



14th November 2012

Mr. Timothy Flor
Supervisor
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra 2601 ACT

Dear Tim,

Re: Investigation into Dumping of 2,4-D: Response to Nufarm Response

We have had the opportunity to read the Nufarm response to our submission and wish to respond as follows (using Nufarm numbering):

1.1 Cooperation with Chinese Exporters.

The Chinese producers listed in our submission remain prepared to cooperate with Australian Customs and are waiting for you to contact them. Nufarm's suggestion to the contrary is fallacious and their claim that you should draw an inference of lack of cooperation from the same is illogical. May I suggest that you focus your attention on Sanonda and Wintafone who are major suppliers to AGRONOMIQ. Jingma is a minor supplier and Good Harvest, with whom we have a long-term supply agreement, has not yet commenced production of 2,4-D and is awaiting AC clearance from APVMA. I have reconfirmed with both of these companies that they are willing to assist Australian Customs with the investigation. However, I agree with ACCENSI that the forms to be completed by Chinese producers need to be simplified. The current forms are too complex resulting in a bias in favour of the applicant.

1.2 Number of Chinese Producers

Nufarm has corrected the error in its original submission and you will note from the ACCENSI submission that they agree with our arguments against the threat of 300 Chinese companies descending upon Australia. Only six Chinese companies have AC clearance for 2,4-D acid in Australia and a similar number hold an ICAMA certificate that enables them to export 2,4-D to Australia. Moreover, the very high cost (approximately US\$200,000) of obtaining ICAMA certification in China is a barrier against the export of 2,4-D from China.

1.3 Reliability of Information from Chinese Suppliers

Nufarm is prevaricating when it suggests "Chinese exporters had the opportunity to cooperate with Customs investigation but have chosen not to do so". As mentioned above Chinese producers remain ready to cooperate with Australian Customs when requested to do so.

The difference between Nufarm and AGRONOMIQ seeking information from Chinese companies is that the Chinese companies are fully aware that Nufarm is seeking information to gain an unjustifiable advantage over them whereas AGRONOMIQ is providing them with a financial advantage by means of a purchase.

1.4 Use of 2,4-D IBE for the Reference Price

Why not ask Chinese producers for the domestic price of 2,4-D acid as we have done? The price of 2,4-D acid constructed from 2,4-D IBE is intellectually dishonest as evidenced by the actual price paid by Chinese formulators in the domestic market - a price, by the way, that is identical to the price paid in Australia.

1.5 Relatively Small Chinese 2,4-D Market

The figure of 5,000 MT of 2,4-D acid we provided is correct and has been sourced from plants producing 2,4-D in China. The domestic 2,4-D market in China is not important as, for example, Australia, with 90% of production exported. The Nufarm statement is somewhat disingenuous when you read in their original submission that (since 2006/07) "Nufarm does not have any further information available to it that indicates Chinese production has altered in any meaningful way". In other words Nufarm admits it is completely ignorant of any developments in the Chinese 2,4-D market since 2006, a fact that is reflected throughout its entire submission, not just the size of the Chinese 2,4-D market. On the other hand, AGRONOMIQ has been actively engaged with the Chinese market for 10 years. In our view, the fact that Nufarm has admitted that it been unable to obtain any fresh information on the Chinese 2,4-D market for the past five years, is justification in terminating the Interim Anti-dumping duty on Chinese 2,4-D imports immediately.

1.6 Price Distorted by Tax

If the final valuation makes an appropriate adjustment for the difference in taxes paid then this adjustment is nowhere to be seen in the calculation.

1.8 The Interim Anti-dumping Duty on 2,4-D is an Export Subsidy

Our views remain unchanged, viz, if Nufarm is to receive the benefit of an Anti-

dumping duty on 2,4-D then that benefit - which is paid for by Australian farmers through increased prices - should remain in Australia otherwise it becomes an export subsidy. Nufarm is free to export its entire 2,4-D output to the protected US market (where it admits it receives a better return) if the company is unable to compete against Chinese 2,4-D in Australia because of higher manufacturing costs. However, Chinese 2,4-D should then be able to enter Australia without the impost of an Interim Anti-dumping Duty.

1.9 Suppressed Prices

Of course Nufarm's price will decrease if the Interim Anti-dumping Duty is removed, but this does not mean that Chinese 2,4-D is dumped in Australia. Nufarm 2,4-D is currently more expensive than Chinese 2,4-D, therefore, a decrease in Nufarm's price should help the company become more competitive.

1.10 Chinese 2,4-D Exports are Not Dumped

Nufarm, by its own admission, after operating in a vacuum of ignorance for five years, has adapted a price of AUD3.79/kg for 2,4-D acid by using a price for a product that has been banned in Australia since 2007. This price has been selected simply because it is higher than all other prices paid for Chinese 2,4-D acid in Australia for the past few years. This constructed price, like the remainder of Nufarm's submission, is not based on fact, but by assumption. I urge you to re-read the ACCENSI submission on the Chinese domestic price of 2,4-D acid. ACCENSI suggests that price is 15% below that of Nufarm's constructed price and in the range US\$3.35 - 3.30/kg.

Nufarm is also not averse to adapting facts to fit arguments and, in this respect, I also urge you to read the ACCENSI submission on Nufarm's recent case at the AAT (2008/3845) where it argued under oath that 2,4-D and Trifluralin were substitutable - contrary to its claim on page 3 of its 2,4-D submission. Australian Customs will therefore have to decide which version is correct, given that the AAT evidence was presented under oath.

1.12 Dalian Songliao

As of today, Nufarm remains the Approval Holder of Dalian Songliao's AC clearance for 2,4-D acid (No. 44245) as shown in the APVMA "Record of Approved Active Constituents" (refer below). How it came to be Approval Holder is of no concern. Contrary to Nufarm's claim, AC clearance is indeed a property right and only Nufarm - not Dalian Songliao - may cancel the AC clearance. If Nufarm wishes no association with Dalian Songliao, it should cancel the AC clearance forthwith.

| | | | |
|-------|--------------------------|----------------------------------------------------------------------------------------------------------------|-------|
| 2,4-D | Nufarm Australia Limited | Dalian Songliao Chemical Industrial Co Ltd 22 Gongxing Road Ganjingzi Dalian Liaoning Province 116031 Pr China | 44245 |
|-------|--------------------------|----------------------------------------------------------------------------------------------------------------|-------|

Conclusion

Neither Nufarm's original submission nor its rebuttal to AGRONOMIQ's submission contain any new or factual evidence to establish that Chinese 2,4-D is dumped in Australia. The current market price of around AUD3.30/kg is not only identical to the domestic Chinese price, but is also significantly higher than the Ascertained Export Price.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Myles Stewart-Hesketh'.

Myles Stewart-Hesketh
Director