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Dear Mr Bracic

Resumption of investigation into the alleged dumping of formulated glyphosate exported from the People's Republic of China – Nufarm Limited's comments re "Officer Substantive Issues" Paper

1. Introduction

On 17 January 2013 the Australian Customs and Border Protection Service ("Customs and Border Protection") published "Officer Substantive Issues" paper ("the Paper") in response to the Trade Measures Review Officer's findings in respect of Termination Decision No. 183 on formulated glyphosate exported from the People's Republic of China ("China").

Nufarm Limited ("Nufarm") provided a submission to Customs and Border Protection dated 30 November 2012 in response to the publication of Australian Customs Dumping Notice ("ACDN") No. 2012/54 that announced the resumption of an investigation into the alleged dumping of formulated glyphosate from China.

ACDN No. 2012/54 included a summary of the Trade Measures Review Officer's ("the Review Officer") findings that warrant the resumption of the formulated glyphosate investigation, including that the Chief Executive Officer of Customs and Border Protection should:

- consider the inclusion of 62 per cent IPA salt and the unregistered goods as like goods;
- consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s.269TAC(8) of the Act, was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin; and
- give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s.269TAC(2)(d) of the Act.

Nufarm has reviewed Customs and Border Protection's position paper titled "Officer Substantive Issues" and provides this submission in response to each of the matters addressed therein.

2. Like Goods

2.1 *62 per cent IPA salt*

Nufarm disagrees with Customs and Border Protection's assessment that 62 per cent IPA salt "does not fall within the ambit of goods having characteristics that closely resemble those of the goods under consideration".

In support of its finding, Customs and Border Protection outlined that 62% IPA salt "*has a different tariff classification to formulated glyphosate, it is not substitutable for formulated glyphosate, it follows a distinct distribution channel, it has a different price structure, it is sold in different packaging and excludes health and safety labels, and it cannot be sold to end uses (sic) in this form*".

This finding is completely at odds with the findings in the 2002 investigation of alleged dumping of glyphosate from China. In Trade Measures Branch Report 45 Customs found that all forms of glyphosate were like goods within the anti-dumping context because:

- a. "there were no basic differences in the chemical characteristics and properties. Although glyphosate acid constitutes an intermediate stage in the production of formulated product, glyphosate acid contains the essential chemical properties of formulated glyphosate; and
- b. All forms are dedicated to the same ultimate use (as a herbicide) and cannot be used for other purposes".

Nufarm questions whether Customs is correct in finding that the 62% IPA salt has a different tariff classification to formulated glyphosate. IPA salts of glyphosate are typically described as manufacturing concentrates because the amination process produces a soluble compound that is capable of being absorbed by plants – that is, the herbicide.

However, in respect of the remaining attributes that Customs and Border Protection asserts are differences, Nufarm submits:

- 62 IPA salt is substitutable for formulated glyphosate (i.e. 62% IPA salt can be sold to same end-uses as formulated glyphosate and the end-user blends the surfactant to produce formulated glyphosate);
- 62% IPA salt can be sold via the same distribution channels as formulated glyphosate, thereby no barriers to distribution;
- the price structure for 62% IPA salt reflects the absence of the surfactant ingredient and a charge for blending. It is considered that the selling price is influential in the like goods assessment as the lower selling price for 62% IPA salt can attract increased sales at the expense of formulated glyphosate;
- packaging and labels are not influencing factors in the like goods assessment (end-use application is a greater consideration); and
- 62% IPA salt and formulated glyphosate do in fact have the same end-uses as they are both used in weed control applications. 62% IPA salt has no other application than for use in weed control.

Nufarm does not consider that Customs and Border Protection's assessment has provided any additional insight that enables it to arrive at a conclusion that 62% IPA salt is not a like good to formulated glyphosate. Following full account of the intended application for 62% IPA salt, the only reasonable conclusion is that 62% IPA salt is substitutable for formulated glyphosate and is used in formulated glyphosate applications.

Nufarm therefore requests Customs and Border Protection to alter its assessment that 62% IPA salt is not a like good to formulated glyphosate and include the exporter's domestic sales of 62% IPA salt in its like goods analysis for normal value purposes.

2.2 Unregistered formulated glyphosate

Nufarm concurs with Customs and Border Protection's assessment that unregistered formulated glyphosate is a like good to registered APVMA formulated glyphosate exported to Australia.

3. Low volume of domestic sales of unregistered goods by Rainbow, adjusted under s.269TAC(8)

Customs and Border Protection has indicated in its Paper that following its assessment of Shandong Weifang Rainbow Chemical C., Ltd's ("Rainbow") sales of unregistered and 62% IPA salt that Rainbow did not have sufficient domestic sales made in the ordinary course of trade ("OCOT") to satisfy the requirements of s.269TAC(14).

S.269TAC(14) requires the Minister to examine whether sales of like goods made in the OCOT on the domestic market are sufficient for the purposes of establishing normal values under s.269TAC(1)(a) – a 5 per cent threshold requirement is specified.

Specifically, Customs and Border Protection has stated that the domestic sales volumes of like goods were "*significantly less than 5% of the corresponding export volume*".

It is noted that there is no discussion concerning a consideration of s.269TAC(2)(d) normal value for Rainbow. It is noted that Rainbow has significant sales volumes to Argentina that may be used for comparison purposes.

4. Good Harvest's Normal Value should be assessed in accordance with s.269TAC(2)(d)

Nufarm acknowledges Customs and Border Protection's statements in the paper that:

- following the publication of Statement of Essential Facts No. 183, Nufarm provided Customs and Border Protection with information on Good Harvest's third country export pricing information obtained from a third party information source; and
- Customs and Border Protection is "*considering the substantive issue pertaining to the quality and or quantity of third country information and the time of its presentation to Customs and Border Protection during an investigation, and how this information should be considered as part of the normal value determinations*".

Nufarm concurs with the Review Officer that the Minister should have been provided with verified third country export information for each of the cooperating Chinese exporters of formulated glyphosate. The provision of this information to the Minister is in accordance with the requirements of s.269TAC(2)(c) which states "except where paragraph (d) applies" which invites the Minister to elect (or not elect) to make a direction to Customs and Border Protection.

As the Minister was not provided with third country export price information for each of the Chinese exporters of formulated glyphosate, the Minister was prevented from making the appropriate election.

Nufarm respectfully disagrees with Customs and Border Protection's assessment that it is not required to "*consider s.269TAC(2)(d) first before it constructs a normal value under s.269TAC(2)(c)*". The third country export price information of an exporter is required for consideration by the Minister. In this instance (and the Review Officer agrees), Customs and Border Protection has not provided the required information to the Minister to permit an informed decision to be made.

Nufarm rigorously contends that Good Harvest's third country export price information is relevant and represents a fair basis for comparison with Good Harvest's export prices for formulated glyphosate to Australia. The reasons in support of the use of Good Harvest's third country export prices include:

- that the cost data prepared by Good Harvest for like goods (as verified for use under s.269TAC(2)(c)) includes allocations across products that are not alike (i.e. goods that include lower concentrations and are sold in smaller pack sizes) and could therefore dilute the allocations made to like goods;
- at the time of the verification visit the verification team may have been operating with an erroneous view concerning the scope of like goods sold by Good Harvest. Hence, Nufarm questions whether financial data with respect to all the like goods was verified and whether the change to the scope of like goods impacts the allocation of costs and expenses; and
- The third country export prices for Good Harvest are a more accurate basis for comparison with export prices to Australia, as grades sold on export markets and Australian markets are of similar concentrates and therefore represent a better comparison basis (than are costs reflecting all grades of formulated glyphosate manufactured by Good Harvest including 10 per cent and unregistered grades).

Nufarm detailed in its submission of 30 November 2012 that a comparison of Good Harvest's third country export data with export prices to Australia (for grade 450 formulated glyphosate) resulted in a 14.35 per cent dumping margin.

It is appropriate to re-state Nufarm's comments contained in its 30 November 2012 submission:

"Nufarm has examined Good Harvest's third country export data during 2011 (available monthly) for formulated glyphosate (Please refer to Confidential Attachment 1) obtained from [REDACTED]¹. The data indicates that Good Harvest's weighted-average export price during 2011 for 41 per cent formulated glyphosate (i.e. formulated glyphosate 360 g/l) was US\$1.98 per kg. The equivalent export price for 51 per cent formulated glyphosate (i.e. formulated glyphosate 450 g/l) is US\$2.47 per kg.

Good Harvest's average export price to Australia during 2011 for grade 450 formulated glyphosate was US\$2.16 – for approximately 20,000 tonnes in volume.

Customs and Border Protection determined a negative 2.0 per cent dumping margin for Good Harvest over the 2011 investigation period.

A comparison of Good Harvest's grade 450 formulated glyphosate 2011 weighted average export price to Australia with its weighted average export price to third countries indicates a positive 14.35 per cent margin of dumping."

It is Nufarm's position that Customs and Border Protection is required to highlight with the Minister that Good Harvest's third country export price data (sourced from an independent organization) is available and following comparison with export prices to Australia, dumping margins are evident.

The relevance of Good Harvest's third country export price information cannot be understated. As previously indicated, Good Harvest is the largest exporter of formulated glyphosate to Australia from China (by a factor of 3 to the second largest Chinese supplier-

¹ [REDACTED]

Rainbow) and Good Harvest's export prices to Australia are the lowest of the Chinese exporters (approximately 13 per cent below the second largest Chinese exporter being Rainbow - for whom Customs and Border Protection determined a margin of dumping of negative 0.8 per cent).

Nufarm has also previously submitted that the determination of normal value for Good Harvest under s.269TAC(2)(c) is unreliable as the exporter's costs as verified by Customs and Border Protection are inconsistent with the two other Chinese exporters, Rainbow and Zhejiang Xinan Chemical Industrial Group Co. Ltd ("Zhejiang Xinan") both of who's export prices are significantly higher than Good Harvest. It cannot be accepted that Good Harvest possesses a commercial advantage over other Chinese producers of formulated glyphosate such that its costs are significantly below those for Rainbow and (to justify dumping margin findings that for all three exporters are within the range of minus 0.8 to minus 2.0 per cent).

Nufarm requests Customs and Border Protection to recommend that the Minister determine normal values for Good Harvest under s.269TAC(2)(d) using Good Harvest's third country export price data sourced from [REDACTED]. This information is considered reliable as it has been declared by the Chinese exporters to government agencies from which the independent organization has purchased the data.

5. Impact

Nufarm acknowledges that the matters addressed above do not impact the findings in respect of export sales by Zhejiang Xinan and that the investigation in respect of this investigation is likely to be terminated.

For export sales by Rainbow, the low volume of domestic sales in the OCOT limits the normal value to be assessed for Rainbow under s.269TAC(2)(c) or s.269TAC(2)(d). Customs and Border Protection has not addressed this consideration in the Paper as published.

In respect of Good Harvest, Nufarm submits that it is appropriate to establish normal values under s.269TAC(2)(d) based upon Good Harvest's comparable export prices to third country destinations (e.g. the USA). It is considered that formulated glyphosate exported by Good Harvest to the USA is a comparable product to that exported by Good Harvest to Australia, and that this represents a more appropriate and fair comparison for dumping margin purposes.

It is Nufarm's assessment that Good Harvest's export prices to Australia during the investigation period were at margins of approximately 14 per cent.

Nufarm notes that in its submission of 30 November 2012 Rainbow's representative claims that export prices to third countries, including the USA, do not provide an appropriate basis for comparison to exports to Australia due to higher registration and regulatory costs in those markets. The Nufarm group is a member of the US Glyphosate Taskforce – the group responsible for generating and compiling data the regulatory data for consideration by the US Environment Protection Agency (EPA). Good Harvest and Rainbow are not members of the taskforce. Hence, any costs associated with the use of their products in the USA are more than likely paid by the US importer/ EPA registrant. Any claims by Good Harvest and Rainbow concerning regulatory costs in the US and any other market should be subject to full substantiation and verification.

In SEF No. 183, Customs and Border Protection found that the Australian industry producing formulated glyphosate had experienced material injury. However, in SEF No. 183, Customs and Border Protection had not assessed dumping margins for Good Harvest. The revision of dumping margins based upon Good Harvest's export prices to third countries to above negligible levels, necessitates a re-consideration of the findings as to causation of the material injury experienced by the Australian industry across the investigation period.



It is Nufarm's long-held position that the injury experienced by the Australian industry (and evidenced during the inquiry) was caused by dumped exports of Chinese formulated glyphosate (i.e. by Good Harvest being the largest Chinese exporter of formulated glyphosate to Australia with a volume of approximately 20,000 tonnes).

Nufarm requests Customs and Border Protection to recommend to the Minister that Good Harvest's export prices for formulated glyphosate had caused material injury to the Australian industry manufacturing formulated glyphosate and that, in the absence of anti-dumping measures, further material injury will occur.

Nufarm welcomes the opportunity to discuss any of the matters raised in this submission should Customs and Border Protection consider this appropriate. If you have any further queries, please contact me on (03) 9282 1444.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bernard Lee', with a long horizontal line extending to the right.

Bernard Lee
Manager – Industry and Government Affairs