

AGRICHEM MANUFACTURING INDUSTRIES T/A AGRONOMIQ
SUBMISSION TO AUSTRALIAN CUSTOMS SEEKING DISCONTINUATION OF THE ANTI-DUMPING
DUTY ON 2,4-D IMPORTED FROM CHINA#

1. Reasons Why the ADD on 2,4-D Should be Discontinued

1.1 Historical Reasons for the ADD on 2,4-D

Two penalties apply to 2,4-D imported from China. The first penalty is based on the Ascertained Export Price of US\$■.■.■/kg of 2,4-D acid, a price that is now significantly less than actual market price of around US\$3.30/kg. Thus this penalty has not been applied in recent years. The second penalty is an "Interim ADD", a curious term given that the penalty has been in force for almost 10 years. I understand that an "Interim ADD" applies because, at the time of the first investigation, Chinese 2,4-D plants failed to cooperate with Australian Customs, largely because they were government-controlled entities who were disinterested in the implications of dumping. However, Chinese 2,4-D plants are now either privately-owned or behave as private companies. AGRONOMIQ's four suppliers (Sanonda, Jingma, Good Harvest and Wintafone) are prepared to cooperate with Customs on this occasion.

1.2 Nufarm Claim that Imports from China will Increase

I note from its application to continue the ADD that "Nufarm was concerned that there were up to 300 2,4-D producers in China and that in 2006/07 there was significant under-utilisation, suggesting that in the absence of measures, Chinese exports to Australia could increase" and that, "Nufarm does not have any further information available to it that indicates Chinese production capacity has altered in any meaningful way." This statement suggests either how little Nufarm knows about Chinese 2,4-D production capacity or that it has not taken the trouble to investigate the market.

In 2009/10 there were around 10 2,4-D producers in China, but this number was reduced to two producers when the Chinese Government, with considerable publicity (obviously missed by Nufarm), closed all but two plants in late-2010 until their waste-water treatment plants were upgraded. There are now seven producers of 2,4-D with appropriate waste-water treatment in China, although I note that Nufarm could name only two producers in its application, one of which (Jiamusi Heilong) closed around five years ago.¹

Information received from Nutrichem (a major Chinese producer of active material, but not 2,4-D), suggests that there are possibly five 2,4-D illegal producers of 2,4-D operating in China, that is, producing 2,4-D without a license for the domestic market. However, these plants have an estimated combined output of no more than 2,000 MTpa of 2,4-D acid and are gradually being stamped-out.

If you examine the current list of sources of 2,4-D cleared by APVMA you will note, six years after Nufarm expressed its concern, only six Chinese companies (including the defunct Jiamusi Heilong) are listed. There is a compelling reason as to why there are only a few clearances for Chinese 2,4-D acid, much less 300 clearances in Australia. In order for a Chinese 2,4-D producer to export its product it must first of all obtain ICAMA certification

¹ The AgroChemEx Directory of Chinese Chemical Producers for 2011 lists only five producers of 2,4-D. However, based on the writer's knowledge two plants are not listed and there has been one start-up since 2011.

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which is a prerequisite to obtaining an export certificate. An ICAMA certificate takes around two years to obtain and costs around US\$200,000, a considerable investment for a Chinese company seeking to export to a relatively unknown market where there is already a major domestic producer of 2,4-D. APVMA will not clear a source of any active constituent without an ICAMA certificate.

Therefore, not only did the hordes of Chinese 2,4-D producers not descend upon Australia, even if they did exist it would have been virtually impossible for them to make the journey. However, of equal importance is Nufarm's flawed analysis of the situation which places a question mark over its entire application.

1.3 Source of Nufarm's Domestic Chinese Prices

While Nufarm cites the Australian Bureau of Statistics as the source of Chinese import prices, it provides no source for the Chinese domestic prices of 2,4-D. AGRONOMIQ transacts business with approximately 40 Chinese producers of agricultural chemicals who inform us when Nufarm is visiting, therefore, the prices are obviously obtained from the Chinese companies themselves. It defies logic to believe that Chinese producers of 2,4-D would provide Nufarm with accurate, sensitive information about their pricing, if at all, especially knowing that this information would be used against them in an application to Customs to maintain a barrier to their entry into the Australian market. Without any reference or source, this information should be considered a Nufarm contrivance or, even worse, data that has been constructed to fit the Nufarm case. This hubris is consistent with Nufarm's assertion that there are 300 Chinese 2,4-D producers ready to descend upon Australia if the ADD is removed. We therefore submit that Nufarm has no idea about the domestic price of 2,4-D in China and, on this basis alone, its application should be rejected.

1.4 Why Select 2,4-D Iso-Butyl Ester for a Price Reference?

Nufarm has constructed the price of 2,4-D acid from the price of Chinese 2,4-D Iso-Butyl Ester prices in Table 4. The selection of this product begs two questions. Why select a 2,4-D formulation that has been suspended from use by APVMA in Australia since 2007?² Thus any price information constructed from 2,4-D Iso-Butyl Ester is completely irrelevant to the study and, on this ground alone, Customs should reject the Nufarm application. Why not select 2,4-D 860 Amine salt which is commonly used in China and comparable to 2,4-D 625 Amine salt, the most popular formulation used in Australia? Why bother to select a formulated product if you are interested in 2,4-D acid? Why not simply obtain the price of 2,4-D acid from the producers of this product in China?

1.5 Relatively Small Chinese 2,4-D Market

According to Hubei Sanonda (division of ChemChina), the 2,4-D market in China is quite small and, indeed, 90% of all 2,4-D produced in China is exported. The balance is sold to the

² APVMA. "The Reconsideration of Approvals of the Active Constituent 2,4-D, Registrations of Products Containing 2,4-D and their Associated Labels." Part 1: 2,4-D Esters.

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Chinese domestic market as 2,4-D Iso-Butyl Ester 570, 2,4-D 860 Amine Salt and 2,4-D Sodium Salt 85%. We estimate that in 2011 the Chinese market was around 5,000 MT of 2,4-D acid per annum compared with around 11,400 MT for Australia.³ The major producers of 2,4-D in China export their entire output, that is, they do not supply 2,4-D to the Chinese domestic market. Therefore, it is a leap-of-faith to suggest that Chinese producers are selling 2,4-D to the domestic market at a price below the export price.

1.6 Price is Distorted by Tax

Because the Chinese-produced 2,4-D products (listed above in Para. 2.5) supplied to the Chinese market are unique and not exported, they are not subject to a 9% tax rebate and, therefore, on first impression more expensive. Therefore, the meaningless Table 4 could become more meaningful if the Chinese midpoint price of A\$3.96/kg in 2012 was reduced by 5.4% (9% x 570/950) to A\$3.75/kg. A net domestic price of A\$3.75/kg would result in a dumping margin of -A\$0.03 or a dumping margin of -1.1% for 2012. While this figure is the desired result, it also flatters the analysis and especially the derived local price of 2,4-D acid which, based on information provided by Jingma is in the range A\$3.20-A\$3.40/kg. No tax rebate would apply in the case of 2,4-D acid because it is common to both Australia and China. Thus, the average domestic price for Chinese 2,4-D acid is around A\$3.30/kg resulting in a dumping margin of A\$0.49/kg or a dumping margin of -12.9%. This data is shown below in a revised Table 4 and the Nufarm error showing the RMB price in kg has also been corrected. Nufarm's average export price has been repeated in the Table even though it is incorrect. If we used the actual export price there would be a zero dumping margin.

Table 4 : Revised

	<u>Nufarm Case</u> <u>Public File</u> <u>2012</u>	<u>Nufarm Case</u> <u>Excluding Tax</u> <u>2012</u>	<u>Actual Price</u> <u>2,4-D Acid</u> <u>2012</u>
Domestic Price RMB/MT	RMB25-27,000	RMB25-27,000	
Domestic Price A\$/kg	A\$3.77-4.16	A\$3.77-4.16	AUD3.20-3.40
Midpoint A\$/kg	AUD 3.96	AUD 3.75	AUD 3.30
Average Export Price/kg	AUD 3.79	AUD 3.79	AUD 3.79
Dumping Margin A\$/kg	AUD 0.17	-AUD 0.04	-AUD 0.49
Dumping Margin/Export Price (%)	4.5%	-1.1%	-12.9%

1.7 ADD on 2,4-D Acid is Misunderstood by Customs

The ADD on 2,4-D in its present form is misunderstood by Customs' officers. There is currently an interim ADD of 12 cents/kg of 2,4-D acid imported from China, but when

³ Imports of 3,392 MT (Table 1 Nufarm Application) plus approximately 8,000 MT of domestic production by Nufarm after deducting exports.

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AGRONOMIQ commenced importing 2,4-D for AIRR in late-2010, we found that the full 12 cents was also charged on 2,4-D 625 g/L and 2,4-D 300 g/L. Other importers have experienced the same problem. The product 2,4-D 625 contains only 625 gram of 2,4-D acid per litre and, notwithstanding the fact that its weight is around one kilogram, the actual ADD should be 0.625 x 12 cents or 7.5 cents. Consultations with Customs in Canberra confirmed that the position taken by AGRONOMIQ was correct. However, other importers may still be paying the incorrect rate of ADD.

1.8 The ADD on Chinese 2,4-D Imports Subsidises Nufarm's Exports of 2,4-D to the US.

We note that Nufarm has written on page 5, "As indicated in its previous report, Nufarm is an importer of 2,4-D. Nufarm has imported 2,4-D from (xxxxx) with a single shipment from (xxxxx) in the past 12 months to enable it to meet its export commitments." It is well known that Nufarm exports its 2,4-D acid to the USA where it can command a higher price compared with prices available in the Australian market. However, Nufarm's admission that it uses the ADD on Chinese 2,4-D imports to assist its export activities begs the question of should it be able to do this under the protection of an ADD? In other words, Australian farmers are paying a higher price for 2,4-D so that Nufarm can command higher prices for its 2,4-D in the US. At the very least, the ADD on 2,4-D imported into Australia from China is an Australian government subsidy on the sale of Nufarm's 2,4-D to the US. Thus if Nufarm is benefitting from higher prices for its 2,4-D exports to the US, how can it claim material injury from low cost imports of 2,4-D from China.

1.9 If Nufarm's Profit on 2,4-D is Increasing, Why is an ADD Necessary?

On page 8 Nufarm writes the following. "The domestic sales schedules indicate that Nufarm has improved profit in 2011 and the first half of 2012, following very low profit levels in the preceding years of 2009 and 2010." I assume that the years shown actually refer to 31st July of the year in question, the date that Nufarm's financial year concludes. AGRONOMIQ/AIRR commenced importing agricultural chemicals from China in the last quarter of 2010, including significant volumes of 2,4-D⁴, thus our entry into the Australian 2,4-D market obviously had no adverse impact on Nufarm. As mentioned above, in late-2010 all but two Chinese 2,4-D plants were closed by the government pending installation of appropriate waste-water treatment facilities and this action resulted in a significant increase in the Chinese 2,4-D price. The 2,4-D price has since stabilised at the late-2010 level because of the additional operating cost of waste-water treatment. Nufarm probably benefitted from the reduced Chinese competition in late-2010. However, as Chinese 2,4-D plants recommenced production at higher costs, Nufarm was probably able to increase its own 2,4-D price accordingly. I have used the expression, "probably" because we are not privy to the so-called "Confidential Attachment 5 for Nufarm Appendix A6." It is implausible that Nufarm has increased its profitability on 2,4-D in 2011 and 2012 and does not know the reason. Nufarm simply does not want Customs to know why! The reason for Nufarm's improved profit in 2011 and 2012 is that Chinese 2,4-D producers have increased their prices because of government mandate and the revised prices have rendered the reason for

⁴ Confidential information provided separately to Customs.

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the ADD obsolete. Once the ADD on Chinese 2,4-D is abolished, Nufarm will have to reduce its price to remain competitive.

1.10 Import Prices are Incorrect and Data is Suspect

Table 5 on Page 8 of the Nufarm submission seems to be incorrect as far as Australia is concerned. How could the average price be US\$4.06/kg when the lowest price is US\$3.28/kg? This means that there must have been prices considerably higher than US\$4.06/kg. Quotations that AGRONOMIQ has received from China for the past two years for high quality Chinese 2,4-D 95% acid have been in the range US\$3.30/kg to US\$3.40 FOB Shanghai, thus an average price of US\$4.06/kg has no credibility. Nufarm has failed to specify whether the prices are CIF or FOB, but without a proper reference the Table appears to be another Nufarm contrivance. Table 5 shows that China exported 2,759,000 kg of 2,4-D acid to Australia in 2011, but Table 1 shows that Australia imported only 952,230 kg of 2,4-D acid the same year. Which Table is correct? Despite the fact that Table 5, if not the entire submission, has no credibility, the text following the Table does demonstrate Nufarm's attitude. "The export price in Table 5 confirms Nufarm's concerns that in the absence of anti-dumping measures it is likely that Chinese 2,4-D acid (and ester) prices would fall." Does Nufarm not realise that Australia operates a free market? Based on our own investigation, these prices have never reached the level suggested to have "fallen". However, treating the claim at face value, in the absence of dumping, what is wrong if the prices do fall?⁵ Australian farmers will benefit from a reduced price. Nufarm's revenue would decline, but by paying greater and long-overdue attention to its costs, the company could readily recover from lower prices. Nufarm is effectively asking Customs to relieve it of the onerous responsibility of bringing its costs under control.

1.11 No ADD on Chinese 2,4-D in Other Markets

As stated in the Nufarm submission, no ADD measures apply to imports of Chinese 2,4-D in any other country. The absence of these measures begs the question of why Australia has been singled-out amongst several other countries (for example, USA, Argentina, India, Austria, Poland, UK) which produce 2,4-D acid. The answer to this question is quite simple - Chinese 2,4-D acid is not dumped in Australia.

1.12 List of Other Interested Parties

Despite the fact that Nufarm has no case to argue they still have a duty of care to provide Customs with correct information. As already discussed above, Nufarm has listed two exporters, Dalian Songliao and the defunct Jiamusi Heilong. Nufarm had a duty to disclose that it owns the AC clearance of Dalian Songliao 2,4-D in Australia (APVMA No. 44245) while research would have revealed Jiamusi Heilong ceased operating at least five years ago. Nufarm has omitted the following exporters, all of whom are well known to the former:

⁵ AGRONOMIQ/AIRR has submitted confidential documents to Australian Customs that establish absolutely that Chinese 2,4-D is not dumped in Australia.

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Jiangsu Good Harvest-Weien Agrochemical Company Ltd (Good Harvest)

Hubei Sanonda Co., Ltd (Sanonda)⁶

Changzhou Wintafone Chemical Co., Ltd. (Wintafone)

Jingma Chemicals Co., Ltd.

Shandong Rainbow Weifang Chemical Co., Ltd.

Jiangxi Qilin Chemical Industry Co., Ltd

⁶ Sanonda is a subsidiary of the China National Agrochemical Corporation which unsuccessfully attempted to acquire Nufarm in 2007. Sanonda has no connection to the "Sanonda" listed as an importer in the Nufarm application.

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2. AGRONOMIQ Suppliers

AGRONOMIQ sources its 2,4-D acid and formulated 2,4-D from three plants in China which own and operate state-of-the-art facilities:

Jiangsu Good Harvest-Weien Agrochemical Company Ltd (Good Harvest)

Hubei Sanonda Co., Ltd (Sanonda)⁷

Changzhou Wintafone Chemical Co., Ltd. (Wintafone)

Good Harvest will commence production of 2,4-D acid in a modern, computer-controlled 5,000 MTpa plant in October 2012. The quality of its 2,4-D acid will be identical to that of Nufarm's and will be produced in a plant that does not discharge waste material into the air and therefore contaminate Glyphosate produced on the same site. Waste-water will be treated to the Chinese EPA standard of 80 ppm before discharge. Occupational safety is high priority.

Sanonda commenced production of 2,4-D in modern, computer controlled 10,000 MTpa plant in 2010. The quality of its 2,4-D acid is identical to that of Nufarm's and is produced in a plant that does not discharge waste material into the air and therefore contaminate Glyphosate produced on the same site. Waste-water is treated to the Chinese EPA standard of 80 ppm before discharge. Occupational safety is high priority.

The Wintafone plant commenced operating in 2005 and, therefore, may also be described as modern, computer-controlled facility producing a very high quality product. Occupational safety is critical as many employees actually live on the site. The plant has a capacity of 15,000 MTpa of 2,4-D acid and 5,000 MTpa of MCPA acid. The plant does not discharge gaseous material into the air and also treats waste water to 80 ppm compared with the US EPA standard of 220 ppm. It should be noted that in 2010, the Chinese government closed all 2,4-D plants which were not treating their waste-water. Good Harvest was not operating at the time, but Wintafone was one of only two plants that continued to operate because of its compliance with environmental law. All 2,4-D plants in China now comply with waste-water discharge regulations.

Good Harvest, Sanonda and Wintafone produce 2,4-D acid at a lower cost than Nufarm and, contrary to Nufarm's allegation, do not dump their product in Australia. AGRONOMIQ/AIRR pays around US\$2.80/Litre for 2,4-D 625 which converts to US\$3.30/kg for 2,4-D acid. The ascertained export price (under which a penalty would apply) is US\$■.■/kg. All three plants, plus a fourth plant (Jingma), has confirmed that its domestic price for 2,4-D acid is identical to the FOB export price.

⁷ Sanonda is a subsidiary of the China National Agrochemical Corporation which unsuccessfully attempted to acquire Nufarm in 2007. Sanonda has no connection to the "Sanonda" listed as an importer in the Nufarm application.

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3. Conclusion

Nufarm has failed to provide any credible evidence that Chinese 2,4-D acid is being dumped in Australia. By its own admission, Nufarm is completely ignorant about the 2,4-D production market in China and has relied on the mistaken belief that the market in China is unchanged since its last submission five years ago. The only credible source Nufarm has used in its application is import data from the Australian Bureau of Statistics, but this is internally inconsistent (exports from China do not match imports into Australia in Table 5) and patently wrong based on our own experience. In order to compute a price for 2,4-D acid in China Nufarm has ignored tax implications and used an end-user product (Iso-butyl ester) that has been suspended from use in Australia since 2007. On the other hand our data has been sourced from four manufacturers of 2,4-D in China who have independently confirmed that the price domestic formulators in China pay for 2,4-D acid is exactly the same as the FOB export price. Therefore, we urge you to discontinue the ADD on 2,4-D acid from 24th March 2013, if not beforehand.

Myles Stewart-Hesketh
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