



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 473

ALLEGED DUMPING OF AMMONIUM NITRATE
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA, SWEDEN AND THE
KINGDOM OF THAILAND

25 February 2019

SEF 473 ammonium nitrate – China, Sweden and Thailand

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ABBREVIATIONS

\$	Dollars
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicants	CSBP Limited, Orica Australia Pty Ltd and Queensland Nitrates Pty Ltd
CCOIC	China Chamber of International Commerce
CFR	Cost and freight
China	the People's Republic of China
CIF	Cost, insurance and freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 473	Consideration Report No. 473
CPI	Consumer price index
CSBP	CSBP Limited
CTMS	Cost to make & sell
DBS	Downer EDI Mining - Blasting Services Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
EPR	Electronic Public Record
FOB	Free On Board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Guidelines	<i>Guidelines on the Application of the Form of Dumping Duty 2013</i>
HDAN	High density ammonium nitrate
Incitec pivot	Incitec Pivot Pty Ltd
Indonesia	the Republic of Indonesia
IDD	Interim dumping duty
IPP	import parity price
LDAN	Low density ammonium nitrate
the Manual	<i>Dumping and Subsidy Manual</i>

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Minister	the Minister for Industry, Science and Technology
Moncourt	Moncourt Group Pty Ltd
NIP	Non-injurious Price
Orica	Orica Australia Pty Ltd
PAD	Preliminary Affirmative Determination
QNP	Queensland Nitrates Pty Ltd
R&D	Research and development
ROI	Return on investment
Russia	the Russian Federation
SEF	Statement of Essential Facts
SG&A	Selling, general and administration costs
Thailand	the Kingdom of Thailand
USP	Unsuppressed Selling Price
Yara	Yara AB
Yara Pilbara Nitrates	Yara Pilbara Nitrates Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Preliminary findings

This statement of essential facts (SEF) number 473 has been prepared in response to an application lodged by CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica) and Queensland Nitrates Pty Ltd (QNP) (collectively, the applicants) for the publication of a dumping duty notice in respect of ammonium nitrate (the goods) exported to Australia from the People's Republic of China (China), Sweden and the Kingdom of Thailand (Thailand).

The applicants allege that the Australian industry producing ammonium nitrate has suffered material injury caused by ammonium nitrate exported to Australia from China, Sweden and Thailand at dumped prices.

This SEF sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister) in relation to the application, subject to any submissions received in response to this SEF.

1.2 Proposed recommendation to the Minister

Based on the findings outlined in this SEF, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Minister that a dumping duty notice be published in respect of ammonium nitrate exported to Australia from China, Sweden and Thailand

1.3 Application of law to facts

1.3.1 Authority to make a decision

Division 2 of Part XVB of *Customs Act 1901* (the Act)¹ describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) of the Act for the purpose of making a report to the Minister.

1.3.2 Application

On 29 March 2018, the applicants lodged an application alleging that the Australian industry has suffered material injury caused by exports of ammonium nitrate to Australia from China, Sweden and Thailand at dumped prices.

On a number of occasions up to and including 21 May 2018, the applicants provided further information and data in support of the application, without having been requested to do so, as provided for in subsection 269TC(2A).

¹ All legislative references in this SEF are to the *Customs Act 1901* unless otherwise specified.

Having considered the application and further information provided by the applicants, the Commissioner decided not to reject the application and on 25 June 2018 initiated an investigation into the alleged dumping of ammonium nitrate from China, Sweden and Thailand.

Consideration Report No. 473 (CON 473) and the public notice (Anti-Dumping Notice (ADN) No. 2018/103) provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission (the Commission) website at www.adcommission.gov.au.

1.3.3 Preliminary Affirmative Determination

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice or it appears that there will be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 24 August 2018) and the Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

On 24 October 2018, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to exports of the goods from China, Sweden and Thailand, and made a PAD to that effect.² Following the making of the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim dumping duty that may become payable in respect of the goods exported from China, Sweden and Thailand and entered for home consumption in Australia on or after 25 October 2018.

As outlined Chapter 13 of this SEF, the Commissioner remains satisfied that it is necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continues. The Commissioner will revise the level of securities required and taken under section 42 of the Act in respect of interim dumping duty that may become payable in relation to the goods exported to Australia from China, Sweden and Thailand.

² Refer ADN No. 2018/166, item no. [021](#) on the Electronic Public Record (EPR) 473.

1.3.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under subsection 269ZHI(3)³ of the Act, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

The SEF was originally due to be placed on the public record by 13 October 2018. The Commissioner, under subsection 269ZHI(3), was granted extensions of time to publish the SEF and to provide his final report to the Minister. The Commissioner is now required to place the SEF on the public record by 25 February 2019.

1.3.5 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Minister on or before 11 April 2019, unless the investigation is terminated earlier or a further extension of time to provide the final report is granted.

1.4 Preliminary findings and conclusions

The Commissioner's assessments and findings in this SEF are based on available information at this stage of the investigation. A summary of the findings is provided below.

1.4.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced ammonium nitrate is 'like' to the goods that are the subject of the application.

1.4.2 The Australian industry (Chapter 4)

The Commissioner has found that there is an Australian industry producing like goods and that the goods are manufactured in Australia.

1.4.3 The Australian market (Chapter 5)

The Australian ammonium nitrate market is supplied by local production by CSBP, Orica, QNP, Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel), Yara Pilbara Nitrates Pty Ltd (Yara Pilbara Nitrates) and by imports from China, Sweden, Thailand as well as other countries.

1.4.4 Dumping assessment (Chapter 6)

The Commissioner's preliminary assessment of dumping margins is set out in Table 1.

³ On 14 January 2017, the then Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

Country	Exporter	Dumping margin ⁴
China	Uncooperative and all other exporters	29.6%
Sweden	Yara AB	51.1%
	Uncooperative and all other exporters	61.3%
Thailand	Uncooperative and all other exporters	31.3%

Table 1: Preliminary dumping margins

1.4.5 Economic condition of the Australian industry (Chapter 8)

The Commissioner assessed the economic condition of the Australian industry from 1 April 2014 to 31 March 2018.

1.4.6 Is dumping causing material injury? (Chapter 9)

The Commissioner found evidence of injury in the form of price depression following contract negotiations conducted in the investigation period and following the investigation period, which is caused by dumping. The depressed prices have resulted and will continue to result in injury in the form of reduced revenue and reduced profits and profitability for the duration of the contracts.

1.4.7 Will dumping and material injury continue? (Chapter 10)

The Commissioner is of the view that, in the future, exports of ammonium nitrate from China, Sweden and Thailand may be at dumped prices and that continued dumping of the goods from China, Sweden and Thailand may continue to cause material injury to the Australian industry.

1.4.8 Non-injurious price (Chapter 11)

The Commission has calculated a non-injurious price (NIP) for exports of ammonium nitrate from China, Sweden and Thailand that is considered to be the minimum price necessary to prevent the injury being caused by the dumped goods.

The Commission has assessed the NIP from an unsuppressed selling price (USP) based on CSBP's and Orica's prices for domestic sales of ammonium nitrate made from 1 April 2015 to 31 March 2017.

For all exports from China, Sweden and Thailand, the NIP is below the normal value and therefore the lesser duty rule comes into effect.

1.4.9 Proposed form of measures (Chapter 12)

The Commissioner proposes to recommend to the Minister that measures be imposed using the floor price duty method, and the NIP is the operative measure.

⁴ Dumping margins are expressed as a percentage of the export price.

1.4.10 Revision of securities (Chapter 13)

The Commissioner proposes to publish a notice following this SEF notifying interested parties of amendments to be made to the securities. These amendments will be made to reflect the findings in this SEF.

2 BACKGROUND

2.1 Initiation

On 29 March 2018, CSBP, Orica and QNP lodged an application for the publication of a dumping duty notice in respect of ammonium nitrate exported to Australia from China, Sweden and Thailand.

The applicants alleged that the Australian industry had suffered material injury caused by exports of the goods from China, Sweden and Thailand at dumped prices.

Subsequent to receiving further information, the last of which was received on 21 May 2018, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of ammonium nitrate exported to Australia from China, Sweden and Thailand.

Public notification of initiation of the investigation was made on 25 June 2018. ADN No. 2018/103⁵ and CON 473⁶ provide further details relating to the initiation of the investigation.

In respect of this investigation:

- the investigation period for the purpose of assessing dumping is 1 April 2017 to 31 March 2018; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 April 2014.

2.2 Previous cases

On 24 May 2001, the then Minister for Justice and Customs accepted the recommendations of the Australian Customs Service (*Trade Measures Report No. 28* refers) and published a dumping duty notice in relation to ammonium nitrate exported to Australia from the Russian Federation (Russia). Notification of the then Minister's decision was given in Australian Customs Dumping Notice (ACDN) No. 2001/29.

On 11 May 2006, the then Minister for Justice and Customs accepted the findings and recommendations in *Trade Measures Report No. 104* (relating to an inquiry into the continuation of anti-dumping measures) and secured the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia for five years (from 24 May 2006). The then Minister also accepted the findings and recommendations in *Trade Measures Report No. 105* (relating to a review of measures) and varied the dumping duty notice by fixing different variable factors applying to ammonium nitrate exported to Australia from Russia. Notification of the then Minister's decisions was given in ACDN No. 2006/19 on 17 May 2006.

⁵ Refer item no. [003](#) on EPR 473.

⁶ Refer item no. [002](#) on EPR 473.

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On 12 April 2011, the then Minister for Home Affairs accepted the findings and recommendations in *Trade Measures Report No. 168*⁷ (relating to an inquiry into the continuation of anti-dumping measures) and secured the continuation of measures applying to ammonium nitrate exported to Australia from Russia for another five years (from 24 May 2011). The then Minister also accepted the findings and recommendations in *Trade Measures Report No. 169*⁸ (relating to a review of measures) and varied the dumping duty notice by fixing different variable factors applying to ammonium nitrate exported to Australia from Russia. Notification of the then Minister's decisions was given in ACDN Nos. 2011/16 and 2011/17 on 18 April 2011.

On 4 May 2016, the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science accepted the findings and recommendations in *Anti-Dumping Commission Report No. 312*⁹ and secured the continuation of the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia (either directly or via Estonia) for a further five years (from 24 May 2016). Notification of the then Minister's decision was given in ADN No. 2016/34 on 4 May 2016.

Exports of ammonium nitrate to Australia from Russia are currently subject to anti-dumping measures in the form of a floor price, with the NIP being the operative measure.

2.3 Preliminary affirmative determination

On 24 October 2018, the Commissioner made a PAD that there appeared to be sufficient grounds for the publication of a dumping duty notice. The Commissioner was also satisfied that it was necessary to require and take securities in relation to exports of ammonium nitrate from China, Sweden and Thailand to prevent material injury to the Australian industry occurring while the investigation continued. Securities were imposed using the combination fixed and variable duty method with the following fixed rates:

Country	Exporter	Dumping margin ¹⁰
China	Uncooperative and all other exporters	39.5%
Sweden	Yara AB	51.8%
	Uncooperative and all other exporters	61.3%
Thailand	Uncooperative and all other exporters	37.1%

Table 2: Rates of fixed dumping securities as at 24 October 2018

⁷ Refer item no. [037](#) on EPR 168.

⁸ Refer item no. [037](#) on EPR 169.

⁹ Refer item no. [28](#) on EPR 312.

¹⁰ Dumping margins are expressed as a percentage of the export price.

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2.4 Submissions received from interested parties

The Commission has received submissions from interested parties during the course of the investigation as set out in the table below. Non-confidential versions of all submissions received are published on the EPR.

Submission from	Date published on EPR	Document No.
Downer EDI Mining – Blasting Services Pty Ltd	13/07/2018	004
BHP Billiton Iron Ore Pty Ltd	10/08/2018	007
Blue Diamond Australia Pty Ltd and Phoenix Blasting Services Pty Ltd	13/08/2018	008
Moncourt Group Pty Ltd	20/08/2018	011
Orica Australia Pty Ltd	24/08/2018	012
Orica Australia Pty Ltd	24/08/2018	013
Australian industry	10/09/2018	015
CSBP Limited	18/09/2018	016
Yara AB	27/09/2018	018
Queensland Nitrates Pty Ltd	08/10/2018	019
The European Commission	29/11/2018	026
Downer EDI Mining – Blasting Services Pty Ltd	04/12/2018	027
Yara AB	07/12/2018	028
Glencore Coal Assets Australia	11/12/2018	030
BHP Billiton Iron Ore Pty Ltd	14/12/2018	032
Orica Australia Pty Ltd	14/12/2018	033
Orica Australia Pty Ltd	14/12/2018	034
CSBP Limited	14/12/2018	035
Yahua Australia Pty Ltd	17/12/2018	036
China Chamber of International Commerce	02/01/2019	038
Orica Australia Pty Ltd	01/02/2019	039
Orica Australia Pty Ltd	07/02/2019	041

Table 3: Submissions received

All submissions received prior to 8 February 2019 have been considered by the Commissioner in preparing his findings outlined in this SEF. The Commission received a submission from Yara AB on 21 February 2019.¹¹ Given that this submission was made four days before this SEF was due to be published, the Commissioner did not have regard to this submission in preparing this SEF.

¹¹ Refer item no. [043](#) on EPR 473.

2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister, and represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Minister. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than 17 March 2019. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

Submissions should preferably be emailed to investigations2@adcommission.gov.au.

Alternatively, they may be posted to:

The Director, Operations 2
Anti-Dumping Commission
GPO Box 2013
Canberra, ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record. A guide for making submissions is available at the Commission's website.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online at www.adcommission.gov.au.

Documents on the Public Record should be read in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commissioner considers that the Australian industry, which comprises five entities, manufactures ammonium nitrate that are like goods to the goods the subject of the application.

3.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines ‘like goods’ as:

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

An Australian industry can apply for relief from injury caused by dumped imports even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.3 The goods

The goods the subject of the application (“the goods”, or the goods under consideration) 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 applicant can be found in CON 473¹² and ADN No. 2018/103.¹³

¹² Refer item no. [002](#) on EPR 473.

¹³ Refer item no. [003](#) on EPR 473.

3.3.1 Tariff classification

Ammonium nitrate, whether or not in aqueous solution, is classified within tariff subheading 3102.30.00, statistical code 05, in Schedule 3 to the *Customs Tariff Act 1995*.

There is currently no customs duty applying to ammonium nitrate imported into Australia from any country, however, dumping duties (in the form of a floor price) currently apply to goods imported from Russia (directly or via Estonia).

3.4 Like goods

The following sections outline the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration and are therefore 'like goods'.

i) Physical likeness

The Commission has found that both the imported goods and the goods produced by the Australian industry are physically alike in all practical aspects, being solid prilled ammonium nitrate.

The Commission found that, although there are slight differences in the technical specifications (such as the concentration of ammonium nitrate, density, fuel oil absorption percentage and moisture content among other characteristics) between the ammonium nitrate exported from China, Sweden and Thailand and the ammonium nitrate produced by the Australian industry, the goods produced by the Australian industry have physical characteristics that closely resemble the goods subject of the application.

ii) Commercial likeness

The Commission has found that the goods are commercially similar as they compete in the same market segment, mainly for use as explosives in the mining industry. There is direct head-to-head competition between imported goods and the goods produced by the Australian industry. The Commission also found that the majority of importers that imported the goods also purchased ammonium nitrate from the Australian industry.

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

iii) Functional likeness

The Commission found that there are two types of ammonium nitrate which are imported into Australia – low density ammonium nitrate (LDAN) and high density ammonium nitrate (HDAN).

The Commission understands that LDAN is often referred to as technical grade, industrial grade or explosives grade ammonium nitrate, and is predominantly consumed by the mining, quarrying and construction industries.

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The Commission found that LDAN is predominantly used in the production of bulk explosives, including ANFO (porous prilled ammonium nitrate mixed with fuel oil), heavy ANFO (a mixture of porous prilled ammonium nitrate, ammonium nitrate emulsion and fuel oil) and emulsion-based explosives (a mixture of porous prilled ammonium nitrate and ammonium nitrate emulsion). The Commission found that the locally produced LDAN is substitutable with imported LDAN from the countries the subject of the application, given that the goods and like goods are sold to the same customers, predominantly commercial explosives and associated blasting services providers.

The Commission found that HDAN is primarily used in the production of emulsion based-explosives. The Commission found that ammonium nitrate solution produced by the Australian industry is directly substitutable with imported HDAN from the countries the subject of the application, given that HDAN and ammonium nitrate solution is sold to the same customers for the purpose of producing ammonium nitrate emulsion. The Commission also found that Orica produces a solid type of ammonium nitrate¹⁴ that is directly substitutable with imported HDAN. The Commission found that, during the investigation period, this product was sold to a customer that also imported HDAN to produce ammonium nitrate emulsion.

Based on this, the Commission considers that the locally produced goods and the goods the subject of the application perform the same function and are used in the same end-use applications.

iv) Production likeness

The Commission considers that the locally produced goods and the goods the subject of the application are produced using a substantially similar production process¹⁵ (i.e. a similar chemical reaction process) and using similar raw material inputs to the imported goods.

3.4.1 Submission – like goods to the goods exported from China

In its submission dated 24 December 2018,¹⁶ the China Chamber of International Commerce (CCOIC) stated that the Australian industry does not produce like goods to imported HDAN from China and therefore, the goods imported from China cannot have caused injury to the Australian industry.

The Commission found that, during the investigation period, both HDAN and LDAN were exported to Australia from China. Nevertheless, the Commission has examined whether the Australian industry produces like goods to the HDAN exported from China.

¹⁴ Orica refers to this product as 'Marbyl'.

¹⁵ Ammonium nitrate (NH_4NO_3) is produced by reacting ammonia (NH_3) with nitric acid (HNO_3).

¹⁶ Refer item no. [038](#) on EPR 473.

Whether the Australian industry produces like goods to imported HDAN was considered during the original investigation, and in the 2005, 2010 and 2015 continuation inquiries.

In *Trade Measures Report No. 28*,¹⁷ the Australian Customs Service determined that:

...low density, high density AN¹⁸ and AN solution are sub-sets of the product group of AN...all types of AN, irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods.

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

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

In the original investigation (and in subsequent continuation inquiries and reviews) it was found that certain densities, states or forms of ammonium nitrate were technically more suited to the manufacture of different explosives; however, the essential characteristics of different ammonium nitrate products were not changed by the variations in density, state or form.

As noted in section 3.5 of this chapter, subsection 269T(1) defines like goods as goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

The Commission considers that the HDAN exported from China falls within the description of the goods under consideration, which is:

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

For the purpose of considering whether there is an Australian industry producing like goods, the Commission made this determination by considering the description of the goods as a whole. However, analysis of sub-categories of the goods may be relevant to assessing whether dumping has caused or is causing injury to the Australian industry (refer Chapter 9 in this SEF).

In the case of ammonium nitrate, the density, form (prilled or granular) and state (solid or solution) of the goods are physical characteristics that are significant and distinguishing attributes, which are perceived by those entities that use ammonium nitrate in the explosives industry. These characteristics, particularly the density, are linked with the performance expectations of the product. Accordingly, the Commission

¹⁷ Relevant to the investigation into alleged dumping of ammonium nitrate exported to Australia from Russia, May 2001.

¹⁸ Ammonium nitrate (AN).

considers that locally produced LDAN and ammonium nitrate solution are not identical to the HDAN exported from China.

In the absence of identical goods, the Commission must establish if the locally manufactured ammonium nitrate has characteristics closely resembling the imported HDAN from China. In assessing whether the locally manufactured ammonium nitrate has characteristics closely resembling these imported goods, the Commission has regard to the physical characteristics, the commercial likeness, functional likeness and production likeness of the goods.

In considering whether the ammonium nitrate solution produced by the Australian industry is a like good to HDAN imported from China, the Commission acknowledges the obvious differences in state (solution versus solid). It also accepts that solid ammonium nitrate is a result of a further significant process in ammonium nitrate manufacturing, that being the prilling or granulating process. However, the Commission has found that the imported solid HDAN from China is used mainly for 'melting down' in the production of ammonium nitrate emulsion. This emulsion competes directly with, and may be substituted for, emulsions made from ammonium nitrate solution produced by and purchased from the Australian industry.¹⁹

The Commission has also found that, in certain circumstances explosives producers have produced emulsion using LDAN manufactured by the Australian industry, instead of imported HDAN. Further, the Commission found that Orica produces a solid type of ammonium nitrate that is directly substitutable with HDAN in the manufacture of emulsions.

The ability to use either HDAN, ammonium nitrate solution or LDAN (in certain circumstances) in the manufacture of emulsions demonstrates that the essential characteristics of different ammonium nitrate products are not changed by the variations in density, state or form.

Given this, the Commission has found that LDAN and ammonium nitrate solution produced by the Australian industry are like goods to the goods exported from China because:

- HDAN, LDAN and ammonium nitrate solution are technically similar, being ammonium nitrate with variations in density, form and concentration;
- there is a commercial likeness between the goods as they are sold to the same customers and compete in the same market;
- the goods are functionally alike as they are used in the manufacture of explosives and are substitutable; and
- the key steps in the production process (as outlined in Chapter 4 of this SEF) are very similar.

Consistent with previous findings in relation to ammonium nitrate exported to Australia, the Commission remains satisfied that HDAN and LDAN are the goods under

¹⁹ The Australian industry's customers that purchase ammonium nitrate solution to produce emulsion compete directly with entities that import HDAN for the purpose of making emulsion.

consideration and that there is an Australian industry that produces goods that are like to the goods under consideration.

3.4.2 Submission – like goods to the goods imported from the subject countries

In its submission dated 13 December 2018, BHP claimed the following:

The pricing data relied upon by the ADC shows implausibly large variations in pricing for what are said to be like goods, casting doubt on the proposition that customers consider Imported AN to be perfectly substitutable for domestically produced AN.²⁰

Further justification for this claim is outlined in a report commissioned by BHP titled *Opinion of Preliminary Affirmative Determination* (the Frontier Report),²¹ which was prepared by Frontier Economics. The Frontier Report compares the pricing of the goods imported from China, Sweden and Thailand to conclude that the “products are not homogenous or perfectly substitutable”.

The Commission considers that the Frontier Report mischaracterises the test²² that the Commission is required to apply in the assessment of ‘like goods’. The test is not, as opined by BHP, whether “the imported goods are like goods to those produced domestically”. The goods exported to Australia from China, Sweden and Thailand are the goods under consideration,²³ and as prescribed by subsection 269T(4) of the Act, the Commission is required to assess whether there is an Australian industry that produces ‘like goods’ to the goods under consideration, being the goods from the countries the subject of the application.

As noted previously in this chapter of the report, in accordance with subsection 269T(1), in making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are ‘like’ to the imported goods. Subsection 269T(1) defines ‘like goods’ as:

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

The Commission’s assessment of whether the Australian industry produces ‘like goods’ to the goods under consideration is set out in section 3.4 of this chapter of the report.

Further, the imported goods are not required to be homogenous or ‘like’ to each other. This is not a relevant consideration under the Act.

²⁰ Refer item no. [032](#) on EPR 473, page 2.

²¹ Refer item no. [032](#) on EPR 473.

²² Refer item no. [032](#) on EPR 473, page 6 of Annexure A.

²³ Refer section 3.3 of this SEF for a description of the goods.

The Commission disagrees with the opinion in the Frontier Report that there is “no evidence that customers see imports as perfectly substitutable for domestic product”.²⁴ The Commission has undertaken separate verification visits to the relevant importers of the goods,²⁵ Yara AB (the exporter of the goods from Sweden)²⁶ and the Australian industry (CSBP²⁷ and Orica²⁸). The Commission has found that the imported goods are used interchangeably with the locally produced goods and that the same customers that purchased the goods from the Australian industry also imported the goods from the subject countries. Further, the Commission found that the importers of the goods under consideration and the Australian industry compete for the same contracts. Therefore, the Commission considers that there is evidence that customers perceive imports as substitutable for domestically produced goods.

The Commission further observes that the Frontier Report bases its assessment of the export prices of the goods from the subject countries on the information provided by the applicants in the application lodged on 29 March 2018. The information referred to in the Frontier Report and used in its analysis to draw the conclusion that there are “implausibly large and unexplained variations in prices of imports” was based on public data which was readily available to the applicants and was used by them to support their opinion of the export prices of the goods in the application, which the applicants provided to comply with subsection 269TB(4)(c) of the Act.

The Commission has not used this data provided in the application for the purpose of assessing export prices (in accordance with section 269TAB), and import volumes (as required by subsection 269TDA(4)). The Commission has obtained and verified actual information and data relevant to the import consignments of the goods imported by the relevant entities during the investigation period. This information has been reconciled to data obtained from the Australian Border Force (ABF) customs import database.

3.5 The Commissioner’s assessment

The Commissioner found 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 locally produced goods closely resemble the imported goods;
- the imported and locally produced goods are commercially alike as they are sold to the same customers and compete in the same market;
- the imported and locally produced goods are functionally alike as they have the same end-uses and are substitutable; and
- the imported and locally produced goods are manufactured in a similar manner.

²⁴ Refer item no. [032](#) on EPR 473, page 10 of Annexure A.

²⁵ Refer item nos. [022](#), [024](#) and [025](#) on EPR 473.

²⁶ Refer item no. [023](#) on EPR 473.

²⁷ Refer item no. [042](#) on EPR 473.

²⁸ Refer item no. [040](#) on EPR 473.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner finds that there is an Australian industry producing like goods, comprising CSBP, Orica, QNP, Dyno Nobel and Yara Pilbara Nitrates.²⁹

4.2 Legislative framework

The Commissioner must be satisfied that the 'like goods' are in fact produced in Australia. Subsection 269T(2) provides that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.2.1 Australian industry members

In the application, the applicants also identified Incitec Pivot Limited (Incitec Pivot) and Yara Pilbara Nitrates as manufacturers of ammonium nitrate in Australia. The Commission is aware that Dyno Nobel is a wholly owned subsidiary of Incitec Pivot, and considers that Dyno Nobel is the manufacturer of ammonium nitrate in Australia. Dyno Nobel and Yara Pilbara Nitrates are not co-applicants to the application lodged on 29 March 2018, and did not participate in this investigation.

The Commission estimates that the applicants accounted for 78 per cent of the total production volume in Australia during the investigation period.

4.2.2 Production process

Ammonium nitrate is produced by reacting ammonia with nitric acid. This chemical reaction produces ammonium nitrate solution, which can be solidifying by prilling or granulation.

The applicants claim that ammonium nitrate is predominantly manufactured using locally-sourced raw materials, most notably natural gas which is used to produce ammonia and accounts for approximately 50 per cent of the total production cost of ammonium nitrate. A detailed description of the production process is contained in the application.

The applicants claim that the production of chemicals (such as ammonia and nitric acid) at each stage of the production process is a substantial process of manufacture

²⁹ Yara Pilbara Nitrates is a joint venture between Orica Investments Pty Ltd and Yara Australia Pty Ltd, subsidiaries of Orica Limited and Yara International ASA respectively. It has made discrete production runs of ammonium nitrate in the Pilbara region in WA during the investigation period, albeit production has been affected by technical issues.

involving substantial value-adding processes that are undertaken in capital-intensive production facilities.

The Commission has undertaken verification visits to CSBP³⁰ and Orica³¹ to verify the information provided in the application. During the visit to CSBP, the Commission undertook an inspection of CSBP's Kwinana manufacturing site and ammonium nitrate production plants. The Commission has found that CSBP undertakes a substantial process (the production of ammonia) in the manufacture of ammonium nitrate. Based on this, the Commission is satisfied that at least one substantial process in the manufacture of ammonium nitrate is carried out in Australia.

Further information relevant to CSBP's and Orica's manufacturing capabilities is available in the verification reports.

4.3 The Commissioner's assessment

Based on the information obtained from the verification visits to CSBP and Orica, the Commissioner is satisfied, in accordance with subsections 269T(2) and 269T(4), that there are like goods wholly, or partly, manufactured in Australia.

³⁰ Refer item no. [042](#) on EPR 473.

³¹ Refer item no. [040](#) on EPR 473.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found that the Australian market for ammonium nitrate is supplied by the Australian industry members and imports from a number of countries, predominantly China, the Republic of Indonesia (Indonesia), Russia, Sweden and Thailand.

5.2 Background

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives consumed by the mining and quarrying industries. Ammonium nitrate is classified as a dangerous good³² and has limited usage in Australia as a fertiliser, mainly due to the security protocols required for its transport and storage relative to other nitrogenous fertilisers such as urea and urea ammonium nitrate solution.

As depicted in figure 1 below, ammonium nitrate production facilities are located strategically close to the major mines 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 areas of demand for ammonium nitrate in Queensland are in the coals mines in the Bowen Basin and in the central Queensland/Mount Isa region. In WA, the major areas of demand for ammonium nitrate are the Kalgoorlie goldfields and in the Pilbara region.

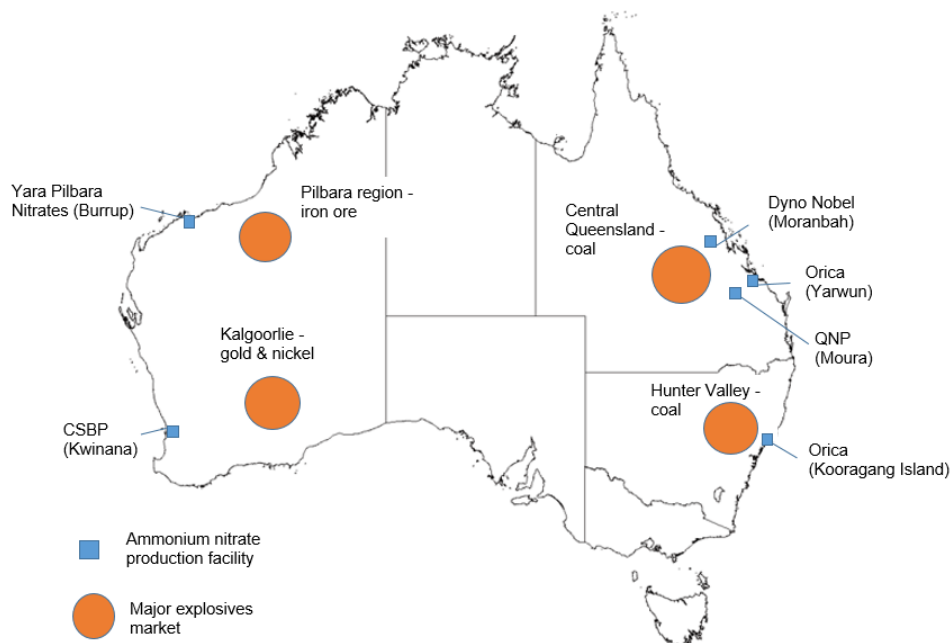


Figure 1: Major ammonium nitrate markets and ammonium nitrate production facilities

³² Ammonium nitrate is classified under the Australian Dangerous Goods Code as a category 5.1 dangerous good. Licences issued by relevant state authorities are required to sell, purchase, transport and store ammonium nitrate. In addition, there are restrictions on the amount of ammonium nitrate that can be received at a designated port at any one time.

All three applicants have claimed that the market for ammonium nitrate is transparent, in that participants in the market have access to import data from various independent third-party sources and other trade data relating to ammonium nitrate, which identifies the prices and import volumes of ammonium nitrate. The Commission found that the ammonium nitrate market is relatively transparent, and that the entities supplying ammonium nitrate to the mining sector are usually aware of which other entities are supplying particular customers in the market; and are also aware of which entities are purchasing or importing ammonium nitrate from particular domestic suppliers or countries.

5.3 Market structure

5.3.1 Market segmentation and end use

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

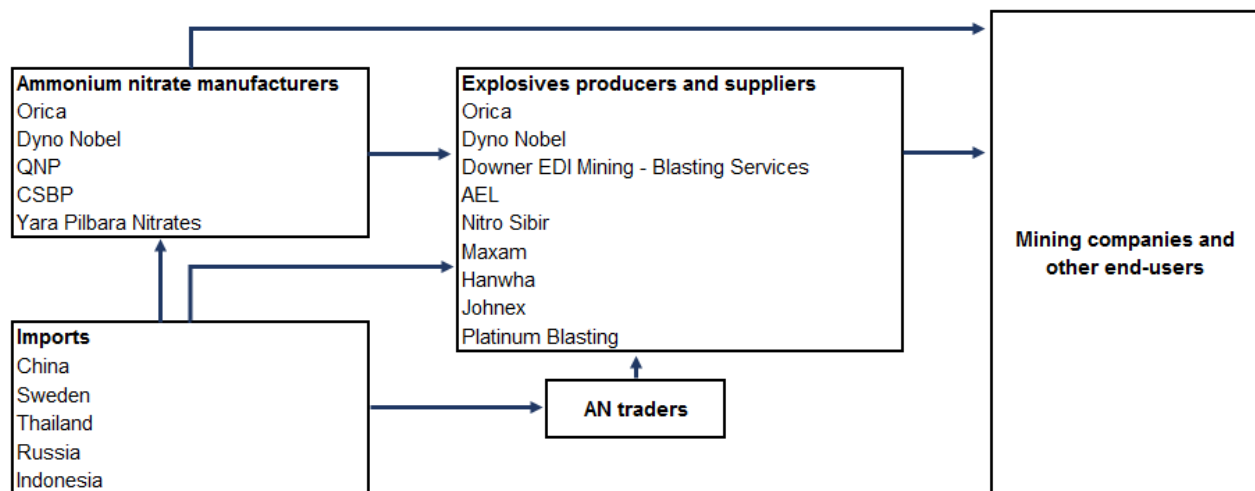


Figure 2: Ammonium nitrate supply chain

Ammonium nitrate is either sold to commercial explosives and associated blasting services providers or is sold directly to mining companies which consume ammonium nitrate at mine sites.

Ammonium nitrate is imported either directly by explosives producers or is imported via traders. The Commission understands that it is unusual for mining companies to directly import ammonium nitrate. The Commission found no evidence that any mining companies imported ammonium nitrate from any countries during the investigation period.

Orica advised the Commission that it views itself primarily as a commercial explosives, blast initiating systems and associated services provider to the mining, quarrying and construction industries; however, Orica indicated that it also sells ammonium nitrate to its direct competitors in the downstream market.

5.3.2 Supply agreements and contracts

The Commission found that, in the Australian market, ammonium nitrate is predominantly sold and purchased in accordance with fixed-term contracts (also referred to as supply agreements throughout this SEF). These contracts, arranged following a tender process, are effective for several years and will typically specify a 'base price'.

These contracts also specify provisions (referred to as 'rise and fall' provisions) to adjust these base prices on a periodic basis, including the formulas and variables used to adjust the base price, to take into account variations in raw material costs (such as ammonia and natural gas) or prices, including movements in price indices published by third-party or government agencies. These price adjustment provisions in contracts are the primary method by which the applicants 'pass through' cost movements in feedstock to preserve margins.

The Commission has found that some of the larger contracts are exclusive and the purchaser of the goods is precluded from purchasing from other suppliers in the market; however, the Commission also found that, in some cases, these fixed-term contracts do not guarantee exclusivity and allow the customer to source ammonium nitrate from other suppliers, thereby exposing the Australian industry to competition from other sources, including imports.

The Commission found that 'take or pay' provisions (minimum offtake volumes stipulated in supply agreements) do exist in some large supply contracts; however, one of the applicants noted that these provisions are being eroded away in newer contracts.

5.3.3 Demand for ammonium nitrate

Demand for ammonium nitrate, including its derivatives commercial explosives, in NSW and Queensland is primarily driven by demand from entities that mine thermal and metallurgical coal. In WA, demand for ammonium nitrate is primarily driven by demand from mining companies that extract ores and commodities such as iron ore and various metals from the earth.

Coal mining activity in the eastern states of Australia had slowed since 2014 due to falling commodity prices and this has led to an oversupply of ammonium nitrate in the eastern states of Australia, particularly in Queensland, which led to Orica's decision to de-commission (or 'mothball') more than half of its production capacity at its Yarwun plant in 2015. Orica however noted that demand has increased in 2017 and this has led to its decision to re-commission some production capacity at Yarwun. While there may have been a contraction in demand for ammonium nitrate in the eastern states, overall, the Commission has found that demand for ammonium nitrate in Australia has steadily increased (refer figure 3) since 2014-15.

The Commission considers that the demand for ammonium nitrate in Australia is a derived demand, and there are no commercially significant alternatives or substitutes for ammonium nitrate consumed by the mining industry in Australia, which indicates that demand for ammonium nitrate is relatively price inelastic.

The Frontier Report presumes that the demand for ammonium nitrate in Australia is price elastic.³³ Its presumption is based on information relevant to the price elasticities estimated for fertiliser-grade ammonium nitrate used to produce nitrogenous-based fertilisers in the United States (US), as presented in a US International Trade Commission report.³⁴ The Commission considers that fertilisers have many close substitutes (synthetic and natural) and therefore demand is likely to be price elastic, while the majority of ammonium nitrate (referred to technical grade or industrial grade ammonium nitrate) in Australia is sold to the mining industry as a consumable in explosives. There are no commercially viable substitutes for ammonium nitrate used in producing explosives and therefore demand is most likely price inelastic.

This is further supported by the fact that the majority of sales of ammonium nitrate in Australia are made in accordance with fixed-term contracts (some of which are exclusive supply agreements, and most contracts specify minimum and maximum supply volumes), and given that demand is a derived demand and there are no close substitutes, any change in price is unlikely to have a significant effect on the quantity demanded, as speculated in the Frontier Report. However, given that demand for ammonium nitrate in Australia is likely price inelastic, any price change will have a significant impact on the applicants' revenue and profit, as discussed in Chapter 9 of this SEF.

5.3.4 Competition

The Commission considers that ammonium nitrate is a commodity product and end users are unlikely to discern significant physical or functional differences. Given that there is little product differentiation, the Commission considers that price is a key consideration in any purchasing decision.

The applicants have advised the Commission that customers do prefer suppliers that are located geographically close to mitigate freight costs and security and quality risks (ammonium nitrate degrades in quality the longer it is transported and therefore product performance can be compromised). Orica has also advised the Commission that in limited circumstances some customers may be prepared to pay a small premium for domestic supply due to flexibility and quality associated with local supply.

The Commission has found that some of the applicants have supplied ammonium nitrate, albeit in relatively small volumes, outside the state in which they are located. However, manufacturers have a significant freight advantage on a delivered ammonium nitrate price basis in respect of mines which are within a close proximity.

The Commission is aware that there are three ammonium nitrate manufacturers (Orica, Dyno Nobel and QNP) in Queensland and that they compete for contracts to supply explosives manufacturers and associated blasting services providers, including mining principals.

³³ Refer item no. [032](#) on EPR 473.

³⁴ Certain ammonium nitrate from Russia, Investigation No. 731-TA-856, US International Trade Commission, August 2000, available at https://www.usitc.gov/publications/701_731/pub3338.pdf.

The Commission understands that CSBP was the sole ammonium nitrate manufacturer in WA until 2017, when Yara Pilbara Nitrates commenced production in early 2017 in the Pilbara region.

As noted in section 5.3.1 of this chapter, Orica considers itself primarily as an explosives and associated blasting services provider. Therefore, its main competitors include other explosives and associated services providers. These competitors source ammonium nitrate as a raw material either from domestic manufacturers or imports from various countries, including China, Sweden and Thailand.

CSBP is primarily a manufacturer of ammonium nitrate and other industrial chemicals and therefore it does not directly compete with other vertically integrated ammonium nitrate manufacturers and mining services providers, such as Orica. CSBP however advised the Commission that its customers do compete with other mining services providers that are active in the WA market. These other mining services providers import ammonium nitrate, including the allegedly dumped goods, therefore, these importers are provided a competitive advantage due to the ability to purchase ammonium nitrate at dumped prices, which allows these importers and service providers to be more competitive on price than otherwise would be the case.

5.4 Suppliers

In Australia, ammonium nitrate is generally supplied to mining companies either directly by the manufacturers in Australia or by commercial explosives and associated services providers that either source the goods from the Australian industry or import the goods. As indicated in section 5.3 above, Orica and Dyno Nobel are both manufacturers of ammonium nitrate and also provide commercial explosives and associated services to mining companies.

5.4.1 Australian manufacturers

The Commission considers that CSBP, Dyno Nobel, Orica, QNP and Yara Pilbara Nitrates are all manufacturers of ammonium nitrate in Australia.

The Commission is aware that Yara Pilbara Nitrates has commenced producing ammonium nitrate in WA in 2017, and has made discrete production runs of ammonium nitrate during the investigation period, albeit production has been affected by technical issues.

Both Dyno Nobel and Orica are manufacturers of ammonium nitrate and are also explosives and associated services providers in the downstream market, while CSBP, QNP and Yara Pilbara Nitrates are wholesalers of ammonium nitrate.

The Commission estimates that the applicants represented 78 per cent of the total production volume in Australia during the investigation period.

5.4.2 Importers

The Commission examined the ABF customs import database to identify importers of ammonium nitrate in the investigation period. Three importers were contacted to

participate with the investigation and complete an importer questionnaire. The following importers participated:

- AECI Australia Pty Ltd, trading as AEL Mining Services Australia;
- Downer EDI Mining – Blasting Services Pty Ltd (DBS); and
- Nitro Sibir Australia.

The Commission has also obtained relevant information from Orica in relation to its imports of the goods from China, and has also been provided with information in-confidence from one other importer of the goods from China; however, this importer did not wish to participate further in the investigation and no verification visit was undertaken.

The Commission has found that the above importers imported the total volume of the goods from Sweden and Thailand, and nearly 74 per cent of the total import volume of the goods from China during the investigation period.

The importer verification reports are available on the Commission's EPR.³⁵

5.5 Market size

Figure 3 depicts the Commission's estimate of the size of the Australian market for ammonium nitrate from 1 April 2014 to 31 March 2018 using data from the ABF import database and the applicants' sales data including Dyno Nobel's estimated sales volumes (based on its production volumes).

³⁵ Refer item nos. [022](#), [024](#) and [025](#) on EPR 473.

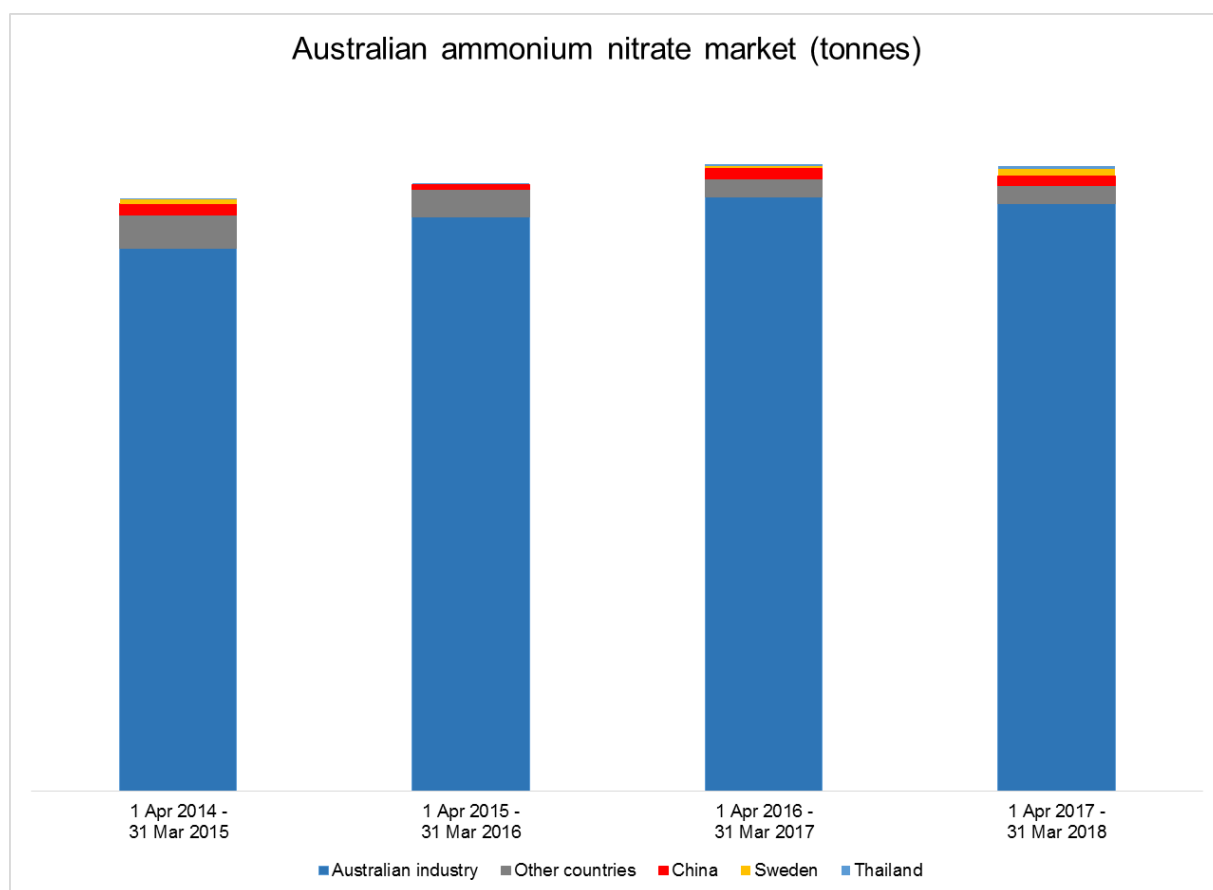


Figure 3: Size of the Australian market for ammonium nitrate (tonnes sold)

The Commission observes that the Australian market for ammonium nitrate has grown steadily since 2014-15; however, consistent with the applicants' observation, it appears that the market has contracted slightly in the investigation period (1 April 2017 to 31 March 2018). The Commission notes that despite the contraction, the volume of imports from the countries subject to the investigation increased, while the Australian industry's sales volumes and the volume of imports from other countries both declined.

However, the Commission is aware that production had commenced at Yara Pilbara Nitrate's Burrup plant in WA in 2017. The above assessment does not include the production volumes from Yara Pilbara Nitrates during the investigating period. The Commission has received some information relevant to production volumes at the Burrup plant. If Yara Pilbara Nitrate's production volume is taken into consideration, and assuming that it closely approximates the sales volumes of ammonium nitrate manufactured at its Burrup plant, then this would show that the Australia market for ammonium nitrate has also increased in the investigating period.

The Commission observes that imports from China, Sweden and Thailand have increased in the investigation period. This is further assessed in Chapter 8 of this SEF.

6 DUMPING INVESTIGATION

6.1 Preliminary finding

The Commissioner has found that exports of ammonium nitrate to Australia from China, Thailand and Sweden in the investigation period have been dumped at margins that are not negligible and the volume of dumped goods from each country is not negligible.

The dumping margins are shown in the following table.

Country	Exporter	Dumping margin ³⁶
China	Uncooperative and all other exporters	29.6%
Sweden	Yara AB	51.1%
	Uncooperative and all other exporters	61.3%
Thailand	Uncooperative and all other exporters	31.3%

Table 4: Preliminary dumping margins

6.2 Introduction and legislative framework

In any report to the Minister under subsection 269TEA(1) following a dumping investigation, the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that the goods have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

Subsection 269TAB(1)(a) provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods or any other matter arising after exportation. Where the conditions in subsection 269TAB(1)(a) are not met, such as when the export transactions are not arms length, the export price is determined under subsection 269TAB(1)(b) or subsection 269TAB(1)(c). Subsection 269TAB(3) provides that, where the export price cannot be established under those provisions, the export price is determined having regard to all relevant information.

Subsection 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. However, subsection 269TAC(1) cannot be used to calculate the

³⁶ Dumping margins are expressed as a percentage of the export price.

normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present. Where one or more of these circumstances are present, the normal value of the goods is to be calculated under either subsection 269TAC(2)(c) or (d).

Subsection 269TAC(2)(c) provides for the normal value to be a constructed amount, being the sum of the cost of production or manufacture of the goods in the country of export, and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export instead of being exported, the selling, general and administrative costs (SG&A) and the profit on that sale.

If the Minister directs that it applies, subsection 269TAC(2)(d) provides that the normal value is the price of like goods sold in the OCOT in arms length transactions from the country of export to an appropriate third country.

Subsection 269TAC(6) provides that, where the normal value cannot be established under subsections 269TAC(1), 269TAC(2)(c) or 269TAC(2)(d), the normal value is determined having regard to all relevant information.

Dumping margins are determined under section 269TACB. To calculate the dumping margins in this investigation, the Commission compared 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).

Further details of the export price, normal value and dumping margin calculations are set out in this chapter of the SEF.

6.3 Exporter questionnaires received

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

At the commencement of the investigation, the Commission contacted known exporters of the goods and each identified supplier of the goods within the relevant tariff subheading for ammonium nitrate as identified in the ABF import database and by the importers of the goods, and invited them to complete an exporter questionnaire.

The Commission received exporter questionnaire responses from the following entities:

- Phoenix Blasting Services Pty Ltd (Phoenix) (trader);³⁷
- Polene Plastic Co., Ltd (Polene Plastic) (Thailand);
- Thai Nitrate Co., Ltd (Thai Nitrate) (Thailand); and
- Yara AB (Yara) (Sweden).³⁸

³⁷ Refer item no. [005](#) on EPR 473.

³⁸ Refer item no. [010](#) on EPR 473.

6.4 Cooperative exporters

The Commission received a complete exporter questionnaire response from Yara, which the Commission considers to be a manufacturer and exporter of the goods from Sweden.

The Commission undertook a verification visit to Yara and considers it to be a cooperative exporter.

6.5 ‘Uncooperative and all other’ exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an ‘uncooperative exporter’, where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The Commission considers those exporters that did not provide a response to the exporter questionnaire to be uncooperative. For uncooperative and all other exporters, the Commissioner will use subsection 269TAB(3) and subsection 269TAC(6) to calculate dumping margins for those exporters, having regard to all relevant information and as required by subsection 269TACAB(1).

6.5.1 Phoenix

In its response to the exporter questionnaire,³⁹ 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.⁴⁰

6.5.2 Polene Plastic and Thai Nitrate

Both Polene Plastic and Thai Nitrate have provided a response within the legislated period, however, the response contained deficiencies that was deemed could not have been quickly and easily rectified in a further response, pursuant to subsection 6(b) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*.

On 10 August 2018, Polene Plastic and Thai Nitrate were notified of the Commissioner’s decision to treat both exporters as ‘uncooperative exporters’ pursuant to subsection 269T(1).

³⁹ Refer item no. [006](#) on EPR 473.

⁴⁰ In accordance with subsections 269TAB(4) and 269TAC(7) respectively.

6.6 Dumping assessment – China

There are no cooperative exporters from China. All exporters from China are therefore ‘uncooperative exporters’ as defined in subsection 269T(1).

6.6.1 Export price

Export prices for ‘uncooperative and all other’ exporters from China were determined having regard to all relevant information under subsection 269TAB(3), as prescribed in subsection 269TACAB(1). Specifically, the Commission has calculated a weighted average export price for the whole investigation period, based on information recorded in the ABF customs import database.

6.6.2 Normal value

Normal values for ‘uncooperative and all other’ exporters from China were determined having regard to all relevant information under subsection 269TAC(6), as prescribed in subsection 269TACAB(1).

The Commission had regard to information provided by the applicants in a confidential attachment to the application. As noted in the consideration report, the applicants provided detailed cost information (‘cost models’), including consumption ratios and variable and fixed costs, relating to five integrated manufacturers of ammonium nitrate in China. The applicants also provided information relating to SG&A and costs relating to packaging, export inland freight and storage.

The Commission has found that, of the five manufacturers that the applicants had provided information for in the application, three of these manufacturers have exported the goods (either directly or via traders) to Australia during the investigation period. The Commission has not found any evidence that the other two manufacturers have exported the goods to Australia during the investigation period. Given this, the Commission has taken a weighted average of the estimated costs of production for the following manufacturers which exported the goods to Australia from China during the investigation period:

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

The Commission has reviewed the costs of production and the costing assumptions relating to these three manufacturers, as identified by the applicants in the application.

The Commission considers that the applicants have provided relevant and reliable information to support the coal input costs used in estimating ammonia⁴¹ production costs. The Commission also assessed the applicants’ coal consumption assumptions

⁴¹ Ammonia is a significant input into the production of ammonium nitrate. Coal is a major raw material used in the production of ammonia in China

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and considers the assumptions to be reasonable based on independent third-party information provided by the applicants.

Further, the Commission considers that the applicants have applied a reasonable assumption, based on average production capacity utilisation rates in China, in relation to the capacity utilisation of the relevant ammonium nitrate manufacturer referred to in constructing the normal value.

The Commission notes that the applicants have estimated depreciation costs based on the applicants' own depreciation costs given that the applicants were unable to obtain relevant information relating to depreciation expenses in China. The Commission considers that the applicants can only provide such information as is reasonably available to them to support their claims. In view of this, the Commission considers that the evidence the applicants have provided is reasonably available to them and therefore is sufficient for the purpose of constructing the normal value under subsection 269TAC(6).

The Commission considers that the applicants have not provided contemporary information relating to electricity and water costs used in constructing the normal value. The Commission, however, was able to obtain contemporary information relating to these utility costs and tariffs, which are relevant to the region in which one of the relevant manufacturer operates. Based on this information, the Commission notes that the applicants have understated the costs relating to electricity and water; however, the costs used by the applicants in constructing the normal value are conservative and therefore the Commission has not amended these costs.

While the applicants did not provide any information to support the export inland freight and storage costs used in adjusting the normal value to ensure a fair comparison to the Free on Board (FOB) export price, in the absence of any other information relevant to these costs, the Commission has used the costs as provided by the applicants to determine the normal value at FOB to ensure that the normal value is properly comparable to the export price determined at FOB.

In relation to the SG&A used by the applicants in constructing the normal value, the Commission considers that the supporting information provided by the applicants is relevant for the purpose of constructing a normal value under subsection 269TAC(6).

The Commission notes that the applicants have not applied an amount for profit in constructing the normal value. In the absence of any reliable information in relation to the profit achieved on Chinese domestic sales of ammonium nitrate, the Commission has not applied an amount for profit and considers that this results in a conservative estimate of the normal value.

The calculations of the normal value for 'uncooperative and all other exporters' from China is at **Confidential Attachment 3**.

Submission concerning determination of the normal value for China

In its submission dated 14 December 2018,⁴² Yahua Australia Pty Ltd (Yahua) provided information relevant to its related party's (Yahua Group's) purchases of ammonium nitrate in the domestic market in China, which it claims were purchased in arms length transactions. The information provided encompassed commercial invoices which appear to pertain to purchases of various types of ammonium nitrate in China.

Yahua has referred to this information to argue that the information provided by the applicants to support their opinion of the normal value of the goods in China, and the information which has been used by the Commission to determine the normal value, is "inaccurate and unreliable" because it is inconsistent with the actual prices paid by the Yahua Group during the investigation period.

The Commission is aware that Yahua is an explosives and associated services provider in Australia, and is not the manufacturer nor the exporter of the goods from China. The Commission is further aware that its related party did not export the goods to Australia during the investigation period.

The Commission has reviewed the information provided by Yahua. Given that the exporters of the goods from China have not cooperated in this investigation, the Commission cannot be satisfied of the following:

- whether the purchases of ammonium nitrate in China by Yahua's related party relate to like goods to the goods exported to Australia;
- whether those purchases in China were made in arms length transactions, despite Yahua's claim that they were arms length;
- whether the sales to Yahua's related party in China were profitable and therefore in the OCOT; and
- the relevant terms of trade of those purchases, including the delivery terms and payment terms, and any discounts or rebates existed that would affect the purchase price.

The Commission considers that the information provided by Yahua may only pertain to a selection of invoices relevant to its related party's purchases of ammonium nitrate in China. Therefore, the Commission considers that, for the purpose of determining the normal value in accordance with subsection 269TAC(6), the information provided by Yahua is less relevant than the information provided by the applicants.

6.6.3 Dumping margin

The dumping margin for 'uncooperative and all other' exporters from China was established in accordance with subsection 269TACB(2)(a), by comparing the weighted average export price established under subsection 269TAB(3), with the weighted average normal value established under subsection 269TAC(6).

⁴² Refer item no. [036](#) on EPR 473.

The Commission has calculated a preliminary dumping margin for ‘uncooperative and all other’ exporters from China as **29.6 per cent**.

The calculations of the dumping margin for ‘uncooperative and all other exporters’ from China is at **Confidential Attachment 4**.

Submission concerning determination of the dumping margin for China

In its submission dated 24 December 2018,⁴³ the CCOIC raised its concerns about the increase in the dumping margin for China as published in the PAD (39.5 per cent) from the dumping margin published in the consideration report (11.5 per cent).

In considering the applicants’ claims outlined in the application⁴⁴ in relation to the alleged dumping of the goods exported from China, the Commission had adopted a conservative approach in estimating the normal value in order to assess the level of dumping (if any). The Commission used the information provided by the applicants for the most efficient manufacturer (Liuzhou Chemical Industry Co., Ltd) identified in the application, and adapted that information to derive the lowest normal value at which to assess the likely magnitude of dumping for the purpose of making a recommendation to the Commissioner on whether to reject or not reject the application.

Following the initiation of this investigation, the Commission has contacted numerous exporters of the goods from China, as identified in the ABF customs import database and as identified by the importers of the goods from China, and invited these exporters to cooperate with the investigation by completing an exporter questionnaire. The Commission has not received any completed questionnaires from any exporters of the goods from China.

Given that no exporters of the goods from China cooperated in this investigation, for the purpose of determining the normal value and dumping margin in the PAD, the Commission had determined the normal value of the goods exported from China by having regard to information provided by the applicants in relation to the least efficient manufacturer.

Following the publication of the PAD and as the investigation progressed, the Commission found that, of the five manufacturers that the applicants provided information in relation to, only three exported the goods from China, either directly or via a trader, to Australia during the investigation period.

Therefore, the Commission has reconsidered its approach in determining the normal value in this SEF. As noted in the previous section of this chapter, the Commission has taken a weighted average of the cost of production for the three manufacturers that were found to be the exporters of the goods to Australia from China during the investigation period. The Commission considers that this approach takes into consideration the most relevant information for the purpose of determining the normal value in accordance with subsection 269TAC(6).

⁴³ Refer item no. [038](#) on EPR 473.

⁴⁴ Refer item no. [001](#) on EPR 473.

The Commission's approach in determining the export price of the goods exported from China did not change from the approach adopted in the consideration report and the PAD (albeit noting that in the consideration report the export price is based on the calendar year 2017). As noted previously in this chapter, the Commission had regard to information obtained from the ABF customs import database and took a weighted average of the FOB export values of the goods exported from China to derive a weighted average export price for the whole investigation period. The Commission observes that the export price (based on information pertaining to the investigation period) is relatively higher than the export price determined in the consideration report (based on information pertaining to calendar year 2017).

6.7 Dumping assessment – Sweden

6.7.1 Yara

The Commission conducted an in-country visit to Yara in Sweden to verify the information provided in its response to the exporter questionnaire. A more detailed assessment of the verification process is contained in the verification report published on the public record.⁴⁵

6.7.1.1 Export price

As outlined in the verification report for Yara, the Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. Therefore, the export price for Yara was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.7.1.2 Normal value

As outlined in the verification report for Yara, the Commissioner is satisfied that there were sufficient volumes of domestic sales of like goods that were sold in arms length transactions and at prices that were in the OCOT. The Commissioner is therefore satisfied that the prices paid in respect of those domestic sales of like goods were suitable for assessing the normal value under subsection 269TAC(1).

The calculations of the normal value for Yara is at **Confidential Attachment 1**.

Submission concerning determination of the normal value for Yara

In its submission dated 5 December 2018,⁴⁶ Yara submits that the Commission erred in determining the normal value for Yara in accordance with subsection 269TAC(1). Specifically, Yara submits that the Commission's approach is incorrect as the normal value determined under subsection 269TAC(1) has not been adjusted in accordance with subsection 269TAC(8) to take into account the physical differences between the

⁴⁵ Refer item no. [023](#) on EPR 473.

⁴⁶ Refer item no. [028](#) on EPR 473.

exported goods and like goods sold domestically, as well as due to the terms and circumstances of those domestic sales.

Yara states that the normal value should be constructed under subsection 269TAC(2)(c) as this would be a more appropriate comparison with the export price.

Yara states that it exported 'tropical' ammonium nitrate to Australia, while it sold 'non-tropical' ammonium nitrate on the domestic market; therefore, the exported goods and the like goods sold domestically are not sales of identical goods.

Yara submits that subsection 269TAC(8) calls for an adjustment in circumstances where the export sales and the domestic sales are not in respect of identical goods. Yara states that it would be difficult to work out how to adjust domestic prices to account for this difference given that no tropical product was sold on the domestic market.

Yara submits that the Commission's analysis in the verification report⁴⁷ regarding prices of 'tropical' and 'non-tropical' ammonium nitrate is irrelevant given that findings with respect to third country markets do not relate to the impact on the price on the domestic market, which subsection 269TAC(8) requires. Yara further states that it did not sell both 'tropical' and 'non-tropical' ammonium nitrate to many third countries during the investigation period; therefore, the Commission's analysis is based on a relatively minor volume of third country export sales.

Further, Yara submits that the terms and circumstances of the domestic sales differ greatly to those that pertain to the export price. Yara claims that subsection 269TAC(8)(c) calls for adjustments where the terms and circumstances of the sale modify export and domestic prices in different ways.

Yara states that a proportion of its domestic sales were made subject to long-term supply agreements, which were entered into at different times and have different scopes of operation. Yara provided a list of contracts relevant to domestic sales during the investigation period.

Yara submits that the circumstances of sale of the goods differ based on a variety of factors, including the market, customer, level of trade and product specification. Yara further states that the period that the contract was negotiated can lead to a significantly different outcome, including the assumptions that underpin the price.

Yara notes that porous prilled ammonium nitrate (referred to by Yara as ANPP) is not frequently sold in the Swedish market, as it more commonly sells ammonium nitrate solution to the domestic market. As such, Yara states that ANPP is a premium product and therefore achieves a price premium in the Swedish market that it does not achieve in other markets.

The Commission found that Yara sold like goods in the OCOT in the domestic market in sales that are arms length transactions. The Commission established that

⁴⁷ Refer item no. [023](#) on EPR 473.

ammonium nitrate sold domestically was ‘like’ to the ammonium nitrate exported to Australia after considering the physical, commercial, functional and production likeness of the goods.⁴⁸

The Commission considered Yara’s claims relating to the requirements of subsection 269TAC(8) for normal value assessed under subsection 269TAC(1).

Subsection 269TAC(8) requires that the normal value calculated under subsection 269TAC(1) be adjusted to account for any of the following differences *so that those differences would not affect its comparison with that export price*. The Commission’s *Dumping and Subsidy Manual* (the Manual)⁴⁹ states that adjustments will be made if there is evidence that a particular difference affects price comparability.⁵⁰ The exporter questionnaire provided to Yara on 25 June 2018 stipulates this requirement and clearly sets out the expectations:

Where the normal value and the export price are not comparable adjustments may be made. This section informs you of the fair comparison principle and asks you to quantify the amount of any adjustment.

...

A party seeking an adjustment has the obligation to substantiate the claim by relevant evidence that would allow a full analysis of the circumstances, and the accounting data, relating to the claim.

The Commission considers that in most cases, a company’s domestic sales of like goods will not be identical to export sales of the goods. However, there is a requirement for the exporter to provide evidence in support of the assertions that any differences affect price comparability and to quantify those differences.

It is the Commission’s view that Yara has not substantiated nor quantified by way of evidence that the differences in:

- the nature of the goods, being ‘tropical’ and ‘non-tropical’ ammonium nitrate; and
- the terms and circumstances of the sale;

affect price comparability between the ammonium nitrate sold on the domestic market and the ammonium nitrate exported to Australia.

Nevertheless, in the absence of any information provided by Yara, and given that Yara has sold both ‘tropical’ and ‘non-tropical’ ammonium nitrate to certain third countries, the Commission has assessed the price relativities between ‘tropical’ and ‘non-tropical’ ammonium nitrate by having regard to Yara’s sales of both products to relevant third countries (ensuring comparability in terms country, customer, quantities, timing and

⁴⁸ Ibid.

⁴⁹ [Dumping and Subsidy Manual](#) (November 2018 version), page 131.

⁵⁰ Refer p. 64 of the [Dumping and Subsidy Manual](#) (November 2018).

delivery terms), as outlined in the verification report. This analysis demonstrated that there was no significant or consistent difference in price between these two products.⁵¹

As such, the Commission determined the normal value of like goods sold in the domestic market in accordance with subsection 269TAC(1) and considers that no information has been provided to warrant an adjustment under subsection 269TAC(8) for the differences outlined by Yara.

6.7.1.3 Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8), as follows:

Adjustment Type	Deduction/addition
Domestic level of trade	Adjust for the difference in level of trade
Domestic duty drawback	Deduct the cost of import duty
Domestic inland transport	Deduct the cost of domestic inland transport
Export inland transport	Add the cost of Australian export inland transport
Export handling and port charges	Add the cost of Australian export handling and port charges

Table 5: Adjustments to Yara's normal value

6.7.1.4 Preliminary dumping margin

The Commission has calculated a preliminary dumping margin for Yara as **51.1 per cent**.

The calculations of the dumping margin for Yara is at **Confidential Attachment 2**.

6.7.2 Uncooperative and all other exporters

6.7.2.1 Export price

Export prices for 'uncooperative and all other' exporters from Sweden were determined having regard to all relevant information under subsection 269TAB(3), as prescribed in subsection 269TACAB(1). Specifically, the Commission had regard to Yara's export price, being the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.7.2.2 Normal value

Normal values for 'uncooperative and all other' exporters from Sweden were determined having regard to all relevant information under subsection 269TAC(6), as prescribed in subsection 269TACAB(1). Specifically, the Commission had regard to Yara's normal value with all favourable subsection 269TAC(8) adjustments removed.

⁵¹ Refer item no. [023](#) on EPR 473.

The calculations of the normal value for ‘uncooperative and all other exporters’ from Sweden is at **Confidential Attachment 5**.

6.7.2.3 Dumping margin

The dumping margin for ‘uncooperative and all other’ exporters from Sweden was established in accordance with subsection 269TACB(2)(a), by comparing the weighted average export price established under subsection 269TAB(3) with the weighted average normal value established under subsection 269TAC(6).

The Commission has calculated a preliminary dumping margin for ‘uncooperative and all other’ exporters from Sweden as **61.3 per cent**.

The calculations of the dumping margin for ‘uncooperative and all other exporters’ from Sweden is at **Confidential Attachment 6**.

6.8 Dumping assessment – Thailand

There are no cooperative exporters from Thailand. All exporters from Thailand are therefore ‘uncooperative exporters’ as defined in subsection 269T(1).

6.8.1 Export price

Export prices for ‘uncooperative and all other’ exporters from Thailand were determined having regard to all relevant information under subsection 269TAB(3), as prescribed in subsection 269TACAB(1). Specifically, the Commission has calculated a weighted average export price for the whole investigation period, based on information recorded in the ABF customs import database.

6.8.2 Normal value

Normal values for ‘uncooperative and all other’ exporters from Thailand were determined having regard to all relevant information under subsection 269TAC(6), as prescribed in subsection 269TACAB(1).

In the PAD, the Commission had determined the normal value of the goods exported to Australia from Thailand having regard to the highest monthly average selling price observed in 2017.

The Commission has reviewed its calculations of the normal value for the purpose of this SEF, and having regard to the information provided by the applicants in the application, the normal value for ‘uncooperative and all other’ exporters from Thailand has been established in accordance with subsection 269TAC(6), using an average of domestic sales prices for 2017.

The calculations of the normal value for ‘uncooperative and all other exporters’ from Thailand is at **Confidential Attachment 7**.

6.8.3 Dumping margin

The dumping margin for ‘uncooperative and all other’ exporters from Thailand was established in accordance with subsection 269TACB(2)(a), by comparing the weighted

average export price established under subsection 269TAB(3) with the weighted average normal value established under subsection 269TAC(6).

The Commission has calculated a preliminary dumping margin for 'uncooperative and all other' exporters from Thailand as **31.3 per cent**.

The calculations of the dumping margin for 'uncooperative and all other exporters' from Thailand is at **Confidential Attachment 8**.

6.9 Dumping – preliminary assessment

The Commissioner has found, in relation to ammonium nitrate exported to Australia from China, Sweden and Thailand in the investigation period, that:

- the goods have been exported at dumped prices; and
- the dumping margins are not negligible.⁵²

6.10 Volume of dumped imports

Pursuant to subsection 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period.

The Commission had regard to information recorded in the ABF customs import database and information obtained and verified from the importers and exporters in determining the volume of imports into the Australian market.

Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from each country subject to the application was individually greater than three per cent of the total Australian import volume and is therefore not negligible. Accordingly, the Commissioner does not propose to terminate this investigation in respect of China, Thailand or Sweden in accordance with subsection 269TDA(3).

The Commission's analysis of the import volumes of ammonium nitrate is at **Confidential Attachment 9**.

⁵² Subsection 269TDA(1).

7 APPROACH TO INJURY AND CAUSATION ANALYSIS

7.1 Introduction and legislative framework

For the publication of a dumping duty notice under section 269TG, the Minister must be satisfied, among other things, that because of the dumping, material injury to an Australian industry producing like goods has been or is being caused or is threatened.

Subsection 269TAE(1) provides a non-exhaustive list of factors which the Commission can examine, and that the Minister may have regard to, in determining whether material injury to an Australian industry has been, or is being caused, or is threatened.

The following two chapters detail the Commission's assessment of whether material injury has been, or is being caused or is threatened by the dumped goods. The Commission has had regard to the *Ministerial Direction on Material Injury 2012* (the Material Injury Direction)⁵³ in undertaking its assessment of material injury.

7.2 Injury claims made by the applicants

In the application, the applicants claimed that the Australian industry has experienced material injury in 2017 in the form of:

- 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.

Subsequent to the initiation of this investigation, Orica also claimed that the Australian industry has experienced injury in the form of reduced market share and reduced growth in an expanding market.⁵⁴

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.

The applicants alleged that increasing import volumes of the goods from China, Sweden and Thailand at relatively low prices have exerted pressure on the Australian industry's selling prices during negotiations with customers which has caused the

⁵³ Ministerial Direction on Material Injury 2012, 27 April 2012, available at www.adcomission.gov.au.

⁵⁴ Refer item no. [012](#) on EPR 473.

applicants to reduce their prices to secure new contracts or maintain existing contracts with customers.

The applicants also alleged that these increasing import volumes at relatively low prices from the countries the subject of the application have undercut the Australian industry's selling prices which has caused the applicants to lose sales volumes in 2017. The applicants have also alleged that the Australian industry's production volumes declined in 2017, which appeared to be the direct result of the reduction in sales volumes.

To support these claims, the applicants had provided seven case studies in the application outlining specific instances pertaining to contract negotiations with either existing customers or potential customers. The Commission found that, of the seven case studies provided in the application, only two case studies relate to negotiations undertaken during the investigation period. The other five case studies outline instances of negotiations undertaken before the investigation period and before the volume of the goods exported from China, Sweden and Thailand increased substantially.

Following the initiation of this investigation, each applicant provided additional information in separate submissions made to the Commission in support of their injury and causation claims.⁵⁵ 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 in response to the dumped goods to secure supply contracts, or where they matched import parity pricing as customers cited the availability and pricing of imported ammonium nitrate.

7.3 The Commission's approach to assessing injury and causation

The Commission found that the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts.

The Commission also found 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, negotiated and agreed to before the investigation period.⁵⁶

Given that the majority of ammonium nitrate in the Australian market is sold and purchased in accordance with fixed-term contracts, and given the numerous other

⁵⁵ Refer items nos. [013](#), [016](#) and [019](#) on EPR 473.

⁵⁶ Albeit noting that some of the applicants' supply agreements are not exclusive agreements and the Commission has found that some of the importers of the goods from the subject countries have sourced ammonium nitrate from the Australia industry and from imports, therefore, the applicants' volumes have to some extent been affected by this 'dual sourcing' during the investigation period.

factors that have caused injury to the Australian industry since April 2014 (refer Chapter 9 of this SEF), the Commission does not consider that a 'coincidence analysis' is appropriate in these circumstances.

The Manual states that where a 'coincidence analysis' is not possible, the Commission may undertake an alternate analytical method, such as a 'but for' analysis (or counterfactual) when examining causal effects. Under a 'but for' analysis it may be possible to compare the current state of the Australian industry to the state that the Australian industry would likely have been in if there had been no dumping.

To establish a causal link between injury to the Australian industry and the dumped goods, the Commission assessed the information provided by the applicants to support their claims that prices and the increasing volumes of the goods imported from the subject countries during the investigation period have impacted contract prices and volumes that were negotiated. This injury may be either in the form of price depression or loss of sales volumes (loss of contract).

The Commission undertook an assessment by comparing the applicants' actual price offers to what the price offers might have been in the absence of dumping, all other factors being equal. In relation to injury in the form of loss of sales volumes, this was only attributed to dumping in certain instances where it could be established that these sales volumes were directly displaced by the dumped goods. This is further discussed in Chapter 9 of this SEF.

The Commission has assessed the economic condition of the Australian industry from 1 April 2014 to 31 March 2018 using verified information provided by the applicants. This assessment is outlined in Chapter 8 of this SEF.

7.4 The injury analysis period

The Commissioner advised at the date of initiation of this investigation in ADN No. 2018/103⁵⁷ that the injury analysis period for assessing the economic condition of the Australian industry would commence from 1 April 2014. During the course of the investigation, the Commission received evidence from the applicants that key customer supply negotiations occurred during the investigation period and some negotiations have continued subsequent to the investigation period and have been finalised post-investigation period.

Notwithstanding that some of these negotiations continued subsequent to the investigation period and were finalised post-investigation period, the Commission considers that the Act does not define the injury analysis period or prescribe a minimum or maximum period for an injury analysis.

In assessing whether dumping has caused material injury to the Australian industry, the Commission considers it relevant to assess whether dumping found during the investigation period has influenced these negotiations.

⁵⁷ Refer item no. [002](#) on EPR 473.

Accordingly, the Commission has considered information and data from 1 April 2014 in assessing the economic condition of the Australian industry and the evidence which demonstrates that the Australian industry has been or is being injured because of dumped imports from the subject countries.

7.5 Cumulative effects of exportations

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 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 information provided in the application, and as outlined in Chapter 3 of this SEF, the Commission is satisfied that the conditions of competition between the goods, and between the goods and like goods that are domestically produced, are similar.

The Commission therefore considers that it is appropriate to consider the cumulative effect of the allegedly dumped exports from China, Sweden and Thailand, given that:

- the margin of dumping for each exporter is not negligible and is above 2 per cent;
- the volume of exports from each country is not negligible and is above 3 per cent of the total volume of imports; and
- a cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and the conditions of competition between the imported goods and like goods that are domestically produced.

7.5.1 Submission relevant to cumulating effects of exportations

In submissions made to the Commission on 27 September 2018 and 5 December 2018⁵⁸, Yara submitted that the exportation of the goods to Australia from Sweden were “unique to the circumstances of the specific supply contract under which they were made”, and are “beneficial to the Australian industry producing like goods”

⁵⁸ Refer item no. [028](#) on EPR 473.

because this supply arrangement was “created by the Australian industry producing like goods”.

Given these circumstances, Yara has submitted that the goods exported from Sweden in accordance with this arrangement do not compete with the goods exported from China and Thailand and therefore the effect of the exportation of the goods from Sweden should not be cumulated with the effect of the exportations of the goods from the other two countries.

Specific details relating to the circumstances of the exportation of the goods from Sweden were outlined in the confidential versions of Yara’s submissions. This particular arrangement has also been described in Yara’s response to the exporter questionnaire.⁵⁹

On 12 November 2018, the Commission submitted questions to Yara concerning its submission dated 27 September 2018. Yara provided a written response to these questions on 19 November 2018 and provided additional information to the Commission.

The Commission has considered Yara’s claims and the information obtained during the course of this investigation thus far. The Commission considers that the particular circumstances of the goods exported to Australia from Sweden, as outlined by Yara, do not support Yara’s assertion that the goods exported from Sweden do not compete with goods exported from China and Thailand, and like goods produced by the Australian industry. The Commission considers that the goods exported from Sweden compete with goods exported from China and Thailand, and like goods that are domestically produced given that these goods are sold to the same or similar customers and are interchangeable in end-use applications.

Therefore, given the conditions of competition between the imported goods and like goods that are domestically produced, the Commission considers that it is appropriate to consider the cumulative effect of exports from each subject country, including Sweden.

A summary of the circumstances relevant to the exportation of the goods from Sweden is at **Confidential Attachment 10**.

⁵⁹ Refer item no. [018](#) on EPR 473.

8 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

8.1 Approach to assessment of the economic condition of the Australian industry

This chapter of the report outlines the assessment of the economic condition of the Australian industry from 1 April 2014 to 31 March 2018 and some of the factors that have affected the performance of the Australian industry during this period.

The analysis detailed in this chapter of the report is based on information provided by CSBP⁶⁰, Orica⁶¹ and QNP in support of the application, including quarterly production, costs, sales and other financial data from 1 April 2014 to 31 March 2018 (refer **Confidential Attachment 11**). Where relevant, the Commission also had regard to data from the ABF customs import database and information relating to the other Australian manufacturer of ammonium nitrate, Dyno Nobel.

Given that the applicants are situated in and supply different regions and markets in Australia, the Commission has assessed the injury indicators separately for each applicant, and also for the Australian industry as a whole by aggregating the data provided by each applicant. The Commission considers that it is possible in such circumstances that injury to the Australian industry occurring in one region (i.e. to one of the industry members) could constitute material injury to the whole industry.⁶² Material injury of this sort may be less obvious if the injury factors are examined only in relation to their totality.

This would also allow for an in-depth, micro-analysis of the different factors affecting each applicant's economic and financial performance from 1 April 2014. The Commission considers that these other factors would be less obvious if the injury indicators are examined only in relation to their aggregate (i.e. for the Australian industry as a whole).

8.2 Volume effects

In the application, the applicants claimed that the Australian industry has experienced injury in the form of reduced production and sales volumes.

The following sections of the report summarise the claimed injury indicators (in terms of volume effects) including the Commission's assessment.

⁶⁰ The Commission has verified CSBP's information and data - refer item no. [042](#) on EPR 473.

⁶¹ The Commission has verified Orica's information and data - refer item no. [040](#) on EPR 473.

⁶² Ministerial Direction on Material Injury 2012, 27 April 2012, available at www.adcomission.gov.au.

8.2.1 Production volumes

Table 6 shows the variations in the Australian industry's total ammonium nitrate production volumes⁶³ (including captive production) from 2014-15 to 2017-18.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica ⁶⁴	100.0	88.1	86.2	87.8
CSBP	100.0	115.2	123.4	113.9
QNP	100.0	109.7	108.6	98.2
Dyno Nobel	100.0	107.1	101.9	120.1
Australian industry	100.0	102.7	103.8	103.0

Table 6: Index of variation in production volumes (output)

For the Australian industry as a whole, production volumes have been increasing since 2014-15, albeit volumes decreased slightly in 2017-18 (the investigation period).

The Commission found that the decrease in Orica's total production volumes from 2014-15 is mostly the result of a decrease in its production volumes at its Yarwun manufacturing plant in Queensland, following the de-commissioning of more than half of the production capacity at the Yarwun plant in 2015.

The Commission found that both CSBP and QNP's production volumes of ammonium nitrate have decreased in 2017-18 (the investigation period).

CSBP's production volumes increased between 2014-15 and 2016-17, and decreased in 2017-18. The Commission notes that the decrease in production volumes coincides with Yara Pilbara Nitrates commencing production in early 2017; however, as most of CSBP's sales were made in accordance with fixed-term contracts, the entry of a new producer in WA is not expected to have had any significant effect on CSBP's volumes during the investigation period. However, the Commission found that during the investigation period, CSBP's production was affected due to the following reasons:

- there was a major planned shutdown that affected the production of ammonium nitrate during the first half of the 2017-18 financial year;⁶⁵ and
- there were unplanned shutdowns undertaken during some months to effectively manage stock which had increased as a result of the expiration of a significant contract in the June 2017 quarter.

⁶³ This includes Dyno Nobel's production volumes which the Commission had estimated using publicly available information in Incitec Pivot Limited's profit report for the half-year ended 31 March 2018.

⁶⁴ Production volumes combined for Orica's Kooragang Island (NSW) and Yarwun (Queensland) manufacturing plants.

⁶⁵ It is also noted in Wesfarmers' half-year report to 31 December 2017 (page 17 refers) that "... volumes produced were lower than the prior corresponding period due to a planned shutdown of one of the AN plants during the half."

The Commission considers that the decrease in production volume observed during the investigation period is due to these planned and unplanned plant shutdowns as well as the expiration of the contract.

QNP's production volumes increased between 2014-15 and 2015-16, and decreased from 2015-16. QNP advised the Commission that its production was impacted by cyclone Debbie (due to demand being affected), numerous production issues at its Moura manufacturing plant in the latter half of 2017, and lower customer demand in the investigation period.⁶⁶

QNP provided the Commission with estimates of the production losses caused by production issues and lower customer demand, and outlined the specific factors that caused the production issues and lower demand. The Commission found that in the absence of the production issues and lower demand experienced during the investigation period, QNP's production volumes would have increased in the investigation period.

8.2.2 Sales volumes

In the application, indices relating to sales volumes and sales values were presented separately for each applicant.

CSBP and QNP claimed that they have experienced a decline in their sales volumes in 2017, while Orica claimed that its sales volumes have remained flat in 2016 and 2017.

The applicants further claim that:

With reduced export prices in 2017, imports from China, Sweden and Thailand have undercut the Australian industry's selling prices to secure increased sales volumes across the Australian market. The impact of the dumping has caused the Applicants to lose sales volumes (down by 2.6 per cent)...⁶⁷

For the purpose of assessing the claimed injury in the form of reduced sales volumes, the Commission has presented indices relevant to each applicant and also aggregated the sales volumes for each applicant to derive an index relevant to the total domestic sales volumes for the Australian industry as whole.

Table 7 shows the variations in the applicants' domestic sales volumes of ammonium nitrate⁶⁸ from 2014-15 to 2017-18.

⁶⁶ This is consistent with the commentary in Wesfarmers' half-year report to 31 December 2017 (page 17 of the report refers) that QNP's earnings were lower due to production issues and weaker demand earlier in the half.

⁶⁷ Refer item no. [001](#) on EPR 473 - page 22 of the application refers.

⁶⁸ Equivalent to 100 per cent ammonium nitrate (%wt/wt).

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	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica ⁶⁹	100.0	94.7	96.2	98.0
CSBP	100.0	115.8	127.7	116.3
QNP	100.0	108.9	106.3	98.5
Aggregated	100.0	105.4	110.8	105.8

Table 7: Index of variation in domestic sales volumes

The Commission found that Orica's domestic sales volumes increased in 2016-17 and 2017-18, albeit volumes have not recovered to 2014-15 levels.⁷⁰ The reduction in Orica's sales volumes observed in 2015-16 is due to a decrease in demand for ammonium nitrate in Queensland, which has also led to Orica's decision to de-commission some production capacity at Yarwun.

The Commission found that CSBP's total sales volume (including sales of prilled ammonium nitrate and ammonium nitrate solution)⁷¹ increased between 2014-15 and 2016-17; however, sales volumes decreased in the investigation period. The Commission found that CSBP's sales volumes decreased for the following reason:

- a key offtake supply contract had expired at the end of the June 2017 quarter, and the consequent reduction in sales volumes following this quarter was only partially offset by opportunistic (spot) sales of ammonium nitrate; and
- lower nitrogen-based fertiliser sales of CSBP's fertiliser division during the investigation period have led to lower internal transfers of ammonium nitrate solution to the production of this fertiliser.

QNP's sales volumes increased in 2015-16, and decreased in 2016-17 and 2017-18. QNP advised the Commission that production issues during the latter half of 2017, coupled with lower demand, adversely affected its sales volumes in the investigation period. The factors that caused the production issues and lower demand are identified and detailed in **Confidential Attachment 12**.

The Commission considers that the factors that affected QNP's sales volumes during the investigation period were not related to dumping. However, the Commission has found that, during the investigation period, QNP had made a bid to supply ammonium nitrate to a particular customer in accordance with a fixed-term contract, however, its bid was unsuccessful and the volumes that QNP had bid for were most likely displaced by dumped goods. The Commission further found that QNP's volumes were directly displaced by the dumped goods in the first half of 2018. This is further discussed in Chapter 9 of this SEF.

⁶⁹ Orica's sales volumes encompass sales of both ammonium nitrate and bulk explosives converted to 100 per cent ammonium nitrate equivalent volumes.

⁷⁰ For further information, refer verification report – Orica Australia Pty Ltd, item no. [040](#) on EPR 473.

⁷¹ A detailed assessment of CSBP's sales volume by specific product is contained in the verification report – CSBP Limited, item no. [042](#) on EPR 473.

8.2.3 Market share

Following the initiation of this investigation, Orica made a submission claiming that the Australian industry has experienced injury in the form of reduced market share and reduced growth in an expanding market.⁷² Specifically, Orica alleged that the dumped imports held an increasing share of the net market growth in 2016 and 2017, with the Australian industry experiencing a reduction in market share in an expanding market.

Table 8 shows the relative market shares (by sales volume) of the Australian industry, imports⁷³ of the goods from China, Sweden and Thailand, and imports from other countries from 2014-15 to 2017-18.

The Commission found that the Australian industry's share of the ammonium nitrate market has increased from 2014-15; however, its share has declined slightly in 2017-18. The market share of imports from China, Sweden and Thailand has increased, from one per cent of the market in 2015-16 to three per cent of the market in 2017-18, while the market share of imports from other countries decreased since 2014-15 and remained constant in 2017-18 relative to the previous year.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
China	1.9%	0.8%	1.7%	1.5%
Sweden	0.8%	0.0%	0.3%	1.2%
Thailand	0.0%	0.1%	0.3%	0.4%
Other countries	5.6%	4.6%	3.0%	3.0%
Australian industry ⁷⁴	91.7%	94.4%	94.7%	94.0%
Australian market	100%	100%	100%	100%

Table 8: Market share

Table 9 shows the variations in the Australian industry's sales volumes and the volumes of the goods imported from China, Sweden and Thailand, and goods imported from other countries, from 2014-15 to 2017-18.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
China	100.0	44.7	97.1	86.7
Sweden	100.0	6.2	37.6	154.2
Thailand	100.0	307.5	770.5	879.5
Other countries	100.0	83.9	56.4	56.2
Australian industry ⁷⁵	100.0	105.7	109.3	108.1
Australian market	100.0	102.7	105.9	105.5

Table 9: Index of variation in sales and import volumes – Australian ammonium nitrate market

⁷² Refer item no. [012](#) on EPR 473.

⁷³ Data obtained from the ABF customs import database. Imports recognised at the entered for home consumption date.

⁷⁴ Includes an estimate of Dyno Nobel's domestic sales volumes, which is based on its ammonium nitrate production volumes.

⁷⁵ Includes an estimate of Dyno Nobel's domestic sales volumes, which is based on its ammonium nitrate production volumes.

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The Commission found that, on an aggregated basis, the Australian industry's sales volumes increased from 2014-15; however the Australian industry's sales volumes declined in 2017-18 relative to the previous period. Over the same period, import volumes from Sweden and Thailand increased substantially and increased in 2017-18, while import volumes from China decreased in 2017-18 relative to the previous period. Import volumes from other countries decreased steadily since 2014-15.

Overall, it appears that the Australian market has contracted by 0.4 per cent in 2017-18, which is mostly attributable to a decrease in the Australian industry's (specifically, CSBP's and QNP's) sales volumes during this period (refer Table 6 and Table 7, given that the Commission is assuming that Dyno Nobel's production volumes approximate its sales volumes); however, this analysis does not account for the sales volumes from the Burrup plant, given that some ammonium nitrate was produced at this plant during the investigation period.

Based on the information available to the Commission, if the sales volumes from this plant are taken into account (assuming that sales volumes would approximate the production volumes), it would show that the Australian market has increased in 2017-18.

The causes of the decrease in CSBP's and QNP's sales volumes in 2017-18, and the causes of the decrease in Orica's sales volumes since 2014-15, is discussed in section 8.2.2 of this chapter.

The Commission considers that, once the Australian industry's import volumes of ammonium nitrate from various countries (including China) is taken into account, the Australian industry's sales volumes increased in 2017-18 and therefore the market share held by the Australian industry is greater than what it appears in Table 8. Further, the Commission has received some information relevant to the actual production volumes of ammonium nitrate at the Burrup manufacturing plant in WA. If this production volume is taken into consideration, assuming that it closely approximates the sales volumes of ammonium nitrate manufactured at Burrup, then this would also demonstrate that the Australian industry's sales volumes increased in 2017-18, and therefore the Australian industry's market share would also be greater than what it appears in Table 8.

Nevertheless, the Commission considers that the volumes of the goods imported from China, Sweden and Thailand, on an aggregated basis, increased substantially since 2014-15, and in 2017-18 (the investigation period) comprised over half of the total import volume, an increase from 43.5 per cent in 2016-17.⁷⁶ In Chapter 9 of this SEF, the Commission considers whether the Australian industry's sales volumes were directly displaced by the dumped goods, and whether the Australian industry's sales volumes would have been higher but for the dumped goods.

The Commission has received a number of submissions which claimed that the Australian industry has, subsequent to importation of the goods from China and Sweden by other entities, purchased some of those goods. The Commission notes

⁷⁶ Data obtained from the ABF customs import database. Imports recognised at the entered for home consumption date.

that most of these claimed purchases of the goods from China occurred following the investigation period. Further, these claims were not substantiated with any evidence that showed that these imported goods were subsequently sold to the Australian industry.

The Commission's assessment of market share is at **Confidential Attachment 13**.

8.2.4 Conclusion - volume effects

The Commission found that the Australian industry's production and domestic sales volumes decreased in the investigation period, albeit volumes have increased overall since 2014-15.

The Commission did not find that the Australian industry's share of the Australian ammonium nitrate market decreased in the investigation period once the Australian industry's imports of ammonium nitrate, and production from the Burrup plant, are taken into consideration.

The Commission found that imports from China, Sweden and Thailand have increased since 2015, as did the market share held by these countries, while the market share held by imports from other countries has decreased over the same period.

8.3 Price effects

In the application, the applicants claimed that the Australian industry has experienced injury in the form of price depression and suppression.

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

The following sections of the report summarise the claimed injury indicators (in terms of price effects) and include the Commission's assessment.

8.3.1 Price depression and price suppression

In the application, the applicants claimed that the Australian industry has experienced a reduction in selling prices in 2016 and 2017, which were allegedly undercut by increasing import volumes from China, Sweden and Thailand.

The applicants further claimed that:

The impact of the dumped export prices at levels that have undercut the Applicants' selling prices during 2017 has resulted in injury in the form of price suppression. The Applicants' CTM&S has increased in 2017, whereas selling prices have remained flat. The local industry has been unable to raise its selling prices to recover cost increases that have occurred as a consequence of reduced production volumes and increasing raw material costs.⁷⁷

⁷⁷ Refer item no. [001](#) on EPR 473 - page 26 of the application refers.

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Table 10 shows the variations in CSBP's weighted average cost to make and sell (CTMS) and weighted average domestic selling prices from 2014-15 to 2017-18.

	1 April 2014 - 31 March 2015	1 April 2015 - 31 March 2016	1 April 2016 - 31 March 2017	1 April 2017 - 31 March 2018
CTMS	100.0	100.5	84.8	87.6
Price	100.0	106.9	97.7	102.4

Table 10: Index of CSBP's cost and price variations

The Commission found that CSBP's weighted average price decreased in 2016-17, and increased in 2017-18 due to significant volumes of opportunistic sales made at favourable prices.

The Commission found that CSBP's weighted average cost to make has been decreasing since 2014-15, mostly due to lower imported ammonia costs and lower natural gas costs in WA. CSBP's weighted average CTMS increased during the investigation period because non-recurring / one-off expenses were allocated to SG&A incurred during this period. By excluding these non-recurring expenses from the SG&A and therefore the weighted average CTMS, the Commission observes that the increase in CSBP's CTMS in the investigation period would equate to less than one per cent relative to the prior period.

The variations in CSBP's price followed a similar trend to the variations in its CTMS over the period 2014-15 to 2017-18, and the margin between the price and CTMS remained relatively steady albeit it has increased slightly from 2014-15 onwards.

Table 11 shows the variations in Orica's weighted average CTMS and weighted average domestic selling prices from 2014-15 to 2017-18.

	1 April 2014 - 31 March 2015	1 April 2015 - 31 March 2016	1 April 2016 - 31 March 2017	1 April 2017 - 31 March 2018
CTMS	100.0	99.6	101.7	106.0
Price	100.0	92.7	88.0	86.5

Table 11: Index of Orica's cost⁷⁸ and price variations

The margin between the unit price and unit CTMS has narrowed since 2014-15 due to increasing costs (a 6 per cent increase since 2014-15) and decreasing prices (a 13.5 per cent decrease since 2014-15).

Orica indicated that the decrease in prices observed since 2014-15 is partly due to contract renewals (i.e. renewal of existing contracts) that resulted in relatively lower re-negotiated base prices; however the Commission found that the majority of Orica's sales made during the investigation period were in accordance with fixed-term contracts that were negotiated before the investigation period. These contracted prices are adjusted on a periodic basis to reflect movements in raw material and other costs. Therefore, the trend in Orica's weighted average domestic prices, as observed in

⁷⁸ Costs aggregated for Kooragang Island and Yarwun manufacturing plants.

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Table 11, would also (apart from the renewal of contracts at revised pricing) reflect the movement in these variables used to adjust contracted prices.

The Commission found that Orica's unit CTMS has increased steadily since 2015-16. Orica identified the following factors that mostly drove this trend:

- an increase in Orica's natural gas costs at its Kooragang Island manufacturing site (which also resulted in an increase in the production cost of ammonia transferred from Kooragang Island to Yarwun) as a result of a new contract, at relatively higher pricing, which commenced on 1 January 2017. The effect of the increase in natural gas prices is partly captured in the March 2017 quarter; however, the increase in natural gas prices mostly affected Orica's costs of production in 2017-18 (the investigation period);
- an increase in variable costs in 2017-18 due to sourcing ammonia from third parties during a planned ammonia plant turnaround at Kooragang Island; and
- an unplanned plant shutdown at Kooragang Island in the December 2017 quarter impacting production and therefore fixed costs.

Table 12 shows the variations in QNP's weighted average CTMS and weighted average domestic selling prices from 2014-15 to 2017-18.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
CTMS	100.0	95.3	94.6	109.7
Price	100.0	97.3	96.4	100.7

Table 12: Index of QNP's cost and price variations

The Commission found that QNP's weighted average price decreased in 2015-16 and 2016-17, and increased in 2017-18 in line with increasing costs in this period, noting that costs increased to a greater extent than prices. QNP advised the Commission that its costs increased significantly due to increasing natural gas and electricity costs.

On an aggregated basis, the applicants' prices have decreased from 2014-15. The applicants' costs also decreased from 2014-15, albeit at a lower rate than prices, indicating price suppression. The applicants' CTMS increased in the investigation period, mostly due to increasing natural gas costs on the east coast of Australia, which is a major raw material used in the manufacture of ammonia.

The Commission found that the majority of the applicants' sales made during the investigation period were in accordance with fixed-term contracts that were negotiated before the investigation period. The Commission is aware that once the 'base' price and volume is contracted, the base prices and margins are effectively 'locked-in' for the term of the contract. These contracted prices are adjusted on a periodic basis (in accordance with formulas stipulated in these supply agreements referred to as 'rise and fall' provisions) to reflect movements in raw materials and other cost and price indices. Therefore, the trend in the applicants' weighted average domestic prices, as observed in Table 10, also reflects the movement in these variables used to adjust contracted prices. The Commission found no evidence that the price reviews or adjustments, as prescribed in the supply agreements, take into consideration import prices or other market prices.

Notwithstanding this, as noted previously, Orica indicated that the decrease in its prices observed since 2014-15 is partly due to the renewal of existing contracts that resulted in relatively lower re-negotiated base prices. To substantiate its claims that some of these reset contract prices were lower because of the influence of the prices of the allegedly dumped goods, in the application lodged on 29 March 2018, Orica provided three specific examples of contract negotiations with existing customers where Orica was the incumbent supplier.

Referring to these examples, Orica claimed that it had to reduce prices to match pricing of the allegedly dumped goods in order to secure the contracts. The Commission found that these negotiations were conducted before the investigation period; however, supply (and pricing) in accordance with these revised contracts was made during the investigation period.

Following the initiation of this investigation, each applicant outlined additional examples in written submissions⁷⁹ made to the Commission that pertained to negotiations for fixed-term contracts that were affected by the prices and increasing volumes of the goods exported from the subject countries during the investigation period. These examples are further discussed in Chapter 9 of this SEF.

8.3.2 Conclusion - price effects

The Commission found that the applicants' weighted average prices have decreased from 2014-15 and increased in 2017-18 (the investigation period), albeit prices did not recover to 2014-15 levels. Although the applicants' weighted average costs also decreased over this period, the rate of the decrease was relatively lower than for prices, indicating price suppression.

8.4 Profit effects

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

The applicants alleged 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.

Table 13 and Table 14 shows the variations in the applicants' net domestic profits and profitability⁸⁰ respectively from 2014-15 to 2017-18.

⁷⁹ Refer items nos. [013](#), [016](#) and [019](#) on EPR 473.

⁸⁰ Profitability measured as net profit as a percentage of total sales revenue.

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	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica	100.0	75.4	59.5	48.5
CSBP	100.0	147.6	173.7	174.9
QNP	100.0	112.7	108.6	82.2
Aggregated	100.0	102.0	100.0	89.9

Table 13: Index of profit variations

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica	100.0	85.8	70.2	57.3
CSBP	100.0	117.8	139.0	141.9
QNP	100.0	106.3	106.0	82.9
Aggregated	100.0	98.5	98.6	89.7

Table 14: Index of profitability variations

The Commission found that both Orica's and QNP's net profit and profitability declined from 2014-15 and declined in the investigation period. CSBP's net profit and profitability increased from 2014-15, although its net profit increased only slightly in the investigation period.

As noted in section 8.5.1 of this chapter, the majority of the applicants' sales made during the investigation period were in accordance with fixed-term contracts that were negotiated before the investigation period, and therefore, apart from the periodic adjustments to the base price to reflect movements in costs and other variables, the base price and margins are effectively 'locked-in' for the term of the contract.

The Commission has found that for Orica, the decrease in its net profit and profitability observed since 2014-15 is the result of the following factors:

- price effects (13.5 per cent decrease in its prices since 2014-15): the renewal of existing contracts 'locked in' relatively lower prices for the duration of the contracts; and unfavourable movements in variables (such as ammonia) used to adjust contract prices, resulted in lower observed average prices; and
- cost effects: Orica's unit CTMS increased by 6 per cent since 2014-15 (noting that costs decreased slightly in 2015-16), which is mostly due to increasing natural gas costs and an increase in variable costs due to sourcing ammonia from third parties during a planned ammonia plant turnaround at Kooragang Island in 2017-18. These effects have somewhat been offset by Orica's increasing sales volumes since 2015-16.

As previously noted in this chapter, Orica had indicated that the decrease in its prices observed since 2014-15 is partly due to contract renewals (i.e. renewal of existing contracts where Orica is the incumbent supplier) that resulted in relatively lower re-negotiated base prices. Orica had provided examples in the application lodged on 29 March 2018 to demonstrate that it had lowered prices to secure existing contracts where it was the incumbent supplier; however, the Commission found that these negotiations were conducted before the investigation period; however, supply (and pricing) in accordance with these revised contracts was made during the investigation period.

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Following the initiation of this investigation, each applicant outlined additional examples in written submissions⁸¹ made to the Commission that pertained to negotiations for fixed-term contracts that were affected by the prices and increasing volumes of the goods exported from the subject countries during the investigation period. The applicants claimed that these lower negotiated contract base prices resulted in lower margins that are ‘locked in’ for the duration of the contract. These examples are further discussed in Chapter 9 of this SEF.

8.4.1 Conclusion - profit and profitability effects

The Commission found that the applicants’ aggregated net profit and profitability has declined in the investigation period and profit is below that achieved in 2014-15.

8.5 Other economic factors

In the application, the applicants claimed that the Australian industry has also experienced injury in the form of reduced revenues, a reduction in the return on investment (ROI), lower capacity utilisation and a reduction in employment in 2017.

The Commission’s findings in relation to these claims is outlined in the following sections.

8.5.1 Revenue

The applicants claimed that the Australian industry has experienced injury in the form of reduced revenues in 2017.

Specifically, CSBP and QNP claim that they have experienced a decline in their sales revenues in 2017, while Orica claims that its sales revenues have remained flat in 2016 and 2017.

The Commission considers that, given revenue is a function of price and sales volume, and given that it appears that the applicant’s prices and sales volumes have decreased since 2014-15, it therefore follows that the Australian industry’s sales revenue should also have decreased in line with the decreases observed in prices and sales volumes.

Table 15 shows the variations in the applicants’ domestic sales revenues from 2014-15 to 2017-18.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica	100.0	87.8	84.7	84.7
CSBP	100.0	125.3	125.0	123.3
QNP	100.0	106.0	102.4	99.2

Table 15: Index of revenue variations

⁸¹ Refer items nos. [013](#), [016](#) and [019](#) on EPR 473.

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The Commission found that Orica's domestic sales revenue decreased since 2014-15, and remained relatively stable in 2017-18 (relative to 2016-17). The decrease in sales revenue since 2014-15 was driven by lower pricing (as noted in section 8.5.1 of this chapter) which was partly offset by higher sales volumes since 2015-16 (refer Table 7 in section 8.4.2 of this chapter).

The Commission found that CSBP's domestic sales revenue has steadily declined since 2015-16 for the following reasons:

- the slight reduction in sales revenue observed in 2016-17 is due to a significant decrease in CSBP's prices observed during this period relative to the previous period. A significant increase in sales volumes in 2016-17 muted this significant price decrease and therefore only a slight reduction in sales revenue in this period is evident; and
- the reduction in sales revenue observed in 2017-18 is due to a decrease in CSBP's sales volumes (refer Table 7 in section 8.4.2) during this period.

The Commission found that QNP's sales revenue decreased since 2015-16 due to lower prices and lower sales volumes from 2015-16 (refer Table 7 in section 8.4.2).

The reasons for the trend in each applicant's sales volumes and prices is discussed in sections 8.2.2 and 8.3.1 of this chapter.

8.5.2 Return on investment

The applicants claimed that the Australian industry has experienced injury in the form of reduced ROI in 2017 which can be attributed to the decline in the Australian industry's selling prices and revenues.

Both CSBP and Orica derived their ROI based on their net profit as a proportion of the value of assets relevant to the production of like goods. It is not clear which variables QNP had regard to in measuring its ROI. The Commission also notes that Orica has provided data in relation to its ROI for calendar years (January to December) and separately for the March 2018 quarter, while both CSBP and QNP provided data in relation to their ROI for years ending 31 March.

Table 16 shows the variations in the ROI for each applicant from 2014-15 to 2017-18, observing that Orica's ROI pertains to calendar years.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
CSBP	100.0	135.2	166.2	171.5
QNP	100.0	82.1	92.9	71.4
	1 Jan 2014 - 31 Dec 2014	1 Jan 2015 - 31 Dec 2015	1 Jan 2016 - 31 Dec 2016	1 Jan 2017 - 31 Dec 2017
Orica	100.0	71.5	52.4	37.0

Table 16: Index of variations in ROI

The Commission observes that CSBP's ROI increased from 2014-15 to 2017-18, mostly as a result of an increase in CSBP's profit over this period. The Commission found that both Orica's and QNP's ROI decreased from 2014-15 to 2017-18, and decreased substantially in 2017-18 in line with decreasing net profit. The factors that

caused Orica's and QNP's declining profits was discussed in section 8.4 of this chapter.

8.5.3 Capacity utilisation

The applicants claimed that the Australian industry has experienced injury in the form of reduced production capacity utilisation in 2017.

Table 17 shows the variations in each applicant's capacity utilisation. The Commission observes that CSBP has measured its production capacity utilisation based on its budgeted production capacity, while both Orica and QNP have measured their capacity utilisation based on their nameplate production capacities.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
Orica	100.0	88.1	86.2	87.8
CSBP	100.0	113.6	119.3	114.6
QNP	100.0	109.7	108.6	98.2

Table 17: Index of variations in production capacity utilisation

Orica's capacity utilisation has improved since 2015-16, following a significant decrease in capacity utilisation observed during this period relative to the previous period.

The Commission is aware that, in July 2015, Orica had decided to de-commission (or 'mothball') more than 50 per cent of its production capacity at Yarwun in response to lower demand for ammonium nitrate in Queensland. This is observed in the significant decline in production volumes at Yarwun in 2015-16 relative to production volumes in the previous period, albeit production volumes have increased in 2017-18.⁸²

In late 2017, Orica decided to re-commission the mothballed production capacity at Yarwun in order to supply increasing customer demand in Queensland, and in order to meet its contractual supply obligations in WA due to production issues at the Burrup plant. However, Orica advised the Commission that it can take up to 6 months for the production plant to be operating at full capacity.

The Commission's preferred production capacity measure in this instance is budgeted or practical capacity, not nameplate, as budgeted capacity reflects actual available operational capacity at the time capacity utilisation is measured, and given that it does take a period of time before the de-commissioned capacity is 'brought back' into operation. Nevertheless, the variations observed in Table 14 would follow a similar trend if Orica's capacity had been adjusted by excluding the 'mothballed' capacity from 2015-16 onwards.

The Commission found that CSBP's capacity utilisation increased from 2014-15 and decreased in 2017-18, albeit noting that CSBP is still operating near full capacity. This decrease in CSBP's capacity utilisation is consistent with its lower production and

⁸² For further information relevant to Orica's production and production capacity utilisation, please refer to the Commission's verification report relevant to Orica – item no. [040](#) on EPR 473.

sales volumes during this period. As noted in section 8.5.1 of this SEF, CSBP's production volumes were lower due to a number of production plant shutdowns during the investigation period, and its sales volumes were lower due to the expiry of a major contract which were only partially offset by opportunistic (spot) sales.

The Commission also found that QNP's production utilisation increased in 2015-16, and decreased in 2016-17 and 2017-18, consistent with lower production volumes during this period.

8.5.4 Employment numbers

The applicants claimed that the Australian industry has experienced injury in the form of reductions in employment numbers in 2017.

The Commission also notes that Orica has provided information in relation to employment for calendar years (January to December) and separately for the March 2018 quarter, while both CSBP and QNP provided information relating to employment for years ending 31 March.

Table 18 shows the variations in employment numbers for each applicant.

	1 Apr 2014 - 31 Mar 2015	1 Apr 2015 - 31 Mar 2016	1 Apr 2016 - 31 Mar 2017	1 Apr 2017 - 31 Mar 2018
CSBP	100.0	101.4	100.0	101.4
QNP	100.0	97.7	95.5	94.3
	1 Jan 2014 - 31 Dec 2014	1 Jan 2015 - 31 Dec 2015	1 Jan 2016 - 31 Dec 2016	1 Jan 2017 - 31 Dec 2017
Orica	100.0	83.7	77.5	73.7

Table 18: Index of variations in employment

The Commission found that the number of employees employed at CSBP's Kwinana manufacturing plant was relatively constant from 2014-15 to 2017-18, while the number of Orica's and QNP's employees decreased steadily from 2014-15, in line with decreasing production.

The Commission understands that the de-commissioning of some production capacity at Orica's Yarwun plant in 2015 resulted in redundancies. Due to increasing productivity from 2014-15, Orica does not foresee an increase in employee numbers to the levels prior to the closure.

8.5.5 Other factors

The Commission has also assessed a range of other economic factors relevant to the applicants that were not claimed in the application, as follows.

Orica has provided data relevant to the assessment of the other economic factors for calendar years (January to December) and separately for the March 2018 quarter, while both CSBP and QNP provided data for years ending 31 March.

Assets – the value of Orica's assets used in the production of like goods has remained relatively constant from 2014 to 2017, declining slightly in the March 2018 quarter.

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The value of CSBP's assets used in the production of like goods has increased in the investigation period, while QNP's has declined.

Capital investment – Capital investment undertaken by Orica decreased steadily since 2014. Orica increased its investment in capital in 2017, with significant investment in the investigation period. Orica advised the Commission that a large part of the capital investment in the investigation period was due to a required maintenance investment in the Kooragang Island ammonia manufacturing plant which is required every six years, referred to as a plant 'turnaround'.

Capital investment undertaken by CSBP in relation to the production and sales of like goods over the injury analysis period has steadily decreased since 2015-16.

Capital investment undertaken by QNP has fluctuated from 2014-15 however investment has increased in the investigation period relative to the previous period.

Research and development (R&D) investment – Orica's investment in R&D has increased since 2014.

CSBP and QNP did not provide data to the Commission in relation to any R&D investments.

Wages – CSBP's average wages per employee have increased in 2017-18, while Orica's and QNP's average wages per employee have remained constant since 2014-15.

Productivity (measured as tonnes produced per employee) – Orica's productivity has increased since 2015.

CSBP's and QNP's productivity has decreased in the investigation period due to decreasing production volumes.

Inventory (closing stock) – the volume of Orica's and QNP's closing stock decreased during the injury analysis period.

Contrary to Orica and QNP, CSBP reported the value of its closing stock. The value of CSBP's closing stock increased since 2014-15.

Cash flow – all three applicants measured cash flow in terms of the accounts receivables turnover ratio relevant to sales of like goods.

Orica's receivables turnover ratio increased from 2015 and increased in the investigation period.

CSBP's receivables turnover ratio decreased since 2015-16 and decreased in the investigation period.

QNP's receivables turnover ratio remained constant since 2014-15.

8.6 Conclusion

This chapter of the report outlined the assessment of the economic condition of the Australian industry from 1 April 2014 to 31 March 2018 and some of the factors that have affected the applicants' performance during this period.

The Commission found 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 from 1 April 2014 to 31 March 2018 mostly reflect the contract terms, including prices and volumes, negotiated and agreed to before the investigation period.

In Chapter 9 of this SEF, the Commission assesses whether dumping found during the investigation period has influenced negotiations relating to supply contracts and whether dumping is causing material injury to the Australian industry.

9 IS DUMPING CAUSING MATERIAL INJURY?

9.1 Preliminary findings

The Commissioner found that a number of factors combined to provide an environment that led to a general decline in prices in the ammonium nitrate market. However, the Commissioner found injury to the Australian industry, particularly injury in the form of price depression, caused by dumping.

The Commission has conducted a 'but for' analysis to assess prices in the absence of dumping. For negotiations where the Australian industry has been unsuccessful in securing a contract, the Commission considered if the volumes were directly displaced by imports from the subject countries.

The Commissioner found that the injury caused to the Australian industry by dumping is material.

9.2 Price effects

As noted in Chapters 7 and 8 of this SEF, the Commission found 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 mostly reflect the contract terms, including prices and volumes, negotiated and agreed to before the investigation period.

Following the initiation of this investigation, each applicant provided additional information in separate submissions⁸³ made to the Commission in support of their injury and causation claims. 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 in response to the dumped goods to secure supply contracts, or where they matched import parity pricing as customers cited the availability and pricing of imported ammonium nitrate.

To establish a causal link between injury to the Australian industry and the allegedly dumped goods, the Commission assessed the information provided by each applicant in support of its claims that prices (and the increasing availability) of the goods imported from the subject countries during the investigation period have impacted contract prices that were re-negotiated (where the applicant is the incumbent supplier) or negotiated (where the applicant made an offer to a potential customer). This injury may be either through price pressure as a result of the allegedly dumped goods (price depression) or through loss of contract (loss of sales volumes).

⁸³ Refer item nos. [013](#), [016](#) and [019](#) on EPR 473.

The following section outlines the specific examples and the Commission's assessment.

9.2.1 Contract negotiations

In assessing each applicants' claims and information provided in support of those claims, the Commission considered the following:

- (i) whether import prices were used by customers to negotiate lower prices with the Australian industry;
- (ii) whether the Australian industry reduced prices to match import pricing to maintain existing contracts;
- (iii) whether the Australian industry provided evidence to support the claims that lower price offers were made in an attempt to match import pricing to secure contracts; and
- (iv) where the Australian industry was unsuccessful in 'winning' a contract, whether import volumes from the subject countries displaced the Australian industry's potential sales volumes.

For the contract negotiations that satisfy the above and were finalised, the Commission assessed what the Australian industry's negotiated contract prices would likely have been in the absence of dumping (a 'but for' analysis) found during the investigation period. This assessment is outlined in section 9.2.2 of this chapter.

The confidential details relevant to each contract negotiation outlined below are at **Confidential Attachment 14**.

Example 1

CSBP detailed a negotiation that commenced in early 2018 for potential supply of additional volumes of ammonium nitrate to an existing customer. The negotiation concluded in mid-2018.

CSBP indicated that at the time of the negotiation it had an existing contract with this customer that was effective during the investigation period. This contract was negotiated before the investigation period.

CSBP indicated that this customer already imported the goods from one of the countries the subject of the investigation and therefore did not have any issues sourcing its ammonium nitrate through an import supply chain. Given this, CSBP's price offer to this customer was determined by having regard to the alternative supply option available to this customer (particularly given that this customer allegedly imports the goods from one of the subject countries) and also prices⁸⁴ of ammonium nitrate imported into WA (mostly from China and Thailand) for the 12 months ending December 2017.

⁸⁴ Including relevant importation 'landing' costs to derive a price at import parity.

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CSBP indicated that this customer had accepted CSBP's price offer and a draft contract has been prepared. CSBP claimed that, had it not matched a price at import parity, it would have lost the opportunity to supply additional volume in accordance with this contract.

The Commission is aware that the customer is an importer of the goods from one of the subject countries. The Commission has also been provided with the import prices that were used by CSBP to arrive at its price offer. The Commission found that the offer that was ultimately accepted closely matches CSBP's derived 'import parity price' (IPP) for this customer.

CSBP quantified the absolute price reduction (on a per tonne basis) relative to the prevailing contracted price to this customer during the investigation period (by having regard to the same quarter for comparison purposes). The final negotiated price is significantly lower than the contracted price to this customer during the investigation period.

CSBP also quantified the impact in terms of revenue forgone, which was based on the assumption that the sales volumes to this particular customer in the future, once the agreement commences, would be similar to the offtake volumes to this customer during the investigation period. However, the Commission does not consider this appropriate as the additional volumes that CSBP had bid for are significantly less, which results in a lower estimate of revenue forgone.

The Commission has included this contract in its assessment of injury to the Australian industry. The Commission's approach to assessing what CSBP's price might have been in the absence of dumping is outlined in section 9.2.2 of this chapter.

Example 2

CSBP claimed that during the investigation period, it supplied ammonium nitrate to a particular customer at a specific site in WA in accordance with an import parity supply arrangement at the insistence of the customer.

CSBP claimed that, during the investigation period, it matched a price determined at import parity, which represented the customer's 'next best' alternative supply option. CSBP provided documentation which demonstrated that the customer requested that CSBP match a price at import parity during a particular period which encompassed three quarters of the investigation period.

The Commission observes that the price that CSBP was requested to match was based upon a FOB price of ammonium nitrate exported from one of the countries the subject of the investigation, plus relevant shipping, importation and other costs to derive an ex-works equivalent price that CSBP matched.

The Commission had verified that the IPP that CSBP matched during the investigation period reconciled to CSBP's sales data at Appendix A4. Therefore, 'but for' the alleged dumping of the goods from this particular country, CSBP's price might have been higher during the investigating period.

CSBP quantified the impact of meeting this allegedly dumped price from this particular country by having regard to its contracted sales (in accordance with a supply agreement negotiated many years before the investigation period and before the volumes of the goods imported from China, Sweden and Thailand increased substantially) to this customer for all other sites during the investigating period. CSBP compared the price it matched at import parity against its contracted price (unaffected by dumped prices) to this particular customer. The price CSBP matched was significantly lower than the price in accordance with the contracted price to this customer. CSBP also quantified the impact of matching this dumped price in the form of revenue forgone during the investigation period.

CSBP further claimed that this import parity supply arrangement was also taken into consideration in negotiating a multi-year supply contract relevant to this customer's same site. These negotiations, which occurred during the investigation period, 'locked in' supply at a price determined at an IPP, which was identical to the import parity supply arrangement outlined above. CSBP advised that this contract had been finalised and supply has already commenced in accordance with this agreement.

CSBP provided the Commission with positive evidence that showed that CSBP matched a specific import price.

The Commission has included this contract in its assessment of injury to the Australian industry. The Commission's approach to assessing what CSBP's price might have been in the absence of dumping is outlined in section 9.2.2 of this chapter.

Example 3

CSBP claimed that, just prior to December 2017, it commenced re-negotiating an existing supply agreement with a customer for supply to South West WA, which was negotiated many years before the investigation period. These negotiations have been finalised, with supply to commence in accordance with the re-negotiated contract at a date specified in the contract.

CSBP alleged that, as a result of these negotiations, the existing agreement with this customer was amended, and the price was reviewed in line with import parity pricing (i.e. the comparative cost of imports into WA at an ex-works equivalent price), particularly from one of the countries the subject of the application. The Commission found that this pricing mechanism outlined related to a particular account relevant to this customer, however, CSBP explained that this exact mechanism was referred to by this particular customer when deriving a price at import parity that CSBP was required to match. The Commission also accepts CSBP's evidence that it has reduced its offer price to match import pricing in order to maintain volumes.

CSBP had quantified the absolute price reduction (on a per tonne basis) relative to the prevailing contracted price to this customer during the investigation period which was not affected by the alleged dumping. CSBP had also quantified the impact in terms of revenue forgone, which was based on the assumption that the sales volumes to this particular customer in the future, once the agreement commences, would be similar to the offtake volumes to this customer during the investigation period.

The Commission has included this contract in its assessment of injury to the Australian industry. The Commission's approach to assessing what CSBP's price might have been in the absence of dumping is outlined in section 9.2.2 of this chapter.

Example 4

In this example, a customer with an existing long-term contract with QNP requested a price review.

The negotiation commenced and concluded during the investigation period. QNP provided documentation to the Commission which demonstrated how it had derived its price to this customer. It is apparent from the documentation that was provided that QNP based its price offer to this customer on import parity pricing. The price offer was revised several times during the course of the negotiation. The Commission verified the price of imports used by QNP to form its price offers. The lowest priced imports during the period were from the subject countries.

The Commission has included this contract in its assessment of injury to the Australian industry. The Commission's approach to assessing what QNP's price might have been in the absence of dumping is outlined in section 9.2.2 of this chapter.

Example 5

QNP provided information in relation to its bid to supply a customer with ammonium nitrate over a 12 month period.

This customer approached QNP in the investigation period, and QNP provided an offer to this customer, which was subsequently rejected.

QNP claims that the potential customer advised that it is able to source ammonium nitrate at a lower price from overseas. No evidence was provided to support this claim. The Commission notes, however, that this customer is an importer of the goods from one of the subject countries. An examination of verified data from the importer shows that, following QNP's unsuccessful offer, this customer ordered the goods from one of the countries the subject of this investigation.

The Commission found that the price at which the customer sourced the goods from the subject country undercut QNP's price offer. The Commission assessed whether QNP's price offer would have been more price competitive in the absence of dumping. The Commission's approach to this assessment is outlined in section 9.2.2 of this chapter.

Example 6

QNP is the incumbent supplier to this customer in accordance with a fixed-term contract. During the investigation period, and subsequent to the investigation period, QNP negotiated with this customer for supply above the contracted volumes on three separate occasions, as follows:

- First negotiation (supply in second quarter, 2017): QNP was successful in supplying at a price derived with reference to import parity pricing. The Commission has been provided with QNP's workings to arrive at a 'landed'

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ammonium nitrate price, which then formed the basis for its own price offer. The price quoted for the supply of these volumes is slightly below this price.

- Second negotiation (supply in second quarter, 2018): QNP was unsuccessful in supplying additional volumes to this customer. The Commission has obtained information from QNP and the importer that has been successful in its bid to supply this particular customer. The Commission found that this importer has supplied this customer with dumped goods from one of the countries the subject of this investigation at a lower price than what QNP's bid was to this customer. The Commission observes that these volumes were directly displaced by dumped imports.
- Third negotiation (supply in FY 2019): QNP agreed to a variation in the current contract with the customer. This variation was to supply volumes over a stated threshold at a price that QNP claims was derived with reference to import prices. While QNP has claimed that the price was based on an IPP, the Commission observes that the information QNP provided in relation to import prices was not contemporary nor specific to this negotiation. Further, QNP only provided an estimate of future supply. For these reasons, the Commission has not included this negotiation in its assessment of injury to the Australian industry.

Example 7

QNP provided the Commission with a list of its 'spot' sales made during the investigation period, which it claimed were based on an IPP. Some of the spot sales were made to the customer referred to in example 12, and as the price has been agreed in 2013 and has not changed since then, the Commission does not accept that this price was influenced by dumped imports during the investigation period.

The Commission observes that the prices of the balance of the spot volumes are similar to the IPP that QNP has derived by using the average of imports to the relevant ports plus importation costs to derive a landed price. The Commission accepts that these QNP's spot prices were influenced by dumped goods. The Commission has included these sales in its assessment of injury to the Australian industry. The Commission's approach to assessing what QNP's prices might have been in the absence of dumping is outlined in section 9.2.2 of this chapter.

Example 8

Orica outlined an example pertaining to negotiations undertaken during the investigation period (and continuing subsequent to the investigation period) with a particular customer to extend an existing supply contract. Orica is the incumbent supplier to this customer and it approached the customer early to extend the existing contract. Orica advised that the customer considered Orica's pricing too expensive at the time and both parties to the negotiation were not able to reach an agreement.

As the end of the term of the existing contracts approached, Orica claimed that this customer approached Orica's competitors (domestic and overseas) during the investigation period to source alternative supply. This customer then re-engaged with Orica and requested an updated offer during the investigation period. Orica has provided revised pricing several times since, and this negotiation is currently ongoing.

The Commission was provided with information relevant to Orica's price offers which showed that Orica had revised and considerably reduced its price offers (relative to its contracted prices to this customer in accordance with the existing contract at the time) on a number of occasions during the course of the negotiation.

In its assessment of the information relevant to this negotiation, the Commission found that there were factors other than dumping that caused Orica to reduce its prices. These factors are detailed at **Confidential Attachment 14**.

The Commission notes, however, that one potential feature of the contract being negotiated with this customer allows for the variation of the contract price in certain circumstances (based, in part, upon import prices).

The Commission considers that, due to this potential provision, the presence of dumped imports may cause injury to Australian industry in the form of price depression, reduced profit and profitability and reduced revenue for the duration of the contract. However, the Commission is aware that this contract is still being negotiated and is yet to be finalised. Therefore, it is unclear whether this provision will be included in the contract, and if it is, how it would operate. As such, the Commission does not consider that this example demonstrates that injury has been caused or is being caused by dumping. The Commission has not included this contract in its assessment of injury to the Australian industry.

Example 9

Orica negotiated with a potential customer for a new contract for supply of bulk explosives and associated services. This negotiation commenced in March 2018.

Orica provided copies of its price offers to this customer. Orica claims that these price offers were "determined by analysis of likely domestic and current import suppliers and intelligence on their respective history of pricing performance". Orica provided an internal document comparing competitors' anticipated pricing as well as prices of the goods imported from China (adjusted to ex-works equivalent pricing).

The Commission reviewed the competitor prices as estimated by Orica and notes that domestic prices are more competitive than the estimated Chinese price (at equivalent terms).

In relation to its first offer to the customer, Orica claimed that it received feedback that it was not the preferred supplier based on price. Subsequent to this, Orica submitted a revised offer, which Orica claimed was verbally accepted however no contract has been finalised.

Orica provided the Commission with market intelligence relevant to one of its competitor's pricing to other customers in Queensland, implying that this competitor's pricing was lower than Orica's initial price offer. This competitor is an importer of the goods from one of the countries subject to this investigation

The Commission observes that the information provided by Orica indicates that the main price competition was from other Australian industry members (rather than imports). There was no incentive for Orica to reduce its price to match import pricing.

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Further, the Commission did not find any evidence that the competitor referred to in Orica's submission has competed for this particular contract.

For the reasons outlined above, the Commission does not consider that this example demonstrates that injury has been caused or is being caused by dumping. The Commission has not included this contract in its assessment of injury to the Australian industry.

Example 10

CSBP outlined an instance where negotiations with a particular customer commenced in October 2017. CSBP claimed that its price offer to this customer was based upon the understanding that this customer's alternative supply option is imported ammonium nitrate; therefore, the price CSBP offered matched pricing at import parity to ensure that its price offer was competitive. CSBP provided evidence to substantiate this.

CSBP stated that it currently supplies ammonium nitrate to this particular customer in accordance with an existing supply agreement. Therefore, CSBP quantified the impact of matching an IPP by having regard to its contracted sales (in accordance with a supply agreement negotiated many years before the investigation period and before the volumes of the goods imported from China, Sweden and Thailand increased substantially) to this customer during the investigating period. CSBP compared the price it matched at import parity against its contracted price (unaffected by dumped prices) to this particular customer. The price CSBP offered was significantly lower than the actual price realised on sales made to this customer in accordance with the existing supply agreement. CSBP also quantified the impact of matching this dumped price in the form of revenue forgone.

While the Commission is satisfied that CSBP reduced its prices with reference to an IPP, CSBP's price offer had lapsed however negotiations with this customer are ongoing. CSBP also no longer expects this to be for full supply to this customer. The Commission has not been provided with any additional information in relation to this negotiation. Given the lack of information pertaining to this ongoing negotiation (for example, information relating to a revised price offer), the Commission has not included this contract in its assessment of injury to the Australian industry.

Example 11

QNP claimed that during a planned plant shutdown, it lost volumes to imports due to the contracted customer refusing QNP's offer of ammonium nitrate through alternative local and import sources.

The Commission reviewed the information provided by QNP in support of this claim and is not satisfied that the customer rejected the offers due to the availability of cheaper imports. It is in fact clear from the information provided that the customer was seeking locally produced ammonium nitrate.

The Commission does not consider that this example demonstrates that injury has been caused or is being caused by dumping; therefore, the Commission has not included this contract in its assessment of injury to the Australian industry.

Example 12

QNP extended an existing contract with a customer in the investigation period, and the price was varied, which resulted in a price reduction.

The Commission reviewed the documentation provided by QNP and observes that the contracted base price was negotiated in 2013 and includes a price adjustment formula based on the underlying ammonia price. The reduced price appears to be largely due to the declining price of ammonia in the quarters preceding the revised price offer. The Commission does not consider that this example supports QNP's claims that the revised price offer was in order to compete with dumped imports. Therefore, the Commission has not included this contract in its assessment of injury to the Australian industry.

Example 13

QNP supplied a particular customer during the investigation period on a spot basis. The Commission notes that the customer regularly imports ammonium nitrate.

QNP claims that the price to this customer was based on an IPP. However, the Commission has also been informed by QNP that the price it generally achieves for spot pricing for this customer has remained unchanged since 2013. While QNP has advised that the reason for this is due to the customer's ability to import volumes, the price was agreed to prior to the commencement of the injury analysis period (1 April 2014) and therefore cannot have been influenced by dumping. Therefore, the Commission has not included this contract in its assessment of injury to the Australian industry.

9.2.2 Prices in the absence of dumping

Given that most of the examples pertain to negotiations where the applicant is the incumbent supplier, each applicant has quantified the price reduction in absolute terms by comparing the negotiated prices with the price prevailing in accordance with the contract existing at the time of the negotiation. In some of the examples provided, the applicant has compared the negotiated price to an estimated 'undumped' price.

While the Commission has found that the applicants had experienced price depression due to lower negotiated contract prices, the Commission considers that there could be factors other than dumping that led to these price reductions. Therefore, in relation to the examples that the Commission is satisfied that the applicant had provided sufficient information to link the price reduction to matching pricing of the dumped goods from a particular country, or matching pricing at import parity, the Commission considered what each applicant's price might have been in the absence of dumping.

In each case, the Commission only adjusted the import prices for the dumping margin – all other variables were held constant to ensure a proper comparison between the final price offers, or the actual prices that the applicants matched, and the 'undumped' prices. Therefore, any difference between the negotiated price and the 'undumped' price would only reflect the difference due to dumping and not any other factors.

Each applicant had provided information relevant to its formulation of the price offer and the factors it took into consideration. The Commission found that the applicants had regard to an IPP in formulating some of the prices (import prices at CIF or CFR adjusted for landing and other relevant costs to derive an ex-works equivalent price). The Commission also found that, in some of the examples provided, the applicants had regard to matching import parity pricing at the insistence of the customer, where the customer outlined specific costs post-exportation to derive equivalent prices at ex-works.

Given the detailed information provided by the applicants, the Commission was able to adjust the negotiated prices for the dumping margins as follows:

- for specific examples where the import parity pricing mechanism is outlined by the applicant's customer, the import price at FOB was adjusted for the dumping margin and relevant post-exportation costs including ocean freight, landing costs and other costs as specified by the customer are added to this 'undumped' FOB price to derive an ex-works equivalent IPP adjusted for dumping; and
- where the applicants had regard to an IPP in formulating the prices, the prices of the goods (adjusted to FOB)⁸⁵ imported during the investigation period from each of the subject countries were adjusted for the dumping margin and costs as identified and used by the applicants to derive their price offer (such as landing, storage and other relevant costs) have been added to derive a price offer at ex-works equivalent terms.

Where the Commission established that the applicant had lost the contract to the dumped goods (example 5 and 6 refers), the Commission adjusted the FOB prices⁸⁶ of these dumped goods for the dumping margin and made relevant adjustments for verified landing costs, to derive a price that can be compared to the applicants price offer at ex-works. The Commission used this to determine whether, in the absence of dumping, the applicant's price offer might have been more competitive in securing the lost volumes.

The Commission found that the prices adjusted for dumping ('undumped' price), on average, are approximately 15.7 per cent higher than the negotiated prices.

The Commission also compared the re-negotiated prices and the 'undumped' prices to the USP as determined by the Commission (refer Chapter 11 of this SEF). The Commission found that, on average, the re-negotiated prices were 16.7 per cent lower than the USP, and the 'undumped' price, on average, was approximately 4.8 per cent lower than the USP.

⁸⁵ The applicants have regard to import data from various third-party sources, including the ABS. The applicants have provided the Commission with the data they had regard to in their consideration of import parity pricing, including relevant post-exportation expenses.

⁸⁶ The Commission has used information obtained from the relevant importer and from the ABF customs import database.

Based on the assessment above, the Commission considers that, while there appear to be factors other than dumping that have likely caused the reductions in prices, dumping has still caused a reduction in prices.

The Commission's assessment of pricing is at **Confidential Attachment 15**.

The Commission's assessment of whether these price reductions (and the impact in terms of revenue and profit forgone) are material to the Australian industry as a whole is discussed in section 9.7 of this chapter.

9.2.3 Submissions concerning contract negotiations

In its submissions dated 27 September 2018 and 5 December 2018,⁸⁷ Yara raised its concerns regarding the use of contract negotiations to assess price related injury. Specifically, Yara claimed the following:

- as its prices during the investigation period were in accordance with a special agreement and was not available to the market generally, these prices could not have been injurious to Australian industry producing the goods;
- any use of Yara's prices in contract negotiations where it "was not a party to and had no direct interest" cannot be said to have injured the Australian industry;
- the position in the PAD appears to be that the applicants will be materially injured unless they are awarded tenders at any price they offer; and
- the conclusion that higher prices might have been agreed to absent the imports is mere speculation and is therefore not a legally correct basis upon which to impose measures.

The Commission disagrees with the view that Yara's prices have not been injurious to the Australian industry. The dumped prices at which Yara has supplied the market—being the lowest prices during the investigation period—have been used to arrive at Australian industry offer prices, either directly or by an average of import prices in the period.

Evidence before the Commission demonstrates that Australian industry reduced prices in response to dumped prices to maintain existing contracts. The applicants have provided the Commission with information that they used to arrive at their prices in order to remain competitive with imports.

In its submission dated 24 December 2018,⁸⁸ the CCOIC argued that "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". The CCOIC then claims that "the impact of such benchmarks or price offers cannot

⁸⁷ Refer item nos. [018](#) and [028](#) on EPR 473.

⁸⁸ Refer item no. [038](#) on EPR 473, refer page 10.

constitute injury caused by dumping of ammonium nitrate. They are not actual imports of the GUC".⁸⁹

As discussed in section 9.2 of this chapter, the Australian industry's prices were influenced by the dumped goods imported during the investigation period. The Commission has also obtained positive evidence that in certain circumstances the customer has insisted that the Australian industry match an IPP based on dumped pricing from a particular country the subject of the investigation.

9.3 Volume effects – lost contracts

The Commission found that for two of the contracts negotiated during and following the investigation period (example 5 and 6 in section 9.2.1), the Australian industry experienced injury in the form of reduced sales volumes due to price competition with dumped imports. The Commission found that dumped imports directly displaced these volumes causing injury to the Australian industry during the investigation period and subsequent to the investigation period.

9.4 Profit effects

The Commission considers that the reduced prices achieved as a result of contract negotiations conducted during the investigation period and subsequent to the investigation period will result in lower profit and profitability (all other variables being held constant) for the duration of the new contracts.

9.5 Factors other than dumping

Apart from acknowledging the oversupply in the global ammonium nitrate market,⁹⁰ the applicants did not attribute any injury to factors other than dumping from the countries the subject of the investigation. The Commission has received submissions from interested parties concerning other factors that may have caused injury to the Australian industry.

The Commission's consideration of these submissions is detailed in the following sections.

9.5.1 Stage of the mining industry

In its submission dated 17 August 2018, Moncourt Group Pty Ltd (Moncourt)⁹¹ claims that as the mining boom ended in 2015, the demand for ammonium nitrate decreased rapidly.

⁸⁹ Ibid.

⁹⁰ Refer item no. [001](#) on EPR 473, page 28 refers.

⁹¹ Refer item no. [011](#) on EPR 473.

In its submission dated 26 July 2018,⁹² Phoenix Blasting Services drew a correlation between the reduced sales volumes of domestic producers and diminished coal mining activity in the period of inquiry. It claims this is due to lower coal prices in the period. These views concerning the mining industry are shared by the CCOIC in its submission.⁹³

The Commission considers that while there has been a contraction in the mining industry and investment in the industry has declined since 2010, the Commission observes that this does not appear to have caused a decrease in the demand for ammonium nitrate over the period 1 April 2014 to 31 March 2018 (refer figure 3 in Chapter 5 of this SEF). Sales of ammonium nitrate over this period have increased and have also increased in the investigation period if the production volumes of the Burrup plant are taken into consideration. Therefore, the impact of the contraction in mining activity on the Australian industry's sales volumes from 2014 to 2018 would have been limited.

9.5.2 Australian industry's imports of ammonium nitrate

The Commission found that Orica imported ammonium nitrate from China, Egypt and Indonesia during the investigation period, and that Orica commenced importing the goods from China in the last quarter of the investigation period (March 2018). The Commission also found that another Australian ammonium nitrate manufacturer, Dyno Nobel, imported the goods from China in the last quarter of the investigation period. These imports by the Australian industry have also been noted by many interested parties in submissions made to the Commission.⁹⁴

The Commission did not find, contrary to claims made in certain submissions,⁹⁵ that the Australian industry imported the goods from Thailand.

Orica claimed that it had imported ammonium nitrate from these countries for the following reasons:

- to acquire more of a particular grade of ammonium nitrate for emulsion manufacture—Orica claims it would generally source this type of grade from its Yarwun plant, however, due to production ramping up slowly at Yarwun, this was not possible;
- to meet increased demand in Queensland and to manage stock levels during plant shutdowns; and
- to meet contractual supply obligations in the Pilbara region due to the Burrup plant not performing to expectations.

⁹² Refer item no. [008](#) on EPR 473

⁹³ Refer item no. [038](#) on EPR 473.

⁹⁴ Refer item nos. [004](#), [011](#), [026](#) and [038](#) on EPR 473.

⁹⁵ Refer item nos. [008](#) and [038](#) on EPR 473.

The Commission understands that the imports by Orica were for the fulfilment of its current contractual obligations and it did not refer to these imports when competing for new contracts.

The Commission reviewed verified information obtained from various importers of the goods from China and also reviewed data relevant to import consignments from China in the ABF customs import database. By excluding the import volumes by Orica and Dyno Nobel from China during the investigation period, the Commission found that the import volumes of the goods from China, when expressed as a percentage of the total Australian import volume of the goods, is still greater than three per cent of the total Australian import volume and is therefore not negligible.

The Commission's analysis of the import volumes of ammonium nitrate is at **Confidential Attachment 9**.

9.5.3 Limitations to importation of ammonium nitrate

DBS, Glencore and BHP⁹⁶ have claimed that there are limitations to the importation of ammonium nitrate.

Some of these claimed limitations include:

- the limited number of ports that are able to accept ammonium nitrate;
- the requirement for a licence to import ammonium nitrate;
- the difficulties with the transportation of ammonium nitrate (as it is an explosive substance);
- the limited options for storage (specific requirements for the facility and limitations of how much may be stored);
- the requirement to have facilities in close proximity to mine sites;
- product quality and consistency, particular as ammonium nitrate degrades with temperature and humidity; and
- security of supply (impacted by lead times for importation).

In its submission dated 24 December 2018,⁹⁷ the CCOIC claimed that there are further limitations for exports from China making export contracts of greater than 6,000 tonnes not viable.

The Commission found that most explosives manufacturers and associated services providers have established import supply chains. Further, the importers of the dumped goods directly compete with Australian industry producers and services providers (such as Orica) for contracts.

Further, the Commission has obtained information that an IPP is often referred to in negotiations of contract prices. Regardless of the volumes imported, the existence of the dumped goods and prices in the investigation period has resulted in the Australian industry reducing its prices to secure contracts, or losing volumes in competition with importers offering ammonium nitrate at dumped prices.

⁹⁶ Refer item nos. [004](#), [030](#) and [032](#) on EPR 473.

⁹⁷ Refer item no. [038](#) on EPR 473.

9.5.4 Bundled contracts

In submissions dated 27 September 2018 and 4 December 2018,⁹⁸ Yara and DBS claim that the competition amongst sellers in the industry is typically for blasting services contracts. As ammonium nitrate only forms one part of this contract, there are other factors that influence how a company prices ammonium nitrate in a bundled contract.

Only one of the contracts that the Commission reviewed (refer section 9.2.1 of this chapter – example 9) was for a bundled product and service. The injury claimed by the applicant in relation to this contract negotiation has not been included in the Commission's injury assessment due to other reasons, as stated in that section. All other contracts reviewed were for ammonium nitrate supply only, and one bundled contract separately identified the ammonium nitrate pricing.

9.5.5 Excess capacity

In its submission dated 10 August 2018,⁹⁹ BHP refers to Orica's 2017 Annual Report to support its claim that increased capacity in the Australian ammonium nitrate market has injured the Australian industry.

Moncourt¹⁰⁰ also argues that it is the Australian industry's investments in additional capacity that have led to reduced pricing within Australia. Moncourt accepts that this was addressed partially by the 'mothballing' of some capacity at Orica's Yarwun plant; however, it claims that the Burrup plant is likely to exacerbate the issue of excess capacity in the Australian industry. The Frontier Report commissioned by BHP¹⁰¹ argues that the pricing of domestic producers was influenced by existing and future excess capacity.

However, the Commission has also found that the Australian industry has imported ammonium nitrate in order to meet its contractual obligations due to production issues or lack of capacity.

The Commission considers that in certain instances, excess capacity in the domestic market may have caused injury to the Australian industry from 2014 onwards; however, the Commission has conducted a 'but for' analysis and found that dumping has caused and is causing injury in the form of price depression (refer section 9.2.2 of this chapter for further details).

⁹⁸ Refer item nos. [018](#) and [027](#) on EPR 473.

⁹⁹ Refer item no. [007](#) on EPR 473.

¹⁰⁰ Refer item no. [011](#) on EPR 473.

¹⁰¹ Refer item no. [032](#) on EPR 473, Annexure A.

9.5.6 Competition at various levels of trade

In its submission dated 17 August 2018,¹⁰² Moncourt argued that in the absence of import supply, explosive service providers would be reliant on sourcing ammonium nitrate from the Australian industry, against which the explosive service providers then have to bid for the same contract.

The Commission found that there is competition at various levels in the value chain within the industry. The purpose of anti-dumping measures is to remedy injury to the Australian industry caused by dumping and not to avert imports of ammonium nitrate.

9.5.7 Competition between Australian producers of like goods

Several submissions received by the Commission claim that injury to the Australian industry was caused by robust competition among Australian industry producers resulting in price depression.

Moncourt¹⁰³ claims that the Burrup plant in WA competes with Incitec Pivot and CSBP. DBS and Yara¹⁰⁴ also claim that Orica has moved into the west coast market while CSBP has increasingly sought to sell ammonium nitrate into the east coast market, which they claim has traditionally been dominated by Orica. DBS asserts that, in seeking to expand their markets, these producers will lower their prices and this depression of prices is not caused by imports. The CCOIC¹⁰⁵ claims that the Burrup plant will create an actual or threatened market oversupply, and has caused Australian industry members to compete strongly against each other for market share.

The Commission observes that there has been a shift in traditional markets for the Australian industry over the past few years. The analysis of price depression by the Commission was based on contract negotiations which were influenced by dumping during the investigation period. Where competition appeared to be from other Australian industry producers, the Commission did not attribute injury to dumping (example 9 in section 9.2.1 of this chapter).

9.6 Materiality of injury

As noted in section 9.2 of this chapter, the Commission found that the applicants reduced their prices following contract negotiations conducted in the investigation period and following the investigation period.

While there appear to be factors other than dumping that have led to these price reductions, the Commission considers that the reduction in price that is attributable to dumping is significant (refer section 9.2.16 of this chapter).

¹⁰² Refer item no. [011](#) on EPR 473.

¹⁰³ Refer item no. [011](#) on EPR 473

¹⁰⁴ Refer item nos. [004](#) and [018](#) on EPR 473.

¹⁰⁵ Refer item no. [038](#) on EPR 473.

The Commission considers that the price reduction directly attributed to dumping will translate to revenue forgone and a fixed margin for the duration of the contract that is lower than otherwise might have been. In considering profit forgone, the Commission had regard to the examples where it was satisfied that sufficient evidence was provided to support the applicants' claims that they matched import parity pricing or where the applicants were requested to match pricing from certain countries the subject of the application. The Commission also had regard to two instances where the applicant had lost sales volumes and where it was established that these volumes were displaced by the dumped goods.

The Commission determined the profit forgone (on a per annum basis) based on the 'undumped price' (which is, on average, approximately 4.8 per cent lower than the USP) derived for each example. The Commission considers that the applicants would have been able to achieve these prices in the absence of dumping.

The Commission found that profit forgone as a percentage of the applicants' total profit is significant and is material to the Australian industry as a whole.¹⁰⁶

The Commission's assessment of materiality is at **Confidential Attachment 16**.

9.7 The Commissioner's assessment

The Commissioner found that the applicants reduced their prices following contract negotiations conducted during the investigation period and following the investigation period.

The Commissioner undertook a 'but for' analysis in order to compare the Australian industry's negotiated prices with prices in the absence of dumping in order to assess whether the injury caused by dumping is material to the Australian industry.

While factors other than dumping may also have caused injury to the Australian industry, the Commission found that the reduction in price that is attributable to dumping is significant. The Commissioner found that the injury caused by dumping is material.

¹⁰⁶ The Commission did not have information relevant to Dyno Nobel's and Yara Pilbara Nitrate's profit. Therefore, in determining the materiality for the industry as a whole, the Commission had regard to the applicants' share of the total Australian industry's production volume. During the investigation period, the applicants accounted for 78 per cent of the total Australian industry's production volume.

10 WILL DUMPING AND MATERIAL INJURY CONTINUE?

10.1 Preliminary findings

The Commissioner considers that exports of ammonium nitrate to Australia from China, Sweden and Thailand in the future may be at dumped prices and that continued dumping may continue to cause material injury to the Australian industry.

10.2 Introduction

Subsection 269TG(2) provides that, where the Minister is satisfied, among other things, that dumping may continue and because of that material injury to the Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

10.3 Will dumping continue?

The Commission has found that ammonium nitrate was exported to Australia from China, Sweden and Thailand during the investigation period at dumped prices, with dumping margins ranging between 29.6 per cent and 61.3 per cent.

The Commission examined import volumes from the ABF customs import database occurring during and following the end of the investigation period. The Commission observes that:

- import volumes of the goods from China, Sweden and Thailand increased significantly (in absolute and relative terms) between 2015-16 and 2017-18 (refer tables 8 and 9 in Chapter 8 of this SEF); and
- import volumes of the goods from China, Sweden and Thailand increased as a proportion of the total import volumes from 2017-18 (the investigation period), comprising over half the total import volume during the investigation period, to approximately 77 per cent of the total import volume (63 per cent excluding the Australian industry's import volumes) in the June 2018 quarter (post investigation period) and have also continued in the September 2018 quarter, albeit noting that volumes have decreased in this quarter relative to the previous quarter, most likely as a result of the initiation of this investigation in late June 2018.

The Commission considers that, even at its full capacity, the Australian industry is not able to fully supply the entire volume of the Australian ammonium nitrate market, and hence importations of the goods from China, Sweden and Thailand are likely to continue.

The Commission has also found that one of the importers of the goods from one of the subject countries was further pursuing supply arrangements with the exporter from this country during the investigation period which was outside of the contractual supply arrangement in place at that time. The Commission has obtained information to suggest that the pricing outside of the current supply arrangement would be at dumped prices and that this importer would continue to import ammonium nitrate from this particular supplier.

Considering the above, the Commission considers that dumping may continue if anti-dumping measures are not imposed.

10.4 Will material injury continue?

The Commission understands that, in any given year, existing supply agreements are reviewed prior to expiry and the applicants are usually offered the opportunity to renegotiate and review the contract. The Commission has obtained information from Orica and CSBP in relation to the proportion of their production capacities (i.e. contracted volumes) coming up for renegotiation or re-tendering in the next 24 months and notes that the proportion of their respective capacities being retendered in the next 18 to 24 months is significant.

Given that the Commission has found that the goods imported from China, Sweden and Thailand during the investigation period have adversely influenced the Australian industry's prices during contract negotiations, and given that the volumes of the goods from the subject countries have continued following the investigation period, the Commission considers that the imports from these countries may continue to adversely impact the Australian industry's prices in any future contract negotiations.

10.5 The Commissioner's assessment

Based on the available evidence, the Commissioner finds that exports of ammonium nitrate from China, Sweden and Thailand in the future may be at dumped prices and that continued dumping may continue to cause material injury to the Australian industry.

11 NON-INJURIOUS PRICE

11.1 Preliminary assessment of NIP

The Commission has calculated a NIP for exports of ammonium nitrate from China, Sweden and Thailand that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumping of the goods.

The Commission has assessed the NIP from an USP based on CSBP's and Orica's weighted average selling prices for ammonium nitrate in the two years prior to the commencement of the investigation period (adjusted for inflation), with appropriate adjustments made to derive the NIP at FOB.

For all exports from China, Sweden and Thailand, the NIP is below the normal value and therefore the lesser duty rule applies.

11.2 Lesser Duty Rule

Interim dumping duty (IDD) may be applied where it is established that dumped imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Minister cannot exceed the margin of dumping.

Where the Minister is required to determine IDD, and the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the 'lesser duty rule' in accordance with subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), unless one of the exceptions in subsection 8(5BAA) of the Dumping Duty Act applies.

The NIP is relevant to the application of the lesser duty rule.

11.2.1 Exceptions to the application of the lesser duty rule

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to, but may still, have regard to the lesser duty rule where one or more of the following circumstances apply:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

The Commission did not find that the above circumstances apply in relation to the goods exported to Australia from China, Sweden and Thailand.

11.3 Calculation of the NIP

Under subsections 269TACA(a) and 269TACA(b), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry caused by the dumping of the goods.

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The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP, as outlined in Chapter 24 of the Manual,¹⁰⁷ observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer selling expenses and profit.

11.3.1 Submissions – determination of the USP

Both CSBP¹⁰⁸ and Orica¹⁰⁹ made submissions to the Commission in relation to the determination of the USP.

CSBP submitted that the appropriate basis for an USP from which the NIP is derived is an average of the Australian industry's weighted average selling prices, preferably over a three-year period prior to the commencement of the investigation period.

CSBP further submitted that the impact of the dumped exports from China, Sweden and Thailand was evident during 2017 and beyond (including in 2018), and as the dumped imports from Sweden and Thailand held only minor shares of the total import volume prior to 2017, it is CSBP's view that the selling prices in the Australian market prior to the investigation period would be unaffected by the dumped exports to Australia.

Orica submitted that the USP should be based on weighted average market selling prices prior to the investigation period. Orica further submitted that, where the Commission cannot determine a market based price for a USP, it could have regard the 'undumped' price of goods imported from Russia.

11.4 The Commissioner's assessment

The Commission considers that the Australian industry's domestic selling prices for ammonium nitrate prior to the investigation period were in accordance with fixed-term contracts that were negotiated before the volumes of the dumped goods from China, Sweden and Thailand increased substantially, and therefore, these prices before the investigation period were not affected by dumping. Given this, the Commission has

¹⁰⁷ Refer page 136 of the [Dumping and Subsidy Manual](#) (November 2018 version).

¹⁰⁸ Refer item no. [035](#) on EPR 473.

¹⁰⁹ Refer item no. [033](#) on EPR 473.

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determined an USP based on the average¹¹⁰ of the weighted average selling prices (at ex-works) for CSBP and Orica over a two-year period prior the investigation period (from 1 April 2015 to 31 March 2017).¹¹¹

The Commission observes that most price adjustment provisions in CSBP's and Orica's supply contracts take into consideration movements in the consumer price index (CPI). Therefore, the Commission has adjusted CSBP's and Orica's prices for movements in the CPI. The Commission also considers that an adjustment to the selling prices for inflation is necessary to allow for a proper assessment of the USP and NIP in the investigation period (in constant dollars), and therefore to ensure a fair comparison of the NIP to normal values determined in the investigation period.¹¹²

The Commission considers that an USP at ex-works is comparable to a landed, duty paid import price, therefore, the Commission deducted the following verified costs to derive a NIP at FOB for each country:

- overseas freight and marine insurance;
- import handling and Australian port charges; and
- customs and quarantine clearance charges.

The Commission has not made any adjustments for importer selling and administration costs or profit, as the importers predominantly consume the ammonium nitrate in making explosives rather than on-selling the goods in the condition that they were imported.

The Commission compared the NIP at FOB with the weighted average normal values of ammonium nitrate for China, Sweden and Thailand, and found that the NIP is below the normal values of ammonium nitrate for each country. As the NIP is below the normal values of ammonium nitrate in China, Sweden and Thailand, the Minister must have regard to the 'lesser duty rule' in accordance with subsection 8(5B) of the Dumping Duty Act.

The calculations of the USP and the NIP are at **Confidential Attachment 17**.

¹¹⁰ Given that CSBP and Orica supply different markets (i.e. west versus eastern states of Australia), an average of CSBP's and Orica's prices is more appropriate than a weighted average.

¹¹¹ Both CSBP's and Orica's sales data was verified by the Commission – refer item nos. [042](#) and [040](#) on EPR 473.

¹¹² The Commission has had regard to published data relevant to the CPI in adjusting prices for inflation.

12 PROPOSED MEASURES

12.1 Proposed form of anti-dumping measures

The Commissioner proposes to recommend to the Minister that anti-dumping measures be imposed on ammonium nitrate exported to Australia from China, Sweden and Thailand in the form of the floor price duty method, where the NIP is the operative measure.

12.2 Forms of measures

In relation to IDD, the methods the Minister may utilise to work out the duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- combination of fixed and variable duty method;
- floor price duty method;
- fixed duty method (\$x per tonne); and
- *ad valorem* duty method (i.e. a percentage of the export price).

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others.

12.3 Form of securities applied following PAD 473

Following the publication of the PAD, the Commonwealth took securities in respect of IDD that may become payable on ammonium nitrate exported from China, Sweden and Thailand. The securities were worked out in accordance with the combination (fixed and variable) duty method.

12.4 Submissions in relation to the form of measures

In its submission of 12 December 2018,¹¹³ Orica proposed that, where measures are recommended to the Minister, the combination method should be recommended as this form of measures limits possible opportunities for circumvention of those measures.

In its submission of 13 December 2018,¹¹⁴ CSBP also proposed that the form of measures to be applied to the dumped goods should be the combination duty method. CSBP stated that this form of measures is less susceptible to exporters reducing export prices to absorb the IDD payable.

12.5 The Commissioner's assessment

The Commissioner, in considering which form of measures to use, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013*

¹¹³ Refer item no. [033](#) on EPR 473.

¹¹⁴ Refer item no. [035](#) on EPR 473.

(the Guidelines), relevant factors in the ammonium nitrate market and submissions received from interested parties.

The Guidelines set out issues to be considered when determining the form of duties. The various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping however certain forms of duty will better suit particular circumstances. The Guidelines list the key advantages and disadvantages of each form of duty.

The floor price method can limit the negative effect of price increases in the goods that are associated with the *ad valorem* duty method. It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under the *ad valorem* duty method which would decrease the amount of duty paid. A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. This duty method may not suit the situation where there are many models or types of good with significantly different prices. Given that there are only two sub-sets of ammonium nitrate (HDAN and LDAN) that are imported, the Commission considers that the floor price method would be appropriate.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination duty method is less suitable in circumstances where there are many model types of the goods with a wide price range, or where a falling market exists. The Commission has found no evidence that circumvention behaviour is likely in respect to ammonium nitrate exported to Australia from China, Sweden and Thailand.

The Commissioner observes that, since 2001 when measures were put in place in respect of ammonium nitrate exported to Australia from Russia, the ammonium nitrate market in Australia has seen significant growth and the Australian industry has maintained a high share of the market. The industry has also experienced a high level of profitability. Therefore, it is clear that the measures (effectively a floor price based on the NIP) in place have been effective in remedying the injury that was being caused to the Australian industry from dumped goods and preventing further injury from occurring.

For the reasons set out in Chapter 9 of this SEF, the Commissioner proposes to recommend to the Minister that a dumping duty notice be published in respect of ammonium nitrate exported to Australia by all exporters from China, Sweden and Thailand. The Commissioner also proposes to recommend that the IDD imposed be calculated using the floor price duty method where the NIP is the operative measure. In this scenario, IDD will become payable upon importation of the goods if the actual export price is below the floor price.

13 REVISION TO SECURITIES

13.1 Background

On 24 October 2018, the Commissioner made a PAD¹¹⁵ and decided to require and take securities from 25 October 2018. The securities are taken as an amount worked out in accordance with the combination method. The fixed component of securities was imposed in relation to the goods exported to Australia from China, Sweden and Thailand at the rates specified in the table below:

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%
	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 16: Preliminary dumping margin summary as at 24 October 2018

13.2 Amendment to securities

Based on the further assessment as set out in this SEF, and pursuant to subsection 269TD(1)(a) of the Act, the Commissioner remains satisfied that there appear 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.

Under subsection 269TD(4)(b), the Commissioner is satisfied that it is necessary to require and take securities in relation to exports of the goods from China, Sweden and Thailand to prevent material injury that is threatened to the Australian industry while the investigation continues.

The Commissioner proposes to revise the level of securities required and taken under section 42 of the Act in respect of IDD that may become payable in relation to the goods exported to Australia from China, Sweden and Thailand. The revised securities have been determined using the floor price duty method. Securities will be required and taken in respect of IDD that is payable if the actual export price (dumping export price or 'DXP') is below the floor price, which is based on the NIP, a specified (confidential) amount per tonne. This revision will take place shortly after the publication of this SEF.

¹¹⁵ Refer item no. [021](#) on EPR 473.

14 ATTACHMENTS

Confidential Attachment 1	Normal value - Yara AB
Confidential Attachment 2	Dumping margin - Yara AB
Confidential Attachment 3	Normal value - uncooperative and all other exporters (China)
Confidential Attachment 4	Dumping margin - uncooperative and all other exporters (China)
Confidential Attachment 5	Normal value - uncooperative and all other exporters (Sweden)
Confidential Attachment 6	Dumping margin - uncooperative and all other exporters (Sweden)
Confidential Attachment 7	Normal value - uncooperative and all other exporters (Thailand)
Confidential Attachment 8	Dumping margin - uncooperative and all other exporters (Thailand)
Confidential Attachment 9	Import volumes
Confidential Attachment 10	Summary of circumstances relevant to exportation of goods from Sweden
Confidential Attachment 11	Economic condition of the Australian industry
Confidential Attachment 12	Factors that affected QNP's production and sales volumes
Confidential Attachment 13	Australian ammonium nitrate market
Confidential Attachment 14	Details of contract negotiations
Confidential Attachment 15	Assessment of prices in the absence of dumping
Confidential Attachment 16	Materiality of injury to the Australian industry
Confidential Attachment 17	USP and NIP calculations