



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO 629

**INQUIRY INTO THE CONTINUATION
OF ANTI-DUMPING MEASURES ON**

AMMONIUM NITRATE

**EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA, THE KINGDOM OF
SWEDEN AND THE KINGDOM OF THAILAND**

20 February 2024

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ABBREVIATIONS

\$	Dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
the applicants	CSBP Limited, Orica Australia Pty Ltd, Queensland Nitrates Pty Ltd and Dyno Nobel Asia Pacific Pty Ltd
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 473	Consideration Report No. 473
CSBP	CSBP Limited
CTMS	Cost to make & sell
DCR	Dumping Commodity Register
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
EPR	Electronic Public Record
FOB	Free On Board
Glencore	Glencore Coal Assets Australia Pty Ltd
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
HDAN	high density ammonium nitrate
IDD	Interim dumping duty
LDAN	low density ammonium nitrate
the Manual	<i>Dumping and Subsidy Manual</i>
Minister	the Minister for Industry and Science
NIP	Non-injurious Price
Orica	Orica Australia Pty Ltd
QNP	Queensland Nitrates Pty Ltd
REQ	response to the exporter questionnaire
Russia	the Russian Federation
SEF	Statement of Essential Facts
the subject countries	China, Sweden and Thailand, collectively
Sweden	the Kingdom of Sweden
Thailand	the Kingdom of Thailand
Thai Nitrate	Thai Nitrate Co., Ltd

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Yara	Yara AB
Yara Pilbara Nitrates	Yara Pilbara Nitrates Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry into whether to continue the anti-dumping measures (the measures) on ammonium nitrate exported to Australia from the People's Republic of China (China), the Kingdom of Sweden (Sweden) and the Kingdom of Thailand (Thailand) (collectively, the subject countries).

The measures are in the form of a dumping duty notice for the subject countries. The measures are due to expire on 3 June 2024 (the specified expiry day).¹

This SEF sets out the essential facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base their recommendations to the Minister for Industry and Science (the Minister).

The Commissioner's final recommendations to the Minister will be contained in a report due by 19 April 2024.

Interested parties should note that the SEF may not represent the final views of the Commissioner. The Commissioner invites interested parties to make submissions in response to the SEF (see chapter 1.5).

1.2 Proposed recommendations

The Commissioner proposes to recommend to the Minister that they allow the measures on ammonium nitrate exported to Australia from China, Sweden and Thailand to expire on 3 June 2024. This is because the Commissioner is preliminarily not satisfied that the expiry of the measures on ammonium nitrate exported to Australia from the subject countries would lead, or be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury that the measures are intended to prevent.

1.3 Background to the inquiry

The Commissioner initiated this inquiry on 28 June 2023 and established an inquiry period of 1 April 2022 to 31 March 2023 (the inquiry period)² following consideration of an application from CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica), Queensland Nitrates Pty Ltd (QNP) and Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel) (collectively, the applicants) seeking to continue the measures.³ The Commissioner notified interested parties that a continuation inquiry into ammonium nitrate imported from the subject countries had been initiated in ADN 2023/038 published on 28 June 2023.

The period from 1 April 2022 to 31 March 2023 was set as the inquiry period. Exporters and importers of ammonium nitrate from the subject countries were initially invited to provide information relevant to this period. In addition, the commission also sought information relevant to the period following the inquiry period.

¹ Section 269TM of the *Customs Act 1901* (the Act). All legislative references are to the *Customs Act 1901*, unless otherwise specified.

² ADN No 2023/038 on the electronic public record (EPR) for case 629.

³ EPR 629, document no 2.

1.4 Summary of key preliminary findings

The Commissioner's preliminary findings and conclusions in this SEF are based on the evidence currently available at this stage of the inquiry. The paragraphs below provide a summary of these findings, which are set out in further detail throughout the SEF.

1.4.1 The goods, like goods and the Australian industry (chapter 3)

The Commissioner finds locally produced ammonium nitrate 'like' to the goods the subject of the application. The Commissioner is satisfied that there is an Australian industry, comprised of the applicants and one other manufacturer, producing those like goods.

1.4.2 Australian market (chapter 4)

The Australian industry is able to supply the majority of demand in the Australian market (approximately 95% of the total demand). There is a small percentage of the Australian market that is supplied by imported ammonium nitrate. The commission has found imported ammonium nitrate is necessary to account for shortfalls in production arising amongst Australian producers (refer to chapter 6.6.5 below). These shortfalls were caused by factors that included statutory shutdowns, production outages and unexpected, or unscheduled, demand, which the commission found are unlikely to be alleviated.

Based on the commission's assessment across a series of cases involving the goods,⁴ the share of the Australian market supplied by imported ammonium nitrate has fluctuated between approximately 0.3% and 15% per quarter between March 2014 and March 2023 (Figure 3 in chapter 4.5 refers). The overall average Australian market share held by imports over this period is approximately 5%. The country of origin for imports of the goods has varied in different cases and at different points in time.

The commission considers the Australian market's long-term reliance on a small share of imported ammonium nitrate supports the findings concerning Australian industry production output but also supports the finding that the Australian market will continue to be reliant on imports of the goods (chapter 4.5 refers).

The following outlines the commission's findings concerning Australian market supply chain arrangements during the inquiry period and imports that occurred in the period following the inquiry period, up to 31 December 2023.⁵

During the inquiry period, the Australian ammonium nitrate market was supplied by:

- the applicants (CSBP, Orica, QNP and Dyno Nobel), manufacturers representing a large proportion of the Australian industry
- Yara Pilbara Nitrates - a manufacturer in the Australian industry that is not an applicant
- imports from Thai Nitrate (an exporter from Thailand) and

⁴ Investigation 473, Continuation Inquiry 565, Investigation 605 and Inquiry 629.

⁵ Based on import declarations dated between 1 April 2023 and 31 December 2023.

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- imports from Lithuania and Vietnam.⁶

The evidence available supports the Commissioner's finding that the Australian market was supplied by the Australian industry members, Thai Nitrate (a producer in Thailand) and other importers not subject to measures during the inquiry period. There was no volume of goods supplied by exporters from China and Sweden in the inquiry period.⁷

In addition, the commission examined imports that occurred in the period after the inquiry period. Based on import declarations dated between 1 April 2023 and 31 December 2023 (the period after the inquiry period), the commission observed that there were 2 relatively low volume consignments that were imported from China with an arrival date of October 2023 and January 2024.⁸ Further to the imports from China, the commission also found the Australian ammonium nitrate market was supplied by imports from the following countries that represented the predominate share of import volume:

- Egypt
- Indonesia
- The Republic of Korea
- Lithuania
- Thailand⁹ and
- Vietnam.

With the exception of imports during the inquiry period, which were low compared to the longer term average, the exporting countries listed above had all supplied the Australian market before the inquiry period. Other countries that supplied the goods in material quantities before the inquiry period also included Chile, the Russian Federation, Sweden and Ukraine. Of relevance to this inquiry are imports from Sweden, which have been absent from the market since the March 2019 quarter. The commission's consideration of the available information in chapter 6.6 concludes imports from Sweden are not likely to recur.

1.4.3 Economic condition of the Australian industry (chapter 5)

The Commissioner assessed the economic condition of the Australian industry between 1 April 2017 and 31 March 2023 to analyse trends in the market for ammonium nitrate and to assess potential injury factors.

The Commissioner preliminarily finds that the Australian industry has generally increased its sales volume and market share since the imposition of measures in 2019.

⁶ Imports from Lithuania and Vietnam were the subject of anti-dumping investigation 605 which examined an investigation period 1 April 2021 to 31 March 2022. The investigation was terminated on 8 August 2023 because the Commissioner of the Anti-Dumping Commission was satisfied that the injury caused by the cumulative effect of exports from Lithuania and Vietnam was negligible ([ADN 2023/045 refers](#)).

⁷ In relation to the three countries the subject of this inquiry, Thai Nitrate from Thailand was the only exporter of the goods during the inquiry period.

⁸ The January 2024 importation had an import declaration date in December 2023.

⁹ Imports from Thailand after the inquiry period originated from Thai Nitrate.

1.4.4 Dumping during the inquiry period

There were no exports of ammonium nitrate from China and Sweden in the inquiry period. The Commissioner has therefore not conducted a variable factor review concerning exports from China and Sweden for the purpose of this inquiry.

The Commissioner preliminarily determined in the Thai Nitrates exporter verification report that there is a dumping margin of 4.8% for exports during the inquiry period.¹⁰

1.4.5 Likelihood of dumping and material injury continuing or recurring (chapter 6)

On the basis of the evidence obtained and the analysis conducted in the course of this inquiry by the commission, the Commissioner preliminarily **is not** satisfied that the expiration of the measures applying to ammonium nitrate exported to Australia from China, Sweden and Thailand would lead, or would be likely to lead, to a recurrence of dumping and the material injury that the measures are intended to prevent.

The commission's findings supporting the Commissioner's above preliminary findings are summarised below and further detailed throughout this chapter and the SEF. The commission's findings are based on the information available and analysis conducted by the commission at this point in this inquiry.

China

- Imports from China continued in the initial period after measures were imposed but declined in 2020 and were absent from the market between 2021 and late 2023. There were no imports from China during the inquiry period. The decline in exports from China to Australia coincides with a broader decline in Chinese exports globally. The commission understands this was the result of export restrictions imposed by the Government of China (GOC) (chapter 6.6.1 refers).
- Notwithstanding exports from China appear subject to restrictions, the commission found exports from China to Australia resumed in late 2023 and early 2024. The imports occurred in two consignments that represented 0.3% of all imports that followed the inquiry period between March 2023 and early January 2024 (chapters 6.6.1 and 6.9.4 refer).
- Although exports from China were absent from the Australian market for a prolonged period, and appear subject to restrictions, the re-emergence of imports in late 2023 and early 2024 leads the commission to conclude exports from China are likely to continue (chapters 6.6.1 and 6.9.4 refer).
- Having regard to an analysis of information concerning domestic prices in China and the prices of exports from China to third countries in the inquiry period, it does not appear these exports were dumped. On this basis of this analysis, the commission does not consider that exports from China to Australia are likely to be dumped (chapter 6.7.1 refers).
- Based on the pattern of trade and likely volume of imports from China, the commission **does not** consider the injurious impact on Australian industry's sales volume and/or market share would likely be material (chapters 6.8 and 6.8.1 refer).
- With respect to price injury, the commission has found imports from China were absent from the Australian market from June 2021 but re-emerged in late 2023. These imports were in two very low volume consignments. The infrequent and low

¹⁰ See the Thai Nitrate Exporter Verification Report at EPR 629, Item No. 20.

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volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions (chapter 6.6.1 refers). The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China and are unlikely to be viewed as a realistic and reliable option for Australian buyers of ammonium nitrate (chapter 6.9.1 refers). As a result, the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers).

- On the basis of the finding that imports from China are not likely to be dumped (chapter 6.7 refers), findings concerning the availability of imports from China (chapter 6.6.1 refers), and the finding that the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers), the commission **does not** consider a continuation of imports from China would be likely to lead to a recurrence or continuation of material injury in relation to price injury factors (chapters 6.8 and 6.8.3 refer).

Sweden

- In order to assess whether imports from Sweden are likely to recur, the commission has examined evidence concerning the commercial arrangements that lead to the import of the goods from Sweden in 2017 and 2018 and why imports ceased shortly after.
- The commission has established imports from Sweden were undertaken pursuant to a supply contract between the sole importer of the goods and the importer's Australian supplier. Within the context of this contract, supply to the importer would be primarily from the relevant Australian industry producer, with supply from Sweden only occurring if supply could not be made from the relevant Australian industry producer. The specific details surrounding this arrangement are confidential however the commission can disclose that the supply of goods from Sweden occurred because the importer's Australian supplier could not secure ammonium nitrate from the relevant Australian industry producer.¹¹ The circumstance leading to imports from Sweden being necessary was eventually resolved as there have been no imports from Sweden since (chapters 6.6 and 6.6.1 refer).
- The commission has also found that exporters from Sweden have not maintained distribution links with the Australian market. This is a further factor which reduces the likelihood of imports from Sweden resuming (chapter 6.6.2 refers).
- Having regard to the above findings, the commission **does not** consider exports from Sweden are likely to recur (chapter 6.6 refers). It therefore follows the commission **does not** consider exports from Sweden would lead, or would be likely to lead, to a recurrence of dumping and material injury (chapter 6.8 refers).

Thailand

- There is a single exporter from Thailand, Thai Nitrate, which has continued to export the goods and maintained its distribution links with the Australian market.

¹¹ The commission examined the circumstances relating to imports from Sweden to Australia for the purpose of Investigation 473. The commission's findings are recorded in Confidential Attachment 10 to SEF 473.

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The goods exported during the inquiry period were dumped with a margin of 4.8% (chapters 6.6.1, 6.6.2 and 6.7.1 refer).

- Exporters from Thailand possess excess production capacity that could be directed to the Australian market however this excess production capacity is limited and would represent a maximum Australian market share of 0.4%. If Thai Nitrate sought to increase its share of the Australian market by an amount that exceeds its excess production capacity, it would be doing so by sacrificing more profitable sales to existing domestic market customers. The commission does not consider this outcome is likely (chapter 6.6.3 refers).
- As interested parties have raised during this inquiry, there continue to be supply issues affecting the Australian industry. These supply issues result in a reliance on imports of the goods to compensate for domestic supply shortages. While these import volumes have been low overall (approximately 5% of the Australian market since 2014), this supports a finding that imports from Thailand, amongst other countries, are likely to continue (chapter 6.6.5 refers).
- On the basis of finding that imports from Thailand are likely to continue, inclusive of the additional excess capacity retained by Thai exporters, the volume available from Thailand would likely hold a market share in Australia of approximately 1.0%. With this likely level of market share, the commission **does not** consider the impact on Australian industry's sales volume and/or market share due to a continuation of imports from Thailand would likely be material (chapters 6.8 and 6.8.1 refer).
- With respect to price injury, in a scenario in which the Australian industry does accept the price of imports from Thailand in a contract negotiation, the commission considers the effect on the Australian industry's economic condition would not likely be material (chapters 6.8.3 and 6.9.2 refer).
- The commission has also found that the price of imports from Thailand would not be likely to influence the Australian's industry's current arrangements that are due conclude after measures are due to expire (chapters 6.8.3 and 6.9.3 refer).
- Having regard to an analysis of prices and other price related evidence, and recognising imports from Thailand were found to be dumped during the inquiry period, the commission **does not** consider a continuation of imports from Thailand at dumped prices would be likely to lead to a recurrence or continuation of material injury (chapters 6.8 and 6.8.3 refer).

1.5 Responding to this SEF

The SEF sets out the essential facts on which the Commissioner proposed to base their final recommendations to the Minister. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

The commission invites interested parties to make written submissions in response to this SEF for the Commissioner's consideration.

Interested parties who wish to make written submissions in response to this SEF must do so no later than **11 March 2024**, which is within 20 days after the SEF being placed on

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the public record.¹² The Commissioner will consider submissions made within 20 days of the SEF in making a final report to the Minister.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.¹³

Submissions may be lodged by email to investigations4@adcommission.gov.au.

Alternatively, interested parties may post submissions to:

Director, Investigations 4
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked as 'OFFICIAL: Sensitive'. A non-confidential version of the submission, marked 'PUBLIC RECORD', is required for the public record. A guide for making submissions is available on the commission's website.¹⁴

The electronic public record (EPR) is available via the commission's website and contains non-confidential submissions from interested parties, non-confidential versions of the commission's verification reports and other publicly available documents.

Interested parties should read this SEF in conjunction with other documents on the EPR.

1.6 Final report to the Minister

The Commissioner must provide a final report to the Minister by no later than **19 April 2024**.¹⁵ The final report will contain the Commissioner's final recommendations about the continuation of the measures.

¹² Section 269ZHE(3).

¹³ Section 269ZHE(4).

¹⁴ A guide for making submissions is available [here](#).

¹⁵ The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under section 269ZHD(4) or such longer period as allowed.

2 BACKGROUND

2.1 Legislative framework

The procedures to be followed by the Commissioner in an application for the continuation of anti-dumping measures are set out in Division 6A of Part XVB of the *Customs Act 1901*.

2.1.1 Legislative test

Under section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

2.1.2 Statement of essential facts (SEF)

Section 269ZHE(1) requires the Commissioner to publish a statement of the facts on which they propose to base their recommendations to the Minister about the continuation of the measures. This is referred to as the SEF.

Section 269ZHE(2) requires the Commissioner, in formulating the SEF, to have regard to the application and any submissions received within 37 days of the initiation of the inquiry. Under section 269ZHE(3), the Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the 37 days if to do so would, in the Commissioner's opinion, prevent the timely placement of this SEF on the EPR.

The Commissioner may also have regard to any other matters they consider relevant.

2.1.3 Final report

Section 269ZHF(1) requires the Commissioner, after conducting an inquiry, to give the Minister a report which recommends that the relevant notice:

- remain unaltered
- cease to apply to a particular exporter or to a particular kind of goods
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained, or
- expire on the specified expiry day.

2.2 Application and initiation

On 3 April 2023, the Commissioner published a notice¹⁶ on the commission's website inviting the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures,¹⁷ or

¹⁶ In accordance with section 269ZHB(1).

¹⁷ Section 269ZHB(1)(b)(i).

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- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.¹⁸

On 31 May 2023, the applicants lodged an application for the continuation of the anti-dumping measures on the goods exported to Australia from

The Commissioner was satisfied that:

- the application complied with section 269ZHC (content and lodgement requirements),¹⁹ and
- there appeared to be reasonable grounds for asserting that the expiry of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.²⁰

The Commissioner therefore decided not to reject the application and published ADN No 2023/038 initiating the present inquiry on 28 June 2023.²¹

2.3 Current measures

The measures were initially imposed by public notice on 29 May 2019 by the relevant Minister following the original investigation (Investigation 473). The findings of that original investigation are detailed in Anti-Dumping Commission Report No 473 (REP 473).²²

Table 3 below summarises the anti-dumping measures currently applying to exports of the goods to Australia from the subject countries.

Country	Exporter	Dumping notice	
		Method	Effective IDD rate
Sweden	Yarra AB	Combination	14.4%
Sweden	All other exporters	Combination	14.4%
Thailand	All other exporters	Combination	13.5%
China	All other exporters	Combination	0.3%

Table 3: Measures applying to exports of the goods

Further detail about these measures can be found on the Dumping Commodity Register (DCR) on the commission's website.²³

2.3.1 Other cases involving imports of ammonium nitrate

The commission has conducted numerous cases relating to ammonium nitrate. A list of selected cases is set out in Table 4 below and further details can be found on the commission's website.

¹⁸ Section 269ZHB(1)(b)(ii).

¹⁹ Section 269ZHD(2)(a).

²⁰ Section 269ZHD(2)(b).

²¹ EPR 629, document no 2.

²² EPR 473, document no 65.

²³ The DCR is available [here](#).

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Case type and number	ADN number	Date	Country of export	Findings
Investigation 28	2001/29	24 May 2001	Russia	Measures imposed on all exporters from Russia.
Accelerated Review 61	2002/043	27 September 2002	Russia	Measures varied.
Continuation Inquiry 104	2006/19	17 May 2006	Russia	Measures continued and variable factors altered for all exporters
Continuation Inquiry 168	2011/16	18 April 2011	Russia	Measures continued for all exporters
Review 169	2011/17	18 April 2011	Russia	Variable factors altered for all exporters
Continuation Inquiry 312	2016/34	4 May 2016	Russia	Measures continued and variable factors altered for all exporters.
Investigation 473	2019/57	3 Jun 2019	China, Sweden, Thailand	Measures imposed on all exporters from .
Continuation Inquiry 565	2021/053	23 May 2021	Russia	Measures allowed to expire in relation to all exporters from Russia. ²⁴
Investigation 605	2023/045	8 Aug 2023	Chile, Lithuania, Vietnam	Investigation terminated relating to Chile, Lithuania and Vietnam.

Table 4: Other cases relating to the goods

2.4 Conduct of the inquiry

2.4.1 Inquiry period

The inquiry period nominated for this continuation inquiry is 1 April 2022 to 31 March 2023. The commission invited exporters and importers of ammonium nitrate to provide information relevant to this period.

To analyse the performance of the Australian industry in the years before and after measures were imposed, the commission has examined the period from 1 July 2017.

2.4.2 Australian industry

The Commissioner is satisfied that the applicants represent part of the Australian industry producing like goods to the goods the subject of this inquiry.²⁵

²⁴ Anti-dumping measures were imposed on ammonium nitrate exported to Australia from the Russian Federation, either directly or via Estonia, on 24 May 2001. Those measures were allowed to expire on 24 May 2021 as a result of the decision of the then Minister for Industry, Science and Technology, following their consideration of *Anti-Dumping Commission Report No. 565*. The Anti-Dumping Review Panel is currently reviewing that decision.

²⁵ See chapter 3.

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In addition to information in the application seeking an inquiry, the commission received 4 questionnaire responses from Australian industry members, CSBP, Dyno Nobel, Orica and QNP.²⁶

The commission conducted verification visits to two Australian industry members, CSBP and Orica in September 2023. The verification reports for each visit are available on the public record.²⁷

The commission considers the information provided by Dyno Nobel and QNP to be reliable on the basis that the information is consistent with verified data provided by CSBP and Orica and is considered reliable for the purpose of this investigation.

2.4.3 Importers

Using Australian Border Force (ABF) import data, the commission identified that imports of the goods from countries the subject of this inquiry originated from Thailand during the inquiry period. There were no imports from China or Sweden during the inquiry period, though the commission has identified a minor volume of imports from China in late 2023 and early 2024. This is discussed further at sections 6.6.1 and 6.9.4 below.

The commission further established AECI Australia Pty Ltd (AECI) as the only importer that imported the goods from Thailand during the inquiry period. AECI provided a response to the importer questionnaire (RIQ) supplied by the commission, which the commission verified in September 2023. The AECI verification report is available on the public record.²⁸

2.4.4 Exporters

Of the three countries the subject of this inquiry, the only exports during the inquiry period originated from Thailand. The available evidence before the commission establishes that exports from Thailand during the inquiry period were produced by Thai Nitrate. The commission contacted Thai Nitrate and invited it to complete an exporter questionnaire response.

On 18 September 2023, Thai Nitrate provided its response to the exporter questionnaire (REQ) supplied by the commission.²⁹ Thai Nitrate was subject to a verification performed by the commission during a visit to Thailand in October 2023. The verification report is available on the public record.³⁰

The commission also placed a copy of the exporter questionnaire on the commission's website for completion by other exporters who were not contacted directly. No other responses further to Thai Nitrate's REQ were submitted.

As noted above, exports of the goods the subject of this inquiry originated from Thailand only during the inquiry period. Exports from Thailand re-emerged in late 2022 after a period of absence from the Australian market. Exports from China have largely been absent from the Australian market since mid-2021 up until October 2023. The commission

²⁶ EPR 629 document nos. 006, 007, 008 and 009.

²⁷ EPR 629 document nos. 028 and 029.

²⁸ EPR 629 document no. 017.

²⁹ EPR 629 document no. 010.

³⁰ EPR 629 document no. 020.

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found there have been two very small volume consignments from China in October 2023 and January 2024. With respect to Sweden, there have been no imports since the March quarter of 2019.

On 23 August 2023, the commission published a file note to advise on the status of exporter questionnaire responses and submissions received from interested parties by 4 August 2023.³¹ This date was the due date for receipt of questionnaire responses and submissions in response to the initiation of the inquiry. The file note confirmed receipt of one submission from Swedish ammonium nitrate producer, Yara AB and the REQ from Thai Nitrate.³²

The commission's 23 August 2023 file note also contained a statement indicating that exporters who did not provide their REQ by the due date will be deemed uncooperative.

Yara AB's submission of 9 October 2023 in response to the file note requested that the commission correct public record statements inferring Yara AB was "uncooperative". Yara AB submits the timing of its submission in response the REQ constitutes cooperation and completion of the exporter questionnaire is not, in its opinion, necessary because it did not export ammonium nitrate in the inquiry period.³³

There were no exports from China and Sweden in the inquiry period and the Commissioner **is not** preliminarily satisfied that the expiry of the measures on ammonium nitrate exported to Australia from China and Sweden would be likely to lead to a continuation of, or a recurrence of, dumping and the material injury that the measures are intended to prevent.

As a result, the commission has made the decision not to assess the status of interested parties from China and Sweden who did not submit a formal exporter questionnaire response.

2.4.5 Other interested parties

The commission issued a Request for Information (RFI) to Glencore in response to matters it raised in submissions. On the basis that the information sought from Glencore is confidential, public record versions of the RFI have not been published.

The commission is however able to outline that the RFI covered a range of subjects such as Glencore's historical supply of ammonium nitrate, contractual arrangements and information about the ammonium nitrate importation process.

Where the commission has considered it relevant, the information provided in Glencore's RFI response has been relied on to formulate the findings in Chapter 6. Some of the findings in Chapter 6 also rely on the same confidential information provided by interested parties. These findings are discussed in Confidential Appendix A; a non-confidential summary of the Appendix is provided in chapter 6.9 below.

³¹ EPR 629, document no. 005.

³² EPR 629, document nos. 004 and 010.

³³ EPR 629, No. 014.

2.5 Submissions received from interested parties

Submissions received by the commission prior to publication of this report are summarised in Table 6. Prior to the publication of this SEF the commission had insufficient time to consider a submission received from AECl on 12 February 2024.³⁴ The Commission did not have regard to AECl’s submission as to do so would, in the Commissioner’s opinion, prevent the timely placement of this SEF on the public record.³⁵ The Commission will have regard to AECl’s submission in the report to the Minister. The preparation of this SEF considered all other submissions. Non-confidential versions of all submissions are available on the EPR.

EPR document no	Interested party and topic of submission	Date received
3	Glencore - Response to initiation of Continuation 629	04/08/2023
4	Yara AB - Submission to Continuation 629	07/08/2023
11	Australia Industry Applicants - Argument for continuing the measures	20/09/2023
13	Glencore - Response to recent developments	05/10/2023
14	Yara AB - Response relating to Yara AB’s cooperation	09/10/2023
16	Australia Industry Applicants – Response to Glencore’s October 2023 submission	29/11/2023
18	AECl - Summary of materials presented during importer verification	14/12/2023
19	AECl - Submission on Orica 2023 Results	15/12/2023
21	Australian Industry Applicants – Response to AECl’s Submission (EPR 018)	11/01/2024
23	Australian Industry Applicants – Argument that material injury will likely recur if measures expire	22/01/2024
24	Orica - Summary of materials presented during verification	25/01/2024
25	Glencore - Argument that there is no evidence of material injury	06/02/2024
26	AECl – Submission in response to Australian industry at EPR 023	12/02/2024

Table 6: Submissions received

³⁴ EPR 629, Item No. 026.

³⁵ Section 269ZHE(3) refers.

3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Preliminary finding

The Commissioner finds the following.

- locally manufactured goods are 'like' to the goods subject to the measures.
- there is an Australian industry, comprised of the applicants and one other manufacturer, producing like goods.
- the like goods are wholly or partly manufactured in Australia.

3.2 Legislative framework

To be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping and the material injury that the measure is intended to prevent, the Commissioner firstly determines whether the goods produced by the Australian industry are 'like' to the imported goods.

Section 269T(1) defines like goods as:

...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.

The definition of like goods is relevant in the context of this inquiry in determining the Australian industry and whether the expiry of the measures would lead to a continuation of, or a recurrence of, the dumping and material injury that the measures are intended to prevent. The commission's framework for assessing like goods is outlined in chapter 2 of the *Dumping and Subsidy Manual* (the Manual).³⁶

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether the respective goods have characteristics closely resembling each other. The Commissioner considers:

- physical likeness
- commercial likeness
- functional likeness, and
- production likeness.

The Commissioner must also consider whether the Australian industry manufactures 'like' goods in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

The following analysis therefore establishes the scope of the commission's inquiry.

³⁶ Available [here](#) on the commission's website.

3.3 The goods subject to the measures

ADN No 2023/038 defined the goods under consideration as follows:

Ammonium nitrate, prilled, granular or in other solid form, with or without additives or coatings, in packages exceeding 10kg.

The goods are generally, but not exclusively, classified to the tariff classification 3102.30.00, statistical code 05, in Schedule 3 to the *Customs Tariff Act 1995*.³⁷

3.3.1 Tariff classification

The goods are generally classified according to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Full description of the goods, as subject of the application

Ammonium nitrate, prilled, granular, or in other solid form, with or without additives or coatings, in packages exceeding 10 kg.

<u>Tariff Subheading</u>	<u>Statistical Code</u>	<u>Description</u>
3102	MINERAL OR CHEMICAL FERTILISERS, NITROGENOUS:	
3102.2	- Ammonium sulphate; double salts and mixtures of ammonium sulphate and ammonium nitrate:	
3102.30.00	05	- Ammonium nitrate, whether or not in aqueous solution

Table 7: Tariff classification of the goods

3.4 Model control codes

The proposed model control code (MCC) structure described in ADN No 2023/038 (and in Table 8) describes the key characteristics of the goods.

Category	Sub-category		Sales data	Cost data
Density	H	High	Mandatory	Mandatory
	L	Low		
Form	P	Prilled	Mandatory	Optional
	G	Granular	Mandatory	Optional
	O	Other Solid form	Mandatory	Optional

Table 8: Proposed MCC structure

³⁷ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

3.5 Like goods

The Commissioner is satisfied that the domestically produced goods are like to the goods under consideration³⁸ because the following characteristics of each closely resemble each other:

- physical likeness
- commercial likeness
- functional likeness, and
- production likeness.

In so finding, the commission has relied on information provided during the conduct of this inquiry and prior cases involving the goods.

In *Trade Measures Report No. 28*,³⁹ the Australian Customs Service determined that:

...low density, high density AN⁴⁰ and AN solution are sub-sets of the product group of AN...all types of AN, irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods.

In reaching this conclusion, the Australian Customs Service found that:

- Australian produced LDAN was substitutable with imported LDAN;
- in certain circumstances, HDAN and LDAN could be substituted for each other; and
- emulsion explosives made from both ammonium nitrate solution and HDAN compete with each other.

In the previous cases it was found that certain densities, states or forms of ammonium nitrate were technically more suited to the manufacture of different explosives; however, the essential characteristics of different ammonium nitrate products were not changed by the variations in density, state or form.

Subsection 269T(1) defines like goods as 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.

3.5.1 Physical likeness

The primary physical characteristics of the ammonium nitrate that the Australian industry produces are similar to the primary physical characteristics of the ammonium nitrate exported from the subject countries, notwithstanding variations in the technical specifications of those goods.

3.5.2 Commercial likeness

In the Australian market, ammonium nitrate that the Australian industry produces competes directly and indirectly with ammonium nitrate imported from the subject

³⁸ As defined in section 269T(1).

³⁹ Relevant to the investigation into alleged dumping of ammonium nitrate exported to Australia from Russia, May 2001.

⁴⁰ Ammonium nitrate (AN).

countries. Australian industry and importers sell ammonium nitrate to common customers and on similar commercial terms or conditions.

Based on this, the commission considers the locally produced goods to be commercially like to the goods the subject of the measures.

3.5.3 Functional likeness

The ammonium nitrate that the Australian industry produces is highly interchangeable or substitutable with the goods the subject of measures, given that both goods are sold to the same customers and for identical or comparable end uses.

Based on this, the commission considers that the locally produced goods and the goods under consideration perform the same function and are used in the same end-use applications.

3.5.4 Production likeness

The commission considers that the locally produced goods and the goods the subject of the measures are produced using similar production processes and similar raw material inputs to the goods the subject of the measures. This is based on the production processes the commission observed during verification activities and based on the commission's understanding of the production process from previous cases.

3.6 Australian industry – domestic production

CSBP, Orica, QNP and Dyno Nobel (the applicants) identified themselves as manufacturers of ammonium nitrate in the application. Previous cases also identified Yara Pilbara as another domestic manufacturer.

The commission is satisfied that these 5 companies comprise the Australian industry producing like goods.

3.6.1 Production process

Ammonium nitrate (AN) is produced by neutralising nitric acid with ammonia. Ammonia is produced from natural gas, which typically accounts for most of the production cost of AN. Natural gas is reacted with steam and air to produce hydrogen, nitrogen and carbon dioxide. The carbon dioxide is removed, and the hydrogen is reacted with nitrogen to produce ammonia.

Nitric acid is produced through the reaction of ammonia with oxygen in the presence of a catalyst. The reaction produces nitric oxides, which are dissolved in water to produce nitric acid. The reaction of ammonia with nitric acid produces an ammonium nitrate solution. This may be sold in the solution state or solidified by prilling or granulation.

To manufacture prills, the solution is sprayed into the top of a prilling tower, a rising air stream cools and solidifies the falling droplets into spherical balls or prills.

The density of the finished product is governed by the concentration of the solution. Low density AN prills are produced using a solution with a higher moisture content. The solidified prills also have a high moisture content and go through a lengthy drying process. High density prills are manufactured using a solution with a lower moisture content.

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To produce a low-density product, additives are introduced prior to prilling which changes the structure of the prills during the prilling process to make it form a hollow, honeycomb type structure. It is the additives that increase the internal crystalline strength of the low-density product. Coating agents are applied to stop the product clumping together and to improve handling and storage properties.

Granules are made either by a rotating drum granulation process or fluid bed granulation process. Regardless of the production process, all granules are high density.

Ammonium nitrate is considered a substantially transformed good, manufactured via a value-add process that involves locally sourced or imported raw materials, in particular natural gas.

3.6.2 Conclusion – Australian industry

Based on the information obtained from verification visits and submissions the Commissioner is satisfied that:

- there is an Australian industry which produces like goods in Australia and
- the like goods were wholly or partly manufactured in Australia.

4 AUSTRALIAN MARKET

4.1 Preliminary finding

The Australian industry is able to supply the majority of demand in the Australian market (approximately 95% of the total demand). There is a small percentage of the Australian market that is supplied by imported ammonium nitrate.

In Chapter 6.6.5, the commission concludes imports of the goods were necessary to account for shortfalls in production output amongst Australian industry producers. These shortfalls were caused by factors that included statutory shutdowns, production outages and unexpected, or unscheduled, demand, which the commission found are unlikely to be alleviated.

Based on the commission's assessment across a series of cases involving the goods,⁴¹ the share of the Australian market supplied by imported ammonium nitrate has fluctuated between approximately 0.3% and 15% per quarter between March 2014 and March 2023 (Figure 3 chapter 4.5 refers). The overall average share of imports over this period is approximately 5%. The country of origin for imports of the goods has varied in different cases and at different points in time.⁴²

The commission considers the Australian market's long-term reliance on a small share of imported ammonium nitrate supports the findings concerning Australian industry production output but also supports the finding that the Australian market will continue to be reliant on imports of the goods (chapter 4.5 refers).

The following outlines the commission's findings concerning Australian market supply chain arrangements during the inquiry period and imports that occurred in the period following up to 31 December 2023.⁴³

The commission found that in the inquiry period, the Australian market for the goods and like goods was supplied by:

- the applicants (CSBP, Orica, QNP and Dyno Nobel) are manufacturers representing a large proportion of the Australian industry
- Yara Pilbara Nitrates - a manufacturer in the Australian industry that is not an applicant
- imports from Thai Nitrate (an exporter from Thailand) and
- imports from Lithuania and Vietnam.⁴⁴

The evidence available supports the Commissioner's finding that the Australian market was supplied by the Australian industry members, Thai Nitrate (a producer in Thailand)

⁴¹ Investigation 473, Continuation Inquiry 565, Investigation 605 and Inquiry 629.

⁴² See Table 9 on worksheet Australian Market in Confidential Attachment 1.

⁴³ Based on import declarations dated between 1 April 2023 and 31 December 2023.

⁴⁴ Imports from Lithuania and Vietnam were the subject of anti-dumping investigation 605 which examined an investigation period 1 April 2021 to 31 March 2022. The investigation was terminated on 8 August 2023 because the Commissioner of the Anti-Dumping Commission was satisfied that the injury caused by the cumulative effect of exports from Lithuania and Vietnam was negligible ([ADN 2023/045 refers](#)).

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and other imports not subject to measures during the inquiry period.⁴⁵ There was no volume of goods supplied by exporters from China and Sweden in the inquiry period.

In addition, the commission examined imports that occurred in the period after the inquiry period. Based on imported declarations dated between 1 April 2023 and 31 December 2023 (the period after the inquiry period), the commission observed there were two relatively low volume consignments that were imported from China that had an arrival date of October 2023 and January 2024 (declaration date was in December 2023). Further to the imports from China, the commission also found the Australian ammonium nitrate market was supplied by imports from the following countries that represented the predominate share of import volume:⁴⁶

- Egypt
- Indonesia
- The Republic of Korea
- Lithuania
- Thailand⁴⁷
- Vietnam

With the exception of imports during the inquiry period, which were low compared to the longer term average, the exporting countries listed above had all supplied the Australian market before the inquiry period. Other countries that supplied the goods in material quantities before the inquiry period also included Chile, the Russian Federation, Sweden and Ukraine. Of relevance to this inquiry are imports from Sweden, which have been absent from the market since the March 2019 quarter. The commission's consideration of the available information in chapter 6.6 concludes imports from Sweden are not likely to recur.

4.2 Approach to analysis

The analysis in this chapter is based on financial information submitted by the applicants, data captured in the ABF import database as well as verified importer and exporter information. The commission has verified the information obtained from CSBP and Orica.⁴⁸ The commission has not verified the information obtained from QNP and Dyno Nobel, it is still considered reliable for the purpose of this inquiry.

The data and analysis on which the commission has relied to assess the size and volume trends is at **Confidential Attachment 1**.

4.3 Market structure

In Australia, ammonium nitrate is predominantly sold to and used by the mining and quarrying industries as a raw material in explosives. Ammonium nitrate is either sold to commercial explosives and associated blasting services providers or is sold directly to mining companies which consume ammonium nitrate at mine sites. Ammonium nitrate is imported either directly by explosives providers or is imported via traders. The

⁴⁵ In relation to the three countries the subject of this inquiry, Thai Nitrate from Thailand was the only exporter of the goods to Australia during the inquiry period.

⁴⁶ See Table 8 on worksheet Importer Analysis in Confidential Attachment 6.

⁴⁷ Imports from Thailand after the inquiry period originated from Thai Nitrate.

⁴⁸ See verification reports at EPR 629 Item Nos. 028 and 029.

commission understands that it is unusual for mining companies to directly import ammonium nitrate.

Ammonium nitrate is classified as a dangerous good.⁴⁹ Ammonium nitrate has limited secondary usage in Australia as a fertiliser in the agricultural sector, relative to other nitrogenous fertilisers such as urea and urea ammonium nitrate solution.

The Australian market for ammonium nitrate is split across the eastern and western seaboard. The eastern seaboard ammonium nitrate plants are in New South Wales and Queensland. These plants primarily supply ammonium nitrate for use in eastern seaboard coal and metal mines. The western seaboard market is primarily focused on supplying ammonium nitrate for use in iron ore, gold, and other mines. There is some market in South Australia, but this represents only a small part of the overall industry.

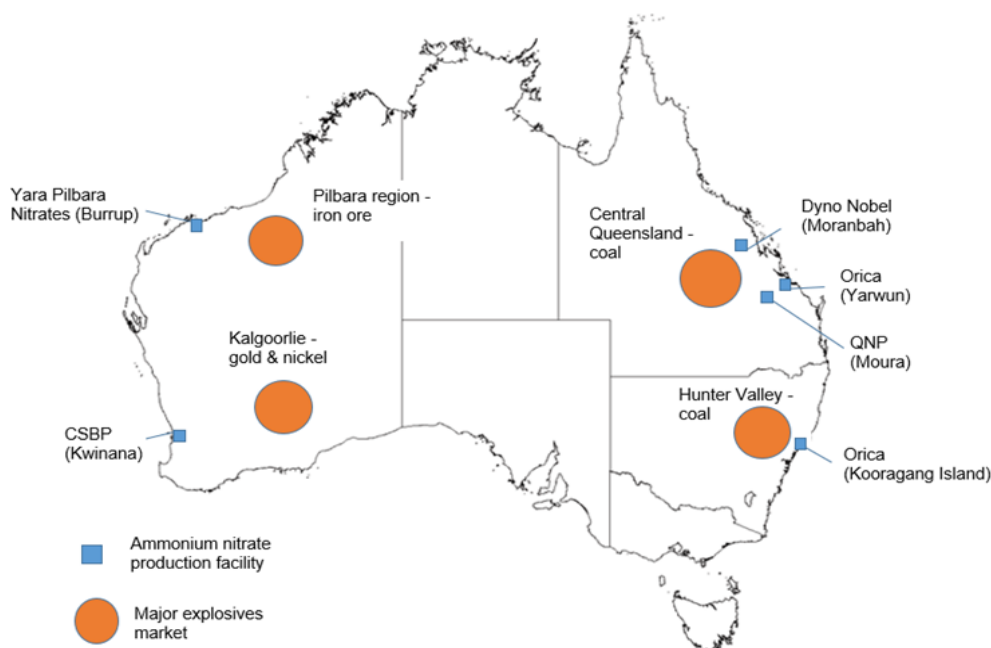


Figure 1: Australian major ammonium nitrate markets and production facilities

4.3.1 Channels to market and competition in the Australian market

In Australia, ammonium nitrate is predominantly sold to and used by the mining and quarrying industries as a raw material in explosives. Figure 2 below illustrates the ammonium nitrate supply channels to the mining sector and other sectors in Australia.

⁴⁹ Ammonium nitrate is classified under the Australian Dangerous Goods Code as a category 5.1 dangerous good. Licences issued by relevant state authorities are required to sell, purchase, transport, and store ammonium nitrate. In addition, there are restrictions on the amount of ammonium nitrate that can be received at a designated port at any one time.

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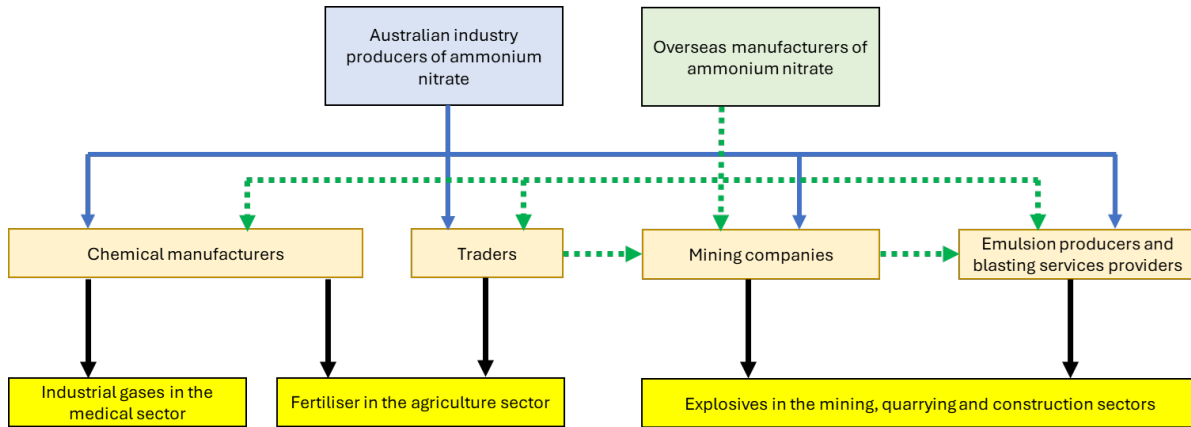


Figure 2: Australian market structure for ammonium nitrate

Ammonium nitrate is either sold to explosives and blasting services providers or is sold directly to mining companies who consume it at mine sites. Ammonium nitrate is imported either directly by explosives providers or via traders. The commission also observed that Australian industry members have imported ammonium nitrate, as well as importations in smaller volumes by entities involved in the production or sale of fertilisers and medical products.

The commission understands that both Orica and Dyno Nobel, in addition to manufacturing and selling ammonium nitrate, provide blasting services, sell commercial explosives, and provide blast initiating systems. Orica and Dyno Nobel's main competitors include other explosives and associated services providers. These competitors source ammonium nitrate as a raw material either from domestic manufacturers or imports from various countries.

In relation to the Australian industry members who do not provide blasting services (CSBP, QNP and Yara Pilbara), the commission considers that they are primarily manufacturers of ammonium nitrate and therefore do not directly compete with other vertically integrated ammonium nitrate manufacturers and mining service providers. However, the entities who are customers of these manufacturers do compete with other mining services providers who import ammonium nitrate, obtain ammonium nitrate from Australian industry, or both.

The 3 ammonium nitrate manufacturers in Queensland (Orica, Dyno Nobel, and QNP) compete for contracts to supply explosives manufacturers and associated blasting services providers, including mining principals. Orica and Dyno Nobel also compete with other market participants to provide mining blast services.

Based on the findings in REP 473, REP 565, REP 605 and information obtained as part of this investigation, the commission understands the following:

- Ammonium nitrate is a commodity product and end users are unlikely to discern significant physical or functional differences. Given that there is little product differentiation, the commission considers that price is a key consideration in any purchasing decision.
- Customers in the mining sector have noted that, given ammonium nitrate is critical to their operations, security of supply is also a key consideration in purchasing decisions.

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- The commission considers that suppliers that are located geographically close to usage sites are able to mitigate some freight costs, storage costs and security and quality risks (ammonium nitrate degrades in quality the longer it is transported and therefore product performance can be compromised). Manufacturers that are proximate to their customer's mines have a significant freight advantage on a delivered ammonium nitrate price basis.⁵⁰ As a result there is limited interstate trade in ammonium nitrate, though in recent years there has been increased trade between the West and East coasts of Australia.
- In limited circumstances, some customers may be prepared to pay a small premium for domestically manufactured ammonium nitrate due to flexibility and quality associated with local supply.⁵¹
- Ammonium nitrate is considered a dangerous good and is subject to various regulatory and licensing requirements related to production, importation and storage.

4.4 Market pricing

Sales of ammonium nitrate in Australia are made predominantly in accordance with fixed-term contracts. These contracts are typically of 2 to 5 years in duration. However, contracts may also be of longer or shorter durations and spot sales may occur on occasion.

Contracts are typically negotiated through a tender process and will usually specify a base price, with rise and fall provisions. These base prices are negotiated on several commercial parameters, which will include pricing offers from alternative supply sources.

The rise and fall provisions referred to above are tied to a range of variables that change relative to the time that the base price in a contract may have been struck. The rise and fall provisions allow parties to take account of the change in costs that occur throughout the life of a contract or supply arrangement but the underlying base price, from which the relative 'rise' or 'fall' is calculated, does not change unless by agreement between parties.

Contracts may also have exclusivity of supply arrangements and/or 'take or pay' provisions (minimum offtake volumes stipulated in supply agreements).

The commission's analysis of supply channels, customer information, sales data and import data, indicates that parties source ammonium nitrate from Australian industry or import sources and, at times, from both.

Both CSBP and Orica advised the commission that price negotiations would consider the price of imports where appropriate.

4.5 Demand

Demand for ammonium nitrate (including its derivative, commercial explosives) in NSW and Queensland is primarily driven by demand from entities that mine thermal and metallurgical coal. In WA, demand for ammonium nitrate is primarily driven by demand

⁵⁰ EPR 473, Item No. 65.

⁵¹ Information obtained from an Australian Industry verification and Final Report 473.

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from mining companies that extract ores and commodities such as iron ore and various metals from the earth.

In addition to the above-mentioned demand drivers, the commission has also identified Australian industry production output as a further driver for imported ammonium nitrate.

The commission's assessment of Australian industry production output in Chapter 6.6.5 concluded imports of the goods were necessary to account for shortfalls in production output amongst Australian industry producers. These shortfalls were caused by factors that included statutory shutdowns, production outages and unexpected, or unscheduled, demand which the commission found are unlikely to be alleviated. This finding was based on submissions made by interested parties and supported by the following analysis which identified the Australian market's long-term reliance on imported ammonium nitrate.

Based on the commission's assessment across a series of cases involving the goods,⁵² Figure 3 below shows that the share of the Australian market supplied by imported ammonium nitrate from all countries, inclusive of imports by the Australian industry, has fluctuated between approximately 0.3% and 15% per quarter between March 2014 and March 2023.⁵³ Inclusive of the outlier observations in 2014, 2018 and following 2020, the overall average Australian market share of imports over this period is approximately 5%. The country of origin for imports of the goods has varied in different cases and at different points in time.⁵⁴

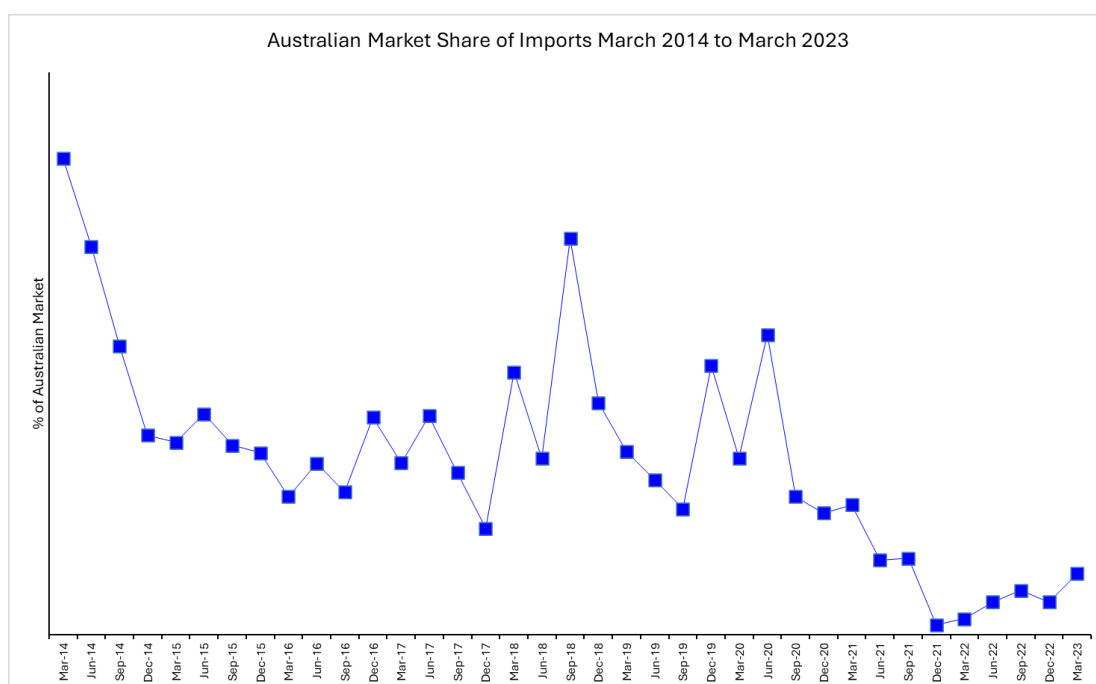


Figure 3: Australian market share of imports

⁵² Investigation 473, Continuation Inquiry 565, Investigation 605 and Inquiry 629.

⁵³ The commission assessment does not extend beyond March 2023 (the inquiry period) as the relevant data for Australian industry sales volume was not requested.

⁵⁴ See Table 9 on worksheet Australian Market in Confidential Attachment 1.

4.6 Market size

Figure 4 depicts the commission’s estimate of the size of the Australian market for ammonium nitrate. The commission estimated the size of the Australian market for ammonium nitrate using domestic sales data from the applicants and data sourced from the ABF import database. The information sourced from the ABF import database was determined using the relevant tariff codes for ammonium nitrate (3102.30.00) and extra filtering to remove imports that are not the goods. The size of the Australian market was then calculated using:

- data provided by the applicants
- ABF import data and
- publicly available information in relation to other members of the Australian industry.

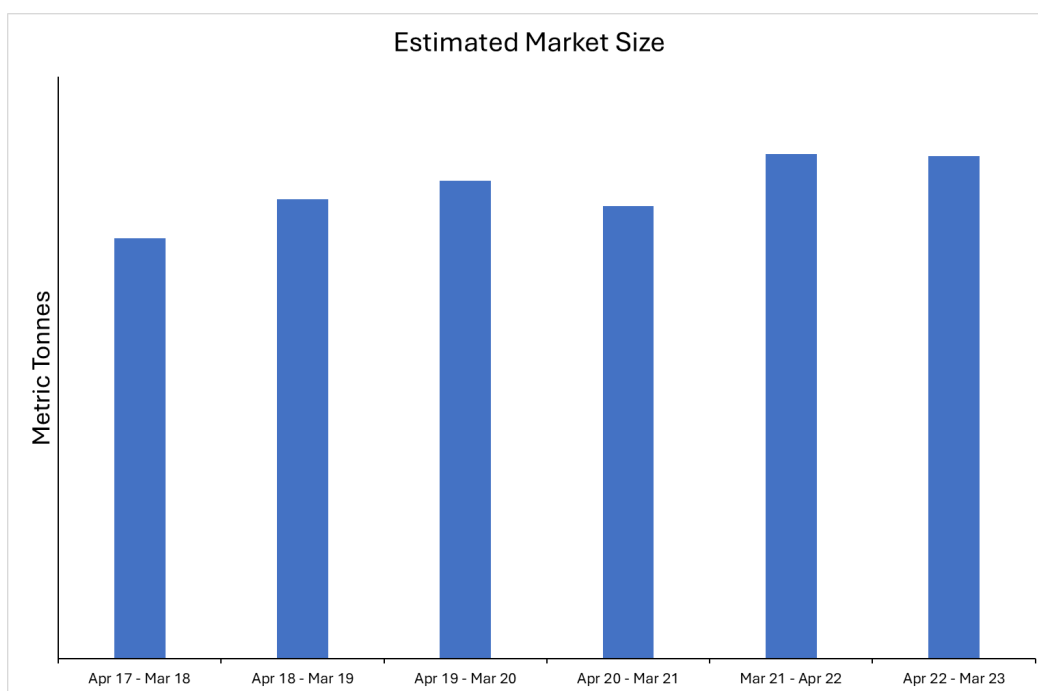


Figure 4: Estimated size of Ammonium Nitrate market in Australia⁵⁵

Figure 4 shows that the size of the Australian industry steadily increased between the years ending March 2018 and March 2023, aside from a brief contraction in the market in between April 2020 and March 2021. Despite the growth in total sales volumes, imports have declined over the period. Much of the growth in supply since 2020 is due to new capacity brought online by Yara Pilbara Nitrates, an Australian industry member that is not one of the applicants.

In addition, the commission examined imports that occurred in the period after the inquiry period. Based on import declarations dated between 1 April 2023 and 31 December 2023 (the period after the inquiry period), the commission observed there were two relatively low volume consignments that were imported from China that had an arrival date of October 2023 and January 2024 (declaration date was in December 2023). Further to the imports from China, the commission also found the Australian ammonium nitrate market

⁵⁵ See Table 10 on worksheet Australian Market in Confidential Attachment 1.

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was supplied by imports from the following countries that represented the predominate share of import volume:⁵⁶

- Egypt
- Indonesia
- The Republic of Korea
- Lithuania
- Thailand⁵⁷
- Vietnam

With the exception of imports during the inquiry period, which were low compared to the longer term average, the exporting countries listed above had all supplied the Australian market before the inquiry period. Other countries that supplied the goods in material quantities before the inquiry period also included Chile, the Russian Federation, Sweden and Ukraine. Of relevance to this inquiry are imports from Sweden, which have been absent from the market since the March 2019 quarter. The commission's consideration of the available information in chapter 6.6 concludes imports from Sweden are not likely to recur.

⁵⁶ See Table 8 on worksheet Importer Analysis in Confidential Attachment 6.

⁵⁷ Imports from Thailand after the inquiry period originated from Thai Nitrate.

5 ECONOMIC CONDITION OF THE INDUSTRY

5.1 Preliminary finding

The commission finds that the Australian industry has generally experienced increased volumes and market share since the measures were imposed in 2019.

5.2 Approach to analysis

This chapter considers the economic condition of the Australian industry since the measures were imposed. This examination provides the basis for the commission's analysis in chapter 6 of whether material injury is likely to continue or recur.

The commission has assessed the economic condition of the applicants from 1 April 2017, using the verified information provided by the applicants in this inquiry, and data from the ABF import database.

5.3 Findings in the original investigation

REP 473 found that the Australian industry had experienced injury in the forms of:

- Reduced production volumes
- Reduced sales volumes
- Price suppression
- Reduced profit and profitability

5.4 Volume effects

The commission has found that the Australian industry has maintained high levels of sales and an increase in market share since the measures were imposed. In recent years, the applicants have lost market share, but the loss was to other domestic producers rather than to importers.

5.4.1 Sales volume

Figure 5 shows the sales volumes of ammonium nitrate in Australia over the past six years. Volumes increased but fell back again in the following year. Since then, the applicants' sales volumes have remained below their peak in 2020.

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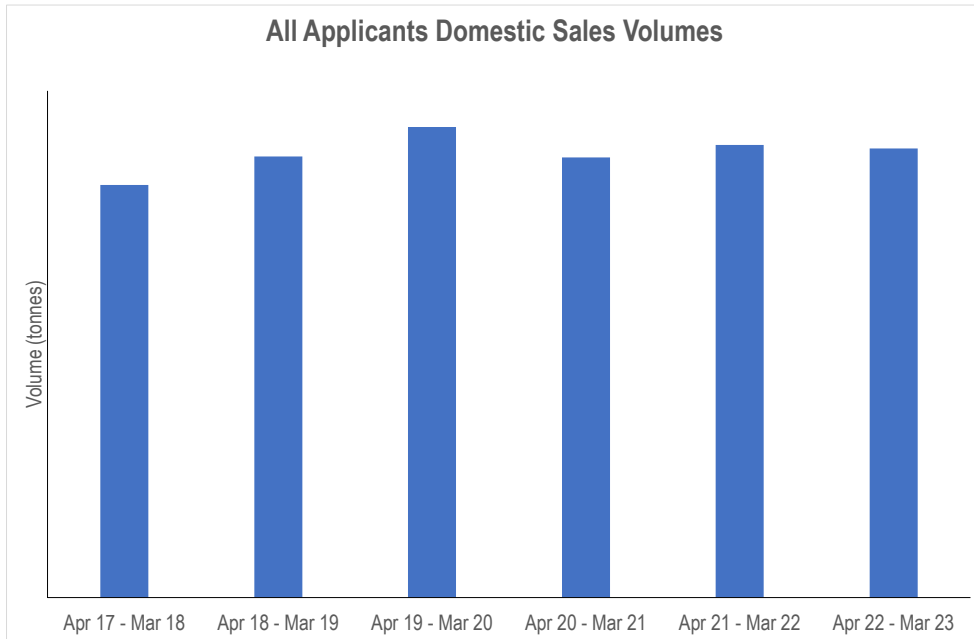


Figure 5: Applicants' sales volume

Figure 6 shows the quarterly sales volumes of the applicants across the inquiry period. Sales volumes fell in the September and December quarters 2022, before increasing slightly in the March quarter 2023.

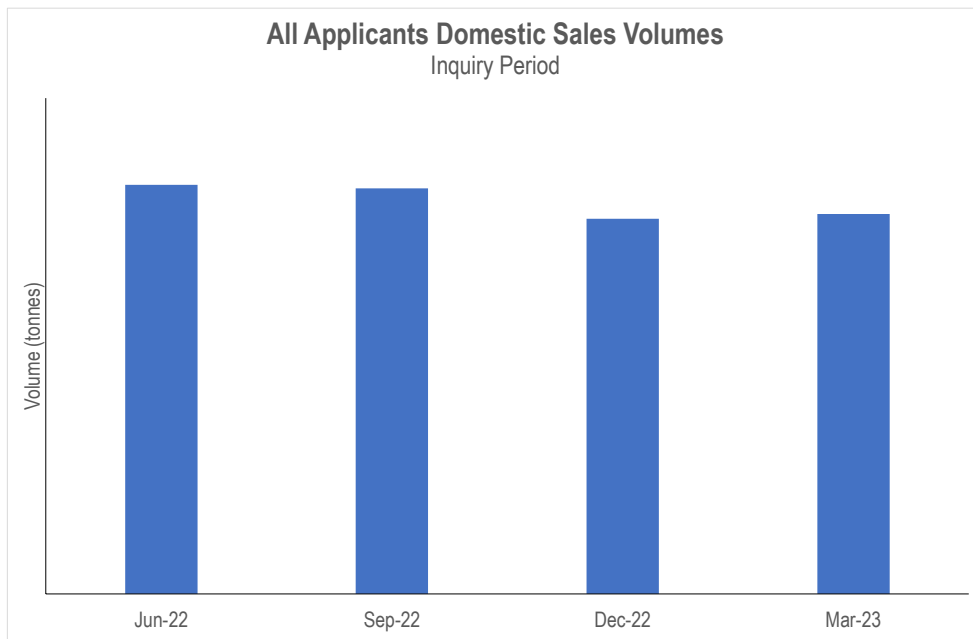


Figure 6: Applicants' sales volume (inquiry period)

5.4.2 Market share

Figure 7 shows the commission's assessment of the market share held by the Australian industry. The Australian industry has supplied a large and increasing share of the domestic market since 2018, however the combined market share of the applicants has declined since 2020, with the non-applicant member of the Australian industry, Yarra Pilbara Nitrates, gaining an increased share of the market during that time. Most of the

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remaining market share belong to imports from countries not currently subject to measures. The combined market share of the subject exporters fell from around 4 per cent to close to zero following the imposition of the measures, though some exports have resumed in the most recent financial year. Other importers supplied around 3-4 per cent of the market between April 2018 and March 2020. The source of these imports included Russia, Chile, Lithuania and, later in the period, Vietnam. In more recent years, the combined market share of these exports has fallen below 1 per cent.

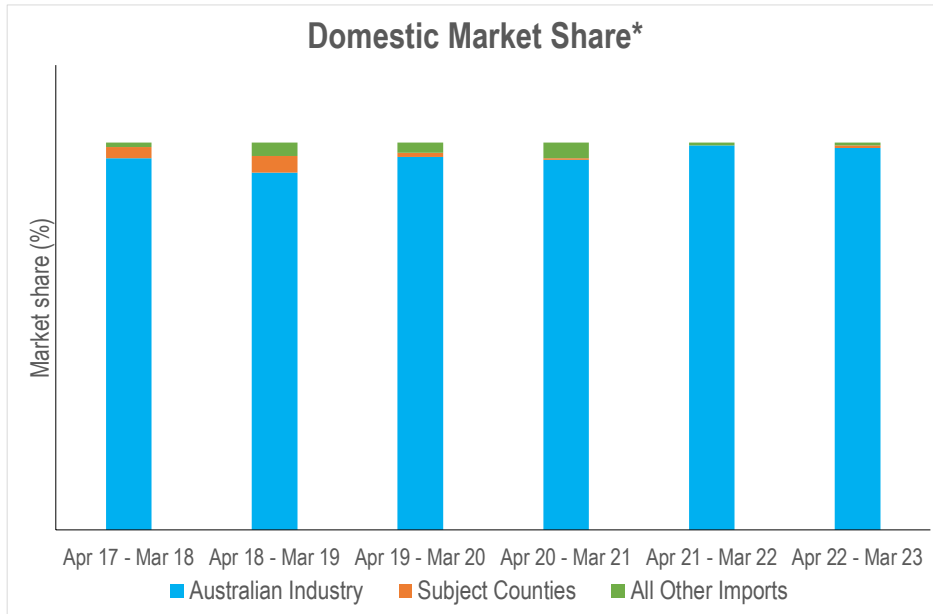


Figure 7: Estimated Australian market share

During the inquiry period the market share of Australian industry fell slightly, though it remained very high (Figure 8). The fall in Australian industry market share in part reflects the resumption of imports from Thailand, as well as an increase in imports from countries not subject to measures.

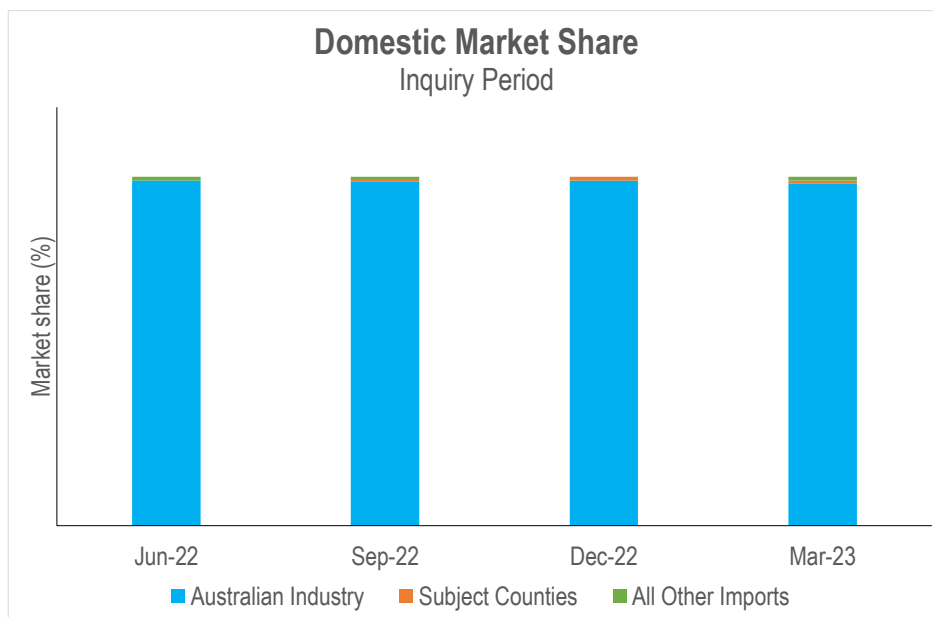


Figure 8: Estimated Australian Market Shares (Inquiry period)

5.5 Price effects

5.5.1 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

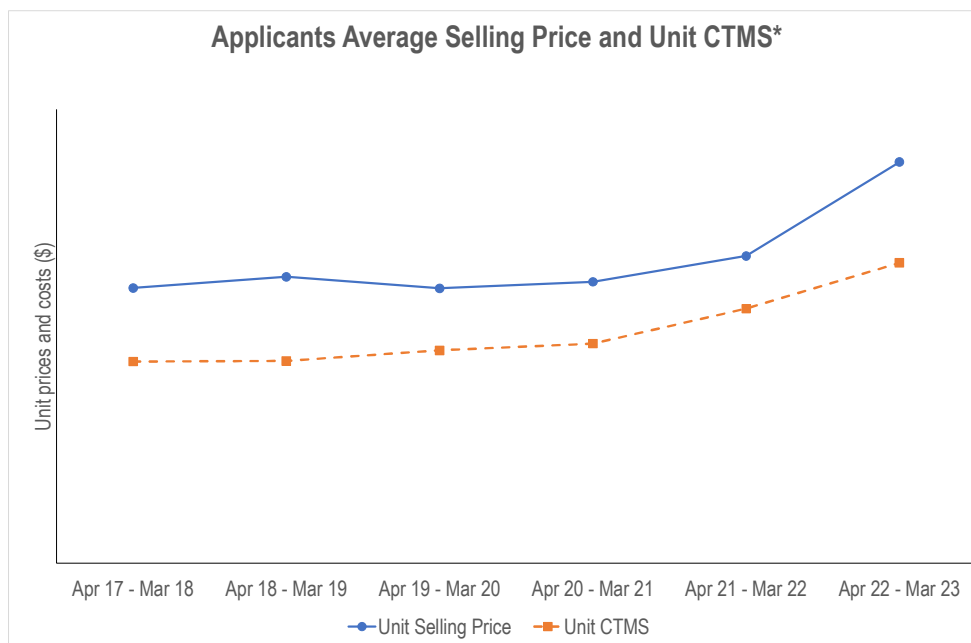


Figure 9: Comparison of the Australian industry's prices and costs

The commission observed the Australian industry's prices since April 2017 have generally increased, with the largest increase occurring during the inquiry period. Costs were also found to have increased. Margins widened again in as prices grew more strongly during those years. Within the inquiry period prices rose faster than costs for the Australian industry (Figure 10).

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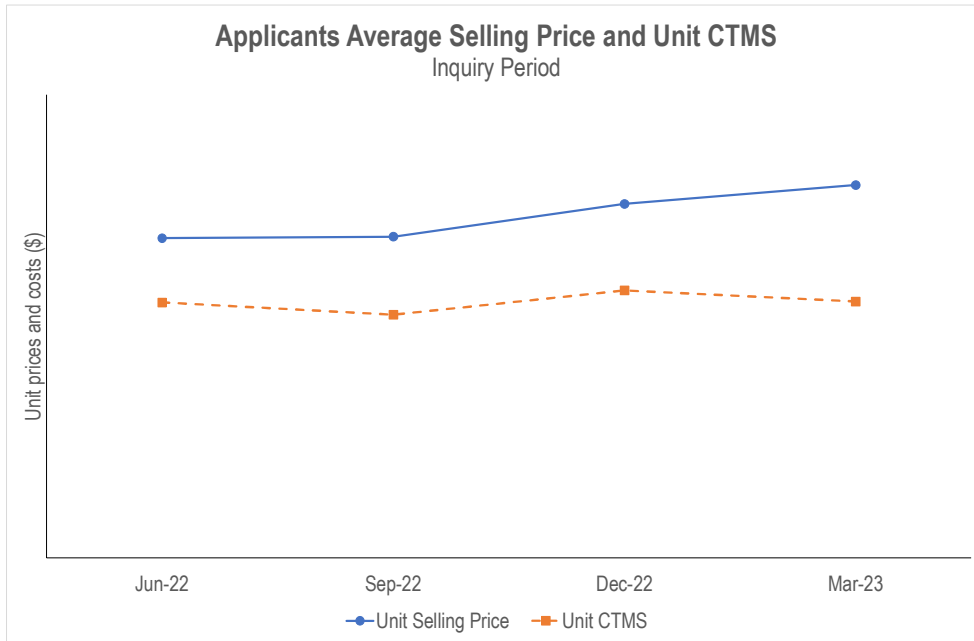


Figure 10: Comparison of the Australian industry's prices and costs (inquiry period)

5.6 Profits and profitability

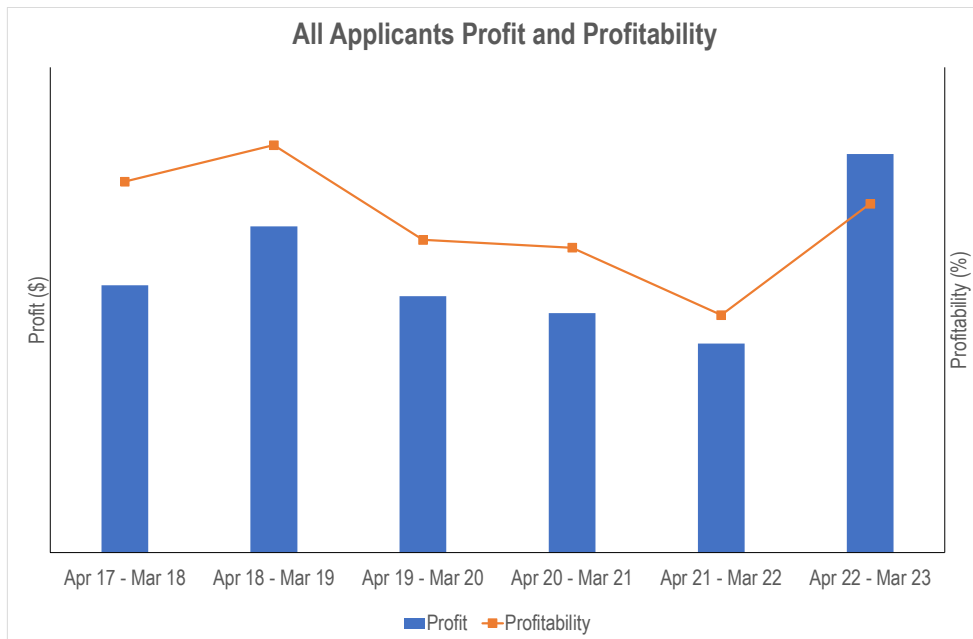


Figure 11: All Applicants profit and profitability

The commission has found for the Australian industry as a whole, profits and profitability generally declined between from April 2017 and March 2022. However, profits and profitability both increased strongly in the year ending March 2023 (Figure 11). Profits and profitability increased within the inquiry period (Figure 12).

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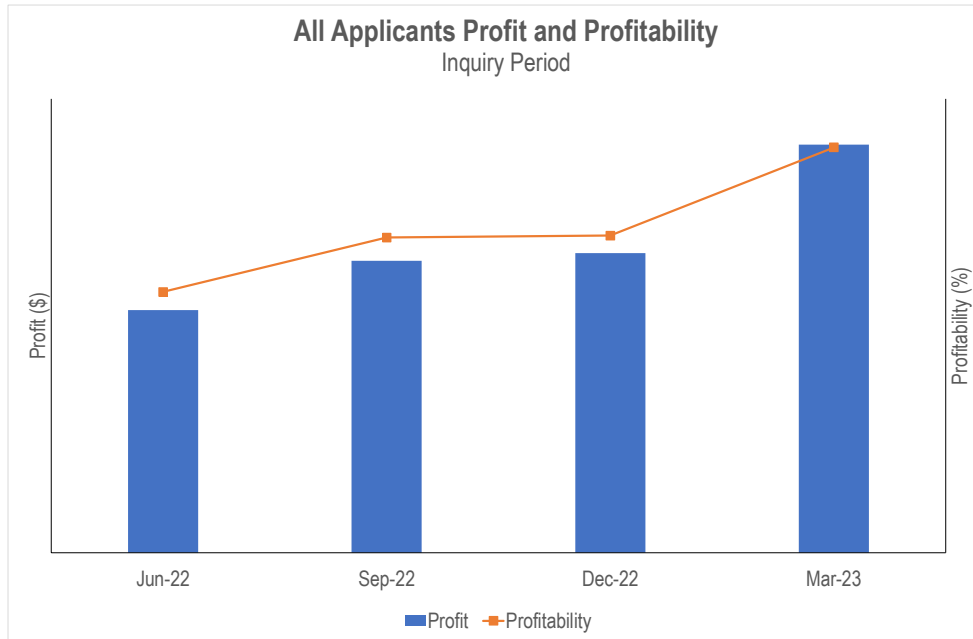


Figure 12: All applicants' profit and profitability (Inquiry period)

5.7 Other economic factors

The applicants' production capacity has remained broadly unchanged over the past six years, with no additional capacity being brought online by any of the applicants. The entry of Yara Pilbara Nitrates added a reported 350,000 metric tonnes in early 2021, but did not go into full scale production until the second half of the year. The average capacity utilisation of Australian industry producers in the period 2017/18 to 2022/23 has remained broadly similar at approximately 90% (Figure 13).

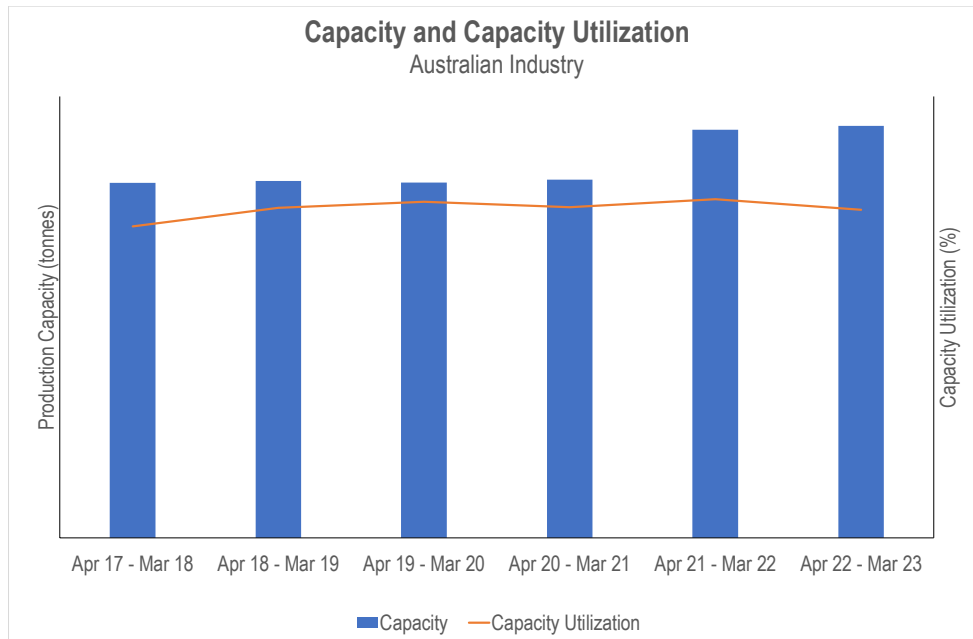


Figure 13: Capacity and capacity utilisation

6 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

6.1 Preliminary finding

On the basis of the evidence obtained and the analysis conducted in the course of this inquiry by the commission, the Commissioner preliminarily **is not** satisfied that the expiration of the measures applying to ammonium nitrate exported to Australia from China, Sweden and Thailand would lead, or would be likely to lead, to a recurrence of dumping and the material injury that the measures are intended to prevent.

The commission's findings supporting the Commissioner's above preliminary findings are summarised below and further detailed throughout this chapter and the SEF. The commission's findings are based on the information available, and analysis conducted by the commission at this point in this inquiry.

China

- Imports from China continued in the initial period after measures were imposed but declined in 2020 and were absent from the market between 2021 and late 2023. There were no imports from China during the inquiry period. The decline in exports from China to Australia coincides with a broader decline in Chinese exports globally. The commission understands this was the result of export restrictions imposed by the GOC (chapter 6.6.1 refers).
- Notwithstanding exports from China appear subject to restrictions, the commission found exports from China to Australia resumed in late 2023 and early 2024. The imports occurred in two consignments that represented 0.3% of all imports that followed the inquiry period between March 2023 and early January 2024 (chapters 6.6.1 and 6.9.4 refer).
- Although exports from China were absent from the Australian market for a prolonged period, and appear subject to restrictions, the re-emergence of imports in late 2023 and early 2024 leads the commission to conclude exports from China are likely to continue (chapters 6.6.1 and 6.9.4 refer).
- Having regard to an analysis of information concerning domestic prices in China and the prices of exports from China to third countries in the inquiry period, it does not appear these exports were dumped. On this basis of this analysis, the commission does not consider that exports from China to Australia are likely to be dumped (chapter 6.7.1 refers).
- Based on the pattern of trade and likely volume of imports from China, the commission **does not** consider the injurious impact on Australian industry's sales volume and/or market share would likely be material (chapters 6.8 and 6.8.1 refer).
- With respect to price injury, the commission has found imports from China were absent from the Australian market from June 2021 but re-emerged in late 2023. These imports were in two very low volume consignments. The infrequent and low volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions (chapter 6.6.1 refers). The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China and are unlikely to be viewed as a realistic and reliable option for Australian buyers of ammonium nitrate (chapter 6.9.1 refers). As a result, the commission

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does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers).

- On the basis of the finding that imports from China are not likely to be dumped (chapter 6.7 refers), findings concerning the availability of imports from China (chapter 6.6.1 refers), and the finding that the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers), the commission **does not** consider a continuation of imports from China would be likely to lead to a recurrence or continuation of material injury in relation to price injury factors (chapters 6.8 and 6.8.3 refer).

Sweden

- In order to assess whether imports from Sweden are likely to recur, the commission had examined evidence concerning the commercial arrangements that lead to the import of the goods from Sweden in 2017 and 2018 and why imports ceased shortly after.
- The commission has established imports from Sweden were undertaken pursuant to a supply contract between the importer of the goods, in which there was one, and the importer's Australian supplier. Within the context of this contract, supply to the importer would be primarily from the relevant Australian industry producer, with supply from Sweden only occurring if supply could not be made from the relevant Australian industry producer. The specific details surrounding this arrangement are confidential however the commission can disclose that the supply of goods from Sweden occurred because the importer's Australian supplier could not secure ammonium nitrate from the relevant Australian industry producer.⁵⁸ The circumstance leading to imports from Sweden being necessary was eventually resolved as there have been no imports from Sweden since (chapters 6.6 and 6.6.1 refer).
- The commission has also found that exporters from Sweden have not maintained distribution links with the Australian market. This is a further factor which reduces the likelihood of imports from Sweden resuming (chapters 6.6 and 6.6.2 refer).
- Having regard to the above findings, the commission **does not** consider exports from Sweden are likely to recur (chapter 6.6 refers). It therefore follows the commission **does not** consider exports from Sweden would lead, or would be likely to lead, to a recurrence of dumping and material injury (chapter 6.8 refers).

Thailand

- There is a single exporter from Thailand, Thai Nitrate, which has continued to export the goods and maintained its distribution links with the Australian market. The goods exported during the inquiry period were dumped with a margin of 4.8% (chapters 6.6.1, 6.6.2 and 6.7.1 refer).
- Exporters from Thailand possess excess production capacity that could be directed to the Australian market however this excess production capacity is limited and would represent a maximum Australian market share of 0.4%. If Thai Nitrate sought to increase its share of the Australian market by an amount that exceeds its excess production capacity, it would be doing so by sacrificing more profitable

⁵⁸ The commission examined the circumstances relating to imports from Sweden to Australia for the purpose of Investigation 473. The commission's findings are recorded in Confidential Attachment 10 to SEF 473.

sales to existing domestic market customers. The commission does not consider this outcome is likely (chapter 6.6.3 refers).

- As interested parties have raised during this inquiry, there continue to be supply issues affecting the Australian industry. These supply issues result in a reliance on imports of the goods to compensate for domestic supply shortages. While these import volumes have been low overall (approximately 5% of the Australian market since 2014), this supports a finding that imports from Thailand, amongst other countries, are likely to continue (chapter 6.6.5 refers).
- On the basis of the finding that imports from Thailand are likely to continue, inclusive of the additional excess capacity retained by Thai exporters, the volume available from Thailand would likely hold a market share in Australia of approximately 1.0%. With this likely level of market share, the commission **does not** consider the impact on Australian industry's sales volume and/or market share due to a continuation of imports from Thailand would likely be material (chapters 6.8 and 6.8.1 refer).
- With respect to price injury, in a scenario in which the Australian industry does accept the price of imports from Thailand in a contract negotiation, the commission considers the effect on the Australian industry's economic condition would not likely be material (chapters 6.8.3 and 6.9.2 refer).
- The commission has also found that the price of imports from Thailand would not be likely to influence the Australian's industry's current arrangements that are due conclude after measures are due to expire (chapters 6.8.3 and 6.9.3 refer).
- Having regard to an analysis of prices and other price related evidence, and recognising imports from Thailand were found to be dumped during the inquiry period, the commission **does not** consider a continuation of imports from Thailand at dumped prices would be likely to lead to a recurrence or continuation of material injury (chapters 6.8 and 6.8.3 refer).

6.2 Legislative framework

Under section 269ZHF(2) the Commissioner must not recommend that the Minister take steps to secure the continuation of measures unless they are satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measure is intended to prevent.

The commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. The commission must consider what will happen (or what would be likely to happen) in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner must nevertheless base their conclusions and recommendations on facts.⁵⁹

6.3 The commission's approach

The commission considered a number of relevant factors to assess the likelihood that dumping and material injury will continue or recur, as outlined in the Manual.⁶⁰ The commission's view is that the relevance of each factor varies depending on the nature of

⁵⁹ [ADRP Report No. 44](#) (Clear Float Glass)

⁶⁰ [The Manual](#), pages 136-38.

the goods and the market into which the goods are sold. In this instance, no one factor can provide decisive guidance. The following analysis therefore examines a range of factors that the commission considers relevant to this inquiry.

6.4 Australian industry claims

In their application, the applicants make the following claims regarding the continuation or recurrence of injury of ammonium nitrate exported to Australia from the subject countries.⁶¹

- The original investigation found that export prices of the goods from the subject countries were a factor that influenced the prices the Australian industry was able to secure in contract negotiations.
- The future threat of material injury remains in 2023 as it did when measures were imposed in 2019 because exporters from the subject countries continue to be active on global export markets.
- Exporters from the subject countries retain an ability to export large bulk shipments that can influence the Australian industry's price negotiations for large volume supply contracts.
- The proven capability for exporters from the subject countries to export at significant margins of dumping has not passed in the period since measures were imposed.
- Exporters from the subject countries have maintained distribution links following the imposition of measures.
- Exporters from China retain excess production capacity that may be directed to the Australian market.

In addition to the broader claims outlined above, the Australian industry makes a specific claim that high prices of ammonium nitrate imports throughout 2022 and 2023 will likely fall back to levels that existed prior to the COVID-19 pandemic in 2020 and before restrictions were placed on ammonium nitrate exports from Russia in 2022.

Australian industry considers that lower prices will return by the time measures are due to expire in June 2024 and these prices will factor in contract negotiations. Australian industry contends that contract prices negotiated on the basis of prices for allegedly dumped imports from the subject countries will likely lead to a continuation or recurrence of material injury.

6.5 Submissions about the continuation or recurrence of dumping and material injury

Submissions by Australian industry

In their submission dated 20 September 2023, the applicants provided the following information concerning further to the analysis in their application and in response to submissions by other interested parties.⁶²

⁶¹ EPR 629, Item No.1 at Attachment A.

⁶² EPR 629 Item No. 011.

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- Changes in the volume of Australian imports from the subject countries following the imposition of measures.
- Re-emergence of imports from Thailand during 2022 and into 2023.
- Evidence concerning the resumption of imports from China in 2023.
- Descriptions of various statistics concerning third country export volumes from the subject countries.
- Reducing prices for imported ammonium nitrate in 2023, noting the discussion references Lithuania.
- A claim that the assurances given in Yara AB's submission cannot be relied upon as they have not completed a questionnaire response to provide information against which they can be tested.⁶³
- The change in country of origin for imports of the goods after measures were imposed shows how importers are able to easily switch suppliers.

In a submission dated 28 November 2023, the applicants outline the following points in response to a submission by Glencore who has stated the Australian industry has 'no spare capacity' and must rely on imported ammonium nitrate to satisfy demand.⁶⁴

- Australian industry concedes imports are necessary to cover unscheduled production outages and increased demand outside of forecasted volume.
- Glencore has made clear its intentions to continue importing the goods at dumped prices.
- It is not unreasonable to anticipate the price of Australian ammonium nitrate imports will reflect globally traded prices, such as those observed for imports from Lithuania, which the Australian industry claims are dumped.
- Glencore's argument that portrays injury caused by dumping as being "inconsequential" is redundant on the basis that the commission has established injury in relation to low volumes can still be material.

The applicants provided a further submission of 11 January 2024 in response to AECl's submission on industry and market behaviours.⁶⁵ The submission noted that AECl have not made public the presentation slides discussed in the submission and claimed that they have been disadvantaged by the lack of disclosure. The submission also made the following claims:

- Contrary to the impression created by AECl's submission, the Australian Industry is not unreliable. Planned and unplanned shutdowns are at times necessary. In contrast to export countries, Australian industry is subject to the Safeguard Mechanism and must sometimes shutdown production to reduce their carbon emissions.
- AECl's claim that importers have limited access to imported supply is not correct; Thai Nitrate seeks to export fifty per cent of its production and has been exporting to Australia at dumped prices.
- Over the past two decades Australian industry has expanded its capacity from 900,000 tonnes per annum to 2.8 million tonnes per annum to meet increasing

⁶³ Yara AB submission at EPR 629 Item No. 004.

⁶⁴ EPR 629 Item No. 016.

⁶⁵ EPR 629 Item No. 021.

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demand. Australian industry states that this investment was premised on imports being priced fairly.

The applicants also provided a submission on 22 January 2024 to argue that material injury would be likely to recur if the measures were allowed to expire.⁶⁶ The submission made the following claims:

- Imported ammonium nitrate prices have declined throughout 2023 and are approaching pre-pandemic levels.
- The submission noted that, following the imposition of provisional measures after Investigation 473, importers switched to sourcing ammonium nitrate from countries not subject measures.
- No exporters from China or Sweden completed an exporter questionnaire, leaving it open to the commission to consider other public domain information to determine if a recurrence of imports is likely from these sources. The submission also claims that China has resumed exporting ammonium nitrate to Australia.
- Since the conclusion of the inquiry period there have been almost 19,000 tonnes of ammonium nitrate imported from Thailand, in addition to 16,523 tonnes imported during the inquiry period. The submission argues that since the commission has found that imports from Thailand were sold at dumped prices during the inquiry period, it is fair to surmise that the subsequent imports were also dumped.
- Investigation 473 established that Australian injury had experienced material injury in the form of lost sales volumes, price depression, price suppression and reduced profits and profitability from dumped imports from China, Sweden and Thailand prior to measures being imposed.
- If the measures expire, and exports from China and Sweden did recur, it would likely be at dumped prices, as they would be competing with lower priced imports from Lithuania and Vietnam.

Orica made a further submission on 25 January 2024 that summarised a confidential presentation given to the commission during the verification visit on 25-26 July 2023.⁶⁷ The presentation covered background information to Orica's business and the ammonium nitrate market in Australia, a discussion of exports to Australia from the subject countries and a discussion of the threat of injury to the Australian industry that would arise from these sources.

Submissions by Yara AB from Sweden

Yara AB has been the only exporter of the goods from Sweden over the past 10 years (since 2014).

Yara AB's submission of 4 August 2023 is summarised as follows.⁶⁸

- An explanation of the circumstances that led to its exports of the goods during the investigation period for Investigation 473 and why these circumstances will not recur.
- Information concerning the acquisition of Yara AB's Australian customer for the goods.

⁶⁶ EPR 629 Item No. 023.

⁶⁷ EPR 629 Item No. 024.

⁶⁸ EPR 629 Item No. 004.

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- Factors explaining why Australia is not a key market for Yara AB's ammonium nitrate business and its business generally.
- Why it has not recommenced exporting the goods within the context of high ammonium nitrate prices during 2022 and 2023 and major production outages amongst Australian producers.
- Yara AB's capacity utilisation not being a driver for its exports in the original investigation period for Investigation 473 and why it is not relevant to the inquiry.
- Discussion to counter Australian industry's claim that Yara AB's exports to third country destinations during the inquiry period were dumped.
- Reiteration of certain findings made by the commission during Investigation 605 where a clear trend or relationship between the price of Australian industry's sales and imported goods could not be found.
- Comments about the Australian industry's improved economic condition.

Yara AB provided a further submission on 9 October 2023.⁶⁹ In the submission Yara AB expressed concern that statements made by the commission that Yara AB was an 'uncooperative exporter' was incorrect and "risks prejudicing this inquiry". In support of this, the submission made the following points:

- Variable factors can only be determined if there have been exports
- Section 269TACAB of the Customs Act 1901 ("the Act") only applies if variable factors are to be determined
- Yara has provided a response to the initiation of the investigation.

Submissions by Glencore

Glencore made 3 submissions following initiation of the inquiry. The key points raised in each submission are summarised below.

Glencore's first submission dated 4 August 2023 covers the following matters.⁷⁰

- The applicants have not satisfied the test for a continuation of measures pursuant to section 269ZHF(2) of the Act. Glencore cites the cessation of exports from China and Sweden and the applicant's statement on the level of dumping associated with exports from Thailand.
- Australian market demand for ammonium nitrate exceeds the Australian industry's capacity.
- The continued volume of imports from Thailand would not be injurious.
- Contractual arrangements concerning the use of third-party ammonium nitrate suppliers.
- Factors relevant to whether exports from Sweden are likely to recur, where Glencore concludes it is not likely.
- The imposition of measures is not the reason that led to a cessation of imports from China in 2021.
- Reiteration of certain findings made by the commission during Investigation 605 where a clear trend or relationship between the price of Australian industry's sales and imported goods could not be found.

⁶⁹ EPR 629 Item No. 014.

⁷⁰ EPR 629 Item No. 003.

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- An absence of supply agreements between buyers in the Australian market and exporters from the subject countries.
- Concerns regarding the available information about the Australian industry's upcoming contract negotiations.

Glencore's second submission dated 5 October 2023 covers the following matters.⁷¹

- Glencore questions the relevance of Lithuanian imports prices cited in a submission by the Australian industry.
- Imports of the goods have continued when the prices of ammonium nitrate were at historic highs. Glencore considers this counters Australian industry claim of reducing import prices making the Australian market attractive to traditional importers and exporters will exploit this.
- Details concerning the relevance of ammonium nitrate imports within the Australian market context.
- Further information to support Glencore's position that the Australian industry cannot satisfy market demand.
- Comments about the market dynamic between Australian producers.

Glencore's submission dated 6 February 2024 covered the following issues⁷²

- Glencore expressed concern that the verification reports for Australian industry had not been released despite the imminent publication of the SEF.
- Glencore argued that industry have provided no evidence that material injury had occurred, and contended that the 4.8 per cent dumping margin that was found for Thai Nitrate was too small to be injurious.
- There has been no evidence presented that China or Sweden is likely to resume exports to Australia if the measure are removed.
- The trend in falling prices is caused by decreases to ammonia prices, which affect both imported and locally produced ammonium nitrate, making it "agnostic as to whether dumping would occur".
- The dumping margin for Thai Nitrate is overstated as the normal value includes transactions relating to domestic sales of higher priced medical grade ammonium nitrate.⁷³

Submissions by AECI

On 11 December AECI made a public submission, providing a summary of the presentation slides that were shown to commission during the verification visit on 6 September 2023.⁷⁴ The submission made the following claims:

⁷¹ EPR 629 Item No. 013.

⁷² EPR 629 Item No. 025.

⁷³ The commission examined the product codes relevant to Thai Nitrate's reported domestic sales and observed some of its sales did relate to ammonium nitrate that was described as medical grade. Sales of ammonium nitrate identified as medical grade were made to customers who were in the mining and blasting services and industrial gas sectors. The price of medical grade ammonium nitrate was comparable to the price of other product codes that corresponded with the export of the goods to Australia and did not necessarily have the highest price. The commission does not consider the price of medical grade ammonium nitrate warrants the relevant transactions are excluded from Thai Nitrate's normal value or require an adjustment under section 269TAC(8) of the Act.

⁷⁴ EPR 629 Item No. 017.

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- There is a tight balance between domestic demand and domestic supply of ammonium nitrate, and domestic supply is affected by plant shutdowns for regular maintenance and due to plant failures.
- Higher priced imports are sometimes needed to safeguard against domestic supply shortage.
- It has become more difficult to import ammonium nitrate from China as Chinese authorities have placed restrictions on ammonium nitrate exports and logistics. AECI cites accidents such as an explosion of ammonium nitrate stored at the port of Tianjin in China during 2015 and in a port storage facility at the city of Beirut in Lebanon during 2020. The measures also appear to be aimed at ensuring a sufficient domestic supply of ammonium nitrate for fertiliser.
- Ammonium nitrate is considered a dangerous good and subject to port limits and other restrictions that constrains the volume that can be imported.
- End users cannot source their entire ammonium nitrate requirements from overseas.

AECI also made a submission on 13 December in response to speeches made by Orica Limited's managing director and chief executive officer at the company's 2023 annual general meeting.⁷⁵ The submission notes that Orica has reported that it had its strongest result in nine years in 2023, has experienced strong demand for its product, and this strength is expected to continue. The submission argues that these statements are inconsistent with material injury from dumping. The submission also claims that Orica's statements show that Orica regularly has planned and unplanned shutdowns.

6.6 Are exports likely to continue or recur?

To assess whether exports from the subject countries are likely to continue or recur, the commission examined the available information for the matters listed below.

- Import volumes.
- Maintenance of distribution links.
- Excess production capacity.
- Availability of other markets.
- Australian industry production output.

Having regard to analysis of evidence relevant to each of the above matters, the commission considers that, should the measures expire, exports from China and Thailand are likely to continue. This conclusion is based on the following findings.

China

- Imports from China continued in the initial period after measures were imposed but declined in 2020 and were absent from the market between 2021 and late 2023. There were no imports from China during the inquiry period. The decline in exports from China to Australia coincides with a broader decline in Chinese exports globally. The commission understands this was the result of export restrictions imposed by the Government of China (GOC) (chapter 6.6.1 refers).
- Notwithstanding exports from China appear subject to restrictions, the commission found exports from China to Australia resumed in late 2023 and early 2024. The

⁷⁵ EPR 629 Item No. 018.

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imports occurred in two consignments that represented 0.3% of all imports that followed the inquiry period between March 2023 and early January 2024 and were undertaken by parties who imported from China in very low and infrequent volumes (chapters 6.6.1 and 6.9.4 refer).

- Although exports from China were absent from the Australian market for a prolonged period, and appear subject to restrictions, the re-emergence of imports in late 2023 and early 2024 leads the commission to conclude exports from China are likely to continue (chapters 6.6.1 and 6.9.4 refer).

Thailand

- There is a single exporter from Thailand, Thai Nitrate, which has continued to export the goods and maintained their distribution links with the Australian market. The goods exported during the inquiry period were dumped with a margin of 4.8% (chapters 6.6.1, 6.6.2 and 6.7.1 refer).
- Exporters from Thailand possess excess production capacity that could be directed to the Australian market however this production capacity is limited to possibly 1 or 2 more shipments representing a maximum Australian market share of 0.4%. If Thai Nitrate sought to increase its share of the Australian market by an amount that exceeds its excess production capacity, it would be doing so by sacrificing more profitable sales to existing domestic market customers. The commission does not consider this outcome is likely (chapter 6.6.3 refers).
- As interested parties have raised during this inquiry, there continue to be supply issues affecting the Australian industry. These supply issues result in a reliance on imports of the goods to compensate for domestic supply shortages. While these import volumes have been low overall (below 5% of the Australian market since 2014), this supports a finding that imports from Thailand, amongst other countries, are likely to continue (chapter 6.6.5 refers).

Having regard to the available information about exports from Sweden, the commission does not consider a recurrence of exports from Sweden is likely. The commission's conclusion is based on the following findings.

- In order to assess whether imports from Sweden are likely to recur, the commission had examined evidence concerning the commercial arrangements that lead to the import of the goods from Sweden in 2017 and 2018 and why imports ceased shortly after.
- The commission has established imports from Sweden were undertaken pursuant to a supply contract between one importer and one member of the Australian industry. Within the context of this contract, supply would be made primarily from the relevant Australian industry producer, with supply from Sweden only occurring if supply could not be made from the relevant Australian industry producer. The specific details surrounding this arrangement are confidential however the commission can disclose that the supply of goods from Sweden arose because the relevant Australian industry producer was unable to satisfy demand. The circumstance leading to imports from Sweden being necessary was eventually resolved and there have been no imports from Sweden since (chapter 6.6.1 refers).
- The commission has also found that exporters from Sweden have not maintained distribution links with the Australian market. This is a further factor which reduces the likelihood of exports from Sweden resuming (chapter 6.6.2 refers).

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- Having regard to the above findings, the commission **does not** consider exports from Sweden are likely to recur.

6.6.1 Import volumes

The commission's analysis of import volumes in the period 1 January 2024 to 31 December 2023 reveals the following.

- Exports from China occurred in late 2023 after being absent from the Australian market since 2021.
- There have been no exports from Sweden since 2019.
- Exports from Thailand re-emerged in 2022 following a 3-year absence from the Australian market.

Table below shows an index of the subject goods import volume from each subject country in the period 1 January 2014 to 31 December 2023. The data uses calendar year [CY] 2014 as the base year and excludes imports by the Australian industry. The analysis period covers the time before and after measures were imposed in June 2019.

Country	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
China ⁷⁶	100	49	45	22	44	46	6	0	0	0
Sweden	100	0	6	136	202	1	0	0	0	0
Thailand	100	146	345	1198	391	0	0	0	980	2430
Total	100	37	39	74	95	33	4	0	17	31

Table 9: Index of subject goods import volume⁷⁷

China

Notwithstanding an absence of imports from China over a lengthy period, the commission considers the importations from China in late 2023 and early 2024, albeit in very low volumes, indicates it is likely imports from China will continue if the measures are allowed to expire. The discussion below outlines further details in support of this finding.

The Australian industry's submission of 20 September 2023 claims China has historically exported ammonium nitrate at levels of up to 60,000 metric tonnes per annum.⁷⁸ A review of ABF data for imports since 2014 shows that 95,000 tonnes of ammonium were imported from China in 2018, however all but 22,000 tonnes of those imports were supplied to Australian industry members.⁷⁹ Imports from China by entities who are not members of the Australian industry never reached 60,000 tonnes.

⁷⁶ The values for China in 2021 and 2023 were actually 0.13 and 0.19 respectively.

⁷⁷ Refer to Table 1 on worksheet 'Indexation Table' in Confidential Attachment 3.

⁷⁸ EPR 629, Item No. 011, p.4.

⁷⁹ See Table 3.1 on worksheet 'China' in Confidential Attachment 3.

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In the initial period after measures were imposed in June 2019, imports from China continued through to the June 2021 quarter and were then absent from the Australian market until a re-emergence in the October 2023 quarter and in January 2024.⁸⁰

The commission observed that the absence of Chinese imports in the Australian market from 2021 coincides with a large decrease in total exports of the goods from China to all other countries.⁸¹ The decrease in ammonium nitrate exports from China suggests producers in that country have directed production output to the Chinese domestic market. The commission understands this was driven by initiatives put in place by the GOC National Development and Reform Commission (NDRC) who imposed restrictions on the export of ammonium nitrate.⁸² The commission's evidence concerning GOC export restrictions also corresponds with information provided by interested parties.⁸³

Australian industry submits that imports from China occurred during the inquiry period.⁸⁴ Analysis of customs data shows the import volumes that the submission referred to were not the goods subject to measures.⁸⁵

Whilst there were no imports from China during the inquiry period, in the months following there were two consignments of 80 and 290 tonnes each. These imports occurred in the months of October 2023 and January 2024. In relative terms, the imports from China relate to a very low volume when compared to imports from other countries.

The commission's review of publicly available information also confirmed Chinese producers who have previously exported the goods to Australia still appear to be a going concern. Of the 6 Australian entities who have imported the goods from China after measures were imposed in June 2019, the commission found only one had made further importations since. These imports involved two consignments in October 2023 and January 2024 of 80 and 290 tonnes each.

Sweden

All imports from Sweden since 2014 have originated from the same supplier, Yara AB. The highest volumes occurred in the 24-month period just before the initiation of the original investigation in June 2018. Imports from Sweden essentially ceased in 2018 however there was a very small residual quantity that arrived in the March 20219 quarter.

Yara AB submits its exports to Australia ceased upon the conclusion of a commercial arrangement with its Australian customer.⁸⁶ Yara AB has explained imports from Sweden were undertaken pursuant to a supply contract between one importer and one member of the Australian industry. It contends imports of the goods from Sweden was the result of circumstances that no longer exist and will not recur.

⁸⁰ See Table 1 on worksheet 'China' in Confidential Attachment 3.

⁸¹ See Table 1 on worksheet 'China Exports' in Confidential Attachment 3.

⁸² <https://www.chemanalyst.com/Pricing-data/ammonium-nitrate-1216> (viewed 25 January 2024).

⁸³ See ACEI at EPR Item No. 018, p.3, and EPR Item No. 028, Confidential Attachment 1, p. 69.

⁸⁴ EPR 629 Item No. 011.

⁸⁵ See worksheet 'China Imports 2023' in Confidential Attachment 4.

⁸⁶ EPR 629, Item No. 004, p.3.

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Within the context of the contract identified by Yara AB, supply would be made primarily from the relevant Australian industry producer, with supply from Sweden only being necessary if it could not be secured from the relevant Australian industry producer.

The specific details in the contract cited by Yara AB are confidential however the commission can disclose that the supply of goods from Sweden arose because the relevant Australian industry producer was unable to satisfy demand. In addition to the details outlined in Yara AB's submission to this inquiry, the commission's original investigation also examined the circumstances.⁸⁷ This is the circumstance that led to imports from Sweden being necessary and was eventually resolved.

The commission does not consider exports from Sweden are likely to recur as the circumstances which led to these exports in the first place are similarly unlikely to recur.

In a further assessment concerning market conditions during the inquiry period, Yara AB has highlighted it has not sought to export the goods to Australia even though it could do so by offering favourable commercial terms.⁸⁸

The commission also observed the quarterly price of the goods imported from Sweden in 2017 and 2018 were the lowest compared to all other countries of export.⁸⁹ Despite holding what appeared to be a very competitive position in the Australian market during 2017 and 2018, when imports from Sweden were not subject to anti-dumping duties, Yara AB has only ever had one Australian customer in an almost 10 year period, i.e. since 2014.

The commission considers that the cessation of imports from Sweden was not connected to the imposition of measures. The rapidly increasing volume of imports from Sweden during 2017 and 2018 appears linked to the specific circumstances outlined in Yara AB's submission, i.e. to cover the shortfall in supply from Australian industry.

The commission has also found Yara AB's former Australian customer has continued importing the goods from other countries that are not subject to anti-dumping measures.⁹⁰ The volume of these imports were significantly lower than the volume it was importing from Yara AB in Sweden.

On the basis that the circumstances that lead to exports from Sweden commencing in 2017 are unlikely to recur, and the available information which shows there have been no exports from Sweden since early 2019, the commission does not consider exports from Sweden are likely to recur.

Thailand

Analysis of imports from Thailand set out in Table 1 above shows the relatively high values for 2017, 2022 and 2023 are the result of the particularly low base year volume in 2014. Imports from Thailand in 2023 represent the highest volume from this country since at least 2014. The exporter during this period has been the same entity, Thai Nitrate.

⁸⁷ The commission examined the circumstances relating to imports from Sweden to Australia for the purpose of Investigation 473. The commission's findings are recorded in Confidential Attachment 10 to SEF 473.

⁸⁸ EPR 629, Item No. 004, p.6.

⁸⁹ See worksheet 'Price Analysis' in Confidential Attachment 3.

⁹⁰ See Table 1 on worksheet 'Supplier Links' in Confidential Attachment 3.

6.6.2 Maintenance of distribution links

The commission has found that exporters from Sweden have not maintained distribution links to the Australian market. However, the commission found exporters from China and Thailand have maintained distribution links with the Australian market.

China

Exporters from China initially maintained their distribution links with the Australian market after measures were imposed in June 2019.

Following a cessation of imports from China after the June 2021 quarter, imports from China re-emerged in late 2023 and early 2024 confirms exporters from this country have maintained distribution links. The imports from China related to just one exporter and one Australian customer. The volumes involved were in relative terms very low. The last time the relevant importer purchased the goods from China was in 2020.

On the basis that certain intermediaries continue to source the goods from several countries on behalf of Australian customers, and previously known Chinese exporters continue to produce to goods, it is likely that Chinese exporters will continue to maintain their distribution links with the Australian market.

Sweden

There have been no imports from Sweden since measures were imposed in June 2019. Consideration of the available evidence does not appear to support a finding that exporters from Sweden have maintained any distribution links with the Australian market since June 2019 or would be likely to re-establish their links if measures expire. This conclusion is based on the findings outlined below.

The Australian industry's application contends the sole exporter of the goods from Sweden, Yara AB, has maintained distribution links but the imposition of measures in June 2019 prevented a continuation of exports. The application was not accompanied with documentary evidence to verify this to be correct with respect to the Australian market.

Yara AB's submission of 7 August 2023 outlines the circumstances relating to its historical exports of the goods to Australia and why in its opinion, these circumstances, and thus exports, are unlikely to recur.⁹¹ In chapter 6.6.1, the commission concludes exports are unlikely to recur after having regard to Yara AB's explanation of the circumstances cited in its submission.

Yara AB has also highlighted it has not sought to export the goods to Australia even though it could do so by offering favourable commercial terms, particularly during the inquiry period when the prices of ammonium nitrate imports were significantly higher than the historical long-term average.⁹²

The absence of imports from Sweden during the inquiry period suggests it has not likely sought to export the goods. If Yara AB was able to offer goods for sale at terms that are

⁹¹ EPR 629, Item No. 004, p.3

⁹² EPR 629, Item No. 004, p.6.

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more favourable than other suppliers, as it has claimed, the commission would expect to see a volume of imports. This would demonstrate to the commission that Yara AB has been successful in maintaining distribution links.

Examination of import data dating back to the start of 2014 shows the distribution links with Swedish exporters was confined to one exporter, Yara AB, and essentially one Australian customer.⁹³ Over 75% of all exports from Sweden since 2014 occurred in 2017 and 2018 and pertained to the supply issues outlined in Yara AB's submission.⁹⁴ It does not appear Yara AB has ever maintained an extensive network of distribution links with the Australian market.

Thailand

The commission is satisfied exporters from Thailand have maintained their distribution links with the Australian market since measures were imposed in June 2019 and may continue to do so irrespective of any anti-dumping measures.

The information available to the commission shows there has only ever been one company exporting the goods from Thailand since 2014.⁹⁵ Imports from Thailand occurred in the period 2014 to 2018 and recommenced in 2022 following a three-year hiatus. Since 2014 there have only ever been three importers of the goods from Thailand. The first was in 2014, the second in the period 2015 to 2018 and the third from 2022 onwards.

6.6.3 Excess production capacity

The commission finds that exporters from the subject countries likely possess excess production capacity. However, the commission considers it is unlikely the full effect of such excess capacity could be fully realised within the Australian market context.

The following outlines a summary of the commission's findings and further country specific analysis.

The commission considers excess production capacity held by the only exporter from Thailand, being Thai Nitrate, is not significant when compared to the current size of the Australian ammonium nitrate market.

With respect to China and Sweden, exporters from either of these countries theoretically appear to have sufficient excess production capacity to displace import volumes from all other countries and/or a portion of the Australian industry's market share. However, certain observations regarding import volumes and supplier arrangements suggest exporters from these countries would be prevented from acquitting their excess capacity into the Australian market.

China

The commission needs to make a finding based on the evidence before it. As the commission has not received a questionnaire response from any Chinese exporters, the commission's assessment relies on other available information, including the information

⁹³ See Table 1 on worksheet 'Sweden' in Confidential Attachment 3.

⁹⁴ See Table 2 on worksheet 'Sweden' in Confidential Attachment 3.

⁹⁵ See Table 1 on worksheet 'Thailand' in Confidential Attachment 3.

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provided by the Australian industry's application. Based on the evidence in the Australian Industry's application, which the commission accepts as correct, Chinese producers have excess capacity. The volume of excess capacity would theoretically be sufficient to displace import volumes from all other countries and/or a portion of the Australian industry's market share.

The Australian industry's application contends the Chinese market is shifting towards emulsion explosives which use less ammonium nitrate and this will impact supply.⁹⁶ The application does not articulate the nature of the impact, however the commission considers it to mean lower domestic demand for ammonium nitrate in China will lead to higher levels of excess production capacity.

Figures contained in Table 4 of Attachment A to the Australian industry's application suggest excess capacity would be sufficient to replace the entire volume of imports from all other countries. Recent import volumes suggest Australian demand for imported ammonium nitrate is not sufficient to enable Chinese producer's to fully acquit their entire excess capacity.

Following on from the above point, the commission considers it unlikely that Chinese exporters will displace imports from all other countries when historical patterns of trade and supplier linkages are considered. In addition, importers have displayed a preference for sourcing the goods from several countries in any one year.⁹⁷

Sweden

The commission did not receive a questionnaire response from any Swedish exporters. Yara AB from Sweden informed the commission that it had not completed a questionnaire because it did not export the goods to Australia in the inquiry period. Although Yara AB did not submit a questionnaire response, it did provide the commission with a submission.

One purpose of requesting Yara AB's response to the questionnaire was to obtain contemporaneous figures about its capacity utilisation and the sales volumes to its various markets. The commission's assessment of excess production capacity relating to Sweden has therefore relied on other available information. This information includes the Australian industry's application, Yara AB's submission, and data obtained in the original investigation 473.

Based on the information available to the commission, Swedish producers would likely have excess production capacity. This excess capacity would theoretically be sufficient to displace Australian import volumes from all other countries and/or a portion of the Australian industry's market share. However, the commission has found information that appears to suggest Swedish exporters are unlikely to access their excess capacity to resume exporting the goods to Australia.

The Australian industry outlines that Yara AB from Sweden has a production capacity of 450,000 metric tonnes per annum.⁹⁸ This figure is based on information provided in Yara AB's 2022 Annual Report. The commission accepts this figure as correct.

⁹⁶ EPR 620, Item 001.

⁹⁷ See Table 1 on worksheet 'Supplier Links' in Confidential Attachment 3.

⁹⁸ EPR 629, Item No. 011, p.2 and Item No.1, Attachment A, p.5.

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However, the Australian industry's application does not provide data relating to domestic sales in Sweden so capacity utilisation can be properly estimated. It has only provided data about total volume of exports from Sweden over the period 2018 to 2023.

It is reasonable that the Australian industry would not have data concerning domestic sales in Sweden. The commission has therefore relied on other evidence concerning the production capacity of Swedish producers.

Yara AB was found to be running at full capacity based on figures for 2018 provided during verification conducted for Investigation 473. Yara AB's production capacity at the time of verification was less than its current level of 450,000 metric tonnes per annum.

According to export data provided in the Australian industry's application, Swedish exports of ammonium nitrate in 2022 were down 5% compared to Yara AB's 2018 levels. Based on exports for the month of January 2023, the commission estimates annualised export volume from Sweden will be around 30% below 2018 levels and at least 25% lower than 2022 levels. This is an indicator that Yara AB would likely have excess production capacity.⁹⁹

The reduced export volumes from Sweden corresponds with data reported by Yara AB's parent company, Yara International ASA [Yara International]. In Yara International's Integrated Report 2022, it states Europe ammonium nitrate deliveries for 2022 were down by about 25% compared to 2020.¹⁰⁰

The above figures quoted in Yara International's report aligns with its 25 August 2022 press release where it announced it was taking steps to 'further' curtail its European operations capacity utilisation to around 35%.¹⁰¹ The reduction in output was a response to 'record high gas prices in Europe'. Yara International's 2022 report outlines Europe gas prices in 2022 were significantly higher than 2021 and the longer-term average going back to 2018.¹⁰²

On the basis of the available evidence, the commission concludes that Yara AB likely has significant excess capacity. If the reduced capacity utilisation affecting Yara AB's European operations is reflected in the figures for Yara AB's plant in Sweden the commission estimates the capacity utilisation of Yara AB's Koning plant in Sweden could be as low as 35%.

While the commission has found that Yara AB has experienced increasing levels of excess production capacity since 2022, the commission has also found that this was driven by the company's decision to cut production in response to high gas prices. It was not due to the addition of new capacity. The commission considers the actions taken by Yara AB's parent company reduces the likelihood that Yara AB will utilise excess production capacity to export the goods to Australia.

Thailand

⁹⁹ See Table 1 on worksheet 'Sweden Exports' in Confidential Attachment 3.

¹⁰⁰ [Yara Integrated Report 2022](#), Deliveries [detailed table], p.73.

¹⁰¹ ["Yara implements further production curtailments in Europe", Yara International ASA, 25 August 2022.](#)

¹⁰² [Yara Integrated Report 2022](#), Key Statistics, p.69.

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Australian industry's application states that Thai Nitrate has an annual production capacity of 220,000 tonnes per annum.¹⁰³ The application is silent as to the level of excess production capacity that may exist.

The commission's examination of production records for Thai exporter, Thai Nitrate, shows its production capacity is significantly less than the amount outlined in the Australian industry's application.

A review of Thai Nitrate's website contains information concerning its daily production capacity of nitric acid.¹⁰⁴ Presentation materials published by Thai Nitrate's parent company, TPI Polene Public Company Limited, reports Thai Nitrate has a production capacity of 95,000 tonnes per annum.¹⁰⁵

Based on data in Thai Nitrate's verified questionnaire response submitted to the inquiry, the company was found to have excess production capacity in relation to the period of production covering 1 April 2022 to 31 March 2023.¹⁰⁶

However, Thai Nitrate's excess production capacity was observed to be very low when compared to the Australian market for ammonium nitrate. If Thai Nitrate was to divert its entire excess capacity to the Australian market, the volume concerned would represent a minor share of the Australian market. The commission estimates this would be equivalent to possibly one or two more shipments representing a maximum Australian market share of 0.4%.

Further, if Thai Nitrate sought to increase its share of the Australian market by an amount that exceeds its excess production capacity, it would be doing so by sacrificing more profitable sales to existing domestic market customers. The commission does not consider this outcome is likely.

A submission by the Australian industry claims 'it is evident that Yara AB and Thai Nitrate will remain active...to ensure high production rates...'. It cites the re-emergence of exports from Thailand as a factor.¹⁰⁷ In chapter 6.6.5 the commission further discusses that imports from Thailand were undertaken to account for a shortfall in production output amongst members of the Australian industry.

The available information supports a finding that Thai Nitrate has excess production capacity, however Australian industry's claims of continued exports to ensure high production rates is not supported by the available information.

6.6.4 Availability of other markets

The commission has relied on data in the Australian industry's application to assess the availability of other markets for exporters from the subject countries. This data provides export volume and price data for the period 2018 to 2023.¹⁰⁸

¹⁰³ See EPR 629 Item No. 001, Non-Confidential Attachment A, p. 6.

¹⁰⁴ www.thainitrate.com/en/about-us.html#content1 (viewed 8 February 2024).

¹⁰⁵ www.tpipolene.co.th/phocadownload/VDO/2022Q2-TPIPL.pdf, p.38 (viewed 8 February 2024).

¹⁰⁶ See EPR 629 Item No. 020, Confidential Attachment 1, p. 22.

¹⁰⁷ EPR 629, Item No.011, p.3.

¹⁰⁸ EPR 629, Item No.1, Confidential Attachment 6.

Analysis of the Australian industry's data shows exporters from Sweden were able to find new markets or increase volumes into existing markets following the imposition of measures on Australian imports.¹⁰⁹ This cannot be found for exports from China and Thailand which have both experienced a steep decline in export volumes across several key markets.

Exports from China have been in a continual state of decline since 2018 when exports to Australia from China were at their peak. Total export volumes out of China to all countries after 2018 shows further contraction and by 2022 were down by 90% compared to 2018 levels. The result in 2022 appeared due to a loss or significant reduction in export volume for several key markets.¹¹⁰

As discussed in chapter 6.6.1, the commission found the decrease in exports from China appears to be driven by a GOC decision to impose restrictions on exports. The export restrictions in China are allegedly in response to certain safety incidents involving handling of ammonium nitrate at Chinese ports. The commission's evidence concerning GOC export restrictions also corresponds with information provided by interested parties.¹¹¹

The commission accepts that the decline in export volumes from China is related to GOC's actions rather than any specific restrictions concerning access to overseas markets. However, the commission also considers that export restrictions are likely to continue in the future, limiting exports from China to both Australian and other markets.

In a similar case to China, total exports from Thailand to all countries were at their peak in 2018 and have never returned to this level since. Volumes in 2022 were down almost 50% compared to 2018 but did represent an increase compared to 2021. Recent volumes show a recovery that appears due to the re-emergence of exports to Australia in 2022 and 2023.¹¹² This increase was not a result of Thai Nitrate losing key markets.

6.6.5 Australian industry production output

The commission considers the Australian industry's capacity utilisation is relevant to whether exports from China and Thailand are likely to continue. Despite the Australian industry having an aggregated average capacity utilisation of 90%, the Australian industry's output is unable to fully meet Australian market demand.

Interested parties have supplied information outlining that the reasons why imports are necessary is due to a short fall in supply amongst Australian producers. The commission considers these issues are unlikely to be alleviated in the short-term.

Figures compiled by the commission shows the Australian industry has been unable to fully supply the Australian market for several years, despite increasing capacity. This corresponds with data that shows ammonium nitrate imports have long been a feature in the Australian market.

¹⁰⁹ See Table 1 on worksheet 'Sweden Exports' in Confidential Attachment 3.

¹¹⁰ See Table 1 on worksheet 'China Exports' in Confidential Attachment 3.

¹¹¹ See ACEI at EPR Item No. 018, p.3, and EPR Item No. 028, Confidential Attachment 1, p. 69.

¹¹² See Table 1 on worksheet 'Thailand Exports' in Confidential Attachment 3.

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It is also the case that the applicants have not outlined any plans to build new capacity or increase utilisation rates to the extent that it would mitigate the need for parties to use overseas suppliers. This includes the Australian industry's own imports of the goods.

To further demonstrate the existence of a short fall in production amongst Australian producers, it is also relevant that recent imports of the goods from China and Thailand, amongst other countries, have occurred at historically high prices. These import prices were also significantly higher than the prevailing selling price amongst the Australian industry.

The commission considers supply constraints amongst Australian producers, rather than the price of imports, as being the likely reason why imports were present in the Australian market. The commission further considers these constraints are unlikely to be alleviated after the measures expire.

The following discussion informs the above conclusions.

Glencore has submitted that Australian imports of ammonium nitrate are a necessity because the Australian industry production is unable to satisfy market demand.¹¹³ It provides numerous examples of its unsuccessful attempts to secure domestic supply from the Australian industry. Glencore outlines that the Australian industry also uses imported ammonium nitrate to supplement a shortfall in its own production.

Glencore further submits that customers have opted for imports of the goods even though prices have been at historically high levels. These actions were not driven by price but rather insufficient domestic supply being available to maintain mining operations.

Yara AB and AECI has also submitted that domestic supply shortages that have required Australian industry to seek inventory from overseas suppliers.¹¹⁴

Australian industry submits that it has imported the goods to cover what is described as 'statutory' production outages and unexpected demand from customers. It also emphasises that the shortcomings in its ability to meet demand should not be confused with claims that justify the importation of dumped goods.¹¹⁵

Analysis of historical imports of the goods shows they have been a feature of the Australian market for an extended period of time. The total volume of goods imported from all overseas suppliers since 2014 is approximately 5% of total Australian market sales volume. This includes imports by Australian industry and imports by other entities.¹¹⁶

At chapter 5.7, the commission found that the Australian industry's capacity increased due to a new ammonium nitrate plant operated by Yara Pilbara Nitrates (YPN) coming online in 2021/22. The YPN facility added a further 350,000 metric tonnes and represents the only example of new capacity since at least 2017.

The commission was unable to completely reconcile the capacity of Australian industry production, actual output and the volume of imports. However, the data was sufficient to

¹¹³ EPR 629, Item No.013, p.4.

¹¹⁴ EPR 629, Item No.004, p.6 and Item 018, p.2.

¹¹⁵ EPR 629, Item No.016, pp.2-3.

¹¹⁶ See Table 9 on worksheet Australian Market in Confidential Attachment 1.

illustrate the volume of imported ammonium nitrate reduced at the time production capacity amongst Australian industry increased in 2021/22 (i.e. YPN).

Members of the Australian industry report varying levels of capacity utilisation but overall seem unable to meet demand generally. Even with the addition of new capacity by YPN, the commission estimates total Australian industry capacity utilisation has remained steady at about 90%. The issues that are driving this result are unlikely to be alleviated after the measures expire. Users of ammonium nitrate, including the Australian industry, are required to import ammonium nitrate in order to make up for the volume that is unavailable out of Australian facilities.

6.7 Will dumping continue or recur?

The commission considers that the expiry of the measures would be likely to lead to a continuation of dumping from Thailand.

However, in the case of China, the commission **does not** consider expiry of the measures would be likely to lead to a continuation of dumping from China.

In relation to exports from Sweden, the commission also considers that the expiry of the measures would not be likely to lead to a continuation of dumping. This is due to the findings in chapter 6.6 where the commission concludes it is not likely exports of the goods from Sweden will recur. As this is the case, it is not likely dumping can recur.

The commission's conclusions concerning a continuation or recurrence of dumping relies on the following.

- Having regard to an analysis of information concerning domestic prices in China and the prices of exports from China to third countries in the inquiry period, it does not appear these exports were dumped. On this basis of this analysis, the commission does not consider a continuation of exports from China to Australia are likely to be dumped (chapter 6.7.1 refers).
- Exports by the only exporter from Thailand, Thai Nitrate, were dumped during the inquiry period. The dumping margin was 4.8%.¹¹⁷
- The finding that imports from Sweden are unlikely to recur (chapter 6.6 refers).

6.7.1 Dumping margins analysis

On the basis of the findings outlined in chapter 6.6, the commission is not satisfied exports of the goods from Sweden will recur. As a result, the commission has not performed a dumping margin analysis for Sweden.

With respect to exports from China and Thailand, the commission considers the following.

- Imports from China after the inquiry period were not likely dumped.
- Imports from Thailand during the inquiry period were found to be dumped with a margin of 4.8%.

The discussion below details the commission's analysis concerning China and Thailand.

¹¹⁷ See the Thai Nitrate Exporter Verification Report at EPR 629, Item No. 20.

China

With regard to China, very small volumes were imported after the inquiry period but not during. Based on the available information, the commission does not consider it likely these exports were dumped.

On the basis no exporter from China supplied an REQ for the purpose of this inquiry, the commission has relied on the available information to analyse dumping margin for Chinese exports.

The information available for China relates to export price and normal value data in the Australian industry's application.

Australian industry provided estimates of normal values and export prices for China in 2022 and 2023. Export price data for 2023 covered the first quarter of the year.¹¹⁸

When compared in like currencies, e.g. USD/metric tonne, the weighted average export price for all exports from China in 2022 and 2023 was higher than Australian industry's estimated normal values for the three producers cited in its application. This implies that the goods from China were not likely dumped.¹¹⁹

When assessed at the individual country level, the prices for exports from China to selection of countries in 2022 indicated dumping had occurred but the volume associated with these countries was very low. The prices for exports from China to countries that represented the most significant volumes did not appear to be dumped.

Thailand

Having regard to a verified REQ and other relevant information, the dumping margin for exports by Thai Nitrate from Thailand was 4.8%. This margin is based on data provided in a questionnaire response from Thai Nitrate. Thai Nitrate is the only producer of ammonium nitrate in Thailand. The dumping margin for Thai Nitrate is therefore applicable to all exports from Thailand.

The dumping margin of 4.8% established for Thailand in this inquiry, is significantly lower than the dumping margin of 32.7% established for Thailand in the original investigation. The dumping margin established in the original investigation relied on the method outlined for uncooperative exporters in section 269TACAB and thus did not use selling prices for Thai Nitrate as the basis for its normal value.

6.7.2 Previous dumping margin assessments

This inquiry represents the first review of exports from the subject countries since the measures were imposed in June 2019. The dumping margins from the original investigation are presented in Table . As the non-injurious price for exports from the subject countries was found to be below the normal value, the effective dumping margins are significantly lower. Following Investigation 473 there have been no reviews or duty assessments performed by the commission.

¹¹⁸ EPR 629, Item No.1, Attachment A on p. 3 and Confidential Attachment 6.

¹¹⁹ See Table 4 on worksheet China Exports in Confidential Attachment 3.

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Country	Exporter	Dumping Margin	Effective Rate of Duty
China	Uncooperative and all other exporters	39.3%	0.3%
Sweden	Yara AB	51.1%	14.4%
	Uncooperative and all other exporters	61.3%	14.4%
Thailand	Uncooperative and all other exporters	32.7%	13.5%

Table 10: Dumping margins in Investigation 473¹²⁰

6.7.3 Estimate of competitiveness of undumped prices in Australia

In relation to Sweden, there appears to be no basis for estimating the competitiveness of exports from this country. This is because there have been no exports from Sweden after measures were imposed, and exporters from this country do not appear to have maintained any distribution links, or are likely to re-establish on the basis that measures should expire.¹²¹

The commission's assessment of undumped prices therefore relates to exports from China and Thailand.

The commission considers that the undumped prices of the goods from China and Thailand are likely competitive when compared to other suppliers. However, the price of imports from China and Thailand were observed to sit at the higher end of the price range for imported goods. This finding is based on the following factors.

- Imports of the goods from China and Thailand had occurred in the year following the imposition of measures despite their prices not always being the cheapest available in the Australian market.¹²²
- In the period covering calendar years 2020 and 2023, when global ammonium nitrate prices were elevated, the prices of all Australian imports, including from China and Thailand, were higher than the prevailing prices reported by the Australian industry.
- Landed prices for imports from China and Thailand were higher than the price of imports from other countries.

6.8 Will material injury continue or recur?

With respect to imports from the subject countries, the findings at chapter 6.6 outline that the commission **does not** consider that imports from Sweden are likely to recur should the measures expire. It therefore follows that the commission **does not** consider expiry of the measures on imports from Sweden would be likely to lead to a recurrence of material injury.

¹²⁰ EPR 473, Item No. 65, Final Report - REP473 – Ammonium Nitrate p.31.

¹²¹ Chapter 6.6 refers.

¹²² See worksheet Price Analysis in Confidential Attachment 3.

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In relation to imports from China and Thailand, the findings at chapter 6.6 outline imports from these countries are likely to continue.

The findings in chapter 6.7 also conclude that dumping of imports from Thailand is likely to continue but it is not likely in relation to imports from China.

For the reasons outlined below, the commission **does not** consider that a continuation of exports, in relation to imports from China and Thailand whether they be dumped or not, would be likely to lead to a continuation or recurrence of material injury.

The findings in support the above conclusion are summarised below.

China

- Based on the pattern of trade and likely volume of imports from China, the commission does not consider the injurious impact on Australian industry's sales volume and/or market share would likely be material (chapter 6.8.1 refers).
- With respect to price injury, the commission has found imports from China were absent from the Australian market from June 2021 but re-emerged in late 2023. These imports were in two very low volume consignments. The infrequent and low volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions (chapter 6.6.1 refers). The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China and are unlikely to be viewed as a realistic and reliable option for Australian buyers of ammonium nitrate (chapter 6.9.1 refers). As a result, the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers).
- On the basis of the finding that imports from China are not likely to be dumped (chapter 6.7 refers), findings concerning the availability of imports from China (chapter 6.6.1 refers), and the finding that the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers), the commission **does not** consider a continuation of imports from China would be likely to lead to a recurrence or continuation of material injury in relation to price injury factors (chapter 6.8.3 refers).

Thailand

- On the basis of the finding that imports from Thailand are likely to continue, inclusive of the additional excess capacity retained by Thai exporters, the volume available from Thailand would likely hold a market share in Australia of approximately 1.0%. With this likely level of market share, the commission **does not** consider the impact on Australian industry's sales volume and/or market share due to a continuation of imports from Thailand would likely be material (chapter 6.8.1 refers).
- With respect to price injury, in a scenario in which the Australian industry does accept the price of imports from Thailand in a contract negotiation, the commission does not consider the effect on the Australian industry's economic condition would likely be material (chapters 6.8.3 and 6.9.2 refer).

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- The commission has also found that the price of imports from Thailand would not be likely to influence the Australian's industry's current arrangements that are due to conclude after measures are due to expire (chapters 6.8.3 and 6.9.3 refer).
- Having regard to an analysis of prices and other price related evidence, and recognising imports from Thailand were found to be dumped during the inquiry period, the commission **does not** consider a continuation of imports from Thailand at dumped prices would be likely to lead to a recurrence or continuation of material injury (chapter 6.8.3 refers).

The following outlines the commission's detailed analysis of matters concerning imports of the goods from China and Thailand and examines if a continuation of these imports would lead, or would be likely to lead to a continuation or recurrence of material injury that the measures are intended to prevent.

6.8.1 Sales analysis

The findings in chapter 6.6 concerning China and Thailand confirm exports from this country are likely to continue. However, having regard to the available information, the commission **does not** consider the volume of goods exported from China and Thailand would be likely to lead to a continuation of material injury to the Australian industry.

Based on information obtained from interested parties and an analysis of historical import volumes, it appears the Australian market is reliant on imports to ensure total demand for ammonium nitrate can be met. Analysis of imports since 2014 shows volumes have fluctuated but have been a consistent feature of the Australian market for a considerable period (chapter 6.6.5 refers).

The commission estimates the total volume of goods imported from all overseas suppliers, inclusive of volumes imported by members of the Australian industry, since 2014 is on average approximately 5% of total Australian market sales volume per annum.¹²³

Submissions from interested parties contend imports of the goods from Thailand, and other countries, are undertaken to make up for supply shortages that arise amongst Australian producers.¹²⁴ In response, the Australian industry has stated plant shutdowns are necessary on occasion.¹²⁵

The commission has also observed the price of imports during the inquiry period and the months following, including those from China and Thailand, were at a significant premium over the prices importers were paying to source ammonium nitrate from their Australian industry suppliers at the same time. The commission considers security of supply, rather than price, appears to be the underlying reason why imports were necessary.

Despite the claims made by interested parties concerning shortage of domestic supply in Australia, the Australian industry is yet to provide information that may outline how it could supply total Australian market demand, by way of either an increase in existing capacity utilisation levels or the addition of new capacity.

¹²³ See Table 9 on worksheet Australian Market in Confidential Attachment 1.

¹²⁴ Yara, Glencore and AECl submissions. EPR 629 Item No. 004, 013, 018.

¹²⁵ EPR 629 Item No. 016.

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As outlined in chapter 6.6.5, the commission does not consider that production output shortages amongst the Australian industry will be eliminated. It is expected that imports are likely to continue as a result.

In the context of the Australian market's reliance on imports to supplement domestic supply shortfalls, the commission has considered the impact that imports from China and Thailand may have on the Australian industry's volumes in the absence of measures.

China

With respect to imports from China, these imports occurred in October 2023 and January 2024. In relative terms, the volume of imports was very low when compared to the total volume of imported by all entities after the inquiry period. The share of imports from China represented approximately 0.3% of all imports that followed the inquiry period between March 2023 and early January 2024.¹²⁶

Analysis of imports made before the inquiry period shows the importer has previously imported the goods from China but in relatively small quantities.

Total imports by the relevant importer since 2014 have been infrequent and were in volumes that are similar to its recent imports. The last time this importer sourced the goods from China was in the June 2020 quarter.

Within the context that imports from all countries increased during 2022 and 2023, and imports from China being virtually duty free, the total volume of imports from China has remained extremely low. Considering this observation alongside other evidence concerning GOC export restrictions and the decline in exports from China, it appears that the volume of exports from China will likely continue being at very low levels.

Based on the pattern of trade concerning imports from China, the commission **does not** consider the injurious impact on Australian industry's sales volume and/or market share would likely be material.

Thailand

The commission's analysis in chapter 6.6.3 found Thai Nitrate held excess production capacity during the inquiry period and this could lead to Thai Nitrate increasing the volume of its sales into the Australian market.

However, the commission considers certain factors prevent these increases being a likely source of material injury.

- The excess capacity available to Thai Nitrate during the inquiry period was equivalent to just over one shipment or 0.4% of the Australian market (chapter 6.6.3 refers).
- Should Thai Nitrate use its remaining production capacity to increase Australian sales, its market share, assuming a stable ongoing market size, would be approximately 1.0%.¹²⁷

¹²⁶ See Table 8 on worksheet Importer Analysis in Confidential Attachment 6.

¹²⁷ See Table 8 on worksheet Australian Market in Confidential Attachment 1.

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- For Thai Nitrate to increase Australian sales beyond its available excess production capacity, it would need to reduce sales made to more profitable markets, undermining its financial position generally.
- Thai Nitrate's sales to the Australian market during the inquiry period were less profitable than sales to its domestic market customers who represented a significant part of its business.
- The commission does not consider it likely Thai Nitrate would sacrifice more profitable domestic sales in order to increase its share of the Australian market.

Further to the above, the commission's enquiries with Thai Nitrate in January 2024 ascertained that the commission's estimates of Thai Nitrate's likely market share, inclusive of excess production capacity, appears accurate.

Thai Nitrate advised it continued to export the goods after the inquiry period. Sales figures provided by Thai Nitrate show the volume of exports to Australia were not accompanied with a reduction in the sales volume for its domestic market or sales to other countries. Rather, it appears to have used up excess production capacity.

Based on the figures for Thai Nitrate, the volume it exported to Australia in the 12-month period covering 1 November 2022 to 31 October 2023 seems to suggest this would be the maximum volume it could export before diverting volume away from its more profitable domestic market customers.

In addition to an analysis of sales during the inquiry period, the commission has also examined the longer-term historical trend of exports by Thai Nitrate. Thai Nitrate is the only producer of ammonium nitrate from Thailand, and has been the only exporter of the goods from Thailand since at least 2014,

The Australian market share of imports from Thai Nitrate since 2014 has historically been very low. When imports from Thailand occurred in the period from 2014 to the end of March 2023, the average quarterly Australian market share of goods from Thailand was 0.2%.¹²⁸

In the injury analysis period selected for the original investigation, imports from Thailand represented approximately 0.25% of the Australian market and a slightly lower amount of 0.1% in the investigation period. Thai Nitrate has never held a significant share of the Australian market either historically or more recently in the inquiry period.¹²⁹

The Australian industry has submitted Thai Nitrate is reliant on export sales.¹³⁰ A review of Thai Nitrate's sales data presented for this inquiry shows this is not the case.

The commission considers that imports from Thailand have been relied upon to supplement shortfalls in domestic supply produced by the Australian industry but the volume of imports has been historically low.

On the basis of the finding that imports from Thailand are likely to continue, inclusive of the additional excess capacity retained by Thai exporters, the volume available from Thailand would likely hold a market share in Australia of approximately 1.0%. With this

¹²⁸ See Table 4 on worksheet Australian Market in Confidential Attachment 1.

¹²⁹ See Table 4 on worksheet Australian Market in Confidential Attachment 1.

¹³⁰ EPR 629 Item No. 1, Attachment A, p. 7.

likely level of market share, the commission **does not** consider the impact on Australian industry's sales volume and/or market share due to a continuation of imports from Thailand would likely be material.

6.8.2 Future ammonium nitrate prices

The commission consider that Australian industry's grounds for the continuation of measures are largely contingent on the price of ammonium nitrate imports from all countries returning to the lower levels that existed in the period prior to the emergence of the COVID-19 pandemic in 2020.

The Australian industry contend that once the price of imports fall back to the pre-2020 levels, the price of these imports, which it claims will likely be dumped, will be lower than the Australian industry's prices. The Australian industry considers these reduced and likely dumped prices could be used by its customers in future contract negotiations that around the time measures are due to expire.¹³¹

In a further submission to the inquiry, the Australian industry restates the influence that the price of imports will likely have on its negotiations with customers whose contracts are due to expire, particularly in the period after the measures are due to expire.¹³²

Before assessing the impact on prices due the likelihood of dumping, which is covered in chapter 6.7, the commission has assessed the Australian industry's broader claims regarding price movements.

Without the change in prices predicted by the Australian industry, a continuation of the prices for ammonium nitrate imported during the inquiry period would unlikely support a claim of material injury continuing or recurring.

During the inquiry period, the prices achieved by Australian industry were some of the lowest in the Australian market. This represents a change of the long-term trend where import prices were generally lower than Australian industry's prices.

A continuation of the pricing relativity observed in the inquiry period would therefore run counter to the Australian industry's price injury claims which are founded upon import prices being lower than Australian industry's price.

The commission agrees than an assessment of material injury in the absence of measures requires an assumption that ammonia prices will revert to 2019 levels. In performing this assessment the commission identified trends that could suggest the timing of Australian industry's claimed price reduction is uncertain or perhaps may not materialise to the extent that Australian industry claim will occur. This conclusion is based on an analysis of the following information.

- Price benchmarks for ammonia and ammonium nitrate.
- Ocean freight cost benchmarks relevant to ammonium nitrate prices.
- Landed prices for Australian ammonium nitrate imports.

The above finding relies on the following observations.

¹³¹ EPR 629 Item No. 1, Attachment A.

¹³² EPR 629, Item No.11.

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- Ammonia price, which is a key price determinant in contracts for ammonium nitrate, increased sharply after the June 2023 quarter and were up 100% by the end of September 2023.
- Price benchmarks for ocean freight costs, which form part of the price in ammonium nitrate contracts, indicates cost in 2024 are likely to be higher than 2023.
- Prices for imports arriving in October, November and December 2023 and arrivals up to 10 January 2024 show an emerging upward trend. Prices in January 2024 were approximately 7% higher than in the September 2023 quarter.
- Imports prices as at the end of 2023 would need to fall by 50% if they are to return to pre-2020 levels.

The analysis does not determine to what extent the future price reductions could be attributable to dumping because the price benchmarks used in the analysis cover several global markets and many suppliers.

The following details the commission's analysis concerning each the observations outlined above.

Ammonia price

Australian industry's predictions concerning a fall in the price of ammonium nitrate imports is predicted on the changes in ammonia and ammonium nitrate price benchmarks published by Fertecon over the period from [May 2017 to June 2023].¹³³

Global pricing trends for ammonia are relevant to the price of Australian ammonium nitrate since ammonia is a key ingredient in the production of ammonium nitrate and the cost of ammonia is a determinant for the price of ammonium nitrate. The trend in ammonia price could therefore be indicator of future ammonium nitrate prices.

Following an examination of ammonium nitrate purchasing information provided by interested parties, the commission confirmed that ammonia prices are a determinant for the price of ammonium nitrate. This information demonstrates the inclusion of factors relating to changes in Fertecon ammonia prices, otherwise referred to as a 'rise and fall' mechanism.

Figure 14 below reproduces the Australian industry's Fertecon data with prices depicted at quarterly intervals. The chart illustrates the price increases that occurred during 2021 and 2022 and the falls that followed in 2023. It shows prices in the June 2023 quarter were trending down towards the prices that prevailed in 2019 [highlighted in yellow].

¹³³ EPR 629, Item No.1, Attachment A, p.6.

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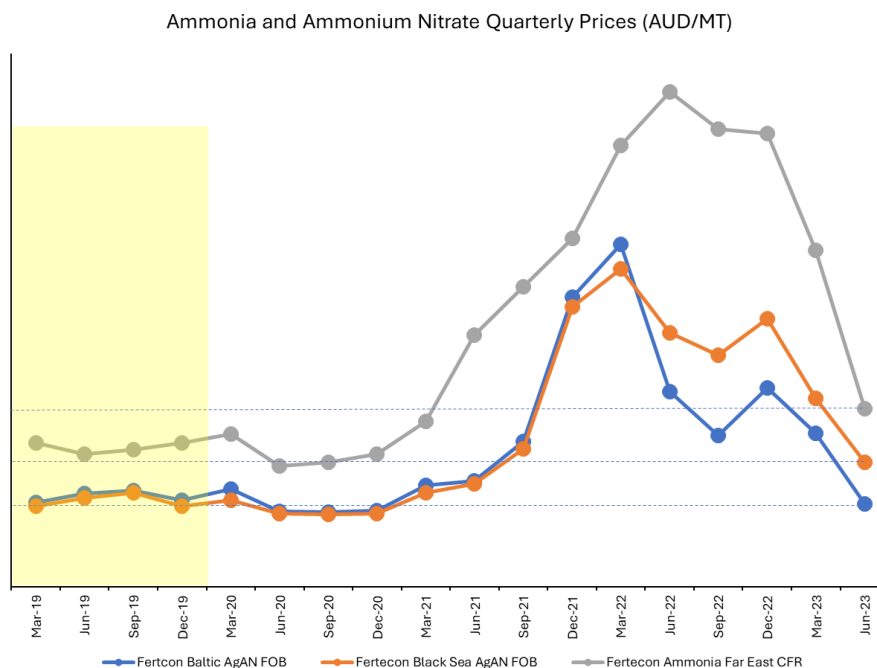


Figure 14: Fertecon Quarterly Ammonia and Ammonium Nitrate Price¹³⁴

Further to the above information, the Australian industry provided additional price information concerning the period after June 2023. This data shows prices for ammonia after June 2023 rebounded and increased by approximately 100% by the end of 2023.

Forecasts included in the data estimate prices initially reducing in the first of half 2024 and then starting to increase again. Ammonia prices return to the 2019 levels for only a brief period. However, prices generally appear to be more closely aligned to 2019 levels rather than the significantly higher prices observed throughout 2022.

Ocean freight costs

The commission has also established that ocean freight costs are also a factor in the price of ammonium nitrate imports. The Australian industry has pointed to falling ocean freight costs throughout 2021, 2022 and 2023 to support its view that the price of ammonium nitrate imports will return to pre-2020 levels.

The data provided by the Australian industry covered a period to the end of July 2023.¹³⁵ The commission's examination of the relevant ocean freight cost benchmarks for the period after June 2023 indicate ocean freight costs have increased since June 2023 and are forecast to go even higher in 2024.¹³⁶

Import price

¹³⁴ See Figure 1 on worksheet Ocean Freight in Confidential Attachment 5.

¹³⁵ See Table 2 on worksheet Fertecon in Confidential Attachment 5.

¹³⁶ See the Drewry World Container Index WCI 25 January 2024 <https://www.drewry.co.uk/supply-chain-advisors/supply-chain-expertise/world-container-index-assessed-by-drewry> and Trading Economic Baltic Exchange Dry Index and Baltic Exchange Dry Index <https://tradingeconomics.com/commodity/baltic> (viewed 1 February 2024).

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In comparison to the Fertecon data shown in Figure 14, Figure 15 below illustrates that changes in the FOB price of Australian ammonium nitrate imports generally followed the movement in Fertecon prices with a few notable exceptions.

Weighted average quarterly prices of Australian ammonium nitrate imports during 2022 and in early 2023 were significantly higher than the prices that prevailed in 2019 [highlighted in yellow], 2020 and early 2021. The rapid decline in ammonium nitrate import prices in 2023 is consistent with the broader trend shown in the Fertecon price data.

However, the price of imports following the September 2023 quarter indicate an emerging upward trend.

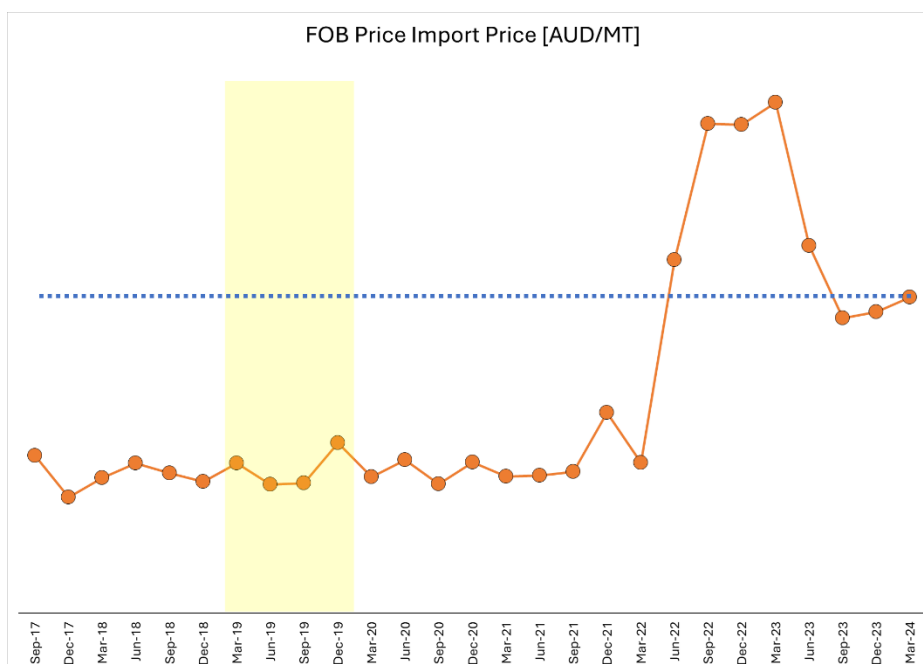


Figure 15: Ammonium nitrate FOB import price [AUD/MT]¹³⁷

On the basis of the trends depicted in Figure 14 and Figure 15, it appears reasonable to conclude that the price of Australian ammonium nitrate imports will likely return to the lower levels observed for 2019 and 2020. This would require prices as at the end of 2023 to fall a further 50% or more.

The price of ammonia shown in the Fertecon price benchmarks indicate a continued fall in the ammonia price. However, the upward trend in price during the second half of 2023 cast doubt over whether this will occur by the time measures expire in June 2024 or in the months following and whether the fall in price will be of the required magnitude.

6.8.3 Price analysis

With the context that prices will likely return to pre-2020 levels by the time measures are due to expire in June 2024, the commission has considered if the price of imports from

¹³⁷ See Table 4 on worksheet Import Analysis in Confidential Attachment 3.

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China and Thailand would be likely to influence the Australian industry's contract negotiations after the measures are due to expire.

Consideration of imports from Sweden is not included as the commission finds exports from this country are not likely to recur.

In relation to China and Thailand, the commission finds that exports are likely to continue.

However, the commission **does not** consider that a continuation of exports from China and Thailand would be likely to lead to a continuation or recurrence of material injury with respect to the Australian industry prices. The commission's conclusion is based on the following findings.

China

- With respect to price injury, the commission has found imports from China were absent from the Australian market from June 2021 but re-emerged in late 2023. These imports were in two very low volume consignments. The infrequent and low volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions (chapter 6.6.1 refers). The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China and are unlikely to be viewed as a realistic and reliable option for Australian buyers of ammonium nitrate (chapter 6.9.1 refers). As a result, the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers).
- On the basis of the finding that imports from China are not likely to be dumped (chapter 6.7 refers), findings concerning the availability of imports from China (chapter 6.6.1 refers), and the finding that the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations (chapter 6.9.2 refers), the commission **does not** consider a continuation of imports from China would be likely to lead to a recurrence or continuation of material injury in relation to price injury factors.

Thailand

- In a scenario in which the Australian industry does accept the price of imports from Thailand in a contract negotiation, the commission does not consider the effect on the Australian industry's economic condition would likely be material (chapter 6.9.2 refers).
- The commission has also found that the price of imports from Thailand would not be likely to influence the Australian's industry's current arrangements that are due conclude after measures are due to expire (chapter 6.9.3 refers).
- Having regard to an analysis of prices and other price related evidence, and recognising imports from Thailand were found to be dumped during the inquiry period, the commission **does not** consider a continuation of imports from Thailand at dumped prices would be likely to lead to a recurrence or continuation of material injury.

The commission has reached its conclusion concerning the price of imports from China and Thailand by having regard to an analysis of the following circumstances.

- Availability of imports.¹³⁸
- Future contract negotiations.¹³⁹
- Existing contractual arrangements.¹⁴⁰
- Imports from China.¹⁴¹

To preserve the confidentiality and commercially sensitive nature of the information available to the commission, the specific details of the information assessed relating to the above three circumstances cannot be detailed publicly however they are available in **Confidential Appendix A** to the report. A non-confidential summary of the material outlined in Confidential Appendix A is provided below in chapter 6.9.

6.9 Non-confidential Summary of Confidential Appendix A

6.9.1 Availability of imports

In chapter 6.6 the commission concluded exports from China and from Thai Nitrate in Thailand are likely to continue. Having regard to an analysis in chapter 6.8.1, the commission does not consider the volumes exported from China and Thailand would be likely to lead to a continuation or recurrence of material injury to the Australian industry in terms of injury factors relating to volume.

Notwithstanding the above in relation to volume injury factors, the Australian industry has submitted that the presence of dumped goods on the Australian market are likely to influence its prices in contract negotiations. In support of this position, the Australian industry has supplied information relating to the determination of prices for contracts to supply the goods.

The commission has therefore considered whether Australian industry's customers would likely refer to the price of imports from China and Thailand within the context that such goods would be available for purchase.

Based on the available evidence, the commission considers ammonium nitrate imported from Thai Nitrate in Thailand would be in a volume that is relevant to the Australian industry's contract negotiations in the period when measures are due to expire.

With respect to China however, the commission does not consider that Australian buyers of ammonium nitrate would view imports from China as being a realistic and reliable source of supply. This conclusion is based on the findings in chapter 6.6.1 which identify the infrequent and low volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions. The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China.

Although the commission considers imports from Thai Nitrate would be relevant to Australian industry's customers, there appears to be limitations on the volume available from Thai Nitrate.

¹³⁸ Chapter A1 to Confidential Appendix A refers.

¹³⁹ Chapter A2 to Confidential Appendix A refers.

¹⁴⁰ Chapter A3 to Confidential Appendix A refers.

¹⁴¹ Chapter A4 to Confidential Appendix A refers.

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For the following reasons, the commission considers imports from Thailand could be relevant to Australian industry's contract negotiations, but this would likely relate to a limited number of customers rather than the Australian industry's customer base generally.

- Thai Nitrate from Thailand is unlikely to increase sales to Australia beyond its current excess capacity on account of the finding that it does not have an export focus and achieves a higher margin of profit on its domestic sales that represent most of its business.
- Thai Nitrate does not have any plans to increase its current production capacity.
- The importation of the goods from Thailand during the inquiry period appeared to be due to supply constraints amongst Australian industry producers that will persist after the expiry date of the measures.
- Whilst it is unlikely the supply constraints amongst Australian industry producers will be alleviated to the extent that ammonium nitrate users will no longer need to source the goods from Thailand, the commission has assessed the maximum available volume from Thai Nitrate would likely equate to an Australian market share of approximately 1%.
- There is a group of Australian industry's customers who could use the price of the goods from Thailand in contract negotiations on the basis such goods would be available in the necessary volume, but only to the extent that other parties have not already exhausted this supply chain option.
- Market intelligence possessed by the Australian industry would likely factor in contract negotiations, particularly the situation regarding supply from Thai Nitrate. This will likely limit the number of ammonium nitrate customers, such as those identified by Australian industry, using the price of imports from Thailand to negotiate prices with the Australian industry.

The commission considers it reasonable to infer the market information available to members of the Australian industry would include the following.

- Australian import volumes from specific countries.
- Volume requirements of the customer the subject of a contract negotiation.
- The production capacity and capacity utilisation of Thai Nitrate.
- The circumstances relevant to parties associated with imports from Thailand.

6.9.2 Future contract negotiations

Based on an examination of pricing information available to the commission, the commission **does not** consider a continuation of imports from China and Thailand would lead, or would be likely to lead, to a recurrence of material injury.

The above conclusions rely on a consideration of several market scenarios and an analysis of the available evidence concerning each of the following.

- Availability of imports (chapter 6.9.1 refers).
- Australian industry contracts.
- Landed import prices.
- Australian industry selling prices.
- Australian industry profit foregone.

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The following provides a non-confidential summary of the information contained in Chapter A2 to Confidential Appendix A. Australian industry claims the price of imports will likely return to pre-2020 price levels at around the time measures are due to expire. When prices return to these lower levels, the Australian industry contends the imports will be dumped and would be likely to lead to a recurrence of material injury in the form of price depression and reduced profit.

The commission considers a continuation of the prices for ammonium nitrate imported during the inquiry period, and the in the months following (as depicted in Figure 15), would unlikely support a finding of material injury continuing or recurring.

Notwithstanding the above, in chapter 6.8.2, the commission considered the Australian industry's prediction of future prices in the ammonium nitrate market seems reasonable but there are some notable exceptions that suggest the timing of these events is uncertain or perhaps may not materialise to the extent that Australian industry claim will occur.

With respect to price injury and imports from China, the commission has found imports from China were absent from the Australian market from June 2021 but re-emerged in late 2023. These imports were in two very low volume consignments. The infrequent and low volume of imports from China corresponds with evidence that indicates exports from China are subject to GOC restrictions (chapter 6.6.1 refers).

Within the context that exports from China are low in volume, infrequent and subject to export restrictions, the commission does not consider that Australian buyers of ammonium nitrate would view imports from China as being a realistic and reliable source of supply. The commission has also found the volumes relevant to Australian industry's future contract negotiations are far in excess of the volume that would appear available from China (chapter 6.9.1 refers). As a result, the commission does not consider the price of imports from China would be relevant in the Australian industry's future contract negotiations.

In relation to Thailand, the commission has considered the effect on Australian industry's economic condition if the price of imports from Thailand did happen to be used in Australian industry contract negotiations. This follows the finding outlined above in chapter 6.9.1, where the commission considers the volumes available from Thailand are sufficient to satisfy the requirements of Australian industry's customers, subject to certain limitations.

The commission considers the available volume from Thai Nitrate, as established in the discussion in chapter 6.9.1, limits the number of customers that could use the price of imports in a contract negotiation. This is based on evidence relating to customers who have annual requirements that could be met by Thai Nitrate. The commission does not consider it reasonable to conclude customers with volume requirements exceeding the available volume from Thai Nitrate would necessarily be able to leverage the price of its exports in a negotiation.

In a scenario where a member of the Australian industry was to accept the price of imports from Thailand in a contract negotiation, the commission **does not** consider the effect on the Australian industry's economic condition would likely be material.

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The commission's finding in relation to the above scenario relies on an examination of the following information.¹⁴²

- Australian industry's likely revenue foregone attributable to dumping, i.e. 4.8%.
- FOB prices for imports from all countries in 2019 (noting there were no imports from Thailand).
- The annual volume of goods that are likely to be exported from Thailand, i.e. 1% of Australian market share observed for the inquiry period.
- The corresponding volume of Australian industry's sales that imports from Thailand are likely to effect, being the likely volume that could be exported from Thailand.
- The Australian industry's total sales revenue based on its sales volume during the inquiry period and selling prices in 2019.
- The Australian industry's cost to make and sell in 2019.
- The commission's estimate of profit foregone due to dumping in investigation 473.¹⁴³

6.9.3 Existing contractual arrangements

The commission has also considered the likelihood of material injury to the Australian industry continuing or recurring within the context of the Australian industry's existing arrangements with parties associated with imports of the goods from Thailand. The commission considers this relevant on the basis that these arrangements will persist into the period after measures are due to expire.

Having regard to the available information, the commission does not consider the price of imports from Thailand was relevant to the prices negotiated in the above-mentioned arrangements or will be relevant throughout the life of the arrangements.

The commission therefore considers a continuation of imports from Thailand **would not be** likely to lead to a continuation or recurrence of price injury, or factors related to price, e.g. revenue and profit, with respect to existing arrangements in place for Australian industry members associated with imports Thailand.

6.9.4 Imports from China

The commission found there were two consignments of the goods imported from China after the inquiry period.

The imports occurred in October 2023 and January 2024. In relative terms, the volume of imports was very low when compared to the total volume of imported by all entities after the inquiry period. The share of imports from China represented 0.3% of all imports that followed the inquiry period between March 2023 and early January 2024.¹⁴⁴

The landed prices of the consignments in October 2023 and January 2024 were higher than the price of other imports that occurred in a corresponding period. The prices of the

¹⁴² The reference to 2019 prices and costs is necessary on account of these being relevant to the market conditions the Australian industry claims will exist by the time measures expire.

¹⁴³ Confidential Attachment 17 to REP 473 refers.

¹⁴⁴ See Table 8 on worksheet Importer Analysis in Confidential Attachment 6.

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consignments were also higher than the price the importer paid its Australian industry supplier.

Analysis of imports made before the inquiry period shows the importer has previously imported the goods from China but in relatively small quantities.

Total imports by the relevant importer since 2014 have been infrequent and were in volumes that are similar to its recent imports. The last time this importer sourced the goods from China was in the June 2020 quarter.

The supplier of the goods was not identified as an exporter of the goods in the original investigation 473 however the import declarations described the goods as 'ammonium nitrate'.

7 PROPOSED RECOMMENDATIONS

The Commissioner proposes to recommend that the Minister allow the measures applying to ammonium nitrate exported to Australia from China, Sweden and Thailand to expire on 3 June 2024. This is because the Commissioner is preliminarily not satisfied that the expiry of the measures on ammonium nitrate exported to Australia from China, Sweden and Thailand would lead, or be likely to lead to a continuation of, or a recurrence of, dumping and the material injury that the measures are intended to prevent.

8 APPENDICES AND ATTACHMENTS

Confidential Appendix A	Confidential Appendix to SEF Chapter 6.9
Confidential Attachment 1	Australian Market
Confidential Attachment 2	Australian Economic Condition
Confidential Attachment 3	Pattern of trade analysis
Confidential Attachment 4	China import declaration data
Confidential Attachment 5	Ammonium nitrate price benchmarks
Confidential Attachment 6	Confidential Appendix A source data