

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

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.**

Docket No. C-4610

ORDER TO MAINTAIN ASSETS

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 to accept the executed Consent Agreement and to place 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 issues its complaint, makes the following jurisdictional findings and issues the following Order to Maintain Assets:

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 to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- 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 America, 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. “Acquirer” means (i) Amvac Chemical Corporation or (ii) any other Person that acquires the CP Assets pursuant to this Order.
- F. “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.
- G. “CP Assets” means the assets identified in Paragraph I.R. of the Decision and Order.
- H. “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.
- I. “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.
- J. “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 to Maintain Assets.
- K. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- L. “Divestiture Date” means the date on which Respondents (or the Divestiture Trustee) close on the transaction to divest any of the CP Assets to an Acquirer.

- M. “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.

II.

IT IS FURTHER ORDERED that until Respondents complete the divestiture required by Paragraph II.A. of the Decision and Order, Respondents shall operate the CP Business and CP Assets in the ordinary course of business consistent with past practices as of the date that Respondents announced the Acquisition, including but not limited to:

A. Respondents shall:

1. Maintain (i) the CP Business and CP Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement and (ii) relations and goodwill with suppliers, customers, landlords, creditors, agents, and others having business relationships with the CP Business and CP Assets;
2. Staff the CP Business and CP Assets with sufficient employees to maintain the viability and competitiveness of the CP Business and CP Assets, including but not limited to, providing each CP Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the CP Assets;
3. Provide the CP Business with sufficient financial and other resources to (i) operate the CP Business and CP Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, and all sales, promotional, and marketing activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the CP Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, or expansion projects; and (iv) maintain the viability, competitiveness, and marketability of the CP Business and CP Assets;
4. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the CP Business and CP Assets (other than normal wear and tear), and not sell, transfer, encumber, or otherwise impair the CP Assets (other than in the manner prescribed in the Decision and Order);

5. Comply with Paragraphs II.C., II.D., II.E., and III. of the Decision and Order; and
 6. Not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, or marketability of the CP Business or CP Assets would be diminished.
- B. The purpose of this Order to Maintain Assets is to (i) preserve the CP Business and CP Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

III.

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 to Maintain Assets and the Decision and Order (collectively "Orders") 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 the Orders and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in the Orders and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondents shall (i) insure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with the Orders 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 the Orders;
 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 concerning Respondents' compliance with the Orders on a schedule as determined by Commission staff.
- 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 under this Order to Maintain Assets shall terminate when this Order to Maintain Assets terminates, 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 to Maintain Assets on the same terms and conditions as provided in this Paragraph III.

- 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 the Orders.

IV.

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 to Maintain Assets and the Decision and Order within thirty (30) days from the date Respondents sign the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates;

Provided, however, that after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VIII. of the Decision and Order.

- B. With respect to any divestiture required by Paragraph II.A. of the Decision and 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.

V.

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 to Maintain Assets.

VI.

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

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

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the date that Respondents complete the divestiture required by Paragraph II.A. of the Decision and Order; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: April 4, 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)