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Ms Joanne Reid
Director Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Public File

Dear Ms Reid

Re: Formulated Glyphosate inquiry – Exporter Visit Report for Zhejiang Xinan Chemical Industrial Group Co., Ltd and Zhejiang Wynca Import and Export Co., Ltd

I refer to the Exporter Visit Report prepared for Zhejiang Xinan Chemical Industrial Group Co., Ltd ("Xinan") and Zhejiang Wynca Import and Export Co., Ltd ("Wynca").

The applicant companies Accensi Pty Ltd ("Accensi") and Nufarm Limited ("Nufarm") seek to raise a number of matters that impact the determination of normal values for the associated exporters Xinan and Wynca.

1. General Comments

It is noted that Xinan was the exporter of the goods to Australia for the initial eight months of the investigation period (i.e. January to August 2011), with all subsequent exports by the wholly-owned subsidiary Wynca for the remaining four months (i.e. September to December 2011). Customs and Border Protection ("Customs") has accordingly referred to the sales as "direct" and "indirect" sales.

It would appear that Customs has treated Xinan and Wynca – for the purposes of establishing normal values – as a single entity.

It is further noted that Wynca is considered an "*intermediary export agent*" for export sales to Australia of formulated glyphosate manufactured by Xinan. In this regard, Xinan executes "*an inter-company transaction with respect of the goods for which payment is made to Zhejiang Xinan by Wynca*". The report indicates that Wynca handles all of the administration for the exported goods, pursuant to the terms of sale negotiated with the relevant importer.

It is submitted that the nature of the activities of the two entities Xinan and Wynca, and the timing of commencement of trading activities by Wynca, suggests that Customs should have determined separate normal values for Xinan and Wynca respectively. Wynca's purchase price (as reflected in the 'inter-company transaction') should also have been tested to examine whether it fully recovered all production costs (as it represents a purchase price from a related party supplier). The Report does not indicate that Customs has confirmed whether full cost recovery was observable in the transfer price from Xinan to Wynca.

Xinan provided Customs with cost to make and sell ("CTM&S") spreadsheets for "all formulations of glyphosate sold in the domestic and Australian export markets". The CTM&S data was provided for each pack sizing sold during the investigation period. On the basis that Xinan and Wynca's accounts are separately audited, it would be expected that Customs would be required to verify the respective entity's selling and general administration ("S,G&A") costs associated with the like goods (for both domestic and export) for the purposes of the CTM&S data for each product pack size.

However, the Report does not indicate a separate verification of S,G&A costs during the investigation period for the two entities but, rather, a ratio calculation of administration and financial expenses to total sales revenue (presumably, for Xinan).

The CTM&S data verified by Customs for each product size of formulated glyphosate can only be described as a "shandy" of costs that are not directly identifiable with the entity undertaking the sales function.

The identified oversights impact the normal values determined for Xinan and Wynca. On the basis that costs have not been correctly allocated, there can be no reliance placed on whether sales considered to be in the ordinary course of trade can be treated as such.

Accensi and Nufarm note the determination of normal values for formulated glyphosate sold in China under s.269TAC(1). The issue of concern to the applicant companies (in light of all domestic industrial sales have been assessed as being made at a loss) is whether all retail sales are in the ordinary course of trade (or whether some retail sales too are also non-recoverable).

2. Specific concerns

2.1 *Surfactants*

Xinan confirmed that "different glyphosate products produced during the POI are formulated using different surfactants." Xinan also stated that it "sources domestically produced and imported surfactants for the formulation of its products." Xinan outlined that it used one type of surfactant in its domestic retail products and surfactants "it manufactured itself for industrial and its export markets". In some circumstances export customers would specifically request a certain surfactant to be used in formulated glyphosate sourced from Xinan.

Xinan's statements concerning surfactants used in glyphosate production indicate the company uses a broad range of surfactants in its manufacturing processes. There is an absence of commentary in Customs' verification of Xinan's surfactants costs as to whether the appropriate and relevant surfactant cost has been verified – for example, whether the locally manufactured surfactant cost was verified in the export production costs for industrial pack formulated glyphosate (or whether a customer-requested surfactant cost was verified), and not merely an average surfactant cost.

At Section 9.1 of the Report, Customs indicates that it calculated an "average cost of surfactants used" as a starting point for a specification adjustment. On the basis of the specificity associated with surfactants used in particular markets, differences in actual surfactant costs should have been applied by Customs. The use of average surfactant costs will mask the true CTM&S the GUC – whether for domestic or export markets.

Accensi and Nufarm request Customs to revise the specification adjustment related to surfactants for the GUC.

2.2 *Formulation specification adjustment*

Xinan exports 450g/L formulated glyphosate to Australia. It does not produce this grade for the domestic market. A specification adjustment for the cost difference between 360 g/L formulated

glyphosate produced for the domestic and export markets and the 450 g/L formulated glyphosate exported to Australia was made.

The adjustment made by Customs will be influenced by the average surfactant cost verified. The adjustment for the grade differences will likely be understated due to the apparent use of "average" surfactant costs.

2.3 Packaging

Xinan's domestic sales are for products sold in packages of 200 litre and below. All exported formulated glyphosate is in 1000 litre IBCs with the exception of one sale.

Xinan sources its packaging requirements from its related party supplier Zhejiang Wynca Packing Material Co., Ltd (Wynca Packing) – a company involved in the manufacture of containers used in the sale of formulated glyphosate.

Customs verified Xinan's packing costs to the general ledger. However, as Wynca Packing is a related party, Customs has failed to test whether the prices for packing materials paid by Xinan are arms' length prices and reflect market prices.

2.4 S,G&A expenses

As indicated above, Xinan confirmed that Wynca handled the administration costs associated with selling formulated glyphosate to Australia from 1 September (i.e. for one-third of the investigation period). However, Customs has accepted S,G&A costs as provided by Xinan from its accounts.

There is a clear delineation of S,G&A costs from 1 September 2011 between Xinan and Wynca. Customs has failed to correctly verify the relevant entity's actual S,G&A costs incurred as they apply to the GUC (whether for domestic or export markets).

2.5 Domestic inland freight

Xinan states that the terms of all domestic sales are delivered to customer (whether retail or industrial). Section 6.5 of the Report indicates that Xinan provided Customs with a "domestic sales spreadsheet" that included certain information, namely:

- Customer;
- Level of trade;
- Product name;
- (packing) type;
- Invoice number, date of invoice and date of sale;
- Order number;
- Payment terms and delivery terms;
- Sales quantity;
- Gross and net invoice values;
- Total ex-factory value of goods.

It is curious that Customs did not seek to request of Xinan details of total domestic freight charges for verification. The Applicants would have expected Customs to request this as the inland freight is provided to Xinan by a related party, Wynca Logistics. However, in making adjustments to Xinan's normal values, Customs has made a downward adjustment for domestic freight costs. What was this adjustment based on? Why were freight costs not included in the "domestic sales spreadsheet"?

3. Conclusions

Accensi and Nufarm accept the basis for normal values for Xinan using domestic retail sales of formulated glyphosate. The Applicants are concerned, however, with:

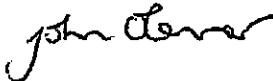
- The determination of certain costs included in C&BP's verification of Xinan's costs for the product packs (domestic and export) such as S,G&A and packaging expenses;
- The specification adjustments to normal values for surfactants (differing quality, source and quantity) and formulation grade (360 g/L domestic v 450 g/L for export);
- Costs associated with packaging from a related party that have not been tested for arms length as to whether representative of "market prices".

The applicants further question why Customs has not determined separate normal values for Xinan and Wynca to reflect different cost bases for the exported goods.

It is requested that Customs re-examine the determination of normal values for Xinan (and Wynca) taking account of the above concerns. The applicants consider that the review of the identified costs and adjustments will result in positive dumping margins above negligible levels for goods exported by Xinan and Wynca during the period of investigation.

If you have any questions concerning the application, please do not hesitate to contact me on (07) 3342 1921.

Yours sincerely



John O'Connor
Director

**Cc Mr Bernard Lee, Manager – Industry and Government Affairs, Nufarm Limited
Mr Craig Ellis, Business Manager – Accensi Pty Ltd**