

AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2012/54  
Resumption of Investigation into Alleged Dumping in Respect of Fully Formulated (FF) Glyphosate  
Exported to Australia from the People's Republic of China  
Submission by Agrichem Manufacturing Industries Pty Ltd T/A AGRONOMIQ and Australian  
Independent Rural Retailers Pty Ltd T/A AIRR

1. Introduction

We have had the opportunity to read Nufarm's submission to Customs dated 30th November 2013 regarding the resumption of the investigation. The response is predictable and contains no additional information of any value. Therefore, Agrichem Manufacturing Industries Pty Ltd trading as AGRONOMIQ and Australian Independent Rural Retailers Limited (AIRR) are firmly of the view that the Chief Executive Officer of Australian Customs and Border Protection Service should reconfirm his previous decision to terminate the investigation into the alleged dumping of formulated Glyphosate in Australia from the China in view of the following.

2. Glyphosate 62% weight/weight (w/w) Manufacturing Concentrate

Our position is already well known on Glyphosate 62% w/w, but we will repeat our views before dealing with Nufarm's claim as to why this product should be included in the investigation.

In Australian Customs Dumping Notice No. 2012/05 published 6th February 2012 which initiated the investigation into the alleged dumping of FF Glyphosate in Australia following an application from Nufarm, the "goods" were clearly defined in the following manner:

"The 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 forms including Glyphosate 680".

The key word in the above statement is "fully" meaning that the products are available for use by customers who simply dilute the product by adding water or in some cases additional wetter.

Nufarm sought to change the ground rules in the middle of the investigation by introducing Glyphosate 62% w/w manufacturing concentrate into the study. The reason they introduced this product - which is not "fully formulated" - was possibly based on our recommendation that the problem could be resolved equitably for all parties, including Nufarm and Australian farmers, if Customs allowed Glyphosate 62% w/w to enter Australia duty free. If Glyphosate 62% w/w was imported duty free, it would mean that all end-user Glyphosate IPA (360 and 450) could be fully formulated in Australia earning additional profits for toll formulators without any price penalty for Australian farmers. However, Nufarm possibly viewed our proposal differently and envisaged it would lead to greater domestic competition and therefore reduced formulation income for itself.

However, in our view, Glyphosate 62% w/w should not be included in the study because:

- The product was not covered in the original Terms of Reference and therefore the CEO of Australian Customs was correct in excluding this product from the investigation.
- Glyphosate 62% w/w is not in a form that may be used by farmers, nor is it approved by APVMA (the sole authority in Australia on this issue) for use by farmers. Thus the marketing of this product would be a breach of Australian law and subject to severe monetary penalties.

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Glyphosate 62% w/w is not a fully formulated product, but simply aminated<sup>1</sup> Glyphosate Technical to which value may be safely added in domestic markets by formulators.

We note that all other respondents, most of whom have extensive experience and expertise in the Glyphosate market segment (or have been briefed by people with this background), believe that Glyphosate 62% w/w should be excluded from the investigation.

However, Nufarm has now added another dimension to this argument when they write, "The 62 per cent IPA salt includes the active constituent glyphosate and therefore can be considered to possess *characteristics closely resembling* formulated glyphosate." The writer then footnotes this statement with the words, "similar to 2,4-D acid and its esters (refer to Trade Measures Report No. 162)." If this logic is accepted by Customs, then one other product that contains Glyphosate active should be included in the investigation and that is Glyphosate Technical 95-98%. As the numbering suggests, Glyphosate Technical contains up to 98% Glyphosate active. The footnote which compares 2,4-D acid (active material) with 2,4-D ester (formulated product) confirms the flawed logic. Our view is that Glyphosate 62% w/w should not be included in the investigation, but if it is included in the investigation then Glyphosate Technical - which also "possesses characteristics that closely resemble formulated glyphosate" must also be included.

Customs gave currency to Nufarm's flawed logic when it accepted Nufarm's argument that there were "like" Glyphosate products in Australia and China. In fact there is only one "like" product - Glyphosate 360 - which was a minor product in both markets in 2011, the designated year for the investigation.<sup>2</sup> Nufarm claimed that Glyphosate acid was the common denominator in all Glyphosate products and while this is true, we believe that a product is defined by its functionality not its content. Glyphosate acid has no function apart from being one component in a herbicide. The molecule cannot function as a herbicide until it is combined with a wetter and in a form that may be used by farmers. The Nufarm argument is comparable to suggesting that pasta, biscuits, cakes and bread are "like" products because they are all based on flour.

### 3. Good Harvest Market Share

On page 3 of its submission, Nufarm writes:

- "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."

AGRONOMIQ-AIRR was the principle importer of Good Harvest Glyphosate in 2011 and only Glyphosate 450 was imported. The SG of Glyphosate 450 is approximately 1.2, therefore, 20,000 MT of Glyphosate 450 is around 16,670,000 litres of Glyphosate 450, significantly more than the ■■■■ litres we imported. We buy Glyphosate from Good Harvest only. Nufarm provides no source for its information which we know to be incorrect. It is possible that the source of the information is CCM, a provider of Chinese export data which is notoriously unreliable, including both volume and prices. Nufarm used information from a source known as CCM in its recent submission to Australian Customs to continue the anti-dumping duty of 2,4-D acid from a further five years from

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<sup>1</sup> Amination means the neutralisation of Glyphosate acid with Mono-Isopropylamine (MIPA), a base.

<sup>2</sup> Glyphosate 360 sold in China has a different wetter to Glyphosate 360 sold in Australia because of different climatic conditions thus, even though the products have the same name, they may not be "like" products.

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March 2012. In Section 7.3.3 of the SEF report dated 29th November 2012, Customs wrote, "Customs and Border Protection considers this data may not be reliable. The CCM data figures do not correspond with other data that is considered more reliable (e.g. ABS data and CBP's own commercial database data." Nufarm is aware of Customs opinion of CCM and therefore elected not to reference the same.

The significant increase in Good Harvest sales to Australia in 2011 (to a figure less than shown) was because of the launch of AIRR's private brand, APPARENT® in late-2010 which was sold through AIRR's 300 rural stores plus another 1,000 independently-owned rural stores in preference to Nufarm's Roundup® CT Glyphosate 450. AGRONOMIQ/AIRR entered into a long-term supply agreement with Good Harvest in mid-2010. Therefore, under these circumstances there is nothing unusual about Good Harvest's growth rate nor Nufarm's decline.

In the same paragraph, Nufarm writes:

- 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."

We are absolutely certain that Good Harvest's Glyphosate 450 is not dumped in Australia and we agree absolutely with Chief Executive Officer's finding that Good Harvest Glyphosate was not dumped in Australia. Moreover, we are firmly of the belief that the Reviewer's recommendation to use Good Harvest's export prices to a third country rather than using the domestic prices would be unhelpful given the fact that Glyphosate 450 differs significantly from country to country. If domestic sales in China are insufficient, Customs has the option of comparing the Australian price with the actual cost of formulation. Therefore, we do not accept Nufarm's claim that it has suffered material damage from dumping because dumping did not occur. In this context, we refer you to the submission by Corrs Chambers Westgarth on behalf of the CCCMC dated 19th March 2012 which found, "exports of formulated Glyphosate from China have not caused injury to the Australian industry. The decline in formulated Glyphosate prices during this period was a result of a correction in the price of technical Glyphosate back to its historical levels." To confirm this point, we also asked Sinochem why it reduced its offer from \$13.00/share to \$12.00/share to buy Nufarm in 2009, action that subsequently resulted in the sale not proceeding.<sup>3</sup> Sinochem responded that during due diligence it noticed excessive stocks of Chinese Glyphosate Technical in Nufarm warehouses around the world and found that it was purchased at prices well in excess of the current market prices. The price was adjusted to take into account the losses that Nufarm would have to accept to sell the over-priced stock of Glyphosate Technical.

### 3. Rainbow and Unregistered Products

We have read Rainbow's submission regarding the unregistered product issue (plus the other two issues) and completely agree with the position the company has adopted. Again, if domestic sales in China are insufficient, Customs has the option of comparing the Australian price with the actual cost of formulation.

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<sup>3</sup> Nufarm Limited announcement to ASX dated 22nd December 2009.