

Non-Confidential

Mr Paul Sexton
General Manager Investigations
Anti-Dumping Commission
GPO Box 2013
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8 June 2018

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Dear Mr Sexton

Application for Ministerial Exemption under section 8(7) of the *Customs Tariff (Anti-Dumping) Act 1975 (Cth) (Act)***Applicant: Nitro Sibir Australia (NSA)****Exempted Product: High Density Ammonium Nitrate (HDAN) exported from the Russian Federation for use by the Australian Mining Industry**

1. We refer to our application lodged on 14 May 2018 on behalf of NSA (**application**), and your letter of 25 May 2018.
2. We respectfully request that the Anti-Dumping Commission proceed to consider the application. In supplementation and support of the application, we **attach** for your consideration the independent expert report '*Report 12164: Selection of AN Source for the Nitro Sibir BlackBear Plant*' prepared by Detonics Australia Pty Ltd, dated 4 June 2018 (**Expert Report**).
3. As set out in our application, an exemption under s8(7)(a) of the Act is sought in respect of HDAN (being one form of ammonium nitrate) on the basis that like or directly competitive goods are not offered for sale in Australia. Our central contention is that within the product group of 'ammonium nitrate', there are different goods which are not substitutable for all purposes. Relevantly, as set out in the Expert Report:
 - (a) HDAN, LDAN and ANSOL are distinct forms of ammonium nitrate;¹
 - (b) NSA manufactures and supplies ammonium nitrate emulsion (**ANE**) explosives to the Australian mining industry. It manufactures ANE at its BlackBear plant, using HDAN;²
 - (c) LDAN is not suitable for the production of ANE;³ and
 - (d) ANSOL is not suitable for the production of ANE at NSA's BlackBear plant, due to infrastructure constraints.⁴
4. To NSA's knowledge, there is no Australian producer of HDAN.⁵ We therefore submit that an exemption should be granted in respect of HDAN exported from the Russian Federation for

¹ Expert Report at [2.1].

² Expert Report at [1.1], [3].

³ Expert Report at [3].

⁴ Expert Report at [3].

⁵ see application at [17].

- use by the Australian Mining Industry, as 'like goods' to HDAN are not offered for sale in Australia.
5. We note that the determination not to proceed to consider NSA's application (notified in your letter of 25 May 2018) relies on the then Minister's finding in REP 312 that LDAN and ANSOL manufactured by the Australian industry are 'like goods' to the HDAN exported from Russia. However, NSA has, by means of its application and now supplemented by the Expert Report, requested consideration of the question of substitutability in a new context (namely, what is functionally substitutable for manufacture of ANE explosives at NSA's BlackBear plant).
 6. With respect, we suggest that the refusal to proceed to consider NSA's application reveals jurisdictional error, on the basis that it:
 - (a) discloses a failure to give genuine, proper and realistic consideration to a matter - namely, whether different forms of ammonium nitrate are in fact substitutable (for NSA's purposes); and
 - (b) gives excessive weight to, and merely adopts, the finding of the then Minister in REP 312 that all forms of ammonium nitrate are relevantly substitutable.⁶
 7. We therefore urge you to proceed to consider NSA's application, and consider it afresh from REP 312. As previously stated, NSA is happy to provide further information to the Commission, or to facilitate a site visit.

Yours sincerely



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Our ref 11276/19263/80196290

⁶ see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24.