



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO 605

ALLEGED DUMPING OF AMMONIUM NITRATE

**EXPORTED TO AUSTRALIA FROM THE REPUBLIC OF
LITHUANIA AND THE SOCIALIST REPUBLIC OF VIETNAM**

30 May 2023

SEF 605 – Ammonium nitrate – Lithuania and Vietnam

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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 (Cth)</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AECI	AECI Australia Pty Ltd
ANFO	ammonium nitrate fuel oil
ANSol	ammonium nitrate solution
the applicants	collectively, CSBP, Orica, and QNP
Chile	the Republic of Chile
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 565	Continuation Inquiry 565
CSBP	CSBP Limited
CTMS	cost to make & sell
CY	calendar year
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975 (Cth)</i>
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
FOB	free on board
FY	financial year (1 July to 30 June)
Glencore	Glencore Coal Assets Australia Pty Ltd
the goods	ammonium nitrate, the goods the subject of the application (also referred to as the goods under consideration or GUC)
J&E	J&E International (China) Co Ltd
LDAN	low density ammonium nitrate
Lithuania	the Republic of Lithuania
the investigation	Anti-Dumping Investigation 605
HDAN	high density ammonium nitrate
the manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)</i>
Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
MCC	model control code
MICCO	Vinacomin Mining Chemical Industry Holding Corporation Ltd
the Minister	the Minister for Industry and Science

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NBA	next best alternative
NIP	non-injurious price
OCOT	ordinary course of trade
Orica	Orica Australia Pty Ltd
PAD	Preliminary Affirmative Determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
QNP	Queensland Nitrates Pty Ltd
the Regulation	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
REP 473	<i>Anti-Dumping Commission Report No 473</i>
REP 565	<i>Anti-Dumping Commission Report No 565</i>
REQ	response to the exporter questionnaire
RIQ	response to the importer questionnaire
Russia	the Russian Federation
SEF	statement of essential facts
SG&A	selling, general, and administrative
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price
Yara Pilbara	Yara Pilbara Nitrates Pty Ltd
YEM	year ending March

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendation to the Minister for Industry and Science (the Minister) concerning Anti-Dumping Investigation 605 (the investigation).

The investigation relates to the alleged dumping of ammonium nitrate (the goods) exported to Australia from the Republic of Lithuania (Lithuania) and the Socialist Republic of Vietnam (Vietnam).¹ The Commissioner proposes to recommend that the Minister does not publish a dumping duty notice.

The investigation follows an application under section 269TB(1)² of the *Customs Act 1901* (Cth) (the Act) jointly lodged by:

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

CSBP, Orica and QNP (collectively, the applicants) are Australian manufacturers of ammonium nitrate and represent part of the Australian industry for ammonium nitrate.

1.2 Preliminary findings

1.2.1 Summary

The Commissioner has preliminarily found that exporters from Lithuania and Vietnam exported the goods to Australia at dumped prices.

Based on the evidence currently before the commission, the Commissioner preliminarily considers that the dumped exports of the goods to Australia from Lithuania and Vietnam have not caused, and do not threaten to cause, material injury to the Australian industry.

Based on the evidence currently before the commission, and subject to any further submissions received in response to this SEF, the Commissioner preliminarily considers that he would not recommend that the Minister publish a dumping duty notice.

The Commissioner's preliminary findings and conclusions in this SEF are based on the available information at this stage of the investigation. A summary is provided in the paragraphs below, and the remainder of this SEF provides greater detail.

¹ The application also related to the Republic of Chile (Chile), however the investigation into Chile was terminated on 3 August 2022. Refer to Anti-Dumping Notice (ADN) 2022/80 at Electronic Public Record (EPR) 605, no 17. The focus of this report is therefore on Lithuania and Vietnam.

² All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

1.2.2 The goods and like goods (chapter 3)

The Commissioner is satisfied that the Australian industry for ammonium nitrate produces like goods to the goods.

1.2.3 The Australian industry and Australian market (chapters 4 and 5)

The Commissioner is satisfied that there is an Australian industry producing like goods, comprised of the applicants and 2 other manufacturers of ammonium nitrate in Australia. The commission has found that, over the investigation period, the Australian market for the goods and like goods was supplied by:

- the Australian industry members
- imports from Lithuania and Vietnam
- imports from countries already subject to anti-dumping measures
- imports from countries not subject to anti-dumping measures.

The applicants made up most of the Australian industry (73%), measured by production quantity over the investigation period (Figure 7, page 47). The Australian industry makes up most of the market for ammonium nitrate in Australia, with only a small fraction of sales to Australian consumers being supplied by imports over the investigation period (Figure 12, page 50). Imports from Lithuania and Vietnam had a combined market share of approximately 1% in the investigation period (0.8% and 0.2% respectively).

1.2.4 Dumping investigation (chapter 6)

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

Country	Exporter	Dumping margin
Vietnam	Vinacomin Mining Chemical Industry Holding Corporation Ltd	167.9%
	All other exporters from Vietnam	167.9%
Lithuania	AB Achema	5.1%
	All other exporters from Lithuania	5.1%

Table 1: Summary of dumping margins

For context, the commission notes that despite the noticeable difference in the dumping margins, the export prices for Lithuania and Vietnam are similar.³ The difference in the dumping margins is primarily driven by a higher normal value in Vietnam (chapter 6).

³ Section 269TAE(1)(d) requires consideration of the export prices paid by importers in determining whether material injury has been caused by dumped goods, along with the dumping margins per section 269TAE(1)(aa). When considered in context, the dumping margins themselves, do not, in this investigation, suggest exports from one country are substantially more injurious than another country.

1.2.5 Economic condition of the Australian industry (chapter 7)

The commission analysed the Australian industry's economic indicators for the injury analysis period (specifically using data ranging from 1 April 2018 to 31 March 2021). The purpose of the injury analysis period is to enable the commission to identify and examine trends in the Australian market (in this case using 4 years of economic data), which in turn assists the Commissioner in determining whether material injury has been caused by dumping in the investigation period (a 12-month period where the dumping has occurred).

The commission's analysis of the Australian industry's economic condition found that the Australian industry experienced a decline in certain economic factors over the investigation period, including profit and profitability (mainly due to increased costs), return on investment (ROI) and capital investment. No downward trends in the Australian industry's prices, sales volumes or market share were observed.

1.2.6 Has dumping caused material injury? (section 8.5)

Based on the evidence currently before the commission, the Commissioner preliminarily considers that dumped exports have not caused material injury to the Australian industry.

The commission examined the reasons for the declines in the Australian industry's economic factors over the investigation period. The commission also examined the available evidence (case studies/specific examples provided in the application and investigation) to assess the condition of the Australian industry in the absence of dumped exports from Lithuania and Vietnam.

The commission found that the declines in several economic factors identified in chapter 7 were primarily driven by factors other than dumped exports (predominantly cost related).⁴ Based on the case studies, the commission also found that there were 2 isolated examples of the impacts of the dumped exports on Australian industry. Noting the isolated nature of these examples, in the context of the broader Australian market, and because of the significant impact of other factors, the Commissioner is preliminarily satisfied that there is not sufficient evidence to demonstrate that material injury to the Australian industry has been caused by dumped imports.

Section 269TAE outlines the requirements for determining whether material injury to an Australian industry is caused by dumping (causation). The Act envisages that causation is examined through the links between the volume of dumped goods and their effect on prices in the Australian market and the consequent impact on the Australian industry. The Act does not prescribe any causation methodology. Rather, determining causation involves a holistic evaluation of all available evidence. There are a variety of analytical tools that can assist the commission to evaluate causation depending on the circumstances of a given case. The commission assesses available evidence in totality and does not rely solely on any individual economic indicia or subset of data-points to

⁴ Section 269TAE(2A) lists factors other than dumping that the Minister must consider when assessing whether material injury is caused by dumping. In this case the commission has found that factors other than dumping have impacted the Australian industry in the investigation period.

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inform its conclusions, as this would be incongruous with the Act. The commission must also exclude any injury caused by factors other than dumping from its causation analysis.

In this case, the commission has conducted a 'coincidence' and a 'but for' analysis to assess whether dumping has caused injury.

Where there is a coincidence in timing between declines in the Australian industry's economic indicators and the volume and price trends of dumped imports, this may be taken to mean there is a causal link.⁵ Under a 'but for' analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping. The commission routinely conducts a 'but for' analysis for goods that already have existing anti-dumping measures. The existence of anti-dumping measures often makes it difficult to rely on coincidence analysis alone.

The commission has also had regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).

1.2.7 Threat of material injury (section 8.6)

The Commissioner has analysed the available evidence and is satisfied that there has not been a change of circumstances that would make injury foreseeable and imminent unless dumping measures are imposed.

The applicants have claimed that the dumped exports from Lithuania and Vietnam present a threat of material injury due to:

- the expiry of current contracts and negotiation of new contracts
- the excess capacity available to exporters from Lithuania and Vietnam
- an increase in import volumes from Lithuania and Vietnam if the Australian industry fails to secure long-term contracts.

The commission has examined the Australian industry's claims. The commission assessed whether the evidence represents a change of circumstances that would make injury to the Australian industry from dumped exports from Lithuania and Vietnam foreseeable and imminent in the absence of measures being imposed – that is, that there is a threat of material injury.

The commission has found that exporters from Lithuania had excess capacity during the investigation period and that in past investigations the presence of dumped goods has impacted contract negotiations. However, on balance, this evidence is outweighed by stronger evidence including that:

- Despite exporters from Lithuania and Vietnam having excess capacity during the investigation period, the excess capacity has not resulted in a significant increase in import volumes after the investigation period. There is no indication that the exporters' inventories of the goods will result in increased import volumes.

⁵ The *Anti-Dumping Commission Dumping and Subsidy Manual* (December 2021) (the manual), p 99.

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- The cost of ammonia has increased significantly after the investigation period, affecting the production costs of exporters of ammonium nitrate from Lithuania and Vietnam.
- Import prices from Lithuania and Vietnam have increased significantly after the investigation period because of the increased price of ammonia.
- In the presence of these increased import prices, the Australian industry may have a competitive advantage in future contract negotiations.
- There is limited evidence of dumped import prices from Lithuania and Vietnam influencing future contracts negotiations in this investigation.

The commission does not consider that this indicates a change of circumstances that would make the threat of material injury to the Australian industry imminent or foreseeable unless dumping measures are imposed.

1.2.8 Non-injurious price (chapter 9)

The commission has calculated a non-injurious price (NIP) for exports of the goods. The commission has calculated the NIP by deducting relevant importation costs from the Australian industry's unsuppressed selling price (USP).

1.2.9 Preliminary overall assessment (chapter 10)

Based on the evidence currently before the commission, and subject to any further submissions received in response to this SEF, the Commissioner considers that he would not recommend that a dumping duty notice be published.

Depending on the submissions received in response to the SEF, the Commissioner will consider whether it is appropriate to terminate the investigation.

2 BACKGROUND

2.1 Application

On 7 April 2022, the applicants lodged an application alleging that the Australian industry for ammonium nitrate has suffered material injury, or is threatened to suffer material injury, caused by exports of the goods to Australia from Chile, Lithuania, and Vietnam at dumped prices.⁶

2.2 Initiation

2.2.1 Background

Having considered the application, the Commissioner decided not to reject the application and initiated the investigation on 8 June 2022.

Anti-Dumping Notice (ADN) 2022/050 and *Consideration Report No 605* provide further details relating to the initiation of the investigation.⁷

The Commissioner decided to initiate an investigation following an application lodged by the applicants under section 269TB. In the application, the applicants claimed that the Australian industry has suffered material injury in the form of:

- price suppression
- loss of profits and reduced profitability.

2.2.2 Investigation and injury analysis periods

The Commissioner specified in the initiation notice that the investigation period is 1 April 2021 to 31 March 2022.

The injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 April 2018.

2.2.3 Submissions on length of the investigation period

The commission received multiple submissions in relation to the investigation period.⁸ The Australian industry raised concerns that a one-year investigation period would result in a misalignment between dumping and the resulting injury. Other interested parties submitted that the investigation period cannot be varied.

Section 269T(1) defines the investigation period in relation to an application for a dumping duty notice as the period specified by the Commissioner in the initiation notice under section 269TC(4). Section 269TC(5A) states that the Commissioner cannot vary the

⁶ EPR 605, no 1.

⁷ EPR 605, nos 2 and 3.

⁸ EPR 605, nos 5, 6, 13, 26, and 27.

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length of the investigation period. Accordingly, the commission does not consider that the investigation period can be varied in this investigation.

The *Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)* (the manual) outlines that the investigation period is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month. The investigation period may cover a longer period in certain circumstances.⁹

In the application, the Australian industry applicants proposed that a 2-year investigation period be used to assess whether dumping had occurred. In *Consideration Report No 605*, the commission considered that a 12-month investigation period was appropriate. The commission was unaware of any circumstance in the market that would make it such that a 12-month examination period would impair the commission's assessment.¹⁰ The commission has on 12-month or 15-month examination periods in past cases into the goods (refer to section 2.2).

The commission therefore does not consider that the Commissioner's specified investigation period is unreasonable or inappropriate. The investigation period therefore remained 1 April 2021 to 31 March 2022 throughout.

2.3 Previous cases

On 24 May 2001, the then Minister for Justice and Customs accepted the findings and recommendations of the Australian Customs Service and published a dumping duty notice in relation to ammonium nitrate exported to Australia from the Russian Federation (Russia).¹¹ Notification of the then Minister's decision was given in Australian Customs Dumping Notice (ACDN) 2001/29.

On 11 May 2006, the then Minister for Justice and Customs varied the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia and secured their continuation for a further 5 years. This followed consideration of *Trade Measures Report No 104* and *Trade Measures Report No 105*. Notification of the then Minister's decisions was given in ACDN 2006/19.

On 12 April 2011, the then Minister for Home Affairs varied the anti-dumping measures applying to ammonium nitrate exported to Australia from Russia and secured their continuation for a further 5 years. This followed consideration of *Trade Measures Report No 169*. Notification of the then Minister's decisions was given in ACDN 2011/16 and ACDN 2011/17.

On 4 May 2016, the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry Innovation and Science secured the continuation of anti-dumping measures applying to ammonium nitrate exported to Australia from Russia (either directly

⁹ The manual, chapter 3.

¹⁰ EPR 605, no 2 (chapter 3).

¹¹ *Trade Measures Report No 28*. The investigation period for the investigation was 1 January 1999 to 31 March 2000.

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or via Estonia) for a further 5 years. This followed consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No 312*.¹² Notification of the then Minister's decision was given in ADN 2016/34.

Those anti-dumping measures were allowed to expire on 24 May 2021 because of the decision of the then Minister for Industry, Science and Technology, following consideration of the findings and recommendations in *Anti-Dumping Commission Report No 565 (REP 565)*.¹³ Notification of the then Minister's decision was given in ADN 2021/053. The Anti-Dumping Review Panel (ADRP) has completed its review of the then Minister's decision.¹⁴

On 25 June 2018, the then Minister for Industry, Science and Technology published a dumping duty notice in relation to ammonium nitrate exported to Australia from the People's Republic of China (China), Sweden, and the Kingdom of Thailand (Thailand). This followed consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No 473 (REP 473)*.¹⁵ Notification of the then Minister's decision was given in ADN 2019/057.

¹² EPR 312, no 28.

¹³ EPR 565, no 50.

¹⁴ ADRP Review 2021/134.

¹⁵ EPR 473, no 65. The investigation period for the investigation was 1 April 2017 to 31 March 2018.

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A background to key cases in relation to the goods, including related cases and the above-mentioned investigations and inquiries, is summarised in Table 2.

Case	ADN number	Date of notice	Country of export	Findings
Investigation 28	2001/29	24 May 2001	Russia	Measures imposed on all exporters from Russia.
Accelerated Review 61	2002/043	27 September 2002	Russia	Measures varied.
Continuation Inquiry 104	2006/19	17 May 2006	Russia	Measures continued and variable factors altered for all exporters.
Continuation Inquiry 168	2011/16	18 April 2011	Russia	Measures continued for all exporters.
Review 169	2011/17	18 April 2011	Russia	Variable factors altered for all exporters.
Continuation Inquiry 312	2016/34	4 May 2016	Russia	Measures continued and variable factors altered for all exporters.
Investigation 473	2019/057	3 June 2019	China, Sweden, Thailand	Measures imposed on all exporters from China, Sweden, and Thailand.
Continuation Inquiry 565	2021/053	23 May 2021	Russia	Measures allowed to expire in relation to all exporters from Russia.

Table 2: Summary of previous cases in relation to the goods

There are currently anti-dumping measures in place for ammonium nitrate exported to Australia from China, Sweden, and Thailand.¹⁶

2.4 Conduct of the investigation

2.4.1 Australian industry

The Commissioner is satisfied that the applicants for the investigation represent part of the Australian industry producing like goods to the goods the subject of the application. The commission completed verification of the information provided by Orica and CSBP and published verification reports on the EPR.¹⁷ Other Australian industry members include Dyno Nobel Asia Pacific Pty Ltd (Dyno Nobel) and Yara Pilbara Nitrates Pty Ltd (Yara Pilbara). These 2 companies did not provide information in support of the application.

2.4.2 Importers

Using the Australian Border Force (ABF) import database, the commission identified several importers of the goods from Lithuania and Vietnam during the investigation

¹⁶ For further details refer to the *Dumping Commodity Register* on the commission's website, www.adcommission.gov.au.

¹⁷ EPR 605, nos 30 and 37.

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period. The commission forwarded importer questionnaires to those importers and placed a copy of the importer questionnaire on the commission's website for completion by other importers which were not directly contacted.

The commission received 5 responses to the importer questionnaire (RIQ) from AECI Australia Pty Ltd (AECI), Enaex Australia Pty Ltd, Glencore Coal Assets Australia Pty Ltd (Glencore), Nitrochem Pty Ltd, and Yahua Australia Pty Ltd. The commission verified the information contained within Glencore's RIQ and published a verification report on the EPR.¹⁸ The commission determined that verification of the information contained within the other RIQs was not required.

2.4.3 Exporters

The commission forwarded exporter questionnaires to AB Achema, Vinacomin Mining Chemical Industry Holding Corporation Ltd (MICCO), and J&E International (China) Co Ltd (J&E) at the commencement of the investigation and placed a copy of the exporter questionnaire on the commission's website for completion by other exporters.

AB Achema, MICCO and J&E provided a response to the exporter questionnaire (REQ), which the commission published on the EPR.¹⁹

The commission verified the information contained within AB Achema's and MICCO's REQs and published verification reports on the public record.²⁰ As part of the verification process, the commission found that J&E is a trader rather than an exporter, that on-sells ammonium nitrate produced by MICCO to Australia.

2.4.4 Foreign governments

The commission received submissions from the Government of Chile, the European Commission, and the Government of Lithuania in response to the initiation of the investigation.²¹ The commission met with representatives from the Government of Lithuania on 18 July 2022 and 19 October 2022 and published summaries on the EPR.²²

2.5 Submissions received from interested parties

The commission received the submissions outlined in Table 3 from interested parties prior to the publication of this SEF. The commission received 9 submissions by 15 July 2022, within the 37-day due date to provide submissions in response to the initiation notice. The commission has received a further 20 submissions since this date.

¹⁸ EPR 605, no 28.

¹⁹ EPR 605, nos 19, 20, and 21.

²⁰ EPR 605, nos 40 and 41.

²¹ EPR 605, nos 4, 8, and 11.

²² EPR 605, nos 12 and 25.

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The Commissioner has terminated the investigation as far as it relates to Chile and all exporters from Chile.²³ The Commissioner has not had regard to submissions received in relation to Chile in this SEF.²⁴ The Commissioner has had regard to the remainder of the submissions in reaching the conclusions contained within this SEF.

EPR number	Interested party	Date of submission
004	Government of Chile	14 June 2022
005	The applicants (CSBP, Orica, QNP)	20 June 2022
006	AECI Australia Pty Ltd	23 June 2022
007	Enaex S.A.	12 July 2022
008	European Commission	12 July 2022
009	Glencore Coal Assets Australia Pty Ltd	14 July 2022
010	Vinacomin Mining Chemical Industry Holding Corporation Ltd	28 June 2022
011	Government of Lithuania	14 July 2022
013	Rio Tinto Limited	15 July 2022
016	Whitehaven Coal Limited	29 July 2022
023	Vinacomin Mining Chemical Industry Holding Corporation Ltd	19 September 2022
024	The applicants (CSBP, Orica, QNP)	21 September 2022
026	Queensland Nitrates Pty Ltd	21 October 2022
027	CSBP Limited	24 October 2022
029	Orica Australia Pty Ltd	4 November 2022
031	Glencore Coal Assets Australia Pty Ltd	25 November 2022
033	AB Achema	21 November 2022
034	AB Achema	14 September 2022
035	AB Achema	7 October 2022
036	AB Achema	7 September 2022
038	The applicants (CSBP, Orica, QNP)	11 January 2023
039	Vinacomin Mining Chemical Industry Holding Corporation Ltd	3 February 2023
042	AECI Australia Pty Ltd	9 February 2023
043	AB Achema	20 February 2023
044	Orica Australia Pty Ltd	21 February 2023
045	Glencore Coal Assets Australia Pty Ltd	24 February 2023
046	Vinacomin Mining Chemical Industry Holding Corporation Ltd	20 February 2023

²³ EPR 605, no 17.

²⁴ EPR 605, nos 4 and 7.

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EPR number	Interested party	Date of submission
048	The applicants (CSBP, Orica, QNP)	31 March 2023
050	AECI Australia Pty Ltd	30 March 2023

Table 3: Submissions received from interested parties

2.6 Termination of investigation into Chile

On 3 August 2022, the Commissioner terminated the investigation in relation to Chile.²⁵ This was on the basis that there were no exports of the goods from Chile during the investigation period.

2.7 Preliminary affirmative determination

In accordance with section 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD), if satisfied that there appears to be (or it appears that there will be) sufficient grounds for the publication of a dumping duty notice. The Commissioner may make a PAD no earlier than day 60 of the investigation. The *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) specifies that, 60 days after the initiation of an investigation, the Commissioner must either make a PAD or publish a Status Report providing reasons why he has not made a PAD.

On 8 August 2022, the Commissioner provided a Status Report outlining that the Commissioner was not satisfied that, at that stage of the investigation, there appeared to be sufficient grounds for the publication of a dumping duty notice.²⁶

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report, at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available and assessed since 8 August 2022.

The evidence as set out in this report does not satisfy the Commissioner that there appears to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported to Australia from Lithuania and Vietnam. The Commissioner has therefore not made a PAD at this stage of the investigation.

2.8 Responding to this SEF

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

²⁵ EPR 605, no 17.

²⁶ EPR 605, no 17.

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

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Minister or in terminating the investigation. The report will recommend whether the Minister should publish a dumping duty notice, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **19 June 2023**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by **8 August 2023**, unless he terminates the investigation.

Submissions should be emailed to investigations3@adcommission.gov.au. Confidential submissions must be clearly marked accordingly, and a non-confidential version of any submission is required for inclusion on the EPR.

A guide for making submissions is available on the commission's website, www.adcommission.gov.au.

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

Interested parties should read the documents on the EPR in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commissioner considers the ammonium nitrate produced by the Australian industry to be 'like goods' to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, among other things, 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 goods' to the imported goods. Section 269T(1) defines 'like goods' as:

[G]oods 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 or subsidised 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
- iv. production likeness.

3.3 The goods

The goods are:

Ammonium nitrate, prilled, granular, or in other solid form, with or without additives or coatings, in packages exceeding 10 kg.²⁷

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings and statistical codes, in Schedule 3 to the *Customs Tariff Act 1995* (Cth).

²⁷ EPR 605, no 3.

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Tariff Subheading	Statistical Code	Description
3102	MINERAL OR CHEMICAL FERTILISERS, NITROGENOUS:	
3102.30.00	05	Ammonium nitrate, whether or not in aqueous solution

Table 4: General tariff classification for the goods

The tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of the tariff classification and statistical code is for convenience or reference only and does not form part of the goods description set out above. Please refer to the goods description for authoritative detail regarding the particulars of the goods, the subject of this investigation.

3.5 Model control codes

The commission undertakes model matching using a model control code (MCC) structure to identify key characteristics used to compare models of the goods exported to Australia and the like goods sold domestically in the country of export. The MCC structure in Table 5 outlines the commission's MCC structure for this investigation.

Category	Sub-category		Sales data	Cost data
Density	H	High	Mandatory	Mandatory
	L	Low		
Form	P	Prilled	Mandatory	Optional
	G	Granular		
	O	Other form		

Table 5: MCC structure

During verification, the commission determined that AB Achema had more categories of products. Table 6 outlines the MCC structure utilised for AB Achema to reflect its pricing more accurately.

Category	Identifier	Sub-category
Quality	P	Prime
	N	Non-prime
Density	H	High
	L	Low
Form	P	Prilled
	G	Granular
	O	Other solid form
Packaging type	U	Unpackaged (bulk)
	P	Packaged

Table 6: Revised MCC structure for AB Achema

AB Achema produced and sold only MCC 'H-P' (all extra sub-category identifiers still fell within MCC 'H-P').²⁸ MICCO produced and sold only MCC 'L-P'.²⁹

3.6 Like goods

This chapter sets out the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods and are therefore 'like goods'. For the purposes of the findings below, the commission has relied on information provided during the conduct of this investigation and prior cases involving the goods.³⁰

3.6.1 Physical likeness

The commission understands that exported ammonium nitrate is broadly classified into 2 grades – low density and high density:

- Low density ammonium nitrate (LDAN) is generally of solid prilled form and is typically used in the manufacture of explosives. LDAN is predominantly used in the production of bulk explosives, including ammonium nitrate fuel oil (ANFO) and emulsion-based bulk explosives.
- High density ammonium nitrate (HDAN) is generally in granular form (it also can be in a prill form) and is typically used as a fertiliser overseas. HDAN can be used in the manufacture of emulsion-based explosives, which are often used for 'wet-blasting' where water resistance is required.³¹

The Australian industry does not produce HDAN but does produce LDAN and ammonium nitrate solution (ANSol). ANSol is directly substitutable with HDAN after being melted.

The commission considers that, although there are slight differences in the technical specifications, the goods produced by the Australian industry for sale into the Australian market are physically like to the imported goods.

3.6.2 Commercial likeness

The commission considers the ammonium nitrate, produced by the Australian industry for sale into the Australian market, is commercially like to the goods. Although there have been submissions contending the commercial competition between HDAN and LDAN,³² the commission has found that the goods compete in the same market segment, where there is direct competition between imported goods and the goods produced by the Australian industry.

²⁸ EPR 605, no 41.

²⁹ EPR 605, no 40.

³⁰ See Anti-Dumping Investigation 473 and Reinvestigation 565.

³¹ EPR 605, no 37.

³² EPR 605, nos 31, 38, and 43.

3.6.3 Functional likeness

The commission considers the ammonium nitrate the Australian industry produces for sale into the Australian market is functionally like to the goods. The Australian industry produced ammonium nitrate and the goods have similar end uses, as both HDAN and LDAN can be used in the manufacture of explosives, the predominant use for ammonium nitrate in Australia. In certain limited circumstances, HDAN and LDAN could be substituted for each other, but would potentially cause different blasting outcomes.³³

Although the applicants do not produce HDAN, the commission found that ANSol produced by the Australian industry is directly substitutable with imported HDAN, as they are sold to the same customers for the purpose of producing ammonium nitrate emulsion. The commission also found that LDAN produced locally is substitutable with imported LDAN.

Based on this, the commission considers that the locally produced goods and the imported goods perform the same function and are used in the same end-use applications.

3.6.4 Production likeness

MICCO, AB Achema and the Australian Industry produce ammonium nitrate by reacting ammonia with nitric acid.³⁴ This chemical reaction produces ammonium nitrate solution, which can be solidified by prilling or granulation. The Commission's analysis of this production process is discussed at section 4.3 of this SEF.

The commission considers the ammonium nitrate the Australian industry produces for sale into the Australian market is produced using a substantially similar production process and using similar raw material inputs to the imported goods.

Both the Australian industry and exporters produce ammonium nitrate through the chemical reaction of ammonia and nitric acid. Manufacturers may use either self-produced ammonia (from natural gas) or imported ammonia. There are also slight variations in additives and final form of the ammonium nitrate.

3.6.5 Like goods preliminary assessment

Based on the above findings, the commission considers that the ammonium nitrate the Australian industry manufactures has characteristics closely resembling the goods exported to Australia, as the:

- physical characteristics of the goods and locally produced goods are similar
- goods and locally produced goods are commercially alike as they are sold to common users and directly compete in the same market
- goods and locally produced goods are functionally alike as they have a similar range of end uses, and

³³ EPR 605, no 37.

³⁴ EPR 605, nos 30, 37, 40, and 41.

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- goods and locally produced goods consist of the same raw materials and are manufactured in a similar manner.

As such, the Commissioner is satisfied that the Australian industry for ammonium nitrate produces like goods to the goods the subject of the application, as defined in section 269T(1).

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry producing like goods, comprised of the 5 manufacturers of ammonium nitrate in Australia:

- CSBP
- Orica
- QNP
- Dyno Nobel
- Yara Pilbara.

4.2 Legislative framework

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

The commission understands that all the above manufacturers produce ammonium nitrate, either wholly or partly, in Australia. Australian ammonium nitrate is manufactured using ammonia produced from gas or using ammonia from external sources.

Ammonium nitrate is produced by neutralising nitric acid with ammonia. Ammonia is produced from natural gas, which typically accounts for most of the production cost. Natural gas is reacted with steam and air to produce hydrogen, nitrogen, and carbon dioxide. The carbon dioxide is removed, and the hydrogen is reacted with nitrogen to produce ammonia.

Nitric acid is produced through the reaction of ammonia with oxygen in the presence of a catalyst. The reaction produces nitric oxides, which are dissolved in water to produce nitric acid. The reaction of ammonia with nitric acid produces an ammonium nitrate solution. This may be sold in the solution state or solidified by prilling or granulation.

To manufacture prills, the solution is sprayed into the top of a prilling tower, a rising air stream cools and solidifies the falling droplets into spherical balls or prills. The density of the finished product is governed by the concentration of the solution. LDAN prills are produced using a solution with a higher moisture content. The solidified prills also have a high moisture content and go through a lengthy drying process. HDAN prills are manufactured using a solution with a lower moisture content.

To produce a low-density product, additives are introduced prior to prilling which changes the structure of the prills during the prilling process to make it form a hollow, honeycomb type structure. It is the additives that increase the internal crystalline strength of the low-density product. Coating agents are applied to stop the product clumping together and to improve handling and storage properties.

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Granules are made either by a rotating drum granulation process or fluid bed granulation process. Regardless of the production process, all granules are high density.

The commission verified the production process used by CSBP and Orica and is satisfied that both produce ammonium nitrate wholly within Australia. Publicly available information also confirms that Dyno Nobel, QNP, and Yara Pilbara manufacture ammonium nitrate in facilities located in Australia.

Accordingly, the commission is satisfied there is an Australian industry which produces like goods.

4.4 Submissions regarding the Australian industry

The Government of Lithuania submitted that the importation of ammonium nitrate by the applicants means they should be excluded as domestic producers.³⁵

The relevant consideration for the Australian industry is whether like goods are wholly or partly manufactured in Australia. As the applicants manufacture ammonium nitrate wholly or partly within Australia, they are considered members of the Australian industry. Imports of the goods by Australian industry members do not preclude them from being considered part of the Australian industry.

³⁵ EPR 605, no 11.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The commission has found that, during the investigation period, the Australian market for the goods and like goods was supplied by:

- the applicants (CSBP, Orica, and QNP), manufacturers representing the Australian industry
- Dyno Nobel and Yara Pilbara, manufacturers in the Australian industry that are not the applicants
- imports from countries subject to anti-dumping measures (China, Sweden, and Thailand)
- imports from Lithuania and Vietnam
- imports from other countries not subject to anti-dumping measures.

5.2 Approach to analysis

The commission has analysed trends in the Australian market for ammonium nitrate and made observations with respect to the economic condition of the Australian industry.

In relation to establishing the size of the Australian market and analysing volume trends, the commission has used information provided by participating Australian industry members, importers, exporters, and information from the ABF import database. The commission has verified the information obtained from CSBP and Orica.³⁶ The commission has not verified the information obtained from QNP; it is still considered reliable for the purpose of this investigation.

The data and analysis on which the commission has relied to assess the size and volume trends is at **Confidential Attachment 1**.

5.3 Australian market structure

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives. The mining, quarrying and, to a lesser extent, the construction industries all use explosives. Ammonium nitrate is classified as a dangerous good.³⁷ Ammonium nitrate has limited secondary usage in Australia as a fertiliser in the agricultural sector, relative to other nitrogenous fertilisers such as urea and urea ammonium nitrate solution.

The Australian market for ammonium nitrate is split across the eastern and western seaboard. The eastern seaboard ammonium nitrate plants are in New South Wales and Queensland. These plants primarily supply ammonium nitrate for use in eastern seaboard

³⁶ EPR 605, nos 30 and 35.

³⁷ 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.

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coal and metal mines. The western seaboard market is primarily focused on supplying ammonium nitrate for use in iron ore, gold, and other mines. There is some market in South Australia, but this represents only a small part of the overall industry.

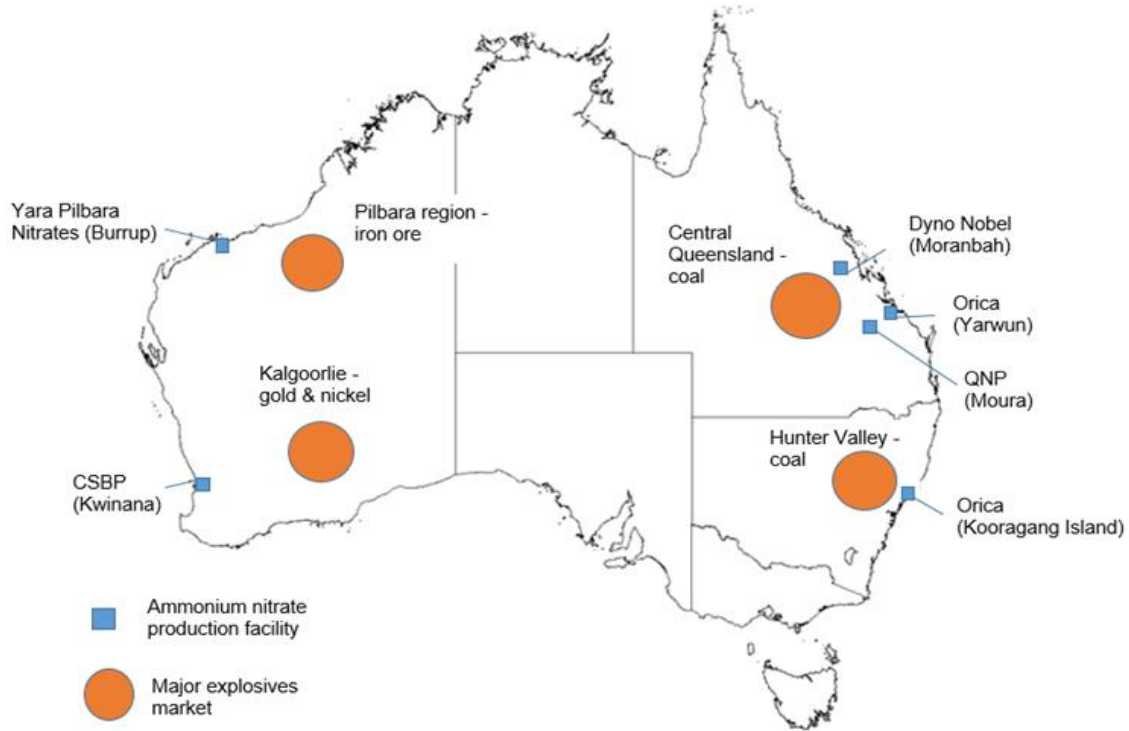


Figure 1: Australian major ammonium nitrate markets and production facilities

5.3.1 Channels to market and competition in the Australian market

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 channels to the mining sector and other sectors in Australia.

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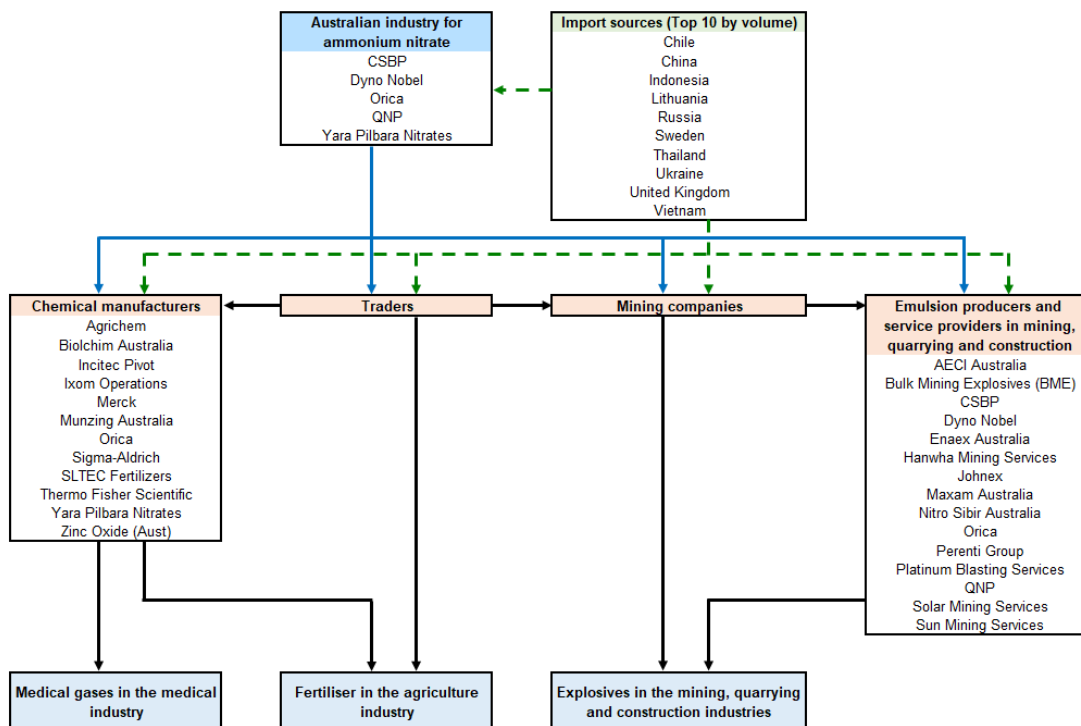


Figure 2: Australian market structure for ammonium nitrate

Ammonium nitrate is either sold to commercial explosives and associated blasting services providers or is sold directly to mining companies who consume it at mine sites. Ammonium nitrate is imported either directly by explosives providers or via traders. The commission also observed that Australian industry members have imported ammonium nitrate, as well as importations in smaller volumes by entities involved in the production or sale of fertilisers and medical products. The commission understands that it is unusual for mining companies to directly import ammonium nitrate. However, the commission found that one mining company did directly import ammonium nitrate from Vietnam during the inquiry period.

The commission understands that both Orica and Dyno Nobel, in addition to manufacturing and selling ammonium nitrate, provide blasting services, sell commercial explosives, and provide blast initiating systems. The commission understands that Orica and Dyno Nobel's 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.

In relation to the Australian industry members who do not provide blasting services (CSBP, QNP and Yara Pilbara), the commission considers that they are primarily manufacturers of ammonium nitrate and therefore do not directly compete with other vertically integrated ammonium nitrate manufacturers and mining service providers. However, the commission understands that their customers do compete with other mining services providers who import ammonium nitrate, obtain ammonium nitrate from Australian industry, or both.

Based on the findings in REP 473, REP 565, and information obtained as part of this investigation, the commission understands the following:

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- 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. It is noted that in addition to price, quality, availability, reliability, and timeliness of supply can influence purchasing decisions.
- Whilst Australian industry members indicate that there are little to no structural impediments to importing AN, MICCO argued that there are structural and cost impediments to exporting AN into Australia.³⁸ The commission considers that suppliers that are located geographically close to usage sites are able to mitigate some freight costs, storage costs and security and quality risks (ammonium nitrate degrades in quality the longer it is transported and therefore product performance can be compromised). It is also noted that ammonium nitrate is considered a dangerous good and is subject to various regulatory and licensing requirements.
- 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.³⁹
- Some of the applicants will supply 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 proximate.⁴⁰
- The 3 ammonium nitrate manufacturers in Queensland (Orica, Dyno Nobel, and QNP) compete for contracts to supply explosives manufacturers and associated blasting services providers, including mining principals. As mentioned above, Orica and Dyno Nobel also compete with other market participants to provide mining blast services.

5.3.2 Pricing in the Australian market

Sales of ammonium nitrate in Australia are made predominantly in accordance with fixed-term contracts. These contracts are typically of 2 to 5 years in duration. However, contracts may also be of longer or shorter durations and spot sales may occur on occasion.

Contracts are typically negotiated through a tender process and will typically specify a base price, with rise and fall provisions. These base prices are negotiated on several commercial parameters, which will include pricing offers from alternative supply sources. The rise and fall provisions will be tied to a range of variables and these variables will vary between contracts. The rise and fall provisions enable for the rise and fall of the base price to occur at specified intervals over the life of the supply agreement. Contracts may also have exclusivity of supply arrangements and/or 'take or pay' provisions (minimum offtake volumes stipulated in supply agreements).

³⁸ EPR 565, no 39.

³⁹ Information obtained from an Australian Industry verification and Final Report 473.

⁴⁰ EPR 473, no 65.

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The commission's analysis of supply channels, customer information, sales data and import data, indicates that parties will source ammonium nitrate from import sources or Australian industry and, at times, from both.

Both CSBP and Orica advised the commission that price negotiations are generally focused on 'next best alternative' (NBA) or import pricing.

5.3.3 Substitutes to ammonium nitrate

The commission understands that there are no commercially viable substitutes for ammonium nitrate in the Australian market for bulk explosives used in the mining and quarrying industries.

5.4 Market structure

5.4.1 Supply and distribution

As mentioned, the supply of ammonium nitrate is predominantly contract based, with some limited spot sales. These supply contracts are long term, typically lasting from between 2 to 5 years with lengthy negotiation phases.

5.4.2 Demand

The commission considers that demand for ammonium nitrate has continued to increase since 2018.

The applicants have indicated that demand for ammonium nitrate is driven by activity within the mining sector, particularly iron ore (Western Australia) and coal (Queensland and New South Wales).

The commission has examined data relating to mining activity available from the Australian Bureau of Statistics (ABS). The commission's analysis of this data is contained in **Confidential Attachment 2**.

There are various measures of activity in these sectors, including expenditure on mining exploration and metres drilled. The commission analysed these measures for iron ore, coal, and total combined deposits. Values were measured on a quarterly basis from March 2018.

The following trends in expenditure were analysed across various commodities:

- The expenditure in iron ore exploration trended upwards between March 2018 and June 2022. Total expenditure peaked in June 2022, representing a 301% appreciation from March 2018.
- The expenditure of coal exploration fluctuated through March 2018 and June 2022. Coal expenditures rose 139.6% from March 2018 to June 2020, before declining 29.7% in the period to June 2022 to \$61.3 million.
- The commission observed a general rise in mineral exploration expenditures between March 2018 and June 2022. Of the 5 other mineral exploration expenditure categories examined, 4 (uranium, gold, diamonds and other) out of 5

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trended higher between March 2018 and June 2022. Just diamond exploration expenditure trended lower over the same period.

Accounting for seasonal variation, data on metres drilled in total mining exploration in Australia in Figure 3 shows an upward trend in metres from early 2018 to mid-2022. Mining metres drilled remained steady between 2300 metres and 2700 metres from early 2018 to mid-2020. By June 2021 metres drilled rose 46.9% year-over-year, before declining 14.3%. By June 2022, mining metres drilled trended 32% higher than March 2018 levels, showing a potential for mining metres to trend higher for the foreseeable future.

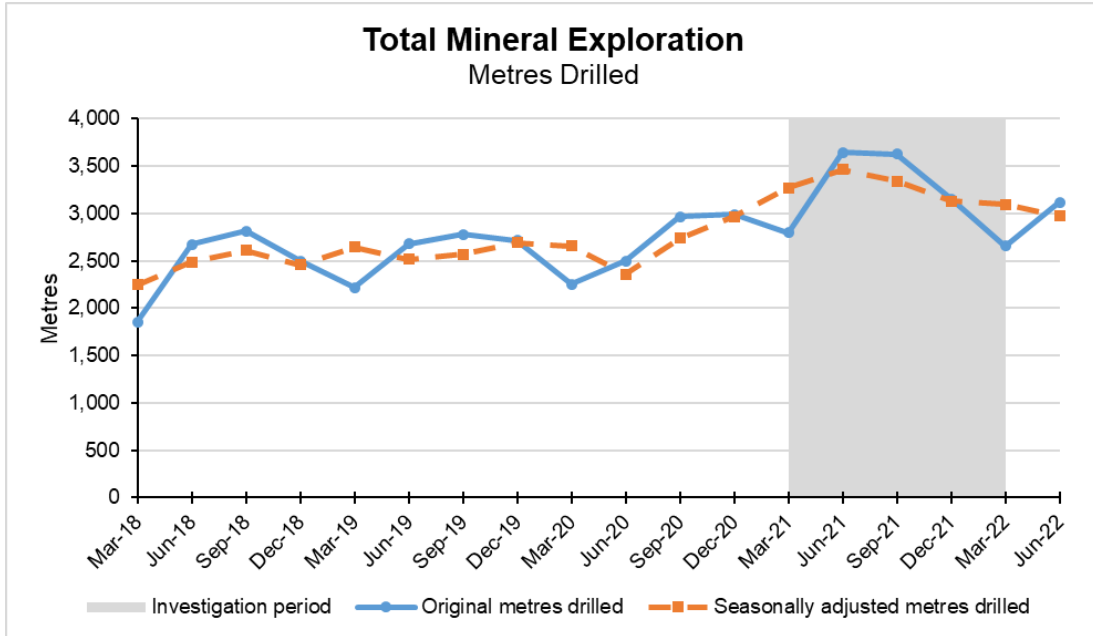


Figure 3: Total Mineral Exploration in Australia in Metres Drilled

Figure 4 shows the total expenditure on mineral exploration in Australia has trended upwards consistently over the past 4 years to June 2022. In total expenditure (seasonally adjusted) on mineral exploration in Australia has appreciated 100.1%.

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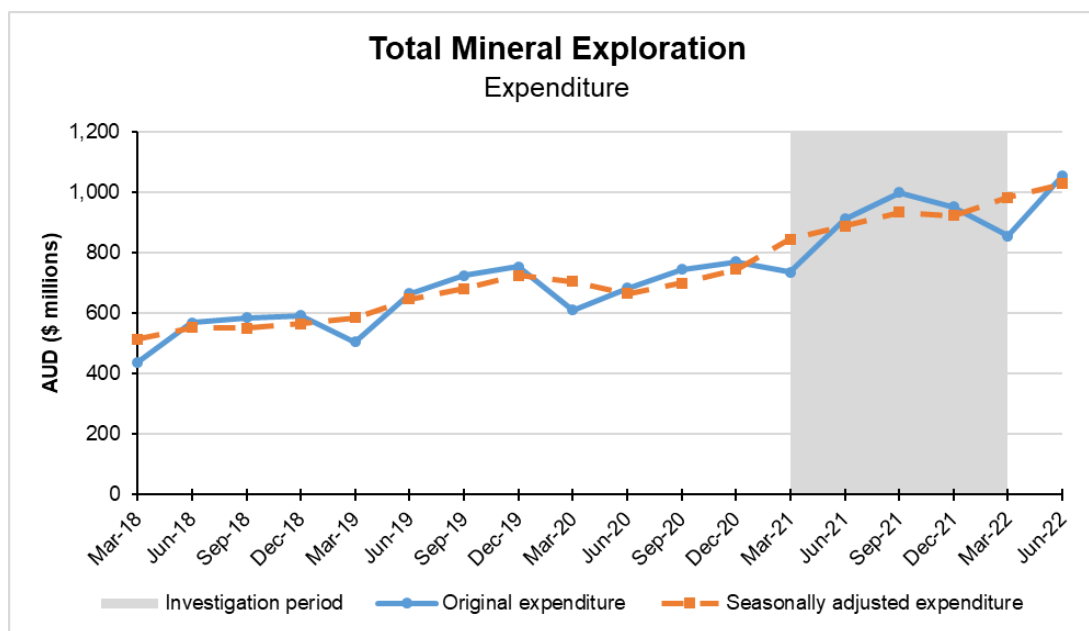


Figure 4: Total Mineral Exploration Expenditure in Australia

Overall figures from 2018 to 2022 indicate an increase in mineral exploration expenditure in Australia in the short term. Over the same period, Australia's total mineral exploration has exhibited an increase in metres drilled. Taken together, the rise in expenditures and metres drilled indicate demand for ammonium nitrate has risen over the long term, with a potential to rise into the near future. Despite the increase in the long term, there has been some noticeable fluctuations over the investigation period (April 2021 to March 2022).

Over the investigation period (data pertaining from June 2021 to June 2022), expenditure in mineral exploration (seasonally adjusted) appreciated, rising 15.8%. Meanwhile, Australia's total mineral exploration in metres drilled (seasonally adjusted) declined 14.3%. The decline in metres drilled for mineral exploration in Australia provides evidence to suggest demand for ammonium nitrate is declining over the short term.

5.5 Market size

The commission has estimated the size of the Australian market for ammonium nitrate using the domestic sales data from the applicants and data sourced from the ABF import database. The information sourced from the ABF import database was determined using the relevant tariff codes for ammonium nitrate (3102.30.00) and extra filtering to remove imports that are not the goods. The size of the Australian market was then calculated using:

- data provided by the applicants
- ABF import data, and
- publicly available information in relation to other members of the Australian industry.

Figure 5 depicts the commission's estimate of the Australian market size for ammonium nitrate from 1 April 2018 to 31 March 2022.

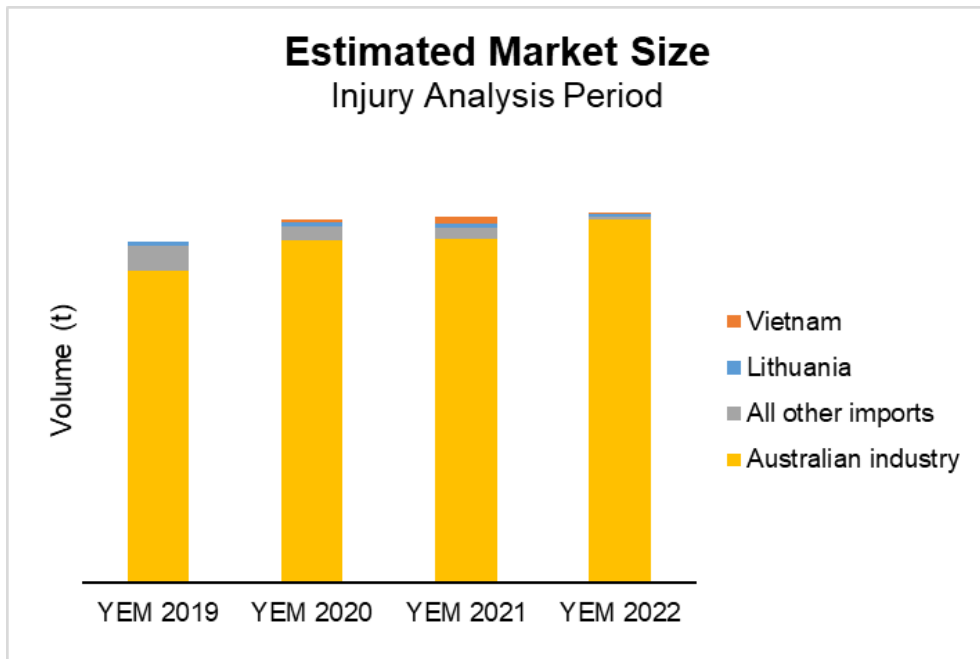


Figure 5: Estimated Australian market size (injury analysis period)

Figure 6 shows the commission’s estimate of the Australian market size for ammonium nitrate over the investigation period, from 1 April 2021 to 31 March 2022.

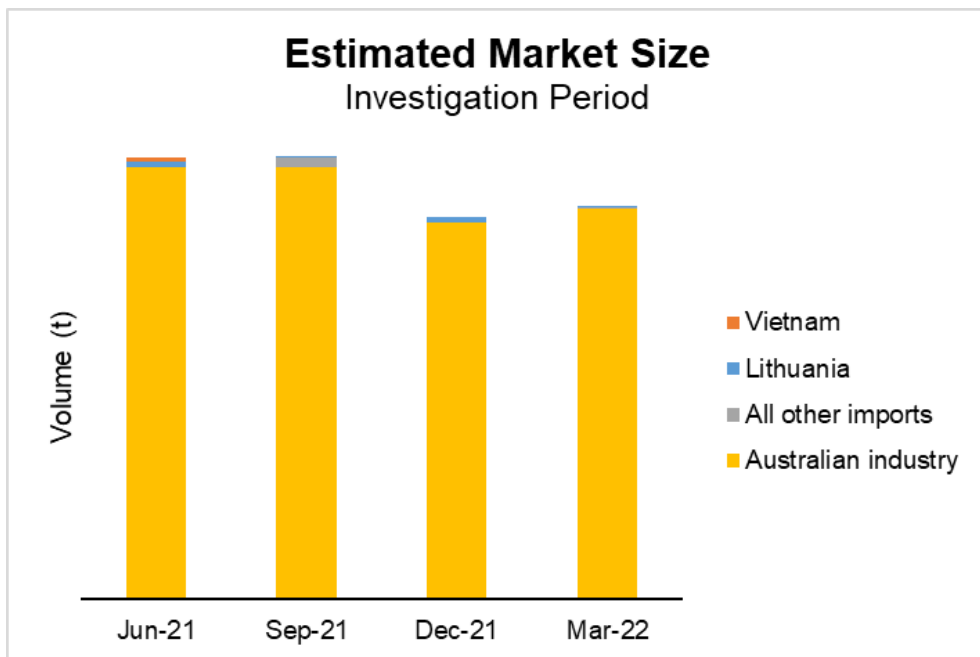


Figure 6: Estimated Australian market size (investigation period)

The overall size of the Australian market has increased since 2018 but reduced towards the second half of the investigation period. The volume of exports from Lithuania and Vietnam appears to have decreased over the injury analysis period and the investigation period.

The commission’s analysis of the Australian market is contained in **Confidential Attachment 1**.

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6 DUMPING INVESTIGATION

6.1 Preliminary finding

The commission found that the goods exported to Australia from Vietnam and Lithuania have been dumped and that the dumping margins are not negligible.

The commission’s assessment of the dumping margins is set out in Table 7.

Country	Exporter	Dumping margin
Vietnam	Vinacomin Mining Chemical Industry Holding Corporation Ltd	167.9%
Lithuania	AB Achema	5.1%

Table 7: Summary of dumping margins

6.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), 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 to publish a dumping duty notice is that exporters exported dumped goods to Australia.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, as far as it relates to an exporter, if satisfied that the exporter has not dumped the goods, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Dumping occurs when an exporter exports a product from one country 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.

6.2.1 Export price

The export price is determined in accordance with section 269TAB, considering whether the purchase or sale of goods are arms length transactions under section 269TAA. Section 269TAB(1)(a) generally 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, where the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter in arms length transactions.

Where the conditions in section 269TAB(1)(a) are not met, such as when the export transactions are not arms length or the importer(s) have not purchased the goods from the exporter, the export price is determined under sections 269TAB(1)(b) or (c).

Section 269TAB(3) provides that, where the export price cannot be established under the preceding provisions, the export price is determined by having regard to all relevant information.

6.2.2 Normal value

The normal value is determined in accordance with section 269TAC. Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

If one of the circumstances set out in sections 269TAC(2)(a) or (b) is present, such as where there is an absence or low volume of relevant sales of like goods in the market of the country of export, or there is a particular market situation, section 269TAC(1) may not be used. In this instance, the normal value of the goods is to be calculated through either a constructed normal value under section 269TAC(2)(c) or using prices of like goods exported to a third country under section 269TAC(2)(d).

Under section 269TAC(14), an exporter's domestic sales of like goods are taken to be in a low volume where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

Section 269TAC(6) provides that, where the normal value cannot be established under the preceding provisions, the normal value is determined by having regard to all relevant information.

6.2.3 Dumping margin

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this investigation, the commission compared the weighted average Australian export prices with the corresponding quarterly weighted average normal values for the investigation period in accordance with section 269TACB(2)(a).

6.3 Cooperative exporters

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

At the outset of the investigation, the commission forwarded questionnaires to identified exporters, and a copy was also placed on the commission's website for completion by any other exporters. The commission received REQs from MICCO and AB Achema.

The commission considers all entities listed above, who provided a REQ and whose exports were examined as part of the investigation, MICCO and AB Achema, to be cooperative exporters.

6.4 Uncooperative exporters

Section 269T(1) provides that an exporter is an uncooperative exporter if the Commissioner is satisfied that:

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- 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
- an exporter significantly impeded the investigation.

The Commissioner must determine an exporter to be an uncooperative exporter on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so within the legislated period.⁴¹

As AB Achema was the only known exporter from Lithuania and MICCO was the only known exporter from Vietnam, the Commissioner does not consider there were any uncooperative exporters within the definition of section 269T(1). The commission considers that the volumes from exporters who cooperated with the investigation represent the total volume of exports relevant to the investigation period.

6.5 MICCO

The commission conducted a remote verification of MICCO's REQ. A report covering the verification findings is available on the public record.⁴²

The commission is satisfied that MICCO is the producer of the goods and like goods. The commission is further satisfied that the information that MICCO provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.5.1 Export price

MICCO submitted that it should not be considered an exporter for the purposes of the investigation as it:⁴³

- negotiates directly with its customer, J&E
- does not have any contact with customers in Australia
- does not have any representatives in Australia
- does not have a distribution channel or business facilities in Australia
- is not aware of all information relating to the sales transaction to the Australian customer.

The commission considers that MICCO is an exporter of the goods, as MICCO:

- is the manufacturer of the goods located in the country of export
- is named as the seller on the commercial invoice
- arranges and pays for the inland transport to the port of export

⁴¹ *Customs (Extensions of Time and Non-cooperation) Direction 2015 (Cth)*, section 8.

⁴² EPR 605, no 40.

⁴³ EPR 605, no 46.

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- arranges and pays for the port handling charges at the port of export
- knowingly placed the goods in the hands of J&E, a Hong Kong trader, for delivery to Australia.

MICCO made one Australian sale during the investigation period, to an unrelated customer through J&E. For this sale J&E acted as an intermediary and was not the importer.

In respect of Australian sales of the goods by MICCO, the commission found that the importer has not purchased the goods from the exporter. Therefore, the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

The commission has therefore calculated the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation. The commission has considered the evidence before it to determine the most appropriate methodology for determining an export price under section 269TAB(1)(c). The commission's analysis is set out below.

The commission has examined the relationship between MICCO and J&E to determine whether it is appropriate to base MICCO's export price on the invoiced price paid by J&E to MICCO. The commission found that MICCO and J&E are unrelated.

In relation to that invoiced price, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁴⁴

The commission is therefore satisfied that J&E purchased the goods from MICCO in an arms length transaction.

Accordingly, the commission considers that it is appropriate to calculate MICCO's export price based on the invoiced price paid by J&E to MICCO, as stated on MICCO's commercial invoices.

The commission's export price calculations for MICCO are at **Confidential Attachment 3**.

6.5.2 Normal value

The commission found that, in terms of sales of the goods to domestic customers, MICCO sold the goods only to unrelated customers during the investigation period.

The commission identified that MICCO has a barter arrangement with its customers, where MICCO purchases explosives from customers in return for selling the goods to the

⁴⁴ Section 269TAA.

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same customers. The customers produce explosives from the goods supplied by MICCO. Each party settles payment by clearing debts for both parties at the same amount. One party can pay the remaining debt by either transferring money or product (i.e., the GUC or explosives).

The commission also determined the following:

- The Vietnamese government fixed the price of ammonium nitrate MICCO sold to customers from 2011 and this price has not changed since 2011.
- No price bargaining or negotiation between MICCO and its customers has occurred since 2011.
- MICCO has special permission from the Vietnamese government to manufacture ammonium nitrate.
- The ammonium nitrate MICCO sells on the domestic market is a specialised product and does not compete with other like products in the local market.
- According to MICCO, there are no other manufacturers of ammonium nitrate in the domestic market.

Based on the findings above and in respect of MICCO's domestic sales of like goods to its unrelated customers during the period, the commission found evidence that:

- there was consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller.

The commission therefore considers that all domestic sales of the goods made by MICCO to its domestic customers during the investigation period were not arms length transactions. The commission excluded all domestic sales from normal value calculations, and therefore the normal value of the Australian export goods cannot be ascertained under section 269TAC(1).

The commission determined that section 269TAC(2)(a)(i) is satisfied, and therefore considered calculating normal value under section 269TAC(2)(c). Where the commission is required to calculate a normal value under section 269TAC(2)(c), sections 269TAC(5A) and (5B) provide that the cost to make, selling, general and administrative (SG&A) costs, and an amount of profit must be worked out under sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (Cth) (the Regulation), respectively.

In relation to calculating profit under section 45 of the Regulation, the commission found that all MICCO's domestic sales of the goods are non-arms length sales. For sales to be in the OCOT, sales must be arms length transactions. Since there are no sales of like goods in the OCOT in the domestic market, profit cannot be calculated under section 45(2) of the Regulation.

The commission therefore considered calculating the profit under section 45(3)(a) of the Regulation. The commission considers the 'same general category of goods' to be ammonium nitrate and sodium nitrate because the exporter classifies these goods as being the only explosive precursors under their products and services category. As MICCO applies a standard cost methodology for some of its cost of production, the commission is not satisfied that it can identify the actual amounts realised by MICCO from

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the sale of the same general category of goods and was therefore not able to determine profit under section 45(3)(a) of the Regulation.

The commission is unable to calculate a profit under section 45(3)(b) of the Regulation as it understands that MICCO is the only exporter or producer of like goods in Vietnam.

The commission also considers it is unable to determine a profit under section 45(3)(c) of the Regulation. Any profit calculated under section 45(3)(c) must not exceed the amount of profit realised by other exporters or producers of the same general category of goods.⁴⁵ As the commission understands there are no other exporters or producers of the same general category of goods in Vietnam, it cannot determine an amount under section 45(4) of the Regulation. As the commission cannot calculate the capped amount in section 45(4) of the Regulation, the commission cannot determine a profit under section 45(3)(c) of the Regulation.

The commission therefore finds that it cannot calculate a profit under sections 45(2) or 45(3) of the Regulation. Accordingly, the commission cannot calculate normal value under section 269TAC(2)(c).

The commission considers that the normal value should be calculated under section 269TAC(6), using a constructed normal value methodology, being the sum of:

- the cost to make the exported goods based on the company's records in accordance with section 43(2) of the Regulation
- SG&A on the assumption that the goods, instead of being exported, were sold for home consumption in the OCOT in the country of export based on the company's records in accordance with section 44(2) of the Regulation
- Verified OCOT profit for AB Achema.

To determine the amount of profit used in the calculation, the commission first looked to MICCO's general category of goods. The commission calculated an amount for profit based on MICCO's revenue and cost of goods sold for the general category of goods (ammonium nitrate and sodium nitrate). This amount did not show a profit. As stated in the manual:

The purpose of the constructed normal value is to estimate as closely as possible, using costs and profit, what the price of the exported goods would have been had they been sold in the ordinary course of trade in the exporter's domestic market.

The commission considers that a zero amount of profit does not reasonably reflect what the price of the goods would have been, had they been sold in the OCOT. Under section 269TAC(6), the Minister has regard to all relevant information. In this case, the commission considers that the most relevant profit amount is the OCOT profit for AB Achema. The commission verified AB Achema's domestic sales and was able to determine an OCOT profit amount.

⁴⁵ *Customs (International Obligations) Regulation 2015* (Cth) section 45(4).

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The normal value is then adjusted to ensure that the normal values are properly comparable with export prices. The commission is satisfied that there is sufficient information to justify the adjustments outlined in Table 8.

Adjustment Type	Deduction/addition
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport and port handling charges	Add an amount for export inland transport and port handling charges
Export credit terms	Add an amount for export credit terms

Table 8: Summary of adjustments – MICCO

The commission's normal value calculations for MICCO are at **Confidential Attachment 5**.

6.5.3 Dumping margin

The commission has calculated a dumping margin for the goods exported to Australia by MICCO of **167.9%**.

The commission's dumping margin calculations for MICCO are at **Confidential Attachment 6**.

6.6 AB Achema

The commission conducted a remote verification of AB Achema's REQ. A report covering the verification findings is available on the public record.⁴⁶

The commission is satisfied that AB Achema is the producer of the goods and like goods. The commission is further satisfied that the information that AB Achema provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.6.1 Export price

The commission considers AB Achema to be the exporter of the goods, as AB Achema:

- produced the Australian export goods
- is named as the supplier on the commercial invoice
- for some sales, is named as the exporter on the Lithuanian export declaration
- arranged and paid for inland transport to the port of export
- depending on the delivery terms, arranged, and paid for port handling, loading and inspection costs at the port of export.

All of AB Achema's export sales in the investigation period were to a single unrelated customer. This customer acted as the importer for some sales, and as a trader/intermediary for other sales. The commission has identified the role of the AB Achema's customer in each export sale and determined the export price.

⁴⁶ EPR 605, no 41.

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Export sales where the customer was the importer

Where AB Achema's export customer was the importer, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁴⁷

The commission therefore considers that all export sales of the goods made by AB Achema to its customer, where it acted as the importer during the investigation period, were arms length transactions.

Therefore, in respect of these Australian sales, the commission determined the export price under section 269TAB(1)(a), being the price paid by the importer to the exporter less transport and other costs arising after exportation.

Export sales of the goods where the customer was a trader

Where AB Achema's export customer acted as a trader, the importer did not purchase the goods from the exporter. Therefore, the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

For these sales, the commission calculated the export price under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The commission has considered the evidence before it to determine the most appropriate methodology for determining an export price under section 269TAB(1)(c). The commission's analysis is set out below.

The commission considered whether it is appropriate to base the export price on AB Achema's selling price to its customer, less transport and other costs arising after exportation. In respect of these sales, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁴⁸

⁴⁷ Section 269TAA.

⁴⁸ Section 269TAA.

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The commission therefore considers that all export sales of the goods made by AB Achema to its customer, where it acted as a trader during the investigation period, were arms length transactions.

AB Achema paid for either all or most of the costs arising up to exportation, depending on the delivery terms of the sale. The commission considers it is appropriate to base the export price for these sales on the AB Achema's selling price to its customer, less transport and other costs arising after exportation.

To ensure that the ascertained export price is calculated using a consistent delivery term, the commission has added an amount for port charges to certain export transactions.

The commission's export price calculations for AB Achema are at **Confidential Attachment 7**.

6.6.2 Normal value

AB Achema made domestic sales of like goods to unrelated and related customers during the investigation period.

In respect of AB Achema's domestic sales of like goods to its unrelated customers during the investigation period, the commission found no evidence that:

- there was consideration payable for, or in respect of, the goods other than the price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁴⁹

The commission therefore considers that all domestic sales of like goods made by AB Achema to unrelated customers during the investigation period were arms length transactions.

AB Achema partly owned its related domestic customer during the investigation period, and both companies were part of the Achemos group. AB Achema made several submissions regarding its related party domestic sales that the commission considered in its assessment, including:⁵⁰

- how AB Achema set its prices to its related customer
- the information barriers in place between AB Achema and its related customer
- conformity with third-party guidelines for related parties.

⁴⁹ Section 269TAA.

⁵⁰ EPR 605, nos 33, 35, and 36.

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The commission considers that the above information indicates that AB Achema and its related customer function commercially as unrelated parties for domestic sales.

Based on the information available, the commission found no evidence that:

- there was consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁵¹

The commission considers that all domestic sales made by AB Achema to its related domestic customer during the investigation period were arms length transactions.

The commission then assessed whether AB Achema's domestic sales of like goods were in the OCOT. Section 269TAAD states that domestic sales of like goods are not in the OCOT if arms length transactions are both:

- unprofitable in substantial quantities over an extended period
- unlikely to be recoverable within a reasonable period.⁵²

The commission tested profitability by comparing the net invoice price to the relevant cost to make and sell (CTMS) for each MCC over the investigation period and calculated the volume of any unprofitable sales as a percentage of total sales to determine if there were substantial quantities of unprofitable sales. The commission then tested recoverability by comparing the net invoice price to the relevant weighted average CTMS.

The commission considers that all domestic sales made by AB Achema to its related and unrelated domestic customers during the investigation period were arms length transactions.

The commission also assessed the total volume of relevant domestic sales of like goods as a percentage of the total volume of goods exported to Australia and found that this was not less than 5%.

The commission is therefore satisfied that there are sufficient sales relevant for the purpose of determining a price under section 269TAC(1). The commission has therefore calculated AB Achema's normal value under section 269TAC(1).

In using domestic sales as a basis for normal value, the commission considers that certain adjustments are necessary to ensure that differences between the normal value and the export price of the Australian export goods would not affect comparison of domestic prices with export prices, in accordance with section 269TAC(8).

⁵¹ Section 269TAA.

⁵² The commission generally considers the inquiry, investigation, or review period – whichever applies in the given case – is the relevant 'extended period' and 'reasonable period'.

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The commission's normal value calculations for AB Achema are at **Confidential Attachment 9**.

6.6.3 Adjustments

The commission considers that certain adjustments are necessary to ensure a fair comparison between the normal value and the free on board (FOB) export price. The commission is satisfied that there is sufficient information to justify the adjustments outlined in Table 9.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packaging	Deduct an amount for domestic packaging
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges, including adjustment to port charges for some sales to calculate export price at consistent delivery terms.

Table 9: Summary of adjustments – AB Achema

6.6.4 Dumping margin

The commission has calculated a dumping margin for the goods exported to Australia by AB Achema of **5.1%**.

The commission's dumping margin calculations for AB Achema are at **Confidential Attachment 10**.

6.7 All other exporters

For all other exporters, the commission recommends that the export price and normal value are ascertained by reference to all relevant information, under sections 269TAB(3) and 269TAC(6) respectively.

The Commissioner recommends that the variable factors relevant to all other exporters should be the same as those established earlier in this chapter. The information the commission relied on under those sections is AB Achema's data for Lithuania and MICCO's data for Vietnam. Therefore, the commission recommends that the variable factors relevant to all other exporters should be:

- for Lithuania, the same as those established for AB Achema, and therefore the dumping margin is **5.1%**.
- for Vietnam, the same as those established for MICCO, and therefore the dumping margin is **167.9%**.

6.8 Summary of dumping margins

The commission ascertained the following dumping margins for the goods exported to Australia from Vietnam and Lithuania in the investigation period:

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Country	Exporter	Dumping Margin
Vietnam	Vinacomin Mining Chemical Industry Holding Corporation Ltd	167.9%
	All other exporters from Vietnam	167.9%
Lithuania	AB Achema	5.1%
	All other exporters from Lithuania	5.1%

Table 10: Summary of dumping margins

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Preliminary finding

The commission's analysis of the Australian industry's economic condition found that the Australian industry experienced a decline in certain economic factors over the investigation period, including:

- price suppression
- profit and profitability (due to increased costs)
- ROI
- capital investment.

No downward trends in the Australian industry's prices, sales volumes or market share were observed.

The commission has analysed information contained in the application, information obtained during verification activities with the applicants, and publicly available information obtained in relation to the non-applicant members of the Australian industry.⁵³

7.2 Approach to economic condition analysis

To assess the economic condition of the Australian industry, the Commissioner specified an investigation period from 1 April 2021 to 31 March 2022. The Commissioner also specified an injury analysis period from 1 April 2018 for the purpose of identifying and examining trends in the Australian market (in this case using 4 years of economic data), which in turn assists the Commissioner in determining whether material injury has been caused by dumping in the investigation period (a 12-month period where the dumping has occurred).

The analysis detailed in this chapter is based on financial information submitted by the applicants, data from the ABF import database, and data from cooperating exporters. The commission considers that this information is reliable and relevant for use in injury analysis.

The Australian industry producing ammonium nitrate is comprised of the 3 applicants (Orica, CSBP and QNP) and 2 other producers (Dyno Nobel and Yara Pilbara). As Dyno Nobel and Yara Pilbara have not participated in this investigation, this chapter only assesses the data provided by the applicants and publicly available data on Dyno Nobel and Yara Pilbara.

Figure 7 depicts the applicant's share of the Australian industry producing ammonium nitrate. Production quantity was used as a measure as this was the only publicly available data provided by Dyno Nobel and Yara Pilbara. Given the applicants' large share of the Australian industry's production quantity, the commission considers that the data supplied

⁵³ The commission verified the information obtained from CSBP and Orica. The commission has not verified information obtained from QNP. The commission considers that the level of detail in QNP's information is like that of CSBP and Orica and is reliable for the purpose of this investigation.

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by the applicants is sufficient to make broader assessments on the economic factors experienced by the Australian industry producing ammonium nitrate.

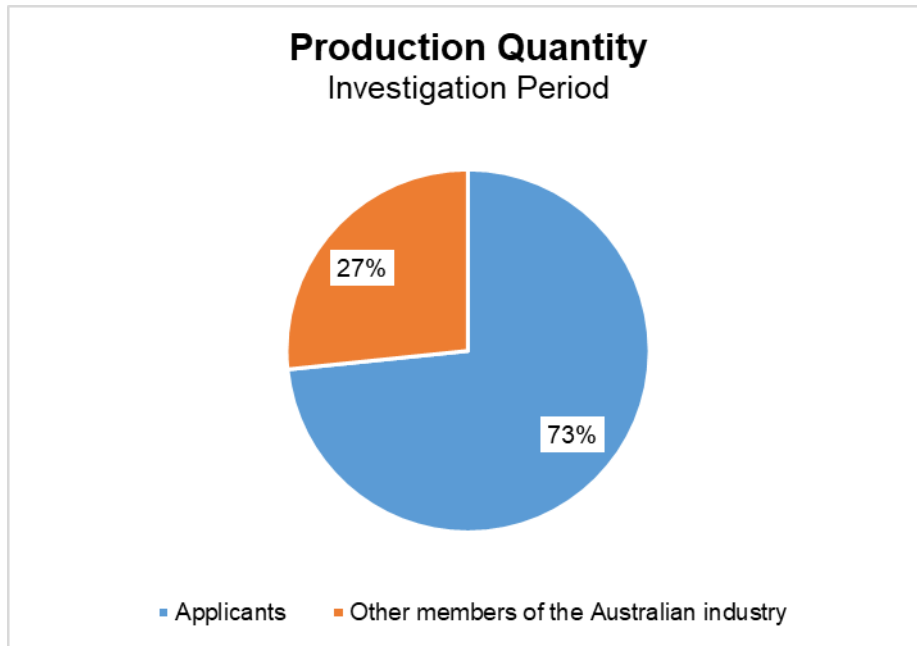


Figure 7: Production quantity as a percentage of the Australian industry producing ammonium nitrate

The commission's assessment of the Australian industry's economic condition is based upon like goods only. In circumstances where an applicant's sales involve the provision of blasting products or services, the commission has only examined the proportion of those sales related to like goods.

The commission's analysis in this chapter does not consider whether dumped exports from Lithuania and Vietnam have caused the trends in economic factors. The causation analysis is examined in chapter 8 of this SEF.

The commission's analysis of the economic condition of the industry is contained in **Confidential Attachment 1**.

7.3 Introduction

The applicants claim that the Australian industry has experienced injury in the form of:

- price suppression
- loss of profits and reduced profitability.

Additionally, each of the applicants identified other injury experienced as follows:

- CSBP claims a deterioration in revenue from levels in 2018/2019 and 2019/2020. CSBP also claims that its ROI deteriorated in 2020/2021 from the levels achieved in 2017/2018 and 2018/2019.
- Orica claims a deterioration in 2020 and 2021 in relation to capital investment, revenue, ROI, and employment numbers.

- QNP claims a deterioration in 2020/2021 and the first half of 2021/2022 in relation to capital investment and ROI.⁵⁴

7.4 Movements in volume

The commission considers that the Australian industry did not experience downward trends in sales volumes or market share during the investigation period.

7.4.1 Sales volumes

Figure 8 shows the applicants' combined sales volumes across the injury analysis period, demonstrating stable levels throughout, with an increase in overall sales in year ending march (YEM) 2022 when compared to YEM 2021.

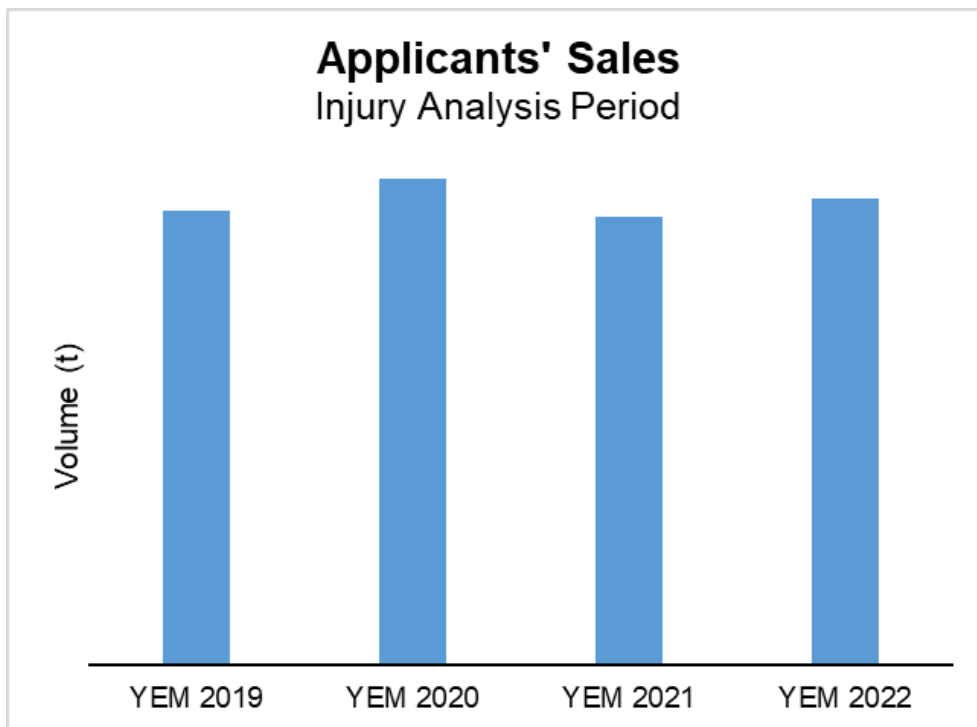


Figure 8: Applicants' sales volume (injury analysis period)

Figure 9 depicts the variations in each applicant's sales volumes over the injury analysis period.

The movements in Figure 9 mirror those in Figure 8, with a slight rise in YEM 2020, a fall in YEM 2021 and a recovery in YEM 2022. QNP and CSBP increased their sales quantities over the injury analysis period, while Orica's sales volumes decreased, falling slightly in YEM 2022 from YEM 2019 levels. Each of QNP, CSBP and Orica's sales volumes increased in the investigation period, from YEM 2021 levels.

⁵⁴ EPR 605, no 1.

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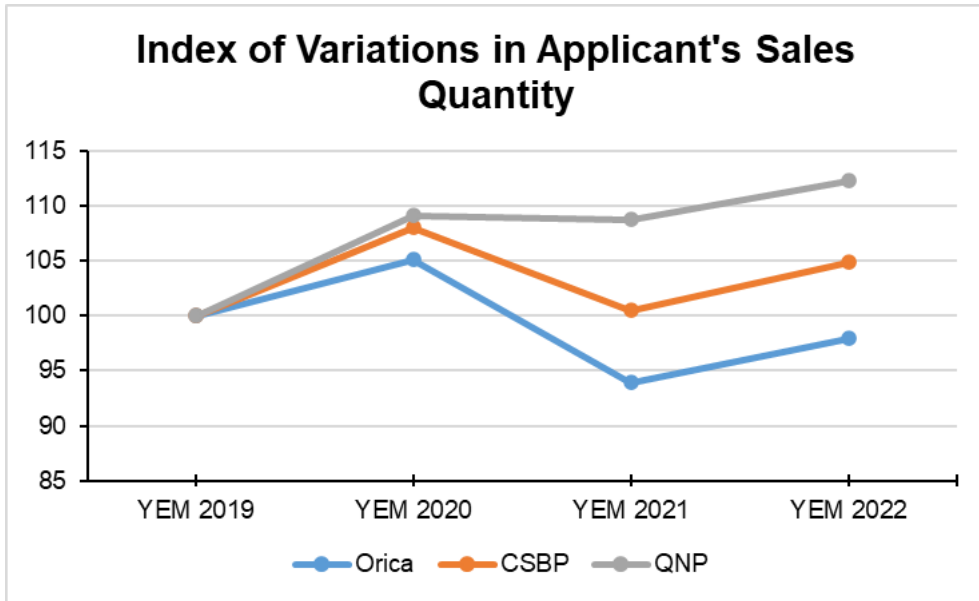


Figure 9: Index of variations in Applicant's sales quantity (injury analysis period)

Figure 10 depicts the applicants' combined sales volumes on a quarterly basis across the investigation period. There was some variation in quarterly sales volumes over the investigation period, with a decrease between the Sep-21 quarter to the Dec-21 quarter, and a slight increase between the Dec-21 and the Mar-22 quarter. This variation in quarterly sales volumes follows the variation in market size observed over the investigation period (Figure 6, page 33).

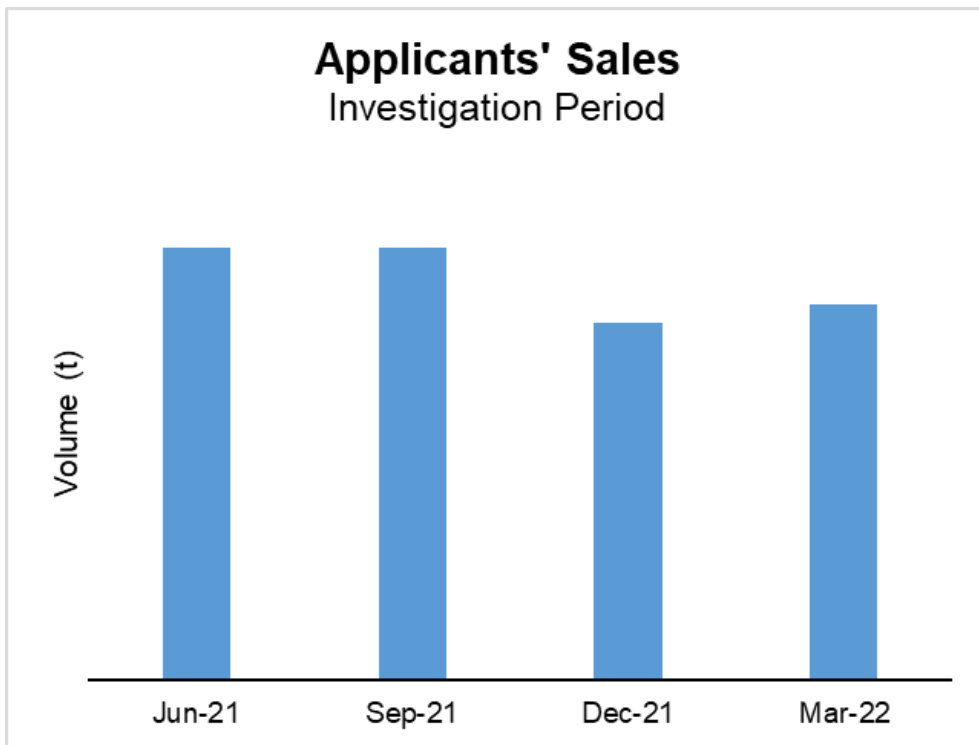


Figure 10: Applicants' sales volume (investigation period)

7.4.2 Market share

Figure 11 sets out the commission’s assessment of the market share held by the Australian industry, including the applicants (CSBP, Orica, and QNP) as well as Dyno Nobel and Yara Pilbara.

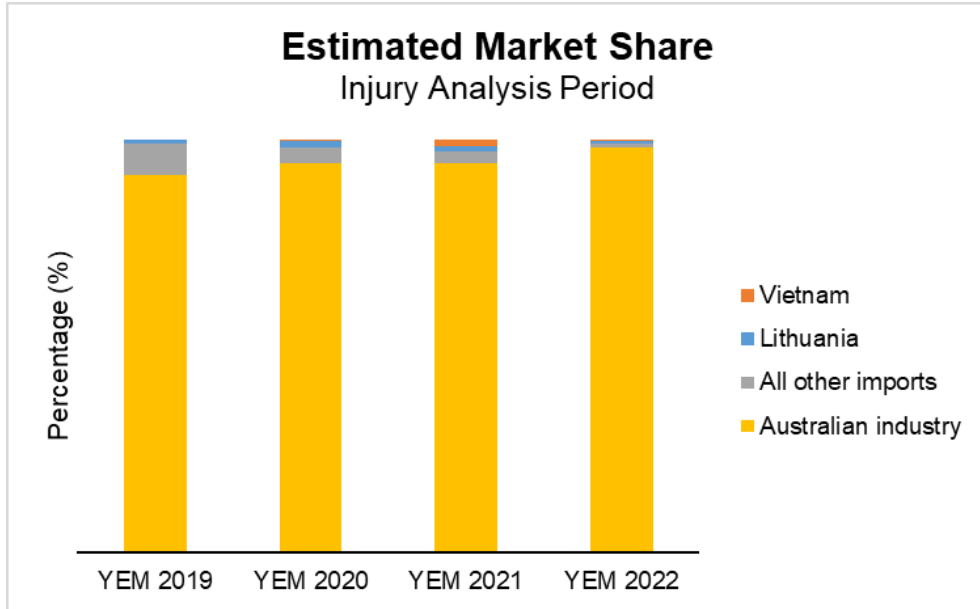


Figure 11: Estimated Australian market share (injury analysis period)

The commission considers that over the injury analysis period, the Australian industry increased its already significant market share, with a steady overall increase towards YEM 2022. Lithuania and Vietnam’s market share fell in YEM 2022, along with imports from all other countries.

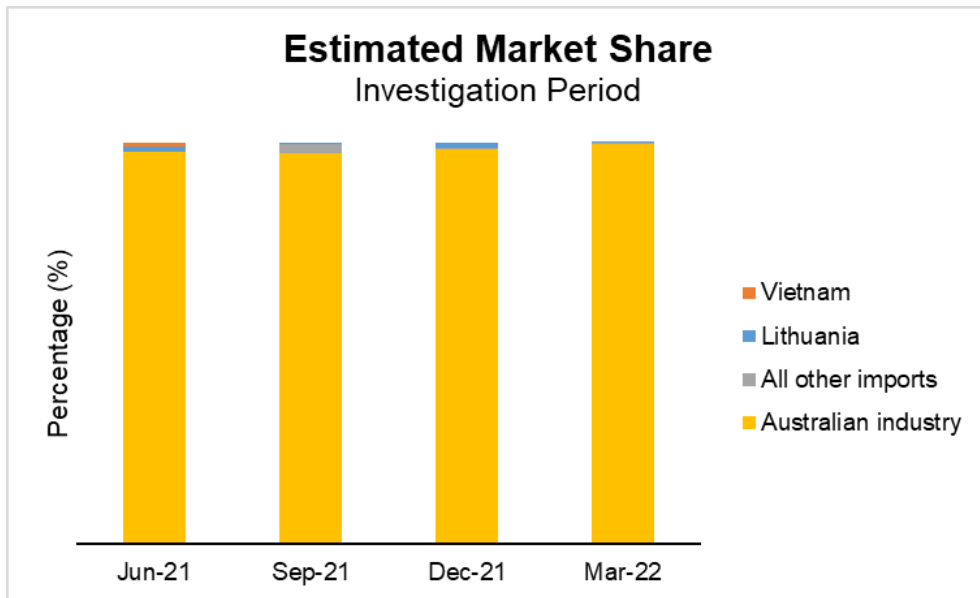


Figure 12: Estimated Australian market share (investigation period)

Figure 12 shows that the Australian industry’s market share has continued to increase over the investigation period, replicating the trend observed over the injury analysis period.

7.5 Price suppression

The commission’s analysis indicates that the Australian industry increased its prices over the injury analysis period. Over the investigation period, the commission considers that the Australian industry may have experienced price suppression.

Price depression and price suppression

All applicants were able to raise selling prices during the injury analysis period and investigation period. The commission does not consider that there has been price depression (which occurs when an entity 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 commission has found that the margin between prices and costs has decreased for each applicant to varying degrees during the investigation period.

CSBP

CSBP maintained the margin between prices and costs over the injury analysis period until the investigation period (Figure 13). CSBP increased its margin throughout the investigation period until the last quarter (Figure 14). There was a sharp increase in costs in the last quarter of the investigation period which resulted in a lower margin between prices and costs. CSBP’s prices increased each quarter throughout the investigation period.

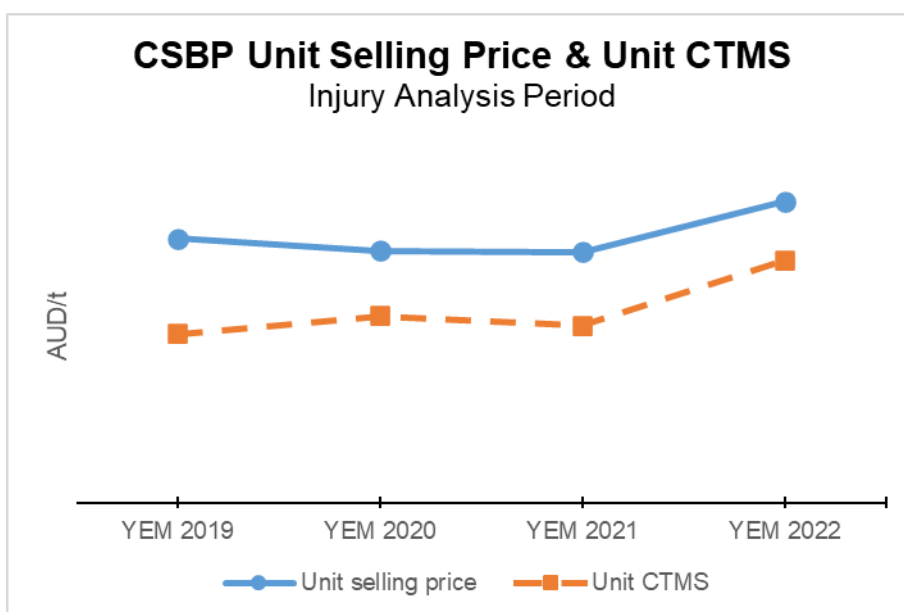


Figure 13: Comparison of CSBP's prices and costs (injury analysis period)

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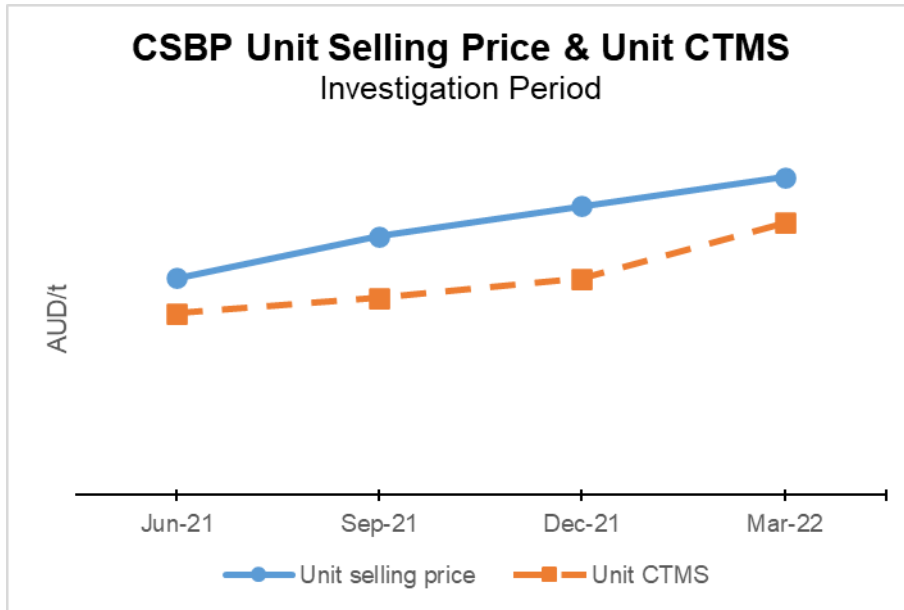


Figure 14: Comparison of CSBP's prices and costs (investigation period)

Orica

Orica experienced a narrowing of the margin between price and cost throughout the injury analysis period (Figure 15). It further experienced a reduction in the margin in the investigation period (Figure 16). There was sharp increase in costs in the last 2 quarters of the investigation period which lead to the reduction in margin between prices and costs. Orica increased its prices throughout the injury analysis and investigation periods.

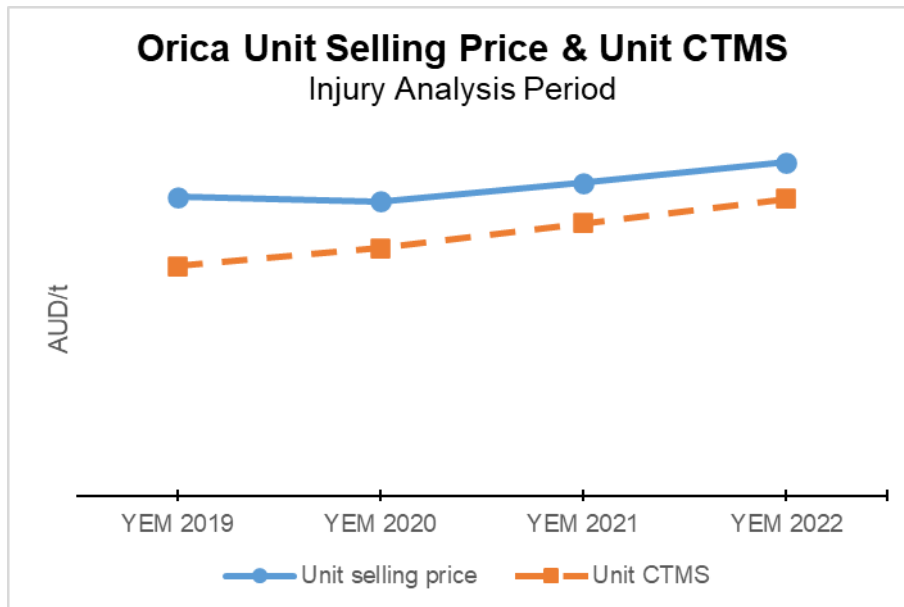


Figure 15: Comparison of Orica's prices and costs (injury analysis period)

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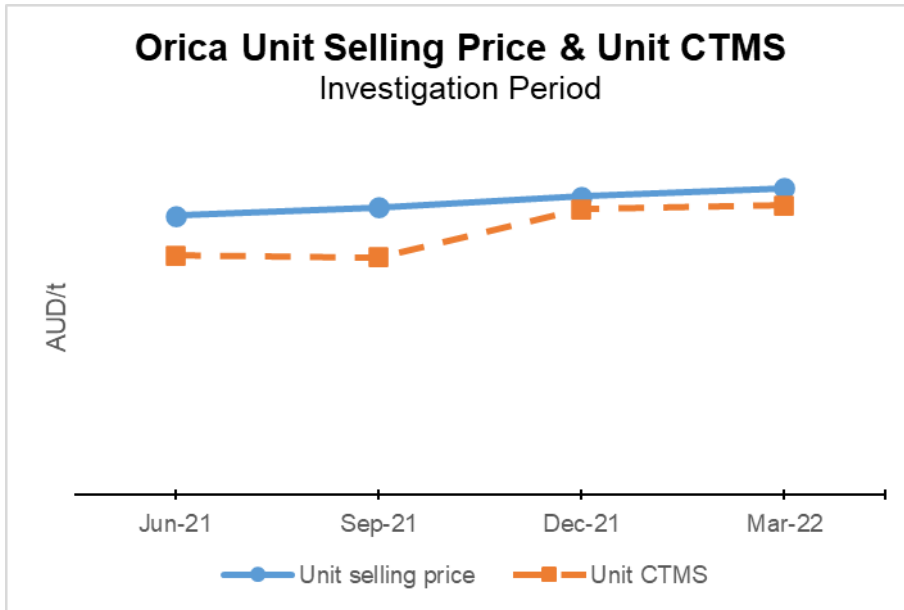


Figure 16: Comparison of Orica's prices and costs (investigation period)

QNP

QNP increased its margin between prices and costs over the injury analysis period, recovering from a decrease in prices in YEM 2020 (Figure 17). QNP maintained this margin throughout the investigation period (Figure 18).

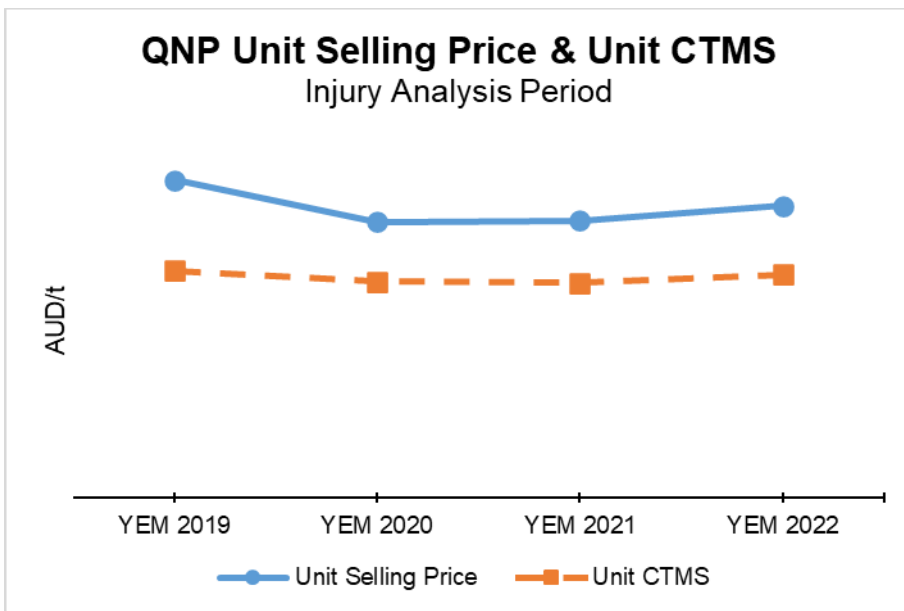


Figure 17: Comparison of QNP's prices and costs (injury analysis period)

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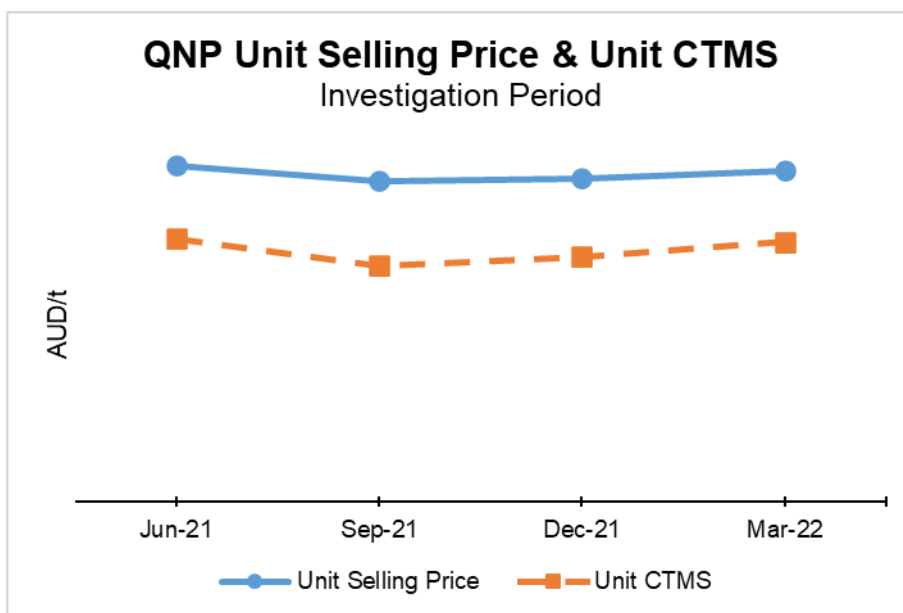


Figure 18: Comparison of QNP's prices and costs (investigation period)

7.6 Profits and profitability

The commission considers that overall, the Australian industry has experienced a reduction in profit and profitability over the injury analysis period. Over the investigation period, the Australian industry's profit and profitability has declined slightly.

The commission considers that Orica and CSBP have experienced decreases in profit and profitability across the injury analysis period and investigation period. QNP's profit and profitability fell slightly over the injury analysis period, with profit and profitability remaining stable over the investigation period.

CSBP

CSBP experienced downward trends in profits and profitability from YEM 2019 to YEM 2022 (Figure 19).

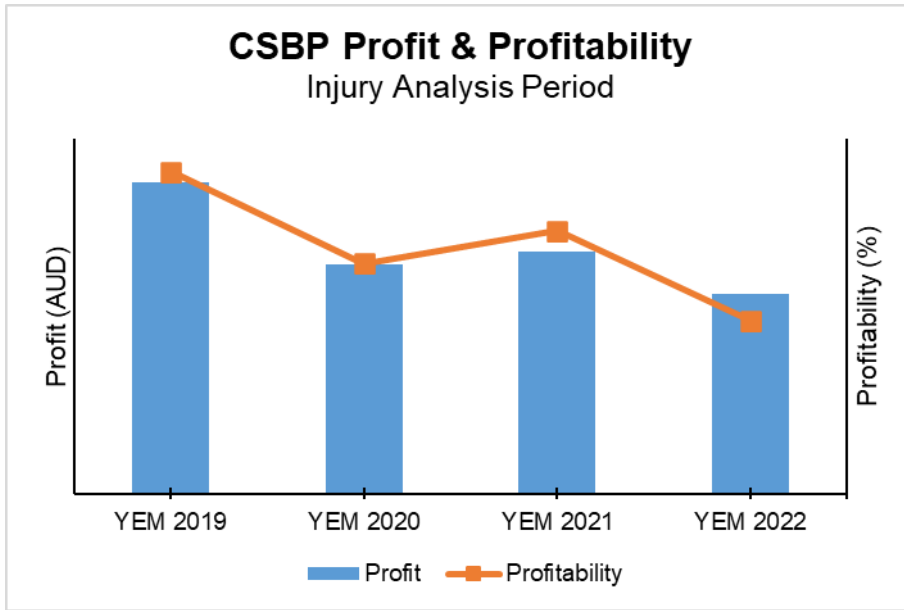


Figure 19: CSBP’s profit and profitability over the injury analysis period

Over the investigation period, CSBP’s profit and profitability increased until December 2021, falling in March 2022 to levels comparable to those at the beginning of the investigation period (Figure 20).

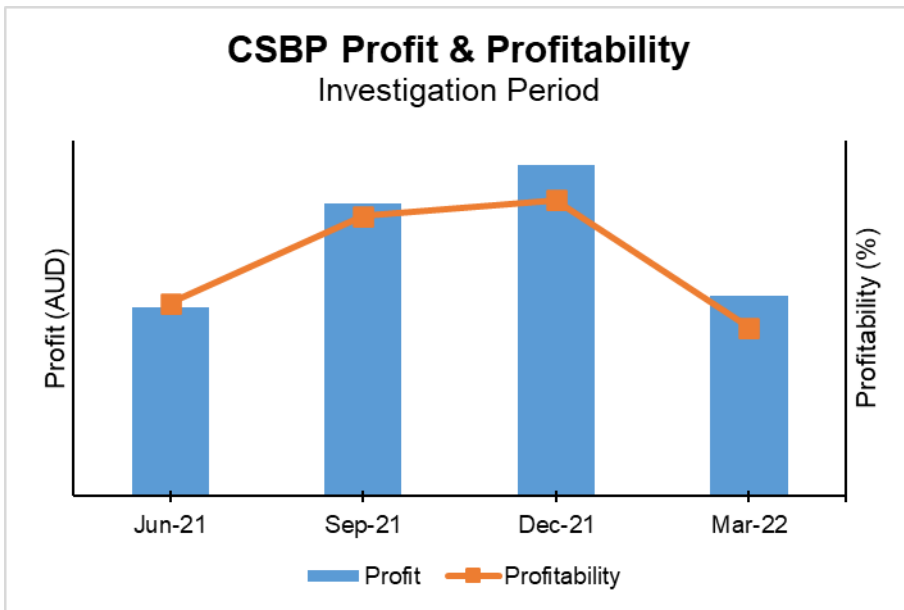


Figure 20: CSBP’s profit and profitability over the investigation period

Orica

Orica also experienced downward trends in profit and profitability over the injury analysis period, seeing profits and profitability fall each year from YEM 2019 to YEM 2022 (Figure 21).

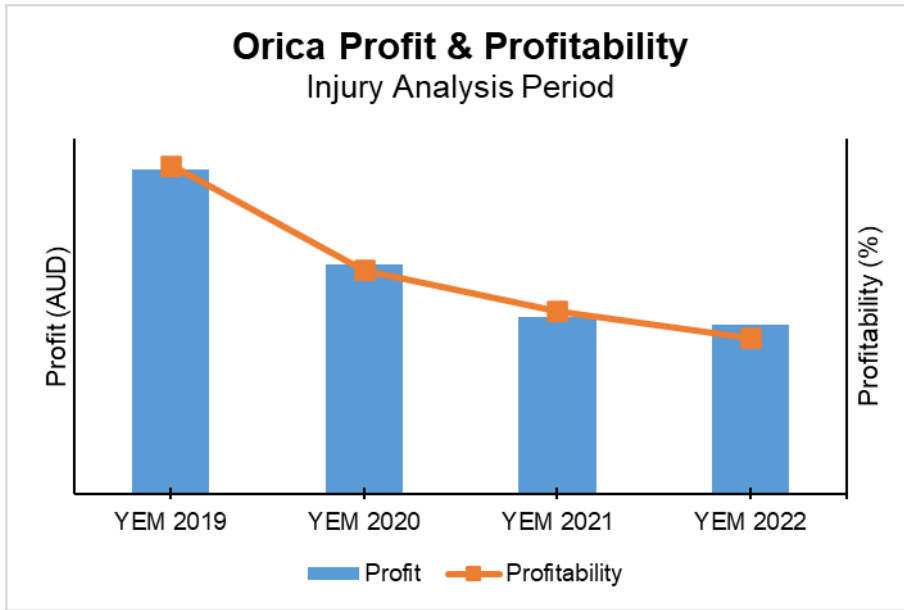


Figure 21: Orica’s profit and profitability over the injury analysis period

Orica’s profit and profitability continued this downward trend over the investigation period, rising slightly from the quarter ending June 2021 to the quarter ending Sept 21, then falling dramatically the next quarter, recovering partially in the quarter ending March 2022 (Figure 22).

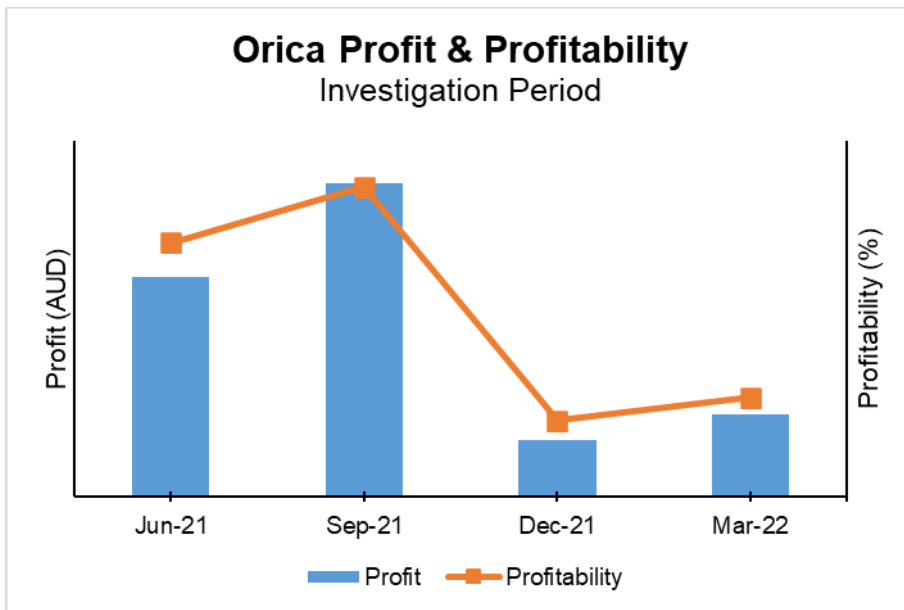


Figure 22: Orica’s profit and profitability over the investigation period

QNP

QNP’s profit and profitability fell slightly over the injury analysis period (Figure 23). After experiencing a drop in profit and profitability from YEM 2019 to YEM 2020, QNP’s profit and profitability increased to YEM 2022.

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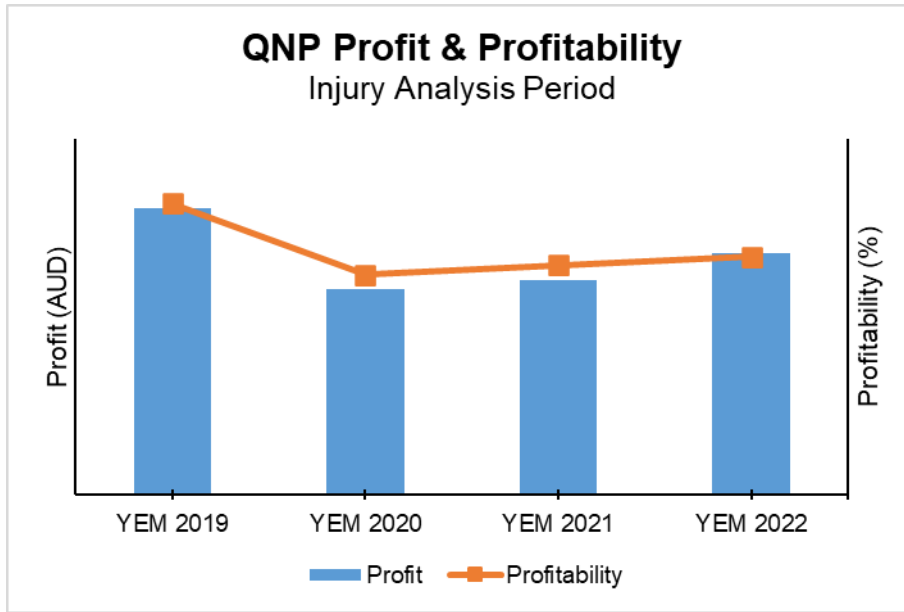


Figure 23: QNP's profit and profitability over the injury analysis period

QNP's profit and profitability remained stable over the investigation period (Figure 24).

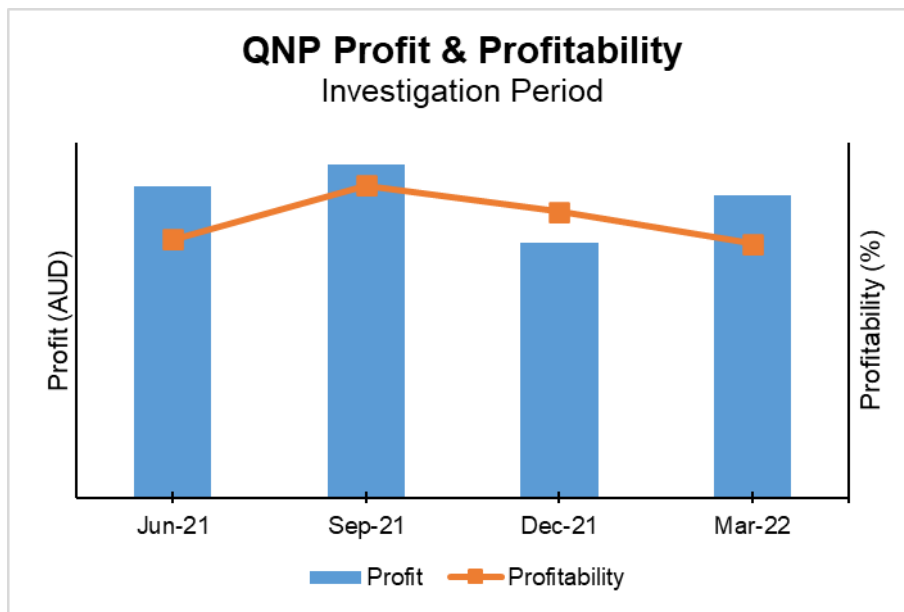


Figure 24: QNP's profit and profitability over the investigation period

7.7 Other economic factors

The applicants have each also claimed injury from a range of other economic factors. All applicants claimed a reduced ROI. Orica and QNP have claimed injury from deterioration in capital investment. CSBP and Orica have claimed injury due to lost revenue. Orica has claimed injury from reduced employee numbers.

Orica's data relating to these other economic factors (except for production volumes which are in YEM) was provided in terms of calendar years (CY), and CSBP and QNP's

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data was provided in financial years (FY, i.e., ending June). The commission considers that these periods are appropriate for assessing trends in the relevant economic factors.

7.7.1 Return on investment

	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 - 31 Dec 2019	1 Jan 2020 - 31 Dec 2020	1 Jan 2021 - 31 Dec 2021
Orica	100.0	81.3	56.3	43.8
	FY 2018	FY 2019	FY 2020	FY 2021
CSBP	100.0	100.7	96.5	69.0
QNP	100.0	105.0	105.0	130.0

Table 11: Index of variations in ROI

The commission observed a consistent downward trend in Orica's ROI from CY 2018 to CY 2021. CSBP's ROI remained stable from FY 2018 to FY 2020 before a fall in FY 2021 and QNP's ROI showed stability over roughly the same period, with an increase in FY 2021.

The commission considers that the Australian industry has experienced a downward trend in ROI across the injury analysis period, including the investigation period.

7.7.2 Capital investment

	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 - 31 Dec 2019	1 Jan 2020 - 31 Dec 2020	1 Jan 2021 - 31 Dec 2021
Orica	100.0	95.7	91.9	84.7
	FY18	FY19	FY20	FY21
CSBP	100.0	96.8	94.0	90.0
QNP	100.0	142.3	17.9	31.2

Table 12: Index of variations in capital investment

Over the injury analysis period, the commission observed downward trends in Orica and CSBP's capital investment, with a consistent decrease each year over. QNP's capital investment increased significantly from FY 2018 to FY 2019 then sharply declined in FY 2020 and FY 2021.

The commission considers that the Australian industry experienced a downward trend in capital investment across the injury analysis period, including the investigation period.

7.7.3 Like goods revenue

	YEM 19	YEM 20	YEM 21	YEM 22
Orica	100.0	103.5	98.4	109.4
CSBP	100.0	102.8	95.4	119.5
QNP	100.0	94.8	94.9	103.1

Table 13: Index of variations in like goods revenue

The Australian industry experienced an overall increase in like goods revenue over the injury analysis period, including the investigation period.

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7.7.4 Employment

	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 - 31 Dec 2019	1 Jan 2020 - 31 Dec 2020	1 Jan 2021 - 31 Dec 2021
	FY18	FY19	FY20	FY21
Orica	100.0	106.3	109.8	112.2
CSBP	100.0	100.0	100.0	108.8
QNP	100.0	102.4	114.5	120.5

Table 14: Index of variations in employment

The applicant’s data on employee numbers shows an upward trend in employee numbers at each company over the injury analysis period. The commission considers that the Australian industry did not experience a downward trend in employee numbers over the injury analysis period, including the investigation period.

7.7.5 Wages

	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 - 31 Dec 2019	1 Jan 2020 - 31 Dec 2020	1 Jan 2021 - 31 Dec 2021
	FY18	FY19	FY20	FY21
Orica	100.0	118.2	122.3	119.8
CSBP	100.0	106.5	114.4	110.7
QNP	100.0	101.3	110.6	113.6

Table 15: Index of variations in average wage bill for production of like goods

The commission observed that Orica’s average wage bill to produce like goods increased from CY 2018 to CY 2019 and remained at those elevated levels until the end of the injury analysis period. CSBP’s wages also rose from FY 2018 to FY 2020, falling slightly in FY 2021. QNP’s wages to produce like goods rose steadily from FY 2018 to FY 2021.

The commission considers that the Australian industry experienced an upwards trend in wages over the injury analysis period, remaining flat for the investigation period.

7.7.6 Like goods production volume

	YEM 19	YEM 20	YEM 21	YEM 22
Orica	100.0	100.1	92.3	98.5
CSBP	100.0	98.3	98.0	103.9
QNP	100.0	110.8	113.7	114.0

Table 16: Index of variations in production volume of like goods

Orica’s production volume of like goods fell slightly over the injury analysis period. CSBP and QNP’s production volumes increased over the injury analysis period. The commission considers that the Australian industry experienced an overall upward trend in production volumes over the injury analysis period, including the investigation period.

7.7.7 Capacity utilisation

	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 - 31 Dec 2019	1 Jan 2020 - 31 Dec 2020	1 Jan 2021 - 31 Dec 2021
Orica	100.0	102.6	94.5	96.5
	FY18	FY19	FY20	FY21
CSBP	100.0	99.0	100.0	100.4
QNP	100.0	97.4	114.8	114.0

Table 17: Index of variations in capacity utilisation

Orica’s capacity utilisation fell slightly from CY 2018 to CY 2022, rising slightly from CY 2020 to CY 2021 to below CY 2018 levels. CSBP’s capacity utilisation remained stable from FY 2018 to FY 2021 and QNP’s capacity utilisation rose from FY 2018 to FY 2020, after a small dip in FY 2019 and remained stable over FY 2021.

The commission considers that:

- Orica has experienced a slight downward trend in capacity utilisation.
- CSBP’s capacity utilisation has remained stable.
- QNP has experienced an upward trend in capacity utilisation.

The commission considers that the Australian industry experienced an overall upwards trend in capacity utilisation over the injury analysis period, including the investigation period.

8 ASSESSMENT OF INJURY AND CAUSATION

8.1 Preliminary assessment

Based on the evidence currently before the commission, the Commissioner preliminarily considers that dumped exports have not caused, and do not threaten to cause, material injury to the Australian industry.

The Commissioner has come to this preliminary conclusion based on the commission's assessment of the information obtained during the investigation. This includes the following:

- The Australian industry has experienced downward trends in certain economic factors over the investigation period.
- There does not appear to be a clear causal link between these downward trends and dumped exports from Lithuania and Vietnam.
- While there were 2 examples of the impacts of dumping on the economic condition of the Australian industry, these appear to be isolated examples when considered in the broader context of the Australian market.
- Factors other than dumping appear to have had a significant impact on the economic condition of the Australian industry.

The evidence at this stage of the investigation indicates that there has not been material injury to the Australian industry caused by dumping during the investigation period.

The commission has examined the available evidence in relation to the claims of threat of material injury, including the following:

- The ability of dumped prices to influence contract negotiations.
- The volume of current contracts which will expire in the next 1-5 years.
- The market conditions, including volume and pricing trends post-investigation period.
- The excess capacity available to exporters from Lithuania and Vietnam.

The evidence at this stage of the investigation does not indicate that there will be a change of circumstances that would make the threat of material injury to the Australian industry imminent or foreseeable unless dumping measures are imposed.

8.2 Legislative framework

Under section 269TG, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that, because of dumping, the Australian industry has experienced material injury. Section 269TAE(1) outlines the factors to which the Commissioner has had regard, and that may be considered, when determining whether material injury to an Australian industry has been, or is being, caused or threatened. Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods and provides examples of such factors.

In assessing material injury, the Commissioner has also considered the Material Injury Direction.

8.3 Approach to causation analysis

8.3.1 Summary

In assessing whether a causal link exists between the dumped exports and any injury to the Australian industry, the commission has found the following:

- The Australian industry experienced downward trends in certain economic factors over the investigation period, coinciding with dumping from Lithuania and Vietnam.
- Long-term contracts, and the existence of dumped exports from other countries subject to anti-dumping measures during the injury analysis period, mean that reliance on a coincidence analysis alone, may be inconclusive.
- It is appropriate in this investigation to consider specific examples and case studies provided by the Australian industry to conduct a ‘but for’ analysis in addition to a ‘coincidence’ analysis.

8.3.2 Background

Findings and legislative framework

The commission has found that the Australian industry has experienced downward trends in certain economic factors (chapter 7). These downward trends coincided with dumped exports from Lithuania and Vietnam (chapter 6), i.e., in relation to the investigation period.

Accordingly, in this chapter, the commission has analysed whether dumping has caused, or partially caused these downward trends.

The commission has had regard to the Act and the Material Injury Direction in conducting its causation analysis.

Section 269TAE outlines the requirements for determining whether material injury to an Australian industry is caused by dumping (causation). The Act envisages that causation is examined through the links between the volume of dumped goods and their effect on prices in the Australian market and the consequent impact on the Australian industry. The Act does not prescribe any causation methodology. Rather, causation analysis involves a holistic evaluation of all available evidence.

There are a variety of analytical tools that can assist the commission to evaluate causation depending on the circumstances of a given case. The commission assesses available evidence in totality and does not rely solely on any individual economic indicia or subset of data-points to inform its conclusions, as this would be incongruous with the Act. The commission must also exclude any injury caused by factors other than dumping from its causation analysis.

Coincidence analysis

As outlined in the manual, causation is commonly examined by using a coincidence analysis—where the volume and prices of the dumped imports and the injury factors are

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examined to assess whether a linkage exists between these events. To complete the causation analysis the Commission examines other factors that cannot be attributed to dumped or subsidised imports and excludes their effects when determining causation.

Where there is a coincidence in timing between declines in the Australian industry's economic indicators and the volume and price trends of dumped imports, this may be taken to mean there is a causal link.⁵⁵

But for analysis

Under a but for analysis, it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping. The commission routinely conducts a but for analysis for goods that already have existing anti-dumping measures and an injury analysis period is affected by dumping. The existence of anti-dumping measures often makes it difficult to rely on coincidence analysis alone.

The commission will also have regard to claims of interested parties, the nature of the relevant Australian market and other events that impact the injury analysis period. In this investigation, the following considerations are relevant.

As noted in chapter 5 and consistent with REP 473, sales of ammonium nitrate in the Australian market are commonly made in accordance with long-term contracts.⁵⁶ The commission has found that this was still the case during the investigation period.

In addition, there are currently anti-dumping measures applying to several countries which export ammonium nitrate. These anti-dumping measures were imposed part-way through the injury analysis period because of *Investigation 473*. *Investigation 473* found that certain contracts negotiated between 1 April 2017 and 31 March 2018 had been affected by dumping, which caused material injury to the Australian industry. The commission found that injury was material due to the long-term nature of these contracts, meaning the injury occurred during and after the examined period. The commission considers that the effects of these contracts would be present during the injury analysis period.

Therefore, long-term contract terms and the effect of anti-dumping measures have influenced the applicant's economic condition over the injury analysis period and into the investigation period. Dumped exports may have also contributed to the applicant's economic condition during the investigation period. As a result of the above factors, a pure coincidence analysis may be inconclusive, and it is appropriate in this case to also conduct a but for analysis.

The commission has also assessed the information provided by the applicants to support their claims of injury. The applicants provided examples of contract negotiations as evidence of alleged injury suffered. Examination of the specific examples provide the

⁵⁵ The manual, p 99.

⁵⁶ REP 473, section 7.3.

commission with an opportunity to examine the applicant's economic condition but for dumping. The commission has examined this evidence in section 8.5.6.

Conclusion

In this case, the commission has conducted a 'coincidence' and a 'but for' analysis to assess whether dumping has caused material injury.

8.4 Cumulation of exports

The commission considers that it is appropriate to cumulatively assess the effects of dumped exports from Lithuania and Vietnam.

Section 269TAE(2C) sets out the factors that the Minister must be satisfied of before the Minister can consider the cumulative effect of exports of goods to Australia from different countries. In this case:

- exportations from both Lithuania and Vietnam are the subject of the investigation⁵⁷
- the investigation resulted from applications under section 269TB lodged on the same day⁵⁸
- the dumping margin for each exporter is at least 2% of the weighted average export price⁵⁹
- the volume of dumped goods from Lithuania and Vietnam is not negligible (in accordance with sections 269TDA(3) and (4))⁶⁰
- as set out below, the commission's analysis of the specific factual circumstances of this case has indicated that it is appropriate to consider the cumulative effect of Lithuanian and Vietnamese exports, having regard to the conditions of competition between the imported goods and between the imported goods and domestically produced like goods.⁶¹

Several interested parties have submitted the following:

- Imports from Lithuania and Vietnam should not be cumulated for the purpose of the injury analysis.⁶²
- LDAN and HDAN, while like goods, are not directly competitive and not substitutable.⁶³

⁵⁷ Section 269TAE(2C)(a).

⁵⁸ Section 269TAE(2C)(b)(i).

⁵⁹ Section 269TAE(2C)(c).

⁶⁰ Section 269TAE(2C)(d).

⁶¹ Section 269TAE(2C)(e).

⁶² EPR 605, nos 8, 11 and 31.

⁶³ EPR 605, nos 31 and 43.

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- The Australian industry does not produce HDAN, and, although ANSol is substitutable for HDAN, it forms the minority of sales in the Australian market.⁶⁴

The applicants have submitted that HDAN and LDAN have, in previous investigations, been treated as like goods that directly compete, and that cumulation is appropriate.⁶⁵

The commission has found:

- during the investigation period, Lithuania only exported HDAN, and Vietnam only exported LDAN
- during the investigation period, customers imported the goods from either only Lithuania (HDAN) or only Vietnam (LDAN)
- there is some competitive overlap between HDAN and LDAN
- the ammonium nitrate produced by the Australian industry competes with both HDAN and LDAN imports.

Accordingly, the commission considers that the conditions of competition between:

- the goods exported from Lithuania and the goods exported from Vietnam, and
- those goods exported from Lithuania and Vietnam and the like goods that are produced by the Australian industry

are such that it is appropriate to consider the cumulative effect of exports from Lithuania and Vietnam.

The commission has examined the conditions of competition for ammonium nitrate within the Australian market. One of the major factors influencing the purchasing decisions of customers is the characteristics of the ammonium nitrate.

The characteristics of the goods are outlined in chapter 3 of this SEF. There are broadly 2 grades of exported ammonium nitrate: LDAN and HDAN. During the investigation period, exports from Lithuania were of HDAN, and exports from Vietnam were of LDAN. Customers imported the goods from either only Lithuania or only Vietnam.

The commission considers that this indicates there may be a lack of competition between exports from Lithuania and Vietnam. Glencore submits that 'A purchaser seeking to buy HDAN, presumably to produce emulsion, will not purchase LDAN as an alternative'.⁶⁶

The commission considers that ammonium nitrate customers seek to purchase either HDAN or LDAN for their specific purposes (including to produce emulsion). However, in certain circumstances explosives producers have produced emulsion using LDAN instead of HDAN.⁶⁷ This suggests there is at least some competitive overlap between HDAN and

⁶⁴ EPR 605, nos 31 and 43.

⁶⁵ EPR 605, no 38.

⁶⁶ EPR 605, no 31.

⁶⁷ EPR 473, no 65.

LDAN and, therefore, there may be circumstances where a customer would consider both Lithuania and Vietnam for sourcing ammonium nitrate.

As outlined in chapter 3 of this SEF, Australian produced ANSol is directly substitutable for imported HDAN and can both be used in the production of ammonium nitrate emulsion. Although REP 565 found that the size of the emulsion market in Australia is smaller than that for LDAN,⁶⁸ for the purposes of determining whether cumulation is appropriate, the commission considers that ANSol and HDAN do compete due to their similar end-uses. The Australian industry also produces LDAN which directly competes with imported LDAN.

Although exports from Lithuania and Vietnam only compete in certain circumstances, they both compete with the Australian industry. As such, dumped exports from either Lithuania or Vietnam have the potential to affect the economic condition of the Australian ammonium nitrate industry. The commission therefore considers that it is appropriate to cumulate the effects of exports from Lithuania and Vietnam.

The commission has based the analysis in the remainder of this chapter on the cumulated effect of exports from Lithuania and Vietnam.

8.5 Has dumping caused material injury?

8.5.1 Finding

The commission has found that:

- the Australian industry has experienced price suppression as well as downward trends in profit and capital investment over the investigation period
- factors other than dumping having impacted significantly on the economic condition of the Australian industry, such as increased costs, restrictions in contract terms and competition between Australian industry producers
- there are 2 isolated examples of the impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and Orica foregoing revenue because of the accrual of a rebate
- because of the isolated nature of these examples in the context of the broader Australian market, and the significant impact of other factors on the economic condition of the Australian industry, there does not appear to be a sufficient causal link between the dumped exports and material injury to the Australian industry.

In coming to this conclusion, the commission has examined the evidence provided by the applicants in **Confidential Appendix A** and **Confidential Attachment 12**. The commission has also provided a non-confidential examination of this evidence throughout this chapter.

⁶⁸ EPR 565, no 50.

8.5.2 Examination of price effects

As outlined in chapter 7, the commission's analysis indicates that the Australian industry appears to have experienced price suppression over the investigation period. The commission does not consider that the price suppression observed over the investigation period have been influenced by dumped exports from Lithuania and Vietnam.

Instead, the commission considers that the appearance of price suppression is primarily due to increases in unit costs. The Australian industry's inability to increase prices in response to these increased costs is due to a combination of contract terms that place various restriction on pricing and competition between Australian industry members.

The commission has found that the Australian industry has increased or maintained its selling prices over the investigation period. However, Orica and CSBP's price increases, over certain quarters, did not directly correspond to their increases in costs (Figure 14, page 52 and Figure 16, page 53).

The applicants claim that they have not been able to increase prices for ammonium nitrate due to dumped exports from Lithuania and Vietnam. This has led to an inability to recover increases in production costs.⁶⁹

Multiple interested parties have made submissions in relation to factors impacting the pricing of ammonium nitrate:

- Due to the small volumes of exports, Lithuania and Vietnam could not have been price setters in the ammonium nitrate market.⁷⁰
- Export prices for Lithuania and Vietnam and selling prices for the applicants have increased.⁷¹
- Total cost and rise and fall provisions are more relevant considerations than the price of ammonium nitrate when negotiating contracts for blasting products and services.⁷²
- Price effects observed in the inquiry period reflect the lag effect and contract terms negotiated prior to the investigation period, not the impact of imported goods.⁷³
- Different pricing effects apply for LDAN and HDAN.⁷⁴

⁶⁹ EPR 605, no 1.

⁷⁰ EPR 605, nos 10 and 11.

⁷¹ EPR 605, nos 8, 9 and 10.

⁷² EPR 605, nos 16, 31, and 42.

⁷³ EPR 605, nos 9, 31, 42, and 43.

⁷⁴ EPR 605, no 31.

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- Vietnam's single consignment during the investigation period is a single data point which does not show ongoing pricing trends, particularly higher prices post-investigation period.⁷⁵

In response to the submissions above, the applicants submitted:⁷⁶

- A small volume of imports can still influence domestic Australian prices. Import pricing is transparent and used as a point of reference in contract negotiations.
- The total cost of blasting products and services is dependent on the price of ammonium nitrate which accounts for a significant proportion of the total value of any contracts. Providers of blasting services that do not manufacture ammonium nitrate can source cheaper imports and therefore offer lower contract prices.
- Rise and fall provisions are a constant in contracts that may result in short-term gains and losses, but they do not cause the long-term injury that is claimed to result from dumped import prices.

The commission has considered the effect that imports from Lithuania and Vietnam have had on the Australian industry's prices.

The commission has had regard to the dumping margins from Lithuania and Vietnam as per section 269TAE(1)(aa). The commission has also had regard to the export prices paid by importers for goods in determining whether material injury has been caused by dumped goods per section 269TAE(1)(d). Despite the noticeable difference in the dumping margins, the export prices for Lithuania and Vietnam are similar. The difference in the dumping margins is primarily driven by a higher normal value in Vietnam (chapter 6). When considered in context, the dumping margins themselves, do not, in this investigation, suggest exports from one country are substantially more injurious than another country.

The commission typically conducts an undercutting analysis as part of assessing whether the price of imports has affected the Australian industry's prices. The commission considers that in this circumstance an undercutting analysis would not be informative. This is due to differences between how imported and Australian produced ammonium nitrate are sold in Australia, including that:

- imported HDAN is not directly comparable to Australian manufactured LDAN or ANSol
- supply of ammonium nitrate is subject to contract terms which govern certain costs, including transport.

These represent factors which cannot be directly quantified to produce a meaningful undercutting analysis.

Instead, the commission has analysed an index of price movements. The commission has used this analysis to ascertain if there may be a relationship between import prices and

⁷⁵ EPR 605, no 45.

⁷⁶ EPR 605, nos 24, 38 and 44.

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the Australian industry's prices. Figure 25 shows the movement in import prices and the applicant's prices over the injury analysis period.

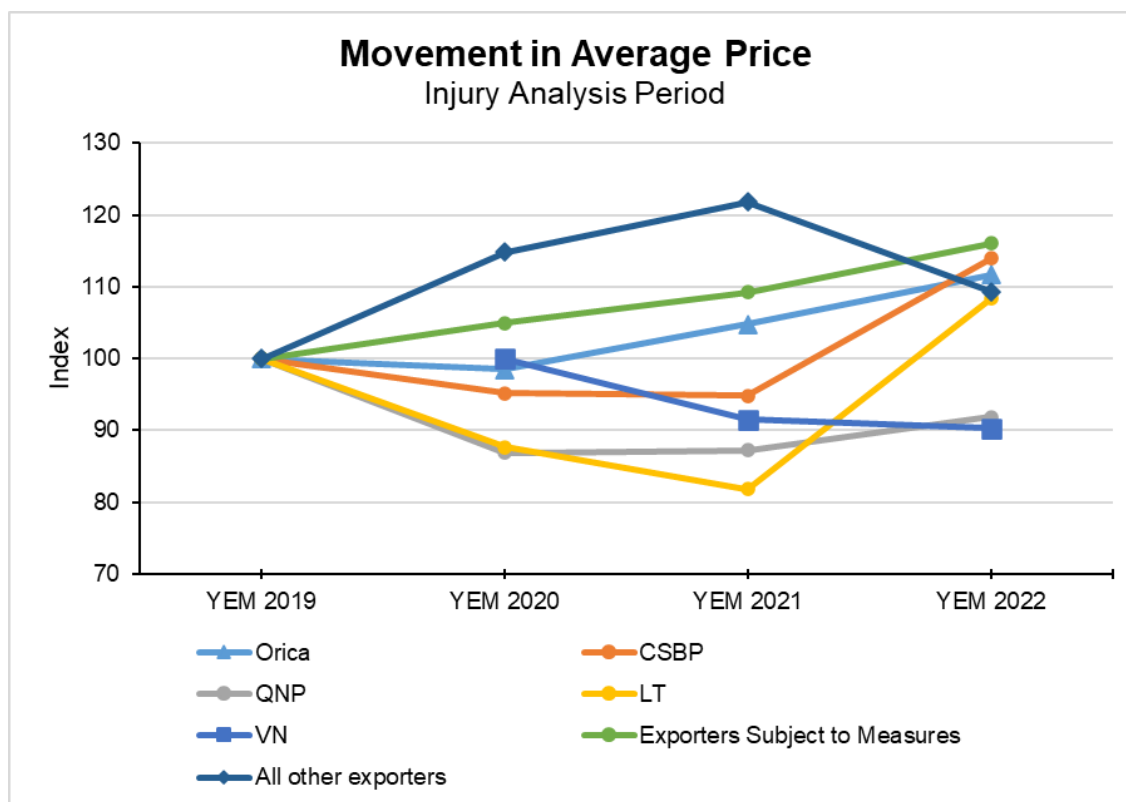


Figure 25: Index of movement in average price

The commission considers that Figure 25 does not indicate any clear trend or relationship between the applicants' prices and import prices. Each applicant's price decreased in YEM 2020 which coincided with a decrease in Lithuanian prices. However, in the following years both Orica and QNP's prices increased (Orica's greater than QNP's) while Lithuanian prices continued to decrease. Excluding Vietnam and 'all other exporters', prices from all sources increased in YEM 2022.

The commission also examined the applicants' price setting practices.

As discussed in section 7.5, the commission does not consider that QNP has experienced price suppression in the investigation period.

CSBP explained during verification that part of its price evaluation involved reference to import prices. When evaluating prices, CSBP's practice is to add various domestic costs to the import price to calculate an equivalent domestic price. CSBP claims that this equivalent domestic price could be used as part of contract negotiations.

It does not appear that CSBP has experienced price-related injury during the investigation period (Figure 14, page 52). CSBP's prices have increased over the investigation period at a faster rate than costs, excluding the Mar-22 quarter.

Orica explained that it uses a 'next best alternative' (NBA) price as part of its negotiations. Orica's NBA price involves a base price (either manufacturing cost of import price), with additional costs and a margin added to form the overall price.

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The commission found that Orica's prices increased at a consistent rate over the investigation period (Figure 16, page 53). However, Orica's unit costs increased significantly in the last 2 quarters of the investigation period. This led to the appearance of price suppression.

The commission considers that Orica's increased costs are primarily driven by a reduction in production volumes in the last 2 quarters. As Orica's manufacturing costs remained largely the same, a reduction in production volumes lead to an increase in per unit costs. Figure 9 (page 49) shows that Orica's sales volumes have slightly decreased over the injury analysis period, while the other applicants' sales have increased. Table 16 (page 59) shows that Orica's production volumes decreased as production from the other applicants increased. The commission considers that these factors indicate Orica may be lowering production due to competition with other Australian industry members. A lower demand (sales volume) results in a lowering of production.

The commission has considered why CSBP and Orica were not able to increase selling prices to cover the above increases in unit costs. The commission considers that rise and fall provisions tied to existing contracts, and inter-industry competition are the primary reasons that CSBP and Orica could not increase prices in-line with the cost increases.

The commission has examples of Orica's contracts with 2 of its largest customers. These contracts include provisions which govern how the price of ammonium nitrate changes over time (rise and fall). The exact adjustment of the price is subject to different formulas under each contract. A common component between both is an adjustment for changes in raw material costs. The degree to which changes in raw material costs influence the overall price adjustment are different for each contract, but a common thread is that only a portion of the change is reflected in the final adjustment. This means that the full effect of increases in raw material costs are not reflected in price adjustments under the rise and fall provisions.

Although the commission did not have similar contracts for CSBP, it considers that rise and fall provisions are a standard inclusion in contracts for ammonium nitrate in the Australian market. Accordingly, the commission considers that CSBP is similarly constrained from passing on the full impact of cost increases in its selling prices.

To assess competition between Australian industry members, the commission examined the applicants' average selling price for ammonium nitrate over the investigation period in **Confidential Attachment 1**. In its analysis, the commission found that Orica and QNP had similar prices for 3 of the 4 quarters of the investigation period. The commission also found that CSBP was able to increase its prices quarter on quarter. Examination of the prices over the injury analysis period also indicates that the decrease in QNP's price in Figure 25 (page 69) over YEM 2020 may be attributable to competition with the Australian industry.

Orica has submitted that:⁷⁷

It should be noted that the subject imports have predominantly been imported into the two major east coast ports of Gladstone, Queensland and Newcastle, New South Wales. Orica's production facilities at Yarwun and Kooragang Island are located within close proximity of both ports. Orica has experienced injury that is material from the dumped imports into the two identified ports.

The commission considers that this indicates that Orica considers that Australian industry members on the east coast of Australia are more vulnerable to the effects of dumped exports than those on the west coast. As CSBP is located on the west coast, it has been able to increase its prices in the absence of dumping imports. However, interested parties have submitted that CSBP does supply customers on the east coast of Australia.⁷⁸ CSBP has also submitted that imports have a 'market-wide, pervasive impact on Australian prices for ammonium nitrate'.⁷⁹

The ability of CSBP to increase its prices suggests that the effects of dumped exports are limited. CSBP can make sales across Australia and has been able to increase its average prices over the investigation period.

The commission considers that, due to their similar prices over the investigation period, Orica and QNP are in competition with each other. The commission found at least one instance during the investigation period in which one member secured sales over the other.

8.5.3 Examination of volume effects

The commission does not consider that the Australian industry has experienced volume injury caused by dumped exports from Lithuania and Vietnam.

As outlined in chapter 7, the commission's analysis indicates that the Australian industry:

- experienced some variation in sales volumes over the investigation period which followed the variation in market size over the investigation period
- increased its market share over the investigation period.

The commission has considered submissions from the applicants and multiple interested parties relating to volume effects of the dumped exports.

Orica considers it has lost volume to dumped exports from Lithuania and Vietnam.⁸⁰ The other applicants did not submit that they had lost volume to dumped exports.

⁷⁷ EPR 605, no 29.

⁷⁸ EPR 605, nos 31 and 42.

⁷⁹ EPR 605, no 27.

⁸⁰ EPR 605, no 29.

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Multiple interested parties have submitted that:⁸¹

- the quantity and overall market share of imports from Lithuania and Vietnam to Australia is minimal, and generally small volume spot sales
- import volumes from Lithuania and Vietnam have reduced over the inquiry period while the Australian industry's sales volumes increased
- it is difficult to see how such a small volume of imports could cause material injury.

In response, the applicants have stated:⁸²

- imports from Lithuania and Vietnam make up a significant proportion of all imports
- imports from Lithuania and Vietnam have displaced imports subject to measures
- relatively small import volumes can still affect the Australian market
- the reduced import volumes in the investigation period are temporary in nature
- import volumes from Lithuania and Vietnam are expected to increase.

Despite the relatively small volume of imports from Lithuania and Vietnam (Figure 12, page 50), these imports make up most of ammonium nitrate imports into Australia. There is a clear shift away from exports from countries subject to measures towards countries not subject to measures (Figure 26). However, imports from all sources decreased into the investigation period.

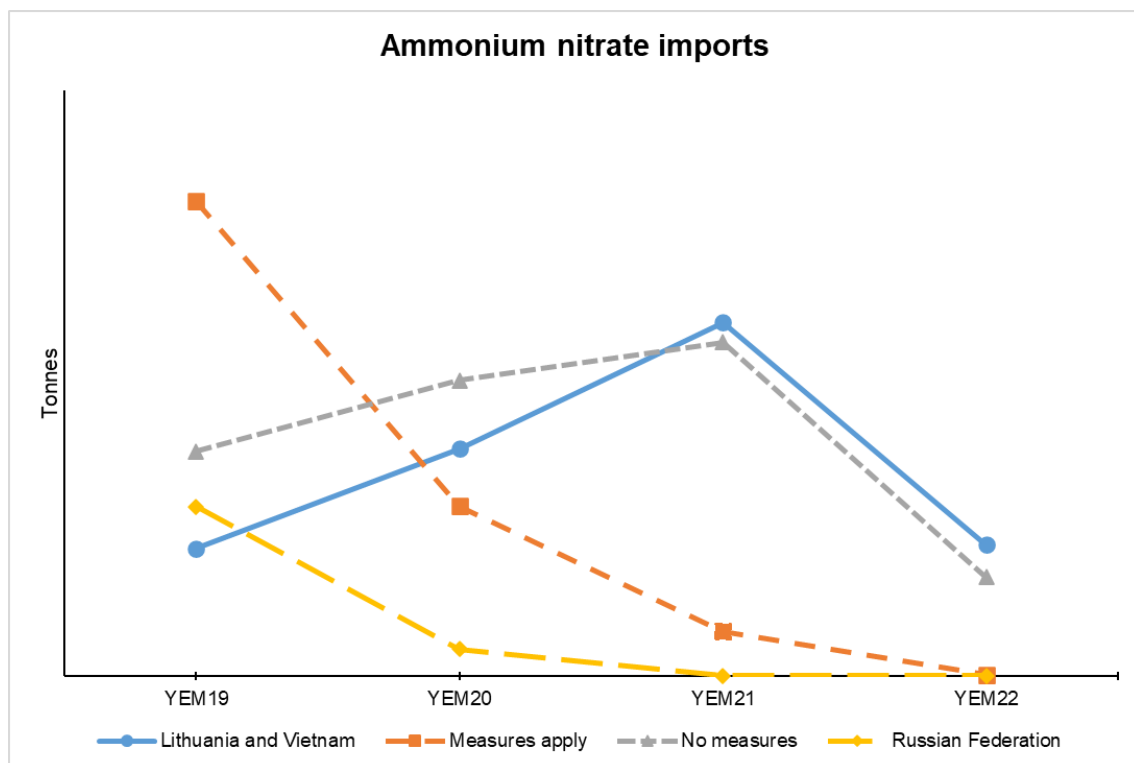


Figure 26: Movements in ammonium nitrate imports by form of measure

⁸¹ EPR 605, nos 8, 9, 10, 11, 16, 23, 31, 39, 42, 43, and 45.

⁸² EPR 605, nos 24, 26, 27, 29, and 38.

The commission notes that the decrease in imports has coincided with an overall increase in the size of the Australian market (Figure 5, page 33). Accordingly, the commission does not consider that the Australian industry has experience volume injury caused by dumping.

The commission's analysis of imports is contained in **Confidential Attachment 11**.

8.5.4 Examination of profit effects

The commission considers that the Australian industry's decrease in profits in the investigation period is not linked to dumped exports from Lithuania and Vietnam.

As outlined in chapter 7, the commission's analysis indicates that CSBP and Orica appear to have experienced downward trends in profit during the investigation period.

The applicants have submitted that the decrease in profits has coincided with the increase in imports from Lithuania and Vietnam.⁸³ The commission found movements in the applicants' profit and profitability were largely driven by changes in their costs over the investigation period.

As detailed in section 8.5.2, the commission found that CSBP and Orica were not able to increase selling prices to cover increases in costs in certain quarters of the investigation period. The commission considers that CSBP and Orica could not increase costs primarily due to a combination of restrictive contract terms and competition between Australian industry members.

8.5.5 Examination of downward trends in other economic factors

The evidence before the commission does not link the decrease in ROI and capital investment to dumped exports from Lithuania and Vietnam.

As outlined in chapter 7, the commission's analysis indicates that the Australian industry appears to have experienced downward trends in ROI and capital investment during the injury analysis period (Table 11, page 58 and Table 12, page 58).

The applicants submitted in the application that the ammonium nitrate industry 'requires continued capital investment to maintain production efficient assets.'⁸⁴ The commission considers that the Australian industry's decreases in profits over the injury analysis period have decreased the return on assets (ROI) and reduced the ability to invest in those assets (capital investment).

As discussed in sections 8.5.2 and 8.5.4, it does not appear that the Australian industry's decrease in profits is linked to dumped exports from Lithuania and Vietnam. Accordingly, the resulting reduction in ROI and capital investment due to lower profits is not linked to dumped exports from Lithuania and Vietnam.

⁸³ EPR 605, nos 26, 27 and 29.

⁸⁴ EPR 605, no 1.

8.5.6 Specific examples/case studies

The commission examined the case studies provided in the application, and considers they show that there are 2 isolated examples of the impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and Orica foregoing revenue because of the accrual of a rebate.

The commission does not consider that the remaining examples show that dumped exports are impacting the Australian industry.

The applicants provided 5 case studies in the application to demonstrate the influence that the imports had on the Australian industry's prices, profit, and profitability.⁸⁵ The commission also discussed the injury claims in the application with CSBP and Orica during their respective verifications.⁸⁶

QNP lowering its prices for one customer

The commission is satisfied that QNP lowered its prices for one customer in response to prices of dumped exports from Lithuania. QNP identified sales to a customer that it claimed were influenced by dumped exports from Lithuania and Vietnam. The commission was able to confirm that this customer also purchased ammonium nitrate from Lithuania during the investigation period. The commission compared QNP's prices to this customer to QNP's prices to other customers for equivalent product. The commission found that QNP's prices to the subject customer were lower than its prices to the other customers. The commission considers that this indicates that QNP may have lowered its prices to the subject customer due to pressure from imports. However, some of the other customers which the commission examined also imported from Lithuania during the investigation period. The commission did not find that QNP's prices to these customers were similarly affected. It appears that this is an isolated example and may indicate that there are other factors.

Orica foregoing revenue because of the accrual of a rebate

During the investigation period, only one customer imported ammonium nitrate from Vietnam. The applicants provided evidence in relation to this customer as part of the application.

The customer which imports the goods from Vietnam does so subject to a contract with Orica. Under this contract, the customer may import a certain amount of ammonium nitrate per year. The contract terms do not affect Orica's price of ammonium nitrate to the customer. Instead, where Orica's prices are above the import price, a rebate is payable to the customer. The commission found that during the investigation period, Orica accrued a rebate under the contract terms. The commission considers that this is revenue forgone because of the impact of dumped exports.

⁸⁵ EPR 605, no 1.

⁸⁶ EPR 605, nos 30 and 37.

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Remaining case studies

The commission does not consider that the remaining examples show that dumped exports are impacting the Australian industry.

Some of the evidence provided by the applicants relates to injury outside of the investigation period. The commission has examined whether this evidence supports the argument that injury has been caused by dumped exports from Lithuania and Vietnam. This evidence has also informed the commission on other matters, such as how negotiations occur between the applicants and their customers and how the Australian ammonium nitrate market operates.

The commission has considered the other evidence presented by the applicants and is not satisfied that there is injury, nor that there is injury that has been caused by dumped exports, in those examples.

The commission examined one of the applicant's claims regarding injury caused by dumping in relation to a certain contract. The injury claim involved an adjustment to the price of ammonium nitrate under the contract.

The commission found that the price of ammonium nitrate was adjusted under certain conditions, some of which related to import prices. The commission examined the circumstances in which import prices might cause injury under the contract terms. The commission found that, based on current import prices, there would be no injury to the applicant member.

An applicant also claimed that its prices for ammonium nitrate were reduced due to competition from imports. The basis for this claim related to competition with imports from Chile. Although the commission has terminated the investigation in relation to Chile, it still examined this claim. This is because the customer also imported some ammonium nitrate from Lithuania during the investigation period. The commission found that the applicant's sales to this customer were at much larger volumes than the customer's imports from Lithuania. The commission also found that the applicant's prices to this customer increased slightly over the investigation period. The commission considers that while this indicates that the customer is aware of alternative import pricing, the evidence does not support that this caused injury to the applicant.

Orica also provided a timeline of its negotiations for supply of ammonium nitrate to a customer. Orica claims that it was unsuccessful in securing a contract with the customer, in part due to the price of ammonium nitrate. The commission identified that this customer also imported ammonium nitrate from Lithuania during the investigation period. The customer also purchased ammonium nitrate from Orica during the investigation period (separate to the above negotiations).

In relation to Orica's unsuccessful negotiations for supply to this customer, the commission cannot conclude that this constituted injury to the Australian industry. The information available to the commission indicates that these negotiations were influenced by other Australian industry members in addition to imports. In some circumstances, it appears another Australian industry member secured supply over Orica. In addition, the volumes imported from Lithuania by this customer were insufficient to fully cover the volumes being negotiated.

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Interested parties have contested the validity of the above case studies on the basis that:

- the contract negotiation examples range from 2019 to 2021 and it is unclear which examples fall within the investigation period⁸⁷
- evidence relating to 'price offers' is not sufficient to demonstrate injury⁸⁸
- the non-confidential summary of the evidence does not provide interested parties with sufficient information to defend their interests.⁸⁹

The applicants have submitted that the evidence relates to genuine negotiations for sales volumes, which were influenced by import prices from Lithuania and Vietnam.⁹⁰ They claim that the injury experienced in the investigation period is an extension of the injury determined to have been suffered in *Investigation 473*.⁹¹ The applicants further submitted that they are available to assist the commission with resolving any complexities concerning injury to the Australian industry.⁹² The applicants are invited to provide submissions in response to the issues raised in this SEF.

8.5.7 Factors other than dumping

As discussed in earlier parts of section 8.5, other factors have had a significant impact on the economic condition of the Australian industry. The commission considers that because of the impact of these other factors, there does not appear to be a sufficient causal link between the dumped exports and material injury to the Australian industry.

Summary of other factors considered in earlier parts of section 8.5

While Orica and CSBP have experienced price suppression and decreased profits during the investigation period, the commission considers these are attributable to factors other than dumping. Specifically:

- Orica's price suppression and decreased profits appear to be driven primarily by decreases in production volumes (which led to an increase in per unit costs). Orica's decreased production volumes appear to be due to competition with other Australian industry members, as opposed to dumped exports.
- CSBP's price suppression and decreased profits appear to be driven primarily by increases in raw material costs due to limitations of rise and fall provisions, as opposed to dumped exports.

⁸⁷ EPR 605, nos 9, 16, 31, and 45.

⁸⁸ EPR 605, no 31 and 43.

⁸⁹ EPR 605, nos 8, 9, 11, 16, 31, and 45.

⁹⁰ EPR 605, no 38.

⁹¹ EPR 605, nos 24, 26, and 44.

⁹² EPR 605, no 48.

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Submissions about other factors from interested parties

Interested parties submitted that no regard was given to other factors that may have had an impact on the Australian industry, including:⁹³

- reduced trading of coal with China negatively affecting the mining industry
- adjustment of prices under contracts
- the limited supply capacity of the Australian industry to meet demand
- business activities other than ammonium nitrate production (such as the provision of explosives and associated services) undertaken by some of the applicants
- competition between members of the Australian industry.

The applicants submitted in response that these factors do not detract from the fact that there has been injury to the Australian industry caused by dumping.⁹⁴

The commission has assessed the impacts of the other factors raised by interested parties below (noting that competition between members of the Australian industry and rise and fall provisions in contracts have also been discussed in the preceding parts of section 8.5).

The commission has found that the Australian ammonium nitrate industry has been impacted by an unofficial ban imposed by China on coal exports from Australia during the investigation period. The ban significantly suppressed Australian coal shipments in 2021-22, however this suppression was somewhat offset by the Australian industry's modest success in finding new purchasers for its coal.⁹⁵ This decreased demand for Australian coal may have reduced Australian coal production which in turn reduced demand for ammonium nitrate in Australia. Orica has referenced the impact that this ban had on its earnings in the thermal coal market in the first half of 2021.⁹⁶ The effects of the ban have been more pronounced on the east coast of Australia, where the coal market is concentrated. This lack of demand in the coal market may have increased competition for ammonium nitrate in other markets, as ammonium nitrate manufacturers sought to retain production and sales volumes. Increased competition for a smaller share of the market may have made the Australian industry more vulnerable to injury caused by dumped exports.

In early 2023, China began to unwind the unofficial ban on Australian coal. As such, the impact that this may have on demand for ammonium nitrate going forward is likely to be

⁹³ EPR 605, nos 8, 9, 11, 16, 31, 42, and 45.

⁹⁴ EPR 605, nos 24, 26 and 29.

⁹⁵ Economist Intelligence, [China begins to unwind ban on Australian coal imports](#), *The Economist Group*, 11 January 2023, accessed 3 April 2023.

⁹⁶ Orica Limited, [Market Update on Factors Impacting First Half of FY21](#), *Orica Limited*, 26 February 2021, accessed 21 March 2023.

minimal, especially given that Australian exports of coal had already largely recovered with diversification into other markets.⁹⁷

The commission considers that the Australian industry does have some limits on its supply capacity and may not always be able to meet all domestic demand for ammonium nitrate. This was observed in section 7.7.7 where both CSBP and QNP were operating above capacity in the investigation period. The commission does not consider that being at capacity precludes the Australian industry from being injured through other factors, including price. However, the commission has not found this to be the case during the investigation period (as discussed earlier in section 8.5).

The commission considers that the Australian industry can be injured by dumped exports through other business functions, including in the explosives market. Ammonium nitrate makes up a significant portion of the cost of explosives. The commission has found that explosives customers may separately negotiate the price of ammonium nitrate, even if the overall contract is for a bundle of products and services. In this way, even vertically integrated manufacturers such as Orica can be injured by dumped exports, where the evidence shows that the ammonium nitrate price has been affected. The commission's assessment of the Australian industry's economic condition has been adjusted to account for like goods only.

Finally, the commission agrees that there is competition between Australian industry members. As outlined earlier in this section, the commission has found that in certain cases, Australian industry members have either lowered their prices due to competition with, or lost volumes to other Australian industry members.

8.5.8 Preliminary overall assessment of whether dumping has caused material injury

Based on the evidence currently before the commission, there does not appear to be a sufficient causal link between the dumped exports and material injury to the Australian industry.

While the commission found price suppression and a decrease in certain economic factors for some Australian industry members during the investigation period, these were primarily driven by factors other than dumped exports.

The commission also examined case studies provided by the applicants and considers that there are 2 examples of the impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and Orica foregoing revenue because of the accrual of a rebate.

The commission considers that these examples are isolated examples of the impacts of dumped exports and do not affect the Australian industry as a whole. The injury to Orica relates to specific contract terms which are not applicable to other Australian industry members. QNP's injury linked to dumped exports from Lithuania (lowering of prices) appears to relate to one customer because QNP does not appear to have similarly

⁹⁷ Economist Intelligence, [China begins to unwind ban on Australian coal imports](#), *The Economist Group*, 11 January 2023, accessed 3 April 2023.

lowered its prices to compete with Lithuanian exports for its other customers. Although this type of impact appears less specific than Orica's example, the commission does not have evidence of similar impacts of dumped exports on other industry members.

Noting the isolated nature of these examples and because of the significant impact of other factors on the economic condition of the Australian industry, there does not appear to be a sufficient causal link between the dumped exports and material injury to the Australian industry.

8.6 Is there a threat of material injury?

The Commissioner has analysed the available evidence and is satisfied that there has not been a change of circumstances that would make injury foreseeable and imminent unless dumping measures are imposed.

8.6.1 Assessing whether there is a threat of material injury

The applicants have claimed that the dumped exports from Lithuania and Vietnam present a threat of material injury due to:

- the expiry of current contracts and negotiation of new contracts
- the excess capacity available to exporters from Lithuania and Vietnam
- an increase in import volumes from Lithuania and Vietnam if the Australian industry fails to secure long-term contracts.⁹⁸

The commission has examined the Australian industry's claims having regard to the legislation. Section 269TAE(2B)(a) provides that for the purposes of determining whether material injury is threatened to an Australian industry, the Minister must take account only of such changes in circumstances as would make that injury foreseeable and imminent unless dumping measures were imposed. The change of circumstance must be such that this change causes the dumping which is already occurring to begin injuring Australian industry. Section 269TAE(2B)(a) therefore will involve a comparison of the status quo, in which dumping is not causing injury to the domestic industry, compared to new circumstances in which the pre-existing dumping begins to cause injury to the Australian industry because of one or several clearly foreseen and imminent changes in circumstances.

The manual states that when assessing the threat of material injury, the commission will consider the non-exhaustive list of factors in Articles 3.4 and 3.7 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (ADA) in totality.⁹⁹ Summarised, these factors are:

- a significant rate of increase of dumped imports into the domestic market
- the excess production capacity available to exporters of the goods
- the price effects of imports on domestic prices

⁹⁸ EPR 605, nos 1, 24, 26, 27, 29, 38.

⁹⁹ The manual, p 19.

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- inventories of the goods and like goods.

The commission has considered the above factors and examined the available evidence within this chapter. The commission has found that exporters from Lithuania had excess capacity during the investigation period and that in past investigations the presence of dumped goods has impacted contract negotiations. However, on balance, this evidence is outweighed by stronger evidence including that:

- Despite exporters from Lithuania and Vietnam having excess capacity during the investigation period, the excess capacity has not resulted in a significant increase in import volumes after the investigation period. There is no indication that the exporters' inventories of the goods will result in increased import volumes.
- The cost of ammonia has increased significantly after the investigation period, affecting the production costs of exporters of ammonium nitrate from Lithuania and Vietnam.
- Import prices from Lithuania and Vietnam have increased significantly after the investigation period because of the increased price of ammonia.
- In the presence of these increased import prices, the Australian industry may have a competitive advantage in future contract negotiations.
- There is limited evidence of dumped import prices from Lithuania and Vietnam influencing future contracts negotiations in this investigation.

The commission does not consider that this indicates a change of circumstances that would make the threat of material injury to the Australian industry imminent or foreseeable unless dumping measures are imposed.

8.6.2 Whether dumping may continue

The commission considers that dumping may continue.

To be satisfied that there is a threat of material injury, the Minister must be satisfied that dumping may continue.

The commission has found that import prices have increased after the investigation period (Figure 28, page 86). An increase in import prices may indicate that exports are no longer dumped. However, the commission considers that the increase in import prices is primarily due to global increase in ammonia costs, discussed further in section 8.6.4. As ammonia is a raw material in the production of ammonium nitrate, it is reasonable that these cost increases would also affect the domestic price in the exporting country. Accordingly, although import prices have increased, the commission considers that there would also be a corresponding increase in domestic prices. This would mean that dumping may continue, despite increases in import price.

In addition, the commission has observed that exports have continued from Lithuania and Vietnam after the investigation period. Continued exports, coupled with the rise in production costs, indicate that dumping may continue.

8.6.3 Assessment of rate of imports and excess capacity

The commission does not consider that the rate of import and excess capacity of exporters from Lithuania and Vietnam present a threat of material injury. The commission

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does also not consider that there is a threat of material injury due to the inventories of the goods.

Despite exporters from both countries having excess capacity:

- imports from Lithuania have not increased following the investigation period
- imports from Vietnam have returned to the same level as before the investigation period
- the prices of ammonium nitrate from Lithuania and Vietnam have increased significantly following the investigation period, removing the risk of any depressing or suppressing effect on the Australian industry' prices (discussed in sections 8.6.4 and 8.6.5).

Interested parties have made the following submissions:

- MICCO have submitted that it has limited production capacity and limited volumes available for export to Australia after domestic demand is fulfilled. MICCO also submitted that it still faces challenges in shipping the goods to Australia as MICCO does not have established distribution channels.¹⁰⁰
- The applicants are close to, if not at, full production capacity, indicating that the Australian industry is not able to consistently supply ammonium nitrate.¹⁰¹
- Lithuanian imports were predominantly due to unavailability from local suppliers and were in small spot-sale volumes, again indicating that imports are required.¹⁰²

The applicants have made the following submissions:

- Vietnam and Lithuania have excess production capacity, and with shipping restrictions easing after 2021 they will have greater ability to increase export volumes to Australia.¹⁰³
- Even if imports are required to meet supply, those imports should not be at dumped prices causing injury to the Australian industry.¹⁰⁴

The commission has found that both verified exporters had excess capacity during the investigation period. Excess capacity is a risk factor that could indicate that there is a threat of material injury caused by dumping.

To assess this risk, the commission conducted an analysis of import volumes following the investigation period. Figure 27 shows the import volumes from Lithuania and Vietnam

¹⁰⁰ EPR 605, no 39.

¹⁰¹ EPR 605, nos 16, 31, and 42.

¹⁰² EPR 605, no 43.

¹⁰³ EPR 605, nos 26, 27, 29, and 38.

¹⁰⁴ EPR 605, no 38.

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over the injury analysis period. From the end of the investigation period (Mar-22), it can be observed that exports from:

- Lithuania have not increased significantly
- Vietnam have increased compared to the investigation period (Jun-21), however, appear to be a return to levels before the investigation period.

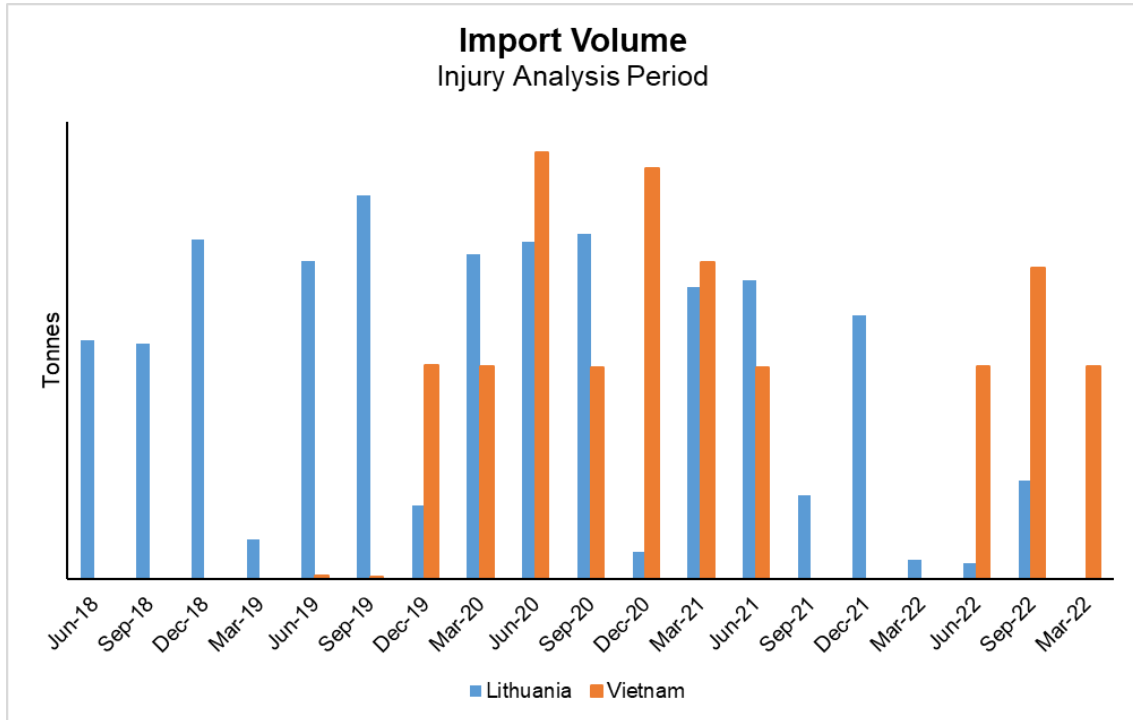


Figure 27: Import volumes over the injury analysis period

Article 3.7 of the Anti-Dumping Agreement (ADA) outlines a non-exhaustive list of factors that should be considered in totality when determining a threat of material injury:¹⁰⁵

- A significant rate of increase of dumped/subsidised imports into the domestic market indicating the likelihood of substantially increased importation.
- Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped/subsidised exports to the market, considering the availability of any other export markets to absorb extra exports.
- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imports.

The commission considers that the import volumes depicted in Figure 27 indicate that there has been a significant increase of imports into Australia from Vietnam after the investigation period. The commission found that MICCO's excess capacity decreased in the investigation period, partially due to production shutdowns. Coupled with the trends

¹⁰⁵ The manual notes, at p 19, that the commission will consider these requirements of the ADA.

observed in Figure 27, this may indicate that imports from Vietnam will increase as it seeks to increase its capacity utilisation. In isolation, this may indicate a threat of injury to the Australian industry. However, the commission found that only one customer imported from Vietnam during and after the investigation period. As discussed earlier in this report, these imports occur subject to specific contract terms (section 8.5.6). As the import volumes under the contract terms are limited, the commission does not consider that imports from Vietnam will increase substantially.

Imports from Lithuania do not appear to have increased at a significant rate after the investigation period. In addition, the commission found that AB Achema experienced an increase in its excess capacity during the investigation period. This was primarily due to the disruption in the European gas market due to the Russia-Ukraine conflict. The disruption meant that AB Achema was unable to operate at full capacity due to gas supply issues. AB Achema submitted that 'Achema's production continues to be heavily constrained and what is available is committed to traditional markets.'¹⁰⁶ The commission considers that the import volumes from Lithuania after the investigation period are consistent with AB Achema's claims.

The commission has found that import prices from Lithuania and Vietnam have increased significantly after the investigation period. The commission considers that these price increases are such that they would not have a depressing or suppressing effect on the Australian industry's prices. These price increases are discussed in sections 8.6.4 and 8.6.5.

The commission's analysis of volume trends after the investigation period is contained in **Confidential Attachment 12**.

The commission has found no evidence of that the level of inventories of the goods presents a threat of material injury. The hazardous nature of ammonium nitrate means that manufacturers do not keep stockpiles of product at such levels that would influence the market – for example, providing an incentive to offload excess stock.

8.6.4 Disruptions in global ammonia prices

The commission has found that:

- ammonia prices have been impacted by a range of factors, but significantly by the Russia-Ukraine conflict and related effects
- ammonia prices increased throughout 2021 and peaked in early 2022 to much higher levels than historically observed
- as one of the major raw materials for the manufacture of ammonium nitrate, these increased ammonia prices have impacted the ammonium nitrate market.

As outlined in chapter 4 of this SEF, ammonium nitrate is made by combining ammonia gas with liquid nitric acid, which itself is made from ammonia. Natural gas therefore

¹⁰⁶ EPR 605, no 43.

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represents a significant proportion of the raw materials and production costs.¹⁰⁷ As key raw materials in the manufacturing process for ammonium nitrate, rapid changes to gas prices and ammonia prices create a lag effect before companies can reflect those increases in their ammonium nitrate prices.¹⁰⁸

Several interested parties have submitted that the price and volume of ammonia has varied significantly during the investigation period, as well as the periods before and after.¹⁰⁹ Glencore submitted that a decline of imports of ammonium nitrate from all sources during the investigation period was due to increasing raw material costs and freight rates that it anticipated would continue into the future.¹¹⁰ Publicly available information on the global market for ammonia supports the submissions that ammonia prices have been elevated during the relevant period, largely driven by natural gas prices in the European Union. The Government of Lithuania submitted that the circumstances contributing to the reduction in production by AB Achema, particularly uncertainty around gas supply and prices, are expected to continue. AB Achema made similar submissions, pointing to continuing production constraints and contract negotiations for the applicants not expected within the next couple of years.¹¹¹

While ammonia prices now appear to be decreasing, predictions do not anticipate a return to pre-2021 levels.¹¹² The WTO has issued a trade monitoring update on the effects of restrictions on exports from Russia as a top supplier of fertilisers. The WTO noted that, one year on, there is less of a direct linkage between the Russia-Ukraine conflict and the implementation of restrictions, and that the protection of domestic markets in response to a range of other factors (including climate change, COVID, and inflation) has also driven restrictive measures on trade. Effectively, 'the nature of export restrictions became more diversified over time', with some stabilisation and less restrictive measures from May 2022.¹¹³

Glencore submitted that the applicants have not been prevented from passing on elevated ammonia costs in their prices and can instead benefit, as most Australian industry producers are not directly exposed to global ammonia prices.¹¹⁴ As pointed out in

¹⁰⁷ EPR 605, no 11.

¹⁰⁸ EPR 605, nos 31 and 42.

¹⁰⁹ EPR 605, nos 16, 31, 42, and 45.

¹¹⁰ EPR 605, no 31.

¹¹¹ EPR 605, nos 11 and 43.

¹¹² John Baffes and Wee Chian Koh, '[Fertilizer prices ease but affordability and availability issues linger](#)', *World Bank Blogs*, 5 January 2023, accessed 1 March 2023.

¹¹³ World Trade Organization, '[A Year of Turbulence on Food and Fertilizers Markets](#)', *Trade Monitoring Updates*, 28 February 2023, accessed 2 March 2023.

¹¹⁴ EPR 605, nos 31 and 45.

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submissions,¹¹⁵ Orica has noted in its 2021 annual report that increases in ammonia costs are passed on in sales prices, though with a time lag.¹¹⁶

With some stability expected to return to the market at higher levels, this would not indicate a change in circumstances that would threaten future material injury.

8.6.5 Risk of material injury from future contract negotiations

The commission does not consider that future contract negotiations present a threat of material injury to the Australian industry.

The commission has previously found that dumped exports of the goods can have an influence on contract negotiations.¹¹⁷ This influence has been found to cause material injury to the Australian industry. In *Investigation 473*, the applicants provided the commission with evidence of contract negotiations which occurred during the relevant period. The commission assessed that evidence and concluded that there was material injury caused by dumping. The commission was able to compare the negotiated contract prices with prices it considered could be achieved in the absence of dumping.

As part of its verification for INV 605, Orica provided evidence showing the expiry of its existing contracts. The commission considers that this indicates that Orica will need to negotiate new contracts in the future. In its verification, CSBP also advised that it was finalising a contract negotiation at the end of the investigation period. The commission considers that the price of imports from Lithuania and Vietnam could influence these upcoming negotiations.

To assess whether the effect of import prices on upcoming negotiations would be injurious to the Australian industry, the commission examined import prices during and after the investigation period.

Figure 28 shows that import prices for Lithuania and Vietnam significantly increased after the investigation period, along with the import price for all imports generally.

¹¹⁵ EPR 605, nos 16 and 31.

¹¹⁶ Orica Limited, '[Orica Annual Report 2021](#)', p 33, [Orica Company Reports](#), 10 November 2021, accessed 1 March 2023.

¹¹⁷ EPR 473, no 65 and *Reinvestigation Report 473*.

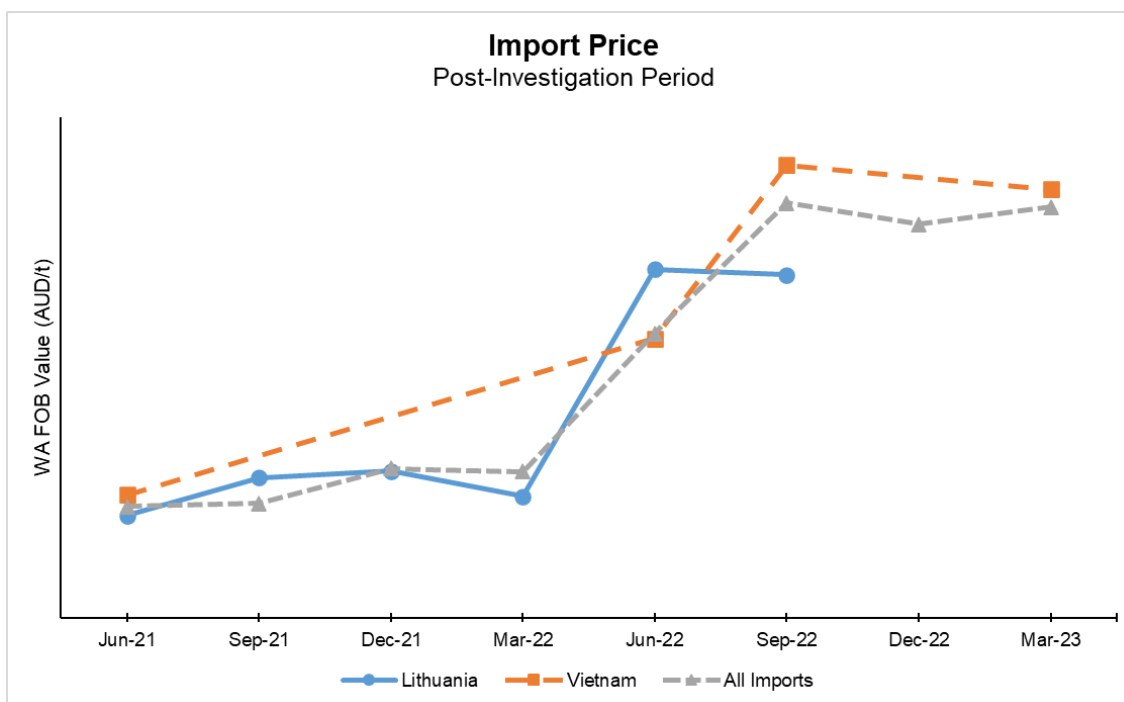


Figure 28: Import price movements post-investigation period

The commission considers that this increase in import prices is primarily due to the increase in global ammonia prices, as discussed in section 8.6.4. The commission considers that imports may be less competitive in the future due to this sharp increase in price. Although Australian industry members import some ammonia, they also have access to domestic natural gas.¹¹⁸ This partially insulates the Australian industry from the full cost increase that may be experienced by exporters and may provide the Australian industry with a competitive advantage in its upcoming negotiations.

The commission considers that dumped exports of the goods may influence future contract negotiations. However, the current evidence does not support a finding that material injury is threatened.

The commission’s analysis of price trends after the investigation period is contained in **Confidential Attachment 12**.

8.7 Possibility of termination of investigation

As outlined in section 8.5, based on the evidence currently before the commission, the commission does not consider that dumped exports have caused material injury to the Australian industry. In addition, at this stage, the commission does not consider that material injury to the Australian industry is threatened.

Depending on the submissions received in response to the SEF, the Commissioner will consider whether it is appropriate to terminate the investigation, including assessing (under section 269TDA(14B)) whether to consider the cumulative effect of the

¹¹⁸ EPR 605, nos 30 and 37.

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exportations from Lithuania and Vietnam. As discussed in section 8.4, the commission considers it is appropriate to cumulate the effects of the exportations from Lithuania and Vietnam for the purposes of assessing material injury.

Section 269TDA(13) states that the Commissioner must terminate a dumping investigation, as far as it relates to goods exported from a particular country of export, if satisfied that the injury to the Australian industry that has been, or may be, caused by those exports is negligible.

Section 269TDA(13A)(a) states that, if the Commissioner considers the cumulative effect of exportations of goods to Australia and is not satisfied that the injury to the Australian industry that has been, or may be, caused by those exports is negligible, then section 269TDA(13) does not apply. Conversely, if the Commissioner considers the cumulative effect of the exportations and is satisfied that the injury caused by those exports is negligible, then the Commissioner must terminate the investigation as far as it relates to those countries (section 269TDA(13A)(b)).

The commission has also received submissions relating to the termination of the investigation.

Glencore submitted that the investigation should be terminated on the grounds that the evidence provided in the application is not sufficient to justify the imposition of measures.¹¹⁹ As detailed earlier in sections 8.5 and 8.6, the commission considers there does not appear to be a sufficient causal link between the dumped exports and material injury to the Australian industry.

Both AECI and AB Achema submitted that the commission's findings in *Continuation Inquiry 565* (CON 565) are applicable to exports from Lithuania, and that the investigation in relation to Lithuania should be terminated.¹²⁰ The basis for these claims is that imports from Lithuania:

- have been spot sales at low volumes
- are at a higher cost than the estimated imports from Russia
- are not demonstrative of long-term arrangements
- have not reoccurred during since the end of the investigation period
- have been used to address shortfalls in supply from the Australian industry.

In CON 565, the commission found that entities that imported from Russia:

- did not import continuously over the period examined
- imported from multiple countries with varying volumes.

¹¹⁹ EPR 605, no 45.

¹²⁰ EPR 605, nos 42 and 43.

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The commission considered that these patterns indicated that imports from Russia reflected spot sales, as opposed to long-term supply arrangements.¹²¹

The commission considers that the pattern of imports from Lithuania are different to those from Russia as found in CON 565. The findings in CON 565 do not directly apply to exports from Lithuania in this investigation. The commission considers that exports from Lithuania:

- have occurred consistently over the injury analysis period
- have occurred during and after the investigation period
- were imported by the same entities over the injury analysis period, reflecting an ongoing relationship between the exporter and its customer
- were purchased in accordance with short-term supply contracts, as opposed to limited spot-sales.
- have been used to address shortfalls in supply from the Australian industry
- provide end-user customers with leverage when negotiating for supply with the Australian industry.

The commission considers that this indicates that importers intend to source ammonium nitrate from Lithuania on an ongoing basis. There is a clear and ongoing relationship between the exporter in Lithuania and its customer, which either imports the goods directly or acts as a trader.

Accordingly, the findings in CON 565 are not directly applicable to exports from Lithuania in this investigation.

¹²¹ *Preliminary Reinvestigation Report of certain findings in REP 565*, pp 67-68.

9 NON-INJURIOUS PRICE

9.1 Preliminary assessment of NIP

The Commissioner proposes to calculate the NIP by deducting importation costs from a constructed unsuppressed selling price (USP).

9.2 Introduction

This chapter is provided to allow interested parties to comment on the calculation of the NIP if it becomes relevant.

The NIP is a variable factor which is relevant to the publication of a dumping duty notice. As outlined in this report, at this time, the Commissioner is not recommending that a dumping duty notice be published. However, this is subject to submissions. If because of submissions the Commissioner recommends that the Minister publish a dumping duty notice in the final report, the Minister will be required to ascertain the NIP. If required, the Commissioner will recommend that the Minister ascertain the NIP as set out in this chapter, subject to any submissions received.

The NIP is defined in section 269TACA as ‘the minimum price necessary to prevent the injury, or a recurrence of the injury’ caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice. The commission will generally derive the NIP from the Australian industry’s USP.

9.3 Legislative framework

Where the Minister is required to determine the interim dumping duty (IDD) payable, subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) applies.

Under section 8(5B) of the Dumping Duty Act, where the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the desirability of specifying a method such that the sum of the export price and the IDD payable does not exceed the NIP (‘lesser duty rule’).

9.4 Calculation of the non-injurious price

9.4.1 Approaches to calculating the NIP

The legislation does not prescribe the methods of calculating a NIP, however there are several methods outlined in the manual.¹²²

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.

¹²² The manual, chapter 24.

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The commission's preferred approach to establishing the USP is set out in the manual and observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping
2. constructed industry prices – industry cost to make and sell plus profit
3. selling prices of un-dumped imports.

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

9.4.2 Commission's calculation of the NIP

In following the hierarchy as set out above, the commission has considered whether the USP may be established using industry selling prices at a time unaffected by dumping. The commission considers that it is not practicable to establish a USP based on a time when the Australian industry's prices were not affected by dumping, because the goods have previously been found to be dumped and injurious to the Australian industry. As outlined in chapter 2 of this SEF, anti-dumping measures have variously applied to exports from Russia from May 2001 to May 2021, and measures have applied to exports from China, Sweden, and Thailand since June 2019.¹²³

The next available option to establish the USP in the hierarchy set out above is to construct industry prices based on industry cost to make and sell plus an amount for profit. The commission considers that this method is the most appropriate method in this instance.

For this investigation, a weighted average USP has been determined based on a weighted average of Australian CTMS data covering the investigation period, plus a reasonable amount of profit achieved by the Australian industry. The commission has used the maximum profit amount for each of the applicants over the injury analysis period in determining a reasonable amount of profit achieved for the calculation.

Having calculated the USP, the commission has deducted the Australian importation and delivery costs and the ocean freight and marine insurance costs to calculate the NIP. The commission has used:

- verified importer costs for imports from Vietnam
- ABF data for importer costs for imports from Lithuania.

The commission's USP and NIP calculation is at **Confidential Attachment 24**.

¹²³ Dumping Commodity Register at www.adcommission.gov.au.

10 PRELIMINARY OVERALL ASSESSMENT

10.1 Preliminary finding

The Commissioner has found that goods exported to Australia from Lithuania and Vietnam during the investigation period were at dumped prices. However, based on the evidence currently before the commission, the Commissioner considers that dumped exports from Lithuania and Vietnam have not caused, and do not threaten to cause, material injury to the Australian industry producing like goods.

Based on the evidence currently before the commission, and subject to any further submissions received in response to this SEF, the Commissioner considers that he would not recommend that a dumping duty notice be published.

Depending on the submissions received in response to the SEF, the Commissioner will consider whether it is appropriate to terminate the investigation.

11 APPENDICES AND ATTACHMENTS

Confidential Appendix A	Assessment of confidential evidence
Confidential Attachment 1	Australian market and economic condition analysis
Confidential Attachment 2	Demand factors
Confidential Attachment 3	MICCO export price
Confidential Attachment 4	MICCO CTMS
Confidential Attachment 5	MICCO normal value
Confidential Attachment 6	MICCO dumping margin
Confidential Attachment 7	AB Achema export price
Confidential Attachment 8	AB Achema CTMS
Confidential Attachment 9	AB Achema normal value
Confidential Attachment 10	AB Achema dumping margin
Confidential Attachment 11	Imports analysis
Confidential Attachment 12	Injury assessment
Confidential Attachment 13	Application for measures (confidential)
Confidential Attachment 14	Orica Confidential Attachment A-9.2.1 – Summary of case study
Confidential Attachment 15	QNP – December 2021 board report
Confidential Attachment 16	AECI submission – EPR 605, no 42 (confidential)
Confidential Attachment 17	Orica Confidential Attachment A-9.2.2 – Summary of case study
Confidential Attachment 18	Whitehaven Coal Limited submission – EPR 605, no 16 (confidential)
Confidential Attachment 19	Confidential supply contract A
Confidential Attachment 20	Summary of confidential supply contract A
Confidential Attachment 21	Confidential supply contract B1
Confidential Attachment 22	Confidential supply contract B2
Confidential Attachment 23	Glencore submission – EPR 605, no 31 (confidential)
Confidential Attachment 24	USP and NIP calculations