



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 – PART XVB*

**ANTI-DUMPING COMMISSION  
REPORT TO THE  
ANTI-DUMPING REVIEW PANEL**

**REINVESTIGATION OF CERTAIN FINDINGS  
IN RELATION TO  
ANTI-DUMPING COMMISSION REPORT NO. 430**

**DICHLOROPHENOXY-ACETIC ACID (2,4-D)  
EXPORTED TO AUSTRALIA FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**August 2018**

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**ABBREVIATIONS**

2,4-D or the goods	dichlorophenoxy-acetic acid
the Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
the Assistant Minister	Assistant Minister for Science, Jobs and Innovation
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
GOC	Government of China
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual</i>
Nufarm	Nufarm Limited
Rainbow	Shandong Weifang Rainbow Chemical Co., Ltd
the Regulation	<i>Customs (International Obligations) Regulations 2015</i>
REP 430	<i>Anti-Dumping Commission Report No. 430</i>
SAT	GOC State Administration of Taxation
SG&A	selling, general and administration
VAT	value-added tax
the VAT Regulation	Interim Regulations of the People's Republic of China on Value-Added Tax (Order No.538, Promulgated 6 February 2016)

## 1 SUMMARY OF FINDING AND BACKGROUND

### 1.1 Summary of findings

The Commissioner of the Anti-Dumping Commission (the Commissioner) affirms that:

- an adjustment under subsection 269TAC(9) of the *Customs Act 1901* (the Act)<sup>1</sup> to the normal value calculated for Shandong Weifang Rainbow Chemical Co., Ltd (Rainbow) in relation to sales of dichlorophenoxy-acetic acid (2,4-D or the goods), in soluble and emulsifiable concentrate forms, is warranted to account for residual value-added tax (VAT) liability<sup>2</sup> incurred on export sales to Australia.

The Commissioner finds that:

- no adjustment to the normal value calculated under subsection 269TAC(9) for Rainbow in respect of 2,4-D in technical form is warranted, as there is no residual VAT liability on export sales of those goods to Australia;
- the adjustment calculated in relation to 2,4-D in soluble and emulsifiable concentrate forms in *Anti-Dumping Commission Report No. 430* (REP 430) was incorrect;
- after correcting the adjustments required as part of this reinvestigation, Rainbow's normal value has reduced; and
- the dumping margin applicable to 2,4-D exported to Australia by Rainbow is 22.3 per cent.

### 1.2 Continuation Inquiry No. 430

On 20 July 2017, the Commissioner initiated an inquiry into whether the continuation of the anti-dumping measures, in the form of a dumping duty notice, applying to the goods exported to Australia from the People's Republic of China (China) is justified.

The inquiry was initiated following the Commissioner's consideration of an application lodged by Nufarm Limited (Nufarm), the largest Australian manufacturer of 2,4-D, seeking the continuation of the anti-dumping measures.

As set out in REP 430, the Commissioner was satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

In order to assess whether dumping may continue or recur, the Anti-Dumping Commission (Commission) obtained information relevant to the assessment of dumping. The Commission ascertained the variable factors relevant to the anti-dumping measures

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

<sup>2</sup> References in this report to residual VAT liability are to be read as the applicable VAT rate (13 per cent) less the amount of VAT rebate received.

during the inquiry period (1 July 2016 to 30 June 2017). The Commission found that there had been a change in the variable factors.

On 5 March 2018, the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister) accepted the Commissioner's recommendation to secure the continuation of anti-dumping measures applying to 2,4-D exported from China for a further five years from 25 March 2018.<sup>3</sup> The Assistant Minister also determined that the notice applicable to 2,4-D exported to Australia should have effect as if different variable factors had been fixed in relation to all exporters of 2,4-D from China. A notice of this decision was published on 5 March 2018 (Anti-Dumping Notice (ADN) No. 2018/21).

### **1.3 Review by the ADRP**

The Anti-Dumping Review Panel (ADRP) is conducting a review of the Assistant Minister's decision. The ADRP received an application for review from Rainbow.

### **1.4 Requirement for reinvestigation**

Pursuant to subsection 269ZZL(1), the ADRP has requested the Commissioner to reinvestigate specific findings that formed the basis of the reviewable decisions which were the result of the recommendations made in REP 430. The ADRP requested that the Commissioner report the result of the reinvestigation to the ADRP by 7 August 2018.

This report provides the results of the reinvestigation by the Commissioner.

### **1.5 Approach to the reinvestigation**

The Commissioner must conduct a reinvestigation in accordance with the ADRP's requirements and give the ADRP a report of the reinvestigation concerning the finding or findings within the period specified by the ADRP.<sup>4</sup>

In its report to the ADRP the Commissioner must:<sup>5</sup>

- (a) if the Commissioner is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed—affirm the finding or findings; and
- (b) set out any new finding or findings that the Commissioner made as a result of the reinvestigation; and
- (c) set out the evidence or other material on which the new finding or findings are based; and
- (d) set out the reasons for the Commissioner's decision.

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<sup>3</sup> On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this decision the Minister is the Assistant Minister.

<sup>4</sup> Subsection 269ZZL(2).

<sup>5</sup> Subsection 269ZZL(3).

## 2 RAINBOW'S NORMAL VALUE

### 2.1 ADRP request for reinvestigation

The ADRP has requested that the Commissioner reinvestigate certain findings in REP 430 in relation to the following:

- the normal value constructed under subsection 269TAC(2)(c) in relation to Rainbow's exports of 2,4-D to Australia; and, if any change is made to the normal value;
- the dumping margin for those exports.

Specifically, the ADRP has requested the Commissioner to reinvestigate:

- the upwards adjustment made to Rainbow's normal value under subsection 269TAC(9) to account for differences in the rate of VAT applicable to export sales and domestic sales of 2,4-D.

### 2.2 Evidence or other material on which the findings are based

The Commission has based its findings on:

- Rainbow's exporter questionnaire response to *Continuation Inquiry No. 430*;
- Anti-Dumping Commission Exporter Verification Report – Rainbow, published 4 December 2017<sup>6</sup>;
- Information provided by Rainbow in Attachment B to its application to the ADRP seeking a review of the Assistant Minister's decision published in ADN No. 2018/21 on 5 March 2018; and
- Information provided by Rainbow for the purpose of the reinvestigation.

### 2.3 Reasons for the Commissioner's decision

#### 2.3.1 Rate of VAT on 2,4-D

As part of the reinvestigation, the Commission wrote to Rainbow seeking clarification and evidence of the VAT rate applicable to the goods in China. Rainbow responded that the *Interim Regulations of the People's Republic of China on Value-added Tax (Order No.538, Promulgated 6 February 2016)* ("the VAT Regulation") were applicable during the inquiry period.<sup>7</sup> Rainbow specifically referred to Article 2(2)(d) which states that a tax rate of 13 per cent applies to the selling of "feeds, chemical fertilizers, agricultural chemicals, agricultural machinery and plastic film for farming" and that 2, 4-D falls into the "agricultural chemicals" category.

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<sup>6</sup> Case 430 Public Record Item No. 7.

<sup>7</sup> Confidential Attachment 2, p.3.

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To verify the VAT rate on sales of 2,4-D, the Commission has examined:

- Commercial invoices (Exhibit D-7) provided for the domestic sales of 2,4-D reported by Rainbow in Appendix D-4 (Domestic Sales) of its questionnaire response;<sup>8</sup> and
- Commercial invoices relating to Rainbow's domestic sales of 2,4-D which were exported to Australia by related party Shandong Rainbow Agrosiences Co., Ltd under Invoice No.16RA653.<sup>9</sup>

Reviewing the commercial sales invoices referred to above, the Commission observed that the VAT rate payable on those sales was 13 per cent, which is consistent with Rainbow's claims and the VAT Regulation.

The Commission is therefore satisfied that the correct rate of VAT applicable to sales of 2,4-D is 13 per cent, rather than 17 per cent which the Commission used in its calculations for working out the VAT adjustment in REP 430. The documents that trace back to the sales transaction which resulted in goods being exported to Australia by Shandong Rainbow Agrosiences Co., Ltd under Invoice No.16RA653 are provided at **Confidential Attachment 3**.<sup>10</sup>

### 2.3.2 VAT rebates on export sales of 2-4,D

In reinvestigating this issue, the Commission has re-examined the information subject to verification in REP 430. This data includes the following:

- Source documents provided for a sample of 12 export transactions relating to sales of 2,4-D reported by Rainbow in Appendix B-4 (Australian Export Sales) of its questionnaire response; and
- Government of China (GOC) State Administration of Taxation (SAT) Export VAT Rebate Tables for HS Codes 2918.99.00 and 3808.93.19.<sup>11</sup>

The Commission has established, by examining the GOC SAT Export VAT Rebate Tables, that differential VAT rebates are applicable to exports of 2,4-D from China. The table below summarises the VAT rebates applicable to the types of 2,4-D exported to Australia by Rainbow.

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<sup>8</sup> Exhibit D-7 to Rainbow's questionnaire response is referenced in footnote 10 at Attachment B to Rainbow's ADRP application.

<sup>9</sup> Export Sale Transaction Sample No.6 examined in Attachment 1 to the Rainbow Verification Report published on 4 December 2017 (Case 430 Public Record Item No.7) and referenced in footnote 10 at Attachment B to Rainbow's ADRP application.

<sup>10</sup> Page 2 of Confidential Attachment 2 provides to the domestic sales invoice which indicates the VAT rate of 13 per cent.

<sup>11</sup> Examined in Attachment 1 to the Rainbow Verification Report published on 4 December 2017 (Case 430 Public Record Item No. 7).

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HS Code	Product Type (As reported by Rainbow)	VAT rebate
3808.93.19	Soluble Concentrate	5%
3808.93.19	Emulsifiable Concentrate	5%
2918.99.00	Technical	13%

**Table 1 – HS Code VAT rebate rates**

To verify which VAT rebate was applicable to the goods exported to Australia by Rainbow, the Commission re-examined export declarations provided in relation to a sample of 12 export transactions subject to verification during the inquiry.<sup>12</sup> The Commission has compared the product details of the exported goods to the export declarations provided to confirm under which HS code the goods were exported. The Commission finds that the goods had been exported to Australia under the HS codes in accordance with Table 1 above. Using this data, the Commission is able to map the VAT rebates to the relevant goods exported to Australia. The Commission is also able to calculate the residual VAT liability of the goods, which for goods declared under HS Code 3808.93.19 (Soluble Concentrate and Emulsifiable Concentrate) is 8 per cent. There is no residual VAT liability for goods declared under HS Code 2918.99.00 (Technical).

Consistent with the practice outlined in the *Anti-Dumping Commission Dumping and Subsidy Manual* (the Manual), at section 14.3, the Commission treats the residual VAT liability applicable to Rainbow's sales of 2,4-D exported to Australia as having influenced the export price. An upward adjustment to the normal value should therefore be applied under subsection 269TAC(9) to account for the residual VAT liability incurred by Rainbow on the sale of soluble and emulsifiable concentrate 2,4-D exported to Australia, as discussed further below.

### **2.3.3 Basis for adjustment to normal value to account for residual VAT liability**

The Commission's policy and practice in relation to adjusting for differences in residual VAT liability is covered in Chapter 14 of the Manual which discusses due allowance.

This chapter explains that VAT liability can differ between domestic sales and export sales. Domestic sales prices are usually VAT free (because most companies separately capture the output VAT amount on each sales). Export sales, on the other hand, usually incur VAT liability.

The Manual makes it clear that, in circumstances where it is established that a residual VAT liability applies to export sales, this residual VAT liability is treated as having influenced the export price (i.e. it is taken to have been factored in to the invoiced price because the exporter would be seeking to recoup it).

Accordingly, where the normal value is calculated from VAT exclusive domestic sales prices (or in this case constructed based on VAT exclusive costs) an upwards adjustment will be applied to the normal value in order to ensure fair comparison between the normal value and export price.

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<sup>12</sup> Attachment 1 to the Rainbow Verification Report published on 4 December 2017 (Case 430 Public Record Item No. 7).



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The level of adjustment applicable is usually the residual VAT liability (that is, the VAT rate for the goods minus any VAT rebates received). In REP 430, the Commission incorrectly relied on a VAT rate of 17 per cent for working out the residual VAT liability Rainbow incurred on its 2,4-D exports. In its application to the ADRP, Rainbow stated that the VAT rate for agricultural products in China during the inquiry period was 13 per cent.

Having established the rate of VAT on 2,4-D in section 2.3.1 and the relevant VAT rebate on export sales in section 2.3.2, the Commission finds that the VAT liability on exports of 2,4-D in the soluble and emulsifiable concentrate forms is not fully recovered. The Commission is satisfied that a residual VAT liability is incurred, and this residual VAT liability is taken to have influenced the export price. The Commission finds that an upwards adjustment, to account for residual VAT liability, to the normal value for 2,4-D in the soluble and emulsifiable concentrate forms is warranted.

The Commission finds that the VAT liability on the export of 2,4-D in the technical form is fully recovered by the exporter. Accordingly, the Commission is satisfied that there is no basis to apply an upwards adjustment for residual VAT liability in relation to exports of 2,4-D in the technical form.

The Commission notes that Rainbow made a number of claims in its application to the ADRP as to why it considers there is no apparent basis or evidence for an adjustment in relation to residual VAT liability. For example, Rainbow consider that, because it is an export oriented business, residual VAT liability is a normal cost of the entire business. Among other things, Rainbow claim that given the negligibility of its domestic sales, residual VAT liability would have had no impact on Rainbow's export pricing and that it does not factor it into its pricing. The Commission notes that:

- Rainbow's position is not supported with documentary evidence which establishes that Rainbow's pricing decisions consider the relativities between the various markets in which it participates; and
- incorrectly attributes the size of its domestic sales volume as a factor which influences its export prices rather than establishing if the residual VAT liability itself, which is the subject of the adjustment, influenced the export price.

The Manual is clear on what should be considered when establishing the basis for adjustments to an exporter's normal value to account for residual VAT liability incurred on export sales. The difference in an exporter's domestic and export sales volumes and the market orientation are not factors which the Commission's policy and practice requires to be considered.

Rainbow also assert in its application that the constructed normal value already incorporates the residual VAT liability. The Commission does not accept Rainbow's claims. The constructed normal value calculation for Rainbow under subsection 269TAC(2)(c) includes the selling, general and administrations (SG&A) costs associated with the sale of like goods on the domestic market, established under subsection 44(2) of the *Customs (International Obligations) Regulations 2015* (the Regulation).

The Commission verified the domestic SG&A costs applicable to Rainbow's constructed normal value and was satisfied that only costs relevant to domestic sales activities are

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included. These domestic SG&A costs appropriately exclude any residual VAT liability incurred in relation to export sales.

### 2.3.4 Normal value calculation under subsection 269TAC(2)(c)

Having established the basis for making the adjustment under subsection 269TAC(9) to account for the residual VAT liability Rainbow incurs on its sales of 2,4-D exported to Australia, the Commission has recalculated the normal value for Rainbow, which in REP 430 was a constructed normal value under subsection 269TAC(2)(c).

Having identified the correct rate of VAT applicable on sales of 2,4-D and the amount of VAT rebate applicable to Rainbow's exports of 2,4-D, the Commission can calculate the residual VAT liability and apply this as an upwards adjustment to the normal value, where applicable under subsection 269TAC(9). The residual VAT liability is the difference between:

- the VAT rate applicable to 2,4-D (13 per cent); and
- the VAT rebate on 2,4-D exports to Australia (5 per cent or 13 per cent).<sup>13</sup>

The Commission finds that the constructed normal value for Rainbow has reduced, correcting the normal value established in REP 430. The reduction in normal value is due to a VAT rate of 13 per cent rather than 17 per cent which was used to work out the residual VAT liability in REP 430. The Commission's calculations of the normal values constructed under subsection 269TAC(2)(c), taking the lower rate of VAT into account, are provided at **Confidential Appendix 1**.<sup>14</sup>

### 2.3.5 Variable factors applicable to Rainbow

For the purpose of the notice published by the Assistant Minister on 5 March 2018 (ADN No. 2018/21), should the ADRP accept the findings in this reinvestigation, the Commission recommends that the ascertained normal value applicable to Rainbow's exports should be [REDACTED] [normal value] RMB per litre or kilogram.<sup>15</sup>

### 2.3.6 Dumping margin calculation

As a result of the finding that the normal value for Rainbow has reduced, it is necessary to recalculate the dumping margin applicable to Rainbow's sales of 2,4-D exported to Australia.

The Commission has calculated that the dumping margin in respect of 2,4-D exported to Australia by Rainbow is **22.3 per cent**.

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<sup>13</sup> Calculations relevant to the upwards VAT adjustment, showing the correct VAT rate, are provided at worksheet '(c) VAT Adjustment' in Confidential Appendix 1.

<sup>14</sup> The application of the VAT adjustment referred to in footnote 13 is provided in column Z at worksheet '(a) Normal Value' in Confidential Appendix 1. The constructed normal values determined in this reinvestigation are summarised at worksheet '(c) Normal Value Summary' in Confidential Appendix 1.

<sup>15</sup> Cell reference K25 in worksheet '(b) DM Calculation 2' refers.

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For the purpose of the notice published by the Assistant Minister on 5 March 2018 (ADN No. 2018/21), should the ADRP accept the findings in this reinvestigation, the Commission recommends that the dumping margin applicable to Rainbow's exports should be **22.3 per cent**.

The Commission's dumping margin calculations are provided at **Confidential Appendix 2**.<sup>16</sup>

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<sup>16</sup> Cell reference I15 in worksheet '(b) DM Calculation 2' refers.

**3 ATTACHMENTS AND APPENDICIES**

<b>Non-Confidential Attachment 1</b>	Request from ADRP for reinvestigation
<b>Confidential Attachment 2</b>	Interim Regulations of the People's Republic of China on Value-added Tax (Order No.538, Promulgated 6 February 2016)
<b>Confidential Attachment 3</b>	Export Invoice No.16RA653 Trace Documents
<b>Confidential Appendix 1</b>	Rainbow Normal Value (correcting the normal value in REP 430 at Confidential Attachment 5.3)
<b>Confidential Appendix 2</b>	Rainbow Dumping Margin (correcting the dumping margin in REP 430 at Confidential Attachment 5.4)