

RESPONSE TO APPLICATIONS FOR EXEMPTION FROM DUTY UNDER THE CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Exemption inquiry EX0066 – response requested by 1 August 2018

1 Introduction

The Anti-Dumping Commission (the Commission) requests your response to an application for exemption from anti-dumping measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Paragraphs 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide a discretion for the Minister (or his or her delegate) to exempt goods from anti-dumping measures, where he or she is satisfied that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The Commission has received an application for exemption from anti-dumping measures in respect of ammonium nitrate of the goods described at section 5 of this form ('the exemption goods').

Your company has been identified as an Australian producer of the goods.

The Commission seeks your assistance in this exemption inquiry by responding to the questions in this form. The Commission will use the information you provide in its assessment as to whether an exemption from anti-dumping measures may be recommended to the Assistant Minister for Science, Jobs and Innovation (as the relevant delegate of the Minister).

2 Measures on ammonium nitrate

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

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

3 Application for Exemption from Measures

An application for exemption has been made to the Commission by Nitro Sibir Australia (NSA). The Commission has considered the application and after consultation with the applicant, accepted the application and will now undertake an examination to determine whether it should recommend the requested exemption.

4 Exemption Provision

The Dumping Duty Act provides a discretion for the Minister to exempt goods from dumping and/or countervailing duties if one of the criteria in subsections 8(7) and 10(8) is met. The relevant parts of subsections 8(7) and 10(8) for current purposes are set out below.

Subsection 8(7)

The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- ...

Subsection 10(8)

The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- ...

The exemption provisions are subject to the discretion of the Assistant Minister and an exemption is not automatically granted, even where one of the criteria in the provisions is met.

5 The goods subject to the exemption application

The goods the subject of the exemption inquiry is high density ammonium nitrate (HDAN).

The exemption goods are classified to the tariff subheading 3102.30.00 (statistical code 05) of Schedule 3 to the *Customs Tariff Act 1995*.

Goods produced in Australia

The applicant claims that there are no Australian manufacturers of HDAN.

6 Instructions on completing this 'Response to the Exemption Application'

Your company has been identified as an Australian producer of ammonium nitrate.

Public File Version

Consequently, the Commission has forwarded you this 'response to exemption application' (the response) to provide you with the opportunity to participate in this exemption inquiry.

The Commission will use the information provided by Australian producers to determine whether like or directly competitive goods are offered for sale in Australia, and whether offers for sale of the goods are available to all purchasers on equal terms under like conditions having regard to custom and usage of trade.

Due date for the response

We request that you complete your response and return it to the Commission by no later than the close of business on **1 August 2018**.

Please email your response to: investigations2@adcommission.gov.au

Verification of the information that you supply

The Commission may seek to verify some or all of the information supplied in the response. The Commission may request evidence to support the claims such as quotations and offers of sale.

An onsite visit by the Commission may be required in some cases. A report will be prepared of visits conducted and a non-confidential version will be placed on the public record.

There is no legislative timeframe for completion of an exemption inquiry, however a recommendation to the Assistant Minister will be made as soon as practicable after obtaining all relevant information.

Confidential and non-confidential submissions

We request that you also lodge a non-confidential version of your response suitable for placement on the public record. The Commission puts greater weight on submissions that are available to other interested parties for comment.

Please ensure that each page of information you provide is clearly marked either "FOR OFFICIAL USE ONLY" or "PUBLIC RECORD".

All information provided to the Commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the public record.

Outline of information required by the response

Part A	Company contact information
Part B	Response to exemption application
Part C	Identical goods
Part D	Like or directly competitive goods
Part E	Capability to produce like or directly competitive goods
Part F	Additional comments
Part G	Your declaration

Response to Exemption Application

PART A – Company Information

A.1 Please provide the following company contact information;

Name:	CSBP Limited
Position in company:	Commercial Manager – Ammonium Nitrate
Address:	Kwinana Beach Road, Kwinana W.A. 6966
Telephone:	(08) 9411 8593
Facsimile number:	(08) 9312 9767
E-mail address of contact person:	Gerard.Chan@csbp.com.au

PART B – Response to Exemption Application

B.1

Does your company oppose or not consent to the request for an exemption?

CSBP Limited ("CSBP") is opposed to the granting of an exemption from anti-dumping measures for high density ammonium nitrate ("HDAN") exported from the Russian Federation to Australia.

NOTE: If your company does not oppose the request for an exemption, you do not need to complete all parts of the questionnaire. Please indicate that you do not oppose the request (stating the reasons why), answer the questions that are relevant to your reasons for not opposing the request, sign and return the form as soon as possible.

PART C – Identical Goods

C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this 'Response to Exemption Form'?

If no, go to Part D - Like or directly competitive goods.

CSBP does not produce identical goods (i.e. HDAN) to the goods the subject of Exemption Investigation No. 0066. Please refer to Part D.

C.2

Please provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

Please refer to Part D.

C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

Please refer to Part D.

PART D – Like or Directly Competitive Goods

D.1

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

CSBP manufactures low density ammonium nitrate (“LDAN”) and ammonium nitrate solution (“ANsol”) which are a like good and compete directly with HDAN used in the manufacture of emulsion explosives.

In determining whether the goods are like or directly competitive, the Commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The Commission may also consider;

- whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance, grade, standards, age, strength and purity);

- whether the goods are commercially alike, this may include consideration of the following;
 - whether the goods directly compete in the same market sector;
 - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption;
 - how the price of the goods and goods subject to the application influences consumption;
 - whether the goods share similar distribution channels; and
 - whether the goods are similarly packaged.
- functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of;
 - the extent to which the goods are functionally substitutable;
 - the extent to which the goods are capable of performing the same or similar function;
 - whether the goods have the same or similar quality standards; and
 - consumer behavior in relation to the goods and goods subject to this application for exemption.
- production likeness, this may include an assessment of;
 - the extent to which the goods are constructed of the same or similar materials;
 - the manufacturing process of the goods; and
 - whether any patented processes or inputs are involved in the production of the goods.

D.2

If you answered yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

CSBP manufactures low density ammonium nitrate (LDAN) and ammonium nitrate solution (ANsol) that are considered like goods to imported HDAN the subject of this exemption application.

CSBP highlights the Commission's findings in Report No. 312 that affirmed the Australian Customs and Border Protection Service (ACBPS) determination published in Trade Measures Branch Report No. 28 (REP 28), that:

"[L]ow density, high density ammonium nitrate and ammonium nitrate solution are subsets of the product group of ammonium nitrate....all types of ammonium nitrate irrespective of whether in solid or solution state, prilled or granular form, low density or high density, are like goods."

Further, the ACBPS found:

- *Australian produced LDAN was substitutable with imported LDAN;*
- *Australian produced HDAN and ANsol could be substitutable with imported high density HDAN;*
- *In certain circumstances, high and low density ammonium nitrate could be substituted for each other; and*

- *Emulsion explosives made from both ANsol and HDAN compete with each other.*

Of relevance to the Exemption application No. 0066, is the ACBPS determination that HDAN and Ansol can be substituted for each other in the manufacture of emulsion explosives.

CSBP confirms that there has been no change in circumstances in the interchangeability of LDAN, Ansol and HDAN in emulsion manufacture since the Commission's most recent Investigation 312 (and from the original finding of the ACBPS in REP 28) and HDAN and ANsol can, and have been regularly, substituted in the production of emulsion explosives.

It is CSBP's firm position that Ansol continues to be a like good manufactured by the Australian industry to imported HDAN.

CSBP has addressed the relevant considerations to assist the Commission's 'like goods' assessment.

Characteristics	Description
Physical characteristics	HDAN and LDAN are physically similar (solid form) and ANsol is AN in liquid form, there also being minor technical variations in density and concentration.
Commercial likeness	HDAN, LDAN and Ansol have a commercial likeness as they compete in the same market (in this instance emulsion explosives manufacture).
Functional likeness	HDAN, LDAN and Ansol are functionally similar as they are all used in the manufacture of explosives.
Production likeness	HDAN, LDAN and ANsol are all manufactured using similar production processes and often on the same production facility.

The Commission confirmed in Report 312 that HDAN was imported from Russia and was used in the manufacture of emulsion explosives. The Commission was satisfied (as reported in Report 312) that *"...in line with previous inquiries, the Commissioner remains satisfied that LDAN and Ansol manufactured by the Australian industry are like goods to the imported HDAN exported from Russia."*

CSBP is a manufacturer of like goods (i.e. LDAN and ANsol) for use in emulsion explosives production and compete directly with imported HDAN from Russia.

Please provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature concerning the like or directly competitive goods you produced and sold.

CSBP has included a spreadsheet of all domestic sales of LDAN and ANsol sold by it during the period 1 April 2017 to 31 March 2018 (refer Confidential Attachment 1). Certain invoices relating to these sales have also been included as Confidential Attachments.

D.3

Provide evidence of the terms and conditions of sale of these like or directly competitive products. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

CSBP supplies locally produced LDAN and Ansol to Australian customers in the mining industry on equal terms and under like conditions, allowing for commercial considerations such as volume, level of purchase obligation, delivery point, etc. CSBP has included sales invoices and sales reports confirming the like goods are available to all customers on equal terms under like conditions.

PART E – Capability to Produce Identical or Like or Directly Competitive Products

E.1

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

CSBP manufactures like goods to the goods the subject of the exemption application. This question does not apply.

E.2

If you answered yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

CSBP manufactures like goods to the goods the subject of the exemption application. This question does not apply.

E.3

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

CSBP manufactures like goods to the goods the subject of the exemption application. This question does not apply.

E.4

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

CSBP manufactures like goods to the goods the subject of the exemption application. This question does not apply.

PART F – Additional Comments

F.1

Provide any additional comments including any other information that will assist the Commission in reaching a recommendation to the Assistant Minister regarding this application for exemption.

CSBP supplies ANsol to customers in WA for use in the manufacture of emulsion explosives. In the 2018 financial year, CSBP sold the following quantities of ANsol to the following customers for use in emulsion production:

- [customer] – [volume] tonnes;
- [customer] – [volume] tonnes;
- [customer] – [volume] tonnes.

It is CSBP's understanding that all of the ANsol sold was for use in emulsion explosives production. On the basis that there is typically [% - %] per cent

(average xx per cent) AN in emulsion, it is possible to estimate the size of the annual emulsion market in WA, as follows:

- [customer] – [volume] tonnes;
- [customer] – [volume] tonnes;
- [customer] – [volume] tonnes.

CSBP itself manufactures emulsion using ANsol in a new emulsion production facility on its Kwinana site that was commissioned in October 2017. In the 2018 financial year, CSBP sold approximately [volume] tonnes of emulsion on an AN equivalent basis. On an annualized basis, this equates to approximately [volume] tonnes of emulsion.

Therefore, there is approximately [volume] tonnes of emulsion manufactured in WA per annum using ANsol.

Additionally, CSBP has sold approx. [volume] tonnes of prilled LDAN to [customer] in the 2018 financial year for emulsion manufacture at its [location] plant (approx. [volume] tonnes of emulsion). This demonstrates that LDAN can also be used as the raw material AN in emulsion manufacture.

CSBP notes that the witness report attached to the Nitro Sibir Australia's (NSA) application confirms that¹ "ANsol is suitable for the production of ANE". The applicant has therefore confirmed that ANsol can be used in emulsion explosives manufacture as a substitute for HDAN and LDAN.

It is further noted that NSA's application is premised on the claim that it does not have the infrastructure required to process AN that is not HDAN. CSBP, however, disagrees as it has sold ANsol to NSA (see attached sales to NSA).

CSBP's view is that NSA's unpreparedness and decision to not invest in infrastructure to handle various forms of AN (i.e. ANsol) is not a basis for granting an exemption from anti-dumping measures. CSBP (and other Australian AN industry producers) manufacture like goods (i.e. LDAN and ANsol) that are readily available from local manufacture in Australia, and are regularly used in emulsion explosives plants across Australia (not just within WA).

From a commercial perspective, CSBP is concerned that should an exemption to AN imported from Russia be granted, NSA would secure a commercial advantage by importing unfairly priced HDAN from Russia. CSBP anticipates that the advantage obtained by NSA (or any other importer of exempt HDAN) would be used in the selling prices of emulsion to undercut local emulsion explosives producers that sourced local LDAN and ANsol.

CSBP therefore strongly opposes the granting of an exemption from anti-dumping measures on HDAN from Russia as CSBP manufactures like goods to the goods the subject of the exemption application.

¹ Nitro Sibir Exemption Application, Detonics Report, Paragraph 2, Page 5.

PART G – Declaration

I hereby declare that CSBP Limited has completed the attached response to application for exemption and, having made due inquiry, certify that the information contained in this submission is complete and correct to the best of my knowledge and belief.

Name : Gerard Chan

Signature : 

Position in Company : Commercial Manager – Ammonium Nitrate

Date : 27 July 2018