

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney

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In the Matter of)
)
China National Chemical Corporation,)
a corporation;)
)
ADAMA Agricultural Solutions Ltd.)
a corporation; and)
)
Makhteshim Agan of North America, Inc.,)
d/b/a ADAMA,)
a corporation.)
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Docket No. C-4610

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondents China National Chemical Corporation, ADAMA Agricultural Solutions Ltd., and Makhteshim Agan of North America, Inc., d/b/a ADAMA (collectively “Respondents”) of the outstanding voting shares of Syngenta AG (“Syngenta”) and Respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should

- M. “Confidential Information” means any and all of the following information:
1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
 3. all information concerning the relevant business, which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials; and
 4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- N. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- O. “Cost” means the (i) actual cost of raw materials, direct labor, and administrative expenses, and reasonably allocated operations, production, and factory costs and shared corporate services overhead used to develop, manufacture, and supply the relevant good or service or (ii) the price terms as specified in a Divestiture Agreement with respect to Respondents’ obligation to provide products pursuant to Paragraph II.D.1(c).
- P. “CP Active Ingredient(s)” means Abamectin, Chlorothalonil, or Paraquat, individually and collectively, as each is identified by its respective unique numerical identifier (CAS#) assigned by the Chemical Abstract Service division of the American Chemical Society.

Q. “CP Assets” means all of Respondents’ right, title, and interest in and to all of the following assets and rights, wherever located, relating to the operation of the CP

2.

United States that provides to a distributor, retailer, other customer (“Syngenta Customer”) a discount for purchasing a defined minimum quantity (based on units, revenues, or any other measure) over a defined period of time of that Syngenta Customer’s demand for crop protection products containing a specified Active Ingredient as the sole Active Ingredient.

CC. “Monitor” means the Person appointed by the Commission pursuant to Paragraph IV. of this Order.

DD. “Paraquat” means the chemical compound 1,1’-Dimethyl-4,4’-bipyridinium dichloride (CAS#1910-42-5).

EE. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

FF. “Record(s)” means information, data, books, records, files, databases, printouts, and documents of any kind, whether stored or maintained in hard copy paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, directly relating to the CP Products or the CP Business, including: customer files, customer lists, customer purchasing histories; correspondence; sales and purchase order information and records; referral sources; supplier, vendor, and procurement files and lists; specifications and information for all materials, ingredients, and components used in product formulation; process and production formulas, instructions, and guidelines, including Confidential Statements of Formulas; product data sheets and specifications; production reports; research and development data and information; quality control and quality assurance specifications, testing methods, and reports; labeling specifications; packaging specifications; Material Data Safety Sheets; advertising, marketing, display, and promotional materials; sales materials; marketing analyses and research data; educational and training materials; employee lists and contracts, salary and benefits information, and personnel files and records (to the extent permitted by law) for CP Employees; financial and accounting records and documents, financial statements; studies and reports; product registration data; registrations, licenses, and permits; regulatory compliance records and data; applications, filings, submissions, communications and correspondence with Government Agencies; operating guides, technical information, manuals, policies and procedures; service and warranty records, maintenance logs, equipment logs; and all other Records that are necessary for the Acquirer to operate the CP Business2(a)-1(nd ss)4(a)pmanner cone CtncfiArA6Tw [(-2(n5(Ctc -0.002 T

HH. “Retained Intellectual Property” means any Specified Intellectual Property relating to both the operation of the CP Business and any other business owned by ChemChina prior to the Acquisition.

II.

- MM. “Support Services” means administrative services, technical services, and training with respect to operating any aspect of the CP Business and CP Assets.
- NN. “Syngenta” means Syngenta AG, a corporation organized, existing and doing business under, and by virtue of, the laws of Switzerland, with its corporate office and principal place of business located at Schwarzwaldallee 215, 4058 Basel, Switzerland.

II.

IT IS FURTHER ORDERED that:

- A. No later than twenty (20) days from the Acquisition Date, Respondents shall divest the CP Assets and grant the CP License, absolutely and in good faith, to Amvac pursuant to the Amvac Acquisition Agreement; *provided, however*, that II.

E. Respondents shall cooperate with and assist the Acquirer to evaluate and hire any CP Employee in connection with the divestiture of the CP Assets, including but not limited to:

1. Not later than twenty (20) days before the Divestiture Date, Respondents shall (i) identify all CP Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all CP Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any CP Employee;

2. Respondents shall (i) not offer any incentive to any CP Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any CP Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondents that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any CP Employee by Acquirer;

3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any CP Employee who accepts an offer of employment from Acquirer and (ii) provide each CP Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and

4. For a period of two (2) years after the CP Assets are divested, Respondents shall not solicit the employment of any CP Employee who becomes employed by Acquirer at the time the CP Assets are divested; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Acquirer's employees

products in which the sole Active Ingredient used in the formulation or sale of the product is one of the CP Active Ingredients; and

2. Include a covenant not to sue or take any other action effecting the foregoing prohibitions in Paragraph II.F.1 of this Order in any Divestiture Agreement related to the CP Assets.
- G. The purpose of the divestiture of the CP Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) keep confidential (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the CP Business or CP Assets; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the CP Business or CP Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph III. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) e's gr to the Crt ini(th)y(r)-og3(r)00.9 thd(w)-

2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the CP Assets and grant the CP License and perform Respondents' other oblig

such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in
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- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VII.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondents shall comply with all terms of the agreement. Any failure by Respondents to comply with any term of the Divestiture Agreement shall constitute a failure to comply with this Order. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondents under such agreement.
- B. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Divestiture Agreement, any modification, replacement, or extension of any term of the Divestiture Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
 - 1. Thirty (30) days from the date this Order is issued and every thirty (30) days thereafter for a period of one (1) year and every ninety (90) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.D. and II.E. of this Order; and
 - 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.

- B. With respect to the divestiture required by Paragraph II. of this Order, Respondents shall include in their compliance reports (i) the status of the divestiture and transfer of the CP Assets; (ii) a description of all substantive contacts with a proposed acquirer (if other than Amvac); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondents have completed such divestiture and the date the divestiture was accomplished.

IX.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on June 13, 2027.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 13, 2017

Appendix A

Specified Products

Abamectin Products

ABBA 0.15EC

ABBA 0.15ME (Alternate Brand Names: BORRADA and ABBA 0.15)

ABBA Ultra Miticide/Insecticide

Chlorothalonil Products

EQUUS DF

EQUUS 500ZN

EQUUS 720 SST

Paraquat Products

Parazone 3SL

Parazone 2SL (pending EPA approval)

Specified Trademarks

PARAZONE

EQUUS

ABBA

ABBA Ultra

BORRADA