



Australian Government

Department of Agriculture, Fisheries and Forestry

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Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission (ACCC)
PO Box 1199
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Dear Mr Gregson

In my letter to you of 23 April 2007, I indicated that the Department of Agriculture, Fisheries and Forestry (the Department) had reserved its final position on the ACCC's proposal to remove the power (after an 18 month adjustment period) currently available to Agsafe to impose trading sanctions for non-compliance with the Agsafe Guardian Code of Conduct pending the outcomes of any further information presented at the pre-determination conference. I now wish to confirm the Department's final position and expand upon the Departmental views put forward during the pre-determination conference held on 1 May in support of the arguments put forward by the agricultural and veterinary (agvet) chemicals industry for the trading sanctions to be retained.

Under the Australian Constitution, agvet chemical regulation is a state/territory responsibility. A Memorandum of Understanding between the Australian Government and state/territory primary industry departments established the National Registration Scheme for Agricultural and Veterinary Chemicals in the early 1990s. Under the Scheme, the Australian Pesticides and Veterinary Medicines Authority (APVMA) evaluates and registers agvet chemical products for use in Australia, while states and territories regulate the control of their use once they are sold.

Within the state and territory jurisdictions, primary industry portfolios are primarily responsible for regulating control of use. However, some aspects, such as the licensing of commercial applicators, may be regulated by different portfolios, such as health or environment, in different jurisdictions. Other regulations that apply to agvet chemicals, including workplace safety, dangerous goods and environmental protection, are also administered by different portfolios in different jurisdictions. As a result, approaches to compliance and enforcement taken by the different regulatory authorities in each jurisdiction and the resource allocations for these approaches may vary.

Given the diversity of regulatory roles and responsibilities within state and territory jurisdictions, it is unlikely they would all give priority to assessing the impacts of removing Agsafe's ability to impose trading sanctions or be able to take appropriate action to address any gaps created by non-compliance with Agsafe Guardian within the proposed 18 month timeframe. In addition, as noted at the pre-determination conference, given that the COAG review of chemicals and plastics regulation will seek to reduce the regulatory burden on the chemicals and plastics industry, it is very unlikely that governments would readily consider introducing any additional regulation that may be necessary to address gaps in Agsafe Guardian compliance that may result from the removal of trading sanctions.

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At the pre-determination conference, it was noted that few state/territory departments had provided submissions on the Agsafe Guardian authorisations. The Product Safety and Integrity Committee (PSIC), which I chair, is responsible for developing and implementing national policy with respect to the management of agvet chemical use in Australia. Its membership includes representation from Australian and state/territory primary industry departments, as well as representatives of Ministerial Councils responsible for developing national policy for public health, workplace safety and environmental protection. The following comments reflect the co-regulatory policy approach to agvet chemical risk management which is supported nationally through PSIC.

Agvet chemical residues in primary produce can have a major economic impact on the primary production and export sectors, given the risks they pose to international trade, market access and food safety and Australia's reputation with its major trading partners. PSIC supports the Agsafe Guardian program because it provides a mechanism for the agvet chemical industry to demonstrate duty of care and to manage the risks associated with the storage, handling, distribution and sale of agvet chemicals and to provide correct and reliable advice on agvet chemical use to their customers. In this way, Agsafe Guardian complements control of use regulation and primary production sector quality assurance programs/codes of practice in minimising agvet chemical residue and trade risks, as well as the risk of off-target impacts on the environment or human health, that may occur as a result of agvet chemical misuse.

In this regard, PSIC is developing nationally consistent approaches to address priority areas of agvet chemical risk management identified through a risk analysis of Australia's agvet chemical management system, one of which is the development of a national accreditation scheme for users of higher risk chemicals. Under the proposed scheme, the onus will be on chemical distributors to ensure that these chemicals are sold only to accredited users. It is noted that the arrangements being considered for chemicals of security concern envisage a stronger role for Agsafe Guardian in managing national security risks associated with agvet chemicals, including access to these chemicals.

PSIC also supports the Agsafe Guardian program because of the significant community benefit it delivers by ensuring agvet chemical industry compliance with regulatory requirements for protecting public health, workplace safety and the environment, which are also elements of the national agvet chemical management system. In addition, PSIC recognises that, over the last two decades, concern has been growing in the Australian and international communities about the presence of agvet chemical residues in food and in the environment, and the impacts they may have on people's health. This has the potential to influence the future market for, and availability of, agvet chemical products in Australia and have flow on effects for primary producers who rely on agvet chemicals to be productive and competitive.

Therefore, together with the other Agsafe stewardship programs, *drumMUSTER* and ChemClear, Agsafe Guardian also benefits primary producers and all participants in the agvet chemical industry by underpinning its reputation as a responsible participant in the primary industry sector. This benefit extends to rural communities and the Australian community through the significant contribution made by sustainable and productive primary industries to regional and national economies. Gaps in compliance with Agsafe Guardian are likely to undermine these benefits.

Together with state/territory PSIC members who are responsible for regulating control-of-use, the Department recognises and supports the role of industry quality assurance programs and codes of practice in risk management in the primary industry sector. As I noted earlier, under PSIC's national, co-regulatory approach to agvet chemical regulation, primary industry sectors are encouraged to take responsibility for managing the risks associated with their particular activities. Government recognition of mechanisms such as sector-specific or market-driven quality assurance programs and codes of practice which are designed to manage these risks, allows them to comply with control of use regulations in ways that are appropriate to them.

The Department supports the voluntary uptake of these programs because they provide clear commercial benefits that encourage and reward participation, eg, they provide an assurance of product safety and quality that commands a better price or access to a lucrative market. However, as noted by industry at the pre-determination conference, there are no similar commercial incentives for becoming Agsafe Guardian

accredited. The only commercial driver is the threat of being prevented from participating in the market. In this regard, the Department notes that it would be difficult to find an effective and equitable alternative to the use of trading sanctions.

I understand the ACCC's concern is that the imposition of trading sanctions for non-compliance with the Code of Practice effectively makes Agsafe Guardian accreditation compulsory in order to participate in the agvet chemical industry. However, it was noted in the pre-determination conference that there are ways of participating in the industry without being Agsafe Guardian compliant, eg by importing products directly from overseas manufacturers. In addition, as noted above, Agsafe has indicated that it uses trading sanctions only as a last resort, as part of a staged approach to becoming compliant, and that, over the last five years, only one trading sanction has been applied. Agsafe has also offered to involve the ACCC in compliance decisions to ensure that its actions remain fair and accountable in the future.

In summary, the Department believes that the Agsafe Guardian program delivers significant national community health, environmental, primary industry, agvet chemical industry and economic benefits. The Department supports the industry position and the views put forward at the pre-determination conference, that these benefits collectively outweigh the anticompetitive impacts of imposing trading sanctions, as a last resort, on a very small number of non-compliant industry participants. Given that significant changes in the way chemicals are regulated may result from the COAG review processes discussed above, it would be more appropriate to grant authorisation for Agsafe to impose trading sanctions for non-compliance with the Agsafe Guardian Code of Conduct for a further five years, pending the completion of these processes.

It trust that the arguments submitted by the Department and others in support of the authorisation allowing Agsafe to impose trading sanctions for non-compliance with the Code of Conduct will persuade the ACCC to reconsider its decision in making its final determination.

Yours sincerely



Steve McCutcheon
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