

Oslo, 4 May 2014

Balance Agri-Nutrients
161 Hewletts Rd
Mt Maunganui 3116
New Zealand



To the attention of Mr. Larry Bilodeau, lbilodeau@ballance.co.nz
CEO of Ballance Agri-Nutrients

Regarding: BAN's imports of phosphates from occupied Western Sahara

Dear Sir,

Western Sahara Resource Watch is writing to share its concerns regarding your company's imports of phosphate rock from an occupied territory.

Through several years, Western Sahara Resource Watch has observed that Ballance Agri-Nutrients have been importing phosphate rock from the mines of Bou Craa, located in Western Sahara – a territory largely occupied by Morocco since 1975.

To date, no state or international organisation recognizes Morocco's sovereignty over Western Sahara. The United Nations have repeatedly stated that the occupation must end and that the Saharawi people has to be allowed to freely exercise their right to self-determination through a free, fair and transparent referendum.

The occupation of Western Sahara has resulted in enormous suffering and deprivation for the Saharawi people, who are the rightful owners of the land and its natural resources. Approximately 165,000 Saharawi are languishing in refugee camps in the inhospitable Algerian desert since 1975, where they have to survive on humanitarian aid. The Saharawi population remaining in areas under Moroccan control is subjected to grave human rights violations. In his 2014 report on Western Sahara, the UN Secretary General noted many reports of human rights violations perpetrated by the Moroccan authorities, including "arrests without warrants, cruel, inhuman and degrading treatment in detention, limitations on family and advocate access to detainees, confessions extracted under torture, violation of the right to a fair trial, conditions that may amount to enforced disappearance and infringement of the rights of freedom of speech, association and assembly." Yet, on 29 April 2014, Morocco prevented the Security Council from introducing human rights monitoring as part of the mandate of the UN mission in the territory.

Although there is no trade embargo implemented by the UN Security Council, nor by the Government of New Zealand, the UN has established that Morocco has no right to extract and sell Western Sahara's resources, if carried out as currently is the case. The people of Western Sahara objects to the trade and do not benefit from it.

The International Court of Justice in its 1975 Western Sahara Advisory Opinion established that Morocco has no legal claim to Western Sahara. That same opinion affirmed that the Saharawi people have a right to self-determination, restated in more than 100 UN Resolutions. That right to self-determination includes, inter alia, the right of permanent sovereignty over its natural resources; a customary principle of international law. Numerous resolutions of the United Nations Security Council and General Assembly and a legal opinion by the former UN Under-Secretary General of Legal Affairs, on 29 January 2002 affirm this position (www.arso.org/Olaeng.pdf). Because the Saharawi have not been able to exercise their right to self-determination, and because they have not been properly consulted, trade with Morocco of natural resources emanating from Western Sahara is a violation of the Saharawi's right to permanent sovereignty over their resources.

Our organisation is convinced that the firms that import phosphates from Western Sahara contribute to the continuation of the Moroccan illegal presence in the area. This kind of support, in addition to the financial gain from selling off illegally excavated phosphate rock, makes Morocco less inclined to fully engage in the UN-hosted peace talks, and makes delaying tactics and attempts to profit from the existing situation more attractive. The phosphate trade in Western Sahara therefore increases the risk of resumed armed conflict, destabilisation and suffering in the region.

Morocco's control and exploitation of Western Sahara also hurts the Saharawi's labour rights and their economic development. According to a report by the French organization France Libertés - Fondation Danielle Mitterrand, the Saharawi have been systematically marginalised from the phosphate industry in Western Sahara. In 1968, before Morocco took control over the phosphate mines, all 1600 workers in the industry were Saharawi. Today, the latest figure we have, is that 1568 of the 1734 workers are Moroccan settlers who have been moved into the territory illegally. The documentation that OCP itself has produced regarding the production in Western Sahara is not open for the Saharawi people to assess themselves, and can thus not be trusted.

A substantial number of firms from around the world have realised their ethical obligations and have stopped importing natural resources from occupied Western Sahara. For example, Yara, the world's biggest fertiliser company, terminated the imports to Norway in 2005, for ethical reasons. They have stated that they do not wish to import from the territory until the conflict is solved. A number of shipping firms which previously transported this phosphate have also stopped its involvement. Among those is Chinese shipping company Jinhui Shipping which regretted having transported phosphates to your company in 2008.

We believe it is not in the interest of Ballance Agri-Nutrients to be associated with such business.

We respectfully invite Ballance to reply to the following questions:

- 1) When does Ballance's purchase agreement with OCP for phosphates from Western Sahara expire?
- 2) Does the contract specify any volumes that are to be taken by Ballance? If yes, what volume annually?
- 3) What has Ballance done to seek the consent of the people of Western Sahara, who are the legitimate owners of the phosphates?

We will be more than happy to provide you with any additional information that you may require to study this matter more closely, and look forward to a reply to our questions.

We are in May 2014 publishing a report about the phosphate trade, and would like to include a reference to any response from your company regarding this trade. Any response must in that case be sent to us, at erik@wsrw.org, prior to 17 May 2014. The report names the shipments received by your company in 2012-2013.

Looking forward to hearing from you,

Sincerely yours,

Erik Hagen
Chair,
Western Sahara Resource Watch
erik@wsrw.org

A copy of this letter was sent to;

- Chair of Ballance, Mr. David Peacocke dpeacocke@ballance.co.nz