Phone: +61 455 999 187
Email: info@MoncourtGroup.com
Website: www.MoncourtGroup.com

17 August 2018

The Anti -Dumping Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne
VIC 3000

Dear Commissioner

RE: Ammonium nitrate from China, Sweden and Thailand

INTRODUCTION AND PURPOSE OF SUBMISSION

Moncourt Group Pty Ltd represents a number of parties that have significant interest in relation to the importation of ammonium nitrate into Australia reflecting an important cross-section of the companies that will be affected by any determination made by the Anti-Dumping Commission ("ADC"). It is the purpose of this submission to outline key concerns of these parties with regards to the initiation of the investigation by the ADC into ammonium nitrate for China, Sweden and Thailand that is the subject of the complaint made on behalf of Orica Australia Pty Ltd, CSBP Limited and QNP Limited dated 29 March 2018 (the "Complaint") and to explain why there is no basis for remedial action in respect of Ammonium Nitrate ("AN") into Australia.

A list of companies represented by Moncourt Group and who are signatory to this submission is provided in Appendix 1, including an explanation of the role they play in the Australian ammonium nitrate industry.

EXECUTIVE SUMMARY

Under World Trade Organisation ("WTO") rules, allegations of "dumping" must be based on a positive finding of three key elements: (1) the existence of dumping, which occurs when an exporter exports goods to another country at an export price less than what it sells the same like goods in its own country; (2) domestic industry of the importing country producing "like" goods suffering "material injury"; and (3) the "material" injury being caused by the alleged dumping in question.

The purpose of the anti-dumping mechanism is to protect Australian manufacturers from import competition where that competition caused *material injury* to those manufacturers. The Complaint fails to demonstrate a material injury or clearly evidence the causative nexus between the alleged dumping conduct and the alleged injury that is sufficient to satisfy the injury-causation tests that are outlined above and incorporated into the *Customs Act 1901* ("Customs Act"). Notably, the Complaint also omits relevant facts that are all supported by publicly available statements and information that indicate that the alleged injury is a result of relevant local market and economic factors to which regard must be had:

1. The Australian Industry has not suffered, and is not suffering, any injury, let alone material injury, as a result of imported ammonium nitrate. Notably, the share of imported AN in question represents only 2.8%[1] of the Australian AN market, which consistent with ministerial guidance, clearly suggests that a "material injury" is unlikely to be established[2],
2. Decisions and investments by the Australian ammonium nitrate manufacturing industry (the "Australian Industry") (and not imported ammonium nitrate) have led to reduced pricing within Australia, as a direct result of the Australian industry's excess manufacturing capacity,
3. Reduction in volumes that the Australian Industry may have suffered are a result of the mining boom coming to an end and is unrelated to imports of AN, and
4. The Australian Industry has remained extremely profitable over the time period that is the subject of the Complaint and the current trend is that its profitability is increasing further.

The Complaint is also inconsistent with the underlying policy of the *Competition and Consumer Act 2010* (Cth) ("CCA"). Australia's anti-dumping regime and competition policy are not mutually exclusive. In the absence of clear and compelling evidence that the alleged dumping conduct (and not other market factors) has led to a material injury to local producers, enforcement and economic policy should focus on promoting and protecting the competitive process and consumer outcomes, not individual competitors. The complaint fails to acknowledge the emphasis that the CCA and the Australian Competition & Consumer Commission place on the importance of import competition in ensuring a competitive process that promotes consumer welfare. This is a relevant economic factor that needs to be considered in the assessment of the Complaint.

The Complaint fails to satisfy the relevant legal tests that must be met in order to bring remedial action, is not supported by relevant, objective evidence and omits to mention publically available statements the applicants have made regarding their own performance. As such, it appears that the intention of the Complaint is to immunise the applicants against legitimate and effective import competition, which would be detrimental to price competition, efficiencies, consumers and the international competitiveness of the Australian AN Sector.

This submission is intended to give you further context surrounding the Australian AN market, the applicants for this investigation and the injury claims specifically. The intention is that this information is illuminating and sufficient to establish that there are no credible grounds for investigation on the basis that no causal material injury can be found to have occurred.

---

[1] When the imports made by the Australian ammonium nitrate manufacturing industry, which by definition cannot cause injury, are removed this percentage is estimated to be below X%.

[2] Anti-Dumping Commission, Australian Customs Dumping Notice No. 2012/24, New Ministerial Direction on Material Injury.

LEGAL TESTS ARE NOT SATISFIED

Article VI:1 of the GATT 1994 and Article 3 of the Agreement on the Implementation of Article VI of the GATT (commonly known as the WTO Antidumping Agreement ("AD Agreement")) have set out the requirements of, and factors to be considered in, the determination of "injury" and "causation". Specifically, Articles 3.1 and 3.2 of the AD Agreement mandate an assessment of the volume of dumped imports and its impact on prices of domestic "like goods" based on positive evidence and objective examination. Article 3.4 further requires consideration of "all relevant economic factors and indices having a bearing on the state of the (local) industry" in concern.

All fifteen factors listed in Article 3.4 of the AD Agreement must be considered in determining injury. These factors include sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices and magnitude of the margin of dumping. An evaluation of the factors envisaged under Article 3.4 of the AD Agreement mandates not only facts/data compilation, but also "a thorough and dynamic evaluation of data capturing the current state of the industry, including any other known factors that may be the basis for the injury that has been caused by the alleged dumping.

In examining relevant available facts that relate to the Australian Industry and ministerial policy directions on the assessment of "material injury", it is submitted that the relevant causation-injury test cannot be objectively or affirmatively satisfied.

Relevant facts and background in support of this submission are set out below.

INDUSTRY BACKGROUND: THE AUSTRALIAN AN MARKET

In this section background is provided about the Australian AN market and the applicants for this investigation. For the purposes of an anti-dumping investigation it is understood that the focus is on the Australian industry producing like goods. However, as you must be aware, the production, importation and sale of AN concerns many more entities than just the three applicants. There is of course Incitec-Pivot, an Australian AN producer that did not support the application, independent explosive service providers, logistics providers and end-users, including some of Australia's biggest corporations, who depend on there being an open, competitive AN market. It would seem that a law that fails to take into account the broader interests of these entities is neither economically sound, nor fair in any sense of the word.

The Australian market is dominated by the local manufacturers of AN. The Anti-Dumping Commission's Consideration Report suggests that in the investigation period the volume of AN sold in the Australian market was approximately 1.97 million tonnes. ABS import statistics indicate that over the same period, the total imports of AN were 135,689 tonnes, meaning that the Australian manufacturers of AN produced 93% of the AN in the Australian market. However, this is not indicative of the totality of their market dominance, as will be discussed, it is clear that they have also imported AN and purchased already imported AN in greater volumes than has been imported by the countries targeted by this investigation.

AN is typically sold in two ways – directly as AN, or as part of an explosive services agreement, in which the AN is used to manufacture explosives which are then delivered, ready to use, to the end customer. This is important to understand, because it impacts how the three applicants compete with one another and with the remainder of the Australian Industry. For example, in the past CSBP was dominant in the West Australian market, having a near monopoly in the supply of AN to that market. However, traditionally CSBP did not transform AN into any other products nor did it provide explosive services. Orica and other entities sought supply of AN from CSBP in order to have the raw materials necessary for them to sell AN directly and also to tender for explosive service contracts. Recently, CSBP has started transforming AN into emulsion (a pre-cursor for some explosive products). This is one of a number of market disruptions for which the applicants have been fully responsible and in which they have been fully involved in their intense competition with each other.

This also explains where the need for imports arises. An independent explosive services provider can either source AN from Orica, QNP, CSBP or Dyno-Nobel, or from overseas. The problem is, if one of the domestic Australian AN manufacturers is their only source of supply, that explosive service provider will then need to compete in tender against them, either for the direct sale of AN and/or emulsion to the end customer and, in the case of Orica and Incitec Pivot, for the related explosive services to deliver the AN (in whatever final form) to the end customer. Relying on an upstream supplier for raw materials needed to fulfil a service contract requirement when you are competing against the self-same supplier at the service contract level is not an ideal situation.

The primary driver of demand for AN is mining activity, as this drives the demand for explosive services. During the mining boom, the Australian market for ammonium nitrate was short, in the sense that demand for AN outweighed supply, which gave the local industry a significant degree of pricing power in the market. Chasing boom-driven margins, they invested in the expansion of production capacity. While this made sense during the mining boom, as the market cooled this resulted in an oversupply of AN in the Australian market. Their investment has become an over-investment. The market was suddenly "long", and as demand for AN decreased significantly at the end of the mining boom, prices followed when supply contracts came up for tender or renewal. This has been somewhat addressed by mothballing of production capacity in some regional markets, however there is a huge oversupply in the WA market and it can only get worse as Orica's new Burrup facility ramps up its production capabilities.

FACTS ILLUSTRATING THE ABSENCE OF MATERIAL INJURY AND CAUSATION

This section of the submission provides a summary of facts and known factors that are relevant to the issue of materiality (in respect of the alleged injury) and causation. Relevant facts and evidence are summarised as they relate to each of the claims made by each Applicant.

Orica

Orica is the world's largest provider of commericial explosives. It provides AN and explosive services throughout Australia. It has three AN plants in Australia:

- Kooragang Island (NSW) – Orica has both an ammonia plant and ammonium nitrate plants at Kooragang Island. The latter has a capacity of ~430,000 tonnes per annum, and is understood to typically run at capacity supplying the Hunter Valley market where the final explosives products are typically consumed by coal mines,
- Yarwun (QLD) – Orica's Yarwun plant has a capacity of ~530,000 tonnes per annum, however this was reduced to 280,000 tonnes per annum following the decision to mothball part of the plant in July 2015. However, this mothballed production capacity is anticpated to come back on line at full rates in 2018,[3] and
- Burrup (WA) - Additionally, Orica has a joint venture with Yara, Yara Pilbara Nitrates Pty Ltd, which has 330,000 tonnes production capacity per annum. This opened up in August 2016, and since has been producing batches of AN in response to customer demand, but has experienced issues relating to licensing and a cracked heat exchanger that have prevented further production. It is anticipated that it will become fully operational in late 2018.[4]

The application for the investigation shows the following trend for sales quantities and sales values since 2014:

	2014	2015	2016	2017
Australian market sales volume[5]	100	88.6	85.2	86.0
Australian market sales value[6]	100	83.1	75.8	76.4

To add context, in July 2015 Orica mothballed part of the production capacity in its Yarwun plant reducing total capacity from 530,000 tonnes a year to 280,0000 tonnes a year. It would seem obvious that the decrease in sales volume between 2014 and 2015 was caused by the same factor that caused Orica to mothball its production, namely an expected drop-off in demand. Imports were irrelevant to that decrease.

[3] As detailed here: https://www.gladstoneobserver.com.au/news/mothballed-capacity-back-online-at-orica-yarwun/3443147/
[4] See https://www.afr.com/business/mining/orica-hit-by-burrup-problems-and-impairments-20180228-h0wtnk
[5] Application page 15.
[6] Application page 16.

The mothballing of this production capacity was due to excess AN production capacity in QLD[7] coupled with the end of the mining boom. Over the mining boom, while the market for AN was short, Orica expanded its production capacity. Once the mining boom ended the demand for AN decreased rapidly. At the time of the mothballing of the Yarwun plant, the then CEO of Orica stated:

> "We are in the eye of the storm in terms of prices in the mining industry…yes this [is] quite dramatic and yes this causes margin pressure."

And that:

> "…the mining industry will just have to go back to normal before the boom. The past 10 years was something we will not see again."

So, the end of the mining boom, and the resultant oversupply in the Australian market is clearly the reason for the decrease in sales values between 2014 and 2015. From this, it is obvious that any comparison of Orica's performance in the period of investigation with 2014 would be massively misleading. In the words of the CEO of Orica, the situation it faced in 2014 and the preceding nine years was something that will not be seen again.

Perhaps more importantly, in the period in which the Commission is investigating whether dumping has occurred (largely, 2017) sales volume and value increased over the previous year. Orica's sales and production volume has further increased, with the Yarwun mothballed capacity being brought fully back online in 2018 and production starting in Burrup. One cannot call increased sales volume and value to be injury, let alone material injury.

It is also worth noting that Orica imports ammonium nitrate from Indonesia, which it states it has done to supplement its local supply in Yarwun in QLD.[8] The import statistics tell a different story. The imports from Indonesia were destined for Port Hedland in Western Australia or Newcastle in NSW. Indonesia is the largest source of imports into WA – a market in which there is currently oversupply of AN – and NSW respectively. The very fact of these imports calls into question the claim that "[l]ower production volumes have resulted in lower utilisation of production capacity and therefore increasing fixed costs". If fixed cost coverage presented such an issue, Orica could have chosen to displace its imports from Indonesia and China using the production capacity in its mothballed Yarwun facility. This would help reduce the fixed cost on a per unit basis and and create jobs in Australia. However, it is clear that Orica has consciously chosen to promote an import scenario in place of domestic production in Australia.

Publicly available information also shows that Orica's performance improved since the doldrums of 2015. Their 2017 Results state that AN sales volumes were up 10% based upon:

- Improved volume from normalisation of mine plans and strip ratios
- Volume growth across the Pilbara and Indonesian regions and east coast coal markets[9]

[7] As context: (a) Orica increased production capacity at Yarwun in QLD by 277,000 tonnes a year in August 2006. Refer to page 13 and the 'Plant Expansion' section: http://www.orica.com/ArticleDocuments/301/2006-Orica-Business-Overview.pdf.aspx; (b) Incitec Pivot, via its subsidiary Dyno Nobel, introduced new capacity of 330,000 tonnes a year at its Moranbah facility in QLD in July 2012. The commencement date is referenced in http://investors.incitecpivot.com.au/phoenix.zhtml?c=170340&p=irol-projects1 and the plant capacity is referenced in https://www.incitecpivot.com.au/~/media/Files/IPL/Work%20with%20us/moranbah_site_leaflet.pdf .

[8] Application page 14.

[9] Refer to page 6 of Orica 2017 results presentation (covers Oct 16 to Sep 17) http://www.orica.com/ArticleDocuments/303/FYR17_Investor%20Presentation_FINAL.pdf.aspx

This continued into the 1st half of 2018:

- Continued AN volume growth trend from 2H17 across the Pilbara and Indonesian regions,
- Substantial new contract wins in 1H18[10]

Apparently, Orica has been reasonably pleased with the increases in its sales volume – particularly in WA – over the investigation period. It clearly considers this trend will continue, as it reports "significantly stronger 2H18 EBIT" expected from "[c]ontinued volume growth, particularly in Australia", and anticipates even further gains in FY19 from:

- AN volume growth supported by positive commodity growth and mine plan outlook,
- Firmer AN pricing, and
- Improved manufacturing reliability at Orica plants; however, *Burrup performance remains uncertain until permanent fix is completed…*

The Burrup plant is producing AN but is said by Orica to not yet be fully operational. This has been a game changer. Orica's presence and future capabilities in the region (a massive addition of 330,00MT, or 16% of existing market volume!) has led to a mad scramble for contracts and market share amongst the Australian producers. In particular, Orica snatched the huge ammonium nitrate supply contracts for BHP and Roy Hill from Incitec Pivot (which had previously been supplying CSBP-purchased AN to service those contracts). That caused Incitec-Pivot to turn around and aggressively and successfully bid against Orica for the Fortescue Metals contracts.[11]

Orica's decline in EBIT in 1H2018 was said by Orica to have been primarily due to the impact of "unplanned maintenance shutdowns at Yarwun and Kooragang Island, and operational issues at the Burrup plant, which resulted in higher short term third party product costs".[12] If that is true, and it must be, because it is an unfavourable disclosure for Orica to make, then why is it complaining about imports? Add to this the intense competition for market share amongst the Australian Industry members so that they can maintain throughput and the "irrelevance" of imports becomes even more obvious.

Of equal importance is the fact this investigation is not targeted at all imports, only those from Sweden, China and Thailand. Based on the same ABS information, these relevant imports only represent 66,981.67 tonnes, or approximately 3% of the Australian market. Not in consideration is the 36,800 tonnes imported from Indonesia (more than the Swedish and Thai volumes combined) which Indonesian export statistics demonstrate was imported by Orica.[13] This raises the question if there is any merit to the claim made by the Australia industry that imports from Sweden, China and Thailand have negatively impacted Australian jobs but that imports from Indonesia (which Orica could have chosen to substitute with production in Australia) had no such impact.

Furthermore, it appears that the imports from China have, to some significant degree, been imported or used by the Australian Industry members and so, almost by definition, such imports cannot have damaged the Australian Industry.

---

[10] Refer to page 6 of Orica 1st half presentation for 2018 (covers Oct 17 to Mar 18): http://www.orica.com/ArticleDocuments/303/Orica%20HYR18_Investor%20Presentation.pdf.aspx

[11] See https://www.afr.com/business/mining/orica-hit-by-burrup-problems-and-impairments-20180228-h0wtnk and https://www.afr.com/business/mining/incitecs-iron-ore-pain-could-be-oricas-gain-20171206-gzzo0a.

[12] See the 2018 Half Year Results ASX Release (accessible here: http://www.orica.com/Investors/results-presentations#.W2kmFygzaUk)

[13] This is interesting, because historically Orica *exported* to Indonesia. However, since Orica's Indonesian affiliate KNI Bontang began production in 2012, this practice appears to have ended. It is likely this displaced export volume would now need to be consumed in Australia and so further increasing the oversupply of AN available for manufacture in Australia.

CSBP

CSBP's AN plant is based in Kwinana. The Kwinana plant has a production capacity of 780,000 tonnes per annum, increased from 520,000 tonnes per annum in the period 2011 to 2014.

Traditionally, CSBP dominated the Western Australian market as a near monopolist in the sale of AN, but stayed out of the East Coast market. That is no longer the case. Port statistics reveal that in the investigation period 35,593 tonnes of ammonium nitrate discharged at Gladstone port was from Australian sources. This would have been destined for use in the Bowen Basin where the AN is delivered as explosives to coal miners and other end-users. QNP produces AN at Moura (QLD), Dyno-Nobel produces AN at Moranbah (QLD) and Orica's Yarwun plant is situated in Yarwun (QLD) and, according to Orica, has spare production capacity available. As the only other AN production facilities in Australia are in NSW (Kooragang Island, owned by Orica and as discussed, thought to be running at full capacity) and WA (CSBP's plant at Kwinana), it seems very likely that this AN originated from CSBP. This would indicate increased competition between CSBP and the East Coast-based manufacturers.

It is also worth noting that up until recently CSBP did not sell emulsion (a pre-cursor to explosives made from ammonium nitrate), and so largely acted as a supplier of AN to explosive services companies like Orica and Incitec Pivot. However, with CSBP's new emulsion production capacity, the level of competition has increased significantly and undoubtedly changed the interactions between CSBP as a supplier and the likes of Orica and Incitec Pivot who used to be CSBP's customers but now find themselves as direct competitors. This increased competition was ignited originally by the almost contemporaneous decisions taken by CSBP to expand its AN production capacity at Kwinana and Orica's decision to partake in the Burrup project, which as has been highlighted, is a direct attack on CSBP's position as the only AN producer in Western Australia.

CSBP's sales quantities and values have increased from 2014, but otherwise remained relatively steady. There was a slight decrease between 2016 and 2017 which appears to have been caused through the effects of Orica's intent to establish a foothold for its increased production.

	2014	2015	2016	2017
Australian market sales volume[14]	100	121.6	137	129.3
Australian market sales value[15]	100	128.9	137.4	129.1

The reason for the substantial increase in sales volume and value in 2015 was due to the new AN volumes available following the expansion of its ammonium nitrate production facility (as mentioned, increasing overall capacity at Kwinana from 520,000 tonnes to 780,000 tonnes.[16]). Notably, both the 2016 and 2017 Annual Reports indicate that the Kwinana AN plants have been operating at "full expanded production capacity".[17] Additionally, and as already discussed, in 2018 CSBP has commissioned an ammonium nitrate emulsion plant.[18]

[14] Application page 15.
[15] Application page 16.
[16] See https://www.csbp.com.au/about-us/history and Page 42 of Wesfarmers 2015 Annual Report, accessible here: https://www.wesfarmers.com.au/docs/default-source/reports/2015-annual-report.pdf?sfvrsn=4
[17] Wesfarmers Annual Report 2016, page 45 and Wesfarmers Annual Report 2017 page 47.
[18] Refer to page 46 of Wesfarmers (owner of CSBP) 2017 annual report (note it is page 25 of the pdf document). This covers the period 1/7/16 to 30/7/17: http://www.wesfarmers.com.au/docs/default-source/reports/j000901-ar17_interactive_final.pdf?sfvrsn=4

The 2017 Wesfarmers Annual Report has the following comments regarding sales of AN: [19]

> Revenue of $1,639 million was 9.9 percent below last year due to declines in Chemicals and Fertilisers revenue. Chemicals revenue declined due to lower PVC volumes, following the change to an import model, and lower ammonia prices which affected ammonium nitrate sales prices as well as ammonia revenue.

So, it seems as though any decrease in prices and revenue in 2017 would have been caused by lower ammonia prices, ie CSBP's costs. This is a function of the pricing mechanism in the supply contracts that CSBP enters into with its customers for AN, which have traditionally included rise and fall provisions linked to movements in an ammonia price index as well as other things. Thus, a reduced ammonia price would be passed through and would cause a reduction in the AN price, but not necessarily in the profits generated from the sale.

That said, the same Report indicates that "strong performance" in the ammonium nitrate business drove earnings growth, so this impact was clearly limited.[20]

In terms of future prospects, the 2017 Annual Report states as follows:

> "Earnings for the Chemicals business will be affected by an anticipated oversupply in the Western Australian explosive grade ammonium nitrate market, although good work has been undertaken to secure new contracts for ammonium nitrate and emulsion.

The anticipated oversupply is, of course, a direct reference to Burrup. And with regards to the first half of 2018, Wesfarmers has explained its Half year results 2018 like this:[21]

> "The ammonium nitrate (AN) business successfully commenced production and sales of AN emulsion during the half. Together with other new contracts for explosive grade AN, emulsion sales helped offset some of the impact of the expiry of a key offtake contract at the beginning of the financial year. Customer demand for AN has also been strong, supporting opportunistic sales. Although production rates were pleasing, volumes produced were lower than the prior corresponding period due to a planned shutdown of one of the AN plants during the half.[22]"

So, expiry of a single contract was offset by sales of emulsion and successful bids for new contracts.

In summary, there is no suggestion of material injury caused by imports in any of the circumstances pertaining to CSBP either. Injury, if any, is stated to be the result of the impact of lower ammonia prices, an oversupply in the Western Australian ammonium AN market (likely due to the increased presence of Orica produced and imported AN in that market) and the expiry of a key offtake contract.

---

[19] Refer to page 46 of Wesfarmers (owner of CSBP) 2017 annual report (note it is page 25 of the pdf document). This covers the period 1/7/16 to 30/7/17: http://www.wesfarmers.com.au/docs/default-source/reports/j000901-ar17_interactive_final.pdf?sfvrsn=4

[20] Refer tp page 45 of the report.

[21] Refer to pages 42 - 52 of Wesfarmers (owner of CSBP) 2018 half year results: http://www.wesfarmers.com.au/docs/default-source/asx-announcements/2018-half-year-results-briefing-presentation.pdf?sfvrsn=0

[22] http://www.wesfarmers.com.au/docs/default-source/asx-announcements/2018-half-year-report-(incorporating-appendix-4d).pdf?sfvrsn=0

QNP

QNP is a joint-venture between CSBP and Dyno-Nobel (which in turn is owned by Incitec Pivot). It is based in Moura in QLD. Its production primarily services the Bowen Basin. It has a production capacity of approximately 220,000 tonnes per annum and tends to run at full capacity. QNP sells AN, but does not supply explosive services.

According to the Application, QNP's sales volumes and values have fluctuated since 2014:

	2014	2015	2016	2017
Australian market sales volume[23]	100	91.1	101.1	92.2
Australian market sales value[24]	100	97.5	108.1	98.6

Due to the nature of QNP, there is limited public information regarding its performance. However, what can be gleaned is as follows:

- In FY2017 QNP's earnings were negatively affected by disruptions caused by Cyclone Debbie.[25]
- CSBP's half year report for FY2018 indicates that QNP's earnings were lower due to production issues and weaker demand earlier in the half.[26]

Obviously, any supply issues caused by Cyclone Debbie or production issues would impact the sales volume and values. This would be the reason for the dip in the sales volume, due to the simple fact that if AN is not produced, it cannot be sold. This is supported by the fact that Incitec-Pivot, the parent company of Dyno-Nobel reported "strong" activity in the Bowen Basin in 2017, and reported that its Moranbah plant which supplies the Bowen Basin was operating at "record levels" in the first half of FY18.[27] [28]

To sum up, there are no protestations about the effect of imports in any of QNP's literature either. Rather, the publicly available information points to the impact of production issues, weaker demand and Cyclone Debbie.

[23] Application page 15.
[24] Application page 16.
[25] http://www.wesfarmers.com.au/docs/default-source/asx-announcements/app-4e---preliminary-final-report-and-2017-full-year-results.pdf?sfvrsn=0
[26] http://www.wesfarmers.com.au/docs/default-source/asx-announcements/2018-half-year-report-(incorporating-appendix-4d).pdf?sfvrsn=0
[27] Refer to page 10 of the Incitec Pivot full year 2017 presentation (1/10/16 to 30/9/17): http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9Mzk0MjQ0fENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636462322222149114
See pages 34 & 35 for ammonia pricing charts
[28] Refer to page 13 of the Incitec Pivot half year presentation: http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDA0OTM4fENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636614202454110649
See pages 30 & 31 for ammonia pricing charts

THE INJURY ALLEGATIONS DO NOT PASS THE "PUB TEST"

Even on the basis of the information in the application it is impossible to understand why this investigation was initiated at all. The Consideration Report shows that the three Australian Industry applicants are producing ammonium nitrate at significantly profitable levels and that they dominate the market in terms of volume:

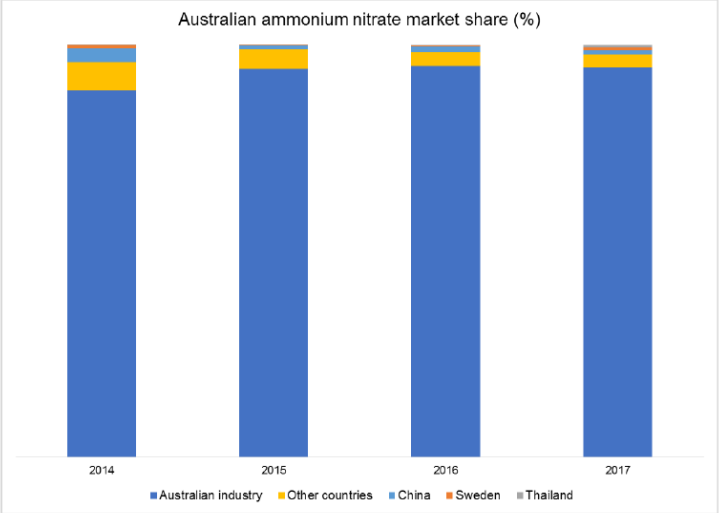
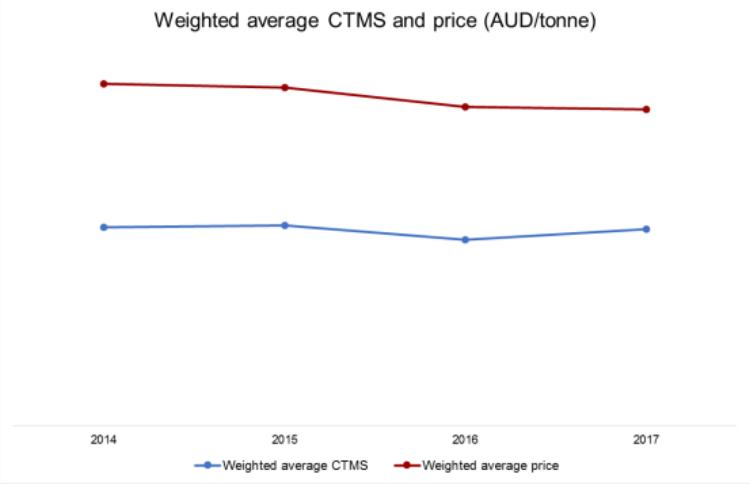


Figure 4: Australian ammonium nitrate market share (percentage of tonnes sold)[23]



It is not clear why Incitec Pivot declined to participate in this investigation. However, the information that the Commission seeks from it needs to include data that completes the picture of the market position held by the Australian manufacturers of AN and undoubtedly will confirm the clear market dominance of these business and their ability to achieve what can only be considered to be "super" profits.

The Report states that the imports from Sweden, China and Thailand targeted by this investigation amount to 2.4% of the entire volume of the Australian market for ammonium nitrate, which is considered to be 1.97 million tonnes. As a general observation it first of all seems that the Australian Industry members have been "trading blows" amongst each other, in fear of their own production capacity increases that have come on stream in the market and which will escalate in the future. In this competitive environment, imports amounting to only 2.4% of the total market are nothing more than a sideshow.

The Report says that the application does enough to satisfy the Commission that the dominant Australian manufacturers have incurred:

- A decline in production;
- Reduced sales volumes;
- Reduced revenues;
- Price depression;
- Price suppression;
- Reduced profit and profitability;
- Reduced return on investment;
- Lower capacity utilisation; and
- Reduction in employment.

It appears that this was a view formed merely on the basis of what the Commission was told by the applicants and that the investigation itself is for the purposes of considering whether the applicants' claims are correct. However, in light of the information in this submission, it should be clear that the allegations made by the Australian Industry are really quite inaccurate.

The law requires that anti-dumping measures can only be imposed where dumping has caused injury. The injury must be caused by the dumping. Dumping deals with the relative pricing of a manufacturer between its home market and the Australian market. Logically, the direct impact of dumping would be illustrated by price movements and potentially the sales volume achieved by the local manufacturers. So, the "directly" observable injury would be the "decline in production", "reduced sales volume", "price suppression" and "price depression". These might have the flow on effect of causing the "reduced revenues", "reduced profit and profitability", "reduced return on investment", "lower capacity utilisation" and the "reduction in employment". The following sections of the submission address the former directly.

Price depression, suppression and reduced revenues

With regard to price suppression and depression, the Report states:

> "The Commission observes that the applicants' prices have decreased since 2015, which appears to confirm the applicants' claim that the Australian industry has experienced price depression.
>
> The Commission further observes that the applicants' costs have increased in 2017 while prices have decreased in the same period, indicating slight price suppression."

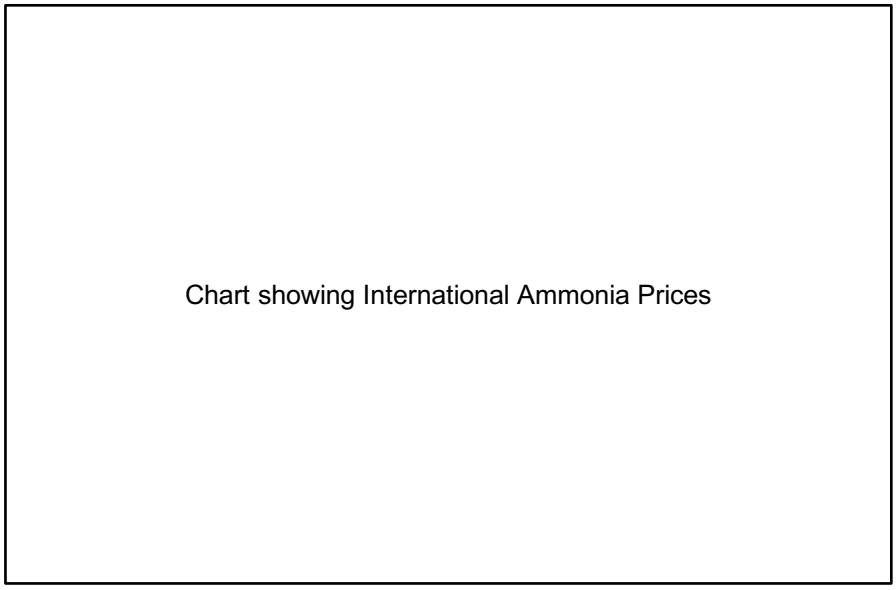
This is on the basis of the weighted average CTMS and price comparison graph that has been extracted above. In terms of qualitative analysis the reduction in price seems to be immaterial, as is the increase in costs. These also need to be understood in terms of the massive margin between price and CTMS. In that context it does not seem possible to surmise injury had occurred, or that the injury was supposedly material. Based on an educated estimation, the average margin the Australian Industry would be making is between X and X% (in other words, their selling price is approximately double their costs). A slight reduction in such a large margin cannot be injurious. And as has been mentioned, the period that has been used to extrapolate these numbers is one in which the Australian Industry itself has added capacity equal to almost 20% of a market that was already fully satisfied.

The Consideration Report goes on to consider that the targeted goods caused "price pressure" that prevented the Australian manufacturers from increasing prices and have otherwise depressed prices. This appears to be based upon a comparison of CSBP and Orica's monthly weighted average export price (ex-works) with a calculated CIF price from Sweden, Thailand and China. However, that form of analysis is next to meaningless in the context of the Australian ammonium nitrate market.

The vast bulk of sales of ammonium nitrate are made subject to supply contracts which include a base price and rise and fall provisions for the main raw material of the producer (gas or ammonia) and other factors such as CPI indexing. The method through which prices are determined over time is set for the duration of the contract – it has nothing to do with the contemporaneous import price of the targeted goods. The two are unrelated. Logically, this makes sense. Why would any serious commercial operation peg the price of its market dominant goods to that of a small volume of imports?

Respectfully, it appears clear that the "price depression" and "price suppression" said to have occurred in the Report were caused by:

- The operation of the pricing mechanism in the supply contracts. The rise and fall provisions in those pricing mechanisms relate to certain external indicators. These can be things like a world fertiliser index, ammonia market price and CPI, and other actual costs such as gas, fuel and transport. Increases and decreases in one or other of the rise and fall factors then causes the price to be adjusted. As noted above, CSBP admits that ammonia price decreases impacted its AN price and revenue in the 2017 financial year. The price of ammonia has been falling for some time, as illustrated below:



- Under these long term rise and fall contracts, many of which are “take or pay”, the producer is not without risk. If the make-up of the price adjustment formula does not correctly reflect the proportionate change in actual costs, then the outcome will be a mismatch between costs and prices. A disconnect can therefore develop between the movements in the actual costs incurred by the manufacturer and the prices arrived at by application of the rise and fall provisions. Sometimes this will favour a producer, other times it might favour the buyer.
- It is reported that Orica has suffered significantly in its East Coast pricing because it has not been adequately shielded from gas cost increases by the rise and fall provisions in its long term sale contracts. CSBP, it seems, has had the opposite experience, as exemplified by ASX announcements advising of forward loss or profit expectations made by mining services companies that lose or win service contracts.[29]
- Increased competition between CSBP and Orica would have to be the single most deleterious impact on their prices. Logically, CSBP’s prices into the East Coast market must be very low, in order to gain a foothold in the market. Similarly, Orica’s increased sales into WA suggests that they are trying to “front-load” capacity for when the Burrup plant is consistently up and running at full capacity. Anecdotally, it is understood that this has been the intent behind some pricing decisions by Orica since at least 2015, however this is likely to accelerate after the period of consideration as Burrup comes closer to full operation. Given the production capacity of the two (CSBP 780,000 tonnes per annum and currently Orica at 680,000 tonnes plus imports, but scheduled to return to boom-times capacity of 930,000 and then up to 1,260,000 when Burrup comes fully on line) it is clear that each is the other’s biggest competitor. In these circumstances the prospect that import price pressure was a factor at all is somewhere between nil and nothing.

Even then, the revenues and profit of the Australian Industry producers have not been reduced in any great amount. It is hard to see this as being injury, rather than the usual variability in performance that all businesses are subject to. But more to the point, it is not caused by the imports that are targeted by this investigation. Those imports cannot impact on pre-existing prices, and the producers cannot change their prices if they are already being set under rise and fall contracts. The producers are however protected by “take or pay”, or injured by “take or pay”, depending on whether their price negotiations were fortunate or unfortunate in terms of how the rise and fall provisions matched with changes in costs, respectively.

[29] See for example, Incitec Pivots ASX release of 6 December 2017, regarding its loss of a contract with BHP Iron Ore (accessible here: investors.incitecpivot.com.au/phoenix.zhtml?c=170340&p=irol-news)

Decline in production, reduced sales volumes

With regard to the "reduced sales" the application indicates that the sales volume of the three applicant entities deceased by 2.6% between 2016 and 2017.[30] From the above discussion it is clear that Orica actually increased its sales by 0.94% between 2016 and 2017, so this reduction in sales would reflect reductions in CSBP and QNP's sales volumes. It is also evident that:

- In the first half of FY18 (up to December 17) CSBP's parent company considered its production rates to be "pleasing" but that they were impacted by a planned shutdown by one of the AN plants.
- QNP's production in FY17 was impacted by Cyclone Debbie and by "production issues" in the first half of FY18.

These factors will of course effect sales volume. Logically, it cannot be the case that this injury, if this even meets the threshold of an injury, has been caused by the targeted imports.

What does not affect sales volume is the imports from the targeted countries. Again, sales of explosives and of AN tend to be made under supply contracts. They are not supply sales. A customer cannot simply spot purchase cheaper product when the opportunity arises. Moreover, it should be further emphasised that:

- According to the Report, those imports only account for 2.4% of the Australian market;
- Based on an analysis of import statistics and an understanding of the Australian AN market, it seems the Australian manufacturers themselves imported some X tonnes during the investigation period, which is at least X% of the Australian market;
- Of these imports by the Australian manufacturers, at least X tonnes came from one of the countries subject to this investigation;
- The AN that was imported from the target countries during the investigation period by entities other than the Australian manufacturers (X tonnes) is less than the amount of AN imported by the Australian manufacturers.

Given the Australian Industry is clearly servicing contracts with AN that was not produced in Australia, you have to wonder how it is reasonable to contend the smaller volume of imports from the subject countries have caused that industry injury in the form of reduced sales volume and reduced production. If the Australian Industry could have produced more, would it not have done so rather than importing these volumes? Why is it okay for the Australian Industry to do this, so limiting their domestic production, and to accuse the imports from the target countries of causing injury?

[30] Application page 22.

Reduced production capacity, employment and return on investment

The claims surrounding the reduced production capacity, employment and return on investment are not articulated in the application. However, in light of the announcement that Yarwun and Burrup will be coming fully online this year these claims have to be questioned.

You should also not be fooled into counting the cost of Orica's delayed start-up at Burrup as being injury caused by imports. That plant is a huge investment and basic economics (taking into account the cost of the plant and the excess supply in the domestic market) clearly demonstrate that it must have caused a "reduced return on investment". Any financial "injury" caused by that decision cannot have any relationship to the measly volume of imports in the market. As a result of other factors than imports.

CONCLUSION

It is regrettable that this investigation was initiated at all. The injury claims in the application and the analysis of those same claims in the Report do not satisfy the relevant limbs of the legal test. In particular, the injury-causation limbs are not satisfied by the facts alleged in the Complaint. Rather, the Complaint seems to be a pragmatic and opportunistic attempt by the applicants to insulate themselves from legitimate import competition and exert further control over the "borehole", by ensuring that explosive services contracts are supplied by either their product, or product they import[31], to the detriment of end consumers.

Ultimately, the Australian Industry has not been materially injured, let alone have they suffered material injury as a result of the target imports. If measures were imposed on those imports you would simply be punishing other businesses without providing any material benefit to the applicants.

As it is within the ADC's power to terminate these investigations where it is satisfied that causal material injury cannot be found to have occurred having regard to all relevant known facts, we respectfully request that this investigation be terminated.

Name: Robert Gare

Position: Director

[31] Anecdotally, during 2018, a potential AN consumer approached both Orica and CSBP for indicative pricing for supply of AN. In both cases the AN vendors replied they could not offer committed supply or pricing during 2018 to 2019 due to heavy plant loads and demand plans, with all existing capacity being consumed. Some of the companies represented by this submission have observed that it would be untenable to introduce dumping duties for key sources of ammonium nitrate supply whilst at the same time the Australian Industry refuses or is unable to supply AN to other industry participants.

Appendix 1

Party Name	Role in Australian Ammonium Nitrate Industry	Signed
Glencore	Glencore is the largest coal miner in Australia and is the end user for close to X% of the ammonium nitrate in Australia, which it consumes as explosives. The dominant position of the Australian Industry creates major issues for Glencore in relation to security of supply, which would only be made worse if the proposed dumping duties are established.	
Rio Tinto	Rio Tinto is the largest iron ore miner in Australia and is the end user for around X% of the ammonium nitrate in Australia, which it consumes as explosives. It also operates diamond and bauxite mines. In addition, during the investigation period, Rio Tinto owned and operated large coal mines in Queensland and NSW, which have since either been sold or are undergoing a sales process.	Mark Davies VP Global Procurement Rio Tinto
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
Moncourt Group	Moncourt Group provides independent professional services related to ammonium nitrate and explosives to a range of different companies and industries with an interest in the purchase, sale, delivery, use and development of these products and associated services.