

**Ballance Agri-Nutrients**

**Att: Mr. Mark Wynne, Chief Executive Officer**

**161 Hewletts Road, Mount Maunganui**

**Private Bag 12-503, Tauranga**

**New Zealand**

**Brussels, 07.03.2021**

## **RE. BALANCE AGRY-NUTRIENTS'S 2020 PHOSPHATE IMPORTS FROM OCCUPIED WESTERN SAHARA**

Dear Mr Wynne,

Western Sahara Resource Watch (WSRW) is again privileged to write to you. We hope that this message finds you well in the current phase of the COVID-19 crisis.

We invite you to comment about Ballance Agri-Nutrients' imports of phosphate rock from occupied Western Sahara in 2020. WSRW is now preparing an update report on phosphate exports from the territory, and Ballance Agri-Nutrients will be featured in it. Accordingly, we would be grateful for your answers to the questions below, so that we can present your views on the matter accurately.

Our monitoring and research indicate that Ballance Agri-Nutrients received three shipments of phosphate rock from Western Sahara during 2020:

- An estimated 59,000 tonnes aboard the m.v. *STH Athens* (IMO 9747390, arrival in New Zealand on 10 March 2020);
- An estimated 59,600 tonnes aboard the m.v. *Van Star* (IMO 9573842, arrival in New Zealand on 20 May 2020);
- An estimated 58,400 tonnes aboard the m.v. *IVS Windsor* (IMO 9774458, arrival in New Zealand on 1 November 2020).

We note that as such, the imports by Ballance Agri-Nutrients from occupied Western Sahara have continued at the same level as previous years.

Since the time of our last letter of January 2020 – which we sadly note did not elicit a reply – there have been dramatic changes on the ground. The ceasefire between Morocco and Frente Polisario ended in mid-November, and armed conflict has been resumed in the territory. We observe also the decisions of both Epiroc, announced in October 2020, and Continental, announced February 2021, to no longer service the Bou Craa phosphate mine in Western Sahara.

Ballance Agri-Nutrients' website hosts a subpage called "ethical sourcing" (which – despite its generic title – only deals with sourcing in Western Sahara). We have several comments and questions on certain aspects there offered in defence of the continued imports of phosphate rock from Western Sahara.

- A. Ballance Agri-Nutrients compares Western Sahara to Tokelau.

Western Sahara is indeed a Non-Self-Governing Territory (NSGT) – like Tokelau - but there is a fundamental difference setting Western Sahara apart from the other 16 NSGTs on the UN list: it is the only one that does not

have an administering power appointed to it.<sup>1</sup> The role of Morocco is that of an *occupier*, as declared in UN Resolution 34/37. Additionally, the people in Tokelau and the other 15 NSGTs on the UN list have had a chance to decide whether they accept being administered by another nation. Tokelau even had a referendum on self-determination and chose for a free association with New Zealand. In spite of promises by the international community and a UN mission in place with the express mandate to organise such a referendum, the people of Western Sahara have not yet had a chance to exercise self-determination. While Morocco initially agreed to holding a referendum, it changed its mind and will not allow a referendum that includes independence as an option. The people of Western Sahara have never accepted Morocco's military presence in part of their land.

B. Ballance Agri-Nutrients claims that the UN has the following "expectations" for trade with non-self-governing territories:

- "The operations should promote economic advancement and provide benefits to the inhabitants of the territory.
- Working conditions should be non-discriminatory.
- The operations should be conducted rationally and sustainably to ensure long-term access to resources."

Following Indonesia's withdrawal from East Timor, there are no other Non-Self-Governing Territories that are currently under foreign occupation. In other words, there is no "UN framework" regulating business activities in or with Western Sahara.

Of course, there are rules and responsibilities that befall administering powers of NSGTs regarding business activities in these territories, but Western Sahara does not have an administering power. We know there to be a legal framework governing occupying powers' economic activities in territories they occupy, but Morocco does not abide by it. It does not consider itself as an occupying power – it does not even recognize the existence of Western Sahara. It is this which makes the case of Western Sahara unique.

The closest thing to a "framework" for Western Sahara was that advice of the UN Legal Counsel to the UN Security Council in 2002. The rules applicable to administering powers were taken as a point of departure – while at the same time the advice clearly stated that Morocco does not have that role in Western Sahara and thus stronger interpretations ought to apply. The advice is accepted as the settled UN understanding and application of legal principles governing involvement with NSGT resources.

The author of the 2002 advice has repeatedly stated that trade in Western Sahara's resources cannot be lawful if not in accordance with the wishes (i.e. the consent) and interests (i.e. the benefit) of the people of the territory. Both the UN Human Rights Committee and the UN Council for Economic, Social and Cultural Rights have stressed the importance of securing the consent of the people of Western Sahara to any project or operation in their land.<sup>2</sup>

The framework that you refer to perhaps includes the Sustainable Development Goals, ILO regulations, and the like. But in the case of Western Sahara, there are overarching legal considerations: the separate and distinct status of the territory vis-à-vis any country in the world, including Morocco, and the right to self-determination of the people. To omit these basic facts on Western Sahara seems misleading, unethical even.

We would be grateful for your answer to the following questions.

1. *Could you confirm that Ballance Agri-Nutrients has received three shipments of a combined estimated volume of 177,000 tonnes of phosphate rock from Western Sahara during 2020?*

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<sup>1</sup> UN, List of Non-Self-Governing Territories, <https://www.un.org/dppa/decolonization/en/nsgt>

<sup>2</sup> UN Human Rights Committee, 1 December 2016, CCPR/C/MAR/CO/C, [https://ccprcentre.org/files/documents/CCPR:C:MAR:CO:6\\_FR.pdf](https://ccprcentre.org/files/documents/CCPR:C:MAR:CO:6_FR.pdf) and UN Committee for Economic, Social and Cultural Rights, 22 October 2015, E/C.12/MAR/CO/4, [https://wsrw.org/files/dated/2015-12-09/cescr\\_morocco\\_2015\\_eng.pdf](https://wsrw.org/files/dated/2015-12-09/cescr_morocco_2015_eng.pdf)

2. *What steps has Ballance Agri-Nutrients taken, if any, to ascertain that the imports of phosphate rock are done with the express consent of the people of the territory?*
3. *We note that your annual report for 2020 includes a map that shows Western Sahara and Morocco as one territory.<sup>3</sup> Is Ballance Agri-Nutrients of the view that Western Sahara is part of Morocco?*
4. *Does Ballance Agri-Nutrients agree with the UN that Western Sahara does not have an administering power?*
5. *On what basis does Ballance Agri-Nutrients decide to circumvent the people with the sovereign right to decide the status of the territory, and to instead strike a supply contract with a party which does not hold those sovereign rights?*
6. *What UN framework does Ballance Agri-Nutrients refer to with “the UN’s framework of managing resources in territories like these”?*

We appreciate that New Zealand’s soil requires specific nutrients. However, there are now well over a dozen companies that have all stopped importing from occupied Western Sahara, who once held the same position: that there was no alternative to the Western Sahara phosphate rock. Yet through experiencing with different exporters, different blends or upgrading grinding machinery, they managed to find alternatives. There is no reason why this should be impossible for the New Zealand cooperatives.

We would be grateful for your response before 25 March 2021, so that we can include your position in our upcoming report. The previous editions of the report are available here: <https://wsrw.org/en/news/wsrw-reports>.

Please do not hesitate to contact us should you require any further information. We thank you in advance for your consideration and look forward to your response.

Sincerely

Sara Eyckmans

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<sup>3</sup> Pp. 13-14, <https://ballance.co.nz/medias/Ballance-2020-Annual-Report-Final.pdf>