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25 May 2012

Ms. Joanne Reid
Director Dumping Operations
Customs and Border Protection Service
5 Constitution Ave
CANBERRA ACT 2601

Dear Ms Reid

Report of Importer Visit – Australian Independent Rural Retailers (AIRR)

I write to express a number of concerns regarding the report of the visit to AIRR.

At paragraph 5.2.3 of the visit report Customs notes that Agronomiq advised that it also charges AIRR x% of the FOB price for its services. We note that Customs sought and received a copy of the invoice for these costs from Agronomiq notwithstanding that the visit was conducted at AIRR's offices in Shepparton. Did Customs verify that the invoices presented by Agronomiq were actually paid by AIRR and appropriately recorded in AIRR's accounts and banking records? Were these arrangements also verified against the contracts between Agronomiq and AIRR?

At paragraph 6.4 of the report we note that AIRR's sales of imported glyphosate were found to be unprofitable. Notwithstanding this finding, the recommendation in the visit report is that the Minister should find that the sales are at arms length.

Nufarm understands that Good Harvest pays export commission or rebates in respect of sales to Australia. Those commissions may, however, be paid to entities based outside Australia.

We also note that in its previous submissions to Customs AIRR and Agronomiq have demonstrated the massive growth of their glyphosate imports in recent years and stated that they intend to grow imports to over 15 million litres in the next couple of years. AIRR's apparent loss making position in respect of glyphosate sales does not accord with these growth ambitions. Glyphosate is not a loss leader. A small loss on glyphosate sales, given the sheer volume sold, very quickly erodes the profits from the sale of other products.

The arms length provisions in s. 269TAA *Customs Act 1901* (the Act) provide a safeguard against sales dumping and allows the Minister to deem sales not to be at arms length when the imported goods are sold at a loss. In these circumstances, the Act does not require Customs to find actual evidence of rebates, reimbursements or other benefits accruing to the importer. Sub-section 269TAA(2) provides a statutory inference that rebates, reimbursement or other benefits were received by the importer (or an associate of the importer) when the imported goods are sold at a loss.



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Nufarm believes that a finding that AIRR's imported glyphosate sales were at a loss should result in the Minister finding that the sales are not arms length in accordance with s.269TAA. Adherence to this principle would be in line with the Government's recently stated policy of robust application of the anti-dumping provisions. Failure to apply this principle places Australian industries at significant disadvantage and sends a clear message to exporters and importers that anti-dumping investigations and outcomes can readily be manipulated in Australia.

If you wish to discuss this matter further, please call me on 03 9282 1444.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a horizontal line extending to the right.

Bernard Lee
Manager
Industry and Government Affairs