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9 November 2022

Director, Investigations Unit 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

By Email: investigations2@adcommission.gov.au

Dear Director

**Thai Harvest Ltd.
2,4-D Continuation Inquiry - Response to Statement of Essential Facts**

We act for Thai Harvest Ltd. (**Thai Harvest**) in relation to the present Continuation Inquiry into anti-dumping measures levied on 2,4-Dichlorophenoxyacetic acid (**2,4-D**) imported into Australia from the People's Republic of China (**China**).

1 Background

- 1.1 Thai Harvest serves as a trading hub for the CAC group of companies (**CAC Group**), with the Thai Harvest entity having previously exported 2,4-D from China to Australia.
- 1.2 The CAC Group entity which is responsible for the manufacturing of 2,4-D is [REDACTED]
- 1.3 The CAC Group are Chinese developers, manufacturers, domestic suppliers and exporters of 2,4-D that has been noted by the Anti-Dumping Commission (**ADC**) as an interested party in relation to the current Continuation Inquiry 604 (**Continuation Inquiry**) into anti-dumping measures imposed on 2,4-D (**Measures**).
- 1.4 We have been instructed by Thai Harvest to prepare a submission in response to the Statement of Essential Facts (**SEF**) published on the ADC's electronic public record on the 24th of October 2022.
- 1.5 By way of background, the CAC Group of companies operates primarily in the sphere of research, development, manufacture and sale of new technologies and agrochemicals with the goal of enhancing crop protection, and ensuring the stable supply of agricultural produce and a sustainable farming sector.
- 1.6 While the CAC Group has a number of facilities and production plants throughout mainland China, the main corporate office of its trading company is located in Shanghai.

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- 1.7 Although the CAC Group produces a number of products such as other pesticides, curing agents and corrosion inhibitors, its core product is 2,4-D, which it sells both domestically in China as well as exporting to a number of countries globally.
- 1.8 We note that while Thai Harvest has exported 2,4-D to Australia in the past, it has not done so for approximately 2 years, due to the ongoing presence of the Measures.

2 Response to Exporter Questionnaire

- 2.1 We note that the present Continuation Inquiry was initiated by Nufarm Limited (**Nufarm**), the primary Australian manufacturer of 2,4-D, which is seen by the ADC due to its market position in Australia as representative of the Australian industry.
- 2.2 In Nufarm's application for the continuation of dumping duty notices dated 22 March 2022, CAC Group was nominated by Nufarm as a party likely to have an interest in this matter, being a Chinese exporter of 2,4-D.
- 2.3 Please note that 'CAC Group' is not a legal entity, and the correct exporting entity is Thai Harvest Ltd, which forms part of the broader CAC Group of related companies.
- 2.4 Subsequently, the ADC contacted Thai Harvest by email on 13 April 2022, providing it with an exporter questionnaire with a deadline for completion of 20 May 2022 and inviting Thai Harvest to participate in the Continuation Inquiry as an exporter of 2,4-D to Australia.
- 2.5 Unfortunately, at the time of this correspondence being sent by the ADC to our client, Shanghai was in the midst of a strict COVID-19 lockdown, which began in March 2022 and continued until May 2022.
- 2.6 During this lockdown period, residents of Shanghai, including Thai Harvest staff, were unable to leave their home for any reason, with the city experiencing food shortages and a number of other difficult challenges related to the crisis. Understandably, this had a significant impact on Thai Harvest's usual business operations leading to notable disruptions of its usual internal procedures.
- 2.7 As a result of these COVID-19 related disruptions, the relevant personnel at Thai Harvest were not properly informed of such an exporter questionnaire with a very tight deadline to respond, until 20 May 2022.
- 2.8 Accordingly, Thai Harvest requested by email on the 21 May 2022 that the ADC provide it with an extension of time to prepare its response to the exporter questionnaire.
- 2.9 This request was denied in an email sent by the ADC to Thai Harvest on 23 May 2022, which advised Thai Harvest that while it was still able to submit a response to the exporter questionnaire there was no guarantee that the ADC would be able to consider the information provided and that the ADC was not willing to grant an extension of time to provide a response.

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- 2.10 As the ADC would appreciate, compiling the required financial data in order to provide a response to an exporter questionnaire is a process requiring significant resources and time.
- 2.11 Accordingly, with no guarantee that any response prepared by Thai Harvest would be considered by the ADC, Thai Harvest believed that the significant expenditure on an exporter questionnaire response would not be warranted, in effect barring Thai Harvest from further participation as an exporter of 2,4-D in the Continuation Inquiry.
- 2.12 Consequently, Thai Harvest will by default be deemed an uncooperative exporter that will be subject to an 'all other exporters' rate of dumping duty at the conclusion of the investigation.
- 2.13 We understand from the Note for File uploaded to the electronic public record for the Continuation Inquiry on 25 May 2022 that the ADC did not receive any completed responses to the exporter questionnaire by the due date of 20 May 2022.
- 2.14 However, upon request, the ADC subsequently granted an extension of time to submit a response to the exporter questionnaire to Shandong Weifang Rainbow Chemical Co., Ltd (**Rainbow**), another Chinese exporter of 2,4-D to Australia.
- 2.15 While we understand that the ADC retains a certain measure of discretion regarding whether or not to grant any relevant party's extension request, it is unclear from the ADC's correspondence with Thai Harvest or statements on the electronic public record, why Rainbow was granted an extension request while Thai Harvest's request was denied.
- 2.16 Accordingly, Thai Harvest wishes to use this submission in response to the SEF as an opportunity to pre-emptively object to it being classified as an uncooperative exporter in relation to this Continuation Inquiry. At a minimum, the ADC should determine that Thai Harvest belongs to the category of 'other exporters' rather than 'uncooperative exporters'.
- 2.17 Thai Harvest was willing to cooperate with the Continuation Inquiry and as explained above, its inability to provide a complete and timely response to the exporter questionnaire was due to unforeseen circumstances outside of its control.
- 2.18 This willingness to participate in the Continuation Inquiry is demonstrated by Thai Harvest's request to the ADC to grant an extension to submit a response to the exporter questionnaire.
- 2.19 Thai Harvest remains willing at all times to cooperate with the ADC in relation to this or any future inquiry into the Measures.

3 Dumping Margin

- 3.1 While Thai Harvest has not exported any 2,4-D to Australia since 26 June 2020, it has continued to supply a number of its clients in other countries such as Brazil and continues to sell 2,4-D domestically to its customers in China.

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- 3.2 Based on its own analysis of its cost to make, domestic and international sales data, Thai Harvest is confident that it would not be dumping if it was to resume exports of 2,4-D to Australia, as its export prices are generally higher than domestic selling prices.
- 3.3 Accordingly, Thai Harvest would be willing to providing the ADC its relevant financial data equivalent to an exporter questionnaire response, to enable the ADC to conduct its own investigations and verification of this data, and determine an individual dumping margin for Thai Harvest.
- 3.4 Thai Harvest would be willing to provide such relevant data for this purpose on a confidential basis, regardless of the format in which the ADC would require the information to provided.

We note that subject to the ADC's response to this submission and the outcome of the Continuation Inquiry, Thai Harvest reserves the right to take any further action it deems necessary to secure its rights in relation to this matter including assisting its customers in Australia in making an application for a duty determination and/or seeking administrative or judicial review of the result of the Continuation Inquiry.

If the ADC requires any further information from Thai Harvest, please do not hesitate to contact us.

We look forward to hearing from you shortly in relation to this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Andrew Hudson', with a long horizontal flourish extending to the right.

Andrew Hudson
Partner