



Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel
C/O Legal, Audit & Assurance
Department of Industry, Innovation and Science
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By EMAIL

Mr Dale Seymour
The Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Dear Commissioner,

ADRP Review No. 79 - Dichlorophenoxy-acetic acid (2,4-D) exported from the People's Republic of China

The Anti-Dumping Review Panel (Review Panel) is currently conducting a review of the decision of the Assistant Minister for Science, Jobs and Innovation/Parliamentary Secretary to the Minister for Jobs and Innovation (Assistant Minister) made on 5 March 2018 under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act) to continue the anti-dumping measures applying to 2,4-D exported from the People's Republic of China.

The Review Panel accepted the application for review from Shandong Weifang Rainbow Chemical Co., Ltd (Rainbow).

As you are aware, I am conducting the review.

Pursuant to section 269ZZL of the Act, I require the following finding in Report 430, relating to the Applicants grounds of review, be reinvestigated:

- The normal value constructed under s.269TAC(2)(c) of the Act for Rainbow's exports of 2,4-D, and, if any change is made to the normal value;
- The dumping margin for those exports.

I provide below a summary of my reasons for making the request under s 269ZZL of the Act:

1. Rainbow is an exporter of 2,4-D products to Australia from the Republic of China (China). During the continuation inquiry, the normal value for its exports to Australia was constructed under s.269TAC(2)(c) of the Act.
2. An upwards adjustment was made to the constructed normal value for Rainbow's exports to account for the cost of unrefunded VAT costs.¹ The calculation of the adjustment is set out in Confidential Attachment 5.3 to REP 430 and appears to be the difference between a rate of 17% and the rate of VAT refunded being either 5% or 13%.
3. The basis for the adjustment is not set out in REP 430 but the Exporter Verification Report for Rainbow states:

"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."²
4. In its application for review, Rainbow contends that the use of the rate of 17% was an error. This is because a VAT rate of 13% applies to the sale of agricultural products in China and 2,4-D products are sold as agricultural products. In support of its contention, Rainbow referred to two sales, the documents for which were before the Anti-Dumping Commission during the continuation inquiry. The documents for one of the sales does support the contention that the applicable rate is 13%. The documents for the other sale do not appear to do so.
5. It is possible that the rate of VAT for 2,4-D products sold in China varies depending on the state of production of the product being sold. However, it is not possible to determine whether this is the case from the documents available to the Review Panel. It is also unclear from the available material what rate of VAT should be used for the calculation of the upwards adjustment. I note that it should be the rate for the 2,4-D products which were exported to Australia on the assumption that those goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China.

If you have any issues in relation to the reinvestigation or if you consider that a conference under s 269ZZHA of the Act would assist in obtaining the further information the subject of the reinvestigation, please contact the Secretariat.

Please could you report the result of the reinvestigation within 60 days, that is, by **7 August 2018**.

¹ REP 430, section 7.3.2 Table 5 at page 32.

² EPR 430 Doc 007 Exporter Verification Report.

Thank you for your assistance.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Joan Fitzhenry', written in a cursive style.

Joan Fitzhenry
Senior Panel Member
Anti-Dumping Review Panel
8 June 2018