1610093

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

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

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 issue stating its charges in that respect, and having thereupon issued its complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule § 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent China National Chemical Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the People's Republic of China, with its corporate office and principal place of business located at No. 62 Beisihuanxilu, Haidian District, Beijing 100080, People's Republic of China.

2. Respondent ADAMA Agricultural Solutions Ltd. is a corporation organized, existing and doing business under, and by virtue of, the laws of Israel, with its corporate office and principal place of business located at Golan Street, Airport City 7019900, Israel.

3. Respondent Makhteshim Agan of North America, Inc. d/b/a ADAMA, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 3120 Highwoods Blvd., Suite 100, Raleigh, North Carolina 27604.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "ChemChina" means China National Chemical Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by China National Chemical Corporation (including Respondent ADAMA), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, ChemChina shall include Syngenta.

B. "ADAMA" means ADAMA Agricultural Solutions Ltd. and Makhteshim Agan of North America, Inc., their directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups and affiliates in each case controlled by ADAMA Agricultural Solutions Ltd. and Makhteshim Agan of North Americal, Inc.,

and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means ChemChina and ADAMA, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Abamectin" means a mixture of avermectins containing more than 80% avermectin B1a and less than 20% avermectin B1b (CAS#71751-41-2).

F. "Acquirer" means (i) Amvac Chemical Corporation or (ii) any other Person that acquires the CP Assets pursuant to this Order.

G. "Acquisition" means the proposed acquisition described in the Transaction Agreement dated as of February 2, 2016, by and between China National Chemical Corporation, China National Agrochemical Corporation, and Syngenta AG relating to a public tender offer of BidCo for all publicly held registered shares and American Depositary Shares of Syngenta.

H. "Acquisition Date" means the date the Acquisition is consummated.

I. "Active Ingredient" means the specific molecule or chemical substance that provides the relevant biological activity, such as insecticidal, fungicidal, herbicidal, or other similar activity.

J. "Amvac" means Amvac Chemical Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4695 MacArthur Court, Suite 1250, Newport Beach, California 92660.

K. "Amvac Acquisition Agreement" means the asset purchase and sale agreement between Makhteshim Agan of North America Inc., Adama Makhteshim Ltd., Adama Agan Ltd., and Amvac Chemical Corporation, dated March 22, 2017, including related ancillary agreements, amendments, schedules, exhibits, and attachments, thereto, that have been approved by the Commission to accomplish the requirements of this Order.

L. "Chlorothalonil" means the chemical compound 2,4,5,6-Tetrachlorobenzene-1,3-dicarbonitrile (CAS#1897-45-6).

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 Business:

1. All Governmental Authorizations;

2. All Registration Data;

3. All Specified Trademarks;

4. All Specified Intellectual Property;

5. All Specified Contracts, at the option of the Acquirer;

6. All Specified Inventory, at the option of the Acquirer; and

7. All Records;

Provided, however, that the CP Assets need not include ChemChina's right, title, and interest in the Retained Intellectual Property.

R. "CP Business" means the research, development, registration, manufacture, formulation, licensing, sale, and distribution by ADAMA of all CP Products, including products in development, for crop protection in the United States, prior to the Acquisition.

S. "CP Employee" means any individual (i) employed by ADAMA on a full-time, part-time, or contract basis at any time as of and after the date of the announcement of the Acquisition and (ii) whose job responsibilities predominantly relate or predominantly related to the CP Business.

T. "CP License" means:

1. A royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license under the Retained Intellectual Property sufficient for an Acquirer to operate the CP Business in substantially the same manner as ADAMA prior to the Acquisition, including the freedom to extend existing product lines and develop new products, that receives the prior approval of the Commission. The CP License shall be exclusive (even as to ChemChina) for use in the United States for any product sold in the United States for use in crop protection in which the sole Active Ingredient is one of the CP Active Ingredients; and

2. Such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable the Acquirer to use the rights.

U. "CP Product(s)" means all of ADAMA's crop protection products, including products in development, in which the sole Active Ingredient used in the formulation or sale of the product is one of the CP Active Ingredients, including but not limited to, the CP Products listed on Appendix A to this Order.

V. "Divestiture Agreement" means (i) the Amvac Acquisition Agreement or (ii) any other agreement between Respondents (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the CP Assets, including all related ancillary agreements (Transitional Assistance agreement (including for Support Services), intellectual property transfer and license agreement(s), and manufacturing services agreement), schedules, exhibits, and attachments thereto.

W. "Divestiture Date" means the date on which Respondents (or the Divestiture Trustee) close on the transaction to divest the CP Assets to the Acquirer.

X. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph V. of this Order.

Y. "Government Agency(ies)" means any federal, state, local, municipal, foreign, or other governmental regulatory authority responsible for registering, or for granting or issuing any consent, license, approval, permit, clearance, or qualification for, any aspect of the research, development, manufacture, formulation, licensing, sale, or distribution of any CP Products or any of the CP Active Ingredients.

Z. "Governmental Authorization" means any registration, consent, license, approval, permit, clearance, or qualification issued, granted, given or otherwise made available by or under the authority of any Government Agency or pursuant to any legal requirement, that is necessary for any aspect of the research, development, manufacture, formulation, licensing, sale, or distribution of any CP Product or any of the CP Active Ingredients, and all pending applications therefor or renewals thereof.

AA. "License-Back" means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license to Respondents from the Acquirer under any Specified Intellectual Property included in the CP Assets (that is not exclusively related to the operation of the CP Business) for use in any business operated by Respondents prior to the Acquisition Date that does not compete with the CP Business.

BB. "Loyalty Program" means Syngenta's Key Active Ingredient Support Program (Section 2 of Syngenta's Crop Protection and Seedcare Retail Program & Policy Guide), or any other similar Syngenta program related to Syngenta's crop protection business in the

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 Business in a manner consistent with the purposes of this Order.

GG. "Registration Data" means all data, information, and studies relating to a particular CP Active Ingredient and its formulations, including its impurities or metabolites, which are necessary for supporting an application to obtain a Governmental Authorization from an applicable Government Agency for the sale of a CP Product.

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. "Specified Contract(s)" means all agreements, contracts, leases, license agreements, consensual obligations, promises, or undertakings (whether written or oral and whether express or implied), and all outstanding offers or solicitations to enter into any contract, and all rights thereunder and related thereto, including all rights relating to membership in any task force or task force seat, directly related to a CP Product or a CP Active Ingredient.

JJ. "Specified Intellectual Property" means the following intellectual property owned or licensed (as licensor or licensee) by Respondents, and all associated rights thereto, other than the Specified Trademarks, relating to the CP Products or the CP Business: (1) all trade secrets, know-how, technology, and confidential or proprietary information, including product specifications, manufacturing processes and data, and production formulas, including Confidential Statements of Formula, mixing and formulating instructions, protocols, guidelines, and methods; quality control and quality assurance data, specifications, and methods; technical data and information; and all other information relating to formulating, handling, packaging, labeling, storing, or transporting the CP Products; (2) the trade dress associated with the CP Products, including, but not limited to, product packaging and labeling and the lettering of the product trademark, trade name, or brand name; (3) all copyrights to all materials and works directly relating to the CP Products and the CP Business, including advertising, marketing, promotional and sales materials, customer materials and information, educational information and training materials, research and other data, reports, programs, and all correspondence and communications with any Government Agencies; and (4) all rights to obtain and file for patents, trademarks, copyrights, and registrations thereof and to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, misuse, violation, or breach of any of the foregoing.

KK. "Specified Inventory" means all inventories of finished CP Products packaged, labeled, and ready for sale pursuant to all legal requirements of all relevant Government Agencies.

LL. "Specified Trademarks" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), and all common law rights, and goodwill symbolized thereby and associated therewith, and used specifically for the CP Products, including but not limited to, the "Specified Trademarks" listed on Appendix A to this Order.

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 Respondents may enter into an agreement with Amvac for a License-Back that receives the prior approval of the Commission.

B. If Respondents have divested the CP Assets and granted the CP License to Amvac prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Amvac is not acceptable as the Acquirer of the CP Assets, then Respondents shall immediately rescind the Amvac Acquisition Agreement, and shall divest the CP Assets and grant the CP License no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture or grant of license to Amvac was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Amvac Acquisition Agreement) to the manner of divestiture of the CP Assets or grant of the CP License as the Commission may determine are necessary to satisfy the requirements of this Order.

C. No later than the Divestiture Date, Respondents shall secure all Consents and Governmental Authorizations from all Persons that are necessary for the Acquirer to divest and operate the CP Business and CP Assets, except as provided for under a Divestiture Agreement; *provided, however,* that:

1. In the event that Respondents are unable to obtain any such Consent, Respondents shall, with the acceptance of the Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements; and

2. In the event that Respondents are unable to obtain any such Governmental Authorization, Respondents shall provide such assistance as the Acquirer may reasonably request in the Acquirer's efforts to obtain a comparable authorization.

D. Respondents shall:

1. At the option of the Acquirer and subject to the prior approval of the Commission, provide to the Acquirer:

(a) Support Services for a period of eighteen (18) months from the Divestiture Date;

(b) A supply of CP Products in which the sole Active Ingredient is Chlorothalonil or Abamectin for a period of twenty-four (24) months from the Divestiture Date; and

(c) A supply of CP Products in which the sole Active Ingredient is Paraquat for a period of thirty-six (36) months from the Divestiture Date; and

2. Provide the support set forth in Paragraph II.D.1.(a)-(c) of this Order (hereinafter collectively referred to as "Transitional Assistance") at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the CP Business in substantially the same manner as Respondents prior to the Acquisition, including the ability to develop new products and increase sales of current products;

Provided, however, that if the CP Products or ability to provide services as Transitional Assistance pursuant to a Divestiture Agreement are or become limited for any reason, Respondents shall give priority to Acquirer's requirements over its own;

Provided further that (i) Acquirer may terminate any Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty to Respondents and (ii) at Acquirer's request, Respondents shall file with the Commission any request for prior approval to extend the term of any Transitional Assistance needed to achieve the purposes of this Order; and

Provided further that Respondents shall not (i) terminate its obligation to provide any Transitional Assistance because of a material breach by Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide Transitional Assistance.

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, or (iii) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.

F. Respondents shall:

1. Not join, file, prosecute, or maintain any suit, in law or equity, or take any administrative action, either directly or indirectly through a third party (including assignees, transferees, or licensees), against the Acquirer or any of its customers or affiliates (including distributors, licensees, manufacturers, and suppliers), assigns or successors in interest, under or with regard to any Retained Intellectual Property if such suit or action would interfere with the Acquirer's freedom to practice in developing, registering, producing, manufacturing, formulating, distributing, marketing, or selling in the United States any non-crop protection

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.

IV.

IT IS FURTHER ORDERED that, for a period of three (3) years from the earlier of (i) the expiration of the current annual Loyalty Programs or (ii) October 1, 2017, Respondents shall exclude crop protection products containing any one of the CP Active Ingredients as the sole Active Ingredient from any Loyalty Program in the United States; *provided, however,* that this provision is not intended to cover volume discounts offered in the ordinary course of business or other current of future Syngenta programs, so long as those programs do not have a substantially similar effect as a Loyalty Program for any crop protection products containing a CP Active Ingredient as the sole Active Ingredient.

V.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Duff & Phelps B.V. to serve as Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Divestiture Agreement.

B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:

1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;

2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives

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) every thirty (30) days after the Acquisition Date for a period of one (1) year, (ii) every ninety (90) days thereafter until Respondents have completed all obligations required by Paragraph II. of this Order (including a final report when Respondents have completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

D. The Commission may require the Monitor and each of the Monitor'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 Monitor's duties.

E. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph V.C.(ii) of this Order, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and

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 obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the CP Assets and grant the CP License;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one

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 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

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.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of any Respondent;

B. Any proposed acquisition, merger, or consolidation of any Respondent; or

C. Any other change in any Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

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 ten (10) years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

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