



18th December 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 Record of Meeting between Nufarm and C&BP Dated 5th December 2012

We have had the opportunity to read the Record of Meeting between Customs and Nufarm dated 5th December 2012 and wish to respond as follows. There are certain matters in the Record that need to be addressed and are discussed below.

1. Nufarm's Export Market Performance vs. Domestic Market Performance

Implicit in this statement is Nufarm complaining that because it was unable to compete against Chinese imports of 2,4-D acid, it was forced to change tack and focus on the export market, notably the US. Continuing this thread, if Nufarm was to be given the benefit of extra protection it could once again produce 2,4-D acid at Laverton North for the domestic market. However, if this is indeed what is being implied, this is simply untrue. The quality of Chinese 2,4-D acid was relatively poor until around 2000, therefore, there was no market for the product in Australia until around this time (hence the imposition of an Anti-dumping Duty [ADD] in 2002). However, Nufarm was selling its 2,4-D acid to the US at least as early as 1993. In 1996, after it acquired a 2,4-D plant in Linz, Austria, Nufarm realised it could benefit from the arbitrage of importing 2,4-D from Austria for the Australian market and exporting Australian-produced 2,4-D to the US. We do not know where the Linz 2,4-D is currently sold, but the arbitrage has since improved because Indian 2,4-D has replaced Austrian 2,4-D. We wish to emphasise that there is nothing wrong with this strategy and, indeed, Nufarm is to be commended for the same. However, as clever as this strategy is, it does not warrant support from Customs by continuing the ADD on Chinese 2,4-D from March 2013. If Nufarm genuinely feels that Chinese 2,4-D is dumped in Australia, it has the option of continuing to export its locally-produced 2,4-D to the US and buying Chinese 2,4-D for the Australian domestic market.

Indeed, the financial benefits of taking this action are far greater than an ADD and, importantly, would also benefit Australian farmers.

2. Approved Sources

Nufarm expresses concern that some product may be entering Australia from sources which have not been approved by APVMA, in other words a source that has not been approved is selling to an approved source for export purposes. While this is an APVMA issue rather than a Customs issue we nonetheless wish to comment on the allegation. We have been operating in China for 10 years and have heard the same allegation many times before. As it is in our best interests to investigate the allegation, we have done so, but have found absolutely no evidence that it occurs. The allegation is possibly an urban myth created by MNCs to discredit Chinese suppliers, who like Nufarm have every interest in behaving ethically and ensuring the highest possible product quality. AGRONOMIQ, like other importers (we are certain) conducts due diligence on suppliers as well as quality control checks on individual shipments to ensure the product we buy is sourced from the plant we specify.

3. Material Injury

We are not surprised that Nufarm claims it is less able to compete in the Australian market. The company is facing aggressive competition, a declining share of the Australian crop protection market and reduced access to the Australian market as distributors buy direct. Moreover, compared with Chinese 2,4-D plants, Nufarm has an ageing plant and reduced flexibility to respond to competition because of a debt-laden balance sheet and high overheads. Nufarm's glory days were in the 1990s and 2000s when the AUD was valued at around US\$0.60 - today, as we all know, the AUD is valued at around US\$1.05. However, Nufarm does not have a God-given right to succeed in the Australian market and nor must Chinese 2,4-D producers resort to dumping to succeed in the Australian market. The reality is that many Australian manufacturers from many different industries have found it impossible to compete against Chinese imports and have moved to China in some form or another to survive. They often survive and prosper by resorting to trading or marketing Chinese products which they once manufactured.

Nufarm is facing similar difficulties and its situation is unlikely to improve. The manufacture of active materials used in agricultural chemicals has rapidly moved to China (and to a lesser extent, India) where there are now more than 700 plants engaged in the production of up to 180 different molecules, including 2,4-D. We wish to emphasise that China does not have a labour cost advantage in this sector (although Chinese labour is still relatively inexpensive compared to Australia) because chemical production in China is capital intensive. The comparative advantage that Chinese chemical plants enjoy is modern, computer controlled plant and equipment in special locations where environmental and zoning issues (while considered by the Chinese government to be extremely important) are taken out of play. The capital cost of building a chemical plant in China is also relatively low compared with western countries. One company (■■■■■), with a manufacturing capacity of ■■■■ MT of high quality 2,4-D and MCPA invested US\$5 million in 2005 (including land cost), to establish its plant. This investment should be contrasted

with the UK£46.5 million Nufarm paid for A. H. Marks, Wyke, Bradford, UK in 2008 for a 2,4-D and MCPA plant with a slightly smaller capacity.¹

Nufarm is correct in its observation that Chinese 2,4-D acid has dropped in price over the past two months. AGRONOMIQ is now being quoted US\$2.85/kg for high quality 2,4-D compared with US\$3.30/kg in August 2012. We can supply evidence if requested. However, we again emphasise that Chinese 2,4-D acid, even at these low prices is not being dumped. We have asked and satisfied ourselves that Chinese formulation plants are paying the same price for 2,4-D acid. What this situation does emphasise is the inaccuracy of the prices constructed for 2,4-D acid by Nufarm from finished products, as well as the inaccuracy of its data.

4. Favourable Profit Environment is under Threat

At the bottom of page 2 the following statement appears. "Nufarm acknowledged that its positive **overall** profit performance in the last 12-24 months, however, Nufarm suggested that current trade data shows that the favourable profit environment is under threat due to an observed decline in import prices." We accept that these words are those of Customs paraphrasing Nufarm. Nufarm has unwisely allowed a price-sensitive statement to be released to the public domain that was undoubtedly not read by all shareholders. As a publicly-listed company, Nufarm has an obligation to adhere to the continuous disclosure requirements of the ASX. If this statement is indeed true, Nufarm had an obligation to disclose the same to the ASX on 5th December after its discussion with Customs, otherwise the statement it is in breach of its continuous disclosure obligations. However, no such disclosure was made. Nufarm is fully aware of its continuous disclosure obligations, having been fined by the ASX in the past for breach of the same. By coincidence, the following day (6th December), Nufarm conducted its Annual Meeting and in his address to shareholders the managing director (Doug Rathbone) is on record as stating, "While we have several months of trading to complete the period, underlying EBIT is expected to be up strongly and at least 15% ahead of the 2012 interim result." And later, "While our major selling periods are still some months away ... we remain very confident of generating an improved underlying EBIT outcome for the full year."² The document containing this statement has been published on the ASX website and complies with Nufarm's continuous disclosure obligations. Given the recent law suit settled by Nufarm in favour of its shareholders for \$46.6 million, the statement by Mr. Rathbone is more likely to reflect the correct situation. Under these circumstances we request that Customs ignores the statement quoted at the top of this paragraph because it is clearly untrue.

5. Customs has an Obligation to all Australians

The tenor of this document dated 5th December 2012 and, indeed, even the SEF, is that Customs has some form of obligation to support companies, such as Nufarm, by penalising their competition. However, Customs' obligation is to all Australians, including those who earn a living from the importation, processing and distribution

¹ Source: "Nufarm Acquisitions". ASX website (Nufarm announcements) dated 5th March 2008.

² Source: "Results of Meeting". ASX website (Nufarm announcements) dated 6th March 2012.

of 2,4-D and, in undertaking these activities, to prevent Nufarm from becoming a monopoly supplier. Customs obligation also extends to Australia's 132,000 farmers who are seeking fair prices for their inputs, noting that the ADD on 2,4-D is effectively a tax on the farming sector. We are not disregarding Nufarm's employees, but these would be best served by Nufarm continuing to export domestically-produced 2,4-D to the US and importing Chinese 2,4-D (if it is as inexpensive as Nufarm alleges) for the Australian market.

We look forward to learning that Customs has decided not to continue the ADD on Chinese imports of 2,4-D acid for another five years from March 2012.

Yours sincerely,

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

Myles Stewart-Hesketh
Director