25th June 2026

Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Clarification of specific points raised in submissions available on Electronic Public Record (EPR) for case 693; 2,4-Dichlorophenoxyacetic acid (2,4-D)

Dear Commissioner,

Nufarm provides the following clarifications in response to specific matters raised in three of the submissions available on Electronic Public Record for case 693, which it considers to be lacking appropriate context.

These clarifications are intended to provide further context and evidence to support Nufarm's application.

Kind Regards

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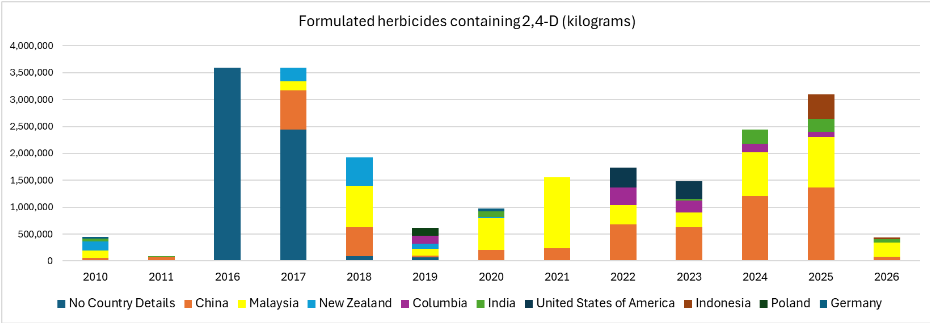
Topic	ADC EPR Reference	Claim	Nufarm response
Trade Patterns and Evidence of Circumvention	Government of Malaysia, MITI (EPR 693-5)	"In response, the GOM highlights that Malaysian exporters have maintained a consistent and established presence in the Australian 2,4-D market since 2000. Therefore, current export volumes do not constitute a 'sudden change in the pattern of trade' triggered by duties on Chinese-originating goods; rather, they represent a long-standing and legitimate commercial relationship" (p. 2)	The available trade data presents a different pattern. Australian import data show a sharp rise in 2,4-D imports from Malaysia starting in 2018 – around the time that the Chinese 2,4-D duties were extended and coinciding with Kenso's new Malaysian esterification plant commissioning in 2019 (EPR 693-1, p. 8 – see ABS import volume data).  Source; Australian Bureau of Statistics data (International Merchandise Trade); Attachment 1, Nufarm Application Malaysia's exports jumped from approximately 167 tonnes in 2017 to over 1.3 million tonnes by 2021 (Attachment 1 - 2,4-D ABS Trade Clearances Sept 2025 COMMERCIAL IN CONFIDENCE), a pattern inconsistent with the prior two decades. This indicates a significant change in trade flows. Moreover, the evidence on the record indicates that Malaysia does not produce 2,4-D acid; all of the technical 2,4-D feeding Kenso's Malaysian output comes from imports, and the vast majority would be from China (as confirmed by Attachment 2 to Nufarm's application, a 2020 US Customs ruling explicitly noting Kenso's Chinese acid source). Therefore, the surge in Malaysian shipments represents Chinese-origin 2,4-D entering Australia via Malaysia, is consistent with the pattern of trade redirection in accordance with section 269ZDBB(4) of the *Customs Act 1901*.

Topic	ADC EPR Reference	Claim	Nufarm response
Origin Rules vs Anti-Dumping Measures	Government of Malaysia, MITI (EPR 693-5)	MITI points to valid Certificates of Origin and a US Customs (CBP) ruling that Kenso's Malaysian 2,4-D ester is considered "Malaysian" for normal customs or tariff purposes, due to the substantial processing it undergoes in Malaysia. "Additionally, the GOM points out that the evidence provided by the Applicant includes a ruling by U.S. Customs and Border Protection affirming that Malaysian-produced 2,4-D constitutes a product of Malaysian origin. This finding is based on the principle of substantial transformation, whereby raw materials are converted into a new and different article of commerce." (p. 2)	The tariff origin designation is not disputed, but it highlights a crucial distinction: Origin rules for ordinary tariffs can be separated from how origin is determined for anti-dumping / countervailing duties, which focus on where the main component was made (ADC EPR 693-2, p. 11). For example, U.S. trade authorities recently held that a 2,4-D ester made in Malaysia by Kenso using Chinese 2,4-D acid (the exact scenario which is at the core of Nufarm's application) is still considered Chinese for anti-dumping duty purposes, even though the finished product's tariff origin is Malaysia (Federal Register 90 FR 22243, 27 May 2025, Scope Appendix). Nufarm's application underscored that Australia's anti-circumvention law shares this principle: significant Chinese content can trigger anti-dumping remedies even if the final goods formally originate in a third country (EPR 693-1, p. 12). A Malaysian tariff-origin determination addresses a different legal question to the anti-circumvention test, and does not preclude a finding that the product's key Chinese input triggers Australia's anti-circumvention provisions.

Topic	ADC EPR Reference	Claim	Nufarm response
Proper Use of the Anti-Circumvention Mechanism	Government of Malaysia, MITI (EPR 693-5)	MITI's submission cautions that this inquiry is an attempt to extend an old anti-dumping measure and calls Nufarm's allegations unjustified and protectionist. "As an Australian domestic industry that have been protected by a perpetual AD measure of almost 25 years, the GOM is of the view that the Applicant should not resort to baseless anti-circumvention allegations for more protection from legitimate international competition." (p. 2 & 3)	MITI's characterisation does not reflect the statutory threshold Nufarm's application was required to meet. Anti-circumvention inquiries are a legitimate and necessary part of Australia's trade remedy system, designed to ensure that existing duties (in this case, the original 2,4-D duty on China) are not rendered ineffective by workarounds. Nufarm's goal is not to impose a new tariff against Malaysia, but to maintain the effectiveness of an existing measure against unfairly priced Chinese imports. Nufarm followed the proper legal process and the Anti-Dumping Commission's Commissioner found the application met all requirements and was supported by reasonable evidence (ADC EPR 693-2, p. 4). The inquiry itself is thorough and evidence-based, allowing all parties (including Kenso and MITI) to be heard and for on-site verification of facts if needed (EPR 693-5, p. 2). If the ADC finds no circumvention after examining the facts, the inquiry will conclude without any action against Malaysian exporters. However, if circumvention is substantiated, altering the duty to cover those Malaysian imports shown to be substantially Chinese in origin ensures that the playing field remains level, exactly as Australia's law intends.

Topic	ADC EPR Reference	Claim	Nufarm response
Circumvention Does Not Require Intent	Kenso, Exporter (EPR 693-4)	Kenso's submission suggests that because it has long sourced 2,4-D acid from China (since the 1990s) and deals with multiple suppliers on commercial terms, its actions are not a deliberate "strategy" to avoid duties. (p. 5)	Nufarm's response is that the anti-circumvention provisions target the objective effect of trade flows, rather than requiring proof of conspiratorial intent. The law purposely does not demand evidence of a secret plan or collusion; it's enough that Chinese 2,4-D is entering Australia through a third country without paying the duty (EPR 693-1, p. 13). This remains true regardless of Kenso's motivations. In fact, Nufarm's data show that, following Kenso's expansion of Malaysian production in 2019, Kenso Agcare's imports of Malaysian 2,4-D have replaced a significant portion of Nufarm's domestic sales (EPR 693-1, p. 16), which the data indicates corresponds to the volume of Nufarm's displaced domestic sales. Thus, Nufarm's case does not allege any unlawful intent by Kenso; instead, Nufarm simply seeks to ensure the existing anti-dumping measure is not inadvertently undermined, which is what the law provides for.

Topic	ADC EPR Reference	Claim	Nufarm response
Chinese Input Costs and Level Playing Field	Kenso, Exporter (EPR 693-6)	Kenso contends that it is not benefiting from unusually cheap Chinese inputs, presenting data to show its Chinese 2,4-D acid costs were higher than some others, including those of a Nufarm affiliate in Asia. (p. 1 & 2)	This raises a different question to the one the anti-circumvention inquiry must answer. Regardless of the price paid, the key fact is that Chinese 2,4-D acid is the major ingredient (about 68% by content) in Kenso's Malaysian 2,4-D Ester Formulated Product, which is only produced for export (EPR 693-1, p. 10). This high Chinese content is what triggers the circumvention concerns, not Kenso's purchase price Indeed, Nufarm's application calculates that nearly A$3.4 million in dumping duties were avoided on Malaysian 2,4-D imports since 2018, a substantial price advantage enabling Kenso to undercut domestic pricing (EPR 693-1, pp. 13–14). As for Nufarm's own offshore sourcing (e.g. a Nufarm subsidiary buying Chinese acid in another country), it is not relevant to whether Kenso's product is circumventing the Australian measure on China, which is the only question before the Commission. When Nufarm itself occasionally imports Chinese 2,4-D into Australia, Nufarm pays the 35.3% duty, as required (EPR 693-1, Part (e), p. 14), which is a completely different scenario from Chinese acid entering duty-free via Malaysia. Therefore, the "double standard" claim is not relevant to this inquiry. Nufarm is simply asking that all Chinese 2,4-D content destined for Australia – no matter how it is routed – be subject to the same duties, to preserve fair competition.

Conclusion

Nufarm appreciates the opportunity to address these points. In summary, the data and legal principles support Nufarm's position that a third-country circumvention is plausibly occurring, impacting the fairness of Australia's 2,4-D market. We have confidence that the Commission's inquiry – conducted under established laws and procedures – will consider all evidence and respond appropriately. Nufarm stands by its application, which relies on verifiable facts and aligns with the purpose of Australia's anti-dumping framework, and we remain committed to full cooperation with the inquiry to reach a fair outcome for all stakeholders.