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23 July 2026

Director - Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601

PUBLIC RECORD

By email

Dear Director

Kenso Corporation and Kenso Agcare
Anti-circumvention 693 - 2,4-Dichlorophenoxyacetic acid from China

We refer to the submission from Nufarm Limited ("Nufarm") dated 25 June 2026 but placed on the public record in this matter on 3 July 2026.

Seven months after the initiation of this inquiry Nufarm still has not engaged with the legal points that preordain this inquiry's termination.

First, for the purposes of considering Section 269ZDBB(3) of the *Customs Act 1901*, formulated 2,4-D acid products are not *assembled* from individual parts in Malaysia.[1] Producing downstream 2,4-D acid products is a *processing* exercise involving the conversion of chemicals by the reaction and mixing referred to in the industry concerned as *formulation*.[2]

Secondly, for the purposes of considering Section 269ZDBB(4) of the Act, the goods as were imported into Malaysia by Kenso are not the same goods as the goods exported by Kenso to Australia. The export of formulated 2,4-D acid products processed in Malaysia does not equate to the transhipment of 2,4-D acid exported from China.

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1 Definition of *"assemble"* from Merriam Webster Dictionary: *to fit together the parts of; "assemble a new bicycle".*

2 Definition of *"formulate"* from Merriam Webster Dictionary: *to prepare according to a formula; "formulate the vaccine against malaria".*

The Commission only need rely on a proper reading of the two circumvention activities that Nufarm has presented in its application to terminate this inquiry. Nonetheless there are a number of misguided comments in Nufarm's submission that Kenso cannot let go unchallenged.

1 "Trade patterns and evidence of circumvention"

Nufarm critiques the Malaysian Ministry of Investment, Trade and Industry's statement that *"Malaysian exporters have maintained a consistent and established presence in the Australian 2,4-D market since 2000"*.[3] The suggestion attempted to be made is that Malaysian exporters intentionally circumvented the dumping measures, and that trade patterns confirm that proposition. In response, it is to be noted:

- that Nufarm's submission does not present any data prior to 2010,[4] such as might serve to rebut MITI's plainly true statement;
- that MITI reports Malaysian exports commenced in 2000, whereas the measures were originally imposed in March 2003, disclosing no pattern at all;
- that Australia does not consider avoidance or evidence thereof, circumstantial or otherwise, as an element of the legal test/s that underlie the consideration of any of the circumvention activities referred to in the Act or Regulations;
- that Section 269ZDBB(4) does not refer to a *"pattern of trade redirection"*[5] other than transhipment of goods through a third country, which is a description that does not apply to the production of goods in a third country via industrial activities that take place in that third country;
- that if intention to circumvent was at all relevant in this case, which it is not, one would expect it to be an intention of a Chinese exporter subject to the original duties, rather than an intention of a Malaysian exporter, because a Malaysian exporter cannot have an intention to circumvent a legal measure that does not apply to it;
- that if intention to circumvent was at all relevant in this case, a sudden change in the pattern of trade would have to be in response to the imposition of the duties, and accordingly Nufarm's statement *that "Malaysia's exports jumped from approximately 167 tonnes in 2017 to over 1.3 million tonnes by 2021"* is unhelpful because the dumping duties have been in place since 2003.

The trade data presented by Nufarm shows nothing more than the predictable interaction of international market conditions with those of the Australian market, where Australian market conditions have been distorted by the government's anti-dumping intervention against exports from China that has been in place since 2003.

2 "Origin Rules vs Anti-Dumping Measures"

Nufarm's attempted use of US authority to support its argument, and the argument itself, are misguided. Nufarm states:

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3 See Nufarm's submission at page 2/6.

4 Ibid.

5 Ibid.

> *…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*[6] [footnote omitted]

That is incorrect. This was not a holding by U.S. trade authorities about origin; it was a *scope definition* mandated by US law for the purposes of conducting the investigation concerned.

> *The conversion of a 2,4-D salt or ester from 2,4-D acid, or the formulation of nonsubject merchandise with the subject 2,4-D, its salts, and its esters in the country of manufacture or in a third country does not remove the subject 2,4-D, its salts, or its esters from the scope. For any such formulations, only the 2,4-D, 2,4-D salt, and 2,4-D ester components of the mixture is covered by the scope of the investigation.*[7]

The outcome of the investigation was that US countervailing duty rate could be applied to the value of the 2,4-D acid or 2,4-D salt/ester *content* of a downstream 2,4-D product if that *content* was of China or India origin.

US anti-circumvention laws "trace" the *content* of the individual product that is subject to duties when it is imported directly into the US from the country that is subject to anti-dumping duties. This is a recognition that the goods exported from the third country that contain that *content* are not the same goods as those subject to the dumping duties when exported from the original country.

It is notable as well that US legislation also avoids the limitations of a parts-based definition of circumvention goods, such as the assembly of parts definition as found in Australia's legislation, by using these words:

> *…merchandise <u>completed</u> or assembled in other foreign countries.*[8] [underlining supplied]

This additional reference to *"completed"* is conjoined with the expression *"assembled"* thereby covering situations where an assembly of parts is inapt to describe the process involved. This wider coverage as used in the US is nowhere to be found in Australia's legislation.

3 "Proper Use of the Anti-Circumvention Mechanism"

Nufarm claims that:

> *[a]nti-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.*[9]

A *"workaround"* would presumably involve a Chinese and a Malaysian entity working together to avoid dumping duties. No evidence was provided by Nufarm for this pejorative criticism, nor could there be any such evidence. Kenso buys 2.4-D acid on the international market from suppliers from a number of

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6 Ibid, page 3/6.

7 *2,4-Dichlorophenoxyacetic Acid From the People's Republic of China and India: Final Affirmative Countervailing Duty Determination*, 90 Fed. Reg. 14,971 (Apr. 7, 2025), page 14971.

8 See *Tariff Act of 1930*, Section 781, *"Prevention of circumvention of antidumping and countervailing duty orders*".

9 See Nufarm's submission at page 4/6.

countries, and does so at world market prices. Kenso does not *"workaround"* legal obligations to which it would otherwise be subject and rejects the contrary implication that is inherent in Nufarm's submission.

4 "Circumvention Does Not Require Intent"

What circumvention *does not require* is not the point. The point is what circumvention in the Australian legal context *does require*. Nufarm fails to engage with the legal interpretation of the requisite circumvention activities it has alleged. Saying that the two circumvention activities do not require intent[10] does not answer the question of what the legislature passed into law when the two circumvention activities were included in the Act.

5 "Chinese Input Costs and Level Playing Field"

Nufarm states that *"[the] high Chinese content is what triggers the circumvention concerns, not Kenso's purchase price"*.[11] So far as Kenso is concerned, that is a nonsense. Kenso has proved that 2.4-D acid can be purchased on the world market from a number of countries, and that Chinese 2,4-D acid is not the cheapest acid available. Thus, it cannot be the "high Chinese content" that has triggered Nufarm's concerns.

Nufarm has lodged an opportunistic and unmerited application with the Commission, pursuant to which it hopes that it will not be required to go to the effort of trying to prove any of the mandatory conditions for the imposition of dumping duties under the Anti-Dumping Agreement. Furthermore, taking "pot shots" at the Malaysian industry is politically and commercially complicated for Nufarm, because Nufarm itself has its own 2,4-D formulation plant in Malaysia as well.

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Like the Ministry of Investment, Trade and Industry of Malaysia, our client trusts that the Commission will maintain its commitment to a fair and evidence-based investigation, and ensure that all proceedings remain consistent with domestic legislation

Should further information be required please do not hesitate to contact the writer.

Yours sincerely

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10 Ibid, see page 5/6.
11 Ibid, page 6/6.