

29 November 2012

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



commercial+international

By email

Dear Mr Bracic

Zhejiang Xinan Chemical Industrial Group Co., Ltd Resumption of investigation into alleged dumping of formulated glyphosate from China

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. The companies are referred to as “Zhejiang Xinan” and “Wynca IE” respectively in Termination Report No 183 (“the termination report”).

We note the recent announcement, as contained in ACDN 2012/54, that Australian Customs and Border Protection Service (“Customs”) has resumed the investigation into the alleged dumping of formulated glyphosate from China. This resumption has taken place pursuant to a report issued by the Trade Measures Review Officer (“the TMRO”) dated 23 October 2012 (“the TMRO report”), which had the effect of setting aside the decision of the Chief Executive Officer of Customs (“the CEO”) to terminate the investigation.

In that termination decision, the CEO terminated the investigation in relation to Zhejiang Xinan and Wynca IE, as well as the other Chinese exporters, because it was found that there had been no dumping by the major exporters of the goods subject to investigation, and because the export volume of other Chinese exporters was negligible for the purposes of imposing measures.

Wynca notes that the TMRO report addressed certain specific issues raised by the applicant in relation to the termination decision. In relation to the termination decision concerning our client companies, the applicant requested the TMRO to review two findings of the CEO, namely:

- *that Customs should have calculated the export price by reference to the invoice price between Zhejiang Xinan and Wynca, rather than between Wynca and the Australian customer.*

- *that it was incorrect for Customs to treat Zhejiang Xinan and Wynca as a combined entity for the purpose of the normal value assessment.*¹

The TMRO reviewed these findings and was satisfied with Customs' consideration of these matters as set out in the termination report.

In relation to the first finding, the TMRO said:

*I am satisfied that in these circumstances it was reasonable to calculate the export price by reference to the invoice price from Wynca to the Australian importer as opposed to Zhejiang Xinan's invoice price to Wynca. This export price included expenses for functions that had previously been incurred by Zhejiang Xinan directly and which represented administrative, selling and other general costs associated with the sale. Furthermore, I am not satisfied the establishment of Wynca led to any change in the export price that would affect the dumping margin.*²

In relation to the second finding, the TMRO said:

*I am satisfied that there was a reasonable basis for Customs to assess Zhejiang Xinan and Wynca as a combined entity, namely the common ownership (Wynca being a 100 per cent owned subsidiary of Zhejiang Xinan) and the commercial relationship (under which Wynca performed functions previously performed by an internal division of Wynca from the same premises and with substantially the same employees).*³

The TMRO report recommended that the CEO should consider the following issues in the resumed investigation:⁴

- include 62 per cent IPA salt and the unregistered goods as like goods;*
- consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s 269TAC(8), was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin; and*
- give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s 269TAC(2)(d) of the Customs Act.*

In ACDN2012/54, Customs has advised interested parties that the resumed investigation will focus on addressing these issues, as recommended by the TMRO.

We note that in relation to recommendation "a", **[CONFIDENTIAL TEXT DELETED – details of Wynca's export sales]**. In relation to recommendations "b" and "c", it is clear that they involve the other Chinese exporters in this investigation only, and are not relevant to the termination decision in so far as it relates to Zhejiang Xinan and Wynca IE.

¹ TMRO report, paragraphs 31 and 34

² TMRO report, paragraph 33

³ TMRO report, paragraph 35

⁴ TMRO report, paragraph 83

Accordingly, we can see that:

- the TMRO report confirms the correctness of the termination decision so far as it relates to our clients; and
- none of the issues which will be subject of the resumed investigation involve our clients.

We note that Customs considers that there could be two possible outcomes of the resumed investigation. The first is that Customs might make necessary changes to its determination in accordance with the three recommendations made by the TMRO. The second is to confirm the termination decision.⁵

However, may we respectfully draw your attention to a more imminent and inevitable outcome – the termination of the investigation so far as it relates to Zhejiang Xinan and Wynca IE.

Section 269TDA(1) of the *Customs Act 1991* provides that if the CEO is satisfied that there has been no dumping by an exporter of any of the goods under investigation, or where the weighted average dumping margin is less than 2%, the CEO must terminate the investigation so far as it relates to that exporter.

Statement of Essential Facts No 183 and the termination report found that there had been no dumping of any of the goods under investigation by our client. This finding applied to goods directly exported by Zhejiang Xinan and to goods indirectly exported through Wynca IE. Customs determined the dumping margin for the goods exported by our clients to be negative 1.6%. The TMRO report affirms Customs' findings in relation to our clients as contested by the applicant. The TMRO has not recommended any further investigation in relation to our clients in the resumed investigation.

Accordingly, Wynca respectfully requests the CEO to terminate the investigation so far as it relates to Zhejiang Xinan and Wynca IE as soon as possible.

Yours sincerely



Charles Zhan
Solicitor

⁵ A 3DN 2012/54