

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

Brussels
27 January 2016

To the attention of Mr Mark Wynne
CEO of Ballance Agri-Nutrients

Dear Mr Wynne,

The import to New Zealand of phosphate rock from occupied Western Sahara

Western Sahara Resource Watch is privileged to write to you again. This letter is about Ballance Agri-Nutrients' phosphate imports from occupied Western Sahara during the calendar year 2015.

In the coming weeks, WSRW will publish its annual overview report on the Western Sahara phosphate trade, which will feature Ballance Agri-Nutrients ('Ballance').

Our research shows that your firm received two shipments of phosphate extracted from the Bou Craa mine in Western Sahara in 2015. We estimate that those shipments totaled around 104,000 tonnes, corresponding to a value of about US \$12.4 million. Ballance thus remains a sizeable importer of this illegally traded commodity.

In our previous letters, we have outlined our concerns with regard to the detrimental effects of Ballance's imports on the Western Sahara peace process, and on the Saharawi people's well established and universally recognized right to self-determination. There is no need for repeating them here. However, there are some recent, notable developments that ought to be addressed.

You will have seen the Concluding Recommendations in the review of Morocco by the UN Committee on Economic, Social and Cultural Rights (CESCR), published in October 2015. The UN treaty body was very clear on the significance of the Saharawi people's right to self-determination, also with regard to Western Sahara's natural resources. The Committee recommended Morocco to "*guarantee respect for the principle of prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources*". Everyone can agree that this most basic regard for the rights of the Saharawi people goes disregarded.

A Legal Opinion published by the African Union on 14 October 2015 puts the matter even more clearly including by referring to Morocco as "the occupying power" in Western Sahara. "Only the people of Western Sahara have the right to permanent sovereignty over their natural resources", the Opinion continues. The African Union called on companies to adhere to international obligations and refrain from business deals with Morocco pertaining to Western Sahara, as that leads to "perpetuation or legitimization of the colonial situation in Western Sahara".

On 10 December 2015 the Court of Justice of the European Union annulled the EU-Morocco Free Trade Agreement as it applies in Western Sahara. In its judgment, the Court states that Morocco has no mandate by the United Nations or by any other institution for the administration of the territory.

In the fall of 2015, an upsurge in socio-economic protests was observed in occupied Western Sahara. What started out as regular demonstrations by unemployed Saharawi graduates in El Aaiun, has – particularly in recent weeks – spread to other parts of the Saharawi demographic and to other towns in the occupied territory. Saharawis protest against what they refer to as "Morocco's policy of marginalizing Saharawis". They no longer accept being treated as second class citizens, while Moroccan settlers receive employment on the back of Morocco's illegal exploitation of the Saharawis' homeland. Grievances are in particular targeted against your supplier of phosphate rock, *Office Chérifien des Phosphates SA (OCP)*. Demonstrations take place daily, and are being met with disproportionate use

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Western Sahara Resource Watch works to raise awareness of the illegal occupation of Western Sahara, and to support the recognition of the Saharawi people's right to self-determination and their right to dispose of their natural resources.

of force by the Moroccan police. A group of 19 Saharawis is currently on hunger strike to demand their right to employment and a decent living. On 22 January 2016, a group of Saharawis entered the headquarters of OCP in Casablanca, in Morocco proper, to demand rights to their land's phosphate resources. As a side note, protests against OCP are also taking place throughout Morocco proper, especially with regard to the poor working conditions and health and safety concerns for phosphate workers.

We refer to our letter of 9 February 2015. In that letter, we questioned Ballance's statement of not contravening "a United Nations legal opinion" as it has expressed in writing to us on 6 May 2014. Since said legal opinion (S/2002/161) qualifies any resource-related operation in Western Sahara as unlawful if not in accordance with the wishes and the interests of the people of that territory, we asked Ballance what steps it had taken to seek the consent of the people of Western Sahara, as the legitimate owners of the phosphate. We do not seem to have received a reply to our letter, so we are compelled to repeat our question. In addition, we would be grateful if, before this February 20, Ballance might clarify the following:

1. Is it correct that Ballance received two shipments of phosphate from occupied Western Sahara during 2015, amounting to approximately 104,000 tonnes?
2. Does Ballance agree that the Saharawi people of Western Sahara have a right to self-determination as defined by international law and the 1990-91 referendum agreement of the UN, Morocco and the Frente Polisario?
3. Would Ballance agree with the conclusion of the International Court of Justice that there are no ties to sovereignty between the kingdom of Morocco and the territory of Western Sahara?
4. Does Ballance accept the 2015 conclusion of the UN Committee on Economic, Social and Cultural Rights (CESCR) about the principle of the prior, free and informed consent of the Saharawis in relation to the exploitation of Western Sahara's natural resources?
5. In view of the conclusion of the 2002 UN Legal Opinion on mineral resources in Western Sahara, and of the conclusions by the CESCR, how will Ballance assure itself of the credible consent of the Saharawi people prior to importing from Western Sahara?
6. Does Ballance accept the conclusion of the Court of Justice of the European Union that Morocco has no mandate to administer Western Sahara?
7. What is Ballance's position in respect of the legal opinion of the African Union about the exploitation of occupied Western Sahara's natural resources?

WSRW remains of the view that Ballance must not purchase phosphate rock from Western Sahara while the final status of the territory is pending. By ending all engagement in occupied Western Sahara, the firm can significantly contribute to the good faith needed to reach a just and lasting outcome of the UN peace talks. In the long run, this will benefit the entire Maghreb region.

We remain at your disposal should you have any questions. We look forward to hearing from you.

Sincerely,

Sara Eyckmans
Coordinator, Western Sahara Resource Watch
coordinator@wsrw.org

A copy of this letter has been sent to:

- HE Ambassador Christopher Ross, UN Secretary-General Personal Envoy for Western Sahara
- HE Kim Bolduc, UN Secretary-General Special Representative for Western Sahara and Head of the UN Mission for the Referendum in Western Sahara (MINURSO)
- HE Nkosazana Dlamini-Zuma, Chairperson of the African Union Commission
- HE Murray McCully, New Zealand's Minister of Foreign Affairs
- HE Todd McClay, New Zealand's Minister of Trade, Associate Minister of Foreign Affairs

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