

24 December 2018

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By email

Dear Director

China Chamber of International Commerce Investigation into ammonium nitrate from China

We represent the China Chamber of International Commerce (“CCOIC”) for the purposes of this investigation.

CCOIC appreciates the opportunity to provide this submission, and thanks the Commission officials concerned for making themselves available to meet with CCOIC’s representatives and with ourselves at the Commission’s offices in Melbourne on 10 December 2018.

The CCOIC is a national trade and investment body that is itself a member organisation of the China Council for Promotion of International Trade, which represents the interests of its members in international markets. CCOIC’s membership includes Chinese producers and exporters of ammonium nitrate, which are the goods subject to this investigation (“the GUC”).

Specifically, CCOIC has been engaged to make submissions on behalf of the Chinese exporters of the GUC to Australia in this investigation by the following members, being entities that are identified in the Application¹ as exporters of the GUC from China:

- Henan Jinkai Chemical Investment Holding Group Co., Ltd;
- Tianji Coal Chemical Industry Group Co., Ltd; and
- Shaanxi Xinghua Group., Ltd.

In this submission, we would like to draw the Commission’s attention to the following issues stemming from the Preliminary Affirmative Determination (“the PAD”) published on 24 October 2018, and issues concerning the Chinese exporters in this investigation generally.

¹ See Doc 001 – Application at page 31.

A PAD dumping margin is inconsistent with initiation dumping margin

In Preliminary Affirmative Determination 437 (“the PAD”) a dumping margin of 39.5% was determined for all Chinese exporters.

The PAD recites that the export price was determined on the basis of Section 269TAB(3) of the *Customs Act 1901* (“the Act”), having regard to “*all relevant information*”, specifically using import data from the Australian Border Force (“ABF”) import database.

The normal value was determined on the basis of Section 269TAC(6) of the Act, having regard to “*all relevant information*”, specifically relying on the information provided in the Application.²

The first observation we would like to make is that Consideration Report 473 calculated a dumping margin of 11.5%, as compared to the 23.8% claimed by the Applicants. It would appear to the reader that the Commission has calculated the dumping margin in the PAD in the same manner as in Consideration Report 473, because the dumping margin in the Consideration Report was based on the ABF data for export price and the Commission’s adaptation of the normal value information provided in the Application.

In these circumstances our client has an extreme level of concern about the significant increase in dumping margin from 11.5% to 39.5%, how that came about, and how it is said to be justified.

Accordingly, we respectfully request the Commission to provide a further explanation. In doing so the Commission is also requested to openly disclose the relevant information used for calculating the dumping margin. We note that the weighted average ABF data calculated across the overall investigation period (“POI”) would not lead to any disclosure of commercially confidential information of any individual exporter. We would understand that this is the kind of aggregated data that the Australian Bureau of Statistics makes available to interested parties on a regular and open basis. The information used for calculating normal value also appears to be of the nature of information in the public domain, as said in the Application. If the Commission changed any of that information we would expect the manner and contents of those changes to also be non-proprietary.

We understand that the dumping margin calculation in the Application and in Consideration Report 473 is based on the calendar year 2017, as compared to the adoption of the 1 April 2017 to 31 March 2018 period for the POI in the PAD. To the extent that the variance in dumping margin is due to the changes in the relevant database periods, CCOIC considers that this variance warrants special attention from the Commission. This is because it is highly likely that the increased imports from China during the 1 January to 31 March 2018 period were overwhelmingly attributable to the Australian industry members themselves, either by way of direct imports or as purchased. The implication of this will be discussed further below, in our submissions concerning injury and causation aspects of the investigation. CCOIC respectfully urges the Commission to discount any imports from China which were sold either directly or indirectly to the Australian industry in its decisions about the dumping margin and about injury and causation. Such imports could not be injurious to the Australian industry.

Indeed, if the motivations of the Australian industry were not to profit directly from those imports, nor to meet an immediate need that was supportive of the Australian industry member concerned, then the low prices could be in the nature of entrapment for the purposes of satisfying the Commission’s application requirements for an investigation of this nature. If that were proven to be the case, then for

² See Doc 001 – Application.

public policy reasons at least, if not for reasons of misrepresentation, the Application should be considered void and the investigation immediately terminated.

B The Australian industry is responsible for imports of the GUC from China

CCOIC's information indicates that a significant proportion of the GUC exported from China were sold either directly or indirectly to members of the Australian industry producing the GUC.

The PAD makes the following comments concerning imports by the Australian industry during the POI:

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 imports in 2015-16 to 55 per cent of total import volumes during the investigation (47 per cent excluding the applicants' imports of the goods from China).³
[underlining supplied]

In our view, it is likely that this observation does not accurately reflect the situation concerning the importation of the GUC by the Australian industry. The Australian industry is likely to have been responsible for the importation of a much larger proportion of the goods from China.

The Consideration Report shows that the total market for the GUC in 2017 was about 1.97 million tonnes, and that the market share of the Australian industry represented over 93% of the market during the POI. Based on the PAD, the "applicants" accounted for about 8% of the total imports under investigation, (ie. excluding imports not subject to this investigation) and these were solely sourced from China during the POI. To put this in perspective, we note that this is compared to China's market share of 30% of total imports for the POI, and the 17.9% for the 2017 calendar year. That is, the imports by the applicants accounted for between 27% to 45% of the total imports of GUC from China. This is a very substantial amount of imports, especially considering the already small volume of imports from China.

The question of the Australian industry's imports from China is a significant factor to be addressed, in light of the applicants' claim of an over-supply condition in the Australian market. Simply put, if there is an over-supply in the Australian market already, then why did the Australian industry itself need to import the GUC from China, and elsewhere?

Moreover, CCOIC submits that the import volumes from China that should be attributed to the Australian industry are much greater than suggested in the PAD. The applicants for the purposes of this investigation are:

- Orica Australia Pty Ltd ("Orica");
- CSBP Limited ("CSBP") and
- Queensland Nitrates Pty Limited ("QNP").

In addition, the Application identifies Incitec Pivot Pty Ltd ("Incitec") and its subsidiary Dyno Nobel Asia Pacific Pty Ltd ("Dyno Nobel") as a "fourth" producer of the goods:

The total AN produced in Australia is reflected in Industry Appendix A6.1 which includes all AN production volumes for the three applicant companies. There is additional production in

³ See Doc 021 – PAD at page 10.

Australia for AN over the 2014 to 2017 period by the fourth AN producer, Dyno Nobel (a wholly-owned subsidiary company of IncitecPivot Limited). Dyno Nobel's production volumes at its Moranbah, Queensland production facility are not included in the following Index of Production volumes. The data includes production volumes in Australia by the three applicant companies that is destined for both domestic and export markets.⁴

Dyno Nobel is a part owner of the QNP joint venture operation with CSBP.

Information from the Application indicates that Incitec and Dyno Nobel account for a substantial part of the Australian industry, amounting to at least 15% of the market share enjoyed by the Australian industry overall, and that this share has been fast-growing:

6. Use the data from appendix A2 (Australian market) to complete this table:

Indexed table of sales quantities

Period	(a) Your Sales	(b) Other Aust ⁿ Sales	(c) Total Aust ⁿ Sales (a+b)	(d) Dumped Imports	(e) Other Imports	(f) Total Imports (d+e)	Total Market (c+f)
2014	100	100	100	100	100	100	100
2015	106.3	100	105.4	25.6	70.9	54.2	99.8
2016	110.8	130.8	113.7	39.8	73.7	61.2	107.9
2017	108.2	130.8	111.4	66.8	40.5	50.2	104.7

Despite the substantial role of Dyno Nobel in the Australian market, it is not one of the “applicants”. Therefore, we respectfully ask the Commission to clarify the meaning of the statement in the PAD that the “*applicants’ imports*” were taken into account in assessing the market share of imports by the Australian industry, rather than the “Australian industry’s imports”.

Based on information collected by CCOIC, we understand that Dyno Nobel together with Orica were responsible for significant volumes of imports from China both during and after the POI. Further, QNP, being a joint venture of CSBP and Dyno Nobel, also supplied ammonium nitrate in the Australian market that it sourced from China. CCOIC’s information suggests that the Australian industry as a whole has been the single largest importer of the GUC from China, either directly or indirectly, accounting for **[CONFIDENTIAL TEXT DELETED – expression of degree and number]**% of the total imports, and **[CONFIDENTIAL TEXT DELETED – expression of degree and number]**% of total imports from China as the Commission’s PAD comment suggests.

CCOIC submits that further investigation of ABF records as well as each of the Australian industry’s records for *purchasing* the GUC, whether domestically or directly from overseas, is required, so that the full extent of the importation and purchasing, by the Australian industry members, of the GUC exported from China can be understood and taken into account.

To assist with the Commission’s inquiry, we provide the following information:

⁴ See Doc 001 – at page 19.

- 1 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]**⁵ to Orica, **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]**. A copy of the commercial invoice⁶ and the end user certificate from Orica⁷ is attached.
- 2 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]** to Orica, **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales detail]**. A copy of the commercial invoice⁸ and the end user certificate from Orica⁹ is attached.
- 3 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales detail]** to Dyno Nobel **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]**. Copies of relevant Dyno Nobel end user certificates are attached.¹⁰
- 4 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales detail]** which were all made to traders and **[CONFIDENTIAL TEXT DELETED – Chinese exporter]** is not aware of the final customers of these imports in Australia.
- 5 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]** with Dyno Nobel being the single largest importer, **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]**. Copies of relevant end user certificates are attached.¹¹
- 6 **[CONFIDENTIAL TEXT DELETED – Chinese exporter’s sales details]**, who resold the goods to Orica.
- 7 **[CONFIDENTIAL TEXT DELETED – Australian market sales behaviour]** imported from China at lower prices to “clear stock” and then to offer to continue to supply at a much higher price. **[CONFIDENTIAL TEXT DELETED – Australian market sales behaviour]**.¹²

By any measure, it is clear that the Australian industry members were responsible for *purchasing* the vast majority, if not almost all of the GUC imported from China. On the evidence of Attachment 11, it has been the Australian industry members themselves that have been using the imported AN prill to augment their stocks and to compete against each other in their resales of AN to independent blasting services providers. CCOIC has also been informed by importer companies in Australia that a significant amount of the GUC was imported and resold to Orica during the POI.

CCOIC’s understanding of the circumstances is consistent with and supported by the information provided by other interested parties in this investigation, for instance:

⁵ With respect to HDAN, CCOIC wishes to repeat and re-emphasise its submission, as made at the meeting with the Commission on 10 December, to the effect that HDAN should be exempted from this investigation on the basis that the Australian industry does not produce like goods. The reasons for this are well-stated in the submissions of AECI (Doc No 012), Nitro Sibir (Docs Nos 013, 014 and 015) and Downer EDI Mining Blasting Services (Doc 016), all of which are on the electronic public record “EX0066 – Exemption - Ammonium nitrate exported from the Russian Federation”. CCOIC supports those submissions, in the context of both “like goods” and the exemption conditions under Section 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*.

⁶ Attachment 1. **[CONFIDENTIAL ATTACHMENT]**

⁷ Attachment 2. **[CONFIDENTIAL ATTACHMENT]**

⁸ Attachment 3. **[CONFIDENTIAL ATTACHMENT]**

⁹ Attachment 4. **[CONFIDENTIAL ATTACHMENT]**

¹⁰ Attachments 5 and 6. **[CONFIDENTIAL ATTACHMENTS]**

¹¹ Attachments 7, 8, 9 and 10. **[CONFIDENTIAL ATTACHMENTS]**

¹² Attachment 11. **[CONFIDENTIAL ATTACHMENT]**

From the Imports AN Statistics from 1 April 2017 to 31 March 2018. Total imports of Ammonium Nitrate into Australia were 135,505 MT. From this quantity Domestic producers imported 36,800 MT (27.15% of total Imports) from Indonesia, Domestic producers imported 30,604 MT from China (22.58%) Blue Diamond / Phoenix Blasting my company sold XXX 3,200 MT (2.36%) ...¹³

and:

- 2.1 NSA is aware that certain parties opposing this exemption application import HDAN from countries such as China. For example, NSA is aware that as at late June 2018, [REDACTED] had an order for about 20,000 tonnes of HDAN with [REDACTED], [confidential third party identification and information] and had just imported 7,000 tonnes of HDAN from the same Chinese supplier. NSA respectfully urges the Commission to verify these overseas HDAN imports via its customs database, and any similar imports.

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To reiterate, CCOIC respectfully requests the Commission to thoroughly investigate and consider the purchases of the GUC by the Australian industry from China and from other imported sources. This is an indispensable exercise in this investigation, because:

- imports by/for the Australian industry are clearly not injurious to the Australian industry, or are self-injurious, and cannot amount to injury caused by dumping;
- imports by/for the Australian industry highlight the need of the Australian industry to supplement its supply from imported goods, and its incapability or unwillingness to supply that market with its own production, which indicates that competitive factors other than price dumping by the imports under consideration was and is at play, and that any impact of such imports must not be attributed to dumping;
- the fact of Australian industry imports from China indicates that imports from China are considered as being beneficial by the Australian industry, in supplementation of their current stocks, and not injurious to the Australian industry;
- the imports from China are subject to different conditions of competition¹⁵ and should be treated differently to the other imports under investigation.

Separately, we draw your attention to the fact that most of the imports from China were made in the last quarter of the POI, and mostly by the Australian industry. CCOIC submits this is unlikely a coincidence, for a number of reasons.

Firstly it is well known that Orica won large supply contracts from its domestic producer competitor based on its joint venture with Yara. However the joint venture facility had production issues which put pressure on Orica's supply commitment during the last quarter of the POI:

¹³ See Doc 008, submission by Blue Diamond, at page 8.

¹⁴ See Doc 0015 in Exemption Inquiry 0066, submission by Nitro Sibir Australia, at page 2.

¹⁵ Under Section 2969TAE(2C) of the Act, the Minister must only cumulate the effect of exportations of goods from different countries if, *inter alia*, it is appropriate to do so "having regard to... the conditions of competition between those goods... and... the conditions of competition between those goods and like goods that are domestically produced". The important condition of competition that applies to Chinese LDAN for the purposes of this investigation is that it was purchased almost exclusively by the Australian industry itself. That condition critically differentiates the effect of Chinese LDAN exports to Australia in the POI from the effects of exports from the other countries under investigation.

The Burrup plant recently allowed Orica to snatch ammonium nitrate supply contracts with BHP and Roy Hill from rival ammonium nitrate producer Incitec Pivot.

Orica was not due to start supplying BHP until 2019, but Incitec's supply deal with Roy Hill was due to expire last month.¹⁶

This appears to at least provide some context of the large volume of imports by Orica and Dyno Nobel both in the last quarter of the POI and immediately after the POI.

The Application was lodged by the Australian industry shortly after the surge of imports from China. CCOIC's understands that imports by Orica were mostly to address its own supply issues and to supplement the need for HDAN which the Australian industry does not produce. The tactic of "import and complain" appears to be designed to suit the Australian industry's commercial strategy of continued domination of the Australian market through buying up market share, relying on supplements from imports, and then "locking up" the market through anti-dumping actions for its own future production, rather than being a genuine claim of injury by dumped imports.

Lastly, we also draw the Commission's attention to the fact that a large portion of the GUC imported from China was of HDAN. We understand through the information published on the public record of the Commission's exemption inquiry EX0066 that it is well-established that HDAN is not produced by the Australian industry. HDAN is a different type of explosive and is sold at a lower price than LDAN, due to simpler production procedure and lower production cost. HDAN has been largely imported by the Australian industry, at different price levels. It is a different product to LDAN to the extent of being non-substitutable. The ammonium nitrate "solution" sold by the Australian industry is a precursor to HDAN and is also an entirely different product. HDAN imported from China does not compete with the LDAN supplied by the Australian industry in the same market sector and is not functionally or commercially comparative to ammonium nitrate solution.

Therefore any alleged impact of HDAN imported from China should be examined separately from the other imports under investigation.

C The Australian industry has not suffered material injury

The Australian industry controls the Australian ammonium nitrate market. This is clear from the market size data. To break down the numbers:

- The Australian market for ammonium nitrate in 2017 was about 1.97 million tonnes.¹⁷
- The Australian industry occupied about 93-94% of the market during the POI and in the 12 months prior to the POI.¹⁸
- The Australian industry's sales volume during the POI and in the 12 month prior to the POI were higher than the first 24 months of the injury analysis period.
- Imports of the GUC from countries under this investigation amount to just over half of the market share for imported goods, or about 3% of the total market share.

¹⁶ <https://www.afr.com/business/mining/orica-hit-by-burrup-problems-and-impairments-20180228-h0wtnk>

¹⁷ Based on the Commission's estimation for 2017. See Doc 002 – Consideration Report page 17.

¹⁸ Estimated from Doc 0021 – PAD, at Figure 1.

- It is widely known that Australian industry has been the key importer of the goods from China, Thailand and Indonesia,¹⁹ meaning that at least a majority share of the imported goods are also the market share of the Australian industry, pushing its market share to over 97%.
- The imports of the GUC from China by non-Australian industry members would account for a minuscule portion of the Australian market for the GUC, likely to be less than [CONFIDENTIAL TEXT DELETED – number]%.
- The Australian industry members – at least the applicants - maintain a good level of profit with their over 97% market share.
- The over 97% market share enjoyed by the Australian industry is shared between four domestic producer competitors.

The CCOIC submits that these figures are singularly instructive. With respect, how could these statistics justify a finding of material injury having been suffered by the domestic industry, quite apart from the question of what is said to have “caused” injury?

Prima facie, the domestic industry cannot be described as having suffered or as suffering material injury. An industry dominating almost the entire market, and operating at high profitability, and which continues to dominate that market with long term supply contracts in place, cannot be said to be suffering “material injury”. Imports occupy a negligible level of market share and mostly supply the Australian industry members themselves.²⁰ The facts that the import volume has been so small; that the Australian industry has been substantially responsible for that volume; and that the Australian industry has been making healthy profits whilst maintain a dominant share of the market, all strongly point towards a case where the investigation must be terminated under Section 269TDA(13) of the Act on the basis that any injury caused by dumped imports is negligible.

It is not clear whether the Commission engaged in any analysis in the PAD of whether or not the Australian industry as a whole suffered material injury. Instead, it appears that material injury has been simply assumed. The focus of the PAD seems to be to draw a connection between price offers for non-GUC – in the sense that those imports had not even been imported in the POI, and might never be imported - and such assumed material injury.

CCOIC urges the Commission to correct this approach and to find that the Australian industry did not suffer material injury during the POI.

D Injury, if any, is not caused by imports from China

The PAD states that price effect injury has been, or will be, suffered by the Australian industry. In assessing this injury, the Commission states:

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

¹⁹ See Doc 008 – Blue Diamond submission, Doc 004 – Downer submission, Doc 011 – Moncourt submission

²⁰ To be clear, the term “negligible” is used here in the general sense and not in the statutorily defined meaning of negligible *volume* that demands termination of the investigation under Section 269TDA(4) of the *Customs Act 1901*.

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.²¹

...

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.

...

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.²² [underlining supplied]

In our view the methodology and reasoning applied here is very problematic, and not a proper consideration of whether any material injury to the Australian industry was caused by imports at dumped prices.

1 Chinese imports were not capable of injuring the Australian industry

Firstly, we would like to mention that based on CCOIC's understanding of the circumstances surrounding Chinese exports of the GUC the Chinese exports were all spot sales. Indeed, we understand that it has not been suggested that the Australian industry members lost any long term supply contracts due to competition from imports of the GUC from China. That is to say, despite the alleged linkage between the Australian industry's claimed "material injury" in negotiating those specific contracts, and the imports from China, the Chinese exports did not even compete with the Australian industry's long term contract supply at all. This is borne out by the minuscule import volume of the imports from China, which were mostly purchased either by the Australian industry itself, or by customers who could not source HDAN from the Australian industry.

2 The Australian industry's injury claims is not about imports at all

Secondly, and in addition to the first point, given that there is no evidence that Chinese exports were even directly involved in any long term supply contract negotiations, and that the Australian market is dominated by the four Australian industry members themselves, we must query why it is that the imports subject to this investigation, including the imports from China, are regarded as the only or main culprit of the alleged price injury? The claims that this is because the price of imported GUC is somehow the

²¹ See Doc 021 – PAD at page 4.

²² Ibid, at page 14.

key factor in price negotiations with long term supply contract customers, and that import price parity is adopted by the Australian industry members, are of clear relevance to this discussion.²³

However, although the discussion is relevant, the imports are not. International prices appear to be nothing more than a benchmark or reference point that both the Australian industry members and the long term supply contract customers routinely agreed to as part of the pricing formula in long term supply contracts.

We understand that benchmarks utilised in such long term contracts include the ammonia market index published by Independent Chemical Information Services (“ICIS”) and “Fertecon”. The point is, a factor simply being considered as a point of reference by two parties to a negotiation cannot make the reference point somehow culpable of the outcome of that private negotiation. And in any event CCOIC understands that these variables are not prices for LDAN itself.

3 Future non-imports cannot cause injury in a past period

The Australian industry members could feel threatened by dumped imports in the future. If so, this threat would need to have been complained-of in the relevant application, and a case establishing such a threat, to the correct legal standard, would need to have been made out in the application for the purposes of initiation. None of those things have been done.

Further, anti-dumping is about finding the real impact of *actual* exports of the GUC during the POI, not the *talk* of those exports and export prices. The Australian industry applicants claim to have been injured through contract negotiations that either implanted a foreign benchmark or benchmarks into a forward price formula, or because they were the successful lowest bidder against the alleged price of imports that would never eventuate, by reason of the fact that the applicant concerned won the tender concerned. The impact of such benchmarks or price offers cannot constitute injury caused by dumping of ammonium nitrate. They are not actual imports of the GUC.

4 Australian industry’s injury claims of being injured by its own imports

In any case, we kindly remind the Commission that the Australian industry is the single largest importer of the GUC, mostly sourced from China and Indonesia. This means that if import prices of the GUC from China are considered to be a source of injury, then the Australian industry is ultimately responsible for this injury. Again, we find it perplexing that the Australian industry would claim that it has suffered price injury from the imports from China when it was the Australian industry itself that was responsible for the importation of the majority of the imports.

5 Australian industry’s injury claim ignores commercial reality

In this regard, we draw the Commission’s attention to the following factors.

We kindly remind the Commission of the dominant market share enjoyed by the four Australian industry members, at above 97%. Each of these Australian industry members have much more market power than the exporters of the GUC. Indeed, simply considering the 97% vs 3% market share, the fact that there are four local industry members, and that they retain profitability should be enough to dispose of the question. In so far as it is necessary to go further, we submit that the injury and causation analysis is

²³ Price comparisons for injury causation purposes must not disregard price differences between LDAN and HDAN, regardless of decisions with respect to the exemption of HDAN, which our client advocates and supports, or with respect to a singular dumping margin in a technical sense.

severely incomplete without thorough examination of the competition between the Australian industry members.

Any long term supply contract negotiations during the POI will have occurred in the context of a mining industry that has moved from peak conditions in previous years to a more balanced and lower cost environment in recent years. It is therefore natural and merely a normal part of the ebb and flow of business for customers to try to negotiate prices down as much as possible.

The competition between the Australian industry members and the dynamic conditions in the Australian market for ammonium nitrate are well-known and well documented and cannot be ignored in injury and causation analysis. This can be considered at two levels – first, in terms of the experience of independent parties in the market, and secondly in terms of the Australian industry’s public statements.

With respect to the former, we refer to the testimony of the representative of **[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider]** The reason, as he stated, is that AN is available to his company from the Australian industry, on a competitive basis.

[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider] clarified that it was simply not possible **[CONFIDENTIAL TEXT DELETED – Australian blasting services provider]** to import large bulk quantities of AN from China, even if **[CONFIDENTIAL TEXT DELETED – Australian blasting services provider]** wished to do so, because Chinese AN supply is highly regulated. This regulation impacts on the logistics at the point of export. Due to the Tianjin disaster, there are only two ports in China authorised to ship AN. Further, a dangerous substance such as AN must be directly loaded onto the ship, and the volume that may be loaded at any one time is limited as a result. **[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider]** indicated that no more than 10 trucks can enter the port with respect to any one consignment of AN, meaning that export contracts greater than 6000 MT are not viable. Regulation also heavily limits the amount of AN that can be imported into Australia at any one time due to port handling capacity and temporary stock capacity. For these reasons large exportations are not feasible and planning and supply reliability cannot be guaranteed.

[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider] also explained that Chinese suppliers cannot and do not enter into long term contracts, finding them difficult to honour and not sufficiently price-certain. Instead, Chinese AN sales are normally one-off spot sale consignments. As a result **[CONFIDENTIAL TEXT DELETED – Australian blasting services provider]**, like other independent blasting services providers, cannot enter into large blasting services contracts where certainty of AN supply is critical.

In the POI **[CONFIDENTIAL TEXT DELETED – Australian blasting services provider]** purchased AN largely from **[CONFIDENTIAL TEXT DELETED – Australian industry members]**, who he said were the “most competitive” suppliers. **[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider]** cannot get supply at a good price from one Australian supplier, it will approach another Australian supplier. This includes approaching companies like **[CONFIDENTIAL TEXT DELETED – Australian AN supplier]**, **[CONFIDENTIAL TEXT DELETED – Australian market sales behaviour]**. **[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider]** described this ability to seek supply for alternate Australian industry members as a “merry go round” of AN pricing.

[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider] also adverted to Orica’s establishment of the Burrup plant, which has created an actual or threatened market oversupply, and has caused Australian industry members to compete strongly against each other for AN market share. At the same time, **[CONFIDENTIAL TEXT DELETED – representative of Australian**

blasting services provider] was cautious about future AN prices, because of recent indications of price increases for supply by **[CONFIDENTIAL TEXT DELETED –Australian industry member]** to **[CONFIDENTIAL TEXT DELETED – Australian blasting services provider]**, and presumably to other independent blasting services providers. **[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider]** was concerned that the Australian industry members intended to access the market via their own blasting service provider business units/related companies, at the expense of independent providers such as **[CONFIDENTIAL TEXT DELETED –Australian blasting services provider]**, who would then face a “price squeeze” in their efforts in tendering for blasting services contracts.

[CONFIDENTIAL TEXT DELETED – representative of Australian blasting services provider] testimony evidences the irrelevance of import supply (in his case, Chinese import supply) to the efforts of his company to compete in the Australian market. It vividly demonstrates the impact of the Burrup plant – whether fully operational or not – on the Australian market and how Australian industry members have responded to that development.

With respect to the Australian industry’s own public statements about the market situation it faces, there is no evidence of injury caused by imports and plenty of evidence to the contrary. For instance, QNP reported a strong year in the 2017/2018 period, citing specifically the favourable impact from the disruptions that affected Orica’s joint venture Burrup plant and its entering of the non-LDAN based market:²⁴

Chemicals, Energy & Fertilisers overview

- *Increased revenue, underlying earnings & ROC supported by strong demand for products*
- *Chemicals earnings increased compared to the prior year:*
 - *Strong WA EGAN demand due to unplanned disruptions at competing Burrup AN plant resulting in opportunistic sales*
 - *Commencement of AN emulsion sales & new EGAN contracts partially offset the impact of the expiry of a key contract*
 - *Improved natural gas input costs*
 - *Buoyant WA gold sector driving strong demand for sodium cyanide*
- *Strong Kleenheat earnings driven by higher Saudi CP, improved LPG plant performance & continued growth in natural gas retailing to ~198,000 residential customers*
- *Fertiliser earnings were impacted by lower margins in a competitive environment*
[footnotes omitted]

Orica’s financial statement for the 2017/2018 period paints a favourable picture for its ammonium nitrate sector, despite disruptions unrelated to dumped imports:

Volume and mix

²⁴ Wesfarmers 2018 Full-Year Results Briefing Presentation, at page 42.

Explosives volumes were 14% higher than the pcp, underpinned by stronger demand in Indonesia and Australia, from both new contracts and organic growth from existing customers. The already strong growth in the first half improved further in the second half, led by strengthening in the Pilbara and Queensland from mine ramp ups and recent contract wins. Indonesia benefited from higher volumes from new contracts, improved demand from existing customers, and sales to competitors.

Sales of EBS were up 30% on the pcp from increased demand and customer conversion. Cyanide volumes were relatively flat on the pcp, impacted by the maintenance shutdown at the Yarwun cyanide plant in the first half.

Margin and price

The ongoing challenges at the Burrup plant resulted in incremental costs of \$26 million, including additional sourcing costs as alternate AN products were sourced from various locations across the region to meet supply commitments, as well as the commencement of administration costs in anticipation of the plant operating.

The negative impact of contract pricing was lower than expected for the year, due to some contract negotiations being deferred to the 2019 financial year.

Unplanned maintenance shutdowns at the Yarwun and Kooragang Island manufacturing plants in the first half resulted in unrecovered labour and operational costs as well as higher short term third party sourcing to cover lost production. This adversely impacted the Australian business, offsetting much of the benefit from increased volume and improved mix. In line with expectations, Kooragang Island's gas costs were up \$8 million in the first half due to the roll through of a contracted price increase which came into effect in January 2017.

Outlook

EBIT in APA is expected to grow, despite the delayed commencement of the Burrup plant, with market share increasing from recent profitable contract wins. Continued growth in EBS products and a focus on new technology offerings, enabling productivity improvements, will further support growth in the region. Deferred contract renegotiations will take effect in the 2019 financial year.²⁵

It is particularly relevant to note that the statement above indicates that Orica considered its margin was negatively impacted by its own sourcing of ammonium nitrate from third parties to meet supply commitments. Further, Orica has been very vocal about the impact of high gas prices in Australia on its business operations – a factor that has price and profit effect but is not related to the alleged dumped imports.²⁶

As noted above, Orica was also actively competing with Dyno Nobel in relation to major supply contracts for BHP and Roy Hill. Dyno Nobel's financial report makes the following comments about its Australian operations for the GUC:

²⁵ See, <http://www.orica.com/ArticleDocuments/303/Orica%202018%20Full%20Year%20Results%20Announcement.pdf.asp>
X

²⁶ See, <https://www.theaustralian.com.au/business/mining-energy/orica-ceo-caldreton-accs-gas-price-transparency-move-will-help-local-firms/news-story/71e7cecd31e34d912f6d55ea68fd3daa>

Dyno Nobel Asia Pacific

Sales volumes are expected to remain strong across all sectors in 2019 underpinned by robust mining activity, particularly in the Bowen Basin.

Moranbah production is expected to be in line with 2018 record production at approximately 370,000 metric tonnes of ammonium nitrate.

The impact of contract losses in the Base & Precious Metals sector for 2019 is \$14m (\$10m after tax) versus 2018 earnings.

The business remains focussed on actively working with its customers through contract reviews and renewals over the next two years.

The ammonium nitrate oversupply position in Australia is expected to keep pressure on pricing and margin.²⁷

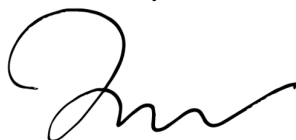
Clearly, oversupply in Australia is a market reality caused by the actions of the large and dominant Australian industry members themselves, rather than the small volume of imports from China which were mostly imported by those industry members anyway. Despite this the PAD premised its analysis on the assumption that the Australian industry was materially injured by the potential presence of imports from China, being imports which did not even compete with the Australian industry's long term supply contract sales. The PAD ignores the *real* competitive factors that affect the commercial behaviour of the Australian industry members, and its conclusions are unsafe for that reason and the other reasons we have mentioned in this submission.

In summary, CCOIC submits that the evidence available overwhelmingly points against a finding that the Australian industry suffered material injury, or that such injury was caused by dumped imports from China.

CCOIC trusts that once the Commission has objectively analysed the Australian industry's condition and the conditions of competition between the ammonium nitrate produced by the Australian industry and imported from China, and has taken into account the various interested parties' submissions, including CCOIC's, it will form the view that the preliminary findings in the PAD are incorrect.

CCOIC respectfully urges the Commission to withdraw its findings in the PAD and to determine that the investigation as against Chinese imports be terminated immediately.

Yours sincerely



Charles Zhan
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²⁷ See, http://media.corporate-ir.net/media_files/IROL/17/170340/1.%20IPL%20Annual%20report%202018_final.pdf