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26 April 2012

Ms Joanne Reid
Director Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory
Australia 2601



commercial-international

Attention: Ms Christie Sawczuk

By email

Dear Ms Reid

Alleged dumping of formulated glyphosate from China Inquiry concerning Australian production of granular glyphosate

We refer to the abovementioned investigation as notified in Australian Customs Dumping Notice No 2012/05.

As you know, Zhejiang Xinan Chemical Industrial Group Co. Ltd ("Wynca") has retained Molis Legal to represent Wynca and Wynca's related companies in relation to this matter.

We submit that the liquid formulated glyphosate product said to be produced by the Australian industry is not a like good to granular glyphosate products. We wish to make the following submissions on behalf of our client in this regard.

A The Applicants do not produce granular glyphosate

The Applicants have made the following statements in their Application for Dumping Duties:

The imported product the subject of this application is formulated glyphosate, a non-selective herbicide, imported in varying strengths of the active glyphosate acid ingredient ("glyphosate technical"), in both liquid and dry forms.

The goods to which the Application refers are described as follows:

This application is concerned with imported Glyphosate in all its fully formulated liquid forms including Glyphosate 360, Glyphosate 450 and Glyphosate 570 and the fully formulated dry form including Glyphosate 680.

NON-CONFIDENTIAL

The Application makes the following statements regarding the domestically manufactured products that are said to be "like" the imported product:

The Australian industry manufactures a range of formulated glyphosate products that it views as 'like products' to imported formulated glyphosate. Specifically, Nufarm and Accensi manufacture formulated glyphosate 360g/L, 450g/L, 470g/L, 510g/L, and 540g/L that are like goods to imported formulated glyphosate.

Nufarm produces liquid formulated glyphosate herbicides at its Laverton North, Victoria and Kwinana, WA plants. The following Nufarm products, by tradename, are considered to be like goods to the imported fully formulated liquid forms of glyphosate listed in the Table at A.3.1 below.

Furthermore, it is said that:

Accensi manufactures formulated glyphosate that is a like good to the imported goods. As indicated, Accensi manufactures formulated glyphosate 360g/L, 450g/L and 540g/L. Accensi does not have product brochures, however, has included labels of the three grades of formulated glyphosate it manufactures at its Narrangba site.

From the above statements, it seems to us that the Applicants produce only liquid forms of formulated glyphosate. They do not produce the granular product that our client exports to Australia.

In addition, the Applicants have provided the following responses in the Application to questions regarding the production process:

Formulated glyphosate is produced via a two-stage process, followed by packaging for transportation and sale.

The initial stage of the process involves the amination of glyphosate acid and monoisopropylamine to produce the isopropylamine salt of the N-phosphono methylglycine molecule (i.e. the active ingredient). The amination process is essentially a controlled acid-base chemical reaction. The amination process is an exothermic reaction that generates significant heat.

The amination process is carried out in large purpose built reaction vessel that incorporates cooling equipment and microprocessor based process controls to maintain the temperature of the chemical reaction. This facilitates production in large-scale batches. The vessels are also equipped with sulphuric acid scrubbers to prevent emission of noxious fumes of monoisopropylamine to the atmosphere...

The second stage of the process involves formulation, where the isopropylamine salt of glyphosate is blended with surfactants and other ingredients to produce a glyphosate herbicide at the desired level of concentration (i.e. between 7.2 – 540 grams per litre). The addition of surfactants facilitates the absorption of the active ingredient by plants. Without the addition of the surfactants, plants do not readily absorb the isopropylamine salt of glyphosate.

After formulation, the glyphosate herbicide is packaged in a variety of retail containers ranging from 250 ml to 1000 litre. The herbicide is also loaded into bulk containers for transport to refilling stations located through regional Australia.

Although the production flow diagram provided by the Applicants was made confidential, the above explanation does not describe the process of producing a granular product.

Table A-3.1 (Application, page 8) and the Australian channel to market diagram (Application, page 14) make clear that the Applicants do not produce a granulated product, and that instead it is imported by them from the USA.

The information which has been made available to interested parties therefore indicates that neither of the Applicants produce formulated glyphosate in granular or in any other dry form, and that they did not do so during the investigation period.

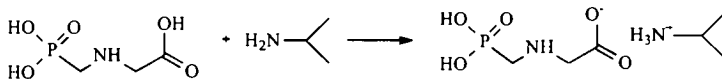
B The granular product is not a "like good" to liquid formulated glyphosate

Our client strongly maintains that liquid formulated glyphosate and the granular product are not like goods. They have different production processes. They are made from different raw materials. They have different physical characteristics. They are packaged differently. Their usage is different.

We now wish to explain the differences between the liquid formulated glyphosate said to be produced by the Applicants and the granular product exported to Australia by Wynca.

- 1 **Process difference** - 41% and 51% glyphosate are two kinds of glyphosate *isopropylammonium* product. A simple description of the process is that glyphosate acid (CAS 1071-83-6) reacts with the mono-isopropylamine (CAS 75-31-0) in water, to which surfactants are also added. Filter pressing then follows, and packing.

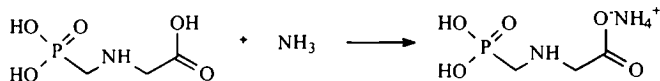
The chemical reaction formula is as follows:



The granular product is a kind of *ammonium* glyphosate. A simple description of the process is that ammonium glyphosate is mixed with ammonium chloride/ammonium sulphate, surfactants and dyes in the mixer. It is then granulated and packed. The main material used to produce the granular product is ammonium glyphosate, which is from the reaction of glyphosate acid with ammonia. This crystallizes after methanol extraction.

Wynca's ammonium glyphosate production technology is patented. The patent is named *Preparation of solid ammonium glyphosate using organic solvent in extraction*. The Australian patent code is 2003261610. The US patent code is US7435847.

The chemical reaction formula is as follows:



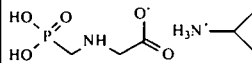
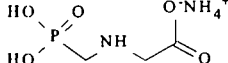
Please refer to Attachment 17 of our client's Exporter Questionnaire for production flowcharts showing the different stages required for the production of the granulated product as compared to those required for the production of liquid formulated glyphosate. The intermediate requirement of the production of ammonium glyphosate, and the different processes required to produce a dry finished product, are clearly indicated.

- 2 **Production facilities difference** - A key point to note is that the production facilities for the 41% and 51% products cannot be used to produce the granular product.

Product	41%, 51% glyphosate	Granular glyphosate
Main facilities	Reactor	Reactor and crystallizer
	Filter press	Mixer
	Filler	Granulator, dryer

As can be seen, the facilities required to produce the different products are themselves quite different. Again, we refer you to Attachment 17 of our client's Exporter Questionnaire.

- 3 **Chemical composition difference** - the products are made differently, from different materials, and have different chemical compositions:

Product	41%, 51% glyphosate	Granular glyphosate
Substance	Glyphosate isopropylammonium	Ammonium glyphosate
CAS	38641-94-0	114370-14-8
Molecular weight	228.1	186.1
Molecular formula		
Other materials	Water	Ammonium chloride/ammonium sulphate
	Surfactant	Surfactant

- 4 **Form and packing difference** - the products are in a different physical form, and they are presented to the market in different packaged forms:

Product	41%, 51% glyphosate	Granular glyphosate
Form	Liquid	Solid granular
Packing	Drum/barrels/bottles	From bulk bags to various sizes of retail packs

- 5 **Usage difference** - Formulated glyphosate in liquid and in granular forms will both kill

weeds. However the relevant question in an anti-dumping context is not, and has never been, whether the two products being compared eventually end up doing the same thing. The test is whether the products are identical, or if not identical whether they (ie the products) have characteristics closely resembling each other.

We have already outlined significant differences in the technical features of the products. Those technical differences create significant market and usage differences between the two products as well:

- Granulated product overcomes poor quality water (ie "hard" water) problems faced by farmers. Sulphate ammonium is required to make glyphosate effective in hard water areas. The granulated product incorporates a proportion of sulphate ammonium. However liquid formulated glyphosate does not contain any sulphate ammonium. If it is required in any particular application where liquid glyphosate is used, it has to be added in the preparation and mixing procedures which take place immediately before the application of herbicide.
- Importantly, the granulated product has a much higher concentration of active ingredient. We believe that the strongest concentration of liquid available is a 54% product. However the granular glyphosate exported to Australia by our client has a higher concentration which far exceeds the concentration of the liquid formulated products.
- This higher concentration, in a dry form, reduces the weight of the product that is needed by farmers. This creates benefits that also distinguish the granulated product from liquid formulated glyphosate. Less bulk and weight means that the granulated product is easier to transport and uses up less storage space. It is safer to transport and safer to handle.
- The packing required for the two different forms is different. Liquid formulated glyphosate is packed in drums, meaning that farmers have a significant waste storage, collection and disposal problem. The granulated product is packed in disposable bags and cartons. There is no waste build-up.
- The "like goods" comparison is not an exercise in establishing that one product is better than another. The exercise simply requires a demonstration of the differences. Granulated product has its disadvantages as well. One of these is the need for granular product to be agitated in the mixing vat before application so that it dissolves properly in the water to which it is added. This is not a problem which is encountered in the use of liquid formulated glyphosate which, of course, mixes much more readily when it is introduced into water. Another disadvantage - whether perceived or actual - is the higher cost of granulated product.

Australian Customs is respectfully requested to investigate this issue very closely.

On the facts, we do not think that the Applicants can maintain the position that the two products are like goods.

Simply to look at them side by side is enough to establish that they are very different.

Australian Customs is requested to think about this issue for itself, in an independent and objective way

On behalf of our client we submit that the dry granular glyphosate product it exports to

Australia, which;

- is in an entirely different form;
- is not made of the same raw materials;
- is made on different equipment;
- has different production processes;
- is of a much higher concentration;
- is used differently;
- is packaged differently;
- has different application qualities; and
- is mixed differently.

to liquid formulated glyphosate cannot be considered to be "like" the liquid formulated glyphosate said to be produced by the Applicants in the sense required by Australian anti-dumping law.

Because the Australian industry does not produce the granulated product, we request that granulated product be excluded from the scope of the goods under consideration in this investigation.

Yours sincerely



Daniel Moulis
Principal