

27 May 2013

Mr John Bracic
Director, Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
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CANBERRA ACT 2601

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Public File Version

Dear Mr Bracic

Statement of Essential Facts No. 183a - Resumption of investigation into the alleged dumping of formulated glyphosate exported from the People's Republic of China

SEF No. 183a Preliminary Findings

Nufarm Limited ("Nufarm") has reviewed Statement of Essential Facts ("SEF") No. 183a including the examination of the preliminary findings made by Customs and Border Protection concerning the substantive issues identified by the Minister for reinvestigation.

The preliminary findings contained in SEF No. 183a are as follows:

- 62 per cent IPA salt is not a like good;
- unregistered formulated glyphosate is a like good;
- Zhejiang Xinan Chemical Industrial Group Co., Ltd's ("Zhejiang Xinan") dumping margin was negative 1.6 per cent;
- Jiangsu Good Harvest Weien Agrochemical Co Ltd's ("Good Harvest") dumping margin was negative 2.0 per cent;
- Shandong Weifang Rainbow Chemical Co Ltd., ("Rainbow") dumping margin was negative 0.8 per cent;
- Customs and Border Protection considers Good Harvest's normal values should not be calculated pursuant to s.269TAC(2)(d) of the Customs Act 1901 ("the Act"); and
- Despite the changed view of like goods, Customs and Border Protection considers Rainbow's domestic sales were of a volume that was too low to be considered appropriate to calculate normal values pursuant to s.269TAC(1) and making adjustments pursuant to s.269TAC(8).

Nufarm uses this opportunity to address the substantive issues relating to 62 per cent IPA salt as a like good, and the normal value as proposed for Good Harvest.

Nufarm's comments concerning each of the substantive issues was addressed in its submission of 30 January 2013.

1. Like Goods

1.1 62 per cent IPA salt

Customs and Border Protection has re-affirmed its decision in Report No. 183 that 62 per cent IPA salt does not possess characteristics closely resembling formulated glyphosate. In

particular, Customs and Border Protection afforded "*greater weighting to the functional differences between the two goods*". That is, the 62 per cent IPA salt does not include the surfactant and other adjuvants that permits it to kill weeds.

Nufarm considers 62 per cent IPA salt to be a like product to formulated glyphosate. That is, whilst 62 per cent IPA salt is not identical to formulated glyphosate, it does possess characteristics closely resembling formulated glyphosate.

1.2 **Unregistered formulated glyphosate**

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

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

The Trade Measures Review Officer (the "Review Officer") recommended that the Minister direct the CEO of Customs and Border Protection to:

"Give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s.269TAC(2)(d) of the Customs Act."

In the absence of a sufficient volume of domestic sales on the domestic market of the exporter (or representative sales by other sellers), the Minister can consider whether the exporter's normal value may be determined by reference to the exporters costs of production (plus amounts for selling and general administration, and profit) under s.269TAC(2)(c) or, by reference to the exporter's selling price to third countries (i.e. under s.269TAC(2)(d)).

In the original investigation, the Minister was not afforded the opportunity to consider Good Harvest's export prices to third countries as a basis for normal value.

Nufarm considered that Good Harvest's normal values could have been assessed under s.269TAC(2)(d) using Good Harvest's export price information for sales of formulated glyphosate to the USA.

SEF No. 183a suggests that the third country export data submitted by Nufarm concerning Good Harvest's export sales was considered not to be "reliable". This conclusion was made on the grounds that there existed "*significant volume differences, product exclusions and some erroneous countries being identified*".

Nufarm had obtained the Good Harvest export data from an independent agency that specializes in import and export trade statistics. As such, Nufarm relied upon the integrity of the independent agency to provide accurate data.

Nufarm nominated Good Harvests' export prices to the USA as comparable to export prices to Australia, albeit that Good Harvest's export prices to the USA were for glyphosate 41 per cent. Nufarm used an uplift factor based upon the acid concentration to arrive at a notional export price to the USA for formulate glyphosate exports by Good Harvest of 51 per cent glyphosate.

Customs and Border Protection has rejected Nufarm's uplift factor as not representative of actual pricing in the Australian market. Nufarm, however, contends that its market selling prices for 51 per cent formulated glyphosate are depressed (and suppressed) due to the impact of the dumped exports to Australia by Good Harvest. It is therefore incorrect to dismiss the uplift factor when the selling prices for 51 per cent glyphosate are influenced by dumping. Furthermore, Nufarm did not actually contend that this was the appropriate method to determine the normal value. Nufarm used the uplift factor to highlight to Customs and Border Protection that 3rd country export prices were relevant to the determination of normal

values in this case; a point with which the TMRO agreed. The appropriate method for determining the normal value is discussed below.

Customs and Border Protection has rejected determining normal values for Good Harvest under s.269TAC(2)(d) on the grounds that the volume of trade for Good Harvest's exports to the USA are not of a similar volume as exports to the Australia (s.269TAC(5C)). It is stated that the export sales to the USA are less than 20 per cent of the volume to Australia.

Nufarm would highlight that a low volume of sales for s.269TAC(1) normal value purposes is where the domestic sales volume is less than 5 per cent of the volume of export sales to Australia over the investigation period. Good Harvest's export sales volume to the USA of approximately 20 per cent of the sales volume to Australia far exceeds the acceptable "low volume" provisions of s.269TAC(2)(a)(i).

Nufarm submits that Good Harvest's export sales to the USA are of sufficient volume to be considered as the basis for normal value under s.269TAC(2)(d), adjusted to reflect a comparable normal value for formulated glyphosate 51 per cent with Good harvest's export sales to Australia.

3. Good Harvest normal value – Adjustments to determine under s.269TAC(2)(d)

Nufarm notes that s.269TAC(8) applies where third country export prices are to be used as the basis of determining the normal value under s.269TAC(2)(d). Section 269TAC(8) provides for the adjustment of Good Harvest's export prices of formulated products sold to the US to take account of the differences between the US and Australian exports – that is, the difference between the 41 percent product sold to the US and the 51 percent products sold to Australia. It appears from the SEF that Customs and Border Protection has failed to undertake this task in respect of its consideration of the application of s. 269TAC(2)(d). Nufarm contends that this is an error.

Nufarm contends that the adjustments required by s.269TAC(8) are relatively straight forward in this case. Customs and Border Protection has access to Good Harvest's CTM&S for 41 per cent and 51 per cent formulated glyphosate and has Good Harvest's USA export prices for 41 per cent. Customs and Border Protection is therefore able to determine the level of profit that is made by Good Harvest on its export sales to the USA. The determination of normal values under s.269TAC(2)(d) simply requires adjusting for the differences in CTM&S between the 41 percent goods sold to the US and the CTM&S of the 51 percent goods sold to Australia. The profit level would, of course, remain constant. Nufarm contends that an adjustment would be necessary to reflect the difference in the amount of glyphosate acid contained in the each formulation. While other adjustments might be required, Nufarm does not believe that there would be any significant difference between the 41 percent US product and 51 percent Australian product in respect of surfactants, surfactant load or selling expenses.

4. Good Harvest normal value – level of profit if determined under s.269TAC(2)(c)

Without limiting the determination of Good Harvest's normal value under s.269TAC(2)(d) using the export price s to the USA, Customs and Border Protection should reconsider the basis for the level of profit to apply to Good Harvest's constructed normal value (under s.269TAc(2)(c)).

As noted above, Customs and Border Protection has access to Good Harvest's CTM&S for 41 per cent and 51 per cent formulated glyphosate and has Good Harvest's USA export prices for 41 per cent, it is therefore able to determine the level of profit that is made by Good Harvest on its export sales to the USA. From this, Customs and Border Protection could take the level of profit and apply it to Good Harvest's CTM&S 51 per cent formulated glyphosate.

This level of profit is the appropriate profit to apply to Good Harvest's normal value under s.269TAC(2)(c).

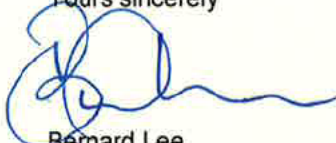
5. Conclusions

Nufarm restates that 62 per cent IPA salt is a like good to formulated glyphosate although not identical it has characteristics closely resembling formulated glyphosate. Nufarm considers that there are a sufficient volume of sales to determine Good Harvest's normal values using export sales to the USA (adjusted for the glyphosate acid difference between 41 per cent and 51 per cent formulated glyphosate).

Nufarm believes that determination of Good Harvest's normal value in accordance with either of the methods outlined in 3 and 4 above would result in a finding of significant dumping margin in respect of exports by Good Harvest during the period of investigation.

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



Bernard Lee
Manager – Industry and Government Affairs