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commercial + international

13 February 2026

Mr D Latina
Commissioner, Anti-Dumping Commission
c/- The Director - Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

FOR PUBLIC RECORD

By email

Dear Commissioner

Kenso Corporation and Kenso Agcare

Anti-circumvention 693 - 2,4-Dichlorophenoxyacetic acid from China

We are the lawyers for Kenso Corporation (M) Sdn Bhd and Kenso Agcare Pty Ltd.

1 Introduction

Kenso Corporation is a Malaysia-based company that engages in the formulation of technical 2,4-D acid so that it is in a consumer ready form. The finished product is known as formulated 2,4-D acid. The industrial production of formulated 2,4-D acid involves the conversion of technical 2,4-D acid into a salt or an ester by reacting the acid with a selected amine, base, or alcohol, and then mixing the salt or ester with solvents, surfactants, and emulsifiers. The resulting formulated 2,4-D acid product can take the form of an amine-salt solution, ester emulsifiable concentrate, or microemulsion.

The industrial production of technical 2,4-D acid is a chemical process involving a synthesis of 2,4-dichlorophenol and chloroacetic acid. Kenso Corporation does not synthesise technical 2,4-D acid itself. Kenso Corporation buys technical 2,4-D acid as a bulk chemical commodity on the international market, in arm's length transactions, from producers in countries such as China, India, Poland, and the United Kingdom. Kenso Corporation has no affiliates that synthesise technical 2,4-D acid in China, or anywhere else for that matter.

The formulated 2,4-D products produced by Kenso Corporation are distributed and sold locally in Malaysia, and also exported to foreign markets such as Australia, New Zealand, Indonesia, Thailand and Cambodia.

Kenso Agcare Pty Ltd, a company affiliated to Kenso Corporation, is an Australia-based company that collects orders from broadacre farmers for formulated 2,4-D products and fulfills those orders by specific order on Kenso Corporation or from stock-on-hand supplied by Kenso Corporation.

2 Alleged circumvention activities

The applicant in this inquiry attempts to bring its case within the scope of two circumvention activities that are referred to in the *Customs Act 1901* (“the Act”). Neither are suitable for that purpose.

a Assembly of parts in a third country

Under Section 269ZDBB(3) of the Act, the circumvention activity that is specified is the practice of the assembly of individual parts in a country, not being a country in respect of which the notice applies (“second country”), of parts that are manufactured in a country in respect of which the dumping notice applies (“first country”), whether or not with other parts, to create goods (“the circumvention goods”), where the circumvention goods would be subject to the dumping notice if exported from the first country by an exporter to which the dumping notice applies, and where the parts from the first country are a significant proportion of the customs value of the circumvention goods.

The circumvention activity under Section 269ZDBB(3) is the assembly of parts in a third country. The formulation of technical 2,4-D acid is not an assembly of parts and cannot be characterised as an assembly of parts. There are many simply understood indications that a chemical formulation is not an assembly of parts and is not captured by the expression used.

- 1 It is *technically incorrect* to consider that a chemical reaction and mixing that converts technical 2,4-D acid into formulated 2,4-D acid can be characterised as parts being “assembled”. The process is not a process of assembly. The process is a conversion of chemicals by the reaction and mixing of materials. The process involves an alteration to the composition of the “parts”, if it is even appropriate to refer to the chemical materials as “parts”, such that they do not exist as “parts” or as an “assembly of parts” once the conversion has taken place.
- 2 It is *literally incorrect* to consider that formulated 2,4-D acid is assembled from “parts”. A question from a visitor to the Kenso Corporation facility in Malaysia such as “*what is it that you do here*” would never be responded to with the answer “*we produce formulated 2,4-D acid by assembling parts*”.
- 3 Formulated 2,4-D acid is not a representation of “*individual parts*”, if it is even appropriate to refer to the chemical materials as “parts”. The “parts” are not identifiable as themselves in the formulated product. The formulation process changes the “parts”, and they no longer exist as “parts” in the end product. To express this bluntly, but logically, formulated 2,4-D acid cannot be “disassembled”.

“Assembly” connotes the putting together of parts in an “assembly” sense, such as is described in country of origin parlance as “screw-driver assembly” or as the “kit assembly” of physical parts and components. In that context, and based on Nufarm’s own appreciation of what it does, and how it does it, Nufarm’s application is entirely disingenuous. Searching Nufarm’s website, a company which going by its allegations in this case is one of the world’s top ten assemblers of parts to make herbicides, turns up no references to “assembly” or “parts”, which is in notable contrast to the usages of the words “formulation” and “production” on its website.

Therefore, our client does not accept the proposition that a “circumvention activity” described as the assembly of individual parts can be applied to the production of formulated 2,4-D acid.

The screenshot shows the Nufarm website search results page for the query "assembly". The page header includes the Nufarm logo and navigation links for "About Us" and "Investor Centre". Below the search bar, the text reads "Showing all search results for 'assembly'". A filter section is visible with the heading "Filter results" and three options: "All" (checked), "News", and "Profiles". The main content area displays "No results were found".

No references to "assembly" on Nufarm website¹

The screenshot shows the Nufarm website search results page for the query "parts". The page header includes the Nufarm logo and navigation links for "About Us" and "Investor Centre". Below the search bar, the text reads "Showing all search results for 'parts'". A filter section is visible with the heading "Filter results" and three options: "All" (checked), "News", and "Profiles". The main content area displays "No results were found".

No references to "parts" on Nufarm website²

Nufarm welcomes world's first regulatory approval for plant-based long chain omega-3

13 Feb 2018

Nufarm Limited has welcomed today's announcement by Australian regulators that approval has been granted for the production and use in feed and human consumption of the company's proprietary omega-3 canola. [Click here to read the full announcement.](#)

References to "production" not assembly³

Acquisition of European crop protection assets

24 Oct 2017

Nufarm Limited today announced that it has entered into an agreement to acquire a portfolio of crop protection products ("Century Portfolio") from Adama Agricultural Solutions Ltd ("Adama") and Syngenta Crop Protection AG and related group companies ("Syngenta") for US\$490 million. The 'Century' product portfolio includes over 50 crop protection formulations which are registered for use in European markets and is expected to generate revenues of approximately A\$250 million; an EBITDA contribution of approximately A\$95-100 million; and be mid to high single digit earnings per share accretive (pre-amortisation) in the first full year of Nufarm ownership (FY2019). [Click here to read the full announcement.](#)

References to crop products as "formulations"⁴

¹ https://nufarm.com/?post_type=any&s=assembly

² https://nufarm.com/?post_type=any&s=parts

³ <https://nufarm.com/announcements/nufarm-welcomes-worlds-first-regulatory-approval-for-plant-based-long-chain-omega-3/>

⁴ <https://nufarm.com/announcements/acquisition-of-european-crop-protection-assets/>

b Export of goods through one or more third countries

Under Section 269ZDBB(4) of the Act, the circumvention activity that is specified is the practice of the exportation of goods to Australia from a country, not being a country in respect of which the notice applies (“second country”), where the goods were first exported from a country in respect of which the dumping notice applies (“first country”) and would have been subject to the notice if they were exported from the first country by an exporter to which the dumping notice applies.

The circumvention activity under Section 269ZDBB(4) is the export of goods through one or more third countries. This, essentially, is the practice known as “transshipment”. Kenso’s exportation of formulated 2,4-D acid does not fall within the confines of this circumvention activity. This is apparent from a plain reading of Section 269ZDBB(4), because subparagraph (4)(b) refers to the goods in subparagraph (4)(a). Simply put, the goods exported by Kenso from Malaysia are not the goods exported from China.

Should the Commission wish to be assured of that reading of the legislation, it need only have reference to the Explanatory Memorandum for the *Customs Amendment (Anti-Dumping Improvements) Bill (No. 3) 2012*, which was circulated by authority of the Minister for Home Affairs on the occasion of the passage of that Bill. In explaining the circumvention activity constituted by the export of goods through one or more third countries, the Explanatory Memorandum refers to the requirement that the goods exported to Australia from the second country (in the case of this inquiry, Malaysia) be the same goods that were exported from the first country (in the case of this inquiry, China). In relevant part, the Explanatory Memorandum provides as follows:

...before that export [to Australia], there were one or more other exports of the same goods from a foreign country to another foreign country⁵ [underlining supplied]

Therefore, our client does not accept the proposition that a “circumvention activity” described as the export of goods through one or more third countries can be applied to its exports of formulated 2,4-D acid to Australia.

3 Purpose of Australia’s anti-circumvention regime

We also wish to point out that the Explanatory Memorandum makes clear that the behaviour sought to be addressed by the amendments to which it refers has a purposive element which is entirely absent from Kenso’s activities as an independent herbicide producer.

The Explanatory Memorandum states the following

Circumvention is a trade strategy used by the exporters and importers of products to avoid the full payment of dumping and countervailing duties. Circumvention behaviours take various forms and exploit different aspects of the anti-dumping and countervailing system, but they all aim to ensure that the relevant goods do not attract the intended dumping or countervailing duty.⁶

Kenso has no “trade strategy... to avoid the full payment of dumping... duties” levied by the Australian Government.

⁵ [Explanatory Memorandum for the Customs Amendment \(Anti-Dumping Improvements\) Bill \(No. 3\) 2012](#), para 71.1.

⁶ Ibid, para 12.

Kenso has no arrangements “used by... the exporters and importers of products to avoid the full payment of dumping... duties” levied by the Australian Government.

Kenso exhibits no behaviours to “exploit different aspects of the anti-dumping... system [that] aim to ensure that the relevant goods do not attract the intended dumping... duty”.

No “strategy” to avoid dumping duties can possibly be discerned from these facts:

- 1 Kenso buys technical 2,4-D acid on international markets and then converts the acid into a formulated consumer-ready product.
- 2 Kenso has been sourcing technical 2,4-D acid from China since 1991 which was 12 years before anti-dumping measures were imposed against Chinese 2,4-D acid.
- 3 There were no changes in Kenso’s technical 2,4-D acid supply arrangements coinciding with the imposition of original measures on China in 2003.
- 4 Kenso’s sourcing practice is spot-sale based - there are no long term supply contracts that might suggest some kind of duty avoidance strategy.
- 5 Kenso’s suppliers of technical 2,4-D acid have no interest in knowing what the technical 2,4-D acid they supply to Kenso is to be used for, nor any knowledge of where it is going to.
- 6 Kenso sources technical 2,4-D acid and other materials for reaction and mixing in the production of formulated 2,4-D acid from Australia, China, India, Korea and Malaysia.

4 Threatening behaviour on Nufarm’s part

Kenso Corporation prides itself on its regulatory compliance, good governance, and technological development. In conjunction with Kenso’s recent 50th anniversary, the company delivered this message to its shareholders, stakeholders, employees, and commercial partners, and to members of the public:

Kenso celebrated its 50th anniversary today at the St. Regis Hotel Kuala Lumpur, alongside employees, suppliers, and customers from both national and international. Guests were captivated by spectacular performances from local artists, including Malaysia’s iconic Dato’ Sheila Majid.

With the theme “SOWING SUCCESS – Kenso’s 50-Year Journey,” the company reflected on the efforts sown by its late founder, Dato’ Kenneth Soh York Beng. He built Kenso as a vertically integrated agribusiness from the ground up, nurturing its growth much like a tree that flourishes with care until it bears fruit. His journey was marked by perseverance, dedication, and the support of strong leaders and committed employees.

Over the past decade, Kenso has experienced continuous growth. Among its key achievements are the establishment of an oil palm mill, expansion into the hybrid seeds business, attainment of OECD-GLP certification for Kenso Research Lab, and the development of manufacturing capabilities for Capsule Suspension (CS) formulation in agrochemicals.

As the world grapples with pressing global challenges such as climate change and sustainability, Kenso remains committed to adapting cutting-edge yet cost-effective technologies in its

*operations and product innovations. By doing so, the company aims to create greater mutual value for both its stakeholders and the global community.*⁷

Environmental and social responsibility, legal compliance, and respectful competitor relationships are important to Kenso Corporation.

In this context, Kenso Corporation draws attention to the attached letter it received from the applicant in this matter accusing Kenso of “*avoid[ing] paying the relevant IDD on 2,4-D exports from Malaysia to Australia*”. The letter goes further, trumpeting its anti-dumping application as being conclusive of the matters the Commission would inquire into once Nufarm had lodged its application and the inquiry was undertaken.

Granted, there is an anti-circumvention jurisdiction within the Anti-Dumping Commission. However weaponising such a process for anti-competitive purposes, if that was Nufarm’s intention in writing to Kenso in the way it did, is ill-advised and most regrettable.

Kenso is not “*avoiding paying the relevant IDD on 2,4-D exports from Malaysia to Australia*”. Kenso is not subject to that duty and there can be no suggestion that it has avoided any payment of it.

Moreover, the suggestion that during the pre-application process Nufarm was assured of the outcome of the inquiry, as implied in the letter, is a matter of great concern to Kenso. We cannot imagine that the Commission would do such a thing and condemn Nufarm’s letter on that basis.

5 Kenso assures the Commission of its fullest cooperation

Although Kenso is dismayed by Nufarm’s inappropriate application and threatening behaviour, Kenso does recognise that the Commission, having accepted Nufarm’s application, will necessarily have to proceed with this inquiry.

We assure the Commission that Kenso will give its fullest cooperation to the Commission to enable the facts to be established and our legal submissions to be supported.

Yours sincerely



Daniel Moulis
Partner Director

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Encl

⁷ See <https://kensocorp.com/kensos-50th-anniversary/>.

2 July 2025

Kenso Agcare Pty Ltd

Attention Mr Murray Goodlich

Kenso Corporation Sdn Bhd

Attention Mr Soh Kinn Yeow

BY EMAIL

Dear Sirs

We write to you in relation to the supply into Australia of 2, 4-Dichlorophenoxyacetic acid (**2,4-D**), including 2,4-D salts/esters and 2,4-D fully formulated product.

Background

As you are aware, all 2,4-D goods imported into Australia from the People's Republic of China (**China**) are subject to anti-dumping measures as set out in the Dumping Commodity Register of the Australian Anti-Dumping Commission (**ADC**), via the Federal Department of Industry, Science, Energy and Resources. The current measures are in place until 24 March 2028 and take the form of an interim dumping duty (**IDD**) calculated by measuring the dumping export price by the applicable ad valorem duty rate.

Current trade arrangements

As an integrated manufacturer of 2,4-D in Australia, Nufarm continually monitors trade data and is aware that Kenso has been supplying the Australian market with significant quantities of 2,4-D which we believe originates from China. We understand that the relevant 2,4-D tech ester and ester formulations have been transformed in Malaysia but originate from 2,4-D acid produced in China. We believe that Kenso may have avoided paying the relevant IDD on 2,4-D exports from Malaysia to Australia on the basis that the relevant products originate from Malaysia, even though we understand that the underlying acid is supplied from China as Malaysia does not currently have any 2,4-D synthesis capability and we have visibility of 2,4-D imports into Malaysia from other countries.

As you would be aware, the United States International Trade Commission (**ITC**) has clearly determined that the US anti-dumping/counter-veiling duties are applied whenever 2,4-D acid originates from China, including 2,4-D that routes through or is esterified or formulated in other countries.

Nufarm wishes to notify Kenso that Nufarm has initiated a pre-application process with the ADC in relation to commencement of a new anti-dumping investigation. The investigation will confirm that the country of origin for the purposes of calculating 2,4-D IDD is the place where the 2,4-D acid originates

We will be requesting the ADC to seek retrospective collection of duties, subject to the finding of their investigation.

Yours sincerely



Nufarm Australia Limited

Brett Sutherland

Regional General Manager Asia Pacific