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By email:

Ms Joanne Reid

Director, Operations 2

Australian Customs & Border Protection

Service

Customs House

5 Constitution Avenue

Canberra ACT 2601

Date: 2012-11-30

Public version

**RE: Anti-dumping investigation – exports of formulated glyphosate from the
People's Republic of China
-- Comments regarding the Australian Customs and Border Protection Service's
Statement of Essential Facts Published on 25 June 2012**

Dear Ms Reid,

Reference is made to Australian Customs and Border Protection Service (Customs)'s Dumping Notice No. 2012/54 regarding the resumption of investigation into alleged dumping in respect of formulated glyphosate exported to Australia from the People's Republic of China on November 16, 2012. To assist the Customs to collect necessary information for its new SEF as required by TMRO, Shandong Weifang Rainbow Chemical Co., Ltd. (Rainbow) hereby provides following comments:

A. Comments on the suggestion that 62 per cent IPA salt be treated as like goods

Rainbow cannot agree with the Applicant's contention and TMRO's suggestion to treat 62 per cent IPA salt form of glyphosate (manufacturing concentrate, hereinafter "62 per cent IPA salt") as like goods of the product under investigation.

As Customs correctly pointed out in SEF No. 183 on June 25, 2012, "the current application is ... only relates to *fully formulated* products." (Emphasis added)

Throughout the entire dumping investigation and TMRO's review, no one claimed that 62 per cent IPA salt is a "fully formulated" Glyphosate.

While the Petitioners, key players in this industry, were not banned from including 62 per cent IPA salt within the product scope in their petition to request the Minister publish a dumping notice in respect of formulated glyphosate exported to Australia from China, they chose not to do so. Rainbow holds that this indicates the true intension of the petitioners at the moment of application is to not include 62 per cent IPA salt, a not full formulated glyphosate into the scope of investigation.

The Customs' review over the petition, and its later decision of the initiation of this investigation were, therefore, based on the fact that the petition was concerning only "fully formulated" Glyphosate but not any intermediate product, such as 62 per cent IPA salt.

Should the product scope be defined differently in the petition, i.e. including the non-fully formulated products or intermediate product, the Customs would have had the review of the petition on issues like, among others, the standing and representativeness of the domestic industry, on a different basis. And of course, the result of Customs' preliminary analysis could be different for dumping as well as the

injury. Apparently, to treat non-fully formulated glyphosate as like goods is not something that can be reasonably assumed and expected by interested parties in the course of this investigation. Rainbow holds that the change of this product scope ruling is not in line with the fundamental spirits of the legal certainty and predictability.

The Custom correctly determined that 62 per cent IPA salt “is not covered by the description (of the goods contained in the application) and 62% manufacturing concentrate glyphosate produced by the Australian industry are not like goods to the goods. This product is considered to be out of the investigation scope.”¹ We are of the view that this determination should be reconfirmed in this resumed investigation.

B. The issue of “whether the low volume of domestic sales of unregistered goods by Rainbow... was nevertheless sufficient to allow a proper comparison to be made for the purpose of determining a dumping margin”.

Rainbow would like to clarify that the glyphosate salt ([*Confidential*] glyphosate by salt content) it sold on domestic market was a chemical compound of Glyphosate Acid Technical with [*Confidential*] (Glyphosate[*Confidential*] salt). But the products it sold on Australian market (products under investigation) are glyphosate salt which is a chemical compound of Glyphosate Acid Technical with MIPA (Glyphosate IPA salt).

[The above confidential responses are provided to the Commission in confidential version, which include the details information regarding the technology secret. Because the information is commercial activities and sensitive business information, disclosure of them could bring the Company less competitiveness in the market.]

Although these two products with two different chemical compounds both can be used as herbicide, the Glyphosate [*Confidential*] salt cannot be used in country of

¹ SEF No. 183, Page 18, June 25, 2012.

Australia because of its water specification and weather condition. That's why Rainbow only sold Glyphosate IPA salt to Australian market and did not registered Glyphosate [Confidential] salt in Australia.

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Glyphosate [Confidential] salt (the unregistered goods) is different form Glyphosate IPA salt (registered goods) not only in surfactant component, but also in its basic chemical composition, and also the production process. There's also a big cost gap between these two products, since the [Confidential] used for the Glyphosate [Confidential] salt production worth only RMB [Confidential] Yuan per ton, but the MIPA for Glyphosate IPA salt costs RMB [Confidential] Yuan per ton.

Keeping in mind the factors mentioned above, to use the Glyphosate [Confidential] salt to determine the normal value of Glyphosate IPA salt sold in Australian market, even taking into consideration of the adjustment(s) supposed by TMRO, is not appropriate. And we doubt how the adjustment(s) can properly quantify the value for all differences between these two products.

In sum, Rainbow holds that the two products are not like to each other and it is not reasonable to use the price of Glyphosate[Confidential] salt as the basis of normal value for Glyphosate IPA salt, even adjustments were made.

[The information in brackets is removed because they are the detailed information regarding the commercial and technology secrets of the Company. Due to the sensitiveness of these information, Rainbow believes that disclosure of them may make the Company in a less competitiveness position on the market.]

C. Comments on TMRO's suggestion on adopt Good Harvest's export price to third countries as the basis of normal value

Rainbow is firmly of the view that export price to third countries, such as EU and the United States, is far from appropriate to be used as normal value.

On the one hand, the registration fee in these 3rd countries were much higher than that in Australia, e.g. a registration in the U.S. and EU usually cost 2 to 5 million US dollars, but it only cost only a small percentage of the figure above for a Australian registration. The high registration fee push export prices to 3rd countries much higher so that the comparison between the companies' exporting price to 3rd countries, as the base for normal value, and exporting price to Australia will not be appropriate. Let along that for country like Japan, the prices are even higher because the products are mainly used for gardening and thus are sold in small packages.

On the other hand, even if the Customs adopted TMRO's suggestion that adjustment(s) be made to allow the 3rd country price comparable with the export price. Rainbow holds that if the adjustments were made all the way back to raw material level (i.e. Glyphosate technical level), the case seems to became an investigation into the dumping of glyphosate technical instead of fully formulated goods.

D. Conclusion

As a result, Rainbow holds that Customs should reconfirm decision on termination of the investigation into the alleged dumping of formulated Glyphosate in Australia from People's Republic of China.

Yours faithfully

Pu Lingchen, Liu Jianwei



CC. Weifang Rainbow Chemical Co., Ltd.