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

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**Public File Version**

Dear Mr Bracic

**Resumption of investigation into the alleged dumping of formulated glyphosate exported from the People's Republic of China**

1. Introduction

I refer to Australian Customs Dumping Notice ("ACDN") No. 2012/54 announcing the resumption of an investigation into the alleged dumping of formulated glyphosate exported from the People's Republic of China ("China"). ACDN No. 2012/54 summarizes the Review Officer's findings that warrant the resumption of the formulated glyphosate investigation, including that the Chief Executive Officer of Customs and Border Protection should:

- consider the inclusion of 62 per cent IPA salt and the unregistered goods as like goods;
- consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s.269TAC(8) of the Act, was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin; and
- give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s.269TAC92)(d) of the Act.

Nufarm Limited ("Nufarm") provides this submission for consideration in the re-commenced investigation.

2. Like Goods

**62 per cent IPA salt**

Nufarm re-affirms previous representations that 62 per cent IPA salt is a like good to formulated glyphosate as it can be blended with surfactant and water (not a substantial process of manufacture) and be used in the same end-use applications to formulated glyphosate.

The 'like goods' definition contained in s.269T(1) includes goods that *"although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration"*. The 62 per cent IPA salt includes the active constituent glyphosate and can therefore be considered to possess *"characteristics closely resembling"* formulated glyphosate<sup>1</sup>.

<sup>1</sup> Similar to 2,4-dichlorophenoxyacetic acid and its esters (refer Trade Measures Report No. 126).

Nufarm therefore reasserts that 62 per cent IPA salt is a like good to formulated glyphosate.

***Unregistered formulated glyphosate***

The Review Officer has concurred with Nufarm's view that simply because formulated glyphosate grades sold on the Chinese domestic market are unregistered goods does not warrant exclusion of these goods as "like goods" to the goods exported to Australia. Similarly, the unregistered domestic sales of formulated glyphosate cannot be excluded from inclusion in normal value calculations.

The Review Officer further considered that where the goods sold domestically are not identical to those exported to Australia, s.269TAC(8) permits an adjustment to be made so that (any) differences do not affect a fair comparison between the domestic price (for the unregistered formulated glyphosate) and the export price (of the registered formulated glyphosate).

Nufarm also agrees with the Review Officer concerning the "low volume" of domestic sales test is not limited solely by s.269TAC(14). The inclusion of the domestic sales identified as "unregistered" domestic sales (along with the original domestic sales in the ordinary course of trade) may be sufficient to permit a proper comparison for dumping purposes.

Nufarm contends that the Minister should include the unregistered domestic sales as like goods for the purposes of determining normal values under s.269TAC(1). The impact of including the sales of 62 per cent IPA salt and the unregistered equivalent formulated glyphosate as sales of like goods for Jiangsu Good Harvest Weien Agrochemical Co., Ltd ("Good Harvest") and Shandong Weifang Rainbow Chemical Co., Ltd ("Rainbow") will influence determinations as to:

- whether domestic sales are in sufficient volume for normal values to be determined under s.269TAC(1); or
- if normal values are to be determined under s.269TAC(2)(c) the appropriate level of profit to be applied to the exporters costs to produce and sell goods sold domestically (derived from the profit achieved on domestic sales of like goods).

It is Nufarm's view that normal values for formulated glyphosate exported to Australia by Good Harvest and Rainbow will require re-assessment and verification by Customs and Border Protection.

3. Export price information to third countries

The Review Officer has indicated that in determining normal values for an exporter under s.269TAC(2)(c) it is appropriate firstly for the Minister to consider whether s.269TAC(2)(d) applies. This would involve Customs and Border Protection verifying the exporter's prices to third countries and thereafter recommending whether s.269TAC(2)(d) should apply. The Review Officer confirmed that in "*order for the Minister to properly consider whether he should make such a direction it would be necessary for Customs to consider the appropriateness of calculating the normal value in accordance with s.269TAC(2)(d) as opposed to s.269TAC(2)(c).*"

In the investigation into formulated glyphosate exported from China, "*Customs did not give any consideration to whether s.269TAC(2)(d) might be appropriate.*"

The Review Officer further acknowledged that Nufarm had demonstrated for the Chinese exporter Good Harvest that a comparison of its weighted-average export prices to Australia with weighted average export prices to other destinations confirmed a positive dumping margin. The Review Officer considers that as Nufarm had provided this prima facie information, Customs and Border Protection should have verified Good Harvest's export data

to third countries to enable the Minister to consider whether it would have been appropriate to determine Good Harvest's normal values as per s.269TAC(2)(d).

Nufarm submits that in this re-commenced investigation Customs and Border Protection should verify export price to third countries information for Good Harvest as recommended by the Review Officer.

Nufarm has examined Good Harvest's third country export data during 2011 (available monthly) for formulated glyphosate (Please refer to Confidential Attachment 1) [REDACTED]. The data indicates that Good Harvest's weighted-average export price during 2011 for 41 per cent formulated glyphosate (i.e. formulated glyphosate 360 g/l) was US\$ [REDACTED] per kg. The equivalent export price for 51 per cent formulated glyphosate (i.e. formulated glyphosate 450 g/l) is US\$ [REDACTED] per kg.

Good Harvest's average export price to Australia during 2011 for grade 450 formulated glyphosate was US\$ [REDACTED] – for approximately 20,000 tonnes in volume. (See Confidential Attachment 2) Nufarm would draw Customs attention to the description of the goods in both confidential attachments - both the exports to Australia and those to 3<sup>rd</sup> countries are classified as "ready-made herbicides, not put up for retail sale".

Customs and Border Protection determined a negative 2.0 per cent dumping margin for Good Harvest over the 2011 investigation period.

A comparison of Good Harvest's grade 450 formulated glyphosate 2011 weighted average export price to Australia with its weighted average export price to third countries indicates a positive 14.35 per cent margin of dumping.

Nufarm draws to the attention of Customs and Border Protection the following relevant considerations:

- Good Harvest is the largest exporter of formulated glyphosate to Australia from China (by a factor of 3 to the second largest Chinese supplier- Rainbow);
- Good Harvest's export price to Australia is the lowest of the Chinese exporters, and is 13 per cent below the second largest Chinese exporter Rainbow (for whom Customs and Border Protection determined a margin of dumping of negative 0.8 per cent);
- Good Harvest has increased its export volume to Australia over the last three years from approximately 4,000 tonnes per annum to more than 20,000 tonnes per annum;
- Good Harvest's export prices to Australia are dumped and injurious and have caused material injury to the Australian industry through lost sales and market share, price depression and suppression, reduced profits and profitability, and reduced revenues.

Nufarm requests Customs and Border Protection to establish normal values for Good Harvest on the basis of Good Harvest's weighted-average export prices to third countries. The data is specific for glyphosate and identifies Good Harvest as the exporter of the like goods. It is also Nufarm's contention that the previous determination of normal value for Good Harvest under s.269TAC(2)(c) is unreliable as the exporter's costs as verified by Customs and Border Protection are inconsistent with the two other Chinese exporters, Rainbow and Zhejiang Xinan/Wynca, both of who's export prices are significantly higher than Good Harvest.

In essence, a negative 2 per cent dumping margin for Good Harvest is inconsistent with the negative 0.8 per cent and negative 1.6 per cent for Rainbow and Zhejiang Xinan/Wynca, respectively, given Good Harvest's export prices to Australia that are 13 per cent below the weighted average export price of Rainbow.



4. Impact of considerations

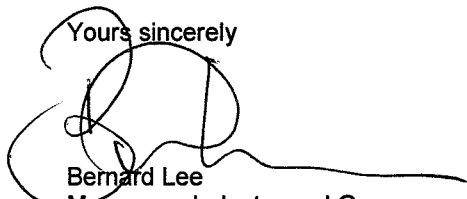
Nufarm acknowledges that the domestic sales of glyphosate 62 per cent IPA salt for the two selected cooperating exporters may be minimal, however, the inclusion of these sales (with appropriate adjustments) will likely impact the level of profit to be applied to a constructed normal values determined under s.269TAC(2)(c) as required.

Prior to concluding whether it is appropriate for normal values for Good Harvest to be determined under s.269TAC(2)(c), the Minister must be afforded the opportunity to consider whether it is appropriate to assess normal values in accordance with s.269TAC(2)(d). It is Nufarm's position that normal values determined under s.269TAC(2)(d) for Good Harvest will result in positive dumping margins (i.e. approximately 14.35 per cent) and that the Minister should determine Good Harvest's normal values based on its export prices (as opposed to a constructed CTM&S methodology) as the export prices are market determined.

On the basis that Good Harvest export prices of formulated glyphosate to Australia are assessed as "dumped" prices under s.269TAC(2)(d), Nufarm requests Customs and Border Protection to find, for the purposes of the Statement of Essential Facts, that the dumped exports have caused material injury to the Australian industry during the investigation period.

If you have any questions concerning this submission, please contact me on (03) 9282 1444.

Yours sincerely



Bernard Lee  
Manager – Industry and Government Affairs