



CUSTOMS ACT 1901 - PART XV B

TERMINATION REPORT

605

ALLEGED DUMPING OF AMMONIUM NITRATE

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

8 August 2023

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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 No 565
CSBP	CSBP Limited
CTMS	cost to make and sell
CY	calendar year
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975 (Cth)</i>
Dyno Nobel	Dyno Nobel Asia Pacific Pty Ltd
EPR	electronic public record
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)
HDAN	high density ammonium nitrate
the investigation	Anti-Dumping Investigation No 605
J&E	J&E International (China) Co., Ltd
LDAN	low density ammonium nitrate
Lithuania	the Republic of Lithuania
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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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
SEF 605	<i>Statement of Essential Facts No 605</i>
SG&A	selling, general, and administrative
Thailand	the Kingdom of Thailand
Yara Pilbara	Yara Pilbara Nitrates Pty Ltd
YEM	year ending March

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Commissioner of the Anti-Dumping Commission (the Commissioner) has terminated an investigation in respect of ammonium nitrate (the goods) exported to Australia from the Republic of Lithuania (Lithuania) and the Socialist Republic of Vietnam (Vietnam).

The investigation follows an application under section 269TB(1)¹ 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.

The Anti-Dumping Commission (the commission) has prepared this termination report which sets out the Commissioner's reasons for terminating the investigation in relation to all exports of the goods from Lithuania and Vietnam.

This termination report follows the commission's publication of *Statement of Essential Facts No 605* (SEF 605) on 30 May 2023, and a previous termination notice that terminated part of the investigation, Anti-Dumping Notice (ADN) No 2022/80 published on 3 August 2022.²

1.2 Findings

1.2.1 Summary

The Commissioner has found that the goods exported from Lithuania and Vietnam were at dumped prices during the investigation period 1 April 2021 to 31 March 2022.

The Commissioner is satisfied that the injury, if any, to the Australian industry that has been, or may be, caused by exports of the goods from Lithuania and Vietnam is negligible.

A summary of the Commissioner's analysis and findings is provided in the paragraphs below, and the remainder of this report provides greater detail.

¹ All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

² The application also related to the Republic of Chile (Chile). The Commissioner terminated the investigation into Chile 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.

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 found that, over the investigation period, the Australian market for the goods and like goods was supplied by:

- the Australian industry
- 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 represent most of the Australian industry (73%), measured by estimated production quantities over the investigation period (Figure 7, page 46).

The Australian industry makes up most of the Australian ammonium nitrate market. Imports supplied only a small fraction of the Australian ammonium nitrate market over the investigation period (Figure 11, page 49). 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 dumping margins calculated by the commission are 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

The commission notes that, despite the noticeable difference in the dumping margins, it found the export prices for Lithuania and Vietnam were similar.³ The different dumping

³ Section 269TAE(1)(d) requires consideration of the export prices paid by importers for goods 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 with export prices, the dumping margins themselves, do not, in this investigation, suggest exports from one country are substantially more injurious than another country.

margins is due to the different market dynamics in Lithuania and Vietnam and higher normal value in Vietnam (chapter 6.5).

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 from 1 April 2018). 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). It also informs the commission's consideration of whether injury is threatened by imports.

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. This presented in price suppression (a narrowing between prices and costs), reduced profit and profitability, reduced return on investment (ROI) and reduced capital investment. Conversely, the commission observed no downward trends in the Australian industry's prices, sales volumes, or market share over the investigation period.

1.2.6 Injury to the Australian industry (chapter 8)

The Commissioner is satisfied that the injury, if any, to the Australian industry caused by exports of the goods from Lithuania and Vietnam is negligible.

The commission examined the reasons for the Australian industry's declines in certain economic factors over the investigation period.

The commission also examined the available evidence (including case studies/examples that the applicants provided in the application and throughout the investigation) to assess the condition of the Australian industry in the absence of dumped exports ('but for' dumped exports) from Lithuania and Vietnam.

Section 269TAE outlines the requirements for determining whether material injury to an Australian industry is caused by dumping (causation). In this case, the commission conducted a 'coincidence' and a 'but for' analysis to assess whether dumping has caused material injury.

A coincidence analysis has regards to broader trends, and 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.⁴

Under a 'but for' analysis it may be possible to compare the current state of the Australian industry to the state the Australian industry would likely have been in if there had been no dumping. The commission routinely conducts a 'but for' analysis for goods that already

⁴ The manual, p 99.

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have existing anti-dumping measures. The existence of anti-dumping measures often makes it difficult to rely on coincidence analysis alone.⁵

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

The commission found that the Australian industry's declines in certain economic factors identified in chapter 7 were primarily driven by factors other than dumped exports. For example, the price suppression and reduced profit and profitability were mainly because of cost increases. Due to the widespread use of contractual arrangements within the Australian market which provide base prices and periodic rise and fall provisions, it is not always possible for the Australian industry to immediately respond to cost increases with price increases, such that profit, and profitability remains static.⁶ Such restrictions to pricing can naturally lead to a degree of volatility in profit and profitability. The commission also observed that restrictions in contract terms and competition between industry members contributed to price and downwards profit trends.

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

The commission's analysis of the available case studies and examples resulted in 2 instances where dumped exports potentially impacted or may impact the Australian industry. The commission considers these 2 instances to be isolated examples and not representative of injury to the industry as a whole, in the context of the broader Australian market categorised by multiple domestic producers holding a large percentage of the market, and a multitude of supply, demand, and geographical considerations as described in chapter 5. This, together with the significance of factors other than dumping, the Commissioner considers there is no material injury to the Australian industry caused by dumped goods during the investigation period.

1.2.7 Threat of injury to the Australian industry (chapter 8)

The Commissioner is satisfied that there is no change of circumstances that would make injury foreseeable and imminent unless anti-dumping measures are imposed.

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

- the expiry of current contracts and negotiation of new contracts that may be influenced by dumped goods
- the excess capacity available to exporters from Lithuania and Vietnam
- a potential return to, or increase in, import volumes from Lithuania and Vietnam when compared to a period before the investigation period

⁵ In certain cases, the commission will use more than one type of analysis, as for example, a coincidence analysis and but for analysis are not necessarily mutually exclusive.

⁶ 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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- a decrease in global ammonia prices (a major raw material used in ammonium nitrate) which may lead to potential decreases ammonium nitrate prices that will have a depressing or suppressing effect.

In considering these claims, the commission highlights that, over the investigation period, it found no material injury to the Australian industry caused by dumped goods during the investigation period. The commission therefore is required to examine whether there is positive evidence of a foreseeable and imminent change in circumstances that would establish a causal link between dumping and claimed material injury – that is, whether there is a threat of material injury.

The commission found that elements of the applicants' claims are present. For example, the commission agrees with the applicants' claims that exporters from Lithuania had excess capacity during the investigation period, that ammonia prices have started to fall since the investigation period, that import volumes have been higher in the past, and that in past investigations into ammonium nitrate generally, the presence of dumped goods from other countries has impacted contract negotiations. However, other evidence before the commission in this investigation negates that there is a foreseeable and imminent change in circumstances that would establish a causal link between dumping and claimed material injury:

- 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 in almost 15 months after the investigation period (1 April 2022 to 22 June 2023 based on the Australian Border Force (ABF) database). There is no evidence that the exporters' excess capacity, will result in increased import volumes in the foreseeable and imminent future. That is, there is no demonstrated change of circumstances from the investigation period, such that volume injury from dumped goods is likely.
- Imports from Lithuania and Vietnam were higher prior to the investigation period. However, the Australian industry's capacity utilisation and market share has remained consistently high during the injury analysis period. The relative changes in market shares for imported goods (between different countries) has changed over the injury analysis period but not necessarily at the expense of the Australian industry's market share. That is, there is no demonstrated change of circumstances from the investigation period, such that volume injury from dumped goods is likely.
- Ammonia prices have fallen since the investigation period. However, import prices for ammonium nitrate from Lithuania and Vietnam have increased following the investigation period, and despite beginning to fall, currently remain higher than during the investigation period. That is, there is no demonstrated change of circumstances from the investigation period such that price injury (price depression or price suppression) from dumped goods is likely.
- Dumped import prices from Lithuania and Vietnam appear to have limited influence on the Australian industry's current contracts based on case studies and examples the applicants provided for the investigation period. The available information and level of detail regarding future contracts has not demonstrated a change of circumstances, such injury from dumped goods in relation to future contract negotiations is likely.

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The commission does not consider that the evidence, when considered in totality, indicates a change of circumstances that would make material injury to the Australian industry imminent or foreseeable unless anti-dumping measures are imposed.

1.2.8 Termination of the investigation (chapter 9)

Section 269TDA sets out where the Commissioner must terminate an investigation. Based on the above findings, the Commissioner is satisfied that the injury, if any, to the Australian industry that has been caused, or may be caused, by exports of the goods from Lithuania and Vietnam is negligible.

Accordingly, the Commissioner must terminate the investigation in accordance with section 269TDA(13A)(b).

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.⁷

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

- price suppression
- loss of profits and reduced profitability.

2.2 Initiation

2.2.1 Consideration of application

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

ADN 2022/050 and *Consideration Report No 605* provide further details relating to the initiation of the investigation.⁸

2.2.2 Investigation and injury analysis periods

The Commissioner specified in the initiation notice that the investigation period would be 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, or may be, caused by exports of dumped goods, is from 1 April 2018.

2.3 Conduct of the investigation

2.3.1 Termination of investigation into Chile

On 3 August 2022, the Commissioner terminated the investigation in relation to Chile.⁹ This was on the basis that there were no exports of the goods from Chile during the investigation period.

⁷ EPR 605, no 1.

⁸ EPR 605, nos 2 and 3.

⁹ EPR 605, no 17.

2.3.2 Australian industry

The Commissioner is satisfied that the applicants represent part of the Australian industry producing like goods.

The commission verified the information Orica and CSBP provided with the application and published verification reports on the EPR.¹⁰ The commission did not verify information that QNP provided with the application. The commission considers that the level of detail in QNP's data is like that of CSBP and Orica and is reliable for the purpose of this investigation.

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.

2.3.3 Importers

Using data from the ABF import database, the commission identified several importers of the goods from Lithuania and Vietnam during the investigation 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.¹¹ The commission determined that verification of the information contained within the other RIQs was not required.

2.3.4 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.¹²

The commission verified the information contained within AB Achema's and MICCO's REQs and published verification reports on the EPR.¹³ As part of the verification process,

¹⁰ EPR 605, nos 30 and 37.

¹¹ EPR 605, no 28.

¹² EPR 605, nos 19, 20, and 21.

¹³ EPR 605, nos 40 and 41.

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the commission found that J&E is a trader rather than an exporter, that on-sells ammonium nitrate produced by MICCO to Australia.

2.3.5 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.¹⁴ The commission met with representatives from the Government of Lithuania on 18 July 2022 and 19 October 2022 and published summaries on the EPR.¹⁵

2.3.6 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.¹⁶

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 Statement of Essential Facts (SEF). In preparation of the SEF, the Commissioner 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 the SEF did not satisfy the Commissioner that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported to Australia from Lithuania and Vietnam. Accordingly, the Commissioner did not make a PAD at the time of publication of the SEF.

2.3.7 Statement of essential facts (SEF)

The Commissioner must place a SEF on the public record within 110 days after the initiation of an investigation. The Minister may extend this period under section

¹⁴ EPR 605, nos 4, 8, and 11.

¹⁵ EPR 605, nos 12 and 25.

¹⁶ EPR 605, no 17.

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269ZHI(3).¹⁷ The SEF forms the basis of the Commissioner's proposed recommendation to the Minister in relation to the application.¹⁸

The Commissioner must have regard to the application and submissions received within 37 days after the date of initiation when preparing the SEF. The Commissioner may also have regard to any other matters he considers relevant.

The Commissioner was originally due to place the SEF on the public record by 26 September 2022. However, the Commissioner extended this date to 30 May 2023.¹⁹ The Commissioner placed the SEF on the EPR on 30 May 2023.

2.4 Submissions to SEF

The commission received the submissions outlined in Table 2 from interested parties in response to the publication of the SEF.

The commission received 6 submissions by 19 June 2023, within the 20-day due date to provide submissions in response to the SEF. The commission has received 2 further submissions since the due date.

The Commissioner has had regard to all submissions to the SEF in reaching the conclusions contained within this report.

EPR number	Interested party	Date of submission
52	European Commission	19 June 2023
53	Government of Lithuania	19 June 2023
54	The applicants (CSBP, Orica, QNP)	19 June 2023
55	AECI Australia Pty Ltd	19 June 2023
56	AB Achema	19 June 2023
57	Glencore Coal Assets Australia Pty Ltd	19 June 2023
58	Whitehaven Coal Limited	23 June 2023
59	The applicants (CSBP, Orica, QNP)	4 August 2023

Table 2: Submissions to SEF 605

2.5 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

¹⁷ The Minister's powers under section 269ZHI(3) have been delegated to the Commissioner (ADN 2017/010).

¹⁸ Section 269TDAA(1).

¹⁹ ADN 2023/012.

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(Russia).²⁰ 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 or via Estonia) for a further 5 years. This followed consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No 312*.²¹ 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).²² 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.²³

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).²⁴ Notification of the then Minister's decision was given in ADN 2019/057.

A background to key cases in relation to the goods, including related cases and the above-mentioned investigations and inquiries, is summarised in Table 3.

²⁰ *Trade Measures Report No 28*. The investigation period for the investigation was 1 January 1999 to 31 March 2000.

²¹ EPR 312, no 28.

²² EPR 565, no 50.

²³ ADRP Review 2021/134.

²⁴ EPR 473, no 65. The investigation period for the investigation was 1 April 2017 to 31 March 2018.

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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 3: 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.²⁵

²⁵ For further details refer to the *Dumping Commodity Register* on the commission's website, www.adcommission.gov.au.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that locally produced ammonium nitrate is ‘like goods’ to the ammonium nitrate exported to Australia from Lithuania and Vietnam.

3.2 The goods

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

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

3.3 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).

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.

3.4 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.

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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').²⁶ MICCO produced and sold only MCC 'L-P'.²⁷

3.5 Legislative framework

Section 269TC(1) requires the Commissioner to 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.

²⁶ EPR 605, no 41.

²⁷ EPR 605, no 40.

3.6 Like goods assessment

The commission assessed 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 relied on information provided during the conduct of this investigation and prior cases involving the goods.²⁸

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.²⁹

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,³⁰ 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.

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

²⁸ See Anti-Dumping Investigation 473 and Reinvestigation 565.

²⁹ EPR 605, no 37.

³⁰ EPR 605, nos 31, 38, and 43.

nitrate in Australia. In certain limited circumstances, HDAN and LDAN could be substituted for each other, but would potentially cause different blasting outcomes.³¹

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.

Consequently, 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

The commission considers that 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.

MICCO, AB Achema and the Australian Industry produce ammonium nitrate by reacting ammonia with nitric acid.³² Manufacturers may use either self-produced ammonia (from natural gas) or imported ammonia. This chemical reaction produces ammonium nitrate solution, which can be solidified by prilling or granulation. There are also slight variations in additives and final form of the ammonium nitrate. The Commission's analysis of this production process is discussed at section 4.4 of this SEF.

3.6.5 Conclusion

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
- 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).

³¹ EPR 605, no 37.

³² EPR 605, nos 30, 37, 40, and 41.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commissioner is satisfied that there is an Australian industry producing like goods, comprised of 5 manufacturers of ammonium nitrate.

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

4.2 Australian industry

CSPB, Orica and QNP (the applicants) identified themselves as manufacturers of ammonium nitrate in the application. The applicants also identified that there are 2 other manufacturers of ammonium nitrate, Dyno Nobel and Yara Pilbara. The commission is satisfied that these 5 companies comprise the Australian industry producing ammonium nitrate.

4.3 Legislative framework

The Commissioner must be satisfied that like goods are produced in Australia. Sections 269T(2) and (3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. The manufacture of the goods must include at least one substantial process carried out in Australia to consider the goods partly manufactured in Australia.

4.4 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

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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.

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.

4.5 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.³³

The *Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)* (the manual) states:

There are no provisions in the Act to exclude from the definition of Australian industry a producer/manufacturer that is related to an exporter, or that is itself an imported or allegedly dumped or subsidised goods.³⁴

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.

³³ EPR 605, no 11.

³⁴ The manual, part 1.2.

5 AUSTRALIAN MARKET

5.1 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 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.³⁵ 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.³⁶ 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 seaboards. The eastern seaboard ammonium nitrate plants are in New South Wales and Queensland. These plants primarily supply ammonium nitrate for use in eastern seaboard

³⁵ EPR 605, nos 30 and 35.

³⁶ 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.

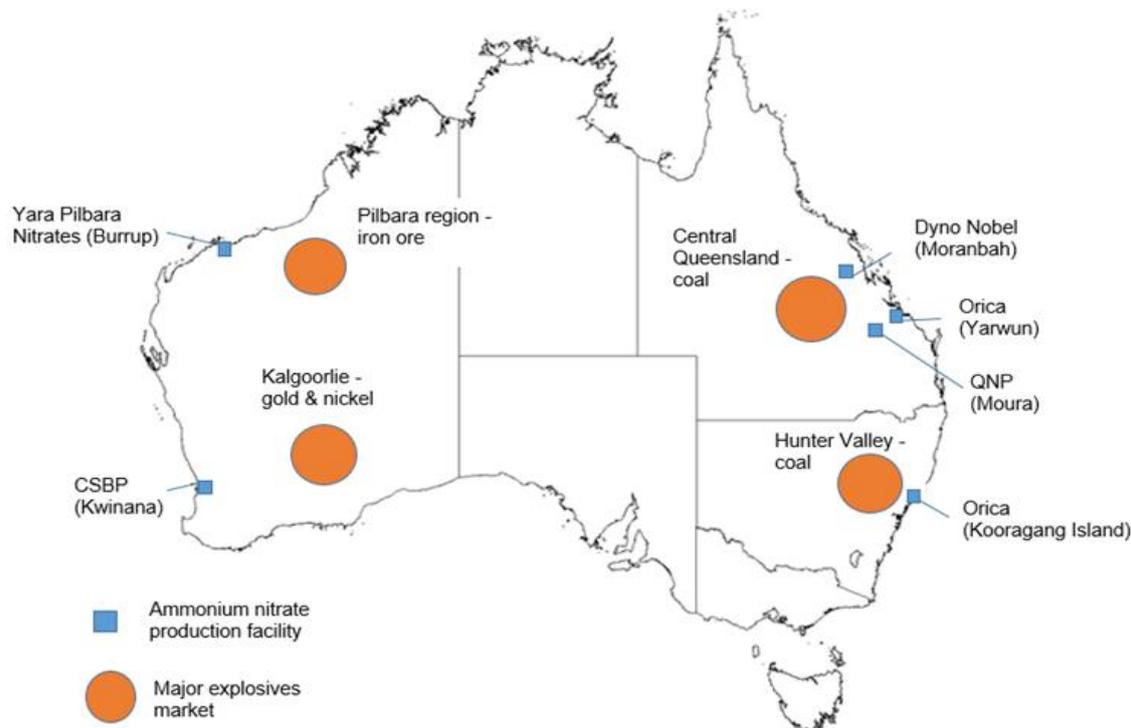


Figure 1: Australian major ammonium nitrate markets and production facilities

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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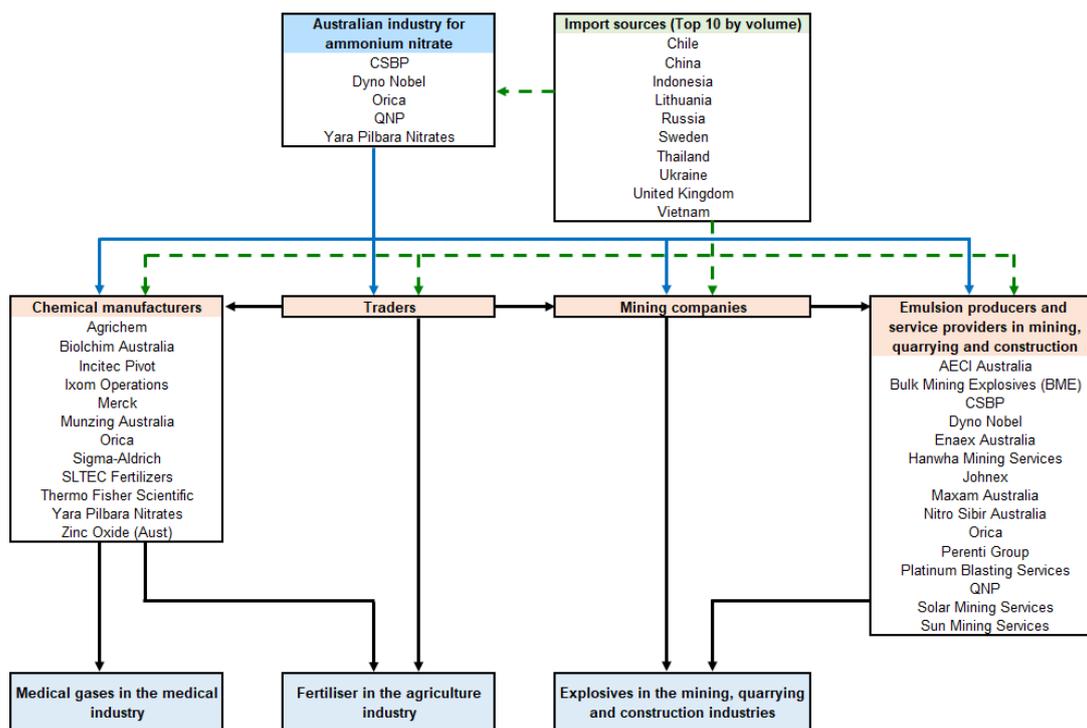


Figure 2: Australian market structure for ammonium nitrate

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 investigation 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.³⁷ 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.³⁸
- 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.³⁹

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).

³⁷ EPR 565, no 39.

³⁸ Information obtained from an Australian Industry verification and Final Report 473.

³⁹ 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 source ammonium nitrate from Australian industry or import sources and, at times, from both.

Both CSBP and Orica advised the commission that price negotiations are generally focused on 'next best alternative' 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.

5.3.4 Supply and distribution

As mentioned in section 5.3.2, 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.

5.3.5 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.
- The expenditure of coal exploration fluctuated through March 2018 and June 2022. Coal expenditures rose from March 2018 to June 2020, before declining in the period to June 2022.
- 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 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.

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Mining metres drilled remained steady between 2300 metres and 2700 metres from early 2018 to mid-2020. By June 2021 metres drilled rose year-over-year, before declining. By June 2022, mining metres drilled trended higher than March 2018 levels, showing a potential for mining metres to trend higher for the foreseeable future.

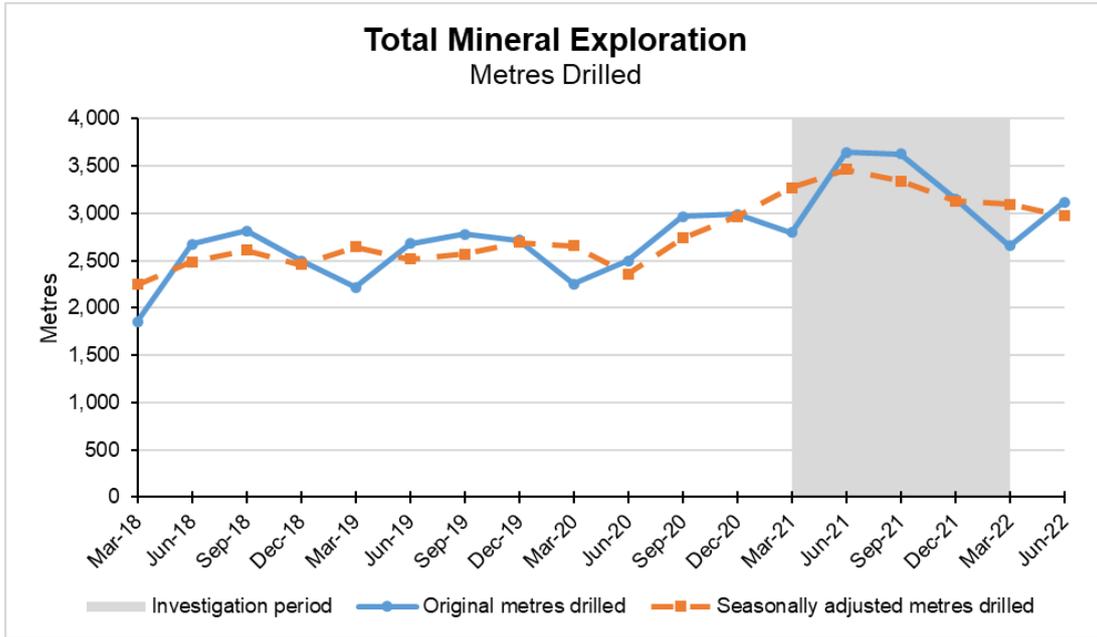


Figure 3: Total Mineral Exploration in Australia in Metres Drilled

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

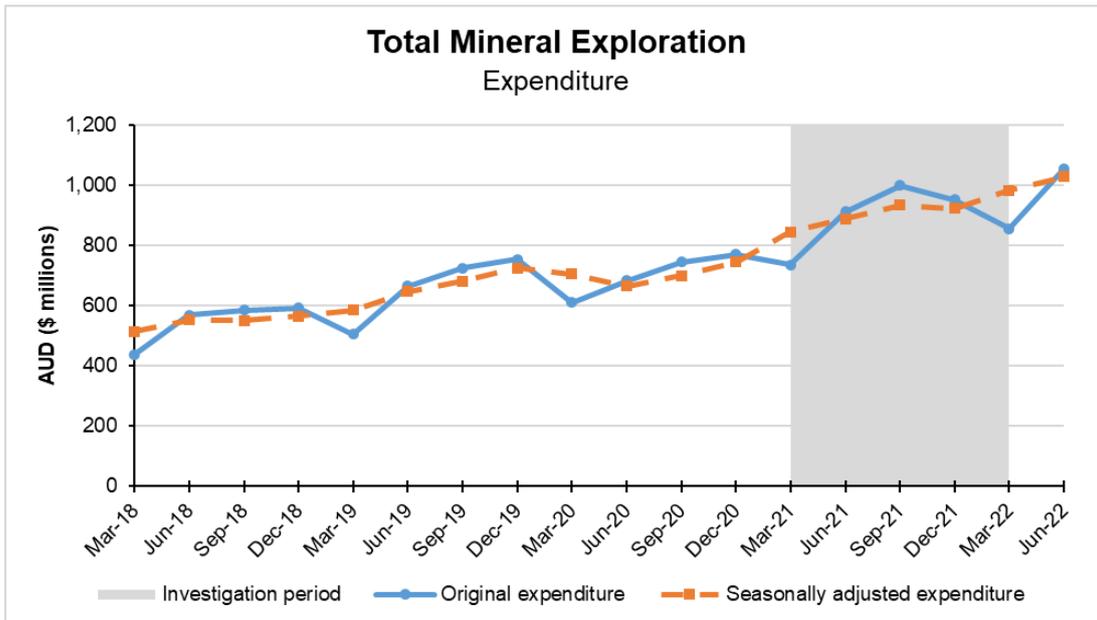


Figure 4: Total Mineral Exploration Expenditure in Australia

Overall, figures from 2018 to 2022 indicated an increase in mineral exploration expenditure in Australia. Over the same period, Australia’s total mineral exploration

exhibited an increase in metres drilled. Taken together, the rise in expenditures and metres drilled indicate demand for ammonium nitrate rose and may continue 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).

5.4 Market size

The commission estimated the size of the Australian market for ammonium nitrate using 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.

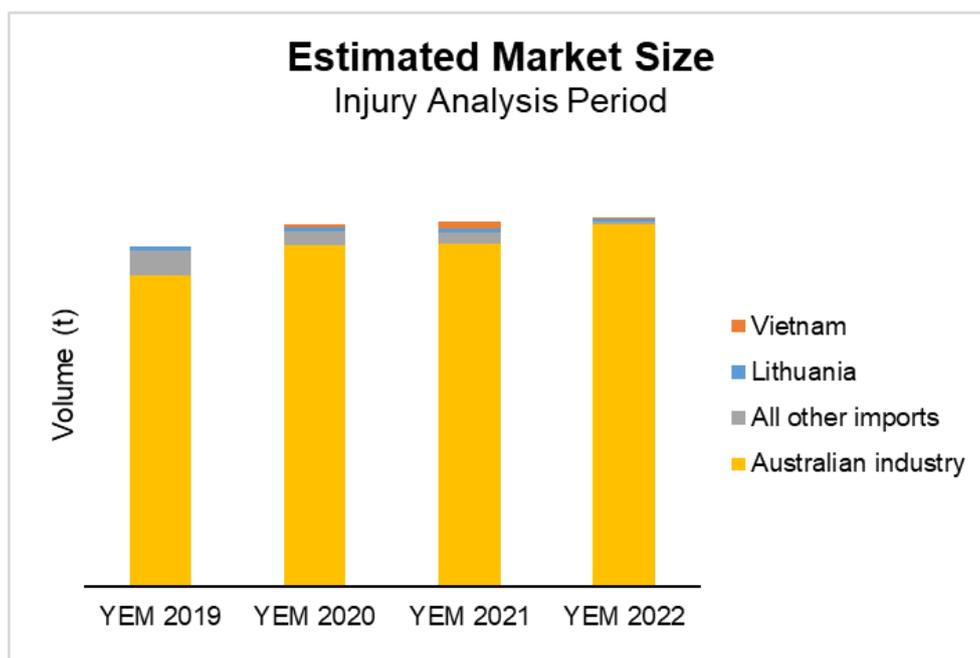


Figure 5: Estimated Australian market size (injury analysis period)

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.

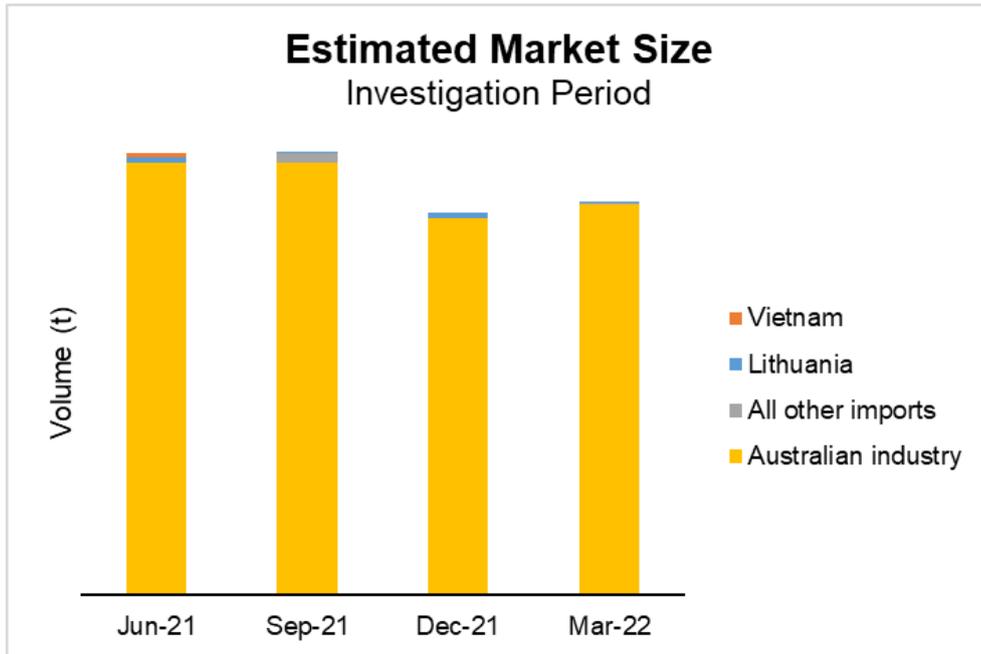


Figure 6: Estimated Australian market size (investigation period)

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**.

6 DUMPING INVESTIGATION

6.1 Finding

The commission found that the goods exported to Australia from Vietnam and Lithuania have been dumped and that the dumping margins and volume of dumped goods is 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

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.

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%.

6.2.1 Export price

The export price is determined in accordance with section 269TAB. 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 under 269TAA or the importer(s) have not purchased the goods from the exporter, the export price is determined under sections 269TAB(1)(b) or (c).

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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

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 under s269T(1).

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.⁴⁰

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 EPR.⁴¹

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:⁴²

- 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

⁴⁰ *Customs (Extensions of Time and Non-cooperation) Direction 2015 (Cth)*, section 8.

⁴¹ EPR 605, no 40.

⁴² 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 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.⁴³

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

⁴³ 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 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 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, so attempted to calculate a 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 calculated under sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (Cth) (the Regulation), respectively.

When attempting to calculate profit under section 45 of the Regulation, the commission found that MICCO's domestic sales of the goods were not arms length sales. For sales to be in the OCOT, sales must be arms length transactions. Since there were 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 considers that it is unable to determine a 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 was also 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.⁴⁴ As the commission understands there are no other exporters or producers of the same general category of goods in Vietnam, so 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.

⁴⁴ Section 45(4) of the Regulation.

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**.

Submissions on the calculation of MICCO’s normal value

Glencore and Whitehaven both submitted that MICCO’s cost to make the exported goods may not be accurate.⁴⁵ Both parties claim that MICCO’s cost to make for the relevant period may have been affected by disruptions to global ammonia prices.

As detailed in MICCO’s verification report, the commission has verified MICCO’s cost to make for the goods during the investigation period.⁴⁶ During verification MICCO did not raise, nor did the commission find, that MICCO’s costs for the relevant period were distorted. Further, MICCO was provided an opportunity to review the verification report and calculations before the verification report was published. MICCO did not identify any issues relating to the accuracy of the findings in the verification report or calculations. The commission considers that the cost to make for the exported goods reflects MICCO’s actual costs for the relevant period.

Both Glencore and Whitehaven also submitted that the use of AB Achema’s OCOT profit was not appropriate.⁴⁷

As noted above, the purpose of constructing a normal value is to estimate as closely as possible what the price of the exported goods would have been had they been sold in the OCOT on the domestic market. The commission considers that goods sold in the OCOT would include a profit. As MICCO’s domestic sales were not in the OCOT, the commission must use the best available information to determine what a reasonable OCOT profit would be. In this circumstance, AB Achema’s verified OCOT profit is the best available information.

⁴⁵ EPR 605, nos 45, 57 and 58.

⁴⁶ EPR 605, no 40.

⁴⁷ EPR 605, nos 57 and 58.

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 EPR.⁴⁸

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.

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

⁴⁸ EPR 605, no 41.

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- 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 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.⁵⁰

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.

⁴⁹ Section 269TAA.

⁵⁰ Section 269TAA.

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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.⁵¹

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:⁵²

- 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.

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

⁵¹ Section 269TAA.

⁵² EPR 605, nos 33, 35, and 36.

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- 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.⁵³

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.⁵⁴

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).

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

⁵³ Section 269TAA.

⁵⁴ 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 considers that certain adjustments are necessary to ensure a fair comparison between the normal value and the 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

6.6.3 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 has ascertained the export price and normal value by reference to all relevant information, under sections 269TAB(3) and 269TAC(6) respectively.

The commission considers 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 has ascertained the variable factors relevant to all other exporters:

- 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.

Country	Exporter	Dumping margin ⁵⁵
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

⁵⁵ The commission also notes that the volume of dumped goods is not negligible for the purposes of section 269TDA.

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Finding

The commission finds that the Australian industry experienced a decline in certain economic factors over the investigation period, including:

- price suppression (a narrowing between prices and costs, due to increased costs)
- reduced profit and profitability
- reduced ROI
- reduced capital investment.

The commission observed no downward trends in the Australian industry's prices, sales volumes, or market shares for the investigation period.

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 Australian industry producing ammonium nitrate is comprised of the 3 applicants (Orica, CSBP and QNP) and 2 other producers (Dyno Nobel and Yara Pilbara). The commission has analysed information contained in the application, information obtained during verification activities with the applicants, data from the ABF import database and publicly available information obtained in relation to Dyno Nobel and Yara Pilbara.⁵⁶

Figure 7 depicts the applicant's share of the Australian industry producing ammonium nitrate. The commission used estimated production quantity as a measure of the Australian industry size as this was the only publicly available data for Dyno Nobel and Yara Pilbara.

Given the applicants' large share of the Australian industry's production quantity, the commission considers that the data supplied by the applicants is sufficient to make broader assessments on the economic condition of the Australian industry producing ammonium nitrate.

⁵⁶ 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 data is like that of CSBP and Orica and is reliable for the purpose of this investigation. 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.

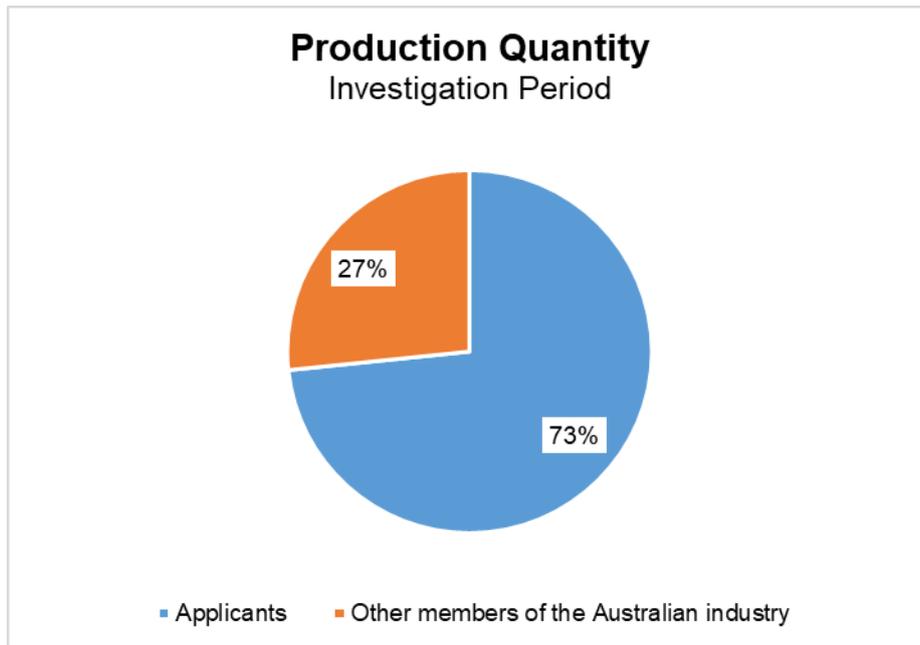


Figure 7: Production quantity as a percentage of the Australian industry producing ammonium nitrate

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 report.

The commission's analysis of the economic condition of the Australian 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.⁵⁷

7.4 Movements in volume

The commission considers that the Australian industry did not experience downwards 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.

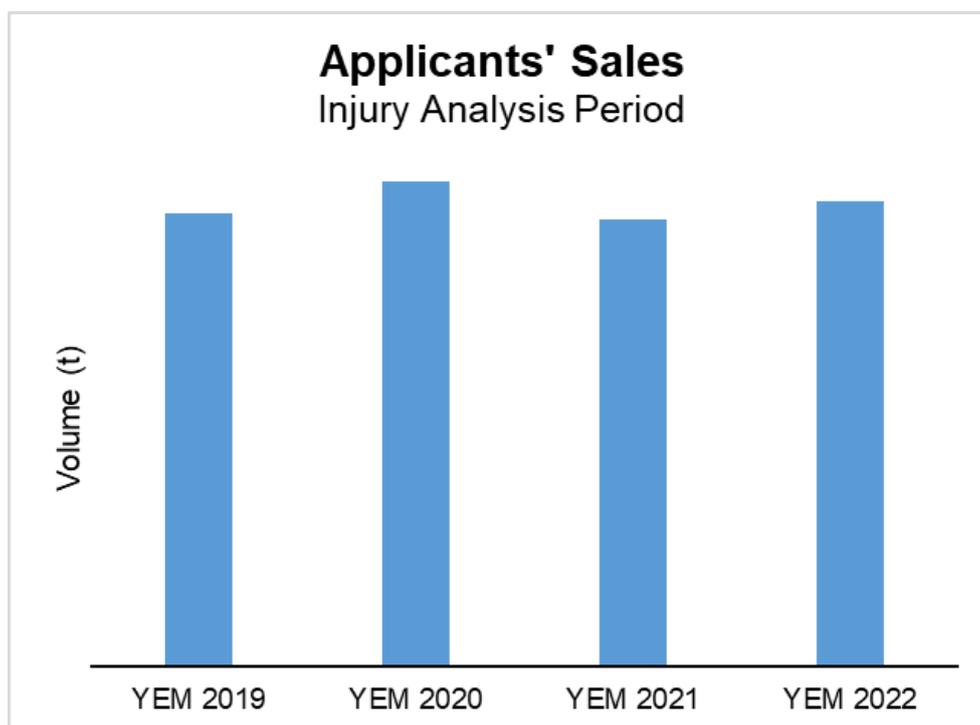


Figure 8: Applicants' sales volume (injury analysis period)

Figure 9 depicts the 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 31).

⁵⁷ EPR 605, no 1.

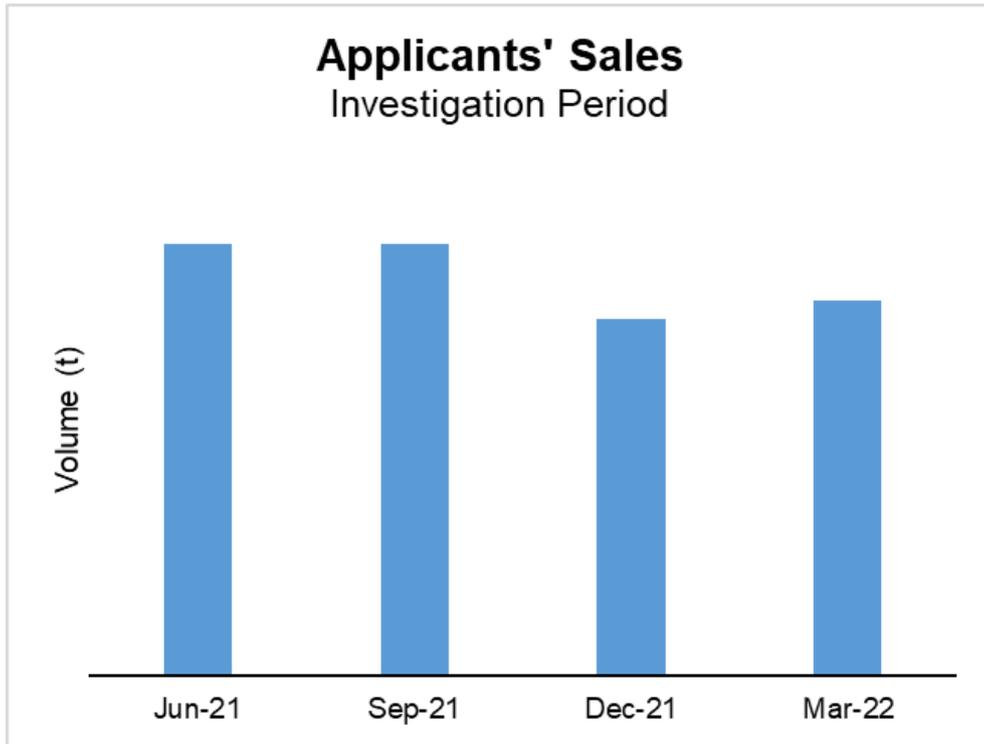


Figure 9: Applicants' sales volume (investigation period)

7.4.2 Market share

Figure 10 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.

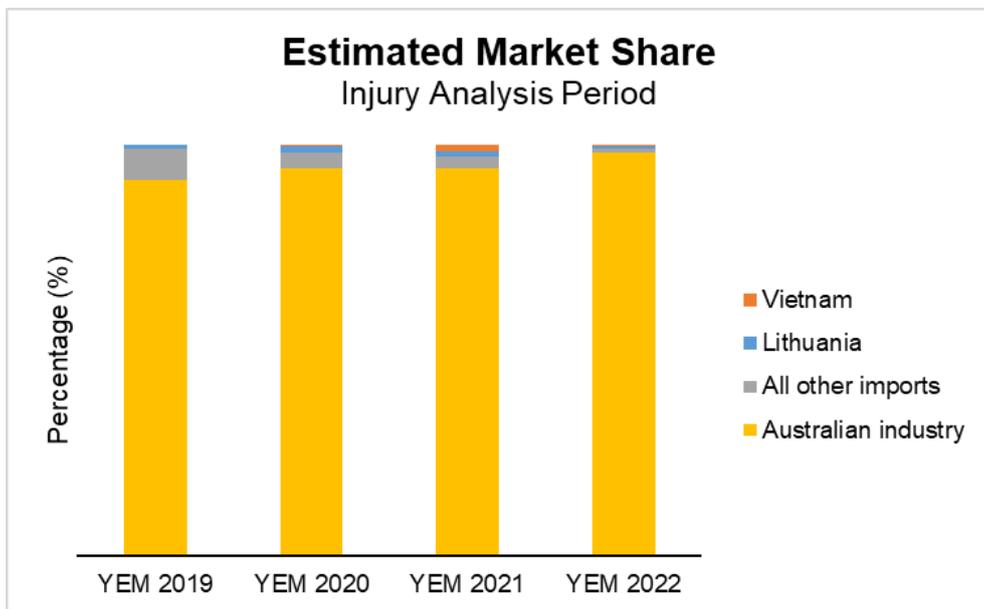


Figure 10: Estimated Australian market share (injury analysis period)

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.

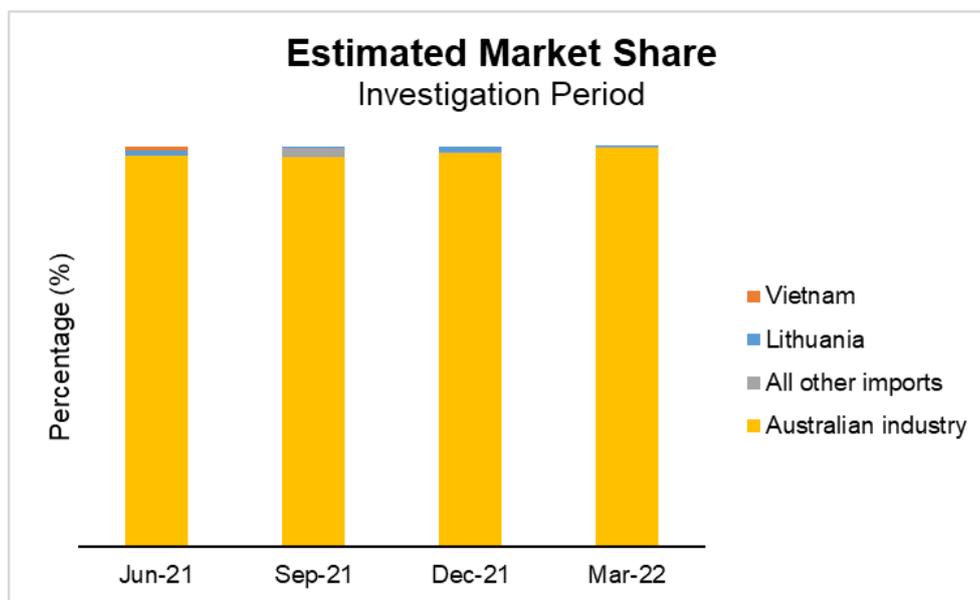


Figure 11: Estimated Australian market share (investigation period)

Figure 11 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 effects

7.5.1 Price depression

Price depression occurs when a company for some reason lowers its prices.

The commission’s analysis indicates that the Australian industry increased its prices over the injury analysis period, which is not indicative of price depression.

7.5.2 Price suppression

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.

Over the investigation period, the commission considers that the Australian industry may have experienced price suppression. The commission has found that the margin between prices and costs has decreased for each applicant to varying degrees during the investigation period.

Overall, the applicants maintained the margin between prices and costs over the injury analysis period with some narrowing of the margin towards YEM 2022 (Figure 12). Similarly, throughout the investigation period the margin increased up to the last quarter (Figure 13). Although the margin appears to have narrowed slightly, this seems to be

driven by increases in costs, given that prices increased each quarter throughout the investigation period.

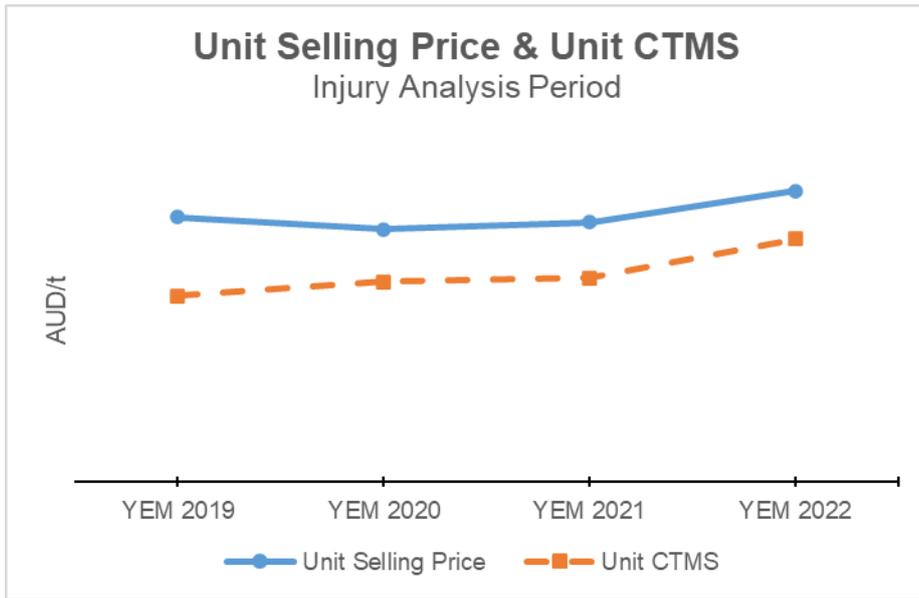


Figure 12: Comparison of the applicants' prices and costs (injury analysis period)

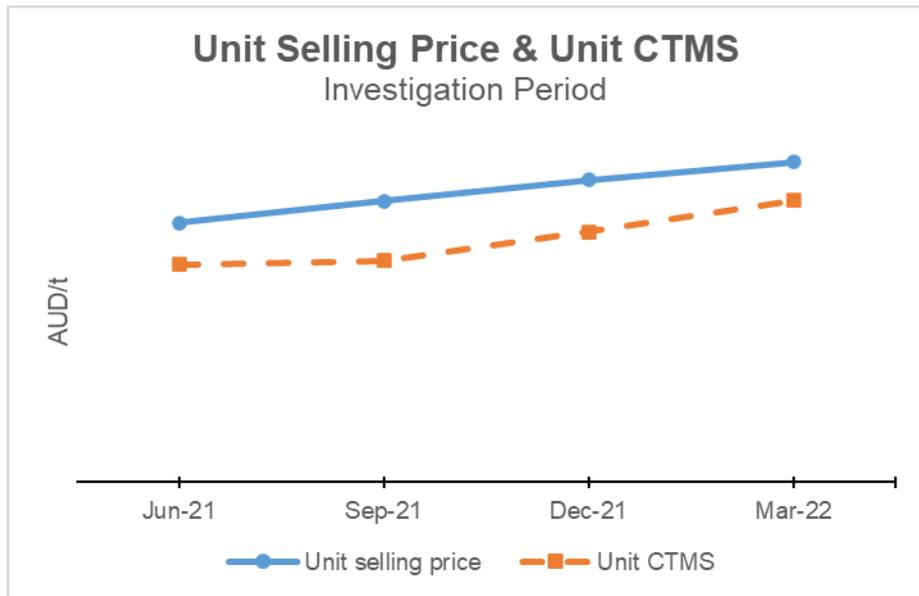


Figure 13: Comparison of the applicants' prices and costs (investigation period)

7.6 Profits and profitability

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

The overall trends in profit and profitability for the applicants are shown in Figure 14 for the injury analysis period and Figure 15 for the investigation period.

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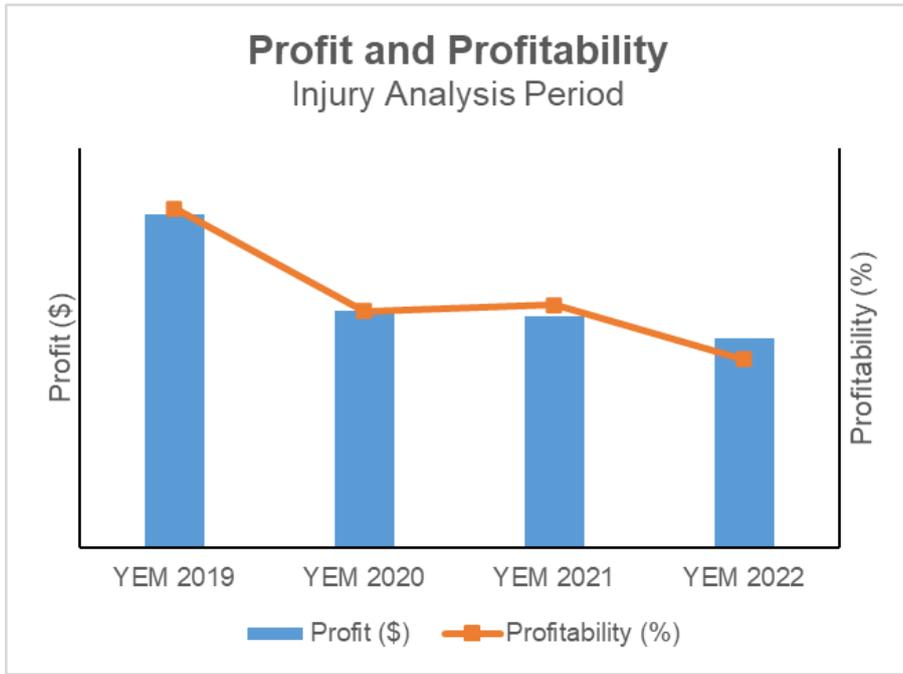


Figure 14: The applicants’ profit and profitability over the injury analysis period

The applicants experienced downward trends in profits and profitability from YEM 2019 to YEM 2022, with some stabilisation between YEM 2020 and YEM 2021.

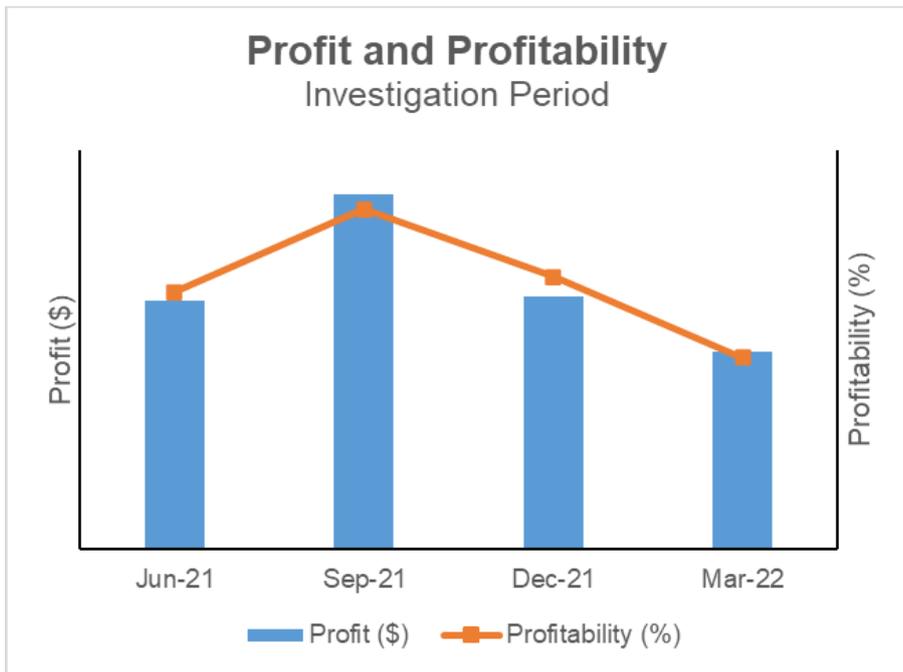


Figure 15: The applicants’ profit and profitability over the investigation period

Over the investigation period, the applicants’ profit and profitability increased from June 2021 to September 2021, followed by a decline until March 2022 to levels slightly below those at the beginning of the investigation period.

7.7 Other economic factors

The applicants each claimed injury in a range of other economic factors:

- All applicants claimed a reduction in ROI.
- Orica and QNP claimed a deterioration in capital investment.
- CSBP and Orica claimed lost revenue.
- Orica claimed reduced employee numbers.

Orica provided data relating to these other economic factors for calendar years (CY, ending December), except for production volumes and like goods revenue which are available for YEM. CSBP and QNP provided data for financial years (FY, ending June) except for production volumes and like goods revenue which are available for YEM.

Like goods revenue and production volume have been assessed on YEM basis below. However, for ROI, capital investment, employment, wages and capacity utilisation, there are minor difference in how the data was presented to the commission, due to how each application records information in its accounting records. The commission considers that the available data, although are not necessarily aligned to the same periods, is appropriate for assessing trends in these relevant economic factors. The commission has aggregated the data to collectively assess the applicants' economic performance and in turn whether there is injury to the Australian industry as a whole.

7.7.1 Return on investment

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

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

2019	2020	2021	2022
100.0	101.9	96.6	112.8

Table 11: Index of variations in like goods revenue

The commission considers that the Australian industry increased like goods revenue over the injury analysis period, including the investigation period.

7.7.4 Like goods production volume

2019	2020	2021	2022
100.0	100.5	97.3	102.6

Table 12: Index of variations in production volume of like goods

The commission considers that the Australian industry experienced an upward trend in production volumes over the injury analysis period, including the investigation period.

7.7.5 Employment

The commission considers that the Australian industry experienced an upward trend in employee numbers over the injury analysis period, including the investigation period.

7.7.6 Wages

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

7.7.7 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 Finding

The Commissioner is satisfied that the injury, if any, to the Australian industry that has been, or may be caused by, exports from Lithuania and Vietnam is negligible.

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, material injury to the Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered.

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 whether the Australian industry has experienced material injury, the Commissioner has also considered the Material Injury Direction.

8.3 Approach to causation analysis

8.3.1 Background

This investigation has examined the applicants' claims that dumped exports have caused material injury in section 8.5 and the threat of material injury in section 8.6. Both claims require separate considerations.

8.3.2 Approach to whether dumping has caused material injury

The commission has found that the Australian industry experienced downward trends in certain economic factors over the investigation period (chapter 7), coinciding with dumping from Lithuania and Vietnam (chapter 6) over the investigation period.

The commission has analysed whether dumping has caused, or partially caused these downward trends.

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.

For this investigation:

- The commission has had regard to the Act and the Material Injury Direction in conducting its causation analysis.
- The commission has undertaken a coincidence analysis.
- Additionally, 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.

8.3.3 Approach to threat of material injury

In relation to threat of material injury, the commission necessarily requires forward-looking analysis informed by available information. The Act requires that the Minister must take account only of such changed circumstances as would make material injury foreseeable and imminent.

8.4 Cumulation of exports

The commission considers that it is appropriate to cumulatively assess the effects of dumped exports from Lithuania and Vietnam in assessing whether dumped exports have caused material injury and the threat of material injury.

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.⁵⁸ In this case:

- exportations from both Lithuania and Vietnam are the subject of the investigation⁵⁹
- the investigation resulted from applications under section 269TB lodged on the same day⁶⁰
- the dumping margin for each exporter is at least 2% of the weighted average export price⁶¹

⁵⁸ Section 269TDA(14B) sets out the circumstances in which the Commissioner must consider the cumulative effect of exports of the goods to Australia from 2 or more countries of export for the purposes of the termination provisions. The factors in section 269TDA(14B) mirror the factors set out in section 269TAE(2C).

⁵⁹ Section 269TAE(2C)(a).

⁶⁰ Section 269TAE(2C)(b)(i).

⁶¹ Section 269TAE(2C)(c).

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- the volume of dumped goods from Lithuania and Vietnam is not negligible (in accordance with sections 269TDA(3) and (4))⁶²
- 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.⁶³

Several interested parties have submitted the following:

- Imports from Lithuania and Vietnam should not be cumulated for the purpose of the injury analysis.⁶⁴
- LDAN and HDAN, while like goods, are not directly competitive and not substitutable.⁶⁵
- The Australian industry does not produce HDAN, and, although ANSol is substitutable for HDAN, it forms the minority of sales in the Australian market.⁶⁶

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.⁶⁷

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

⁶² Section 269TAE(2C)(d).

⁶³ Section 269TAE(2C)(e).

⁶⁴ EPR 605, nos 8, 11, 31 and 53.

⁶⁵ EPR 605, nos 31 and 43.

⁶⁶ EPR 605, nos 31 and 43.

⁶⁷ EPR 605, no 38.

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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 report. 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'.⁶⁸

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.⁶⁹ This suggests there is at least some competitive overlap between HDAN and 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 report, 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,⁷⁰ for the purposes of determining whether cumulation is appropriate, the commission considers that ANSol and HDAN 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.

⁶⁸ EPR 605, no 31.

⁶⁹ REP 473, section 3.4.

⁷⁰ REP 565, section 7.6.

8.5 Is there material injury?

8.5.1 Finding

The Commissioner is satisfied that the injury, if any, to the Australian industry caused by exports of the goods from Lithuania and Vietnam is negligible.

The Commissioner is satisfied that:

- the Australian industry has experienced price suppression as well as downward trends in profit, profitability and reduced ROI and capital investment over the investigation period
- factors other than dumping have significantly impacted 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 or potential impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and potential injury to Orica due to certain contract terms
- these examples are isolated in nature and are not representative of injury to the Australian industry as a whole, in the context of the broader Australian market categorised by multiple domestic producers holding a large percentage of the Australian market, and a multitude of supply, demand, and geographical considerations as described in chapter 5.

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.

8.5.2 Background to 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 examined to assess whether a linkage exists between these events. To complete a 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.⁷¹

'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

⁷¹ The manual, p 99.

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commission routinely conducts a 'but for' analysis for goods that are already subject to anti-dumping measures and where there may have been dumping over an injury analysis period from other countries. The existence of anti-dumping measures makes it difficult to rely on coincidence analysis alone in these circumstances.

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.⁷² The commission has found that this continued during the investigation period.

In addition, there are currently anti-dumping measures applying to several countries. 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 for this investigation.

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 potentially 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 commission with an opportunity to examine the applicant's economic condition but for dumping. The commission has examined this evidence in section 8.5.7.

Conclusion

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

8.5.3 Examination of price effects

As outlined in chapter 7, the commission's economic condition 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 has been influenced by dumped exports from Lithuania and Vietnam.

⁷² REP 473, section 7.3.

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The applicants claim that they have not been able to increase prices for ammonium nitrate due to dumped exports from Lithuania and Vietnam and that this has led to an inability to recover increases in production costs.⁷³

The commission considers that the appearance of price suppression is primarily due to increases in costs. The commission has found that the Australian industry has increased or maintained its selling prices over the investigation period. However, each of the applicants' price increases, over certain quarters, did not directly correspond to their increases in costs (Figure 13, page 50 and **Confidential Attachment 1**). The Australian industry's inability to proportionally increase prices in response to these increased costs is due to a combination of contract terms that place various restrictions on pricing and competition between Australian industry members.

Multiple interested parties have made submissions in relation to factors other than dumping 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.⁷⁴
- Export prices for Lithuania and Vietnam and selling prices for the applicants have increased.⁷⁵
- 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.⁷⁶
- Price effects observed in the investigation period reflect the lag effect and contract terms negotiated prior to the investigation period, not the impact of imported goods.⁷⁷
- Different pricing effects apply for LDAN and HDAN.⁷⁸
- 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.⁷⁹

In response to the submissions above, the applicants submitted:⁸⁰

⁷³ EPR 605, no 1.

⁷⁴ EPR 605, nos 10 and 11.

⁷⁵ EPR 605, nos 8, 9 and 10.

⁷⁶ EPR 605, nos 16, 31, and 42.

⁷⁷ EPR 605, nos 9, 31, 42, and 43.

⁷⁸ EPR 605, no 31.

⁷⁹ EPR 605, no 45.

⁸⁰ EPR 605, nos 24, 38 and 44.

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- 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's assessment – price effects

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

Price undercutting is a tool for assessing price effects from dumped goods. 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, a price 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 price undercutting analysis.

Instead, the commission has analysed an index of price movements and examined the applicants' price setting practices. The commission has used this analysis to ascertain if there may be a relationship between import prices and the Australian industry's prices, noting that some but not all applicants may have experienced price suppression during

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the investigation period.⁸¹ The commission's analysis does not indicate any clear trend or relationship between the applicants' prices and import prices.

The commission has considered why certain applicants experiencing price suppression were unable to increase selling prices to cover the above increases in unit costs. The commission considers that this has been due to two factors other than dumping:

- rise and fall provisions tied to existing contracts, and
- competition between industry producers.

The commission analysed available contracts between the applicants and their 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 all industry producers, based on this case and past cases, 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 the Australian industry 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 there was relatively consistent pricing between the applicants, as well as the ability to increase prices throughout the investigation period.

Orica submitted that:⁸²

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 interprets Orica's submission to be 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

⁸¹ Confidential Appendix A - Assessment of confidential evidence.

⁸² EPR 605, no 29.

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submitted that CSBP does supply customers on the east coast of Australia.⁸³ CSBP has also submitted that imports have a 'market-wide, pervasive impact on Australian prices for ammonium nitrate'.⁸⁴

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 industry member secured sales over the other.⁸⁵

The commission's assessment of the applicants' price setting practices indicates that the appearance of price suppression was primarily due to increased unit costs driven by variation in production volumes across the applicants. As outlined above, this is likely due to competition between Australian industry members as overall volumes have increased for the Australian industry, and as such does not indicate price injury caused by dumping.

8.5.4 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.⁸⁶ The other applicants did not submit that they had lost volume to dumped exports.

Multiple interested parties have submitted that:⁸⁷

- the quantity and overall market share of imports from Lithuania and Vietnam to Australia is minimal, and generally small volume spot sales

⁸³ EPR 605, nos 31 and 42.

⁸⁴ EPR 605, no 27.

⁸⁵ Confidential Appendix A - Assessment of confidential evidence, A4.

⁸⁶ EPR 605, no 29.

⁸⁷ EPR 605, nos 8, 9, 10, 11, 16, 23, 31, 39, 42, 43, and 45.

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- import volumes from Lithuania and Vietnam have reduced over the investigation 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:⁸⁸

- 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 11, page 49), 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 16, page 64). However, imports from all sources decreased into the investigation period.

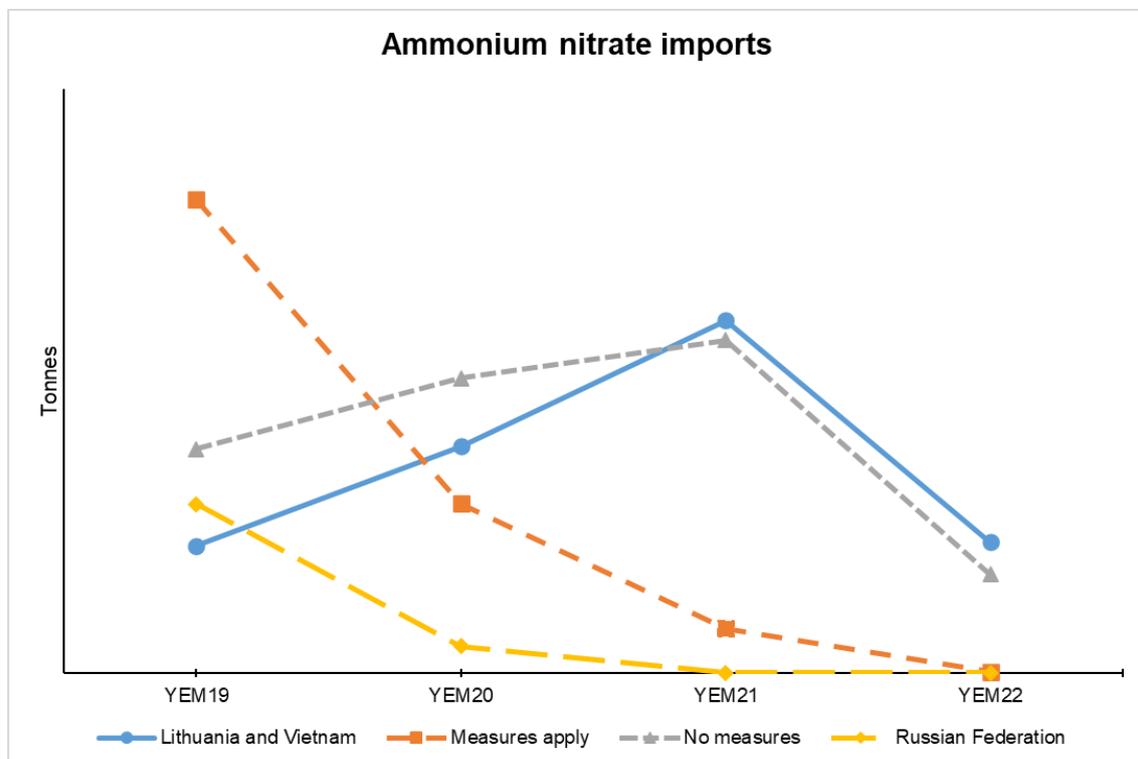


Figure 16: Movements in ammonium nitrate imports by form of measure

The commission notes that the decrease in imports has coincided with an overall increase in the size of the Australian market (Figure 5, page 30). Accordingly, the commission does not consider that the Australian industry has experience volume injury caused by dumping.

⁸⁸ EPR 605, nos 24, 26, 27, 29, and 38.

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

8.5.5 Examination of profit effects

As outlined in chapter 7 and **Confidential Attachment 1**, the commission's analysis indicates that the Australian industry has experienced reduced profits and profitability.

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

The applicants have submitted that the decrease in profits has coincided with the increase in imports from Lithuania and Vietnam.⁸⁹ The commission found movements in the applicants' profit and profitability were largely driven by changes in their costs over the investigation period. Due to a combination of restrictive contract terms and competition between Australian industry members there was a convergence between costs and prices leading to reduced profits and profitability, but these are due to factors unrelated to dumping.

8.5.6 Examination of downward trends in other economic factors

As outlined in chapter 7 and **Confidential Attachment 1**, 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 (Sections 7.7.1 and 7.7.2).

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

The applicants submitted in the application that the ammonium nitrate industry 'requires continued capital investment to maintain production efficient assets.'⁹⁰ 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 8.5.3 and 8.5.5, 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.

8.5.7 Specific examples/case studies

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.⁹¹ The

⁸⁹ EPR 605, nos 26, 27 and 29.

⁹⁰ EPR 605, no 1.

⁹¹ EPR 605, no 1.

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commission also discussed the injury claims in the application with CSBP and Orica during their respective verifications.⁹²

The commission examined the case studies provided in the application, below and within **Confidential Appendix A** and considers they show that there are 2 isolated examples of the impacts or potential impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and potential injury to Orica due terms in a contract.

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

Example for QNP

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. In the SEF, the commission considered that this indicated that QNP may have lowered its prices to the subject customer due to pressure from imports.

As identified in the SEF, some of QNP's 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. The commission considered that this indicated this was an isolated example and that there may be other factors influencing the pricing to the subject customer.

Multiple interested parties (AECI, Glencore and Whitehaven) have commented that it is likely that there were factors other than dumping which affected this example.⁹³ The commission considers that the other factors provided in the submissions by interested parties are relevant considerations. They support the commission's finding that this example is isolated and does not imply a wider influence of imports on QNP's pricing.

Example for Orica

During the investigation period, one customer imported the goods from Vietnam. This customer also has a contract with Orica.

The applicants provided evidence in the application to support its claims of injury in relation to the contract with this customer.

The commission considers that there is potential under the contract for Orica to be injured where the customer imports ammonium nitrate.

⁹² EPR 605, nos 30 and 37.

⁹³ EPR 605, nos 55, 57 and 58.

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Both Glencore and Whitehaven submitted that it was unlikely that the contract terms would result in material injury to Orica because of imports from Vietnam.⁹⁴

Upon re-examination, for the purpose of this report, the commission considers that potential injury to Orica arising from this example is contingent on several factors which are yet unknown and agreed to by the relevant parties. As such, the example does not demonstrate, based on current information, a link between dumping and injury.⁹⁵

Remaining case studies

The commission does not consider that the 3 remaining case studies provided in the application 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 below and in **Confidential Appendix A** 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.

⁹⁴ EPR 605, nos 57 and 58.

⁹⁵ Confidential Appendix A.

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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.

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 period⁹⁶
- evidence relating to 'price offers' is not sufficient to demonstrate injury⁹⁷
- the non-confidential summary of the evidence does not provide interested parties with sufficient information to defend their interests.⁹⁸

The applicants have submitted that the evidence relates to genuine negotiations for sales volumes, which were influenced by import prices from Lithuania and Vietnam.⁹⁹ They claim that the injury experienced in the investigation period is an extension of the injury determined to have been suffered in *Investigation 473*.¹⁰⁰

The commission is limited to finding injury caused by dumping within the investigation period. The injury analysis period provides the commission with a comparison to the Australian industry's economic condition in the investigation period.

However, the commission can use the evidence from before the investigation period to inform it of whether imports affect the Australian industry. These factors have been examined in the commission's assessment of whether there is a threat of material injury in section 8.6.

⁹⁶ EPR 605, nos 9, 16, 31, and 45.

⁹⁷ EPR 605, no 31 and 43.

⁹⁸ EPR 605, nos 8, 9, 11, 16, 31, and 45.

⁹⁹ EPR 605, no 38.

¹⁰⁰ EPR 605, nos 24, 26, 44 and 54.

8.5.8 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 causal link between the dumped exports and the claimed material injury to the Australian industry.

Summary of other factors considered in earlier parts of section 8.5

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

- One applicant's price suppression and decreased profits and profitability appear to be driven primarily by decreases in production volumes (which led to an increase in per unit costs). This applicant's decreased production volumes appear to be due to competition with other Australian industry members, as opposed to dumped exports.
- Another applicant'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.

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:¹⁰¹

- 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.¹⁰²

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

¹⁰¹ EPR 605, nos 8, 9, 11, 16, 31, 42, 45, and 57.

¹⁰² EPR 605, nos 24, 26 and 29.

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success in finding new purchasers for its coal.¹⁰³ 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 2021.¹⁰⁴ 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 minimal, especially given that Australian exports of coal had already largely recovered with diversification into other markets.¹⁰⁵

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.¹⁰⁶ 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

¹⁰³ Economist Intelligence, [China begins to unwind ban on Australian coal imports](#), The Economist Intelligence Unit website, 11 January 2023, accessed 3 April 2023.

¹⁰⁴ Orica Limited, [Market Update on Factors Impacting First Half of FY21](#), Orica Limited website, 26 February 2021, accessed 21 March 2023.

¹⁰⁵ Economist Intelligence, [China begins to unwind ban on Australian coal imports](#), The Economist Intelligence Unit website, 11 January 2023, accessed 3 April 2023.

¹⁰⁶ The commission also found that the Australian industry imported goods at various times, as outlined in Confidential Appendix A at section A-7.

cases, Australian industry members have either lowered their prices due to competition with, or lost volumes to other Australian industry members.

8.5.9 Injury to the Australian industry is negligible

The Commissioner is satisfied that the injury, if any, to the Australian industry caused by exports of the goods from Lithuania and Vietnam is negligible.

While the commission found decreases in certain economic factors for the Australian industry during the investigation period, these were primarily driven by factors other than dumped exports. The Australian industry also improved in other economic factors.

The commission also examined case studies provided by the applicants and considers that there are 2 examples of the impacts or potential impacts of the dumped exports on the Australian industry – QNP lowering its prices for one customer and potential injury to Orica due to certain contract terms.

The commission considers that these are isolated examples of the impacts of dumped exports and do not affect the whole Australian industry. The effect of imports on QNP's prices appears to relate to one customer and is also influenced by competition with other Australian industry members. While there is potential for Orica to be injured by imports under its existing contracts, this has not occurred during the investigation period and is contingent on future events and agreement between the relevant parties.

The commission considers that these examples are isolated in nature, and there is a more significant impact of other factors on the economic condition of the Australian industry. They do not demonstrate a causal link between the dumped exports and claimed material injury to the Australian industry. There was no evidence of material injury to the Australian industry caused by dumped goods during the investigation period. The Commissioner is satisfied that the injury, if any, to the Australian industry caused by exports of the goods from Lithuania and Vietnam is negligible.

8.6 Is there a threat of material injury?

8.6.1 Finding

The Commissioner is satisfied that there is no change of circumstances that would make injury foreseeable and imminent unless anti-dumping measures are imposed.

8.6.2 Assessing whether there is a threat of material injury

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

- the expiry of current contracts and negotiation of new contracts that may be influenced by dumped goods
- the excess capacity available to exporters from Lithuania and Vietnam
- a potential return to, or increase in, import volumes from Lithuania and Vietnam when compared to a period before the investigation period

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- a decrease in global ammonia prices (a major raw material used in ammonium nitrate) which may lead to potential decreases in ammonium nitrate prices that will have a depressing or suppressing effect.

In considering these claims, the commission highlights that, over the investigation period, there was no evidence of material injury to the Australian industry caused by dumped goods during the investigation period. The commission therefore is required to examine whether there is positive evidence of a foreseeable and imminent change in circumstances that would establish a causal link between dumping and claimed material injury – that is, whether there is a threat of material injury.

The commission found that elements of the applicants' claims are present. For example, the commission agrees with the applicants' claims that exporters from Lithuania had excess capacity during the investigation period, that ammonia prices have started to fall since the investigation period, that import volumes have been higher in the past, and that in past investigations into ammonium nitrate generally, the presence of dumped goods from other countries has impacted contract negotiations. However, other evidence before the commission in this investigation negates the claims that there is a foreseeable and imminent change in circumstances that would establish a causal link between dumping and claimed material injury:

- 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 in almost 15 months after the investigation period (1 April 2022 to 22 June 2023 based on the Australian Border Force (ABF) database). There is no evidence that the exporters' excess capacity, will result in increased import volumes in the foreseeable and imminent future. That is, there is no demonstrated change of circumstances from the investigation period, such that volume injury from dumped goods is likely.
- Imports from Lithuania and Vietnam were higher prior to the investigation period. However, the Australian industry's capacity utilisation and market share has remained consistently high during the injury analysis period. The relative changes in market shares for imported goods (between different countries) has changed over the injury analysis period but not necessarily at the expense of the Australian industry. That is, there is no demonstrated change of circumstances from the investigation period, such that volume injury from dumped goods is likely.
- Ammonia prices have fallen since the investigation period. However, import prices for ammonium nitrate from Lithuania and Vietnam have increased following the investigation period, and despite beginning to fall, currently remain higher than during the investigation period. That is, there is no demonstrated change of circumstances from the investigation period such that price injury (price depression or price suppression) from dumped goods is likely.
- Dumped import prices from Lithuania and Vietnam appear to have a limited influence on the Australian industry's current contracts based on case studies and examples the applicants provided for the investigation period and the available level of detail of future contracts. There is no demonstrated change of circumstances, such injury from dumped goods in relation to future contract negotiations is likely.

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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.¹⁰⁷ 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
- inventories of the goods and like goods.

In addition to consideration of these factors, the commission must also analyse the consequent impact that imports will have on the Australian industry. The commission has considered the above factors and examined the available evidence within this chapter.

8.6.3 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 19, page 80). 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 8.6.5. 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.

¹⁰⁷ The manual, p 19.

8.6.4 Assessment of rate of imports and excess capacity

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

- based on almost 15 months of ABF data, imports from Lithuania and Vietnam appear to have returned to similar levels as before the investigation period and have not shown a significant rate of increase.
- imports from Lithuania and Vietnam have not displaced market share held by the Australian industry.

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.¹⁰⁸
- The applicants are close to, if not at, full production capacity, indicating that the Australian industry is not able to consistently supply ammonium nitrate.¹⁰⁹
- Lithuanian imports were predominantly due to unavailability from local suppliers and were in small spot-sale volumes, again indicating that imports are required.¹¹⁰

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.¹¹¹
- Even if imports are required to meet supply, those imports should not be at dumped prices causing injury to the Australian industry.¹¹²
- Recent import statistics up until June 2023 confirm that bulk shipments from Lithuania have re-commenced and the FOB value of these shipments have declined.¹¹³

¹⁰⁸ EPR 605, no 39.

¹⁰⁹ EPR 605, nos 16, 31, and 42.

¹¹⁰ EPR 605, nos 43, 55 and 57.

¹¹¹ EPR 605, nos 26, 27, 29, 38 and 54.

¹¹² EPR 605, no 38.

¹¹³ EPR 605, no 59.

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Commission's assessment of excess capacity and import volumes

Article 3.7 of the Anti-Dumping Agreement (ADA) outlines the following volume-related factors that should be considered when determining a threat of material injury:¹¹⁴

- 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.

Consideration of these factors alone is not sufficient to make a finding of a threat of material injury. The commission must also consider the impact that they would have on the condition of the Australian industry.

The commission's assessment

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 examined movements in Australian market share and import volumes over the injury analysis period.

Figure 17 shows the import volumes from Lithuania and Vietnam from Jun-17. Following the end of the investigation period (Mar-22), imports from both countries have begun to return to levels before the investigation period.

¹¹⁴ The manual notes, at p 19, that the commission will consider these requirements of the ADA.

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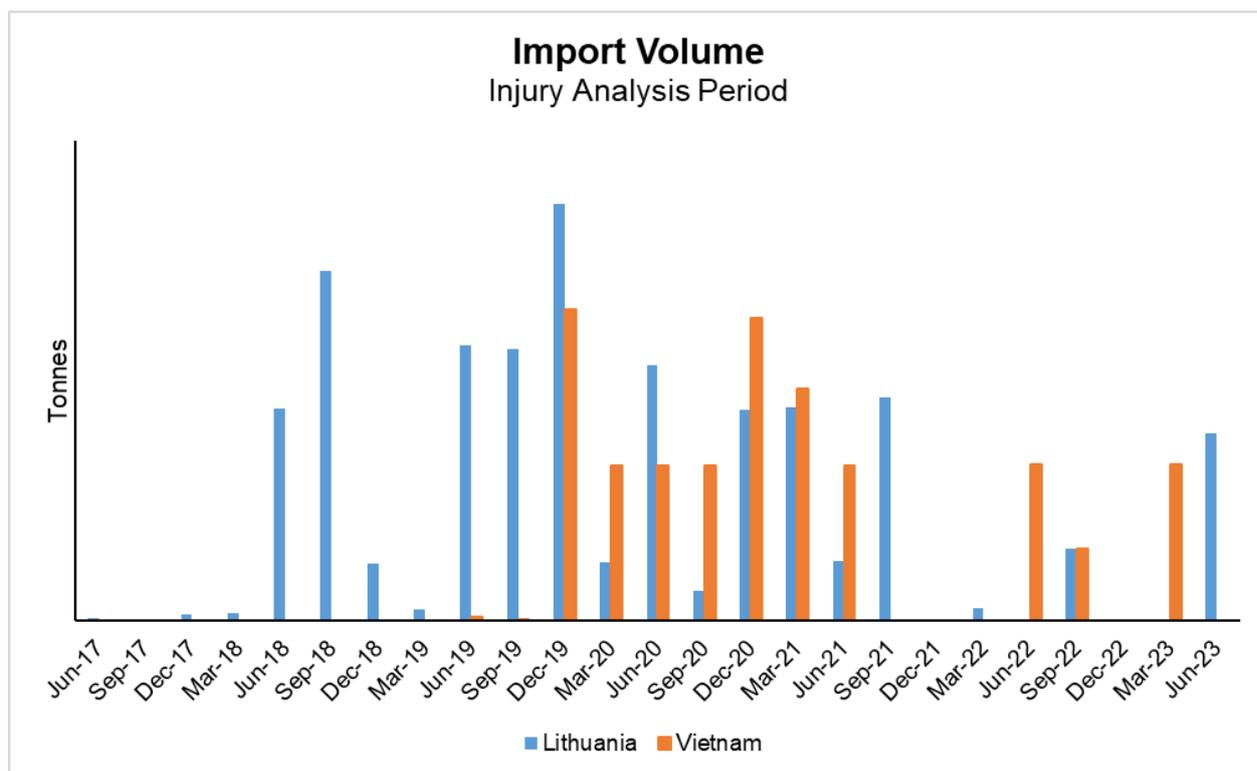


Figure 17: Import volumes over the injury analysis period

The commission considers that the import volumes depicted in Figure 17 indicate that there has been an increase of imports into Australia from Vietnam after the investigation period. However, this is due to only a single importation from Vietnam in the investigation period. When compared to importations prior to the investigation period, these recent imports do not appear to be a significant increase.

The commission found that MICCO's excess capacity decreased in the investigation period, partially due to production shutdowns. Coupled with the trends observed in Figure 17, 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. The commission considers that the circumstances of that customer's imports from Vietnam mean that volumes are unlikely to increase substantially.

Similarly, to Vietnam, imports from Lithuania do not appear to have increased at a significant rate. Imports from Lithuania dropped substantially during and after the investigation period (Dec-21 to Mar-23), with imports appearing to resume in Jun-23. The resumed level of imports is at similar levels to those prior to the investigation period.¹¹⁵

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

¹¹⁵ The applicants' submission dated 4 August 2023, also referred to another potential shipment from Lithuania in the Mar-23 quarter, however the commission has been unable to confirm such a shipment from Lithuania based on the ABF data.

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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.'¹¹⁶ The commission considers that the import volumes from Lithuania after the investigation period are consistent with AB Achema's claims.

The commission has also considered what impact increased imports from Lithuania and Vietnam may have on the Australian industry. Figure 18 shows the movement in the share of the Australian market held by imports from Lithuania, Vietnam, all other countries, and the Australian industry over the injury analysis period.

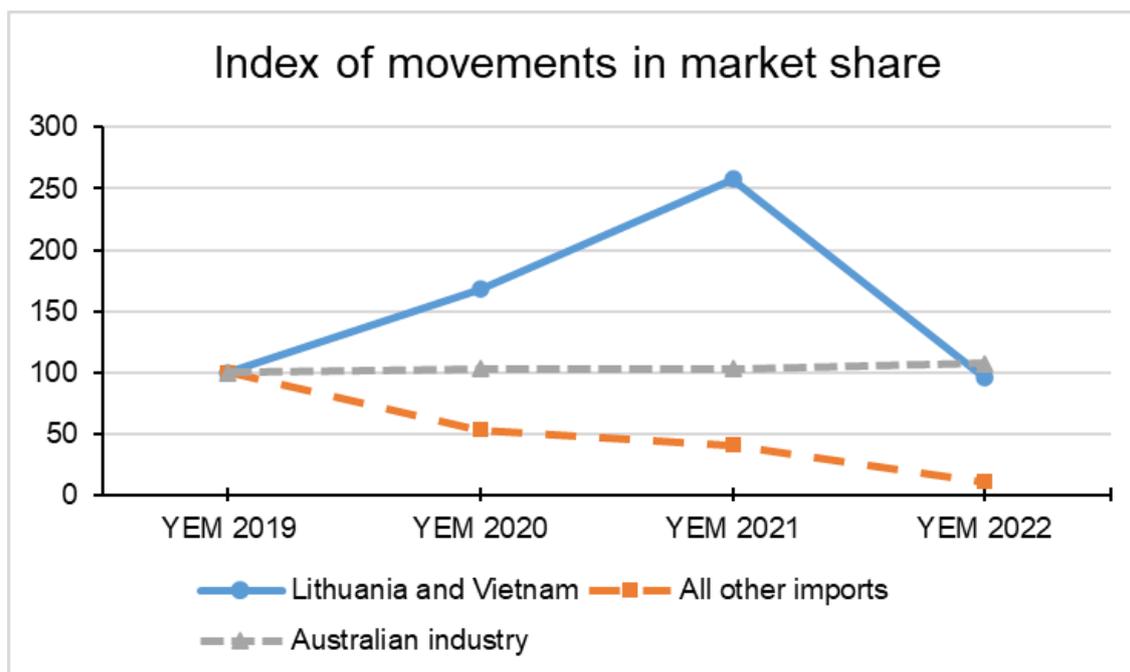


Figure 18: Index of movements in market share

The Australian industry's market share has remained consistent over the injury analysis period. In contrast, the market share from Lithuania and Vietnam has increased substantially prior to YEM 2022. The commission considers that this indicates that although imports from Lithuania and Vietnam may have displaced imports from all other countries, they have not influenced the market share held by the Australian industry.

The commission considers that this indicates that imports only maintain the share of the Australian market that is unable to be captured by the Australian industry due to capacity limitations.¹¹⁷ Therefore, continued imports from Lithuania and Vietnam do not threaten to cause material injury to the Australian industry through displacing volume and market share.

¹¹⁶ EPR 605, no 43.

¹¹⁷ The commission found that the Australian industry was operating at near capacity over the injury analysis period (section 7.7.7).

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

The commission has found no evidence that the level of inventories of the goods presents a threat of material injury to the Australian industry. The hazardous nature of ammonium nitrate means that manufacturers do not keep stockpiles of product at such levels that would influence the market. Therefore, although both verified exporters have excess capacity, the commission does not consider that this excess capacity indicates a threat of material injury under a holistic assessment of imports and future trends.

8.6.5 Disruptions in global ammonia prices

The commission found in SEF 605 that global ammonia prices had increased drastically towards the end of, and following, the investigation period. Ammonium nitrate prices increased because of disruptions in the cost of key inputs, including natural gas and ammonia.¹¹⁸ Global ammonia prices now appear to be decreasing and returning to similar levels as before the disruption.

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
- ammonia prices have decreased since the spike and appear to be returning to previous levels.

As outlined in chapter 4 of this report, ammonium nitrate is made by combining ammonia gas with liquid nitric acid, which itself is made from ammonia. Natural gas therefore represents a significant proportion of the raw materials and production costs.¹¹⁹ 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.¹²⁰

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.¹²¹ 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

¹¹⁸ SEF 605, section 8.6.4.

¹¹⁹ EPR 605, no 11.

¹²⁰ EPR 605, nos 31 and 42.

¹²¹ EPR 605, nos 16, 31, 42, and 45.

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freight rates that it anticipated would continue into the future.¹²² 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.¹²³ AB Achema also claimed that its production continued to be 'heavily constrained and what is available is fully committed to [AB Achema's] traditional markets.'¹²⁴

The commission found that European gas prices had been increasing towards the end of the investigation period.¹²⁵ Several indices which tracked the price of ammonia also showed corresponding increases in ammonia prices.¹²⁶

The increase in natural gas and ammonia prices appears to have led to a corresponding increase import prices for ammonium nitrate. The commission considered in the SEF that this indicated that 'imports may be less competitive in the future due to this sharp increase in price.'¹²⁷

In response to the SEF, the applicants provided evidence that indicates that ammonia prices have now begun to return to similar levels before the disruption.¹²⁸ The applicants claim that the decrease in ammonia prices will lead to decreased ammonium nitrate prices from exporters. The applicants also claimed that the FOB value for recent shipments from Lithuania in the June-2023 quarter have decreased compared to a shipment in February 2023, reiterating that this tracked the rapid decline in raw material ammonia prices.¹²⁹

The commission has updated its examination of import prices for ammonium nitrate following the investigation period from that set out in SEF 605. Figure 19 shows that import prices spiked following the investigation period. The import prices have started to decrease in recent months but remain higher than the levels observed during the investigation period.

¹²² EPR 605, no 31.

¹²³ EPR 605, no 11.

¹²⁴ EPR 605, no 43.

¹²⁵ A Gabuev, [How Will Moscow Use Its Energy Leverage Over Europe?](#), Foreign Policy Magazine website, 2021, accessed 15 September 2022; J Horowitz, [Europe is paying record prices for energy. A winter crisis looms](#), CNN website, 2021, accessed 15 September 2022; Eurostat, [Natural gas prices for non-household consumers](#), Eurostat website, 2022, accessed 15 September 2022.

¹²⁶ **Confidential Attachment 24.**

¹²⁷ SEF 605, section 8.6.5.

¹²⁸ EPR 605, no 54.

¹²⁹ As outlined in a previous footnote, the commission was unable to identify a February 2023 shipment from Lithuania based on the ABF data.

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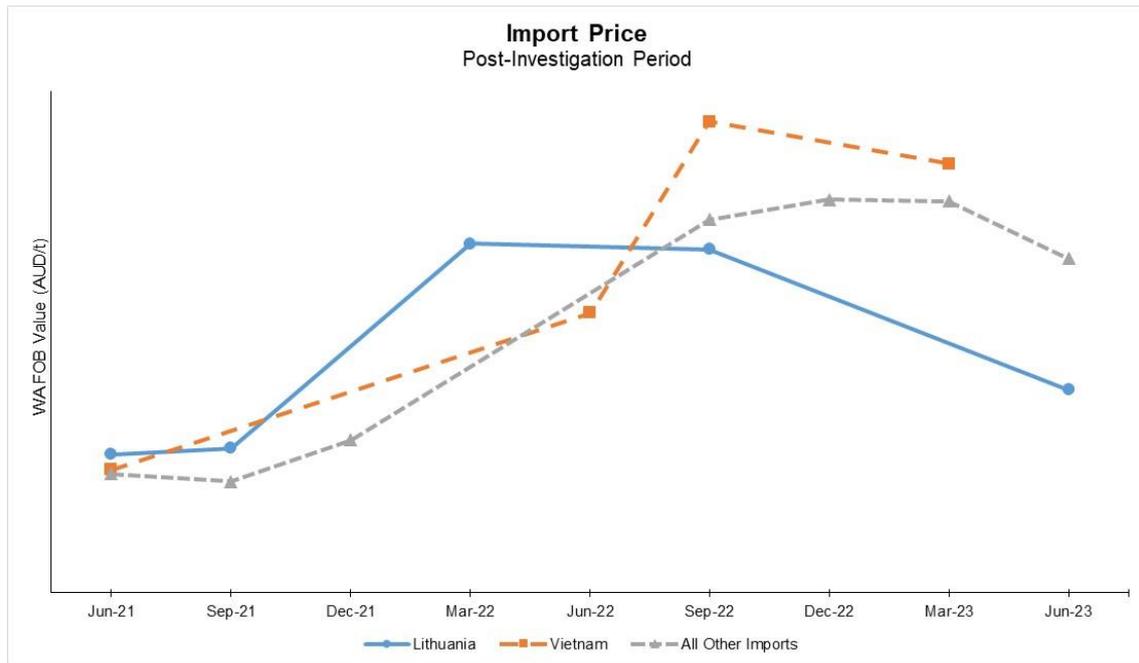


Figure 19: Import price movements post-investigation period

The applicants consider that decreasing import prices mean that ‘exporters in Lithuania and Vietnam will seek to increase export volumes to Australia and supply future contracts on the Australian market’.¹³⁰ This is examined further in the next section.

8.6.6 Risk of material injury from future contract negotiations

The commission is not satisfied that in the absence of measures, the Australian industry would experience material injury from dumped imports from Lithuania and Vietnam through future contract negotiations.

The commission has found:

- import prices from Lithuania and Vietnam have begun to decrease, but remain higher than during the investigation period
- the Australian industry has been able to increase prices at a time where there were higher volumes of imports from Lithuania and Vietnam
- imports from Lithuania and Vietnam have not affected long-term contracts for direct supply of ammonium nitrate
- there are many factors considered when negotiating for contracts involving supply of explosive products and services, only one of which is the price of ammonium nitrate.

The applicants have claimed that although there is limited evidence of injury occurring during the investigation period, previously higher levels of imports from Lithuania and Vietnam have caused injury. If measures are not imposed, there is a threat of injury

¹³⁰ EPR 605, no 54.

occurring due to the volume of imports increasing (due to reductions in ocean freight, ammonia costs).

The commission has previously found that dumped exports of the goods can influence contract negotiations and in some cases cause material injury to the Australian industry.¹³¹ In *Investigation 473*, the applicants provided the commission with evidence of contract negotiations which occurred during the relevant period. The commission was able to compare the negotiated contract prices with prices it considered could be achieved in the absence of dumping and concluded that there was material injury caused by 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 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. However, the commission does not have specific timelines as to when these negotiations will commence and conclude.

The commission considers that the price of imports from Lithuania and Vietnam could influence these upcoming negotiations. To assess whether there is a threat of material injury, the commission has assessed the impact that imports from Lithuania and Vietnam may have on the Australian industry's future contracts for both direct supply of ammonium nitrate, and supply of explosive products and services.

The commission's assessment

As discussed in section 8.5.7, there were only isolated examples of imports from Lithuania and Vietnam influencing or potentially influencing the Australian industry. Further, these examples related to short-term supply or existing contracts. The long-term contract negotiations that contributed to the recommendation in *Investigation 473* are not present in this investigation.

In relation to direct supply of ammonium nitrate, in SEF 605 the commission preliminary considered that the Australian industry would have a competitive advantage over future imports from Lithuania and Vietnam.¹³² As set out in section 8.6.5, although import prices from Lithuania and Vietnam have decreased in the period following publication of SEF 605, they remain above the prices in the investigation period (Figure 19). The commission considers that the Australian industry maintains a competitive advantage over imports.

The commission has also found that the Australian industry had been able to increase prices over the injury analysis and investigation periods. As discussed in section 7.5, the commission found that price suppression was caused by factors other than dumping. This indicates that the Australian industry can increase prices in the presence of imports from Lithuania and Vietnam. The commission considers that this indicates that any effect of

¹³¹ REP 473 and *Reinvestigation Report 473*.

¹³² SEF 605, section 8.6.5.

exports from Lithuania and Vietnam on the Australian industry's contracts for direct supply of ammonium nitrate would be negligible.

In relation to how future imports may affect the outcome of the Australian industry's contract negotiations for supply of explosives, several interested parties have claimed that contracts for the supply of explosive products and services are not sales of like goods and should be excluded from the injury analysis.¹³³ The applicants have conversely argued that these contracts are relevant for the injury analysis.¹³⁴

The contract examples in *Investigation 473* primarily involved direct supply of ammonium nitrate. Where contracts involving supply of explosive products and services were examined, the commission did not find evidence of injury.¹³⁵

As discussed in section 8.5.8, the commission considers that the Australian industry producing ammonium nitrate can be injured by the influence of dumped imports on contracts for explosive products and services. However, the commission considers that there are factors other than the price of ammonium nitrate which are considered when customers award contracts for explosive products and services. The commission has also not found that dumped imports have influenced the Australian industry's negotiations for contracts for explosive products and services during the investigation period. Any such finding would have to isolate the injury caused by dumped imports from the rest of the considerations under the contract. In some circumstances, the price of ammonium nitrate may be separately negotiated, which would allow the commission to directly assess whether there is injury. In other circumstances, it would be difficult for the commission to determine whether there is injury caused by imports of ammonium nitrate. Further, where the Australian industry does not secure a contract for supply of explosive products and services, it may still secure supply of ammonium nitrate to the explosives provider. The evidence before the commission indicates that the effect of exports from Lithuania and Vietnam on the Australian industry's contracts for explosives products and services would be negligible.

There is no apparent change in circumstances outside of the need to negotiate new contracts that would indicate that material injury to the Australian industry is foreseeable and imminent. The commission's assessment of the price and volume movements of imports from Lithuania and Vietnam do not indicate that they would materially injure the Australian industry in negotiations for new contracts.

8.6.7 No change in circumstances such that material injury to the Australian industry is threatened

The commission has found that while some of the circumstances identified by the Australian industry exist, they do not represent a foreseeable and imminent change in circumstances that would establish the requisite causal link between the dumped exports

¹³³ EPR 605, nos 16, 31, 45 and 58.

¹³⁴ EPR 605, nos 24 and 38.

¹³⁵ REP 473, section 9.2.1, example 9.

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and injury to the Australian industry such that material injury to the Australian industry is threatened.

The commission has found that:

- increased volumes of imports from Lithuania and Vietnam have not affected the Australian industry's market share
- import prices from Lithuania and Vietnam remain higher than in the investigation period
- if exports from Lithuania and Vietnam have any impact on the Australian industry's future contract negotiations, this impact would be negligible.

Accordingly, the Commissioner is satisfied that there is no change of circumstances that would make injury foreseeable and imminent unless anti-dumping measures are imposed.

9 TERMINATION

9.1 Findings

Based on the findings in this report, the Commissioner is satisfied that the injury, if any, to the Australian industry that has been, or may be, caused by exports of the goods from Lithuania and Vietnam is negligible.

9.2 Termination legislation

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation in its entirety, or in respect of a specific exporter. 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(13) is subject to section 269TDA(13A). Section 269TDA(13A)(b) states that where the Commissioner considers, in accordance with section 269TDA(14B), the cumulative effect of exportations and is satisfied that the injury that has been, or may be caused, by those exports is negligible, then the Commissioner must terminate the investigation so far as it relates to those countries.¹³⁶

9.3 Termination of investigation

The Commissioner is satisfied, for the purpose of section 269TDA(13A), that the requirements of section 269TDA(14B) have been met and that it is appropriate to consider the cumulative effect of the exportations from Lithuania and Vietnam.¹³⁷

Under section 269TDA(13A)(b), the Commissioner is satisfied that the injury to the Australian industry that has been, or may be, caused by the cumulative effect of exports of the goods from Lithuania and Vietnam is negligible. Therefore, the Commissioner must terminate the investigation.

¹³⁶ Section 269TDA(14B) sets out the circumstances in which the Commissioner must consider the cumulative effect of exports of the goods to Australia from 2 or more countries of export.

¹³⁷ In section 8.4, the commission assessed the factors set out in section 269TAE(2C) and considered that it is appropriate to cumulate the effects of the exportations from Lithuania and Vietnam for the purposes of assessing material injury. The factors set out in section 269TDA(14B) mirror the factors set out in section 269TAE(2C).

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

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Confidential Attachment 22	Confidential supply contract B2
Confidential Attachment 23	Glencore submission – EPR 605, no 31 (confidential)
Confidential Attachment 24	Ammonia price data 2017-2023