

June 5, 2002

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Sent Via email: hearingclerks.waysandmeans@mail.house.gov

Ms. Allison Giles , Majority Chief of Staff  
Committee on Way and Means  
U. S. House of Representatives  
1102 Longworth House Office Building  
Washington, DC 20515

Re: H. R. 4484, 107<sup>th</sup> Congress - Opposition to Temporary Duty Suspension Bill

Dear Ms. Giles:

Pursuant to Trade Subcommittee Advisory Notice TR-9, we are writing to register our strong objection to H. R. 4484. A bill introduced by Representative Biggert representing the 13th District of Illinois at the request of an Australian competitor of Dow AgroSciences LLC ("DAS"), the agricultural division of The Dow Chemical Company ("Dow"). This bill, if enacted as introduced, would temporarily suspend the U. S. duty rate for five years on at least three related chemicals. The chemicals, 2,4-dichlorophenoxyacetic acid (2,4-D), (CAS number 94-75-7), and its salts and esters (CAS numbers 1928-43-4 and 2008-39-1) are produced solely by Dow Chemical in the United States. We are asking that the Ways and Means Committee support our strong objection by seeking the withdrawal or defeat of H. R. 4484. The same chemicals were covered in H.R. 3797 introduced in the 106<sup>th</sup> Congress, but it was not enacted because of the same objections that we raised at that time. Reference the July 10, 2000 letter attached.

We are making similar requests to Mr. Pence, 2<sup>nd</sup> District, Indiana and Mr. Camp, 4<sup>th</sup> District, Michigan, a member of the Ways and Means Committee. Both represent congressional districts where DAS and Dow have substantial operations, including the production and sale of the chemicals named in H. R. 4484. We will also be writing similar letters to the U. S. International Trade Commission, the Department of Commerce and the U. S. Trade Representative in registering our objection to H. R. 4484 for the reasons outlined in this letter.

Dow is the only U. S. producer of 2,4-dichlorophenoxyacetic acid (2,4-D), (CAS number 94-75-7) at a plant located in Midland, Michigan. This product, its production and the U. S. market for 2,4-D is very important to the company. [There are over 100 U.S. employees involved in the production and selling of 2,4-D and our investment in this plant exceeds \$70 million]. 2,4-D is one of the most widely used

herbicides in the U. S. broadleaf market. It is used to treat more than 80 million acres each year. The U. S. market for 2,4-D is the largest in the world, so it is the only significant target for foreign competitors.

In recent years, imports of 2,4-D from GSP eligible countries have already taken a substantial share of the U. S. market because of the duty-free benefit under the GSP program. H. R. 4484 would allow more duty-free imports from Australia, the EU, China and potentially from other countries where 2,4-D is produced. We do not think that a foreign manufacturer in a developed country like Australia should be given even a temporary suspension of the U. S. duty on their imports of 2,4-D. If they were to receive such a suspension, it would enable the foreign manufacturers to sell their product at a reduced price from what it is now, and displace some of the U. S. market share that DAS currently has in the domestic market for 2,4-D. Beyond opening the U. S. market to five years of no duty on imports of 2,4-D from Australia, H. R. 4484 would also open the U. S. market to more imports from European and Asian manufacturers. It is also noteworthy that Australia has a duty rate of 5% on 2,4-D, and the European Union has a duty rate of 6.5% on 2,4-D. DAS is, and would be, assessed these duties on imports into those countries while the U. S. duty would be suspended if H. R. 4484 were enacted!

Another factor that should be considered carefully is the amount of revenue from collection of duties that would be lost for the proposed five-year period. Based on 2001 U. S. import data, the customs value of imports of 2,4-D from Australia were \$8,746,656. At the 2001 duty rate of 8.6%, yearly duties collected should have been about \$ 752,000 on the Australian imports and nearly \$215,000 on imports from China, Austria and the United Kingdom. Another \$942,000 in U. S. duty was not collected in 2001 on GSP eligible imports from Argentina. As you know, suspension of the duty at this level would significantly exceed the annual "PAYGO" type of limitations that are normally suggested by the CBO. In addition, there would be lost tax revenues on reduced DAS sales as imports of 2,4-D take more U.S. market share. These are yet additional reasons for H. R. 4484 to be withdrawn or defeated.

DAS has ample production capacity at its current utilization rates at Dow's plant in Midland, Michigan to supply all the domestic demand for 2,4-D. Imports are not needed to fill this demand, and should certainly not be enabled by a temporary suspension of the applicable U. S. duties. We would hope, that as the sole U. S. producer of 2,4-D, we have more than adequate justification for our objection to H. R. 4484. Furthermore, that it would override any request from a foreign interest in a developed country to temporarily suspend the U. S. duty on imports of 2,4-D, and its salts and esters.

Clearly, the maintenance of the current U. S. duty rate is an important factor for DAS keeping its 2,4-D plant, production, employees and domestic market at operating levels economically viable to justify the investments we have made at our

plant in Midland, Michigan. In addition, maintenance of the U. S. duty on 2,4-D is also important to the many other U. S. locations where products are formulated from 2,4-D and sold into the domestic market. Any future expansion, product development, and related investment in this important product line are dependent upon maintaining the domestic market share we have. Decreases or suspensions of U. S. duty will allow more imports to displace market share, thereby clearly affecting any realization of new investments in our 2,4-D plant, and the related positive economic effects to the U. S. economy and agriculture community.

As the only U. S. producer of 2,4-D, we believe there should be no reason for favorable consideration of H. R. 4484. Clearly it is controversial at this early stage after its introduction, and should be withdrawn. We urge your support of our objection and will appreciate the committee's help with the defeat of H. R. 4484 if Representative Biggert does not withdraw it.

Please do not hesitate to contact Tom Campbell of Dow AgroSciences in our Washington, D. C. offices at (202) 429-3438 if you have any questions. We would be pleased to meet with you or the appropriate committee staff about this matter if you would like to discuss this matter directly. Please let us know an appropriate time if you would like to meet with DAS representatives concerning this matter.

Sincerely,

Gerald L. Ytzen  
Global Business Director  
(317) 337-4891

Attachments

Cc: Representative Judy Biggert, Trade Subcommittee  
Representative Dave Camp  
Representative Mike Pence

July 10, 2000

Mr. A. L. Singleton  
Chief of Staff  
House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Re: H. R. 3797 – Temporary Duty Suspension on 2,4-D and its Salts & Esters

Dear Mr. Singleton:

Our April 4<sup>th</sup> letter to you outlined the various reasons we strongly oppose the enactment of H.R. 3797. Failing its withdrawal, we asked that you reject H. R. 3797 should it be referred to the full Ways and Means Committee for further consideration. Letters similar to our April 4<sup>th</sup> letter to you were also sent to Congressman McIntosh, the United States Trade Representative, the Department of Commerce and the U. S. International Trade Commission stating our strong opposition to H. R. 3797.

Subsequently, in letters dated May 18<sup>th</sup> Congresswoman Danner and Nufarm Limited/Nufarm America Inc. submitted comments on H. R. 3797 to you pursuant to the Trade Subcommittee's Advisory Notice TR-20, as did Dow AgroSciences (DAS). We have now had an opportunity to fully review the letters submitted by Congresswoman Danner and Nufarm. Based on some of their comments, we think that it is imperative for us to provide you with some rebuttal comments to some of the points reflected in their letters. Since the public comment period concerning this matter closed on May 18<sup>th</sup>, we hope that you can make the necessary clarifications to those appropriate about H. R. 3797 based on our comments outlined below. Based on conversations with Trade Subcommittee staff, we understand the Trade Subcommittee is likely to schedule a mid-July mark-up of duty suspension bills.

Dow AgroSciences is the only U. S. producer of 2,4-D; and if H. R. 3797 is going to be formally considered, we urge you to take the following comments into full account.

Rebuttal points to certain statements in letters from Congresswoman Danner and Nufarm Limited are as follows:

1. There is strong opposition from the U. S. producer and there would be a detrimental effect on the U. S. industry, contrary to statements in letters.

2. Duty savings would not flow through to American growers or consumers as claimed in letters. It would primarily flow to Nufarm.
3. Herbicide formulators in the U. S. will not have any better access to the Canadian or Mexican markets as claimed in letters. They already have access to more than adequate GSP duty-free 2,4-D from producers in GSP eligible countries such as Argentina, as well as from DAS production in the U. S. that is available duty-free under NAFTA .
4. Contrary to what the letters claim, DAS has already been detrimentally effected by GSP duty-free imports of 2,4-D, particularly those from Argentina. DAS has scaled back its global presence for 2,4-D production by closing facilities in New Zealand, Brazil and South Africa. Any further scale back necessary due to the loss of market to duty-free imports will directly affect its only remaining 2,4-D production facility located in Midland, Michigan.
5. Claims are made in the letters that new jobs would be created if 2,4-D imports were all duty-free, but the adverse effect on jobs at DAS or its customers are not even mentioned. Any potential new jobs that might be created as a result of more duty-free imports of 2,4-D would be offset by the loss of jobs at DAS. Why jeopardize existing U. S. jobs at the DAS 2,4-D facility in Midland by allowing more duty-free imports from non-GSP eligible countries?
6. Contrary to claims in Nufarm letter, about an unavoidable “significant barrier” to imports of 2,4-D being limited to just current members of the 2,4-D Industry Task Force II (TF II), there is no such barrier. Any current member of TF II can import 2,4-D from wherever a 2,4-D producer is located provided the 2,4-D meets the product specifications and complies with EPA regulatory requirements. Some members choose not to import any 2,4-D at this time from non-GSP eligible countries. For example, BASF-Germany and AGROGOR through PBI Gordon or
7. Atanor. Any of these TF II members, including Nufarm, could also source 2,4-D produced in UK, China or other countries where U.S. duty would now apply.
8. Nufarm claims- “No deleterious effects on the U. S. economy or industry are anticipated from the suspension of duty on 2,4-D.” Nufarm ignores the fact that, if H. R. 3797 is enacted, DAS will have to compete with other foreign producers of 2,4-D that would have duty-free entry into the U. S. while DAS will continue to have to pay duty into Nufarm and other producers’ markets outside the U. S.

9. Nufarm also claims- “Secondly, if there were any threat to the domestic industry from duty-free imports, the effects would already be evident from the majority of lower priced imports from GSP eligible countries.” Again, DAS has been impacted over the years, necessitating the consolidation/rationalization of our 2,4-D production facilities.
10. Nufarm claims that DAS customers that participate in the “Dow Premier Program” are locked into levels of 2,4-D purchases that maintain or increase DAS’s market share. The fact is that DAS does not have a “take or pay contract”, and customers are free to participate or not. Based on nearly 18 million pounds of imports of 2,4-D in 1999 classified under 2918.90.2010, evidence seems clear that U. S. customers have choices of where to source their 2,4-D purchases. The “Dow Premier Program” (which is actually the “Dow AgroSciences Premier Program) encourages 2,4-D sourcing from DAS, and is offered because it became necessary to compete with imports from GSP eligible countries that enjoy duty-free treatment of their imports.
11. The expected revenue loss from not collecting duty on imports of 2,4-D from non-GSP eligible countries will far exceed the CBO scoring guidelines for loss of annual duty collection on a single bill. Contrary to what Nufarm claims for 1999 duties collected, the U. S. Bureau of Census data indicates that in 1999, \$1,138,348 was collected. Already through only four months of 2000, \$807,990 has been collected.
12. Finally, Nufarm claims that DAS is supportive of a zero-for zero tariff initiative on crop protection products that is proposed for the next trade round. While DAS is supportive of a global agreement for zero tariffs on products that include 2,4-D, such an agreement would have to be multilateral to retain DAS’s support, and certainly not unilateral like an U. S. duty suspension bill for 2,4-D.

We would very much appreciate an opportunity to discuss this matter with you personally. Please let us know when would be a convenient time for DAS representatives to meet with you. Our contact in the DAS Washington office is Mr. Tom Campbell. He can be reached by telephone at 202-429-3438. We look forward to meeting with you soon.

Sincerely,

Gerald L. Ytzen  
Global Business Director