

1. Is Nufarm Competitive?

We note that while Customs has doubts about the dumping of Chinese 2,4-D in Australia because of Nufarm's questionable price construction, it nonetheless believes that Nufarm could suffer material damage in the future if the current anti-dumping measures were removed. "Customs considers that the available evidence points to a strong likelihood that in the absence of ADD measures, exports of 2,4-D from China to Australia would continue." Customs has based this conclusion on the indisputable fact that Chinese exports of 2,4-D to Australia increased significantly in FY2011 and FY2012 as evidenced by the chart on page 16. However, an increase in Chinese exports of 2,4-D to Australia does not necessarily mean that the product is dumped, that is, sold in Australia at a lower price than the Chinese domestic market. Nufarm relies very heavily on premium pricing of all products (not just 2,4-D) to cover its exceptionally high overheads and to pay dividends to share-holders. Nufarm also has a long history of whingeing to Customs when it does not get its way! We are of the view that Nufarm's locally-produced 2,4-D is no longer competitive in the Australian market as evidenced by its admission that it exports the same to the USA (a high price market) and imports low-cost 2,4-D acid (from India) as a substitute to formulate product for the Australian market. We wish to emphasise that simply because Nufarm's locally-produced 2,4-D acid is not competitive in the domestic market, it does not mean that imported 2,4-D acid is dumped. Moreover, the fact that 2,4-D imports from India have declined in recent years may suggest that Nufarm is struggling to compete even with low-cost imports because of its very high overheads. Therefore, it is not necessary for any supplier from any country to dump 2,4-D acid in Australia to compete against Nufarm. If Customs decides to retain or worse still strengthen the existing anti-dumping mechanisms, it will unfairly benefit Nufarm's Indian exporter (who we believe is Atul) at the expense of Chinese exporters. Continuation of the anti-dumping mechanism will not create a single job in Australia, but it will increase costs to the important farming sector.

2. The "300"

Customs also appears to have accepted Nufarm's view that 300 Chinese 2,4-D producers are "waiting in the wings" for the ADD to be removed. No evidence has been submitted by Nufarm to support the absurd notion that 300 Chinese formulators will enter the Australian 2,4-D market if the ADD on Chinese 2,4-D acid is discontinued. The Australian 2,4-D market is today controlled by Nufarm and five national distributors/wholesalers who not only favour their own private brands, but limit competing brands to around three in number. Thus the only way that Chinese 2,4-D suppliers would be able to gain market access is through the formulation of private brands for distributors or to sell to Nufarm. However, most distributors have long-standing business relationships in place with Chinese companies and are unlikely to change the same, and Nufarm is not in the market as a customer. Therefore, if the ADD is removed from Chinese 2,4-D acid we do not envisage a single new entrant to the Australian market, let alone 300.

We have already explained that only six Chinese companies have AC clearance for 2,4-D acid in Australia. Six companies were listed on the APVMA database when the investigation commenced, but one of these companies (Jiamusi Heilong) ceased operating some time ago while Good Harvest was granted AC clearance for 2,4-D acid on 21st November 2012. It is often argued (and Nufarm has inferred as much) that Chinese companies with AC clearance for 2,4-D acid buy unlicensed, low quality 2,4-D acid produced in smaller plants which is then sold under their own AC clearances. However, this is not the case and after 10 years of experience in the Chinese agricultural chemical sector, we have seen no evidence of this occurring. Common sense dictates that substitution does not occur, but it does fit the stereotype of Chinese 2,4-D producers that its opponents nurture. All of the six companies with AC clearance for 2,4-D acid in Australia have their own manufacturing capacity which they would find more economical to use in preference to outsourcing. All of the six companies also focus on the export market and therefore are vitally interested in maintaining the quality required in Australia by APVMA. The only way to control quality is to also manufacture the product. Therefore, economic grounds aside, none of the six would risk its reputation for quality by outsourcing supply to an unlicensed 2,4-D acid producer. Moreover, even if an unlicensed plant produced high quality 2,4-D, its production would be spasmodic and subject to instant closure by government inspectors. We are firmly of the view that there is no material damage occurring at the moment¹ and once the notion of "300" has been put to rest there can be no threat of material damage in the future.

3. The "300": Comparison of 2,4-D Market segment with Glyphosate Market Segment

Based on the graph shown on page 16 of the SEF report and using the import figures supplied by Nufarm in its application, it appears that the Australian 2,4-D acid market in 2010/11 (last complete published year) was 7,150 MT covering both imports and local production by Nufarm. Nufarm imports 2,4-D acid from India, thus we assume that this data is included with "other sources". We assume that Customs has obtained complete but unpublished data for 2011/12, therefore, the 2,4-D acid market for the latest year is assessed at 7,886 MT.

Based on an assessment of all available data, the Australian market for Glyphosate Technical is 32,800 MTpa or greater than four times the size of the 2,4-D market. There is no ADD on Glyphosate and in 2002 Customs found, following an application by Nufarm, that Chinese Glyphosate was not dumped in Australia. A more recent preliminary finding (August 2012) found that fully-formulated (FF) Glyphosate was not dumped in Australia. There are currently around 20 Glyphosate Technical manufacturers in China, but only 10 of these are seriously committed to long-term Glyphosate production. The remainder are basically opportunists who periodically re-open their plants when shortages arise to benefit from the speculative market. A total of 23 individual Chinese companies hold AC clearance for Glyphosate Technical with APVMA in Australia. Glyphosate acid is easy to formulate and virtually every formulator in China could produce an end-user product, if not from acid then from the intermediate stage known as Glyphosate 62% w/w.

¹ Nufarm has claimed that its 2,4-D acid segment has been profitable for the past two years,

However, notwithstanding the:

- large number of formulators in China with the potential to formulate Glyphosate;
- relatively large size of the Glyphosate market in Australia compared with the 2,4-D market;
- opportunity to source Glyphosate acid from any of 23 Chinese producers;
- low regulatory barriers-to-entry;
- absence of any Dumping Duty,

The SEF produced by Customs for the FF Glyphosate investigation found that only three Chinese companies (Good Harvest, Rainbow and Wynca) accounted for 95% of the imports of fully-formulated Glyphosate by volume into Australia.

If there was ever a market that could attract 300 formulators from China, it was the Australian Glyphosate market, but they did not arrive for the following reasons:

- formulators, like suppliers of technical product (Glyphosate acid) must also have ICAMA certification which is prohibitively expensive for formulators;
- no market access, especially now that most distributors are buying agricultural chemicals direct from single sources in China;
- presence of Nufarm in the market.

All of the above apply equally to 2,4-D acid.

We note that Nufarm has not responded to the ICAMA requirements before a Chinese formulator may export products or before a Chinese manufacturer of active material (such as 2,4-D acid) may obtain AC clearance by APVMA in Australia.

4. Number of New Registrations

Only four Chinese companies hold 2,4-D registered labels in Australia - one (Rainbow) holds three registered products. There are, of course, many registered 2,4-D products in Australia (205 as at 29th November 2012), but the overwhelming majority of these registrants are Australian companies who undoubtedly either currently source or plan to source 2,4-D from China or other markets.² The fact that there have been 182 additional 2,4-D product registrations since the last continuation enquiry is completely irrelevant and, if anything, counter-productive to Nufarm's case. The number of additional registrations is a reflection

² AGRONOMIQ/AIRR asked Nufarm to supply us with fully-formulated 2,4-D, but the company declined to do so, citing lack of sufficient capacity as the reason.

of the low barriers-to-entry and the fact that there are so few Chinese numbers amongst the group is a measure of just how unattractive the market is for Chinese producers.

5. Burden of Proof

The burden of proof in law in administrative actions, such as anti-dumping cases, is on the party bringing the action and in this particular case, on Nufarm. It appears from the SEF that Customs is persuaded by Nufarm's argument that there are 300 Chinese 2,4-D producers "waiting in the wings" for the ADD to be removed from Chinese-produced 2,4-D so that they may enter the Australian market. We believe that this claim is nonsense and while we are prepared to concede that it is relatively simple to register a 2,4-D product (label) in Australia it is extremely difficult to obtain market access. Nufarm has also failed to address our counter-claim that Chinese companies may not export 2,4-D formulations (or any other agricultural chemical) from China without an ICAMA certificate which is both expensive and time consuming. Moreover, Chinese producers of 2,4-D acid are unable to obtain APVMA clearance for their active material without an ICAMA certificate, therefore, other parties may not import their 2,4-D acid. However, over-riding all of the above is the fact that Nufarm has raised the "300" almost as a throw-away line. We believe that if Nufarm is to rely on this argument or for Customs to give this argument any currency whatsoever, Nufarm has an obligation to prove that the 300 2,4-D producers actually exist. From our perspective we believe that Nufarm is obliged to provide the following information about each of the 300 or alternatively to withdraw the claim:

- Company name
- Location in China
- Is company licensed to produce 2,4-D?
- 2,4-D acid production or formulation capacity
- ICAMA certification

6. Other Exports are more Important

Customs has found that "Nufarm is still the only fully-integrated manufacturer of 2,4-D in Australia".³ While this statement is not completely accurate, it is accurate enough for the purpose of our argument.⁴ Nufarm Australia produces only one active product, 2,4-D acid, and by all accounts the company cannot compete on an even playing field with producers from China and India. However, it is 2,4-D production that differentiates Nufarm from other suppliers in the Australian market who it defines imperiously as "traders", even though around 80% of its own revenue is derived from trading. It is 2,4-D production that enables Nufarm to identify with the MNCs who dominate the global crop protection industry, even though all of the MNCs have moved-on to the production of far more sophisticated molecules.⁵ Therefore, we understand why Nufarm is concerned about 2,4-D production, but is the molecule all that important? Are the 300 producers in China all that concerned?

³ Section 4.2. Customs Statement of Essential Facts.

⁴ Nufarm must import the key intermediate used in the production of 2,4-D acid (MCA) from Meghmani, India

⁵ Dow Agrosiences continues to produce 2,4-D acid.

After all, China is a relatively small market for 2,4-D and the Australian market is not much larger. The 2,4-D molecule is no longer particularly important and in Australia lags behind in sales of relatively simple molecules such as Glyphosate, Trifluralin, MCPA, Paraquat, Paraquat-Diquat, Atrazine and Simazine. Thus, why would even one of these 300 Chinese companies go to the trouble to enter the Australian market with 2,4-D when it could enter the market with one of another 180 molecules produced in China that would generate better returns? Chinese companies are no different to companies from other countries - they will assess the market before attempting to enter the same and select products that maximise returns with minimal risk. We have already assessed the Australian market as the equivalent of 7,150,000 kg of 2,4-D acid per annum. Assuming that the price of 2,4-D acid is US\$3.50/kg, this values the market at US\$25 million. Therefore, after investing US\$200,000 in an ICAMA certificate each of these 300 Chinese companies can expect to generate US\$83,417 per annum if they share the market between them.

7. Exports to the USA

In the verification report Nufarm agreed "that its plant was already operating at capacity, and that a large percentage of domestically-produced acid was sent to the USA while imported (Indian) acid was used to make domestic formulations." Nufarm further advised, "this current business model was due to the fact the USA's 2,4-D market provided much more satisfactory returns than the company would by selling this acid in Australia." And in case we misunderstood these two statements, "it had made the business decision to export significant volumes of acid to the USA and supplement its Australian acid needs with (Indian) product (noting that it is currently operating at capacity in terms of acid production)."

We understand that Nufarm is importing 2,4-D acid from Atul, India to supplement Australian acid needs his purpose and, strategically, this makes good sense - maximise returns from export sales and minimise production costs for the Australian market by using low cost material and avoiding the Interim ADD Duty on Chinese 2,4-D.

However, as sound as this business strategy may be, it begs the question of why does Nufarm require protection of an ADD on Chinese 2,4-D? Moreover, Nufarm's claim that, "if the Australian market were more attractive, it would likely change its approach to supply the Australian market with 2,4-D solely produced by Nufarm Australia." is cynical. We assume that "more attractive" means not only the continuation of the ADD, but one at a higher level as flagged in the SEF. Assuming rational economic behaviour, there is no evidence that Nufarm would focus solely on the Australian market should a higher ADD eventuate and there is every reason to believe that the company would retain the status quo at a higher level of protection.

Under the above circumstances we maintain our position that any ADD on the importation of Chinese 2,4-D is a subsidy paid by Australian farmers on Nufarm 2,4-D exports to the USA and therefore should be avoided at all costs.

As far as the future is concerned, if the ADD is removed from Chinese 2,4-D it will not make any difference to Nufarm's financial performance even if the imaginary "300" ultimately descend on Australia. Nufarm will be secure in the knowledge that it can continue exporting its locally-produced 2,4-D acid to the US (and earning "superior returns") and at the same time purchase low cost Chinese 2,4-D acid for the Australian market. To impose an ADD on Chinese 2,4-D acid under the above circumstances would be a travesty.

8. Conclusion

Nufarm has provided no tangible or conclusive evidence that Chinese 2,4-D acid is dumped in Australia. Moreover, Nufarm's fear of material damage should the ADD on 2,4-D be removed is based on exaggeration and fantasy rather than objective research into 2,4-D production in China. We believe that continuation of the ADD on Chinese 2,4-D acid is highly inappropriate because most, if not all of Nufarm's domestic 2,4-D acid production is exported to the USA (to capture better returns), thereby allowing Nufarm to import low-cost 2,4-D acid from India to formulate 2,4-D products for the Australian market. Customs needs to send a message to Nufarm that if it is to survive as a viable commercial entity it must start "standing on its own two feet" rather than relying upon government largesse.