



Customs Act 1901 – Part XVB

Anti-Dumping Notice No. 2018/166

Ammonium nitrate - 473

**Exported from the People's Republic of China,
Sweden and the Kingdom of Thailand**

Preliminary Affirmative Determination and imposition of securities

Public Notice under section 269TD of the Customs Act 1901¹

1 Introduction

The purpose of this notice is to set out the reasons why I, Dale Seymour, Commissioner of the Anti-Dumping Commission (the Commissioner) have made a preliminary affirmative determination (PAD) under subsection 269TD(1) of the *Customs Act 1901*² (the Act) on 24 October 2018, being not earlier than 60 days after the initiation of the investigation into the alleged dumping of ammonium nitrate ('the goods') exported to Australia from the People's Republic of China (China), Sweden and the Kingdom of Thailand (Thailand).

My preliminary determination is that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from China, Sweden and Thailand, and that it is necessary to require and take securities in relation to exports from China, Sweden and Thailand to prevent material injury to the Australian industry occurring while the investigation continues.

This notice and the preliminary findings contained within reflect the current status of the investigation. My findings may change as a result of further information, submissions, analysis or verification.

1.1 Reasons for making a PAD and for taking of securities

The Commission's preliminary assessment has shown that:

- exports of ammonium nitrate to Australia from China, Sweden and Thailand during the investigation period (1 April 2017 to 31 March 2018) were at dumped prices and the dumping margins were not negligible; and

¹ This is a public notice under subsection 269TD(4)(a) of the *Customs Act 1901* of the Commissioner's preliminary affirmative determination and a public notice under subsection 269TD(5) of the *Customs Act 1901* of the Commonwealth's decision to require and take securities.

² All legislative references are to the *Customs Act 1901*, unless otherwise stated.

- the volumes of dumped goods exported from China, Sweden and Thailand were not negligible (i.e. individually above three per cent of the total Australian import volume).

I am satisfied that, based on the analysis to date and the size of the dumping margins, there currently appears to be sufficient grounds to support a finding that material injury has been caused by dumped goods from China, Sweden and Thailand.

Having regard to the application, submissions received concerning publication of the dumping duty notice and other information I considered relevant,³ and pursuant to subsection 269TD(1)(a) of the Act, I am satisfied there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from China, Sweden and Thailand. As a result, I have made a PAD to that effect, pursuant to section 269TD.

Under subsection 269TD(4)(b), I am satisfied that it is necessary to require and take securities in relation to exports from China, Sweden and Thailand to prevent material injury to the Australian industry occurring while the investigation continues. The Commonwealth will require and take securities under section 42 of the Act in respect of interim dumping duties that may become payable on the goods imported from those three countries and entered for home consumption in Australia on or after **25 October 2018**.

The security has been determined using the combination fixed and variable duty method (refer section 12 of this notice). The fixed component of security will be imposed on goods exported to Australia from China, Sweden and Thailand at the rates specified in the table of preliminary dumping margin assessments in section 6.3 of this notice (refer Table 1).

2 Background

On 25 June 2018, I initiated an investigation into the alleged dumping of the goods from China, Sweden and Thailand following an application by CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica) and Queensland Nitrates Pty Ltd (QNP) (collectively, the applicants),⁴ manufacturers of like goods in Australia. Further details in relation to the initiation of this investigation can be found in Anti-Dumping Notice (ADN) No. 2018/103.⁵

Under subsection 269TD(1) of the Act, I may make a PAD at any time, not earlier than 60 days after I initiate an investigation for the publication of a dumping or countervailing duty notice, if I am satisfied that:

- there appears to be sufficient grounds for the publication of such a notice; or
- it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods.

In accordance with the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction), 60 days after the initiation of such an investigation I must either make a PAD or publish a Status Report outlining the reasons why I have not made a PAD.

Day 60 of this investigation was 24 August 2018. On that day a status report was published (ADN No. 2018/133⁶) advising that the Commission at that time had not completed its preliminary assessment of whether the goods exported to Australia from the nominated countries were at dumped prices and was unable to establish if there were

³ Refer to section 3 of this notice.

⁴ Refer item [no. 002](#) on Electronic Public Record (EPR) 473.

⁵ Refer item [no. 003](#) on EPR 473.

⁶ Refer item [no. 014](#) on EPR 473.

sufficient grounds to be satisfied that the goods exported to Australia had been dumped (at above negligible levels in accordance with section 269TDA) and that the dumped goods were causing material injury to the Australian industry producing like goods.

Interested parties were notified in the day 60 status report that prior to the publication of the statement of essential facts (SEF) or in the SEF, I will advise whether I made a PAD and the reasons for my decision.

3 Evidence relied upon

In deciding to make a PAD in relation to this investigation, I have, in accordance with subsection 269TD(2), had regard to:

- the Australian industry's application;
- importer questionnaire responses received from cooperating importers;
- exporter questionnaire responses received from cooperating exporters;
- submissions received concerning publication of the dumping duty notice, including those received after 1 August 2018 that, in my opinion, would have not prevented the timely consideration of whether or not to make a PAD;⁷
- information obtained during the course of verification visits to CSBP and Orica, importers and exporters; and
- data from the Australian Border Force (ABF) import database.

4 Australian industry producing like goods

4.1 The goods the subject of the investigation

The goods the subject of the application (the goods) are:

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

Further information regarding the goods the subject of the investigation can be found in *Consideration Report No. 473*⁸ and ADN No. 2018/103.

4.2 Australian industry

An application can only be made if there exists an Australian industry producing 'like goods' to the goods the subject of the application. Like goods are defined under subsection 269T(1) of the Act. Subsections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.

Since the initiation of the investigation, the Commission has undertaken verification visits to CSBP and Orica to verify information provided in the application. The Commission undertook an inspection of CSBP's manufacturing facility and is satisfied that at least one substantial process of manufacture of ammonium nitrate (the production of ammonia) is carried out in Australia.

⁷ Under subsection 269TD(3), I am not obliged to have regard to any submission received after 1 August 2018 if to do so would, in my opinion, prevent the timely consideration of the question whether or not to make a PAD.

⁸ Refer item [no. 002](#) on EPR 473.

The Commission has also preliminarily assessed that the locally produced goods closely resemble the goods the subject of the application and are like goods given that:

- the primary physical characteristics of the imported and locally produced goods are almost identical;
- the imported and locally produced goods are commercially alike as they are sold to common customers and compete in the same market;
- the imported and locally produced goods are functionally alike as they have the same end-uses; and
- the imported and locally produced goods are manufactured in a similar manner.

4.3 Australian industry producing like goods – preliminary assessment

As a result of the information verified during the verification visits to CSBP and Orica, I am satisfied that there is an Australian industry producing like goods to the goods the subject of the application, comprised of the applicants and Incitec Pivot Ltd (Incitec Pivot), and that the like goods are produced in Australia.

5 The Australian ammonium nitrate market

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives for use by the mining and quarrying industries. The applicants advised that ammonium nitrate has limited usage in Australia as a fertiliser, mainly due to the additional security protocols required for its transport and storage relative to other nitrogenous products such as urea and urea ammonium nitrate.

Ammonium nitrate production facilities are located strategically close to the major explosives markets in New South Wales (NSW), Queensland and Western Australia (WA). In NSW, bulk explosives are used mainly in the coal mines of the Hunter Valley. The main markets for ammonium nitrate in Queensland are in the Bowen Basin and in the central Queensland/Mt Isa region. In WA, there are major markets for ammonium nitrate in the Kalgoorlie goldfields and in the Pilbara region.

The Commission found that the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts. These contracts, arranged following a tender process, are effective for several years (typically from one year up to five years in duration) and will normally specify a base price and provisions to adjust this base price periodically to take into account variations in raw material costs or prices.

5.1 Market size

Figure 1 depicts the Commission's estimate of the size of the Australian market for ammonium nitrate from the period 1 April 2014 to 31 March 2018 using data from the ABF import database and the applicants' sales data including Incitec Pivot's estimated sales volumes (based on its production volumes).

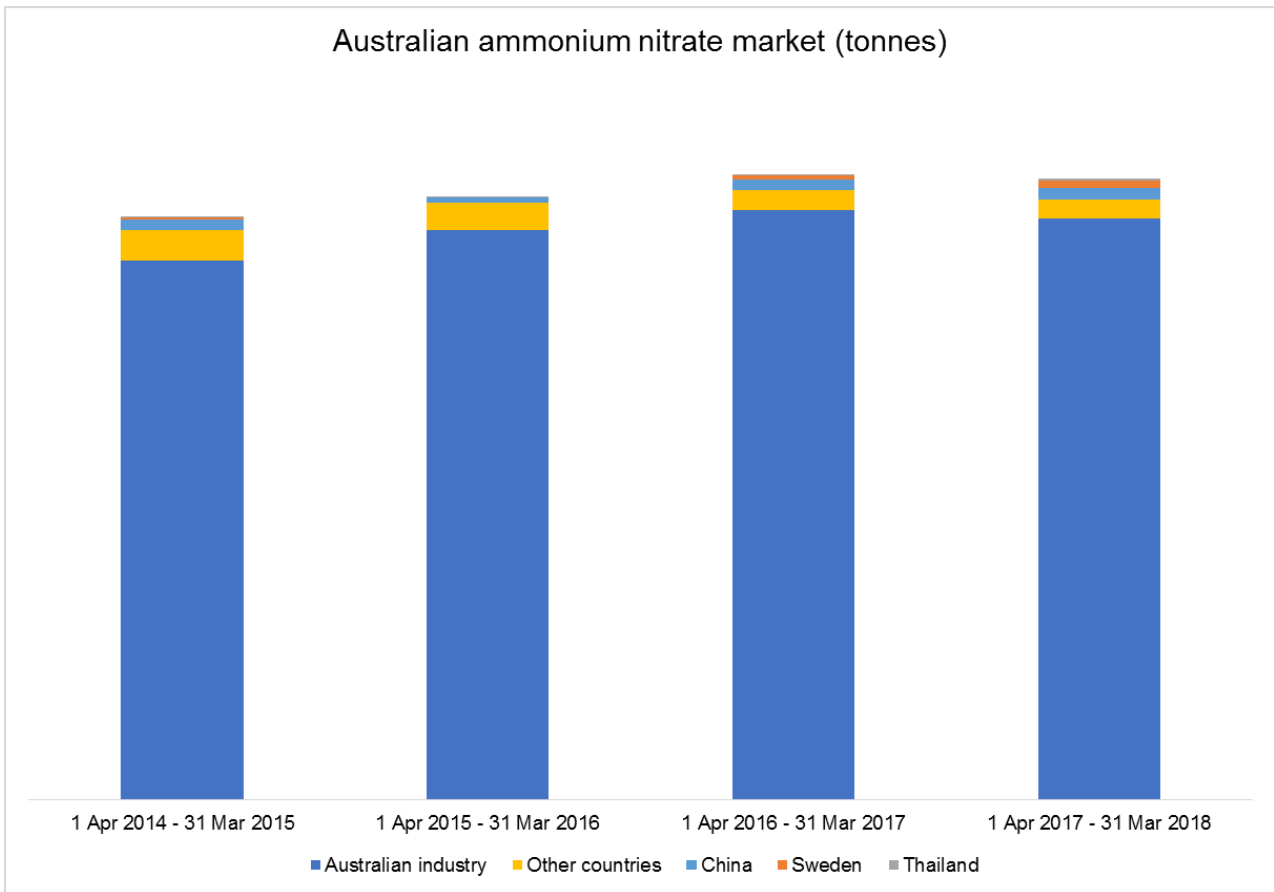


Figure 1: Size of the Australian market for ammonium nitrate (tonnes sold)

The Commission observes that the Australian market for ammonium nitrate has grown steadily since 2014-15; however, consistent with the applicants' observation, the market has contracted slightly in the investigation period (1 April 2017 to 31 March 2018), mostly due to a decline in the Australian industry's sales volumes and imports from other countries. The Commission notes that imports from China, Sweden and Thailand have increased in the investigation period.

6 Dumping investigation

6.1 Exporter questionnaires received

The Commission received exporter questionnaire responses from the following entities:

- Phoenix Blastic Services Pty Ltd (Phoenix);⁹
- Polene Plastic Co., Ltd (Polene Plastic);
- Thai Nitrate Co., Ltd (Thai Nitrate); and
- Yara AB.¹⁰

⁹ Refer item [no. 005](#) on EPR 473.

¹⁰ Refer item [no. 010](#) on EPR 473.

6.2 ‘Uncooperative and all other’ exporters

Polene Plastic and Thai Nitrate

Pursuant to subsection 6(b) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction), I considered that both Polene Plastic and Thai Nitrate have provided a response within the legislated period, however, the response contained deficiencies that could not, in my view, be quickly and easily rectified in a further response.

On 10 August 2018, I notified Polene Plastic and Thai Nitrate of my decision to treat both exporters as uncooperative exporters pursuant to subsection 269T(1).

Phoenix

In its response to the exporter questionnaire,¹¹ Phoenix has indicated that it is a trader of the goods exported to Australia.

The Commission does not consider Phoenix nor its affiliated entity to be the exporter of the goods. The exporters of the goods traded by Phoenix did not cooperate with the investigation; therefore, the information provided by Phoenix was unable to be verified and the Commission considers it to be unreliable for the purposes of establishing an export price and normal value.¹²

All other exporters that did not provide an exporter questionnaire response

Having regard to the Customs Direction, in relation to this investigation, the legislated period for providing an exporter questionnaire response has expired. Therefore, under subsection 8(b) of the Customs Direction, I must determine all exporters who did not provide a response or request a longer period to provide a response within the legislated period to be uncooperative exporters pursuant to subsection 269T(1).

6.3 Dumping determination

Having regard to the exporter questionnaire responses and submissions received to date, the Commission has preliminarily determined the following exporter specific dumping margins in relation to ammonium nitrate exported to Australia from China, Sweden and Thailand during the investigation period (1 April 2017 to 31 March 2018):

Country	Exporter	Export price	Normal value	Dumping margin
China	Uncooperative and all other exporters	s.269TAB(3)	s.269TAC(6)	39.5%
Sweden	Yara AB	s.269TAB(1)(a)	s.269TAC(1)	51.8%
Sweden	Uncooperative and all other exporters	s.269TAB(3)	s.269TAC(6)	61.3%
Thailand	Uncooperative and all other exporters	s.269TAB(3)	s.269TAC(6)	37.1%

Table 1: Preliminary dumping margins

¹¹ Refer item [no. 006](#) on EPR 473.

¹² In accordance with subsections 269TAB(4) and 269TAC(7) respectively.

6.3.1 Export price

The export price for goods exported to Australia from Sweden by Yara AB has been determined under subsection 269TAB(1)(a) as the price paid by the importer to the exporter in an arms length transaction, less transport and other costs arising after exportation.

Export prices for 'uncooperative and all other' exporters from China, Sweden and Thailand were determined having regard to all relevant information in accordance with subsection 269TAB(3) in accordance with subsection 269TACAB(1). Specifically, the export prices for goods exported from China and Thailand were determined using import data from the ABF import database.

6.3.2 Normal value

The normal value of goods exported to Australia from Sweden by Yara AB has been determined under subsection 269TAC(1) based on the exporter's domestic sales of comparable models (i.e. the price paid for sales of like goods) in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions. Where appropriate, adjustments were made pursuant to subsection 269TAC(8).

For 'uncooperative and all other' exporters from Sweden, the normal value has been determined in accordance with subsection 269TAC(6) by having regard to Yara AB's domestic sales; however, no favourable adjustments were made to the normal value pursuant to subsection 269TAC(8).

In relation to 'uncooperative and all other' exporters from China and Thailand, the normal value has been determined having regard to all relevant information under subsection 269TAC(6) in accordance with subsection 269TACAB(1). Specifically, the Commission has had regard to the information provided by the applicants in the application.

6.3.3 Dumping margins

Dumping margins were calculated for all exporters by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

6.3.4 Dumping – preliminary assessment

Given the dumping margins presented in Table 1, I am satisfied that ammonium nitrate exported to Australia from China, Sweden and Thailand during the investigation period was at dumped prices because:

- the margins of dumping were not negligible;¹³ and
- the volume of dumped goods from each country was not negligible.¹⁴

¹³ Subsection 269TDA(1).

¹⁴ Subsections 269TDA(3) and (4).

7 Injury to the Australian industry

In the application, the applicants claimed that the Australian industry has experienced injury in the form of:

- decline in production;
- reduced sales volumes;
- reduced revenues;
- price depression;
- price suppression;
- reduced profit and profitability;
- reduction in return on investment;
- lower capacity utilisation; and
- reduction in employment numbers.

The applicants also claim that the Australian industry has experienced injury in the form of reduced market share and reduced growth in an expanding market.¹⁵

The applicants allege that injury from the dumped goods exported from China, Sweden and Thailand commenced in 2016; however, it is claimed that in 2017 the ‘injury increased’ and is considered by the applicants to be material.

As discussed in section 5 of this notice, the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts. The Commission understands that the majority of the applicants’ sales during the investigation period were made in accordance with contracts negotiated several years prior to the investigation period, and, in some instances, before the volume of the goods exported from China, Sweden and Thailand increased substantially. Therefore, the applicants’ selling prices and volumes observed during the investigation period reflect the contract terms, including prices and volumes, agreed to before the investigation period.

Following the initiation of the investigation, each applicant provided additional information (in separate submissions) to the Commission in support of their injury and causation claims.¹⁶ In these submissions, the applicants outlined specific examples of negotiations with customers during the investigation period, with some negotiations continuing subsequent to the investigation period. Each applicant alleged that these examples demonstrate specific instances where they lowered their prices to secure supply contracts, or where they matched import parity pricing as customers cited the availability and pricing of imported ammonium nitrate.

Given that the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts, the Commission has taken a practical approach to assessing whether dumping has caused or is causing material injury to the Australian industry. The Commission considers it appropriate to assess the information provided by each applicant in relation to specific occurrences of injury experienced during negotiations with customers to determine whether injury has been caused or is being caused, and whether this injury is material.

Given that some of these negotiations are continuing and have not been finalised, the Commission’s assessment in the following sections focused on whether injury to the Australian industry has been caused or is being caused by the allegedly dumped goods from China, Sweden and Thailand. This is further discussed in the following section.

¹⁵ Refer item [no. 012](#) on EPR 473.

¹⁶ Refer items [no. 012](#), [013](#), [016](#) and [019](#) on EPR 473.

8 Cause of injury to the Australian industry

In determining whether material injury to an Australian industry has been caused or is being caused, because of any circumstances in relation to the exportation of the goods to Australia, the Minister may have regard to the matters set out in section 269TAE, to which I have had regard.

8.1 Cumulation of the effects of exports of the goods from different countries

For the purposes of subsection 269TAE(1), in determining the effect of the exportations of the goods to Australia from different countries of export, the relevant Minister should consider the cumulative effect of those exports in accordance with subsection 269TAE(2C).

Subsection 269TAE(2C) specifies that, in relation to a dumping investigation, where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation), the cumulative effects of such exports may be assessed if:

- the margin of dumping established for each exporter is not negligible; and
- the volume of dumped goods that have been exported to Australia is not negligible; and
- cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and between the imported goods and like goods that are domestically produced.

Having regard to the size of the dumping margins determined to date, the volume of the dumped goods, and the conditions of competition between the goods exported from China, Sweden and Thailand, and the like goods produced by CSBP, Orica and QNP, the Commission considers that it is appropriate to consider the cumulative effect of the allegedly dumped exports from China, Sweden and Thailand, in accordance with subsection 269TAE(2C).

8.2 Size of the dumping margins

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia.

The preliminary dumping margins outlined in section 6.3 of this report (refer table 1) for China, Sweden and Thailand range between 37.0 per cent and 61.3 per cent and are above negligible levels (i.e. above two per cent). The Commission considers that the magnitude of dumping provided exporters from these three countries with the ability to offer ammonium nitrate to importers at significantly lower prices than would otherwise have been the case.

8.3 Price effects

The applicants submit that ammonium nitrate is supplied to mining principals or to mining services providers via long-term and spot contracts arranged through competitive tender processes.

The applicants claim that these tender processes, and the dual sourcing by mine operators and mining services providers, exposes the Australian industry to competition from imports, with customers citing the availability of imported ammonium nitrate as the benchmark or alternative source to the local ammonium nitrate supplier.

The applicants further claim that:

The selling prices for AN [ammonium nitrate] supply in Australia is relatively transparent with import volumes and prices observable in published ABS data; the market itself may be described as “price sensitive” as all parties operate in full knowledge of the availability and pricing for alternate supply.¹⁷

Emphasising this price sensitivity in the Australian ammonium nitrate market, the applicants allege that, from 2015,¹⁸ importers of ammonium nitrate sought alternative sources of supply as Russian export prices became less attractive, and therefore import volumes of the dumped goods from China, Sweden and Thailand increased.

The applicants allege that these increasing import volumes of the goods at significantly low prices from the countries the subject of the application have undercut the Australian industry’s selling prices during negotiations with customers in relation to supply contracts, leading to injury in the form of price depression, price suppression and reduced profit and profitability. The applicants allege that the Free on Board (FOB) prices of exports from China, Sweden and Thailand have been significantly below the FOB prices of exports from Russia and other countries.

Figure 2 shows the total volume of imports of ammonium nitrate from 2014-15 to 2017-18. The Commission observes that import volumes of the goods from China, Sweden and Thailand have increased substantially from 2015-16, albeit from a relatively low base. The Commission also observes that import volumes of the goods from China, Sweden and Thailand increased as a proportion of total import volumes from 2015-16 to 2017-18, comprising 18 per cent of total import volumes in 2015-16, to 55 per cent of total import volumes during the investigation period (47 per cent excluding the applicants’ imports of the goods from China). Import volumes of ammonium nitrate from other countries¹⁹ have steadily decreased since 2014-15.

The Commission also compared the FOB prices²⁰ of exports from China, Sweden and Thailand to the FOB prices of exports from Indonesia, Russia²¹ and other countries during the period 1 April 2014 to 31 March 2018, and observes that the export prices from China, Sweden and Thailand were relatively lower than the export prices of all other countries, including Indonesia and Russia, consistent with the applicants’ claims. The Commission also observes that the export prices from Sweden were significantly lower than export prices of any other country during the investigating period and the preceding period.

¹⁷ Page 23 of the application refers – refer item [no. 002](#) on EPR 473.

¹⁸ During 2015, the Commission conducted an inquiry into the continuation of anti-dumping measures applying to ammonium nitrate exported from the Russian Federation (Russia). As a result of this inquiry, exports of ammonium nitrate to Australia from Russia are subject to a floor price.

¹⁹ Indonesia is the main source of imports from ‘other countries’, followed by Russia. Imports from Russia have been subject to anti-dumping measures since 2001.

²⁰ FOB prices derived using data from the ABF import database.

²¹ Exports of ammonium nitrate to Australia from Russia are currently subject to anti-dumping measures in the form of a floor price.

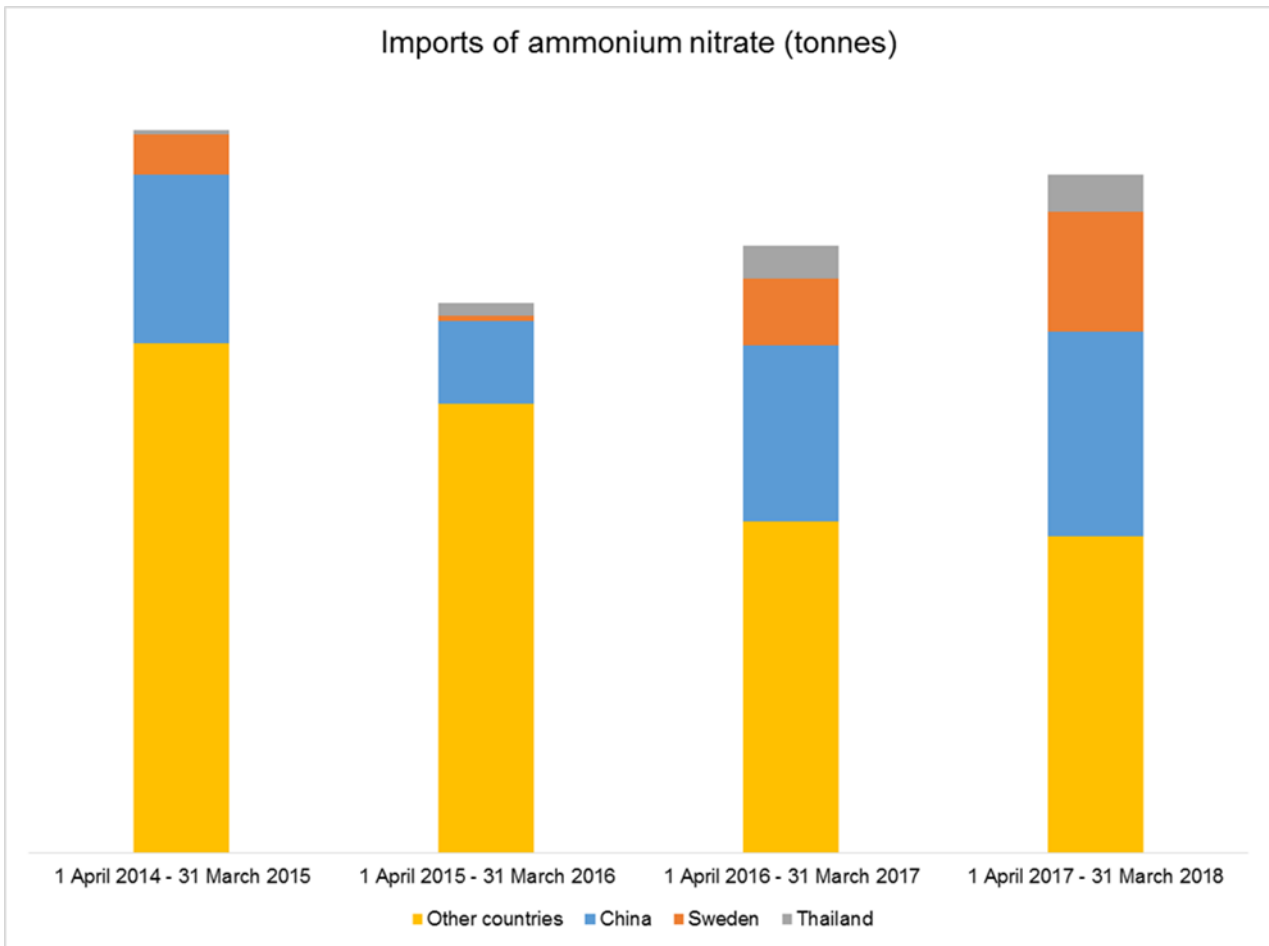


Figure 2: Imports of ammonium nitrate

In separate submissions²² made by the applicants following the initiation of this investigation, the applicants claim that, in negotiations with customers during the investigation period, dumped prices for ammonium nitrate imported from China, Sweden and Thailand were prominent in these negotiations and were referred to by customers to secure reduced pricing in fixed-term contracts with the applicants. Therefore, the applicants allege that the dumped goods have undercut the Australian industry’s selling prices during the investigation period and have resulted in price depression and price suppression.

In their submissions, each applicant outlined examples of negotiations with certain customers during the investigation period, either in relation to contract renewal or price reviews with existing customers, or new tenders for supply, or small volumes of spot sales of ammonium nitrate to certain customers. Each applicant alleged that these examples demonstrate specific instances where their prices were undercut or where they were requested to match import parity pricing, which was influenced by significant volumes of lower priced goods exported from China, Sweden and Thailand.

These examples were supported by documentation, including copies of correspondences between the applicants and customers showing the applicants’ formal price offers to customers and correspondence relating to subsequent price offers showing that the applicants had reduced pricing to secure volumes. The applicants also provided documentation, such as correspondences, that showed customers referencing prices of imported ammonium nitrate from some of the countries subject to the application.

²² Refer items [no. 012](#), [013](#), [016](#) and [019](#) on EPR 473.

Some of the correspondences provided by the applicants indicate that they matched import parity pricing in making formal offers to certain customers.

The applicants submit that these examples demonstrate instances where they reduced the price or matched an import parity price to secure supply contracts and volumes. One applicant also claimed that it had lost a tender for supply because the price it offered was not competitive relative to alternative sources of supply, such as imports.

Each applicant quantified the price reduction in terms of the absolute reduction in price, and quantified the revenue and profit forgone on a per annum basis. The applicants' estimates of the price reductions range between 7 per cent and 22 per cent.

The Commission considers that the information provided by each applicant represents reasonable evidence to support their claims that the prices of the goods imported from China, Sweden and Thailand have been, either directly or indirectly, used by customers to exert pressure on the applicants to reduce their prices during contract negotiations.

Based on this, the Commission considers it is reasonable to conclude that the relatively low prices of the dumped goods appear to have contributed to the ability of certain customers to exert pressure on the applicants to reduce their prices, which has led to injury in the form of price depression during negotiations in relation to fixed-term supply contracts.

The Commission also considers that the depressed contract prices being achieved by the applicants in negotiating with customers will fix, for the duration of the contract, a margin that is lower than otherwise might have been. The Commission therefore considers that the price pressures being caused by the dumped goods are preventing the applicants from negotiating base contract prices that improve the proportion of revenue to their cost to make and sell, which represents price suppression.

As at the date of the publication of this notice, the Commission notes that some of these negotiations are still ongoing and that the outcome is indeterminate in relation to these particular negotiations. Given that supply in accordance with some of these contracts negotiated during the investigation period (and some negotiations continuing post-investigation period) will eventuate in future years, injury in the form of reduced revenue and profit will continue into future years.

8.4 Profit and profitability

In the application, the applicants claimed that the Australian industry has experienced injury in the form of loss of profit and reduced profitability.

The applicants allege that profit declined in 2016, and because the Australian industry experienced reductions in selling prices and was unable to 'adjust selling prices to reflect increases in production costs', profit and profitability also decreased in 2017.

Figure 3 shows the trend in the applicants' aggregated domestic profits and profitability from 2014-15 to 2017-18. The Commission observes that the applicants' profits and profitability decreased from 2015-16 and decreased in the investigation period. The Commission notes that the downward trend in the applicants' profit and profitability coincides with increasing volumes of the goods exported from China, Sweden and Thailand.

In submissions made subsequent to the initiation of this investigation, and as discussed in section 8.3 of this notice, the applicants allege that the negotiations conducted during the investigation period resulted in price reductions for ammonium nitrate, and that these price reductions resulted in revenue and profit reductions which will continue into subsequent periods.

The applicants quantified the absolute revenue and profit reductions, and profit forgone, on a per annum basis in relation to each contract negotiated. The applicants allege that further reductions in profit is envisaged as additional contracts are renegotiated prior to expiry over the next 12 months.

The Commission’s preliminary assessment is that the reductions in the applicants’ prices (as outlined in section 8.3 of this notice) achieved in relation to contracts negotiated during the investigation period will translate to a fixed profit margin, for the duration of the contract, that is lower than otherwise might have been. This fixed margin will apply for the duration of the contract and therefore injury in the form of reduced profit and profitability will continue into future years.

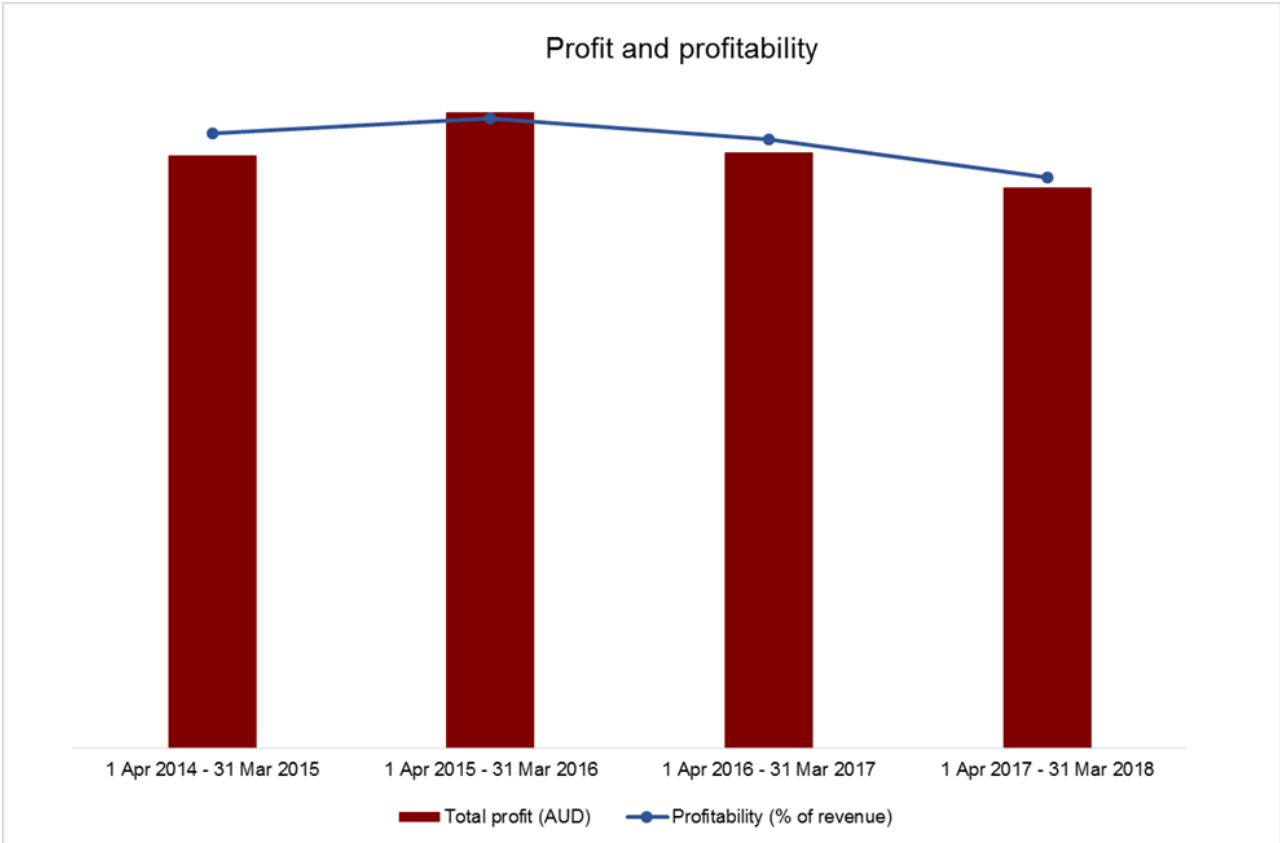


Figure 3: Applicants’ total domestic profit and profitability (profit as a percentage of total domestic revenue)

8.5 Conclusion

The Commission understands that, in any given year, a number of supply contracts are renegotiated before the contracts expire, and information was provided by the applicants to demonstrate that customers have regard to the availability of imported ammonium nitrate as an alternative source of supply in negotiating lower prices with the applicants in relation to supply contracts.

Given that volumes of the allegedly dumped goods exported to Australia from China, Sweden and Thailand have increased substantially since 2015-16, and given that the export prices of the goods from these three countries are substantially lower than the prices of goods exported from other countries, the Commission considers that there appears to be sufficient grounds to preliminary determine that the prices of the goods from these three countries are undercutting the Australian industry’s prices. The Commission’s preliminary assessment is that the degree of price undercutting and price depression is material.

8.6 Injury indicators other than price effects claimed by the applicants

As at the date of the publication of this notice, the Commission's preliminary assessment is that the applicants did not lose sales volumes to the dumped goods nor did the applicants experience lower production capacity utilisation as a result of the dumped goods.

Further, the Commission's preliminary assessment is that the Australian industry has not experienced material injury, as suggested by the applicants, in the form of reduced market share during the investigation period. The Commission considers that the reduced market share observed during the investigation period is not material when the applicants' imports from China and other countries are taken into account.

The Commission will continue to assess information provided by the applicants in relation to injury in the form of loss of sales volumes, lower capacity utilisation and reduced market share.

8.7 Injury to the Australian industry – preliminary assessment

Based on the Commission's preliminary assessment of the applicants' claims made in the application lodged on 29 March 2018 and claims made by the applicants in separate submissions, and based on the preliminary dumping margins, the Commission considers that:

- the volume of the goods exported to Australia from China, Sweden and Thailand at dumped prices increased since 2015-16;
- the export prices of the goods export to Australia from China, Sweden and Thailand were relatively lower than the export prices of all other countries, including Russia, during the investigation period;
- the significantly lower prices of the goods imported from China, Sweden and Thailand have allowed end-users of ammonium nitrate, including explosives manufacturers, to exert pressure on the Australian industry's prices during contract negotiations undertaken in the investigation period; and
- importers are provided a competitive advantage due to the ability to purchase ammonium nitrate at dumped prices, which allows importers to be more competitive on price than otherwise would be the case;
- the price and profit injury caused by the dumped goods is material.

The Commission considers that there is sufficient evidence at this time to establish that it was necessary for the Australian industry to reduce prices to secure supply contracts. This has led to the Australian industry experiencing material injury in the form of price depression, price suppression, reduced revenues, reduced profits and reduced profitability.

Therefore, I consider that there appears to be sufficient grounds to support the applicants' claims that material injury has been caused or is being caused by the dumped goods.

9 Unsuppressed price and non-injurious price

The non-injurious price (NIP) is relevant to subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, which requires consideration of the desirability of fixing a lesser amount of duty if sufficient to remove injury to the Australian industry. The Commission also utilises the NIP as an additional test to establish whether there is a causal link between the alleged dumping and material injury.

The Commission's Dumping and Subsidy Manual specifies that "...*The Commission will generally derive the NIP from an unsuppressed selling price (USP). The USP is a selling price that the Australian industry could reasonably achieve in the market in the absence of dumped or subsidised imports...*"

The Dumping and Subsidy Manual further provides the following hierarchy for determining a USP "...*In calculating the USP, the Australian industry's selling prices will normally be used at a time unaffected by dumping. If there are sound reasons for not using this approach, a price may be constructed based on the industry's cost to make and sell, plus a profit. If either of these methods is not appropriate, the selling prices of undumped imports in the Australian market will be used.*"

The Commission will continue to assess data received during the course of the investigation to determine an appropriate USP.

10 Other matters considered relevant – subsection 269TD(2)(b)

In accordance with section 7 of the PAD Direction and for the purposes of subsection 269TD(2)(b) of the Act, I have considered the desirability of providing relief to an injured Australian industry, as quickly as possible, where warranted.

11 Provisional measures and form of duty

The forms of duty available under the *Customs Tariff (Anti-Dumping) Regulation 2013* include:

- combination fixed and variable duty method ('combination duty method');
- fixed duty method;
- floor price duty method; and
- *ad valorem* duty method (i.e. a percentage of export price).

These forms of duty all have the same objective of removing the injurious effects of dumping; however, in achieving this objective certain forms of duty will better suit the particular circumstances of some investigations more so than other forms of duty.

For the purposes of this PAD, I have had regard to the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (the Guidelines)²³ and note that ammonium nitrate is a homogenous product and there no significant pricing differences between the various grades of ammonium nitrate. The guidelines specify that a floor price duty method and fixed duty method may suit those situations where there are not many models or types of the goods with different prices.

Further, under the *ad valorem* method as described in the Guidelines, export prices may be lowered by exporters to avoid the effects of the duty. The above considerations may become more relevant for the purposes of publishing a dumping duty notice, therefore I will reassess the most appropriate form of measures should a recommendation be made to publish a dumping duty notice.

The current proposed securities are recommended to be taken as an amount worked out in accordance with the combination duty method. The fixed component of securities will be imposed in relation to the goods exported to Australia from China, Sweden and Thailand at the rates of the preliminary dumping margins, specified in Table 1.

²³ Available at www.adcommission.gov.au.

The Commission notes that measures have been in place on ammonium nitrate exported to Australia from Russia since 2001 and that the NIP was the operative measure throughout. The Commission notes the effectiveness of the measures (currently in the form of a floor price based on the NIP) applying to ammonium nitrate exported from Russia in preventing injury to the Australian industry. The Commission also acknowledges the submissions made by interested parties and their observations that the Australian industry is highly profitable and maintains a significant share of the ammonium nitrate market. The Commission will therefore continue to assess information received during the course of the investigation to determine and propose measures that will effectively remedy the injury that has been caused to the Australian industry, while at the same time not setting a form of measures above the level that is required to prevent further injury from occurring.

Affected parties should contact clientsupport@adcommission.gov.au on telephone number 13 28 46 or +61 2 6213 6000 (outside Australia) for further information regarding the actual security liability calculation in their circumstance.

12 Anti-Dumping Commission contact

Enquiries about this notice may be directed to the case manager via email at investigations2@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

24 October 2018