



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

## **REPORT NO. 473**

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

**18 April 2019**

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## ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACDN	Australian Customs Dumping Notice
the Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADN	Anti-Dumping Notice
AEL Mining Services	AECI Australia Pty Ltd, trading as AEL Mining Services Australia
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
CTM	Cost to make
CTMS	Cost to make and 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)
the Guidelines	<i>Guidelines on the Application of the Form of Dumping Duty 2013</i>
HDAN	High density ammonium nitrate
Incitec Pivot	Incitec Pivot Limited
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>
the Minister	the Minister for Industry, Science and Technology
Moncourt	Moncourt Group Pty Ltd

## PUBLIC RECORD

NIP	Non-injurious Price
Orica	Orica Australia Pty Ltd
PAD	Preliminary affirmative determination
Phoenix	Phoenix Blasting Services Pty Ltd
Polene Plastic	Polene Plastic Co., Ltd
QNP	Queensland Nitrates Pty Ltd
ROI	Return on investment
Russia	the Russian Federation
SEF	Statement of Essential Facts
SEF 473	Statement of Essential Facts No. 473
SG&A	Selling, general and administration
Thailand	the Kingdom of Thailand
Thai Nitrate	Thai Nitrate Co., Ltd
USP	Unsuppressed Selling Price
Yahua	Yahua Australia Pty Ltd
Yara	Yara AB
Yara Pilbara Nitrates	Yara Pilbara Nitrates Pty Ltd

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Introduction

This report has been prepared following an investigation by the Commissioner of the Anti-Dumping Commission (the Commissioner) in response to an application<sup>1</sup> made by CSBP Limited (CSBP), Orica Australia Pty Ltd (Orica) and Queensland Nitrates Pty Ltd (QNP) (collectively, the applicants) that alleged that ammonium nitrate (the goods) exported to Australia from the People's Republic of China (China), Sweden and the Kingdom of Thailand (Thailand) at dumped prices has caused material injury to the Australian industry producing like goods.

This report makes recommendations to the Minister for Industry, Science and Technology (the Minister) and sets out the findings on which the Commissioner bases those recommendations.

### 1.2 Recommendations to the Minister

Based on the findings in this report, the Commissioner recommends 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 decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> 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) for the purpose of making a report to the Minister.

#### 1.3.2 Application

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

The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China, Sweden and Thailand.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation on 25 June 2018. Public notification of the initiation of the investigation was also made on 25 June 2018.

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<sup>1</sup> Refer document no. [001](#) on the Electronic Public Record (EPR) for case no. 473.

<sup>2</sup> Unless otherwise specified all legislative references are to the *Customs Act 1901*.

*Consideration Report No. 473* (CON 473)<sup>3</sup> and Anti-Dumping Notice (ADN) No. 2018/103<sup>4</sup> provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### **1.3.3 Preliminary affirmative determination**

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 in accordance with subsection 269TD(1), made a preliminary affirmative determination (PAD) to that effect.<sup>5</sup> 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.

Following the publication of the Statement of Essential Facts (SEF) on 25 February 2019, the Commissioner revised the level of securities required and taken under section 42 of the Act.<sup>6</sup> The revised level of 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 1 March 2019.

### **1.3.4 Statement of Essential Facts**

On 25 February 2019, the Commissioner placed on the public record a SEF<sup>7</sup> on which the Commissioner proposed to base his recommendations to the Minister in relation to the application.<sup>8</sup>

The SEF was originally due to be placed on the public record by 13 October 2018. Under subsection 269ZHI(3), the Commissioner was granted extensions of time to publish the SEF and to provide his final report to the Minister.<sup>9</sup>

### **1.3.5 Final report**

In making the recommendations in this report, the Commissioner had regard to:

- the application;
- all submissions concerning and subsequent to the publication of ADN No. 2018/103 to which the Commissioner has had regard for the purpose of formulating the SEF;

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<sup>3</sup> Refer document no. [002](#) on EPR 473.

<sup>4</sup> Refer document no. [003](#) on EPR 473.

<sup>5</sup> Refer ADN No. 2018/166, document no. [021](#) on EPR 473.

<sup>6</sup> Refer document no. [046](#) on EPR 473.

<sup>7</sup> Refer document no. [044](#) on EPR 473.

<sup>8</sup> As required by subsection 269TDAA(1).

<sup>9</sup> Refer document nos. [020](#) and [037](#) on EPR 473.

- the SEF;
- all submissions made in response to the SEF;
- submissions made prior to the SEF that, due to their timing, were not considered by the Commissioner for the purpose of formulating the SEF; and
- any other matters that the Commissioner considered to be relevant.

In accordance with subsection 269TEA(5), this report includes a statement of the Commissioner's reasons for the recommendations in this report. The statement of the Commissioner's reasons:

- sets out the material findings of fact on which the recommendations are based; and
- provides particulars of the evidence relied on to support those findings.

## **1.4 Findings and conclusions**

A summary of the Commissioner's findings and recommendations 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 wholly manufactured in Australia.

### **1.4.3 Australian market (Chapter 5)**

The Australian ammonium nitrate market is supplied from 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 and other countries.

### **1.4.4 Dumping assessment (Chapter 6)**

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

Country	Exporter	Dumping margin <sup>10</sup>
China	Uncooperative and all other exporters	39.3%
Sweden	Yara AB	51.1%
	Uncooperative and all other exporters	61.3%
Thailand	Uncooperative and all other exporters	32.7%

**Table 1: Dumping margins**

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<sup>10</sup> Dumping margins are expressed as a percentage of the export price.



#### **1.4.5 Approach to injury and causation assessment**

The Commissioner has outlined his approach to assessing injury to the Australian industry and causation. This includes the cumulative effect of exports from the subject countries.

#### **1.4.6 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.

#### **1.4.7 Is dumping causing material injury? (Chapter 9)**

The Commissioner is satisfied that material injury to the Australian industry in the form of price depression, decreased profit and profitability, and loss of sales volumes (lost contracts) has been or is being caused by dumped goods exported to Australia from the subject countries during the investigation period.

#### **1.4.8 Will dumping and material injury continue? (Chapter 10)**

The Commissioner is satisfied 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.

#### **1.4.9 Non-injurious price (Chapter 11)**

The Commissioner 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 Commissioner has assessed the NIP from an unsuppressed selling price (USP) based on CSBP's, Orica's and QNP's prices for domestic sales of ammonium nitrate made from 1 April 2016 to 31 March 2017.

The Commissioner found that, for exportations of the goods from China, Sweden and Thailand, the NIP is below the normal value and therefore the Minister must have regard to the 'lesser duty rule'.

#### **1.4.10 Proposed form of measures (Chapter 12)**

The Commissioner recommends that measures be imposed using the combination duty method, and the NIP is the operative measure.

#### **1.4.11 Recommendations (Chapter 13)**

The Commissioner recommends that the Minister publish a dumping duty notice in accordance with subsections 269TG(1) and 269TG(2) with respect to all exporters of ammonium nitrate from China, Sweden and Thailand.

## 2 BACKGROUND

### 2.1 Initiation

On 29 March 2018, CSBP, Orica and QNP lodged an application under subsection 269TB(1) for the publication of a dumping duty notice in respect of ammonium nitrate exported to Australia from China, Sweden and Thailand.<sup>11</sup>

The applicants alleged in the application that the Australian industry had suffered material injury caused by ammonium nitrate exported to Australia from China, Sweden and Thailand at dumped prices.

Subsequent to receiving further information from the applicants, the last of which was received on 21 May 2018, and having considered the application, 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. 2018/103<sup>12</sup> provides further details relating to the initiation of the investigation.

In respect of this investigation:

- the investigation period<sup>13</sup> 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 or is being 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

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<sup>11</sup> Refer document no. [001](#) on EPR 473.

<sup>12</sup> Refer document no. [003](#) on EPR 473.

<sup>13</sup> As defined by subsection 269T(1).

exported to Australia from Russia. Notification of the then Minister's decisions was given in ACDN No. 2006/19 on 17 May 2006.

On 12 April 2011, the then Minister for Home Affairs accepted the findings and recommendations in *Trade Measures Report No. 168*<sup>14</sup> (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*<sup>15</sup> (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*<sup>16</sup> 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 (either directly or via Estonia) 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**

In accordance with subsection 269TD(1), the Commissioner may make a 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 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

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<sup>14</sup> Refer document no. [037](#) on EPR 168.

<sup>15</sup> Refer document no. [037](#) on EPR 169.

<sup>16</sup> Refer document no. [028](#) on EPR 312.

ammonium nitrate from China, Sweden and Thailand to prevent material injury to the Australian industry occurring while the investigation continued.

Following the publication of SEF 473, the form of securities were amended. The revised level of securities were taken in respect of any interim dumping duty that became payable in respect of the goods entered for home consumption on or after 1 March 2019. Further details are in ADN No. 2019/29.<sup>17</sup>

## **2.4 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), 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.<sup>18</sup>

On 25 February 2019, the Commissioner placed on the public record a statement of the facts (SEF 473)<sup>19</sup> on which the Commissioner proposed to base his recommendations to the Minister in relation the application. SEF 473 informed interested parties of the facts established as of the date the SEF was placed on the public record and allowed them to make submissions in response.

Following its publication on the public record, interested parties had 20 days to respond to SEF 473. Responses to the SEF were to be provided to the Commissioner by no later than 17 March 2019. The Commissioner had regard to submissions received in response to SEF 473 in preparing this report and recommendations to the Minister.

## **2.5 Submissions received from interested parties**

The Commission has received numerous submissions from interested parties during the course of the investigation.

Each submission has been considered by the Commissioner in preparing this report and his recommendations to the Minister. All submissions received are listed in **Non-Confidential Appendix 1** to this report.

## **2.6 Extension of time following SEF 473**

In SEF 473, it was stated that the report and the Commissioner's recommendations was to be provided to the Minister by 11 April 2019. To further consider information provided by interested parties and to invite submissions in relation to the proposed form of

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<sup>17</sup> Refer document no. [046](#) on EPR 473.

<sup>18</sup> Refer document nos. [020](#) and [037](#) on EPR 473.

<sup>19</sup> Refer document no. [044](#) on EPR 473.

## **PUBLIC RECORD**

measures, the Commissioner further extended the due date to provide his final report to the Minister (ADN No. 2019/50 refers).<sup>20</sup>

### **2.7 Public record**

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification reports and other publicly available documents. The public record is available online at [www.adcommission.gov.au](http://www.adcommission.gov.au). Documents on the public record should be read in conjunction with this report.

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<sup>20</sup> Refer document no. [061](#) on EPR 473.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Finding

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

#### 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 application can be found in CON 473<sup>21</sup> and ADN No. 2018/103.<sup>22</sup>

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<sup>21</sup> Refer document no. [002](#) on EPR 473.

<sup>22</sup> Refer document 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 (either 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 under consideration.

#### *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 under consideration.

#### *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 in the mining, quarrying and construction industries.



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 predominantly 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 nitrate 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 under consideration 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 process (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,<sup>23</sup> 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.

Whether the Australian industry produces like goods to imported HDAN was considered during the investigation into alleged dumping of ammonium nitrate exported from Russia (2001), and in the subsequent 2005, 2010 and 2015 continuation inquiries.

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<sup>23</sup> Refer document no. [038](#) on EPR 473.



In *Trade Measures Report No. 28*,<sup>24</sup> the Australian Customs Service determined that:

...low density, high density AN<sup>25</sup> 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.

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 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

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<sup>24</sup> Relevant to the investigation into alleged dumping of ammonium nitrate exported to Australia from Russia, May 2001.

<sup>25</sup> Ammonium nitrate (AN).

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.<sup>26</sup>

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, although AECI Australia Pty Ltd (trading as AEL Mining Services Australia), in its submission dated 18 March 2019,<sup>27</sup> claimed that this product is not readily available.

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

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<sup>26</sup> 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.

<sup>27</sup> Refer document no. [057](#) on EPR 473.

### 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.<sup>28</sup>

Further justification for this claim is outlined in a report commissioned by BHP titled *Opinion of Preliminary Affirmative Determination* (the Frontier Report),<sup>29</sup> 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 test<sup>30</sup> 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,<sup>31</sup> 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.

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”.<sup>32</sup> The Commission has undertaken separate verification visits to the relevant importers of

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<sup>28</sup> Refer document no. [032](#) on EPR 473, page 2.

<sup>29</sup> Refer document no. [032](#) on EPR 473.

<sup>30</sup> Refer document no. [032](#) on EPR 473, page 6 of Annexure A.

<sup>31</sup> Refer section 3.3 of this report for a description of the goods.

<sup>32</sup> Refer document no. [032](#) on EPR 473, page 10 of Annexure A.

the goods,<sup>33</sup> Yara AB (the exporter of the goods from Sweden)<sup>34</sup> and the Australian industry (CSBP<sup>35</sup> and Orica<sup>36</sup>). 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.

### **3.4.3 Submission – exemption inquiry relating to imported HDAN**

In its submission dated 18 March 2019, AECI Australia Pty Ltd stated that, regardless of the Commission’s assessment of like goods in this investigation, this assessment is not relevant to the exemption sought in accordance with subsection 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).<sup>37</sup>

The exemption request (exemption inquiry no. EX0066<sup>38</sup>) is separately being considered in accordance with the Dumping Duty Act, and the outcome of this investigation does not have any bearing on the consideration of this exemption request.

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<sup>33</sup> Refer document nos. [022](#), [024](#) and [025](#) on EPR 473.

<sup>34</sup> Refer document no. [023](#) on EPR 473.

<sup>35</sup> Refer document no. [042](#) on EPR 473.

<sup>36</sup> Refer document no. [040](#) on EPR 473.

<sup>37</sup> Refer document no. [057](#) on EPR 473.

<sup>38</sup> Refer ADN No. 2018/104, document no. [005](#) on EPR EX0066.

### **3.5 Conclusion**

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.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

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

### 4.2 Legislative framework

The Commissioner must be satisfied that “like” goods are in fact produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) specifies 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.

### 4.3 Production process

Ammonium nitrate is produced by reacting ammonia with nitric acid. This chemical reaction produces ammonium nitrate solution, which can be solidified 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 involving substantial value-adding processes that are undertaken in capital-intensive production facilities.

The Commission has undertaken verification visits to CSBP<sup>39</sup> and Orica<sup>40</sup> 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.

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<sup>39</sup> Refer document no. [042](#) on EPR 473.

<sup>40</sup> Refer document no. [040](#) on EPR 473.

#### 4.4 Manufacturers of ammonium nitrate

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.

The Commission wrote to Incitec Pivot, the parent company of Dyno Nobel, on 26 June 2018 and on 21 September 2018 and sought participation in this investigation. Neither Incitec Pivot nor Dyno Nobel participated in this investigation.

The Commission has information relevant to Dyno Nobel's production volumes, obtained from Incitec Pivot's financial reports available on its website. Further, the Commission has obtained information relevant to Yara Pilbara Nitrates' production volumes during the investigation period.

Based on the information relevant to each manufacturer's production volume, the Commission estimates that the applicants accounted for 78 per cent of the total production volume in Australia during the investigation period, with the remaining 22 per cent comprised of Dyno Nobel and Yara Pilbara Nitrates.<sup>41</sup>

Information relevant to each manufacturer's production volume during the investigation period is at **Confidential Attachment 1**.

#### 4.5 Conclusion

The Commissioner is satisfied, in accordance with subsections 269T(2) and 269T(4), that there are like goods wholly, or partly, manufactured in Australia.

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<sup>41</sup> 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.



## 5 AUSTRALIAN MARKET

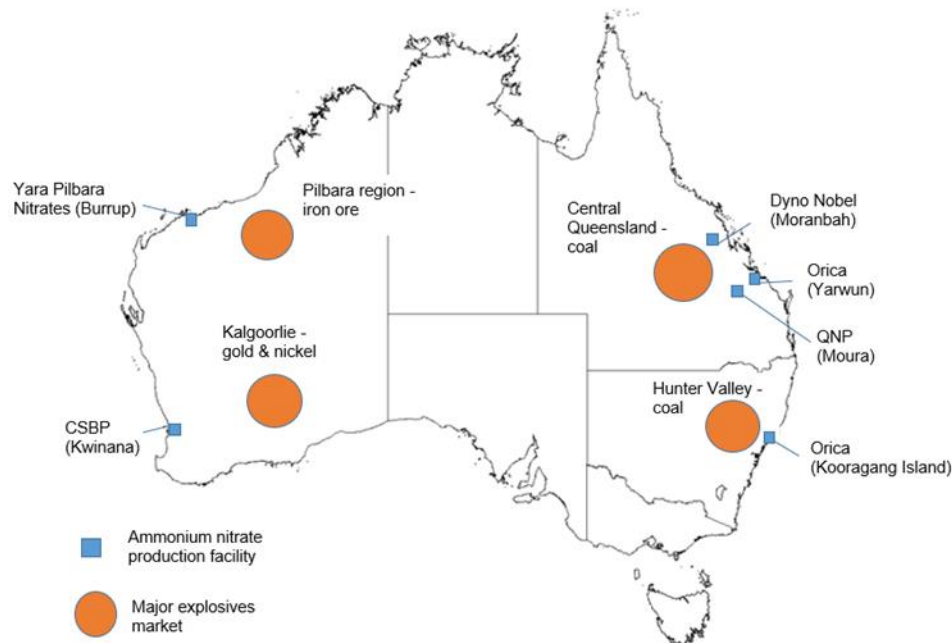
### 5.1 Finding

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 good<sup>42</sup> 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 coal 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**

<sup>42</sup> 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.



The applicants have claimed that the Australian 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 import volumes and prices 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.

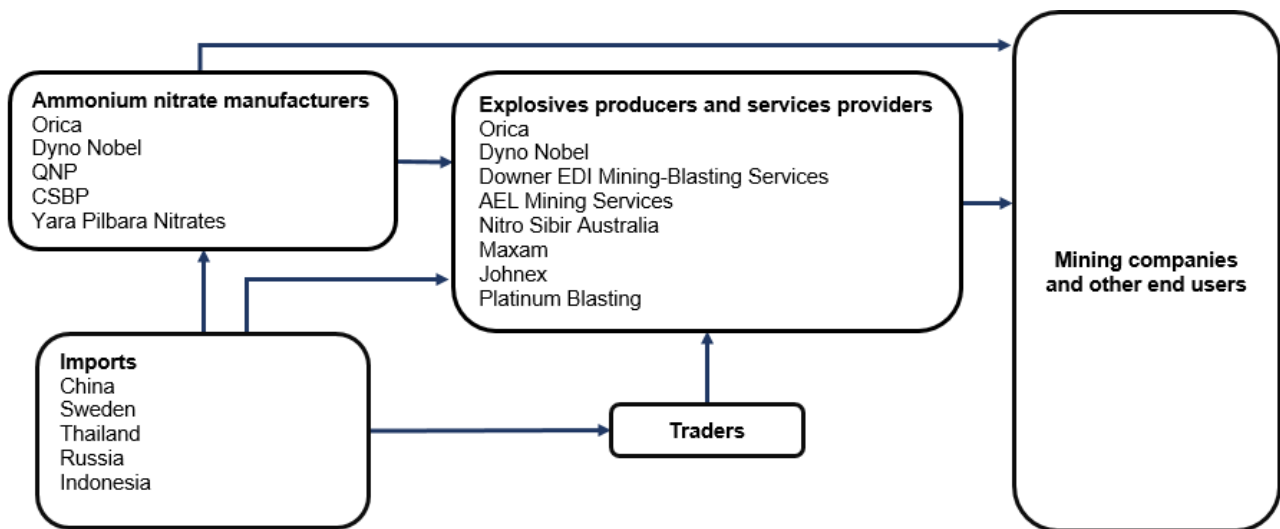


Figure 2: Ammonium nitrate supply channel

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

Ammonium nitrate is imported either directly by explosives providers or is imported via traders. The Commission understands that it is unusual for mining companies to directly import ammonium nitrate. The Commission found no evidence that any mining companies directly 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 report).

These contracts, usually 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 derivative, commercial explosives) in NSW and Queensland is primarily driven by demand from entities that mine thermal and metallurgical coal. In WA, demand for ammonium nitrate is primarily driven by demand 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 in section 5.5 of this chapter) 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.<sup>43</sup> 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.<sup>44</sup> 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 as technical grade, industrial grade or explosives 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 report.

#### **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 domestically manufactured ammonium nitrate 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.

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<sup>43</sup> Refer document no. [032](#) on EPR 473.

<sup>44</sup> 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](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 end-users.

### **5.4.1 Manufacturers of ammonium nitrate**

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

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 entities 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.

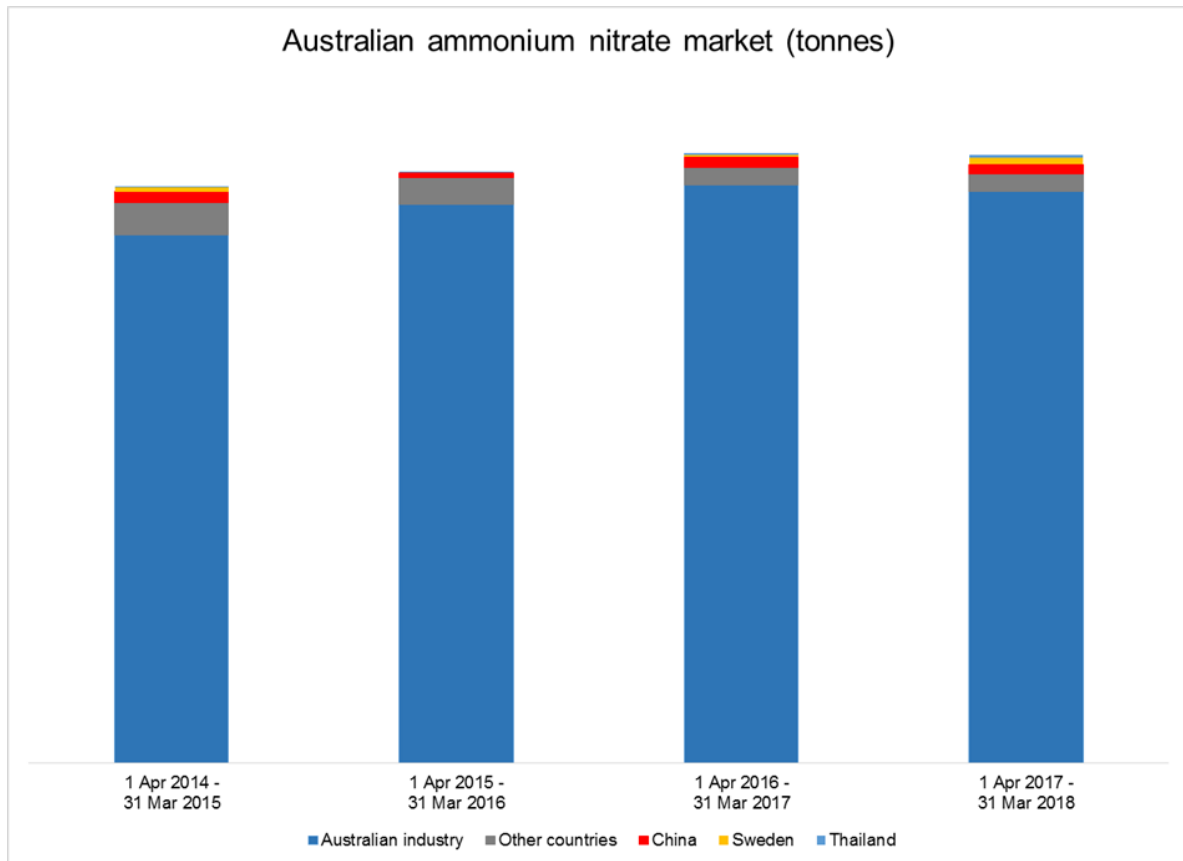
The importer verification reports are available on the public record.<sup>45</sup>

## **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).

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<sup>45</sup> Refer document nos. [022](#), [024](#) and [025](#) on EPR 473.



**Figure 3: Australian market for ammonium nitrate (tonnes sold) – 1 April 2014 to 31 March 2018**

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 this 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 report.

## 6 DUMPING INVESTIGATION

### 6.1 Finding

The Commissioner has found that exports of ammonium nitrate to Australia from China, Sweden and Thailand 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 <sup>46</sup>
China	Uncooperative and all other exporters	39.3%
Sweden	Yara AB	51.1%
	Uncooperative and all other exporters	61.3%
Thailand	Uncooperative and all other exporters	32.7%

**Table 2: 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 normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present.

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<sup>46</sup> Dumping margins are expressed as a percentage of the export price.



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 report.

### **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' in relation to the investigation.

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);<sup>47</sup>
- Polene Plastic Co., Ltd (Polene Plastic) (Thailand);
- Thai Nitrate Co., Ltd (Thai Nitrate) (Thailand); and
- Yara AB (Yara) (Sweden).<sup>48</sup>

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<sup>47</sup> Refer document no. [005](#) on EPR 473.

<sup>48</sup> Refer document 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 in Sweden and examined its exports as part of the investigation. The Commission considers Yara 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 determined the export price and normal value in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively, having regard to all relevant information and as required by subsection 269TACAB(1).

### 6.5.1 Phoenix

In its response to the exporter questionnaire,<sup>49</sup> 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 exporter 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.<sup>50</sup>

### 6.5.2 Polene Plastic and Thai Nitrate

Both Polene Plastic and Thai Nitrate provided a joint response within the legislated period, however, the response contained critical deficiencies that 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).

The Commission considers that the information provided by Polene Plastic and Thai Nitrate could not be verified for accuracy, completeness and relevance. Therefore, in

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<sup>49</sup> Refer document no. [005](#) on EPR 473.

<sup>50</sup> In accordance with subsections 269TAB(4) and 269TAC(7) respectively.

accordance with subsection 269TAB(4), the Commission considers that the information provided by Polene Plastic and Thai Nitrate is unreliable for the purpose of section 269TAB.

## **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 ammonia<sup>51</sup> production

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<sup>51</sup> Ammonia is a major input into the production of ammonium nitrate. Coal is a major raw material used in the production of ammonia in China

costs. The Commission also assessed the applicants' coal consumption assumptions 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.

The Commission notes that the applicants have not applied an amount for profit in constructing the normal value, nor have they provided any information relevant to the profit margin on sales of like goods in China. In the absence of any information in relation to the profit achieved on domestic sales of ammonium nitrate in China, in SEF 473, the Commission had not applied an amount for profit in determining the normal value for the goods exported from China (in accordance with subsection 269TAC(6)).

In its submission dated 15 March 2019, Orica submitted that it is "unrealistic and improbable that Chinese AN [ammonium nitrate] exporters operate on the basis of a nil profit margin".<sup>52</sup> Orica further submitted that not applying any profit in constructing a normal value fails to recognise the capital risk in the ammonium nitrate industry, given that the manufacture of ammonium nitrate is capital intensive. Orica submitted that the Commission could rely on Yara's verified information to derive an amount for profit to use in constructing the normal value for the goods exported from China.

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<sup>52</sup> Refer document no. [052](#) on EPR 473, page 3 refers.

The Commission recognises that the manufacture of ammonium nitrate is capital intensive and therefore considers that Orica's concerns are warranted; however, the Commission does not consider that Yara's information, pertaining to its profit amount on its sales of ammonium nitrate in Sweden, is relevant to sales of like goods in China. The Commission instead considers that it is more appropriate to have regard to information relevant to the exporters in China, as it is more relevant information in accordance with subsection 269TAC(6). Therefore, the Commission has had regard to publicly available information relating to one of the exporters (Shaanxi Xinghua Chemistry Co., Ltd) of the goods from China to determine a pre-tax margin of 12.45 per cent<sup>53</sup> for calendar year 2017 (the most relevant fiscal year to the investigation period) for the purpose of constructing the normal value for the goods exported from China (in accordance with subsection 269TAC(6)).<sup>54</sup>

Further, the Commission has used the same publicly available information for Shaanxi Xinghua Chemistry Co., Ltd to determine an amount for SG&A (6.3 per cent of the cost of goods sold, or 5.2 per cent of the sales revenue) for the calendar year 2017, which is more contemporary than the information provided by the applicants in the application in relation to SG&A (14.7 per cent of sales revenue), and is relevant to the investigation period.

Having regard to this relevant information, the Commission has applied an amount for SG&A and profit in constructing the normal value for the goods exported from China in accordance with subsection 269TAC(6). Therefore, the normal value, and the dumping margin, for the goods exported from China has changed from that determined in SEF 473.

The Commission applied an adjustment to the normal value for the non-refundable value added tax amount (17 per cent for exports of ammonium nitrate).

The calculations of the normal value for 'uncooperative and all other exporters' from China is at **Confidential Attachment 2**.

#### Submission concerning determination of the normal value for China

In its submission dated 14 December 2018,<sup>55</sup> 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

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<sup>53</sup> Available at <https://quotes.wsj.com/CN/XSHE/002109/financials/annual/income-statement> (accessed on 27 March 2019).

<sup>54</sup> Given that Shaanxi Xinghua Chemistry Co., Ltd. is a publicly listed company on the Shenzhen stock exchange in China, the Commission was able to obtain publicly available information relevant to its financial performance. The Commission could not obtain any information relevant to the other two exporters identified in this section of the report.

<sup>55</sup> Refer document no. [036](#) on EPR 473.

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 whether any discounts or rebates were applied that would affect the purchase price.

In its submission dated 17 March 2019, Glencore stated that the Commission’s reasons, as outlined in SEF 473, for deeming Yahua’s information as less relevant are “not compelling”.<sup>56</sup> The Commission has considered Glencore’s specific concerns, as follows:

- Glencore stated that the Commission should have requested the corporate structure and list of affiliates and that this “should be sufficient for these purposes”.<sup>57</sup> The Commission made a determination based on the information provided and available to it, and even if it had received the corporate structure and list of affiliates, this information would not be sufficient to determine whether the purchases were at arms length in accordance with section 269TAA of the Act. Section 269TAA outlines the test that should be adhered to in determining whether a purchase or sale is at arms length. Because the exporters of the goods to Australia from China have not cooperated in this investigation, the Commission has no information to establish whether there are any considerations payable for or in respect of the goods other than their price (subsection 269TAA(1)(a) refers), and whether the buyer will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, compensated or otherwise receive a benefit for or in respect of the whole or any part of the price (subsection 269TAA(1)(c) refers).
- Glencore stated that “simple cost modelling can provide a strong guide as to the profitability of AN [ammonium nitrate] sales”.<sup>58</sup> The Commission’s approach to testing whether sales are profitable and therefore whether they are in the ordinary course of trade is based upon the exporter’s domestic sales of all like goods during

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<sup>56</sup> Refer document no. [051](#) on EPR 473, page 8 refers.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

the investigating period, and the exporter's (the manufacturer's) cost to make and sell pertaining to the manufacture and sales of like goods. As noted in this report and in SEF 473, neither Yahua nor any of its related entities are exporters of the goods to Australia, and given that no exporters of the goods from China have cooperated in this investigation, the Commission does not have information relevant to each exporter's total domestic sales and costs and will not rely upon "simple cost modelling" as suggested by Glencore. In saying this, the information that the Commission does have (as identified earlier in section 6.6.2 of this report) indicates that the purchases by Yahua are not profitable and are therefore not in the ordinary course of trade.

- Glencore submitted that the Commission should have undertaken a similar assessment of Yahua's information to that undertaken in relation to Yara's export sales to Australia and its domestic sales. Glencore submitted that "a review of technical data sheets and an examination of the use of the AN [ammonium nitrate] would be sufficient for this purpose and is easily obtainable".<sup>59</sup> Yara participated in this investigation by providing relevant information to the Commission. Yara also accommodated an on-site verification visit in Sweden to allow the Commission to verify this information for accuracy and completeness. No exporters of the goods from China cooperated in this investigation, and therefore, the Commission does not have relevant information to undertake such assessment.

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 and therefore may not be reflective of general prices of like goods sold for home consumption 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. Further, in accordance with subsection 269TAC(7), the Commission considers that the information provided by Yahua is unreliable for the purpose of section 269TAC.

### 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).

In undertaking a comparison of the export price with the normal value, rather than using an average exchange rate for the whole investigation period to convert the relevant variable factor (as undertaken in SEF 473), the Commission used the relevant daily exchange rate in order to match the valuation date (which approximates the date of exportation) for each exportation.<sup>60</sup>

The Commission has calculated a dumping margin for 'uncooperative and all other' exporters from China as **39.3 per cent**.

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<sup>59</sup> Ibid.

<sup>60</sup> Relevant exchange rates obtained from the Reserve Bank of Australia website - <https://www.rba.gov.au/>.



The calculations of the dumping margin for ‘uncooperative and all other exporters’ from China is at **Confidential Attachment 3**.

Submission concerning determination of the dumping margin for China

In its submission dated 24 December 2018,<sup>61</sup> the CCOIC raised its concerns about the increase in the dumping margin in relation to goods exported from 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 application<sup>62</sup> 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 providing relevant information in 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 the SEF. As noted in the previous section of this chapter, the Commission has taken a weighted average of the estimated 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).

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

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<sup>61</sup> Refer document no. [038](#) on EPR 473.

<sup>62</sup> Refer document no. [001](#) on EPR 473.

(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.<sup>63</sup>

#### *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.

The ascertained export price for Yara is at **Confidential Attachment 4**.

#### *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 5**.

#### Submission concerning determination of the normal value for Yara

In its submission dated 5 December 2018,<sup>64</sup> 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 exported goods and like goods sold domestically, as well as due to the terms and circumstances of those domestic sales.

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<sup>63</sup> Refer document no. [023](#) on EPR 473.

<sup>64</sup> Refer document no. [028](#) on EPR 473.



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 report<sup>65</sup> 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 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.<sup>66</sup>

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<sup>65</sup> Refer document no. [023](#) on EPR 473.

<sup>66</sup> Ibid.

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) states that adjustments will be made if there is evidence that a particular difference affects price comparability.<sup>67</sup> 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 of country, customer, quantities, timing and 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.<sup>68</sup>

As such, the Commission has not made an adjustment to the normal value under subsection 269TAC(8).

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<sup>67</sup> [Dumping and Subsidy Manual](#) (November 2018), page 64 refers.

<sup>68</sup> Refer document no. [023](#) on EPR 473.

### 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	<b>Adjust</b> for the difference in level of trade
Domestic duty drawback	<b>Deduct</b> the cost of import duty
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Export inland transport	<b>Add</b> the cost of Australian export inland transport
Export handling and port charges	<b>Add</b> the cost of Australian export handling and port charges

**Table 3: Adjustments to Yara's normal value**

### 6.7.1.4 Dumping margin

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

The calculations of the dumping margin for Yara is at **Confidential Attachment 6**.

## 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.

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

### 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 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 8**.

## **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 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) (as prescribed in subsection 269TACAB(1)), 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 9**.

### **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 dumping margin for ‘uncooperative and all other’ exporters from Thailand as **32.7 per cent**.

This dumping margin differs to the margin calculated in SEF 473. In undertaking a comparison of the export price with the normal value, rather than using an average exchange rate for the whole investigation period to convert the relevant variable factor (as undertaken in SEF 473), the Commission used the relevant daily exchange rate in order to match the valuation date (which approximates the date of exportation) for each exportation.<sup>69</sup>

The calculations of the dumping margin for ‘uncooperative and all other exporters’ from Thailand is at **Confidential Attachment 10**.

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<sup>69</sup> Relevant exchange rates obtained from the Reserve Bank of Australia website - <https://www.rba.gov.au/>.

## 6.9 Dumping assessment – summary

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.<sup>70</sup>

## 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 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, Sweden or Thailand in accordance with subsection 269TDA(3).

The Commission's analysis of the import volumes of ammonium nitrate is at **Confidential Attachment 11**.

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<sup>70</sup> 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(2), 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*<sup>71</sup> 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.<sup>72</sup>

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

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<sup>71</sup> *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at [www.adcomission.gov.au](http://www.adcomission.gov.au).

<sup>72</sup> Refer document no. [012](#) on EPR 473.

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.<sup>73</sup> 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.<sup>74</sup>

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

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<sup>73</sup> Refer document nos. [013](#), [016](#) and [019](#) on EPR 473.

<sup>74</sup> 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 Australian industry and from imports, therefore, the applicants' volumes have to some extent been affected by this dual sourcing during the investigation period.



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.<sup>75</sup> Under a ‘but for’ analytical method, 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 the absence of 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 and re-negotiated prices to what the prices 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 report.

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

## **7.4 The injury analysis period**

The Commissioner advised at the date of initiation of this investigation in ADN No. 2018/103<sup>76</sup> 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.

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

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<sup>75</sup> [Dumping and Subsidy Manual](#) (November 2018), page 131 refers.

<sup>76</sup> Refer document no. [003](#) on EPR 473.



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 report, 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 2018, 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” because this supply arrangement was “created by the Australian industry producing like goods”.<sup>77</sup>

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

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<sup>77</sup> Refer document no. [028](#) on EPR 473.

not be cumulated with the effect of the exportations of the goods from the other two countries. Yara reiterated this view in its submission dated 18 March 2019.<sup>78</sup>

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.<sup>79</sup>

Following the publication of SEF 473, Yara requested a copy of Confidential Attachment 10 to the SEF. In its submission dated 18 March 2019, Yara claimed that the Commission had omitted "crucial facts"<sup>80</sup> regarding the purpose of the supply agreement in this attachment, which it claimed was to "*benefit*, not injure - another member of the Australian industry".<sup>81</sup> Yara amended the copy of Attachment 10 to SEF 473 and submitted it with its submission dated 18 March 2019.

The Commission has considered Yara's claims and the information obtained throughout the investigation, as follows:

- while the majority of the goods exported from Sweden by Yara have been imported by only one customer in Australia during the investigation period in accordance with a supply agreement, the importer of these goods exported from Sweden does compete with other entities (including the Australian industry) in the Australian market for supply contracts and has also on-sold the goods to other entities within the market (including the Australian industry and importers of the goods from some of the other subject countries), contrary to the importer's claims that these imports were only for supply to a specific customer's mine sites;<sup>82</sup>
- the Commission has information that Yara has competed, at dumped prices, directly with certain Australian industry members for a significant contract during the investigation period;
- the "unique" supply arrangement Yara refers to is not exclusive, and the importer of the goods exported from Sweden could have sourced the ammonium nitrate from certain Australian industry members which it also has supply arrangements with. Further, Yara has willingly chosen to export the goods from Sweden at significantly dumped prices to match pricing in accordance with this supply arrangement; and
- the applicants have presented evidence to the Commission that they do take into consideration import prices, including the relatively low import prices of the goods exported from Sweden, and that these prices have had an effect on the Australian industry's prices; therefore, even though the goods exported from Sweden appear to be the result of one entity's decision to enter into such agreement to benefit one member of the Australian industry (as argued by Yara), this has contributed to the injury experienced by the industry as a whole.

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<sup>78</sup> Refer document no. [055](#) on EPR 473.

<sup>79</sup> Refer document no. [018](#) on EPR 473.

<sup>80</sup> Refer document no. [055](#) on EPR 473, page 8 refers.

<sup>81</sup> Ibid.

<sup>82</sup> Refer document no. [058](#) on EPR 473.

Based on the above, 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.

In its submission dated 18 March 2019, the CCOIC submitted that the exports of the goods from China should not be cumulated with exports of the goods from Sweden and Thailand for the following reasons:<sup>83</sup>

- most sales of the goods from China were made to the Australian industry;
- the volume of exports from China, and the market share of these exports, decreased in the investigation period;
- the price of the exports from China was higher than the price of the other exports;
- the exports from China comprise both HDAN and LDAN; and
- there is no evidence that Chinese export prices undercut prices of the Australian industry.

The Commission has considered the CCOIC's claims, as follows:

- while Orica and Dyno Nobel did import goods exported from China in the investigation period, the majority of the goods were imported by entities other than Orica and Dyno Nobel, including entities that also purchased the goods from the Australian industry;
- the Commission does not consider that a decrease in the market share or volume of the goods exported from China indicates that these goods do not compete with goods imported from the other subject countries and like goods manufactured by the Australian industry;
- the Commission does not consider that the export price of the goods, whether they are lower or higher than the price of goods exported from other countries, as a sufficient reason for not considering the cumulative effect of the exportations of the goods from all countries subject to the investigation. Regardless of the relative prices of the goods exported from the subject countries, the Commission has verified that the goods exported from some of the subject countries are imported by the same entities in Australia that compete with the Australian industry;
- the Commission has verified that the goods exported from Thailand also comprise both HDAN and LDAN, and both types of ammonium nitrate from each country (China *and* Thailand) were imported by the same entity during the investigation period. In addition, and as discussed in Chapter 3 of this report, the Australian industry manufactures and sells goods that are like goods to the goods exported from China; and
- there is evidence that the exports of the goods from China at dumped prices has had an effect on the Australian industry's prices during contract negotiations, causing price depression. The Australian industry also competes for contracts with entities that import the goods from China.

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<sup>83</sup> Refer document no. [056](#) on EPR 473.

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Given the above, the Commission considers that the conditions of competition between the imported goods and like goods that are domestically produced are similar, and therefore, the Commission considers that it is appropriate to consider the cumulative effect of exports from each subject country, including China.

## 8 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

### 8.1 Approach to assessment of the economic conditions 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 CSBP,<sup>84</sup> Orica<sup>85</sup> 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 12**). 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.<sup>86</sup> 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.

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<sup>84</sup> The Commission has verified CSBP's information and data - refer document no. [042](#) on EPR 473.

<sup>85</sup> The Commission has verified Orica's information and data - refer document no. [040](#) on EPR 473.

<sup>86</sup> *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at [www.adcomission.gov.au](http://www.adcomission.gov.au).

### 8.2.1 Production volumes

Table 4 shows the variations in the Australian industry's total ammonium nitrate production volumes<sup>87</sup> (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 <sup>88</sup>	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
<b>Australian industry</b>	<b>100.0</b>	<b>102.7</b>	<b>103.8</b>	<b>103.0</b>

**Table 4: 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;<sup>89</sup> 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.

<sup>87</sup> This includes Dyno Nobel's production volumes which the Commission had estimated using publicly available information in Incitec Pivot's profit report for the half-year ended 31 March 2018.

<sup>88</sup> Production volumes combined for Orica's Kooragang Island (NSW) and Yarwun (Queensland) manufacturing plants.

<sup>89</sup> 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 [ammonium nitrate] 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.<sup>90</sup>

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)...<sup>91</sup>

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 5 shows the variations in the applicants' domestic sales volumes of ammonium nitrate<sup>92</sup> from 2014-15 to 2017-18.

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<sup>90</sup> 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.

<sup>91</sup> Refer document no. [001](#) on EPR 473, page 22 of the application refers.

<sup>92</sup> 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 <sup>93</sup>	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
<b>Aggregated</b>	<b>100.0</b>	<b>105.4</b>	<b>110.8</b>	<b>105.8</b>

**Table 5: 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.<sup>94</sup> 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)<sup>95</sup> 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 13**.

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 report.

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<sup>93</sup> Orica's sales volumes encompass sales of both ammonium nitrate and bulk explosives converted to 100 per cent ammonium nitrate equivalent volumes.

<sup>94</sup> For further information, refer verification report – Orica Australia Pty Ltd, document no. [040](#) on EPR 473.

<sup>95</sup> A detailed assessment of CSBP's sales volume by specific product is contained in the verification report – CSBP Limited, document 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.<sup>96</sup> 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 6 shows the relative market shares (by sales volume) of the Australian industry, imports<sup>97</sup> 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 <sup>98</sup>	91.7%	94.4%	94.7%	94.0%
<b>Australian market</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Table 6: Market share**

Table 7 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 <sup>99</sup>	100.0	105.7	109.3	108.1
<b>Australian market</b>	<b>100.0</b>	<b>102.7</b>	<b>105.9</b>	<b>105.5</b>

**Table 7: Index of variation in sales and import volumes – Australian ammonium nitrate market**

<sup>96</sup> Refer document no. [012](#) on EPR 473.

<sup>97</sup> Data obtained from the ABF customs import database. Imports recognised at the entered for home consumption date.

<sup>98</sup> Includes an estimate of Dyno Nobel's domestic sales volumes, which is based on its ammonium nitrate production volumes.

<sup>99</sup> Includes an estimate of Dyno Nobel's domestic sales volumes, which is based on its ammonium nitrate production volumes.

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 4, and Table 5, 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 6. 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 6.

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.<sup>100</sup> In Chapter 9 of this report, 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 that most of these claimed purchases of the goods from China occurred following the investigation period.

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<sup>100</sup> Data obtained from the ABF customs import database. Imports recognised at the entered for home consumption date.

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 14**.

#### Submission concerning volume of dumped imports

In its submission dated 14 March 2019, the European Commission submits that an increase of 0.4 per cent in the market share of the dumped goods from the countries subject to the investigation cannot be considered as significant in terms of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement, referred to as the ADA throughout).<sup>101</sup>

As set out at section 7.1 of this report, for the publication of a dumping duty notice under section 269TG(2), 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. This requires the Commission to undertake an assessment of the material injury to industry in accordance with section 269TAE of the Act, and with regard to the *Ministerial Direction on Material Injury 2012*.

The Commission considers that the Act, Dumping Duty Act and associated regulations and Ministerial Directions give full effect to Australia's rights and obligations under Article VI of the *General Agreement on Tariffs and Trade 1994*, and the ADA. The Commission has examined injury indicators in terms of volume effects in section 8.2 of this chapter. This includes a consideration of whether there has been a significant increase in dumped imports, either in *absolute* terms or *relative* to production or consumption.

The Commission found that there was an increase in the volume of dumped goods from the countries subject to the investigation in the investigation period (an increase of 19.1 per cent in absolute terms). The Commission considers this increase is substantial. Further, there has also been a substantial increase in the volumes of the dumped goods exported to Australia from Sweden (by 154.2 per cent in the investigation period relative to 2014-15, in absolute terms – table 7 in this chapter refers) and also a significant increase in import volumes of the goods exported from Sweden in relative terms (comprising 0.3 per cent of market share in 2016-17 to 1.2 per cent in 2017-18 – table 6 in this chapter refers).

Based on this, the Commission maintains that there has been a substantial increase in the volume of dumped imports of the goods from the subject countries. The Commission has assessed the materiality of injury in section 9.6 of this report.

#### **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.

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<sup>101</sup> Refer document no. [049](#) on EPR 473.

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 suppression and depression**

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.<sup>102</sup>

Table 8 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 8: 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.

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<sup>102</sup> Refer document no. [001](#) on EPR 473, page 26 of the application refers.

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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 9 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 9: Index of Orica's cost<sup>103</sup> 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 Table 9, 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

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<sup>103</sup> Costs aggregated for Kooragang Island and Yarwun manufacturing plants.

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- an unplanned plant shutdown at Kooragang Island in the December 2017 quarter impacting production and therefore fixed costs.

Table 10 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 10: 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 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 submissions<sup>104</sup> 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 report.

### 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 11 and Table 12 shows the variations in the applicants' net domestic profits and profitability<sup>105</sup> respectively 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	75.4	59.5	48.5
CSBP	100.0	147.6	173.7	174.9
QNP	100.0	112.7	108.6	82.2
<b>Aggregated</b>	<b>100.0</b>	<b>102.0</b>	<b>100.0</b>	<b>89.9</b>

**Table 11: 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
<b>Aggregated</b>	<b>100.0</b>	<b>98.5</b>	<b>98.6</b>	<b>89.7</b>

**Table 12: 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.

<sup>104</sup> Refer document nos. [013](#), [016](#) and [019](#) on EPR 473.

<sup>105</sup> Profitability measured as net profit as a percentage of total sales revenue.

As noted in section 8.3.1 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.

Following the initiation of this investigation, each applicant outlined additional examples in written submissions<sup>106</sup> 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 report.

#### **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.

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<sup>106</sup> Refer document nos. [013](#), [016](#) and [019](#) on EPR 473.



## 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 13 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 13: Index of revenue variations**

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 8.3.1 of this chapter) which was partly offset by higher sales volumes since 2015-16 (refer Table 5 in section 8.2.2 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 5 in section 8.2.2) 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 Tables 10 and 5 respectively in section 8.2.2).

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 14 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 14: 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 15 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 15: 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.<sup>107</sup>

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 15 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 sales volumes during this period. As noted in section 8.2.1 of this report, 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 16 shows the variations in employment numbers for each applicant.

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<sup>107</sup> For further information relevant to Orica's production and production capacity utilisation, please refer to the Commission's verification report relevant to Orica – document no. [040](#) on EPR 473.

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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
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 16: 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.

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 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 report, 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 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 dumped goods exported to Australia from China, Sweden and Thailand is material.

### 9.2 Price effects

As noted in Chapters 7 and 8 of this report, 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 submissions<sup>108</sup> 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 volumes, 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).

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

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<sup>108</sup> Refer document nos. [013](#), [016](#) and [019](#) on EPR 473.



### **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 15**.

#### **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 prices<sup>109</sup> of ammonium nitrate imported into WA (mostly from China and Thailand) for the 12 months ending December 2017.

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.

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<sup>109</sup> Including relevant importation 'landing' costs to derive a price at import parity.



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' 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 15**.

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.

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)<sup>110</sup> 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 prices<sup>111</sup> 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 negotiated prices (or prices that were matched) were, on average, approximately 24.3 per cent lower than the contract prices existing at the time of the negotiation. To quantify the effect of dumping only, the Commission compared the negotiated prices adjusted for dumping (the 'undumped' price) to the negotiated prices. The Commission found that, on average, the prices adjusted for dumping are approximately 17.8 per cent higher than the negotiated prices.

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

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

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 9.6 of this chapter.

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<sup>110</sup> The applicants have regard to import data from various third-party sources, including the Australian Bureau of Statistics (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.

<sup>111</sup> The Commission has used information obtained from the relevant importer and from the ABF customs import database.

### 9.2.3 Submissions concerning contract negotiations

In its submissions dated 27 September 2018 and 5 December 2018, Yara raised its concerns regarding the use of contract negotiations to assess price related injury.<sup>112</sup> Specifically, Yara claimed the following:

- as its prices during the investigation period were in accordance with a special agreement and were 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 inform or arrive at Australian industry price offers, 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, 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".<sup>113</sup> The CCOIC then claims that "the impact of such benchmarks or price offers cannot constitute injury caused by dumping of ammonium nitrate. They are not actual imports of the GUC [goods under consideration]".<sup>114</sup>

As discussed in section 9.2 of this chapter, CSBP's and QNP's prices were influenced by the dumped goods imported during the investigation period, noting that exports from the subject countries comprised 74 per cent and 73 per cent of the total import volume into WA and QLD respectively (refer **Confidential Attachment 11**).

In its submission dated 17 March 2019, following the publication of SEF 473, Glencore submitted that the Commission appears to have failed to properly examine or appreciate

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<sup>112</sup> Refer document nos. [018](#) and [028](#) on EPR 473.

<sup>113</sup> Refer document no. [038](#) on EPR 473, page 10 refers.

<sup>114</sup> Ibid.

the circumstances surrounding commercial negotiations.<sup>115</sup> Moncourt Group Pty Ltd (Moncourt), in its submission dated 15 March 2019, alleged that the Commission has only made a “token attempt” to validate the allegations made by the applicants using other information.<sup>116</sup>

The claims made by the applicants (section 9.2.1 of this chapter refers) were supported by relevant and reliable information, including copies of relevant contracts and price offers, correspondence between the applicants and their customers, and ABS and other trade data used by the applicants, including documentation relevant to other market intelligence relating to competitor pricing in the Australian market, including pricing based on imports of the goods from some countries subject to the investigation. 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.

The Commission also had regard to verified information and data from the importers of the goods exported from each subject country (including information provided by the importers relevant to their bids for contracts in 2017 and 2018), verified information from Yara, ABF data, and information obtained from certain end-users of ammonium nitrate in Australia. Where the information before the Commission did not demonstrate a link between dumped pricing and the Australian industry’s price offers, these examples were not included in the assessment of injury caused by dumping.

Moncourt further submitted that as QNP was not verified, QNP’s claims must be considered unverified allegations. Both Moncourt and Yara submitted that unless more information was provided in addition to the submission on the public record, the submission is not sufficient to draw conclusions concerning injury.<sup>117</sup>

The Commission received confidential documentation (copies of contracts, correspondences, price offers and price formulation workbooks and other related documentation and data) pertaining to the contracts negotiated by QNP to support its claims made in its submission dated 4 October 2018. The Commission is satisfied that the information provided by QNP is relevant and reliable. Further, and as noted by Moncourt in its submission dated 15 March 2019, the Commission has corroborated the applicants’ (including QNP’s) claims using other sources of information where available. For example, for some of the examples provided by QNP, QNP’s claims were corroborated using verified information from one of the importers which imported the goods from the relevant subject country and supplied one of the customers with those volumes.

Yara, in its submissions dated 21 February and 18 March 2019, suggests that the contracts negotiated by CSBP and QNP are for additional volumes or “opportunistic sales”.<sup>118</sup> Yara submits that, as these sales are above the already contracted volumes

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<sup>115</sup> Refer document no. [051](#) on EPR 473.

<sup>116</sup> Refer document no. [050](#) on EPR 473, page 3 refers.

<sup>117</sup> Refer document nos. [050](#) and [055](#) on EPR 473.

<sup>118</sup> Refer documents nos. [043](#) and no. [055](#) on EPR 473.

(which Yara claims are profitable), the Australian industry is not being injured. The Commission notes that most of the examples that have been used in the assessment of material injury are negotiations for extensions of contracts (where the relevant applicant's customer secured new business and sought additional volumes), renewal of contracts (following a termination notice) or new contracts. Nevertheless, even the prices achieved for the additional volumes have been affected by the dumped goods.

Yara further submits that CSBP's examples do not relate to exports of ammonium nitrate by Yara AB and therefore exports from Sweden could not have caused injury to CSBP.<sup>119</sup> Yara also questions if the Commission was provided with evidence of instances where a member of the Australian industry directly used Yara's prices as a basis for a price offer.<sup>120</sup> The Commission has found that the circumstances of some of the contracts negotiated for both CSBP and QNP necessitated the matching of import parity pricing from China, Thailand and Sweden, and there is evidence that both CSBP and QNP had regard to prices of ammonium nitrate from all three countries in formulating its price offers in relation to certain contract negotiations.

In its submission dated 18 March 2019, AEL Mining Services questions the Commission's findings in SEF 473 based on the contract negotiations, in particular how the Commission has quantified injury in the future without accounting for other factors and without being able to predict that it will happen imminently.<sup>121</sup>

The reference by AEL Mining Services to "imminent" injury appears to be a reference to the requirements for determining threat of material injury in accordance with section 269TAE(2B). The Commission's findings relate to dumping that has caused and is causing material injury to the Australian industry, and is not based on threat of material injury.

The Commission's findings based on certain contract negotiations are of price related injury where the Australian industry has had to price their offers for new contracts at lower prices relative to the prices existing in accordance with the contracts in effect at the time of the negotiation. These prices, once accepted, have formed the final price at which the contract has been agreed. As these contracts have been finalised, the price related injury is not injury in the future but has occurred within and following the investigation period, or will occur at the price and date specified in the contract.

Further, noting that most sales of ammonium nitrate in the Australian market are made in accordance with fixed-term contracts, and therefore noting the inappropriateness of undertaking a 'coincidence analysis' (as outlined in Chapter 7 of this report) in these circumstances, the Commission considers that there would be a gap in remedy that would arise if the Commission could not rely upon these contracts to assess injury and causation. The Commission also considers that this would be incongruous with the purposes of the anti-dumping legislation.

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<sup>119</sup> Refer document no. [043](#) on EPR 473.

<sup>120</sup> Refer document no. [048](#) on EPR 473.

<sup>121</sup> Refer document no. [057](#) on EPR 473.

### 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 estimated revenue and profit forgone (on a per annum basis) for each individual contract negotiated as follows:

- price effect on revenue (which directly translates to profit forgone) – the ‘undumped’ price less the re-contracted price (per tonne), multiplied by the contracted minimum annual volume or the volume sold during the investigation period (in tonnes), depending on the specific example. This isolates the effect of dumping from the subject countries, and this is a more conservative estimate than an estimate based on the price prevailing in accordance with the existing contract at the time of the negotiation;
- volume effect on profit (lost volumes) – the price per tonne offered, multiplied by the annual volume (in tonnes) bid for, multiplied by the relevant applicant’s margin in the investigation period.

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.

#### 9.4.1 Submissions concerning profit related injury

In its submission dated 15 March 2019, Moncourt submits that no actual injury has been established, as the injury calculated is ‘profit foregone’ based on an ‘undumped’ price.<sup>122</sup> Moncourt describes profit foregone as “a guess at what an alternative outcome may have been, which is then extrapolated into the future in order to determine materiality”.<sup>123</sup> Moncourt further claims that this ignores other pertinent facts such as over-capacity and the supply and demand imbalance.

Yara made a similar claim in its submission dated 18 March 2019, suggesting that ‘profit injury’ was determined over the duration of the new contracts.<sup>124</sup>

The Commission has estimated profit forgone (which is based on price and volume injury, detailed in section 9.4 above) on an annual / per annum basis and has not extrapolated this to future years (i.e. extrapolated by the number of contract years). Nevertheless, the

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<sup>122</sup> Refer document no. [050](#) on EPR 473.

<sup>123</sup> Ibid, page 2 refers.

<sup>124</sup> Refer document no. [055](#) on EPR 473.

lower renegotiated contract prices will result in lower profit for the duration of the new contracts, regardless of the number of years the contracts are effective.

Further, the Commission has only used examples that show a causal link between the Australian industry's prices and dumped imports, either through matching a price at import parity or where the Australian industry has been specifically requested to match a dumped price. Therefore, the profit foregone is only based on the Australian industry's prices in the absence of dumping, and not on the full price reduction (which would result in a greater estimate of profit forgone) achieved as a result of the negotiations.

In relation to Moncourt's claim that other factors such as over-capacity are ignored, while these factors are addressed in section 9.5 of this chapter, the Commission does not dispute that the Australian industry may have also suffered injury during the investigation period due to these other factors. However, in assessing whether dumping caused material injury to the Australian industry, the Commission quantified the injury caused by dumping by adjusting the negotiated prices for dumping only, with all other variables held constant (refer section 9.2.2 of this chapter for an explanation of the methodology). Therefore, any difference between the negotiated price and the 'undumped' price would only reflect the injury caused by dumping and not any other factors.

## **9.5 Factors other than dumping**

Apart from acknowledging the oversupply in the global ammonium nitrate market, the applicants did not attribute any injury to factors other than dumping from the countries the subject of the investigation.<sup>125</sup> 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 submitted that as the mining boom ended in 2015, the demand for ammonium nitrate decreased rapidly.<sup>126</sup>

In its submission dated 26 July 2018, Phoenix drew a correlation between the reduced sales volumes of domestic producers and diminished coal mining activity in the period of inquiry.<sup>127</sup> 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.<sup>128</sup>

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

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<sup>125</sup> Refer document no. [001](#) on EPR 473, page 28 refers.

<sup>126</sup> Refer document no. [011](#) on EPR 473.

<sup>127</sup> Refer document no. [008](#) on EPR 473.

<sup>128</sup> Refer document no. [038](#) on EPR 473.



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 report). 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 March 2018 quarter (i.e. the last quarter of the investigation period). 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.<sup>129</sup>

The Commission did not find, contrary to claims made in certain submissions,<sup>130</sup> 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.

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.

Following the publication of SEF 473, the CCOIC submitted that “the volume and timing of imports by the Australian industry as mentioned in the SEF is inconsistent with the *export* information provided by CCOIC”.<sup>131</sup> The CCOIC outlined seven instances where it claimed the Australian industry has purchased the goods exported from China during the investigation period and following the investigation period. Based on the wording in SEF 473, the CCOIC appears to have understood that Orica had only imported the goods in the month of March. As noted in SEF 473 and Orica's verification report, Orica had

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<sup>129</sup> Refer document nos. [004](#), [011](#), [026](#) and [038](#) on EPR 473.

<sup>130</sup> Refer document nos. [008](#) and [038](#) on EPR 473.

<sup>131</sup> Refer document no. [056](#) on EPR 473, page 5 refers.



commenced importing the goods from China in the last quarter (March 2018) of the investigation period, and not just in the month of March.

The Commission has information that both Orica and Dyno Nobel have imported the goods *exported* from China during the investigation period, and have continued to import the goods exported from China post-investigation period which is consistent with the CCOIC's observations. By excluding the volumes of the goods *exported* from China to Australia that were purchased and imported by Orica and Dyno Nobel, the export volume 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.<sup>132</sup> In noting this, the Commission has information that there are numerous entities other than Orica and Dyno Nobel that have imported the goods exported from China during the investigation period.

The Commission has found that these exportations of the goods from China, which were imported by Dyno Nobel and Orica, did not influence CSBP's nor QNP's price negotiations or volumes, as outlined in their respective examples discussed in section 9.2.1 of this chapter.

The Commission's analysis of the import volumes of ammonium nitrate is at **Confidential Attachment 11**.

### **9.5.3 Limitations to importation of ammonium nitrate**

DBS, Glencore and BHP have claimed that there are limitations to the importation of ammonium nitrate into Australia.<sup>133</sup> Some of these 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 a hazardous substance);
- the limited options for storage (specific requirements for the storage facility and limitations on the quantity that can be stored);
- the requirement to have facilities in close proximity to mine sites;
- product quality and consistency, particularly 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, the CCOIC claimed that there are further limitations for exports of ammonium nitrate from China, making export contracts of greater than 6,000 tonnes not viable.<sup>134</sup>

The Commission found that most explosives manufacturers and associated services providers in Australia have established import supply chains. Further, the importers of the

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<sup>132</sup> In accordance with subsection 269TDA(4)(a). 'Total Australian import volume' is defined in subsection 269TDA(17).

<sup>133</sup> Refer document nos. [004](#), [030](#) and [032](#) on EPR 473.

<sup>134</sup> Refer document no. [038](#) on EPR 473.

dumped goods directly compete with Australian industry producers and services providers, such as Orica, for contracts. The Commission further found that an exporter of ammonium nitrate from one of the countries subject to the application bid for a large contract of a mining company during the investigation period.

Further, the Commission has obtained information that an IPP is often referred to in negotiations of contract prices. Regardless of the total volume of ammonium nitrate imported into Australia, the existence of the goods from the countries subject to the investigation at dumped prices in the investigation period has resulted in the applicants reducing their prices to secure contracts, or losing volumes in competition with importers offering ammonium nitrate at dumped prices.

Glencore, in its submission dated 17 March 2019, further submitted that the Commission must evaluate if the dumped ammonium nitrate can realistically be a viable option to replace the entirety of the ammonium nitrate supplied by the Australian industry.<sup>135</sup> The Commission considers that imports do not need to replace the entirety of the ammonium nitrate supplied by Australian industry to cause price-related injury to the Australian industry. The Commission has found injury in the form of price depression caused by dumped prices in the Australian ammonium nitrate market.

#### **9.5.4 Bundled contracts**

In submissions dated 27 September 2018 and 4 December 2018, Yara and DBS claim that the competition amongst sellers in the industry is typically for blasting services contracts, and as ammonium nitrate only forms one part of these contracts, there are other factors that influence how a company prices ammonium nitrate in a bundled contract.<sup>136</sup>

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 factors other than dumping causing this injury. All other contracts reviewed were for ammonium nitrate supply only, and one bundled contract (refer section 9.2.1 of this chapter – example 8) separately identified the ammonium nitrate pricing. This contract (example 8) was not included in the Commission's injury assessment.

#### **9.5.5 Excess capacity**

In its submission dated 10 August 2018, 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.<sup>137</sup>

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<sup>135</sup> Refer document no. [051](#) on EPR 473.

<sup>136</sup> Refer document nos. [018](#) and [027](#) on EPR 473.

<sup>137</sup> Refer document no. [007](#) on EPR 473.

Moncourt also submits that it is the Australian industry's investments in additional capacity that has led to reduced pricing within the Australian market.<sup>138</sup> 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 ammonium nitrate market. The Frontier Report commissioned by BHP claims that the pricing of domestic producers was influenced by existing and future excess capacity.<sup>139</sup> 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.

Glencore, in its submission dated 17 March 2019, submitted that the Commission has not appropriately acknowledged or appraised the impact of excess production capacity resulting from the Australian industry's investments.<sup>140</sup> Regardless of the cause of the excess 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.

As discussed in section 9.2 of this chapter, the Commission has obtained evidence from the applicants in relation to specific contract negotiations where the Australian industry's prices were adversely affected by the goods exported to Australia at dumped prices. The Commission conducted a 'but for' analysis and found that dumping has caused and is causing material injury in the form of price depression in these specific instances (refer section 9.2.2 of this chapter for further details).

#### **9.5.6 Competition at various levels of trade**

In its submission dated 17 August 2018, Moncourt submitted that in the absence of imports, explosive services 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.<sup>141</sup>

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 competition between Australian industry producers, resulting in price depression.

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<sup>138</sup> Refer document no. [011](#) on EPR 473.

<sup>139</sup> Refer document no. [032](#) on EPR 473, Annexure A.

<sup>140</sup> Refer document no. [051](#) on EPR 473.

<sup>141</sup> Refer document no. [011](#) on EPR 473.

Moncourt submits that the Burrup plant in WA competes with Incitec Pivot and CSBP.<sup>142</sup> DBS and Yara also submit that Orica has moved into the west coast market while CSBP has increasingly sought to sell ammonium nitrate in the east coast market, which they claim has traditionally been dominated by Orica.<sup>143</sup> 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 CCOIC claims that the Burrup plant will create an actual or threatened market oversupply, and has caused Australian industry members to compete against each other for market share.<sup>144</sup>

In its submission dated 17 March 2019, Glencore submitted that the Commission did not address or consider the extent to which domestic competition has affected pricing in the market.<sup>145</sup> Glencore provided three examples of negotiations that it claims have resulted in “proposed pricing... by the Australian Industry in circumstances where a comparison to imports of AN [ammonium nitrate] does not correspond”.<sup>146</sup> The Commission has not attributed injury to dumping in relation to these examples provided by Glencore.

Moncourt also provided an example that it claims shows a contract negotiation that was not impacted by dumped imports.<sup>147</sup> The Commission has not attributed injury to dumping in relation to this example identified by Moncourt in its submission.

The Commission agrees that price depression resulting from competition between the Australian industry manufacturers (or other factors) should not be attributed to dumping. The Commission did not include some of the examples of contract negotiations outlined in section 9.2.1 of this chapter in its assessment of injury caused by dumping where no causal link was established between the dumped goods and the price reductions. Example 9 (refer section 9.2.1 of this chapter) in particular was not included as competition appeared to be from other Australian industry producers, and in this instance, the Commission did not attribute injury to dumping. Therefore, the Commission’s assessment of materiality of injury was only based on contract negotiations where there was a causal link between dumping and price depression.

#### **9.5.8 Conclusion – factors other than dumping**

While the applicants did not suggest many factors other than dumping that have caused injury to the Australian industry, the Commission considered the other factors identified by various parties throughout the investigation.<sup>148</sup>

The Commission considers that two of these factors discussed above, namely excess capacity in the Australian market and competition between Australian industry producers,

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<sup>142</sup> Refer document no. [011](#) on EPR 473.

<sup>143</sup> Refer document nos. [004](#) and [018](#) on EPR 473.

<sup>144</sup> Refer document no. [038](#) on EPR 473.

<sup>145</sup> Refer document no. [051](#) on EPR 473.

<sup>146</sup> Ibid, page 3 refers.

<sup>147</sup> Refer document no. [050](#) on EPR 473.

<sup>148</sup> Refer document no. [001](#) on EPR 473, page 28 refers.

may also have caused injury to the Australian industry during the injury analysis period; however, the Ministerial Direction on Material Injury provides that dumping need not be the *sole* cause of injury to the industry.<sup>149</sup>

As discussed in section 9.2.1 of this chapter, the Commission obtained evidence from the applicants in relation to specific contract negotiations where the Australian industry's prices were adversely affected by the goods exported to Australia at dumped prices. The examples used in the Commission's assessment of material injury were those where a causal link was demonstrated between the Australian industry's price offers and dumped goods exported to Australia. The Commission's 'but for' analysis found that dumping has caused and is causing material injury in the form of price depression in these specific instances (refer section 9.2.2 of this chapter for further details). The Commission did not include the examples of contract negotiations in its assessment of injury where no causal link is evident between the dumped goods exported to Australia and price depression.

## **9.6 Materiality of injury**

As noted in section 9.2 of this chapter, the Commission found that the applicants reduced their prices (or matched dumped prices from certain countries the subject of the application) following contract negotiations conducted in the investigation period and following the investigation period.

While there also appear to be factors other than dumping that have contributed to the price reductions, the Commission considers that the reduction in price that is attributable to dumping is significant (refer section 9.2.2 of this chapter).

The Commission considers that the price reduction attributable 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 in section 9.2.1 of this chapter 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 estimated the revenue and profit forgone (on an annual basis – refer section 9.4 of this chapter for an explanation of the estimate of revenue and profit forgone) based on the 'undumped price' derived for each example where dumping has affected the Australian industry's pricing or volumes. The Commission considers that this estimate isolates the effect of dumping and is conservative relative to an estimate of revenue and profit forgone based on the prevailing contracted price at the time of the negotiations, which has been used by each applicant to estimate the impact on revenue and profit.

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<sup>149</sup> *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at [www.adcomission.gov.au](http://www.adcomission.gov.au).

The Commission found that profit forgone (on an annual basis), relative to the applicants' (i.e. CSBP's, Orica's and QNP's) aggregated profit in the investigation period, is material to the Australian industry as a whole when taking into consideration the relative share of the total production volume during the investigation period the applicants comprised.<sup>150</sup>

The Commission's assessment of materiality is at **Confidential Attachment 17**.

## 9.7 Submissions concerning causation

In its submission dated 17 March 2019, Glencore submitted that the Commission has not accounted for significant regional differences in its assessment of material injury resulting in a disproportionate adverse effect in NSW.<sup>151</sup> It puts forward the idea of a "granular sectorial analysis" on the grounds that ammonium nitrate destined for one regional market does not typically enter other regional markets. In particular, Glencore claims that there is no injury experienced by Orica in NSW and therefore the "application of duties have no basis to be applied in NSW". Moncourt also questioned how the seven examples on which the materiality assessment is based can be said to be injuring the entire Australian industry.<sup>152</sup>

In *Swan Portland Cement*,<sup>153</sup> Justice Lockhart J noted that the term 'Australian industry' refers to the industry as a whole. He stated that 'the expression "Australian industry" in the context of the anti-dumping legislation refers to an industry viewed throughout Australia as a whole and does not refer to a part of that industry, whether the part be determined by geographic, market or other criteria'.<sup>154</sup> This is the normal practice of the Commission when undertaking an assessment of injury and causation, as described in the Manual.<sup>155</sup>

In the Commission's view, and consistent with Justice Lockhart's comments in *Swan Portland Cement*, the Commission is not required to establish that all the applicants or members of the Australian industry were injured from dumped imports. The Commission is instead required to consider whether material injury has been or is being caused to the Australian industry by the dumped goods as a whole. Further, the Commission cannot recommend the imposition of dumping duties separately for each state or territory (i.e. the Commission cannot 'carve out' certain states from the dumping duty notice). There is no mechanism by which dumping duties may be applied on a regional basis under the Act or the Dumping Duty Act. The *Ministerial Direction on Material Injury 2012* contemplates that

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<sup>150</sup> The Commission did not have information relevant to Dyno Nobel's and Yara Pilbara Nitrate's profit relevant to the production and sales of ammonium nitrate. 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.

<sup>151</sup> Refer document no. [051](#) on EPR 473.

<sup>152</sup> Refer document no. [050](#) on EPR 473.

<sup>153</sup> *Re Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Small Business and Customs and the Anti-Dumping Authority* [1991] FCA 49 ('*Swan Portland Cement*').

<sup>154</sup> *Swan Portland Cement*, at [39].

<sup>155</sup> [Dumping and Subsidy Manual](#) (November 2018).



there may be instances where injury is confined to a specific region of Australia and this may still amount to material injury to the Australian industry as a whole. However, it is important to note that this statement does not imply that the Minister may impose duties to a specific region.

Yara submits that injury would need to be greater than that likely to occur in the normal ebb and flow of business and greater than the profit trend established over the injury analysis period.<sup>156</sup> In order to establish the profit in the normal ebb and flow of business, in its submission, Yara duplicated the index of profit variations from the application, which shows a 12.5 per cent reduction in the applicants' aggregated profit from 2014 to 2017.<sup>157</sup>

The Commission reiterates that the 'profit foregone', as estimated by the Commission in its assessment of material injury, isolates the injury caused by dumping in the examples outlined in section 9.2.1 of this chapter. As the assessment isolates the injury caused by dumping, the Commission is satisfied that the injury to the Australian industry is greater than that likely to occur in the normal ebb and flow of business.

Further, as has been raised by various parties throughout this investigation, there are a range of factors that also impacted on the Australian industry's profit from 2014. Some of these are discussed in chapter 8 of this report and section 9.5 of this chapter. The Commission is not required to establish that profit foregone as a result of dumped imports is the only factor impacting the Australian industry's profits.

The CCOIC, in its submission dated 18 March 2019, disagrees with the Commission's finding of injury caused by dumping as, in its view, the SEF has not examined the Australian industry's economic condition post 31 March 2018.<sup>158</sup> It further argues that the Commission's causation analysis is erroneous and "mixed up", relying on a narrative that dumped exports will always cause injury. It also claims that the SEF appears to say that if the Australian industry competed with or was influenced by dumped goods, then those goods are taken to have caused injury.

The Commission's analysis post 31 March 2018 relates to contract negotiations put forward by the applicants. In accordance with section 269TAE(1)(f), the Commission has considered the effect that the dumped prices have had or are likely to have on the price paid for goods produced by the Australian industry. Contrary to the CCOIC's claim, the Commission received and considered evidence of the link between dumped prices and the applicants' prices.

The Commission was provided with copies of confidential price formulation workbooks, contracts, formal price offers, customer correspondences and other relevant documentation establishing a causal link between dumped prices and the applicants' prices. Where the applicant was unable to substantiate this causal link, the Commission

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<sup>156</sup> Refer document no. [055](#) on EPR 473.

<sup>157</sup> Refer document no. [001](#) on EPR 473.

<sup>158</sup> Refer document no. [056](#) on EPR 473.



did not have regard to the contract negotiation in its assessment of injury caused by dumping.

The European Commission, in its submission dated 14 March 2019, submits that factors other than dumping were not taken adequately into account in the Commission's analysis.<sup>159</sup> The Commission considers that factors such as excess capacity and competition between the Australian industry producers may have caused injury to the Australian industry in addition to dumping. As stated above, dumping need not be the *sole* cause of injury to the Australian industry.<sup>160</sup> It is clear, however, from the contract negotiations analysed by the Commission in section 9.2.1 of this chapter that dumped imports have caused material injury to the Australian industry.

## **9.8 Collection of securities**

Section 269TN and subsection 269TG(1) provide that, if the Minister is satisfied that dumped goods were exported to Australia and, because of that, material injury would have or might have been caused to an Australian industry producing like goods if securities<sup>161</sup> had not been taken on those goods, the Minister may declare that section 8 of the Dumping Duty Act applies to those goods.

Based on the Commission's finding that material injury to the Australian industry producing like goods has been or is being caused by dumped goods exported to Australia, the Commission considers that if securities had not been taken on dumped goods exported to Australia following the publication of the PAD on 24 October 2018, further material injury may have been caused to the Australian industry producing like goods.

## **9.9 The Commissioner's findings**

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.

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<sup>159</sup> Refer document no. [049](#) on EPR 473.

<sup>160</sup> *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at [www.adcomission.gov.au](http://www.adcomission.gov.au).

<sup>161</sup> Pursuant to section 42 of the Act.

## 10 WILL DUMPING AND MATERIAL INJURY CONTINUE?

### 10.1 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 32.7 per cent and 61.3 per cent.

The Commission examined import volumes of ammonium nitrate entered for home consumption in Australia during and following 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 6 and 7 in Chapter 8 of this report); and
- import volumes of the goods from China, Sweden and Thailand increased as a proportion of the total import volumes from March 2017- April 2018 (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 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 is exclusive to 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 source ammonium nitrate from this particular country at dumped prices.

Accordingly, 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, supply contracts are reviewed prior to expiry and the applicants are usually offered the opportunity to renegotiate and review the pricing in the contract. The Commission has obtained information from CSBP and Orica 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. The Commission considers that the proportion of CSBP's and Orica's 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 Finding

The Commission has found that the NIP for the dumped goods exported to Australia from China, Sweden and Thailand is lower than the normal values of the goods from those countries. As a result, the Minister is required to consider imposing a lesser amount of duty.

### 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 Dumping Duty Act, unless one of the exceptions in subsection 8(5BAA) of the Dumping Duty Act applies.

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. Accordingly, the Minister is required to consider imposing a lesser amount of duty.

The NIP is relevant to the application of the lesser duty rule. The Commission's assessment of the NIP is outlined in the following section.

### 11.3 Final assessment 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.

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,<sup>162</sup> observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus an amount for 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 a comparable level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer selling expenses.

### **11.3.1 Submissions – determination of the USP and NIP**

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.<sup>163</sup>

CSBP further submitted that the impact of the dumped goods exported 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 a weighted average of 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 to the 'undumped' price of goods imported from Russia.<sup>164</sup>

In response to SEF 473, the Commission received numerous submissions from various interested parties that disagree with the Commission's approach in determining an USP based on CSBP's and Orica's prices over a two year period prior to the investigation period. The parties suggest that the USP is "overstated", and suggest that the Commission should have regard to the following information in determining a suitable USP:

- prices in comparable overseas markets not impacted by dumping, such as the US or Canada, given that "the prices paid in Australia for ammonium nitrate are significantly higher than elsewhere in the world";<sup>165</sup>
- the weighted average of QNP's and CSBP's sales prices during the investigation period, with the prices achieved in the examples outlined in section 9.2.1 of

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<sup>162</sup> [Dumping and Subsidy Manual](#) (November 2018), page 136 refers.

<sup>163</sup> Refer document no. [035](#) on EPR 473.

<sup>164</sup> Refer document no. [033](#) on EPR 473.

<sup>165</sup> Refer document no. [051](#) on EPR 473, page 11 refers.

SEF 473 that have been found to have been affected by dumping replaced with 'undumped prices';<sup>166</sup>

- the selling prices of the Australian industry over the 12 months prior to the investigation period;<sup>167</sup> and
- the prices of the Australian industry as whole, or the price of QNP only "being the Australian industry member who has demonstrated price depression and suppression during the injury analysis period" and, "the price of the investigation period, with all necessary adjustments as shown in the contracts between the Australian industry and the customers, reflecting the current market condition".<sup>168</sup>

In its submission dated 18 March 2019,<sup>169</sup> the CCOIC further submits that the Commission should consider a NIP as determined for exports of ammonium nitrate to Australia from Russia; or the prices of ammonium nitrate exported to Australia from China to the Australian industry; or prices of undumped exports to Australia; or the NIP based on the selling prices of the Australian industry as a whole.

The Commission has considered each of the suggestions outlined above, as follows:

- using prices observed in overseas markets for the purpose of determining an USP (and hence a NIP) is not appropriate because these prices are reflective of the specific economic and regulatory conditions in the country which do not necessarily relate to Australia and the Australian ammonium nitrate market. The Commission has obtained information from the Australian industry in relation to its domestic pricing and manufacturing costs, which is more relevant than the prices or costs observed in overseas markets. Further, even if the prices paid in Australia for ammonium nitrate are significantly higher than elsewhere in the world, this is not a relevant consideration in determining an USP;
- using a weighted average of CSBP's and QNP's selling prices during the investigation period, with certain prices in accordance with contracts found to be affected by dumping replaced with 'undumped prices', is inappropriate because the selling prices achieved by CSBP and QNP exclusive of these contracts during the investigation period could still have been affected by dumping;
- the NIP as determined for ammonium nitrate exported to Australia from Russia is based on CSBP's and Orica's domestic selling prices in the 2015 calendar year and therefore this information is relatively less contemporary than that available to the Commission in this investigation;
- the prices of the goods exported to Australia from China and imported by certain Australian industry members would be inappropriate as this price is dumped and would not effectively prevent the injury, or a recurrence of the injury, to other Australian industry members that do not import the goods from China;
- the Commission notes that export volumes of ammonium nitrate from countries other than Indonesia are relatively small in comparison to the volumes from each

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<sup>166</sup> Refer document no. [055](#) on EPR 473.

<sup>167</sup> Refer document no. [058](#) on EPR 473.

<sup>168</sup> Refer document no. [056](#) on EPR 473, pages 14 and 15 refer.

<sup>169</sup> Refer document no. [056](#) on EPR 473.



country subject to the investigation and the Commission has no information to determine whether the goods from these other countries are dumped.

#### **11.4 The Commissioner's consideration**

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 determined an USP based on the average<sup>170</sup> of the weighted average selling prices (at ex-works) for CSBP, Orica and QNP from 1 April 2016 to 31 March 2017. This approach departs from the approach adopted in SEF 473 where the Commission determined a USP based only on CSBP's and Orica's information over a two year period prior to the investigation period. On reflection, the Commission is of the view that the more appropriate approach is to use the most contemporary period (unaffected by dumping) prior to the investigation period and therefore only used data from the year prior to the investigation period to determine the USP.

The Commission observes that most price adjustment provisions in the applicants' supply contracts take into consideration movements in the consumer price index (CPI). Therefore, the Commission has only adjusted CSBP's, Orica's and QNP's prices for movements in the CPI (i.e. an adjustment for inflation).<sup>171</sup> The Commission 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.<sup>172</sup>

In SEF 473, the Commission had 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.

Following the publication of SEF 473, AEL Mining Services and DBS raised concerns<sup>173</sup> that the Commission had not made adjustments for importer selling and administration costs, including profit, to derive a NIP. This concern was shared by other interested parties in the investigation.<sup>174</sup>

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<sup>170</sup> Given that CSBP, Orica and QNP supply different markets (i.e. west versus eastern states of Australia), an average of the applicants' prices is more appropriate than a weighted average. This also ensures that the USP is not skewed or 'biased' toward any one applicant's pricing.

<sup>171</sup> Various submissions have raised concerns that the Commission may have adjusted the domestic prices for CPI *and* inflation. The Commission has only made one adjustment for inflation using the CPI.

<sup>172</sup> The Commission has had regard to the CPI (all groups, Australia) as published by the ABS (catalogue no. 6401.0, series ID A2325846C) in adjusting prices for CPI/inflation.

<sup>173</sup> Refer document nos. [057](#) and [058](#) respectively on EPR 473.

<sup>174</sup> Refer document nos. 050 and 051 on EPR 473.



## PUBLIC RECORD

The Commission has verified AEL Mining Services', DBS' and Nitro Sibir's importations of the goods from the countries subject to the investigation, including their respective importation costs.<sup>175</sup> Both AEL Mining Services and Nitro Sibir had advised the Commission that most of the importations of ammonium nitrate is consumed to make explosives and is not on-sold to customers in the form it was imported, therefore, these importers could not allocate amounts for selling and administration costs and determine profit on these imports. However, in light of the concerns raised by interested parties in response to SEF 473, the Commission has re-considered whether an amount for importer SG&A costs and profit is appropriate.

The Commission has verified information from DBS in relation to its SG&A costs, and profit, on its sales of ammonium nitrate in the form that it was imported. In the absence of this information from AEL Mining Services and Nitro Sibir, the Commission has used DBS' verified SG&A costs and profit for the purpose of deriving a NIP for each country, while still having regard the overseas freight and insurance, import handling, and customs charges relevant to each country as obtained from the relevant importers of the goods subject to the investigation.

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;
- customs and quarantine clearance charges;
- importer SG&A costs relevant to sales of ammonium nitrate only; and
- an amount for profit achieved on ammonium nitrate sold in the form it was imported.

The Commission compared the NIP at FOB with the normal values of ammonium nitrate exported to Australia from China, Sweden and Thailand and found that the NIP is below the normal values determined for each country. As the NIP is below the normal values of ammonium nitrate exported from each subject country, 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 18**.

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<sup>175</sup> Refer document nos. [022](#), [024](#) and [025](#) on EPR 473.

## 12 FORM OF MEASURES

### 12.1 Recommended measures

The Commissioner recommends 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 combination 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 and SEF 473

Following the publication of the PAD on 24 October 2018, the Commonwealth took securities in respect of IDD that may become payable on ammonium nitrate exported from China, Sweden and Thailand and entered for home consumption in Australia from 25 October 2018. The securities were worked out in accordance with the combination (fixed and variable) duty method.

Following the publication of the SEF on 25 February 2019, the Commissioner revised the securities with effect from 1 March 2019. The revised securities were worked out in accordance with the floor price duty method, for the reasons outlined in the SEF.

### 12.4 Submissions concerning the proposed form of measures

Following the publication of SEF 473, the Commission received four submissions that, among other matters, concerned the proposed form of measures.

In its submission dated 15 March 2019, Orica disagreed with the Commission's proposed form of measures in SEF 473. Orica reiterated that the combination method should be recommended to the Minister, for the reason that "in a price sensitive market such as AN [ammonium nitrate] there exists a strong likelihood that exporters and importers will seek to circumvent anti-dumping measures based upon an *ad valorem* methodology".<sup>176</sup> Orica further submitted that measures based on a floor price are ineffective in a rising market.

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<sup>176</sup> Refer document no. [052](#) on EPR 473, page 1 refers.

In a further submission made post-SEF 473, Orica reiterated that in a rising market, measures based upon a floor price method would be ineffective.<sup>177</sup> Orica submitted that the prices for ammonia, a major input into the manufacture of ammonium nitrate, track gas and oil prices fairly closely, and that the outlook is that gas and oil prices are projected to increase during the period the measures will apply. Further, Orica submitted that the export prices of ammonium nitrate exported from China are correlated with the price of coal, and that Chinese coal prices are anticipated to rise on the back of the upward trend in the oil price.

To substantiate its claim that energy costs such as gas and coal are expected to increase over the period the measures will apply, Orica provided copies of extracts from the Fertecon<sup>178</sup> Ammonia Outlook and Fertecon Nitrates Outlook reports in separate confidential attachments to its submission dated 2 April 2019 (discussed further in section 12.5 below).

In its submission dated 13 December 2018, CSBP also proposed that the form of measures to be applied to the dumped goods should be the combination duty method.<sup>179</sup> CSBP stated that this form of measures is less susceptible to exporters reducing export prices to absorb the IDD payable. In its submission dated 18 March 2019, CSBP reiterated that it considers the combination method the most effective form of measures in addressing the injurious effects of dumping, particularly in a market affected by price volatility, and that “it is possible that exporters may seek to circumvent the imposed measures”.<sup>180</sup>

In its submission dated 18 March 2019, QNP submitted that prices for ammonium nitrate reflect a high degree of volatility, and in a rising market, measures based upon the floor price do not prevent injury from occurring to the Australian industry.<sup>181</sup> QNP proposes that the Commissioner recommend to the Minister that the form of measures be based upon the combination method.

#### **12.4.1 Submissions received following publication of ADN No. 2019/50**

Following the publication of SEF 473, the Commission invited interested parties to the investigation to make submissions relevant to the form of measures, and sought an extension of time in order to consider these submissions before providing this report to

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<sup>177</sup> Refer document no. [060](#) on EPR 473.

<sup>178</sup> Fertecon is a provider of market intelligence relevant to the global fertiliser (including ammonia and ammonium nitrate) industry and markets. The Commission found that reports and data prepared by Fertecon are used by many entities in the Australian ammonium nitrate market, particularly for the purpose of adjusting the base contract prices for the movements in the prices of ammonia. Information from Fertecon can be accessed via a paid subscription.

<sup>179</sup> Refer document no. [035](#) on EPR 473.

<sup>180</sup> Refer document no. [054](#) on EPR 473, page 3 refers.

<sup>181</sup> Refer document no. [053](#) on EPR 473.

the Minister.<sup>182</sup> The Commission received two submissions following the publication of ADN No. 2019/50, which, among other matters, concern the form of measures.

In its submission dated 9 April 2019, Yara AB submitted that the measures applying to exports of ammonium nitrate to Australia from Russia are in the form of a floor price that has been “characterised by the Commission as being effective at remedying the injury found to have occurred in that investigation, notwithstanding the fact that raw material costs have varied considerably between 2001 and the publication of the SEF”.<sup>183</sup>

In its submission dated 9 April 2019, Glencore submitted that the floor price method is effective in preventing imports of ammonium nitrate, based on the fact that a floor price has applied to exports of ammonium nitrate to Australia from Russia for many years and that this has “almost eliminated imports”.<sup>184</sup>

Glencore further submitted that it has “concerns with the level of reliance the ADC [Anti-Dumping Commission] has placed on submissions made by the Applicants without undertaking appropriate steps to verify the claims made or having regard to facts submitted by industry participants”.<sup>185</sup>

As noted in chapter 1, in preparing this report, the Commission had regard to the following information:

- the application;
- all submissions concerning and subsequent to the publication of ADN No. 2018/103 to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF;
- all submissions made in response to the SEF;
- submissions made prior to the SEF that, due to their timing, were not considered by the Commissioner for the purpose of formulating the SEF; and
- any other matters that the Commissioner considered to be relevant, including verified information provided by the importers<sup>186</sup> and Yara (the exporter) of the goods from the countries subject to the investigation.

Further, in considering the form of measures to propose to the Minister, and noting that only the applicants have made claims in submissions concerning the appropriate form of measures prior to and following the publication of SEF 473, the Commission invited interested parties to this investigation to make submissions in respect of the proposed form of measures. In considering the form of measures, the Commission has had regard to Glencore’s submission made following the publication of ADN No. 2019/50.

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<sup>182</sup> Refer ADN No. 2019/50 (document no. [061](#)) on EPR 473.

<sup>183</sup> Refer document no. [062](#) on EPR 473.

<sup>184</sup> Refer document no. [063](#) on EPR 473, page 3 refers.

<sup>185</sup> Refer document no. [063](#) on EPR 473, page 1 refers.

<sup>186</sup> The importers of the goods exported from the subject countries are identified in section 5.4.2 of this report.

## 12.5 The Commissioner's consideration and recommendation

In considering the appropriate form of measures, the Commission considers the effectiveness of the form of measures in remedying the injurious effects of dumping. The Commission does not consider nor assess the effectiveness of measures in terms of whether the measures have eliminated or prevented (or will eliminate or prevent) imports, as suggested by Glencore.

Following submissions received post-SEF 473, the Commission, in considering the form of measures to propose, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines).<sup>187</sup>

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 considerations for each form of duty.

In SEF 473, the Commission had proposed the floor price duty method given that a floor price has been effective in preventing injury to the Australian industry from dumped goods exported to Australia from Russia.

One of the disadvantages of a floor price duty method is that it can quickly become out-of-date and in a rising market become ineffective. As noted in section 12.4 of this chapter, the applicants have submitted that in a rising market, measures based upon the floor price would be ineffective in preventing further injury from occurring to the Australian industry. Orica has submitted that key costs, such as gas and coal used in the production of ammonia, are projected to increase over the period the measures will apply.

Contrary to Glencore's claim that "the applicants (and Orica in particular) have not provided any evidence of forecasts for higher costs",<sup>188</sup> the Commission considers that Orica has provided reliable information<sup>189</sup> to support its claim that gas costs (which Glencore acknowledges is a key feedstock in the production of ammonia) and ammonia prices are projected to increase in most ammonia producing regions and countries (e.g. Europe and Russia) over the period that measures will apply (2019 to 2024). Further, Orica has provided information<sup>190</sup> relevant to the outlook for Chinese coal prices (a major input into the production of ammonia in China) which indicates that coal prices will increase from 2020 and will continue to increase to 2024. The Commission understands that two of the three exporters of ammonium nitrate to Australia from China identified in section 6.2.2 of this report utilise coal gasification technology and therefore consume coal in the manufacture of ammonia.

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<sup>187</sup> Available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>188</sup> Refer document no. [063](#) on EPR 473, page 3 refers.

<sup>189</sup> Orica provided a copy of an excerpt from the Fertecon Ammonia Outlook Report (September 2018) – pages 15 and 160 of the report refer. Fertecon is available by paid subscription.

<sup>190</sup> Orica provided a copy of an excerpt from the Fertecon Nitrates Outlook Report (October 2018) – page 94 refers. Fertecon is available by paid subscription.

Further, given that exporters of the goods to Australia from Thailand did not cooperate in this investigation, the Commission has no information relevant to the exporters' supplier or suppliers of ammonia. Nevertheless, given that gas costs are forecast to increase in most regions and countries that manufacture and export ammonia, the prices of ammonia purchased by the Thai exporters will most likely also increase over the period the measures will apply.

In its submission dated 9 April 2019, Glencore referred to published articles on certain news websites and submitted that the following factors will contribute to a likely downward trend in feedstock (gas and coal) prices:<sup>191</sup>

- increasing gas supply in the US which will likely lead to downward pressure on gas prices;
- government investments in certain countries and regions in new gas pipelines which will likely increase competition and decrease gas prices; and
- demand and therefore prices for lower-quality coal in China will likely decline as "China legislates to clean up its air".<sup>192</sup>

The Commission considers that while these factors are relevant factors in any forecast or outlook relating to future gas or coal prices, the information provided by Glencore does not amount to an actual forecast of prices that takes into consideration all factors (supply and demand) over the period the measures will apply (2019 to 2024).

The Commission considers that the forecasts outlined in the Fertecon reports are actual forecasts of pricing for gas and Chinese coal prices over the period the measures will apply, and given that Fertecon is used by most entities for market intelligence purposes in the Australian ammonium nitrate market, it is the most relevant and reliable source of information. Based on the forecasts in the Fertecon reports, the Commission considers that feedstock (gas and coal) prices are likely to increase over the period the measures will apply, which will likely increase the cost to produce ammonia and will likely increase the cost to produce ammonium nitrate. This will in turn likely lead to higher export prices and normal values for ammonium nitrate exported to Australia from China, Sweden and Thailand.

Given that a floor price can be ineffective in a rising market (e.g. where the normal value and export price exceed the floor price, there still may be dumping that causes injury to the Australian industry), the Commission has considered whether an *ad valorem* method or the combination method is more 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.

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<sup>191</sup> Refer document no. [063](#) on EPR 473.

<sup>192</sup> Ibid, page 4 refers.



On the other hand, the *ad valorem* duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is advantageous where there are many models or types and is suitable where the market prices of goods fluctuate over time. The *ad valorem* duty method may also require fewer duty assessments and reviews than other duty methods. Conversely, the *ad valorem* duty method has a potential disadvantage in that export prices may be lowered to avoid the effects of the duty.

Both Orica and CSBP have submitted that exporters may seek to circumvent the proposed measures in the form of a floor price. The Commission observes that there was limited cooperation from exporters from China and Thailand in this investigation and therefore the Commission does not have any information relevant to the export arrangements utilised by these exporters in exporting the goods to Australia.

The Commission further observes that, given that the NIP is the operative measure, the fixed rate of duty would be significantly lower than the dumping margin for each country, particularly for China (less than 1 per cent), which could be easily circumvented by lowering the export price of the goods to avoid the effects of the duty. Therefore, the Commission considers that the appropriate form of measures is the combination method rather than the *ad valorem* method, as it effectively imposes a floor price equal to the ascertained export price, which would prevent exporters from lowering export prices to avoid the effects of the duty.

For the reasons outlined in this report, the Commissioner is recommending that a dumping duty notice be published in respect of all exporters of ammonium nitrate exported to Australia from China, Sweden and Thailand. The Commissioner further recommends that the IDD imposed be calculated using the combination duty method in which the NIP is the operative measure.

The combination duty method includes a fixed *ad valorem* rate and a variable amount of duty if the actual export price (or 'DXP') is below the ascertained export price. For all exporters from China, Sweden and Thailand, the fixed *ad valorem* rate is equal to the lesser duty calculated by reference to the NIP and will be taken as a percentage of the actual export price. If this recommendation is adopted, the rates of interim duties in relation to the goods exported to Australia from China, Sweden and Thailand are determined at the rates specified in the table below.



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Country	Exporter	Duty method	Fixed component of interim dumping duty (where the NIP is the operative measure)	Variable component of interim dumping duty
China	Uncooperative and all other exporters	Combination method	0.3%	Applicable where the actual export price is below the ascertained export price
Sweden	Yara AB	Combination method	14.4%	Applicable where the actual export price is below the ascertained export price
	Uncooperative and all other exporters	Combination method	14.4%	Applicable where the actual export price is below the ascertained export price
Thailand	Uncooperative and all other exporters	Combination method	13.5%	Applicable where the actual export price is below the ascertained export price

**Table 17: Recommended measures applicable to ammonium nitrate exported to Australia from China, Sweden and Thailand**

The calculation of the fixed component of interim dumping duty for each country is at **Confidential Attachment 19**.

## 13 RECOMMENDATIONS

### 13.1 Findings

The Commissioner has found that the dumping of ammonium nitrate exported to Australia from China, Sweden and Thailand has caused or is causing material injury to the Australian industry producing like goods.

### 13.2 Recommendations

The Commissioner recommends that the Minister publish a dumping duty notice in respect of all exporters of ammonium nitrate exported to Australia from China, Sweden and Thailand.

The Commissioner recommends the Minister **be satisfied that:**

- in accordance with subsection 269TAB(3), sufficient information has not been furnished to enable the export price of ammonium nitrate exported to Australia from China and Thailand to be ascertained under the subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished to enable the normal value of ammonium nitrate exported to Australia from China and Thailand to be ascertained under the preceding subsections of section 269TAC (other than subsection 269TAC(5D));
- in accordance with subsection 269TAE(2C), the cumulative effect of exportations of ammonium nitrate from China, Sweden and Thailand can be considered because:
  - each of those exportations is the subject of this investigation; and
  - the investigation of those exportations resulted from one application under section 269TB; and
  - the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2 per cent of the export price or weighted average of export prices used to establish that dumping margin; and
  - the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the countries of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
  - it is appropriate to consider the cumulative effect of those exportations, having regard to the conditions of competition between those goods, and the conditions of competition between these goods and like goods that domestically produced.
- in accordance with subsection 269TG(1), the amount of the export price of ammonium nitrate that has been exported to Australia from China, Sweden and Thailand is less than the amount of the normal value of those goods and because of that, material injury would have or might have been caused if security had not

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been taken under section 42 of the Act pursuant to the publication of the PAD on 24 October 2018; and

- in accordance with subsection 269TG(2), the export price of ammonium nitrate that has already been exported to Australia from China, Sweden and Thailand is less than the normal value of those goods and the export price of ammonium nitrate that may be exported to Australia from China, Sweden and Thailand in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods is being caused.

The Commissioner recommends the Minister **determine**:

- being satisfied that subsection 269TAB(1)(a) applies, that the export price of goods exported to Australia from Sweden by Yara 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 any other matter arising after exportation, as set out in section 6.7.1.1 of this report;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export prices of ammonium nitrate exported to Australia from China and Thailand are as set out in sections 6.6.1 and 6.8.1 respectively of this report;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Sweden by Yara in sales that are arms length transactions, that the normal value of ammonium nitrate exported to Australia from Sweden is the price paid or payable for like goods as set out in section 6.7.1.2 of this report;
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal values of ammonium nitrate exported to Australia from China and Thailand are as set out in sections 6.6.2 and 6.8.2 respectively of this report;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4), that the ammonium nitrate exported to Australia from China, Sweden and Thailand is taken to have been dumped, and the dumping margins for exporters from these three countries in respect of those goods is the difference between the weighted average export prices of ammonium nitrate over the investigation period and the weighted average of corresponding normal values over that period as set out in chapter 6 of this report; and
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of ammonium nitrate exported to Australia from China, Sweden and Thailand is an amount which will be worked out in accordance with the combination of fixed and variable duty method pursuant to subsection 5(2) and 5(3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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The Commissioner recommends the Minister **direct**:

- in accordance with subsection 269TAC(8), that, as the normal value of ammonium nitrate exported to Australia from Sweden by Yara is the price paid or payable for like goods sold in Sweden, the normal value be adjusted for specified differences between like goods sold in Sweden and export sales, as set out in section 6.7.1.3 of this report.

The Commissioner recommends the Minister **be of the opinion that**:

- in accordance with subsections 269TAB(4) and 269TAC(7), information provided by Phoenix Blasting Services Pty Ltd, as set out in section 6.5.1 of this report, is unreliable and accordingly disregard that information for the purpose of sections 269TAB and 269TAC;
- in accordance with subsection 269TAB(4), the information provided by Polene Plastic Co., Ltd and Thai Nitrate Co., Ltd, as set out in section 6.5.1 of this report, is unreliable and accordingly disregard that information for the purpose of section 269TAB; and
- in accordance with subsection 269TAC(7), the information provided by Yahua Australia Pty Ltd, as set out in section 6.6.2 of this report, is unreliable and accordingly disregard that information for the purpose of section 269TAC.

The Commissioner recommends the Minister **have regard to**:

- in accordance with subsection 8(5B) of the Dumping Duty Act, in relation to ammonium nitrate exported to Australia from China, Sweden and Thailand, the desirability of specifying a method such that the sum of amounts outlined in subsections 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the non-injurious price.

The Commissioner recommends the Minister **declare**:

- in accordance with subsection 269TG(1) and section 45, by public notice, that section 8 of the Dumping Duty Act applies to:
  - a) ammonium nitrate exported to Australia from China, Sweden and Thailand; and
  - b) like goods that were exported to Australia from China, Sweden and Thailand

six months prior to the publication of the notice, pursuant to the PAD published on 24 October 2018; and

- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia from China, Sweden and Thailand, after the date of publication of the notice.

## 14 ATTACHMENTS

<b>Non-Confidential Appendix 1</b>	List of submissions
<b>Confidential Attachment 1</b>	Australian industry production volume
<b>Confidential Attachment 2</b>	Normal value – all exporters (China)
<b>Confidential Attachment 3</b>	Dumping margin – all exporters (China)
<b>Confidential Attachment 4</b>	Ascertained export price – Yara AB
<b>Confidential Attachment 5</b>	Ascertained normal value – Yara AB
<b>Confidential Attachment 6</b>	Dumping margin – Yara AB
<b>Confidential Attachment 7</b>	Normal value – all other exporters (Sweden)
<b>Confidential Attachment 8</b>	Dumping margin – all other exporters (Sweden)
<b>Confidential Attachment 9</b>	Normal value – all exporters (Thailand)
<b>Confidential Attachment 10</b>	Dumping margin – all exporters (Thailand)
<b>Confidential Attachment 11</b>	Import volumes
<b>Confidential Attachment 12</b>	Economic condition of the Australian industry
<b>Confidential Attachment 13</b>	Factors that affected QNP's production and sales volumes
<b>Confidential Attachment 14</b>	Australian ammonium nitrate market
<b>Confidential Attachment 15</b>	Details of contract negotiations
<b>Confidential Attachment 16</b>	Assessment of prices in the absence of dumping
<b>Confidential Attachment 17</b>	Materiality of injury to the Australian industry
<b>Confidential Attachment 18</b>	USP and NIP calculations
<b>Confidential Attachment 19</b>	Calculation of fixed rate of IDD where NIP is operative measure

## NON-CONFIDENTIAL APPENDIX 1 – LIST OF SUBMISSIONS

**Submission received prior to publication of SEF 473 on 25 February 2019:**

Interested party	Date published on EPR	Document no.
Downer EDI Mining–Blasting Services Pty Ltd	13 July 2018	004
BHP Billiton Iron Ore Pty Ltd	10 August 2018	007
Blue Diamond Australia Pty Ltd and Phoenix Blasting Services Pty Ltd	13 August 2018	008
Moncourt Group Pty Ltd	20 August 2018	011
Orica Australia Pty Ltd	24 August 2018	012
Orica Australia Pty Ltd	24 August 2018	013
Australian industry	10 September 2018	015
CSBP Limited	18 September 2018	016
Yara AB	27 September 2018	018
Queensland Nitrates Pty Ltd	8 October 2018	019
European Commission	29 November 2018	026
Downer EDI Mining–Blasting Services Pty Ltd	4 December 2018	027
Yara AB	7 December 2018	028
Glencore Coal Assets Australia	11 December 2018	030
BHP Billiton Iron Ore Pty Ltd	14 December 2018	032
Orica Australia Pty Ltd	14 December 2018	033
Orica Australia Pty Ltd	14 December 2018	034
CSBP Limited	14 December 2018	035
Yahua Australia Pty Ltd	17 December 2018	036
China Chamber of International Commerce	2 January 2019	038
Orica Australia Pty Ltd	1 February 2019	039
Orica Australia Pty Ltd	7 February 2019	041
Yara AB	21 February 2019	043

**Submission received following publication of SEF 473 on 25 February 2019:**

Interested party	Date published on EPR	Document no.
AECI Australia Pty Ltd	26 February 2019	045
Alcoa of Australia Limited	07 February 2019	047
Yara AB	14 March 2019	048
European Commission	18 March 2019	049
Moncourt Group Pty Ltd	18 March 2019	050
Glencore Coal Assets Australia	18 March 2019	051

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Orica Australia Pty Ltd	18 March 2019	052
Queensland Nitrates Pt Ltd	18 March 2019	053
CSBP Limited	18 March 2019	054
Yara AB	19 March 2019	055
China Chamber of International Commerce	19 March 2019	056
AECI Australia Pty Ltd	19 March 2019	057
Downer EDI Mining–Basting Services Pty Ltd	20 March 2019	058
Orica Australia Pty Ltd	2 April 2019	059
Orica Australia Pty Ltd	3 April 2019	060
Yara AB	10 April 2019	062
Glencore Coal Assets Australia	10 April 2019	063