



Exemption Inquiry Report: EX0066

Ammonium Nitrate

Exported to Australia from the Russian Federation

**Applicant:
Nitro Sibir Australia Pty Ltd**

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Abbreviations

Abbreviation	Full reference
ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
AECI	AECI Australia Pty Ltd
ANE	ammonium nitrate emulsion
ANSol	ammonium nitrate solution
the applicant, NSA	Nitro Sibir Australia Pty Ltd
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CSBP	CSBP Limited
Customs Act	<i>Customs Act 1901</i>
Detonics	Detonics Australia Pty Ltd
Downer	Downer EDI Mining Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic Public Record
the goods	the goods the subject of the application (also referred to as the goods under consideration)
HDAN	high density ammonium nitrate
Incitec Pivot	Incitec Pivot Pty Ltd
LDAN	low density ammonium nitrate
the Minister	the Minister for Industry, Science and Technology
Orica	Orica Australia Pty Ltd
QNP	Queensland Nitrates Pty Ltd
the questionnaire	'Response to Exemption Application' questionnaire
REP 312	<i>Anti-Dumping Commission Report No. 312</i>
REP 473	<i>Anti-Dumping Commission Report No. 473</i>
Russia	the Russian Federation
Thailand	the Kingdom of Thailand

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by Nitro Sibir Australia Pty Ltd (NSA) requesting an exemption under section 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act)¹ from interim dumping duty and dumping duty (the duties)² in relation to ammonium nitrate exported to Australia from the Russian Federation (Russia).

This report sets out the Commission's findings upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied upon to make a recommendation to the Minister for Industry, Science and Technology (the Minister)³ on whether or not to exempt goods from the duties.

1.1 Goods subject to the application for exemption

The goods subject to the application for exemption (exemption goods) are described as follows:

High density ammonium nitrate, in prilled or granular form, with or without additives, in packages exceeding 10 kg.

1.2 Application of law to facts

1.2.1 Authority to make the decision

Section 8(7) of the Dumping Duty Act set out, amongst other things, the matters to be considered by the Minister in deciding whether to exercise their discretion to exempt goods from dumping duties.

This exemption inquiry:

- is concerned with the criterion in section 8(7)(a) (like goods criterion), namely whether 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; and
- whether the Minister should exempt the exemption goods from the duties.

1.2.2 Initiation of inquiry

After examining NSA's application, the Commission initiated an inquiry on 25 June 2018. The details of the initiation are contained in Anti-Dumping Notice (ADN) No. 2018/104.⁴

¹ A reference to a division or section in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² On 24 May 2001, the then Minister for Justice and Customs published a dumping duty notice in relation to ammonium nitrate exported to Australia from the Russian Federation. Notification of the Minister's decision was given in Australian Customs Dumping Notice (ACDN) No. 2001/29.

³ For the purposes of this inquiry, the Minister is the relevant decision maker.

⁴ Refer item [no. 005](#) on EPR (Electronic Public Record) EX0066.

1.3 Findings and conclusions

The Commissioner has made the following findings and conclusions based on the application, submissions, and information provided by three Australian manufacturers of ammonium nitrate, being CSBP Ltd (CSBP), Orica Australia Pty Ltd (Orica) and QNP Pty Ltd (QNP):

- there is an Australian industry producing like or directly competitive goods; and
- those goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The Commissioner is therefore **not satisfied** that like or directly competitive goods to the exemption 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.

1.4 Recommendation

Based on the above finding, the Commissioner recommends that the Minister **not** exempt the exemption goods, pursuant to section 8(7) of the Dumping Duty Act, on the following basis:

- it is the Commissioner's view that the available information and evidence *does not* provide a sufficient basis for the Minister to be satisfied of the like goods criterion; and therefore
- it is the Commissioner's view that the Minister's discretion to exempt these goods from the duties does not arise.

2. Background to the duties

2.1 Previous investigations

The duties were imposed on 24 May 2001 after the then Minister for Justice and Customs accepted the recommendations of the Australian Customs Service and published a dumping duty notice in relation to ammonium nitrate exported to Australia from Russia.⁵ The duties were initially in place for five years, however were continued for a further five years in 2006, 2011 and 2016.⁶

On 29 May 2019 (subsequent to the initiation of this exemption inquiry), the Minister accepted the findings and recommendations in *Anti-Dumping Commission Report No. 473* (REP 473) and 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). Notification of the Minister’s decision was given in ADN No. 2019/57.

2.2 The goods subject to the duties

The goods subject to the duties are:

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

2.3 Tariff classification

The goods subject to the duties may be classified under the following subheading in Schedule 3 of the *Customs Tariff Act 1995*:

Tariff classification				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
3102.30.00	05	kg	MINERAL OR CHEMICAL FERTILISERS, NITROGENOUS: -ammonium nitrate, whether or not in aqueous solution.	All countries - zero

⁵ *Trade Measures Report No. 28* and ACDN No. 2001/29 refer.

⁶ 2006: *Trade Measures Report No. 104* and ACDN No. 2006/19 refer.
2011: *Trade Measures Report No. 168* and ACDN No. 2011/17 refer.
2016: *Anti-Dumping Commission Report No. 312* (REP 312) and ADN No. 2016/34 refer.

3. The Australian market

This chapter provides a summary of the market for ammonium nitrate in Australia, which will assist with understanding the claims made by the applicant and the Commissioner’s assessment of those claims in subsequent chapters.

The Commissioner’s understanding of the Australian market is informed by previous investigations and inquiries concerning the anti-dumping measures on imports of the goods, the most recent being the investigation concerning ammonium nitrate exported to Australia from China, Sweden and Thailand.⁷

3.1 Market structure

The Australian market for ammonium nitrate is supplied by the Australian industry members and imports from a number of countries, predominantly China, the Republic of Indonesia (Indonesia), Russia, Sweden and Thailand.

In Australia, ammonium nitrate is primarily used as a raw material in the production of explosives consumed by the mining and quarrying industries. Ammonium nitrate is classified as a dangerous good⁸ and has limited usage in Australia as a fertiliser, mainly due to the security protocols required for its transport and storage relative to other nitrogenous fertilisers. Figure 1 illustrates the ammonium nitrate supply channel to the mining sector.

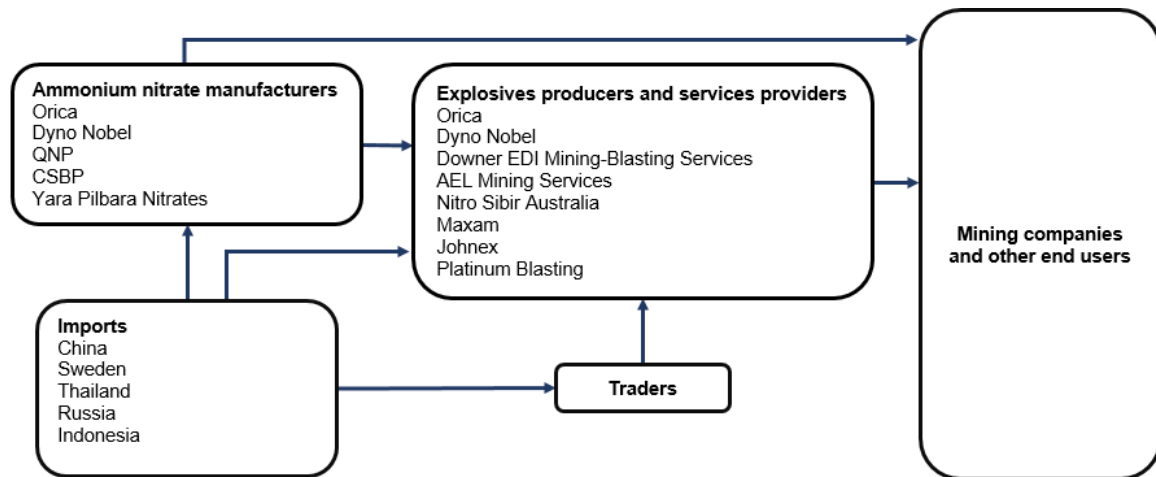


Figure 1: Ammonium nitrate supply channel

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

Ammonium nitrate is imported either directly by explosives providers or is imported via traders. The Commission understands that it is unusual for mining companies to directly import ammonium nitrate.

⁷ REP 473 refers.

⁸ 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.

3.2 Forms of ammonium nitrate

There are three forms of ammonium nitrate used as raw materials in the production of explosives, being:

- high density ammonium nitrate (HDAN)
- low density ammonium nitrate (LDAN) and
- ammonium nitrate solution (ANSol).

HDAN and LDAN are solid forms of ammonium nitrate, produced as granules or small balls known as prills. ANSol is ammonium nitrate in liquid form.

Ammonium nitrate is produced by reacting ammonia with nitric acid. This chemical reaction produces ANSol, which can be solidified by prilling or granulation. Both solid forms of ammonium nitrate can also be melted to produce ANSol again.

LDAN is predominantly mixed with fuel oil to produce ammonium nitrate and fuel oil (ANFO).

HDAN and ANSol are predominantly used to produce ammonium nitrate emulsion (ANE).

The applicant for this exemption, NSA, imports HDAN to produce ANE.

The Australian industry produces and sells ANSol and LDAN.

4. Exemption inquiry

4.1 Exemption application

On 14 May 2018, NSA requested an exemption from interim dumping duty in relation to imports of HDAN from Russia.⁹

NSA's letter outlined the following grounds in support of its application for an exemption from interim dumping duty:

*Under subsection 8(7)(a) of the Customs Tariff (Anti-Dumping) Act 1975 – that is, on the basis 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.*¹⁰

On 25 May 2018, the Commission responded to NSA's application with a letter stating that its application does not establish that there are reasonable grounds to conclude that like or directly competitive goods are not offered for sale in Australia.¹¹

On 8 June 2018, in response to the letter from the Commission, NSA sent a further letter to the Commission to proceed to consider its initial application.¹² In the letter, NSA emphasised its main points from its initial application, and provided an external expert report prepared by Detonics Australia Pty Ltd (Detonics) to support its submission.¹³ The Detonics report detailed NSA's products and operations. Essentially, NSA provided more information related to LDAN not being practical for the production of ANE and ANSol not being suitable for the production of ANE by NSA due to the infrastructure at its plant.¹⁴

Accordingly, the Commission accepted NSA's letters of 14 May 2018 and 8 June 2018 as comprising an application for an exemption from the duties.

4.2 Exemption inquiry initiation and responses

On 25 June 2018, the Commissioner initiated an exemption inquiry and published ADN No. 2018/104, which provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The Commission also sent known Australian manufacturers of ammonium nitrate (Orica, CSBP, QNP and Incitec Pivot Ltd (Incitec Pivot)) an invitation to respond to NSA's application by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that responses be received no later than 1 August 2018.

⁹ Refer item [no. 001](#) on EPR EX0066.

¹⁰ *ibid*, p. 2.

¹¹ Refer item [no. 002](#) on EPR EX0066.

¹² Refer item [no. 003](#) on EPR EX0066.

¹³ Refer item [no. 004](#) on EPR EX0066

¹⁴ Refer chapter 6 for outline of NSA's claims concerning the different types of ammonium nitrate.

The Commission received completed responses to the questionnaire from CSBP (refer **confidential attachment 1**),¹⁵ Orica (refer **confidential attachment 2**)¹⁶ and QNP (refer **confidential attachment 3**).¹⁷

The Commission received no response from Incitec Pivot.

The Commission received a submission from AECI Australia Pty Ltd (AECI) on 1 August 2018 (refer **confidential attachment 4**).¹⁸ Additionally, the Commission received a submission from Downer EDI Mining Pty Ltd (Downer) on 26 October 2018 (refer **confidential attachment 5**).¹⁹

4.3 Applicant's further submissions

In support of its claim 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, NSA further provided certain information.

NSA provided a letter in response to the Australian industry's responses (refer **confidential attachment 6**).²⁰ The letter outlines why NSA disagrees with certain claims made by the Australian industry, and further detailed NSA's claims in relation to its application for exemption.

Additionally, NSA provided a statutory declaration from NSA's General Manager Operations and Development (refer **confidential attachment 7**),²¹ which details the declarant's views in relation to why certain forms of ammonium nitrate are not suitable for the production of ANE.

NSA also provided a letter from an employee of chemicals company Clariant,²² which provides an opinion of why LDAN is not suitable for the production of ANE.

4.4 Legislative requirements for an exemption

NSA has applied for an exemption under section 8(7)(a) of the Dumping Duty Act. NSA requests that the Minister exercise their discretion to exempt goods from the duties on the basis 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.

4.5 Definition of 'like or directly competitive goods'

4.5.1 Like goods

The term "like goods" is defined in section 269T(1) of the *Customs Act 1901* (the Customs Act). Section 6 of the Dumping Duty Act provides that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of 'like goods' in the Customs Act is applicable to

¹⁵ Public version available, refer item [no. 009](#) on EPR EX0066.

¹⁶ Public version available, refer item [no. 010](#) on EPR EX0066

¹⁷ Public version available, refer item [no. 007](#) on EPR EX0066.

¹⁸ Public version available, refer item [no. 012](#) on EPR EX0066

¹⁹ Public version available, refer item [no. 016](#) on EPR EX0066

²⁰ Public version available, refer item [no. 015](#) on EPR EX0066

²¹ Public version available, refer item [no. 014](#) on EPR EX0066

²² Refer item [no. 013](#) on EPR EX0066

the Commission's assessment of whether the exemption goods are 'like goods' under section 8(7)(a) of the Dumping Duty Act.

Section 269T(1) of the Customs Act defines "like goods" as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Chapter 2 of the Commission's *Dumping and Subsidy Manual* outlines the Commission's established policy and practice in relation to like goods. Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the Commission will assess whether they have characteristics closely resembling each other including assessing their physical likeness, commercial likeness, functional likeness and production likeness.

4.5.2 Directly competitive goods

The term 'directly competitive' is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a 'direct' relationship is a question of fact and degree.²³ Drawing on the Macquarie Dictionary and case law, the Commission defines "directly" as:

excluding that which is indirect or remote;²⁴ absolutely; exactly; precisely.

The Macquarie Dictionary also defines 'competitive' as:

*of, relating to, involving, or decided by competition; and
having a feature comparable or superior to that of a commercial rival.*

The phrase '*directly competitive*' can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree, and the goods will not merely, remotely or indirectly compete.

4.5.3 Alternatives to satisfying section 8(7)(a) of the Dumping Duty Act

The exemption provisions in section 8(7)(a) of the Dumping Duty Act enables the Minister to exempt goods from interim dumping duty and dumping duty where either like goods or directly competitive goods are not offered for sale in Australia. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption. It is sufficient for there to be either like goods or directly competitive goods for sale in Australia for the requirements of the exemption not to be met.

²³ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

²⁴ *ibid.*

If there are no like or directly competitive goods offered for sale in Australia, then the requirements for exemption in section 8(7)(a) of the Dumping Duty Act will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

4.6 Definition of ‘custom and usage of trade’

Although the domestically produced goods may be ‘like or directly competitive goods’, the Minister may still grant an exemption to duties in circumstances where the ‘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 term ‘custom and usage of trade’ is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines ‘custom’ as:

a habitual practice; the usual way of acting in given circumstance; and habits or usages collectively; convention.

The Macquarie Dictionary defines “usage” as:

*customary way of doing; a custom or practice;
the body of rules or customs followed by a particular set of people;
usual conduct or behaviour.*

As custom can only be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.²⁵

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.²⁶ When considering what is ‘custom or trade usage’ the courts have concluded that:

1. Custom or usage was established mercantile usage or professional practice: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440; and
2. Evidence of actual market practices was crucial to the existence of a custom or usage. However, universal acceptance was not necessary: *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.

²⁵ *Anderson v Wadey* (1899) 20 N.S.W.R. 412, p. 417.

²⁶ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

5. Claims made by interested parties

NSA claims that like or directly competitive goods to HDAN are not sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

NSA submits that HDAN, which is used as a raw material for the production of ANE, is not manufactured in Australia. NSA further submits that ANSol and LDAN, which are manufactured in Australia, are not like or directly competitive with HDAN.

Both AECl and Downer support NSA's application for this exemption inquiry, and contend that like or directly competitive goods to HDAN are not sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Orica, CSBP and QNP made submissions, contending that LDAN and ANSol are manufactured and sold in Australia, are like and directly competitive with HDAN, and can be used for the production of ANE.

The following sections of the report outline the Commission's assessment of like or directly competitive goods to the exemption goods.

6. 'Like' or 'directly competitive' goods

The Commission considers that HDAN, LDAN and ANSol are not identical, however the Commission considers that they have characteristics closely resembling each other and are therefore like goods.

The following outlines the Commission's assessment of whether HDAN, LDAN and ANSol have characteristics closely resembling each other.

6.1 Physical likeness

LDAN

The Australian industry contends that HDAN and LDAN are physically alike as they are both a solid form of ammonium nitrate. Overall, the Australian industry states that there are minor technical variations in density and concentration with regard to HDAN and LDAN.

NSA, however, submits that LDAN and HDAN are physically different. NSA explains that HDAN is a dense granular form, whereas LDAN consists of free-flowing prills, which each contain over 6% air voids.²⁷

NSA also submits that unlike HDAN, LDAN prills contain internal additives to assist air void formation, and external coatings to reduce the hygroscopic properties of ammonium nitrate and to prevent the prills from clumping together.²⁸

Although the Commission considers that there appear to be some technical differences between HDAN and LDAN as outlined by NSA, the Commission identifies both goods as physically alike because the finished products are in a solid form and look identical.

Therefore, the Commission finds LDAN and HDAN to be physically alike.

ANSol

The Australian industry claims that ANSol is ammonium nitrate in liquid form, and that there are minor technical variations in density and concentration with regard to HDAN and ANSol.

NSA, however, contends that HDAN and ANSol are not physically alike because HDAN consists of high-purity ammonium nitrate in a dense granular form, whereas ANSol is a super-saturated solution of pure ammonium nitrate in water.²⁹

NSA also explains that ANSol needs to remain heated during transport, storage and handling, which necessitates certain infrastructure.³⁰ NSA infers that HDAN does not require the treatment that ANSol needs for transport, storage and handling.

The Commission considers that there are some obvious physical differences between HDAN, being a solid form of ammonium nitrate, and ANSol, being a liquid state. However, the Commission understands that the chemical properties of ammonium nitrate are not changed by differences in the form of ammonium nitrate.

²⁷ Refer item [no. 015](#) on EPR EX0066, p. 3.

²⁸ Refer item [no. 015](#) on EPR EX0066, p. 4.

²⁹ Refer item [no. 015](#) on EPR EX0066, p. 6.

³⁰ *ibid.*, p. 6.

The Commission understands that ANSol is used to make HDAN and HDAN can be converted back to ANSol by melting.

The Commission considers that while in a different physical form, the physical properties of HDAN and ANSol are similar.

6.2 Commercial likeness

LDAN

NSA contends that LDAN is not commercially like or directly competitive with HDAN because it cannot be used for the production of ANE.

NSA explains that multiple scientific research projects have determined that it is not possible, via flocculation, to use LDAN for the industrial production of ANE, because of process time, recovery rates, and costs of disposing waste.³¹

However, the Commission notes that the Detonics report submitted by NSA states that to be used as a substitute for HDAN, LDAN would require flocculation and other liquid cleaning processes in order to produce ANE of acceptable quality for mining use.³² Thus, according to the Detonics report, it seems that it is possible to use LDAN to produce ANE.

The Australian industry claims that both goods are commercially like and compete directly. The Australian industry has claimed that certain customers use LDAN to 'melt' into ANSol to subsequently produce ANE. The Commission has evidence that at least one customer of the Australian industry has purchased and consumed LDAN in the production of ANE.

Given the above, the Commission is satisfied that LDAN can be used to produce ANE, and that LDAN is manufactured and sold by the Australian industry. Hence, the Commission notes that LDAN is commercially like and directly competitive with HDAN.

ANSol

NSA contends that ANSol is not commercially like or directly competitive with HDAN. NSA explains that HDAN and ANSol do not compete in the same market sector.³³ However, the Commission understands that both forms of ammonium nitrate are commonly used for the production of ANE.

NSA claims that unlike HDAN, ANE cannot be solely produced from ANSol because even when ANSol is used to produce ANE, HDAN is always required.³⁴ NSA contends that in order to use ANSol to produce ANE, it must be cooled down from its storage temperature and the only way to do so is to use 10-15% of HDAN.³⁵

The Commission notes that NSA has not provided the Commission with evidence to substantiate its claims.

In support of its allegation that HDAN and ANSol are not commercially alike, NSA further claims that infrastructure limitations and the need for regulatory approvals at

³¹ *ibid.*, p. 4.

³² Refer item [no. 004](#) on EPR EX0066, p. 5.

³³ *ibid.*, p. 6.

³⁴ *ibid.*, p. 6.

³⁵ *ibid.*, p. 6.

its plant does not allow for NSA to substitute HDAN for ANSol as a raw material in the production of ANE. NSA claims that it is 'farfical' to suggest that products that require completely different infrastructure and regulatory approvals in order to be usable for the purpose of producing ANE are commercially interchangeable.³⁶

ANSol is commonly used by the Australian industry and other explosives manufacturers (other than NSA) in Australia to produce ANE and is therefore directly substitutable with HDAN in the manufacture of ANE.³⁷

Further, the Commission considers that regulatory approval outlays, in the initial development of infrastructure to use ANSol to produce ANE, would be a typical expense.

Hence, the Commission considers that HDAN and ANSol, which are both used to produce ANE, are commercially like and directly competitive.

6.3 Functional likeness

The Commission considers that HDAN, LDAN and ANSol, independently, are capable of performing various functions, including the production of ANE. Hence, the Commission notes that HDAN, LDAN and ANSol are functionally alike.

6.4 Production likeness

LDAN

The Australian industry contends that LDAN and HDAN are manufactured using similar production processes and often on the same production facilities.

NSA argues that there are production differences between HDAN and LDAN because unlike HDAN, internal additives and external coatings are added to the ammonium nitrate in the production of LDAN.³⁸

AECI's submission states that both HDAN and LDAN are produced from ANSol by way of spraying the hot ANSol liquid through a shower head at the top of a high tower, known as a prilling tower.³⁹ This accords with the Commission's understanding of the production processes from its previous investigations.

Overall, and despite the differences in the internal additives and coatings to make LDAN, the Commission considers that HDAN and LDAN are produced in a like manner.

ANSol

The Australian industry contends that HDAN, LDAN and ANSol are all manufactured using similar production processes and often on the same production facilities.

The Commission considers that as HDAN is manufactured from ANSol, both ANSol and HDAN share production likeness.

³⁶ Refer item [no. 015](#) on EPR EX0066, p. 7.

³⁷ For example see Detonics report at 2.3 (refer attachment 4).

³⁸ Refer item [no. 015](#) on EPR EX0066, p. 4.

³⁹ Refer item [no. 012](#) on EPR EX0066, p. 1 & 2.

6.5 Conclusion

REP 312 notes that in previous anti-dumping investigations and inquiries relating to ammonium nitrate exported from Russia, the Commission has found that ammonium nitrate manufactured by the Australian industry, irrespective of whether in solid or solution state, prilled or granular form, low or high density, are like goods to the goods exported from Russia.⁴⁰

In REP 312, the then Minister remained satisfied that ANSol manufactured by the Australian industry is a like good to HDAN exported from Russia.⁴¹ The Commission notes that the findings from REP 312 are the most recent concerning ammonium nitrate exported from Russia.

In the more recent investigation into ammonium nitrate exported from China, Sweden and Thailand,⁴² the Commission found that ANSol produced by the Australian industry is directly substitutable with imported HDAN from those countries, given that HDAN and ANSol are sold to the same customers for the purpose of producing ANE.⁴³

Additionally, from the information provided in support of submissions from NSA, the Australian industry and other interested parties, the Commission notes that LDAN and ANSol are manufactured and sold in Australia.

The Commission considers that, while HDAN, LDAN and ANSol are not identical, they have characteristics closely resembling each other.

The Commission also found that Orica produces a solid type of ammonium nitrate that is directly substitutable with imported HDAN. The Commission found that, during the investigation period for REP 473,⁴⁴ this product was sold to a customer that also imported HDAN to produce ANE.

Accordingly, the Commission finds that the Australian industry does offer for sale like and directly competitive goods to HDAN.

⁴⁰ Refer item [no. 28](#) on EPR 312, p. 12.

⁴¹ *ibid.*, p.13.

⁴² REP 473 refers.

⁴³ REP 473, p. 16

⁴⁴ 1 April 2017 to 30 March 2018

7. Custom and usage of trade

7.1 Applicant's claims

NSA claims that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions.

While NSA acknowledges that ANSol is sold in Australia, NSA claims that it is impossible for ANSol to be transported to Western Australia from the east coast of Australia.⁴⁵ Hence, NSA submits that the only source of ANSol available to it is from one supplier.

However, NSA contends that the supplier is not always willing to sell ANSol to NSA. NSA provides email correspondence between itself and the supplier to support its contention. The email correspondence detailed a request for the purchase of ANSol by NSA (refer **confidential attachment 9**).

Downer claims that it is not possible for it to transport ANSol to its Savage River mine site in Tasmania.⁴⁶ Downer argues that there would be significant impracticalities and high costs,⁴⁷ with respect to the transport of ANSol from mainland Australia to Downer's mine site in Tasmania.

NSA also submits that at least one Australian industry member imports HDAN from countries such as China.⁴⁸ NSA claims that this supports its contention that 'like or directly competitive goods' are not available in Australia.⁴⁹

7.1.1 The Commission's consideration

The Commission reviewed the evidence provided in support of NSA's claim that the Australian supplier is not always willing to supply ANSol to NSA. The Commission notes that the supplier rejected NSA's request for ANSol because the order was 'uncontracted'. The Commission understands that sales and purchases of ammonium nitrate in Australia are generally made in accordance with fixed-term contracts, however the Australian industry does also sell like goods on an ad-hoc or spot basis.

However, the Commission notes that the supplier has sold to NSA on an ad-hoc or spot basis on three separate occasions previously.⁵⁰ The example provided by NSA therefore only appears to pertain to one occasion on which the goods were not supplied. Further the Commission notes that, in addition to the supplier selling ANSol to NSA previously, the supplier encouraged NSA to remain in contact.⁵¹ The Commission considers this encouragement by the supplier indicates that it is open to continuing a commercial relationship with NSA.

⁴⁵ Refer item [no. 015](#) on EPR EX0066, p. 7.

⁴⁶ Refer item [no. 016](#) on EPR EX0066, p. 3.

⁴⁷ *Ibid.*, p. 3.

⁴⁸ *ibid.*, p. 2.

⁴⁹ *ibid.*, p. 2.

⁵⁰ Supplier's verified sales data from 1 April 2017 to 31 March 2018 at confidential attachment 10.

⁵¹ Email correspondence at confidential attachment 9.

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The Commission therefore considers that the email provided by NSA does not demonstrate that ANSol is 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 also understands that the supplier sells ANSol regularly to various customers in Western Australia, and sold ANSol to NSA in July and October 2017, and in January 2018.⁵² This is observed in the sales listing of the supplier (refer **confidential attachment 10**).

The Commission understands that ANSol is not normally imported into Australia from overseas due to the impracticality of shipping ANSol. Transporting ANSol from mainland Australia to Tasmania would also involve shipping.

The Commission, however, understands that it is practical for LDAN to be transported within Australia, and from mainland Australia to Tasmania. As a result, the Commission is not satisfied that LDAN is not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

7.1.2 Conclusion

The Commission is not 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.

⁵² Based on the supplier's verified sales data from 1 April 2017 to 31 March 2018.

8. Recommendation

8.1 Summary of findings

The Commissioner is **not satisfied** that like or directly competitive goods to the exemption 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.

8.2 Recommendation

Based on the above finding, the Commissioner recommends that the Minister **not** exempt the exemption goods, pursuant to section 8(7) of the Dumping Duty Act, on the following basis:

- it is the Commissioner's view that the available information and evidence *does not* provide a sufficient basis for the Minister to be satisfied of the like goods criterion; and therefore
- it is the Commissioner's view that the Minister's discretion to exempt these goods from the duties does not arise.

9. Attachments

Attachment	Title
Confidential attachment 1	CSBP's response to the questionnaire
Confidential attachment 2	Orica's response to the questionnaire
Confidential attachment 3	QNP's response to the questionnaire
Confidential attachment 4	AECI's submission
Confidential attachment 5	Downer's submission
Confidential attachment 6	NSA's letter in response to the Australian industry's submissions
Confidential attachment 7	Statutory declaration from NSA
Confidential attachment 8	An Australian industry member's sales listing
Confidential attachment 9	Correspondence regarding the supply of ANSol
Confidential attachment 10	A supplier's sales listing