

Attention : Tim Flor

**Australian Customs and Border Protection,
International Trade Remedies Branch,
5 Constitution Avenue,
Canberra ACT 2601**

Re : Continuation Enquiry – 2,4 D Acid from PRC

Dear Sir,

Accensi is both an importer of 2,4 D active ingredients from China as well as a local formulator of 2,4 D based products.

We fully support the ongoing import duty, not only on formulated products, but also on 2,4 D in its technical forms, since Nufarm is a bona fide local manufacturer of this active ingredient.

However, the additional Anti Dumping Duty which has been levied on imported 2,4 D technicals from China since 2002 is demonstrably unjustifiable in today's market, and close examination of the original application, and the subsequent 2008 review, indicate that the imposition, and continuation, of this "interim" duty has been based on spurious methods of calculating domestic selling prices in China, and we hope that the current continuation enquiry will address this most fundamental aspect of any dumping investigation, and in so doing, find that this product has not been dumped.

Initially, we would contend that the length of time the alleged dumping has been occurring, (10 years), is in itself a clear indication that dumping is not happening, as it defies commercial sense for an exporter to spend a decade pursuing lower price/profit market segments.

We address some issues in Nufarm's application as follows :-

1). **The Goods – Substitutability**

On page 3 of Nufarm's submission they state that 2,4D acid is "*dedicated for purpose and has no other known use*". Yet in a recent TCO application appeal case, Nufarm successfully argued, that 2,4 D and Trifluralin technical (TT) were substitutable products. Extract from the ruling below.
Reference : AAT (File Number 2008/3845) Page 26.

Chinese Trifluralin technical has no dumping duty applicable, and by Nufarm's own evidence, (presumably under oath), 2,4 D can clearly be used as a substitute, so any claims of material harm as a consequence of the removal of 2,4 D measures are automatically invalidated, as there is apparently already a viable substitute product available, which does not attract dumping duty.

80. The Tribunal finds that both TT and 2,4-D acid can be used for the same purpose – to kill weeds growing in a variety of similar crops. The fact that one is a pre-emergent herbicide and operates in a different manner to the other post-emergent herbicide does not establish, as Robertson J stated, that the goods are not substitutable. The question is whether the 2,4-D acid can be put to a use that corresponds to a use to which TT can be put, bearing in mind that the context in which the relevant provisions of the *Customs Act* operate is trade and commerce. We are satisfied that the answer to that question must be 'yes' – that 2,4-D acid does have a corresponding use to TT. In terms of the definition in s 269C, we are satisfied that 2,4-D acid comprises 'substitutable goods' for the TT which is the subject of the TCO application.

2). Likelihood of increase in Chinese Imports in the absence of measures

With the exception of 2010, when most factories were closed down by the Chinese EPA until more stringent waste water compliance standards were met, Chinese imports have increased year by year since 2008 even with measures in place, and there is no reason to believe this trend will change either with, or without, the dumping duty in place. Logically the removal of measures would make it easier for Chinese factories to increase their volumes, but the inference by Nufarm that the continued increase in Chinese volumes would be at the expense of their own production ignores the distinctly stronger possibility that other countries exporting to Australia would be more likely to lose market share than Nufarm. More importantly, it is noted that Nufarm is also an importer of 2,4 D acid indicating that their own production capacity is already 100% utilized.

Nufarm state that there are "up to 300 producers of 2,4 D in China". This is not only wrong, but also misleading and clearly designed to give the impression of a potential avalanche of technical 2,4 D landing in Australia in the absence of anti dumping measures. Through the APVMA's TGAC registration process there are in fact only 6 factories who can legally sell their 2,4 D, either as technical or as formulated product, into the Australian market. A closer examination of the capacities of those six factories, along with the demands of their other export markets would demonstrate that the 300 producers statement has no basis in truth, and the implied flood of Chinese product is unfounded.

3). Determination of Chinese Domestic Price

Whilst Accensi notes the apparent lack of co-operation from Chinese producers, we are concerned that C&BP would once again rely on the primary beneficiary of the anti dumping duty, (Nufarm), to provide information relating to the calculation of a domestic price.

Obviously this information is absolutely critical in determining a fair and truthful outcome in the investigation, and it is our opinion that more effort should be made to obtain this data from Chinese producers. Accensi's advice from certain exporters in China is that they are willing to provide data and C&BP should pursue them in this regard....perhaps with visits or at the least a more simplified version of the questionnaire.

Referring to Table 4, (page 7) – Chinese Domestic 2,4 D Price vs. Export Price, we make the following observations:-

- Nufarm state in section (vii) that domestic selling prices for Iso-Butyl Ester were between 25 – 27,000 RMB/kg (assume they mean metric tonne). They then use these same figures in Table 4 but as an acid price upon which to base their dumping margin calculations.
- Accensi's has evidence of domestic 2,4 D Acid prices during the POI ranging from 21,400RMB to 23,000 RMB/mt.....Converted to USD this equates to approx USD3.35 – 3.60/kg.....some 15% below Nufarm's constructed calculations in Table 4.
- The average export prices of AUD\$3.62 (2011) and AUD\$3.79 (2012) would appear to based on the exchange rate converted average USD price of \$4.06/kg stated in Table 5. Accensi would dispute this average and believe an analysis of ABS import statistics would prove a figure approximately 15% below this approx. USD3.45/kg.
- The volumes of acid in Table 5 must also be subject to some scrutiny as the 2,759,000 figure differs considerably from the 952,230 in Table 1. ... a difference of around 1,800,000 kg !!
- Neither table clarifies the price basis, (FOB or CIF).

Clearly these figures cannot be relied upon for many reasons, and verification and correction would yield a distinctly different dumping margin estimate.

Table 4 – Chinese domestic 2,4-D acid price versus export prices

| | 2011 | 2012 |
|-------------------------------------|------------------|------------------|
| Domestic price RMB | RMB 25-27,000/kg | RMB 25-27,000/kg |
| Domestic Price A\$/kg | A\$3.77-4.16/kg | A\$3.77-4.16/kg |
| Midpoint A\$/kg | A\$3.96/kg | A\$3.96/kg |
| Av Export Price | A\$3.62/kg | A\$3.79/kg |
| Dumping Margin A\$/kg | A\$0.34/kg | A\$0.17/kg |
| Dumping Margin as % of export price | 9.4 per cent | 4.5 per cent |

Table 1 – 2,4-D acid imports (kgs) 2007 to April 2012.

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|--------------|------------------|------------------|------------------|------------------|------------------|------------------|
| China | 401,480 | 582,925 | 728,800 | 381,300 | 952,230 | 1,220,300 |
| India | 594,000 | 2,478,750 | 1,134,000 | 1,010,200 | 1,348,300 | 432,000 |
| Poland | 454,000 | 520,000 | 280,000 | 1,078,000 | 1,000,000 | 200,000 |
| Malaysia | | 90,000 | 52,000 | 122,000 | | |
| Other | 23,800 | 95,680 | | 140,800 | 91,625 | |
| Total | 1,473,280 | 3,777,355 | 2,194,800 | 2,732,300 | 3,392,155 | 1,852,300 |

4). Exports to Third Countries

Accensi are unaware of dumping measures being applied to Chinese 2,4 D exported to any other countries around the world, and when C&BP to take into consideration this fact, combined with a comparison of prices to those countries, it becomes apparent that dumping is not occurring here.

As mentioned above, Nufarm have made an error in Table 5 in their calculation of the export price to Australia and have overstated the average price by around 15%. With the adjustment, we would suggest that around USD3.45/kg (FOB), would be a more accurate average price and much more closely in line with the prices being paid by 7 other significant importing countries of the product. If none of them have had cause to suspect dumping over a 10 year period, C&BP must question Nufarm's application more closely.

If Australia's true average price is almost perfectly in line with other importers, (USD3.45/kg), what commercial logic are Nufarm using in their assertion that removal of measures will result in a decline in Chinese prices.....Why would Chinese exporters reduce their Australian price below that of the prices at which they sell to other countries?? This claim makes absolutely no sense whatsoever.

Table 5 – Chinese 2,4-D acid 2011 export prices to major destinations

| Country | Volume | Average US\$/kg | Lowest Price US\$/kg |
|-----------|-----------|-----------------|----------------------|
| Australia | 2,759,000 | 4.06 | 3.28 |
| Argentina | 1,390,000 | 3.48 | 3.10 |
| Brazil | 1,705,000 | 3.44 | 3.00 |
| Guatemala | 1,580,000 | 3.35 | 3.02 |
| Colombia | 1,321,000 | 3.45 | 3.22 |
| Russia | 1,424,000 | 3.87 | 3.08 |
| Malaysia | 1,464,000 | 3.35 | 2.43 |
| Indonesia | 1,891,000 | 3.31 | 2.80 |

5). Material Injury

On page 9, Nufarm contend that *"the anti-dumping measures applicable to 2,4D exported from China since 24 March 2008, have had the desired effect of minimizing material injury to the Australian Industry..."* yet at the same time claim that Chinese exports have increased *".....to be the largest import source in 2012"* (page 6). These statements are counterintuitive and when we consider that Nufarm was also an importer during the POI, it is hard to envisage exactly how material injury might occur with the removal of dumping measures.

Nufarm also state that they have *"improved profit in 2011 and first half of 2012"*, (Page 8), and that the removal of the existing measures will *"likely result in a decline in Chinese export prices."* As previously stated, there is no commercial sense in selling product to Australia at a price below that which can be obtained in another market, whether that market be another country or a domestic market. They simply would not do it, or if they had some short term reason to do so, they would most certainly not continue to do it for a decade.

Summary

Accensi believe that the continuation of an anti dumping duty on this product for another 5 years cannot be justified or substantiated under C&BP guidelines. It is our belief that the submission by Nufarm contains several significant inaccuracies, which we hope we have addressed, or at least brought to the of attention C&BP for more detailed investigation, in our submission.

We have no doubt that if accurate data is obtained from independent and verifiable sources, (NOT via the main beneficiary of the duty), it will become abundantly apparent that the continuation of this duty would be an injustice.

Your sincerely,

Craig Ellis,
Business Manager.
Accensi – Pty Ltd