Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 0, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. **Applicant's details**

Applicant's name: **Shandong Weifang Rainbow Chemical Co., Ltd. ("Rainbow")**

Address: **No. 03001, Lujian Road,**
Binhai Economic Development Area,
Weifang,
Shandong,
P.R. China

Type of entity (trade union, corporation, government etc.): **Sino foreign joint-venture company**

2. **Contact person for applicant**

Full name: **Ms. Fan Jun (Sandya Fan)**

Position: **Business Unit Leader for Pacific Area**

Email address: **sandya_fan@rainbowchem.com**

Telephone number: **(+86) 0531-88875231**

Please note that all communications in relation to this application are requested to take place with and through Rainbow's legal representatives. For contact details please refer to Part E of this application.

3. **Set out the basis on which the applicant considers it is an interested party**

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. The reviewable decision in this case relates to an application made to the Commissioner under Section 269ZHB requesting that the Minister continue the anti-dumping measures. Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Rainbow is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely Dichlorophenoxy-Acetic Acid ("2,4-D"). Rainbow is thus an "interested party" for the purposes of the Act and this application.

4. **Is the applicant represented?**

Yes ☑ **No**

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods are described as:

2,4-D is a selective herbicide and is exported to Australia from China mainly in the forms of 2,4-D acid and 2,4-D ester.
The 2,4-D covered by the anti-dumping measures includes:

- **Sodium salt;**
- **2,4-D acid;**
- **2,4-D intermediate products (salts and esters), including:**
  - **iso butyl ester technical;**
  - **ethyl ester technical;**
  - **2 ethyl hexyl ester technical;**
  - **dimethylamine (DMA); and**
  - **iso-propylamine (IPA);**
- **2,4-D fully formulated products; and**
- **all other forms of 2,4-D.**

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are currently classified to the following tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Unit	Description
2918.99.00	43	Kg	*2,4-Dichlorophenoxyacetic acid (free acid)*
2918.99.00	44	Kg	*Salts and esters of 2,4-dichlorophenoxyacetic acid*
2918.99.00	48	Kg	Other
3808.93.90	41	Kg	*Goods wholly of, or with a basis of 2,4-D dichlorophenoxyacetic acid, its salts or esters*
3808.93.90	53	Kg	Others

8. **Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**
   If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-Dumping Notice No. 2018/21

9. **Provide the date the notice of the reviewable decision was published**

The reviewable decision was dated and published 5 March 2018.

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

See Attachment A.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

10. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**
11. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 0.**
12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

    Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: **Charles Zhan**

Position: **Senior Associate**

Organisation: **Moulis Legal**

Date: **4 April 2018**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: **Charles Zhan**

Organisation: **Moulis Legal**

Address: **6/2 Brindabella Circuit**
Brindabella Business Park
Canberra International Airport
Australian Capital Territory
Australia 2609

Email address: **charles.zhan@moulislegal.com**

Telephone number: **+61 2 6163 1000**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

See Attachment C.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:……..
(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

4 April 2018

In the Anti-Dumping Review Panel

Application for review Dichlorophenoxy-acetic acid ("2,4-D")

Shandong Weifang Rainbow Chemical Co., Ltd.

Introduction

The Anti-Dumping Commission ("the Commission") on 27 April 2017, by way of public notice, invited certain persons to apply for the continuation of anti-dumping measures applying to the export of dichlorophenoxy-acetic acid (hereinafter "2,4-D" and "the GUC") from the People's Republic of China

("China") to Australia.[1]

The applicable dumping duty notice was due to expire on 24 March 2018. The original investigation, applied for by Nufarm Limited ("Nufarm"), first imposed anti-dumping measures on the GUC on 24 March 2003. The anti-dumping measures were continued in 2007, and again in 2013.

In response to the invitation, Nufarm applied to the Commission on 26 June 2017 for the continuation of the anti-dumping measures applicable to the exportation of 2,4-D from China to Australia.[2]

On the basis of Nufarm's application, the Commission initiated a continuation inquiry ("the Inquiry") in respect of:

> *…whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of dichlorophenoxy-acetic acid ("2,4-D" or "the goods") exported to Australia from the People's Republic of China (China) is justified.*[3]

Based on recommendations contained in *Report No. 430 – Inquiry concerning the continuation of anti-dumping measures applying to dichlorophenoxy-acetic acid (2,4-D)*[4] ("Report 430"), the Assistant Minister for Science, Jobs and Innovation and Parliamentary Secretary to the Minister for Jobs and Innovation ("the Parliamentary Secretary") decided on 5 March 2018 to continue the anti-dumping measures imposed on 2,4-D exported to Australia from China.[5]

Specifically, the Parliamentary Secretary decided to publish notices in relation to 2,4-D exported from China under Section 269ZHG(1) of the *Customs Act 1901* ("the Act").[6] These notices had the effect of continuing the dumping duties on exports from all Chinese exporters, based on different variable factors to those that had previously applied.[7]

Shandong Weifang Rainbow Chemical Co., Ltd. ("Rainbow") is a Chinese manufacturer and exporter of 2,4-D.

As outlined in this application, Rainbow seeks review by the Anti-Dumping Review Panel ("the Review Panel"), under Sections 269ZZA(1)(d) and 269ZZC, of the decision made by the Parliamentary Secretary

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1 See Anti-Dumping Notice 2017/50.
2 See EPR 430 Doc 001 – Application.
3 See Anti-Dumping Notice 2017/102.
4 See EPR 430 Doc 014 – Report 430.
5 See Anti-Dumping Notice 2018/21.
6 A reference in this Application to "the Act", or to a "Section", "Subsection" or "Subparagraph" is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.
7 See Anti-Dumping Notice 2018/21 and EPR 430 Doc 013 – Section 8(5) Notice.

to continue measures against the exportation of 2,4-D from China to Australia, and the related decisions on the determination of variable factors for Rainbow.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to our clients' grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the Review Panel.

A First ground – incorrect adjustment to the normal value relating to VAT

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

The Commission determined that an upwards adjustment to the normal value was required to account for the *"cost of non-refundable VAT costs"* for the exported goods. The reason for this adjustment is described as follows in the Commission's verification report for Rainbow:

> *It was noted that an upward adjustment is required for value added tax (VAT), to reflect net VAT liability for the exported goods.*
>
> *The exporter incurred an un-refundable VAT expense on export sales to Australia during the inquiry period.*
>
> *Consequently the visit team recommends upward adjustments of the weighted average difference between VAT expensed and VAT recovered be applied to the normal value of export sales to Australia.*[8]

The basis of this adjustment was not explained in detail in the verification report or in Report 430. However, we understand that this adjustment was made to account for the differences between the VAT liabilities associated with export and domestic prices. We refer the Review Panel to the following paragraphs in the Commission's *Dumping and Subsidy Manual* ("the Manual") which explains the basis of this practice in detail:

[8] See EPR 430 Doc 007 –Exporter Verification Report – Rainbow, at page 12.

> *Value added tax (VAT) liability can differ between domestic sales and export sales. Domestic sales prices are usually VAT free (because most companies separately capture the output VAT amount on each individual sale). Export sales, on the other hand, usually incur VAT liability.*
>
> *The Commission treats this VAT liability in export sales as having influenced the export price. Accordingly, where the normal value is calculated from VAT exclusive domestic sales prices, an upward adjustment is made in order to compare those domestic sales prices to the VAT inclusive export sales prices.*
>
> *The maximum amount of the upward adjustment will be the difference between the VAT rates for normal supply and the rate of VAT refund for export. For example, if the VAT rate is 17% and the VAT refund rate 5% (because domestic sales incur a VAT liability of 17% while export sales incur a VAT liability of 12%) in this circumstance the maximum upward adjustment to normal value is 12%.*[9]

We assume that, in this Inquiry, the Commission applied the adjustment to the normal value for Rainbow on the same basis as the explanation provided in the Manual. We take two issues with this adjustment.

First, there is no apparent basis or evidence that the adjustment should be applied at all in relation to Rainbow. Report 430 determined Rainbow's normal value entirely based on Section 269TAC(2)(c) of the Act. Accordingly, the Minister was required to, and could only, make adjustments under Section 269TAC(9). That Section provides that *"in determining the costs to be determined under that paragraph"* adjustments are to be made *"as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of [the] goods".* Thus, for any adjustment to be correctly and reasonably applied it was incumbent on the Commission to establish that such adjustment was necessary to ensure a fair comparison between the normal value and the Australian price. In the present case, there is no evidence to suggest that the VAT liability difference affected Rainbow's domestic prices differently as compared to Rainbow's export prices to Australia. None was cited or referred to in Report 430 or any other document on the public record, nor could it have been, because the required circumstance of a different effect on prices does not exist.

It was demonstrated during the verification that Rainbow's business – both in relation to 2,4-D products and almost the entirety of its other operations - was almost fully export-oriented. Rainbow's export sales (all products) accounted for **[CONFIDENTIAL TEXT DELETED – number]**% of its total company turnover. For 2,4-D products, the preponderance of export sales was even more stark, with Rainbow's export sales amounting to **[CONFIDENTIAL TEXT DELETED – number]**% of its total company turnover of 2,4-D. The one domestic sale of 2,4-D product was less than **[CONFIDENTIAL TEXT DELETED – number]**% of its total company turnover in the period of inquiry ("POI"). This demonstrates that

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[9] See Dumping and Subsidy Manual, at page 64.

Rainbow's business in the POI was overwhelmingly reliant on exportation. In this circumstance it was incorrect for the Commission to assume, and it could not be said, that any VAT liability associated with Rainbow's export sales was not taken into account in Rainbow's operations as a normal cost of the entire business, undifferentiated by any consideration of whether a particular sale was being made to the export market (the overwhelming majority of sales) or on the domestic market (a trivial minority of sales). That is to say, any VAT liability differences between export and domestic sales – given the negligibility of Rainbow's domestic sales – would have had no impact on Rainbow's export pricing as compared to its domestic pricing. It was simply not a factor in pricing, and nothing was identified to establish that this was not the case. In fact, as we will further explore in detail below in relation to Ground 2, Rainbow has a business policy of not ordinarily engaging in domestic sales of 2,4-D products whatsoever (hence the very low domestic sales).

A business that substantially engages in both domestic sales and export sales may consider the impact of VAT differences as something that should differently affect its pricing decisions as between the domestic and export markets. However that was simply not the reality faced by Rainbow nor was this its experience in the POI. VAT liability differences between domestic and export sales had no differential impact on Rainbow's export prices as compared to its domestic prices for the GUC. It was simply not relevant to pricing, and was not demonstrated to have affected pricing.

Further, and just as importantly, we point out that Rainbow's normal value was calculated solely on the basis of a cost construction under Section 269TAC(2)(c) of the Act. As such, the normal value already fully reflected the cost of the Australian sales of the GUC, and no additional adjustment under Section 269TAC(9) was either warranted or relevant.

Accordingly, we submit that the VAT based adjustment should not have been made in calculating the normal value for Rainbow's Australian sales of the GUC.

Secondly, and in the alternative to the first issue, even if a VAT liability difference-based adjustment was to be required, which is denied, the adjustment that has been made was not calculated correctly.

In calculating the VAT-based adjustment, the Commission used a rate of 17% - presumably as the applicable VAT rate for the domestic sale of what the Commission considered to be "like goods" by Rainbow – to be compared to the VAT rebate rate applicable to Rainbow's Australian sales of the GUC. Therefore, two rates of adjustment were calculated, as the difference between:

- 17% (for domestic VAT); and

- 13% or 5% (for the VAT rebate rates applicable for Australian sales).

The 13% and 5% are the VAT rebate rates applicable to different types of the GUC exported by Rainbow to Australia during the POI. The 2,4-D "technical" products fall into the HS Code 2918.99.00, and were entitled to a 13% VAT rebate rate, whereas the formulated 2,4-D products are classified under HS Code of 3808.93.19, and were entitled to a 5% VAT rebate rate.

The error here relates to the use of 17% as the VAT rate applicable to domestic sales of like goods. The use of that rate was not correct. In the Chinese domestic market, 2,4-D products are sold as agricultural products. A VAT rate of 13% applies to agricultural products, not 17%. The applicable VAT rate for 2,4-D products is well documented in the domestic sales documents that were provided to the Commission and verified during the Inquiry.[10]

Accordingly, even if the Commission was correct in making such an adjustment at all (a proposition we continue to reject, as per the above), it would be incorrect to use the difference between 17% and 13%, or between 17% and 5%, and to apply such difference to the invoice value of Rainbow's Australian sales of the GUC to calculate such an adjustment. The correct adjustment should be calculated as the difference between 13% (for domestic sales) and 13% or 5% (for export rebate). Accordingly, the VAT based adjustment to the normal value, which should not have been made in the first place, has even been inflated by 4% (being the difference between 13% and 17%).

11 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

As explained above, Rainbow submits that the correct and preferable decision is not to make any VAT related adjustment in the calculation of the normal value, because no differentiation has been evidenced or justified.

As an alternative, and based on the explanation provided above in relation to the VAT rate actually applicable to domestic sales, the VAT-based adjustment should have been calculated using 13% as the applicable VAT for domestic sales, and not 17%.

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[10] For example, see EPR 430 Doc 004 – Rainbow Exporter Questionnaire – Exhibit D-7, at page 5. The applicable VAT rate is also supported by tax invoices raised for Australian sales of the GUC which were made via domestic trading company, such as invoice number 16RA653, also verified by the Commission.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

The proposed decision referred to under 11 above would result in a decision that is materially different from the reviewable decision, because it would result in a change to the variable factors and a reduction to the dumping margin with respect to the exported goods by about 11.9% once the VAT adjustment is removed (first argument), or by about 4%, once the applicable domestic VAT is revised from 17% to 13% (second argument).

B Second ground – incorrect determination of profit for the purpose of calculating normal value

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

As set out at Section 7.3.2 of Report 430, the Commission constructed a normal value for Rainbow on the basis of Section 269TAC(2)(c) of the Act. In relation to the determination of profit, Report 430 states:

> *For all models exported to Australia the Commission has constructed normal values in accordance with subsection 269TAC(2)(c). To construct the normal value, the Commission has used:*
>
> - *the cost of production for Australian export sales; plus*
> - *selling, general and administrative (SG&A) costs applicable to the sale of like goods sold on the domestic market; plus*
> - *an amount of profit.*
>
> …
>
> *The cost of production was calculated under subsection 43(2) of the Regulation, using the exporters' records. SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporters' records. The amount of profit was worked out under subsection 45(2) of the Regulation by using data relating to the production and sale of like goods by the exporter of the goods in the OCOT.*[11] [underlining supplied] [footnotes omitted]

[11] See Doc 014 – Report 430 at page 32.

Rainbow considers that the Commission's determination of profit under Regulation 45(2) of the *Customs (International Obligations) Regulation 2015* ("the Regulation"), by using *"data relating to the production and sale of like goods by the exporter in the OCOT"*, is not the correct or preferable decision.

Specifically, Rainbow contends that the domestic sale on which the Commission seeks to rely under Regulation 45(2) was not of "like goods" to the goods exported by Rainbow to Australia, and were made outside the ordinary course of trade. The circumstances surrounding Rainbow's one domestic sale of 2,4-D meant that it was not reasonably practicable for the Minister to determine the profit amount according to Regulation 45(2) of the Regulation. This is not an argument that intends to impute, in this review, the entire concept that, for the purposes of the Inquiry, there was not the possibility that like goods to those manufactured by the Australian industry were exported to Australia from China. Rather, it is an argument that maintains that the goods sold by Rainbow in the Chinese domestic market were not like goods to those Rainbow exported to Australia for the purposes of comparison as required to be undertaken by the Commission under Sections 269TAC and 269TACB of the Act.

We explain our client's contentions in this regard below.

(1) No domestic sales of like goods

First of all, it is worth noting that Report 430 proceeded to calculate the normal value in accordance with Section 269TAC(2)(c) of the Act, on the following basis:

> *The Commission is satisfied that there was not a sufficient volume of domestic sales made in the ordinary course of trade (OCOT) for any of the model groups of 2,4-D exported to Australia during the inquiry period.*
>
> *For those model groups where there were insufficient domestic sales of an identical model group, the Commission considered whether a surrogate model group would be appropriate. The specification differences between the relevant domestic like goods sales and the nominated exported goods could not be accounted for due to the margin of difference being too great. The Commission is therefore not satisfied that the prices paid in respect of domestic sales of 2,4-D are suitable for assessing normal value under subsection 269TAC(1).*[12]

Two key findings made here are that:

- there was not a sufficient volume of *"domestic sales made in ordinary course of trade*"; and

[12] Ibid, at page 31.

- there were significant *"specification differences"* between the *"domestic like goods sales"* and the exported goods, and that those differences were too great to be accounted for.

This reveals that the Commission departed from working out a normal value under Section 269TAC(1) on two bases – first, that there was an insufficient volume of domestic sales of like goods and, second, because the differences between the goods exported and those sold in the domestic market were considered to be "too great" and unable to be accounted for. The problem is that this highly relevant distinction – that the differences between the goods exported and those sold in the domestic market were considered to be "too great" and unable to be accounted for – then "went missing" in the construction of a "proxy" normal value under Section 269TAC(2)(c) of the Act. It appears to have been assumed by the Commission that because Rainbow sold 2,4-D product in the domestic market, that product must have been "like goods" to the exported 2,4-D product. As we will demonstrate with respect to this ground of review, this is not the case. We submit that the correct view is that there was an absence of domestic sales of like goods by Rainbow during the POI. That is, its domestic sales of 2,4-D products were not like goods to the 2,4-D it exported to Australia for the purpose of determining the normal value of the exported goods.

Under the Act, the expression "like goods" is defined as follows:

> *…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*[13]

The concept of "like goods" is relevant both in the context of identifying and assessing the Australian industry producing like goods, as well as in relation to the determination of a normal value for the goods exported to Australia, under Section 269TAC of the Act. The latter is the more relevant context for the present purpose.

Section 269TAC provides, in relevant part:

> *(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*
>
> *(2) […] the normal value of the goods for the purposes of this Part is:*

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13 See Section 269T of the Act.

> *(c) except where paragraph (d) applies, the sum of:*
>
> > *(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
> >
> > *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export-- such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;*

Similarly, Section 269TACB provides that levels of dumping are to be determined by comparing the export prices of the goods *exported* to Australia, as established under Section 269TAB of the Act, and the normal values in respect of *like goods* during that period, as established under Section 269TAC of the Act. Thus, for the purpose of working out a dumping margin for Rainbow in the Inquiry, it was incumbent on the Commission to identify the like goods by reference to the GUC actually exported by Rainbow during the POI. It would be incorrect, and was incorrect, for the Commission to adopt a "static" approach to the question of the comparison required to work out corresponding normal values by automatically regarding everything that falls into the description of the goods under consideration or, for the present "continuation" purpose, the goods subject to the measures, as like goods. This is especially the case when the GUC covers a broad range of products of different types, and where each type is not necessarily "like" another or others.

If any exporter concerned exported every type of the GUC during the POI, then it is conceivable that all of its domestic sales of product that also meet the description of the GUC would be "like goods". That group of products could be said to be identical, or to have characteristics closely resembling, the group of the goods the exporter did export. On the other hand, if the exporter only exported certain types of the GUC to Australia during the POI, and sold some other types of product that met the description of the GUC but were not of the same type as the goods exported to Australia, then it is possible that the product types sold in the domestic market could not be thought of as like goods to the goods exported to Australia. This is on the basis that the domestic sale, despite also meeting the description of the GUC, did not have characteristics closely resembling the type of product exported to Australia.

Report 430 provides the following description of the goods under consideration:[14]

> *2,4-D is a selective herbicide and is exported to Australia from China mainly in the forms of 2,4-D acid and 2,4-D ester.*

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[14] See Doc 014 – Report 430, at page 10.

The 2,4-D covered by the anti-dumping measures includes:

- *Sodium salt;*
- *2,4-D acid;*
- *2,4-D intermediate products (salts and esters), including:*
    - *iso butyl ester technical;*
    - *ethyl ester technical;*
    - *2 ethyl hexyl ester technical;*
    - *dimethylamine (DMA); and*
    - *iso-propylamine (IPA);*
- *2,4-D fully formulated products; and*
- *all other forms of 2,4-D.*

Further, depending on the type of 2,4-D products, different tariff headings and subheadings may apply:[15]

The goods are currently classified to the following tariff subheadings of Schedule 3 to the Customs Tariff Act 1995:

Tariff Subheading	Statistical Code	Unit	Description
2918.99.00	43	Kg	*2,4-Dichlorophenoxyacetic acid (free acid)*
2918.99.00	44	Kg	*Salts and esters of 2,4-dichlorophenoxyacetic acid*
2918.99.00	48	Kg	Other
3808.93.90	41	Kg	*Goods wholly of, or with a basis of 2,4-D dichlorophenoxyacetic acid, its salts or esters*
3808.93.90	53	Kg	Others

Table 4: 2,4-D Customs Tariff Classifications

In Rainbow's case, it is readily apparent that the GUC covered a range of goods of different types and characteristics.

(a) Description of export sales

Rainbow exported three types of 2,4-D products to Australia during the POI. In Rainbow's response to the Exporter Questionnaire these were referred to as "technical", the "soluble concentrate" and the "emulsifiable concentrate".[16] Rainbow used "technical" to refer to the purified 2,4-D acid in either acid crystalline solid forms (the acid) or ester liquid form. These "technicals" are pure 2,4-D chemical acid and are sold in kilograms (rather than "litres and

15 Ibid, at pages 10 and 11.
16 See Doc 004 – Rainbow Exporter Questionnaire –Exhibit B-4 Australian Sales spreadsheet, and the "Exhibit G-1.1 Production Flow Chart".

kilolitres" for formulated 2,4-D products, see below for more detail). They are used as raw materials or "intermediate" products for the preparation and formulation of 2,4-D products. "Technicals" cannot be applied directly as herbicide. On the other hand, the "soluble concentrate" and "emulsifiable concentrate" products are fully formulated products ready to be applied directly to crops, once diluted with water. In line with the product type classifications referred to above, Rainbow's "technical" products are the "2,4-D acid" and the 2,4-D "intermediate products", specifically, the "**[CONFIDENTIAL TEXT DELETED – Australian sales details]**". On the other hand the "soluble concentrate" and "emulsifiable concentrate" products can be classified as *"2,4-D fully formulated products"*.

Over **[CONFIDENTIAL TEXT DELETED – number]**% of Rainbow's Australian sales of the GUC were of the *fully formulated* 2,4-D products, being the soluble concentrate and the emulsifiable concentrate products. These products are in the form of liquids and sold in litres/kilolitres, as compared to the acid/technical, which is sold by kilogram. These products are comparable to the "*formulated 2,4-D products*" which appears to the only type of product as produced and sold by Nufarm in Australia, which is to be "*diluted with water before sprayed onto acreage*".[17] Rainbow exported the fully formulated products under the tariff heading 3808.93, as herbicide.[18]

As mentioned above, the other 2,4-D products exported by Rainbow to Australia are the "technical" 2,4-D acid products. These are not formulated products. They were exported under the tariff heading 2918.99, as the 2,4-D acid chemical itself.

(b) Description of domestic sales

On the domestic side, Rainbow's only domestic sale of 2,4-D product during the POI was a single sale of 2,4-D technical **[CONFIDENTIAL TEXT DELETED – product type]**. The 2,4-D **[CONFIDENTIAL TEXT DELETED – product type]** and was sold, as a type of **[CONFIDENTIAL TEXT DELETED – product type]** product, to be used as a raw or intermediate material for the preparation or formulation of other products. Under the Commission's classification, the 2,4-D **[CONFIDENTIAL TEXT DELETED – product type]** would have been classified as "**[CONFIDENTIAL TEXT DELETED – product type]**". If exported, the 2,4-D **[CONFIDENTIAL TEXT DELETED – product type]** would come under the tariff heading 2918,99, as a chemical acid.

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17 See EPR 430 Doc 009 – Australian industry Verification Report – Nufarm, at page 4.

18 This is supported by the 5% VAT rebate rate applied to the goods exported under tariff heading of 3808.

In our view, it is quite clear that Rainbow's domestic sale of the [CONFIDENTIAL TEXT DELETED – product type] was not of the same type of any of the 2,4-D products it exported to Australia during the POI. The [CONFIDENTIAL TEXT DELETED – product type] is a different product. It did not have characteristics closely resembling the 2,4-D products that Rainbow exported to Australia during the POI.

Even if we are to take a broad-brush approach in comparing the type of the single sale of the one product sold in Rainbow's domestic market with the types exported to Australia, 2,4-D [CONFIDENTIAL TEXT DELETED – product type] could only be compared, in the sense of having some "family" resemblance, to the other forms of 2,4-D technicals exported by Rainbow, namely 2,4-D acid ([CONFIDENTIAL TEXT DELETED – product type]) and 2,4-D ester technical ([CONFIDENTIAL TEXT DELETED – product type]). These products can be "grouped" together as a range of broadly similar products in that they have the same function as 2,4-D acid/technical, being used as raw material acid for the production of formulated products, and classified under the tariff heading 2918.99. On the other hand, [CONFIDENTIAL TEXT DELETED – product type] and the "technical" 2,4-D products have no close resemblance to the fully formulated 2,4-D products exported by Rainbow to Australia during the POI, which represented almost the entirety of its export sales of the GUC to Australia.

To further demonstrate the differences between the formulated 2,4-D products and the "technical/acid", we refer the Review Panel to the following paragraphs in Report 430 explaining the different production process and function of the 2,4-D acid/technical as compared to formulated 2,4-D products:[19]

> ***4.3 2,4-D Production process***
>
> *Subsections 269T(2) and 269T(3) specify that for goods to be taken as produced in Australia:*
>
> - *they must be wholly or partly manufactured in Australia; and*
> - *where the goods have been partly manufactured in Australia, then at least one substantial process in the manufacture of the goods must be carried out in Australia.*
>
> *During the verification visit of the applicant, the Commission verified the production process of like goods. Finished goods containing the 2,4-D as an active ingredient are the result of a formulation process which starts with 2,4-D acid. 2,4-D acid is itself a*

[19] See Doc 014 – Report 430 at page 14.

discreet product which is produced by Nufarm. However, Nufarm does not sell the 2,4-D acid it produces and consumes this in the production of its 2,4-D formulation products.

4.3.1 Production of 2,4-D acid

2,4-D acid is produced from a chemical reaction involving chlorine, phenol, sodium monochloracetate acid and hydrochloric acid. This process is performed by Nufarm at its Laverton North facility in Melbourne.

2,4-D acid is supplied in acid form or converted to 2,4-D salts or esters (e.g. DMA or 2 ethyl hexyl ester).

The purpose of this conversion process is simply to convert 2,4-D acid into a soluble form. As stated previously, Nufarm is the only member of the Australian industry who possesses the capability to produce 2,4-D acid, or intermediate, as it is otherwise known.

4.3.2 Formulation process

After the 2,4-D acid is converted to either 2,4-D salts or esters, it is combined with other components (incipients) and water into a fully-formulated product, ready for application as a herbicide. Based on the observations made during the verification visit to Nufarm undertaken for this inquiry, the Commission observed that the formulation manufacturing process compared to the acid process is less complex and requires significantly lower levels of plant and equipment. In Australia, the production of formulated 2,4-D products is undertaken by the applicant and numerous other Australian firms who use imported intermediate 2,4-D material sourced from China.

[underlining supplied]

The two products – acid/technical and formulated – are produced in industrial processes that are not parallel. Instead, one is subsequent to the other. The production processes impart entirely different qualities to each. They cannot be used for the same purpose. In the same way that a part for a car is not like the finished car, technical 2,4-D is not like formulated 2,4-D.

Accordingly, we submit that it was incorrect and unreasonable to determine the profit amount for normal value determination purposes under Regulation 45(2). Rainbow did not have any domestic sales of like goods during the POI for that purpose. Rainbow's only domestic sale was of 2,4-D acid **[CONFIDENTIAL TEXT DELETED – product type]**. Rainbow did not export 2,4-D acid **[CONFIDENTIAL TEXT DELETED – product type]** to Australia during the POI.

For all the reasons we have explained above, we ask the Review Panel to find that Rainbow's domestic sale of the intermediate **[CONFIDENTIAL TEXT DELETED – product type]** was not a sale of like goods to Rainbow's export sales of the fully formulated 2,4-D products during the POI.

On that basis a Regulation 45(2) based profit was not available for the purpose of calculating normal value for the fully formulated 2,4-D products exported by Rainbow during the POI.

(2) No domestic sales of like goods in ordinary course of trade

In addition and in the alternative to B(1) above, Rainbow submits that Regulation 45(2) was not the correct or reasonable basis for calculating the normal value, because Rainbow's domestic sale of 2,4-D was not in the ordinary course of trade, thus also not meeting the requirement of Regulation 45(2) that the sales relied upon for profit purposes are in the ordinary course.

In assessing whether particular transactions are in the ordinary course of trade, the first point of reference is the profitability-based ordinary course of trade ("OCOT") assessment provided for under Section 269TAAD of the Act. In addition, the Commission recognises that there are circumstances which, apart from the test prescribed under 296TAAD, sales may be found to be outside the ordinary course of trade. As discussed in Report 430:[20]

> *In addition to the OCOT test in section 269TAAD of the Act, the Commission has also had regard to the circumstances of the domestic sale of the like goods reported by Rainbow for the inquiry period. In section 7.2 of the Anti-Dumping Commission's Anti-Dumping and Subsidy Manual (the Manual), the Commission's policy refers to circumstances which may require a finding that sales are not in the ordinary course of trade for reasons other than when the selling price is below the combined cost of production and selling, general and administrative costs.*

Section 7.2 of the Manual provides:

> *Depending on the circumstances, profitable sales may not be in the ordinary course of trade. These circumstances may include sample sales, promotional sales made at special prices, end of season sales, low quality sales, or sales in other unusual circumstances.*[21]

The Manual also provides:

> *Other conditions in the market which may render sales in that market not suitable for use in determining prices under subsection 269TAC(1) may include:*
>
> - *differing patterns of demand in the exporter's domestic market and the sales to Australia (including domestic sales significantly different in character or design features to the types exported; domestic sales through a single sales channel (including via a related party distributor); and unusual patterns of sales in the domestic market for the good). Implicit in such findings is the assumption that it is not possible to make reasonable adjustments to ensure comparability of the domestic sales prices;*

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20 Ibid, at page 34.
21 See Dumping and Subsidy Manual, at page 33.

- *where only a single sale to one customer constitutes 5 per cent of the sales to Australia;*
- *significant barter trade; or*
- *non-commercial processing arrangements.*[22]

As mentioned above, the domestic sale in question –Rainbow's entire domestic sales of 2,4-D products during the POI - was a single sale of 2,4-D acid **[CONFIDENTIAL TEXT DELETED – product type]**. This sale was made under a single sales contract to a single domestic customer and shipped out under two invoices. It was only **[CONFIDENTIAL TEXT DELETED – number]** MT of **[CONFIDENTIAL TEXT DELETED – product type]**. This domestic sale, being Rainbow's only domestic sale of a product falling within the scope of the Inquiry, amounted to **[CONFIDENTIAL TEXT DELETED – number]**% of Rainbow's total Australian sales of the GUC in value terms.

We note that Rainbow and its legal representatives made quite detailed submissions on this issue during the Inquiry. This is unsurprising, because the point they were making was an obvious one, and the facts that ought to have seen the sale being treated as not in the ordinary course fell squarely within the terms of the Manual that justified that conclusion - but it was continually rejected by the Commission.

Rainbow pointed to the following reasons (patiently at first, but later with greater anxiety) as to why its domestic sale of 2,4-D products was not in the ordinary course of trade. These reasons included: [23]

- the low volume of the domestic sale;
- Rainbow's business model as an export oriented and export dominated company, and not as a domestic seller of the goods;
- Rainbow's internal policy of not ordinarily engaging in domestic sales of 2,4-D acid (technical) product;
- other irregularities concerning this single domestic sale;
- unreasonableness of the profit ratio derived,

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22 Ibid, at page 37.

23 See EPR 430 Doc 008 – Rainbow submission and Rainbow's emails to the Commission dated 9 October 2017, 28 November 2017 and 15 December 2017.

all backing up the lack of ordinariness of the sale, as opposed to its ordinariness as maintained by the Commission.

Report 430 helpfully summarises the key factual elements in Rainbow's claim as follows:

> *In addition to its position that the available volume of like goods sales precludes the Commission from relying on these sales as a basis for profit under subsection 45(2) of the Regulation, Rainbow put forward the following range of other factors to support why the domestic sales of like goods are not suitable;*
>
> - *the sale was made in contravention of Rainbow's internal policy;*
> - *the sale [number of transactions] transaction which occurred in the inquiry period;*
> - *the sale was to a [description of end use] on the domestic market;*
> - *the selling price, [price negotiation];*
> - *the profit margin on the sale [comparison of profit margin] profit of the GUC exported by Rainbow and other agrochemical producers in China; and,*
> - *the profit margin prevented fair comparison between export price and normal value.*
>
> *The Commission provides the following in response to each of the points raised above.*[24]

Report 430 then went on to reject Rainbow's claims. However, we consider that the Commission's analysis and the reasons cited for those rejections either reflected a misunderstanding of the circumstances presented by Rainbow or were driven by policy factors that, so far as we can tell, are not recorded in the Manual and would not be consistent with law. In essence, the Commission was not satisfied that the factors raised by Rainbow supported its claim that the domestic sale was not in the ordinary course of trade. The opinion of the Commission was said to be based on views and opinions that we will now recount and rebut.

First, in relation to Rainbow's otherwise internationally-focussed sales policies, Report 430 determined that:

- domestic sales can be undertaken under special circumstances if authorisation is granted;
- the word "technical" is not exclusively for 2,4-D; and

[24] See Doc 014 – Report 430, at page 34.

- Rainbow *"appears"* not to have not strictly followed its internal policy because Rainbow did make domestic sales of herbicide products.

We disagree. The significance of Rainbow's sales policy should be recognised as evidence and confirmation of what the turnover statistics show. That is, Rainbow's business is export-oriented. Rainbow's total domestic sales of 2,4-D product accounted for only [CONFIDENTIAL TEXT DELETED – number]% of Rainbow's total company turnover. Rainbow's total domestic sales for all products also only accounted for about [CONFIDENTIAL TEXT DELETED – number]% of its total company turnover. The sales policy simply confirms that Rainbow has a documented internal policy *not* to make domestic sales as part of its *ordinary* business operations, for various commercial reasons.

Secondly, in terms of the frequency and volume of Rainbow's "domestic sales" (a single sale) of "like goods", Report 430 considered that:

> *The domestic sale was [product variant] 2,4-D which was also exported to Australia. In comparison to the volume of [product variant] 2,4-D exported to Australia during the inquiry period, the domestic sales represent [percentage of export sales volume]. The Commission does not consider this to represent an insignificant volume.*[25]

We disagree. The fact that Rainbow made a domestic sale of a 2,4-D product, as well as a number of other agrichemical products, and did so in extremely low volumes, indeed demonstrates that the internal sales policies were being implemented, rather than to suggest otherwise. This is clearly a case of the exception proving the rule, rather than undoing it. Such sales do not detract from the exceptional nature of Rainbow's one domestic sale of a 2,4-D product. The question of whether or not the sales policy was being followed to such a degree that there was absolutely no domestic sales is moot. That is not the point. The point is that it is a known and documented business practice of Rainbow not to engage in domestic sales as part of its ordinary trading

We submit that Report 430 was also incorrect and misguided in suggesting that Rainbow's domestic sale of 2,4-D was not of an *"insignificant volume"*. We have referred to the small volume of Rainbow's single domestic sale in comparison to the volume of its Australian sales of the GUC a number of times in this application. We have also noted, at A above, that most of Rainbow's Australian sales of the GUC were of fully formulated 2,4-D product, and that Rainbow also exported a very small amount of 2,4-D acid technical to Australia, accounting for about [CONFIDENTIAL TEXT DELETED – number]% of Rainbow's total Australian sales in value terms. The Commission's claim that Rainbow's domestic sale of

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25 Ibid, at page 35.

2,4-D was not insignificant as it represented [CONFIDENTIAL TEXT DELETED – number]% of Rainbow's Australian sales of 2,4-D technical product merely "plays with numbers" in order to create a grander effect than would otherwise be the case. 2,4-D technical product only represented [CONFIDENTIAL TEXT DELETED – number]% of Rainbow's Australian sales of the GUC. The Commission's intended use of that one domestic sale of the technical 2,4-D product is to apply a profit amount to the vast majority of Rainbow's Australian sales, being fully formulated products sold in litres/kilo-litres. The comparison highlights the insignificance of Rainbow's domestic sale, rather than making it seem more significant.

Thirdly, in terms of Rainbow's claim that the domestic sale took place under special circumstances due to the type of customer, the intended end-use/end-market of the product in the domestic market, and the unusually high price, Report 430 stated that:

> [CONFIDENTIAL TEXT DELETED – confidential text from the Report][26]

and that the high priced domestic sale was to an unrelated party and there is nothing that suggest the transaction was "*unusual and not in ordinary course of trade*".[27]

We disagree. Rainbow considers Report 430's comment that "[CONFIDENTIAL TEXT DELETED – confidential text from the Report]" to be a misunderstanding on the part of the Commission. Rainbow advised that its domestic sale of 2,4-D [CONFIDENTIAL TEXT DELETED – product type] was not in the ordinary course of trade as it was affected by special consideration given to the end-use and the specific customer in the transaction. The customer was a one-off customer, as opposed to a regular customer of Rainbow, that purchased only that small volume of the product, and did so for the purpose of producing a growth regulator. The term "growth regulator" could be taken to encompass the function of a herbicide, in the same way as "friendly fire" euphemistically reflects the fact that an army has killed someone it didn't intend to kill. The term was used by Rainbow to reflect its understanding that the 2,4-D [CONFIDENTIAL TEXT DELETED – product type] was purchased by the particular domestic customer as a raw material to produce a chemical for promoting growth, rather than to "kill" a plant as a herbicide. It is in this context that Rainbow emphasised that this domestic sale could not be considered to be in the ordinary course of 2,4-D sales. It was not considered by Rainbow to be a sale of a 2,4-D product to be used as herbicide, which is the ordinary use and market for most 2,4-D products. This factor contributed to the decision to depart from Rainbow's normal sales policy, applied with almost complete uniformity in

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26 Ibid, at page 36.
27 Ibid.

the ordinary course of its business, and to engage in an exceptional one-off transaction at what was an irregularly high price.

Accordingly, and to recap, Rainbow's business model, its domestic sales policy, the special consideration given to a one off domestic sale at low volume, to a different end-market for different end use, at a price unusually high for herbicide, altogether paints a special circumstance which supports Rainbow's position that its domestic sale of 2,4-D during the POI was not made in the ordinary course of its trade.

(3) Non-comparative and unreasonable sale for the normal value construction

In addition to the above, we submit that the Review Panel should recommend to the Minister that it was not reasonably practicable for the profit amount to be determined pursuant to Regulation 45(2). We make this submission in light of the clear differences between the product sold by Rainbow in the domestic market and all or most of the GUC exported by Rainbow to Australia, in terms of physical characteristics; commercial and functional differences; patterns of sales; the significant volume difference; Rainbow's sales policy and practices; and the exceptional nature of the domestic sale. The Review Panel is requested to recognise that it was correct and preferable to find that the use of Rainbow's only domestic sale of 2,4-D [CONFIDENTIAL TEXT DELETED – product type] as the *"data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade"* is not be a reasonably practicable exercise.

Equally as important to the proposition that the exercise is not reasonably practicable, the comparison that the Commission came up with in Report 430 in order to determine a "proxy" domestic sale of like goods as the basis for normal value was evidently flawed. A normal value must represent a fair comparison with the *corresponding* export price as required under Section 269TACB of the Act. The profit generated from Rainbow's domestic sale of the 2,4-D technical product as the basis for the profit uplift to the normal value under Section 269TAC(2)(c) does not fulfil the requirement of a fair comparison between export price and the corresponding normal value. The significant differences associated with that domestic sale means that it is inappropriate for the profit to be used. It does not accommodate the correspondence required under Section 269TACB(1), which is an essential element of the "fair comparison" requirements of the WTO *Anti-Dumping Agreement*.

The unreasonableness of the high profit generated from Rainbow's single sale of the [CONFIDENTIAL TEXT DELETED – product type] in the domestic market, at 32.8%, is highlighted by the following:

- in the POI the *gross* profit (not taking into account selling, general and administration costs, or "SG&A") of Rainbow's total domestic sales of all product (all agrichemical products) was [CONFIDENTIAL TEXT DELETED – number]% for sales to unrelated customers, and [CONFIDENTIAL TEXT DELETED – number]% to both related and unrelated customers;[28]

- in the POI the *gross* profit of Rainbow's total sales of herbicide product and of all "agrochemical products" (for all market destinations) was [CONFIDENTIAL TEXT DELETED – number]% and [CONFIDENTIAL TEXT DELETED – number]% respectively.[29]

- in 2016, the *gross* profit of Zhejiang Wynca Chemical Industry Group ("Wynca"), being a well-known listed agrichemical producer in China, was publicly reported at 10.24% for all agrichemical products;

- in the same annual report as that referred to in the previous dot point, Wynca reports its *gross* profit for its total domestic sales at 16.63%, meaning that its domestic net profit, once SG&A costs are included, would have been around 4%.[30]

These comparisons highlight that using the profit ratio of [CONFIDENTIAL TEXT DELETED – number]% derived from a one-off domestic sale of [CONFIDENTIAL TEXT DELETED – product type] to a single customer did not arrive at a normal value that could be considered to be a proxy domestic sale of "like goods" for comparison purposes. The proxy did not correspond with the export sales.

11 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

Given the unsuitability of Regulation 45(2), we submit that the correct and preferable decision is for the construction of normal value, in relation to profit, on the basis of Regulation 45(3). In this regard, Rainbow already presented information which is relevant for determining the amount of profit under Regulation 45(3)(a) and (c), namely:

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28 See Doc "Detail information of the gross profit for domestic sales made by Rainbow (IP) 1607-1706", provided to the Commission on 15 December 2017.

29 See Doc 008 – Rainbow submission, at pages 5 and 6.

30 Ibid, at pages 25 and 26.

- the gross profit margins of Rainbow's domestic sales of all agrichemical products, being the same general category of goods as the GUC; and

- relevant profit information concerning Wynca, representing the profit normally realised by a producer of agrichemical products in China.

In relation to the first dot point, as observed by the Commission, of the [CONFIDENTIAL TEXT DELETED – number] types of product sold by Rainbow in the domestic market, [CONFIDENTIAL TEXT DELETED – number] were [CONFIDENTIAL TEXT DELETED – product type].[31] Rainbow's total domestic sales therefore represent a suitable *"same general category"* as Rainbow's 2,4-D exports to Australia.

In alternative, and if the Commission is of the view that none of the methods prescribed under Regulation 45 can be applied, it would also be open to secure the continuation of the measures with the variable factors remains unchanged, that is, to maintain the rate of duty at 0%.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

The proposed decision referred to in 11 above would result in a decision that is materially different from the reviewable decision because it would require the Minister to determine the amount of profit under Regulation 45(3) rather than 45(2). Under Regulation 45(3), the amount of profit would be significantly reduced, as we have proposed above, and in light of the relevant information provided by Rainbow. The lower normal value would negate the dumping margin.

Conclusion and request

The decision to which this application refers is a reviewable decision under 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that our client seeks to have reviewed.

Rainbow is an interested party in relation to the reviewable decision.

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[31] See Doc 014 – Report 430, at page 35.

Its application is in the approved form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decision that should result from the grounds that are raised in the application are dealt with in A and B above.

Accordingly, being fully compliant with the requirements of the Act, Rainbow requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Parliamentary Secretary that, in accordance with Section 269ZZM the reviewable decision (being the decision to publish notices under Sections 269ZHG(1) and (4)(a)(iii)) be revoked and substitute another decision to publish a notice that declares the Minister's decision to secure the continuation of the anti-dumping measures in the same terms as that made on 5 March 2018 and with effect from that date but amended so that the continuation of the anti-dumping measures is so secured, and that in relation to the dumping duty notice:

- the Minister is to make a new determination taking into account the correct or preferable determination of variable factors to be fixed for Rainbow under Section 269ZHG(4)(a)(iii); or
- the Minister is to make a new determination, that the notice continues in force after the expiry day under Section 269ZHG(4)(a)(i), without changes to the variable factors

Lodged for and on behalf of Shandong Weifang Rainbow Chemical Co., Ltd

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