

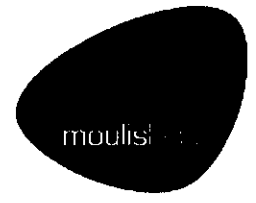
164

Canberra  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
ACT 2609 Australia

Telephone +61 2 6163 1000  
Facsimile +61 2 6162 0606  
Email: info@moulis-egal.com  
www.moulis-egal.com

16 July 2012

Ms Joanne Reid  
Director  
International Remedies Branch  
Australian Customs and Border Protection Services  
Customs House  
5 Constitutional Avenue, Canberra  
Australian Capital Territory



commercial-international

Attention: Ms Christie Sawczuk

By email

Dear Ms Reid

**Alleged dumping of formulated glyphosate from China  
Wynca's response to SEF and to exporter visit report comments**

We write on behalf of Zhejiang Xinan Chemical Industrial Group Co., Ltd ("Wynca") and Wynca's related company Zhejiang Wynca Import and Export Co., Ltd in relation to this matter, referred to as "Zhejiang Xinan" and "Wynca IE" in Statement of Essential Facts No.183 ("the SEF").

Our client welcomes Customs' conclusions in the SEF and in Wynca's exporter visit report ("the Wynca visit report") that Wynca did not engage in dumping of the goods under investigation, and that any injury alleged by the Australian formulated glyphosate industry cannot be attributed to dumping.

The Wynca visit report formed part of the basis of the findings in the SEF. On 12 July 2012, the applicants in this matter – Nufarm and Accenci ("the Applicants") – lodged a submission ("the Applicants' submission") commenting on a number of aspects of the Wynca visit report.<sup>1</sup> This was more than a month after the Wynca visit report was placed on the public record, and two working days before the due date for interested parties to make submissions in response to the SEF.

In this submission we provide Wynca's comments regarding some of the matter raised in the Applicants' submission and in the SEF.

**1 Zhejiang Xinan and Wynca IE as single economic entity**

The Applicants' submission claims that Customs should have determined separate normal values for Zhejiang Xinan and Wynca IE.

---

<sup>1</sup> Letter from John O'Connor & Associates on behalf of Accenci and Nufarm to Customs dated 10 July 2012 in relation to the Wynca visit report.

**NON-CONFIDENTIAL**

In our client's submission Customs has correctly treated Zhejiang Xinan and Wynca IE as a single economic entity. As pointed out in the Wynca visit report, Wynca IE is simply the corporate separation of Zhejiang Xinan's import and export branch from Zhejiang Xinan. At all relevant times Zhejiang Xinan was the sole manufacturer of the goods. At no time has Wynca IE sold the goods domestically. Wynca IE is a wholly owned subsidiary of Zhejiang Xinan. What it does differs in no practical or physical way from what it used to do as an administrative branch within Zhejiang Xinan.

This approach is open to Customs<sup>2</sup> and is consistent with Customs practice in other cases.<sup>3</sup>

## 2 Intercompany sales and ordinary course of trade

The Applicants' submission claims that Wynca IE's purchase price from Zhejiang Xinan should have been tested to confirm whether production costs were recovered.

We note that the ordinary course of trade test is only relevant in connection to the determination of normal value. The intercompany transfers between Zhejiang Xinan and Wynca IE were for the purpose of export. Those sales of the goods were not for domestic consumption under Section 269TAC(1) of the *Customs Act* 1901 ("the Act"). Wynca IE did not make any domestic sales during the period of investigation.

Also in this regard, the Applicants' submission asserts that the SG&A costs of Wynca IE have not been separately verified, and that:

*CTMS data verified by Customs for each product size of formulated glyphosate can only be described as a "shandy" of costs that are not directly identifiable with the entity undertaking the sales function.*

*The identified oversights impact the normal values determined for Xinan and Wynca. On the basis that costs have not been correctly allocated, there can be no reliance placed on whether sales considered to be in the ordinary course of trade can be treated as such.<sup>4</sup>*

We note that Wynca IE's SG&A costs were presented to Customs and were verified by Customs.

The Applicants' submission also asks "*whether all retail sales are in the ordinary course of trade...*" (emphasis from original). We understand that Customs has conducted the ordinary course of trade test across all domestic sales of the like goods, and used only sales that passed that test for normal value purpose.

---

<sup>2</sup> *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*, in which the treatment of related parties to be a single exporter was found by the Panel to be consistent with the *WTO Anti-Dumping Agreement*.

<sup>3</sup> Termination Report 178, concerning alleged dumping of certain electric cables exported from China, where Customs treated the Guilin group of companies as a single export entity.

<sup>4</sup> Applicants' submission, page 2.

### 3 Surfactant cost

The Applicants' submission queries "whether the appropriate and relevant surfactant cost has been verified".

We note that Customs did verify the costs of different surfactants. The Applicant's will have noted the following statement in the Wynca visit report in this regard:

*We asked Zhejiang Xinan to provide an invoice for the purchase of [CONFIDENTIAL TEXT DELETED] (confidential attachment CTMS 15). The product was purchased through the Chinese branch of a [CONFIDENTIAL TEXT DELETED] chemical company. The invoice shows a unit price that corresponds to the unit value shown in the monthly cost calculation sheets.*

*We also asked Zhejiang Xinan to provide its cost calculation sheet for one of the [CONFIDENTIAL TEXT DELETED]. We chose the [CONFIDENTIAL TEXT DELETED] product. The cost calculation sheet (confidential attachment CTMS 16) shows a unit production cost which is carried forward into the formulated glyphosate product cost calculation sheets.<sup>5</sup>*

### 4 Specification adjustment

The Applicants' submission states:

*At Section 9.1 of the Report, Customs indicates that it calculated an "average cost of surfactants used" as a starting point for a specification adjustment. On the basis of the specificity associated with surfactant used in particular markets, difference in actual surfactant costs should have been applied by Customs. The use of average surfactant costs will mask the true CTM&S the GUC – whether for domestic or export markets.<sup>6</sup>*

We note that Customs did calculate the costs of surfactants for specification adjustment purposes, taking into account specific markets and products. The Applicants' claim appears to be a misinterpretation of the Wynca visit report. We note that the report reads:

*We calculated the average cost of surfactants used to produce the [CONFIDENTIAL TEXT DELETED] product...<sup>7</sup> [emphasis added]*

Further, the Applicants' submission alleges that

*...the adjustment made by Customs will be influenced by average surfactant cost verified. The adjustment for the grade differences will likely be understated due to the apparent use of "average" surfactant costs.<sup>8</sup>*

---

<sup>5</sup> Wynca visit report, page 50

<sup>6</sup> Applicants' submission, page 2

<sup>7</sup> Wynca visit report, page 55

<sup>8</sup> Applicants' submission, page 3

As mentioned above, the average costs determined by Customs have taken into account the specificity of products and markets. With respect, the Applicants appear to have misunderstood the methodology.

Further, the "average" is the average of the actuals. The implied suggestion that the average methodology is incorrect and that each separate batch or order needs to be broken out of the factory cost records to identify the precise mix is neither practical – it cannot be achieved without many weeks of manual accounting work – nor is it necessary.

Regarding the Applicants' claim that the differences will likely to be understated, our client considers that it is appropriate to use weighted average costs for the purpose of specification adjustment given differences in formulation. However, based on our client's own calculations, the adjustment calculated by Customs is likely to have been slightly overstated, rather than understated.

## 5 Packaging cost

The Applicants' submission claims that Zhejiang Xinan sources packaging requirements from related party and such costs have not been "arms' length" tested.

We note that Zhejiang Xinan sourced packing materials from both related and unrelated parties. Customs verified both the costs and the prices of these packing materials during the verification visit.

## 6 SG&A expenses

The Applicants' submission suggests that:

*There is a clear delineation of SG&A costs from 1 September 2011 between Xinan and Wynca. Customs has failed to correctly verify the relevant entity's actual S,G&A costs incurred as they apply to the GUC (whether for domestic or export market)<sup>9</sup>*

This suggestion is incorrect. Zhejiang Xinan and Wynca IE both provided their SG&A data which was properly verified by Customs during the verification. Customs has not failed to correctly verify the actual SG&A costs incurred by the relevant entities. In any case, this is a criticism without any apparent "argument" or "relevance" flowing from it – Wynca IE did not make domestic sales.

## 7 Verification of domestic charges

The Applicants' submission asserts that Customs did not verify Zhejiang Xinan's domestic freight charges, and questions the basis for the making of an adjustment relating to freight.

We note that domestic freight was verified and reported on Wynca visit report by Customs at part 7.4.2 of the report. Further, the cost of inland freight provided by a related party was checked against third party freight costs.

---

<sup>9</sup> Applicants' submission, page 3

## 8 As well as no dumping, no injury has been suffered

The injury analysis in the SEF indicates that:

- (a) The Australian industry's sales volume has been in a growing trend, despite the slide in 2011.
- (b) The Australian industry has consistently enjoyed a very high market share (above 70%) since 2008.
- (c) The Australian industry's decrease of sales volume in 2011 coincided with the decline of the total market.
- (d) The Australian industry had almost a monopoly position in 2009, controlling 89% of the total Australian market, during which time Chinese imports accounted for only about 8% of the total market.
- (e) Regarding Nufarm's profitability, and the cause of any decline in that profitability:

*...the profitability of Nufarm's own formulated glyphosate sales, followed similar trends compared to profits, which decreased from 2010 to 2011 but to levels higher than 2009 (which reflects the period in which Nufarm made significant sales returns due to highly overvalued inventory) although below 2008 overall<sup>10</sup>*

- (f) Profits for Nufarm's third party sales have improved since 2009.
- (g) Accensi's profit increased from 2010 to 2011.
- (h) The market share of total Chinese imports decreased in 2011.

These findings do not create the impression that material injury has been suffered by the Australian industry at all.

In terms of factors impacting on this injury analysis, Customs has identified that:

*...the following factors affect Nufarm's financial data, which may impact analysis of injury factors:*

- *large returns of sales product (which was written off);*
- *bad debts;*
- *introduction of new (higher premium) product formulations to replace existing*
- *product formulations; and*
- *cessation of third party (toll manufactured) sales during certain period.*

*The first two factors impact on Nufarm's financial data prior to the investigation period and*

---

<sup>10</sup> SEF, page 53

*for the purpose of this report, trends over time are being considered.*<sup>11</sup>

We note that causation is not detailed in the SEF because of the fact that no dumping has been identified and because Customs proposes to recommend that the investigation be terminated for that reason. Nonetheless, our client submits that the Australian industry has not experienced material injury; and that its financial position is a result of company management and business decisions under normal competitive conditions.

## 9 Wynca has not caused injury to Australian industry

We support Customs preliminary conclusion that the formulated glyphosate exported by Wynca is not dumped. Furthermore, we submit that, quite apart from the "no dumping" result, any injury claimed or experienced by the Australian industry cannot be attributed to Wynca's exports.

As illustrated in the SEF, the market share held by the Australian industry in the overall Australian market for formulated glyphosate has been consistently above 70% since 2008, and was about 71% during the period of investigation. The market share of Chinese imports in 2011 was about 20%.

Wynca understands that out of that 20% market share, Wynca has accounted for only a very small proportion of the total volume of the formulated glyphosate imported from China. Our understanding is that its export volume is the smallest of the three exporters verified in this investigation. Wynca estimates that its market share of the Australian formulated glyphosate market was a very low single digit percentage.

## 10 General comment

Wynca supports the overall finding that Customs has made in relation to Wynca in both the SEF and in the Wynca visit report, and requests that Customs terminate the investigation in relation to Wynca as soon as that conclusion is reached.

Yours sincerely



Charles Zhan  
Solicitor

---

<sup>11</sup> SEF, page 48