



Australian Government
**Australian Customs and
Border Protection Service**

MINUTE PAPER

Central Office

File No: 2012/026853-01

**CONSIDERATION OF AN APPLICATION LODGED UNDER
SUB-SECTION 269ZHB OF THE *CUSTOMS ACT 1901*
FOR CONTINUATION OF ANTI-DUMPING MEASURES**

2,4-Dichlorophenoxyacetic Acid (2,4-D) exported to Australia from China

I, Michael John Kenna, delegate of the Chief Executive Officer of the Australian Customs and Border Protection Service, have considered in terms of sub-section 269TC(1) of the *Customs Act 1901* (the Act), an application by Nufarm Limited (Nufarm), Australian industry member producing like goods, for the continuation of the anti-dumping measures in respect of 2,4-Dichlorophenoxyacetic Acid (2,4-D) exported to Australia from China.

I am satisfied that, having regard to the matters contained in the application and to other information considered relevant:

- the application complies with sub-section 269ZHC of the Act;
- there appears to be reasonable grounds for asserting the expiration of anti-dumping measure to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The attached Consideration Report No. 189 details the consideration of the application and other relevant information, and provides the reasons relied on in making the decision not to reject the application.

A handwritten signature in black ink, appearing to read 'M J Kenna'.

Michael John Kenna
Delegate of the Chief Executive Officer
Position number 23

26 July 2012



Australian Government

**Australian Customs and
Border Protection Service**

TRADE MEASURES BRANCH

CONSIDERATION REPORT NO 189

**APPLICATION FOR CONTINUATION OF
ANTI-DUMPING MEASURES**

2,4-DICHLOROPHENOXY-ACETIC ACID (2,4-D)

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

26 July 2012

1 Summary and recommendations

This report provides the results of the consideration of an application lodged by Nufarm Limited (Nufarm) for the continuation of anti-dumping measures applying to 2,4-Dichlorophenoxy-acetic acid (2,4-D) exported to Australia from the People's Republic of China (China).

1.1 Recommendations

It is recommended that the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) decide not to reject the application.

If the delegate accepts this recommendation, to give effect to that decision, the delegate must sign the instrument at **Attachment 1** and publish a notice indicating that Customs and Border Protection will inquire into whether the continuation of the anti-dumping measures is justified.

1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act¹) sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the continuation of measures.

The Division empowers the CEO to reject or not reject an application for continuation of anti-dumping measures.

If the CEO decides not to reject the application, the CEO must publish a notice indicating that it is proposed to inquire whether continuation of the measures is justified.

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 Findings and conclusions

The CEO must reject an application for the continuation of measures if he or she is not satisfied that:

- the application complies with s.269ZHC; and
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Nufarm's application complies with the requirements of s.269ZHC, in that it is in writing, in an approved form, contains the information that the form requires and is correctly signed.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

Having regard to the applicant's claims and other relevant information, there appears to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Australian import volumes of Chinese 2,4-D products increased substantially in 2011/12. Chinese imports now appear to have replaced India as the major source of 2,4-D acid imports. Nufarm has not provided persuasive evidence of current dumping to Australia of Chinese 2,4-D, or that export prices to Australia are likely to decline in the absence of the anti-dumping measures. However, the significance of the import volumes and the increase in competitiveness that would result from the removal of the measures suggests that the expiration of the anti-dumping measures might lead to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The anti-dumping measures on 2,4-D have not been reviewed since their introduction in 2003. As it appears that one or more of the variable factors relevant to the taking of the measures may have changed, it is proposed to recommend that the Minister for Home Affairs request that the CEO initiate a review of the measures to be conducted concurrently with the continuation inquiry.

2 Background

On 7 May 2012, Customs and Border Protection published a notice in *The Australian* newspaper inviting certain persons to apply to the CEO of Customs and Border Protection for the continuation of anti-dumping measures on 2,4-D exported to Australia from China².

On 5 July 2011, Nufarm, the sole manufacturer of 2,4-D in Australia, lodged an application for the continuation of the measures³.

2.1 History of the anti-dumping measures

- | | |
|---------------|---|
| March 2002 | Nufarm applied for anti-dumping measures on 2,4-D exported to Australia from China, India and the United Kingdom (UK). |
| 25 March 2003 | The then Minister published a dumping duty notice applying to 2,4-D exports from China and the UK (Report No.58). The investigation was terminated as far as it related to India due to negligible volumes of dumped goods. |
| 24 March 2008 | The measures relating to China were continued for a further five years (Report No.126). The measures relating to the UK were allowed to expire. |

The anti-dumping measures have not been reviewed since their introduction in 2003.

2.2 The goods subject to the measures

The goods subject to anti-dumping measures are 2,4-D, a selective herbicide.

The measures cover all forms of 2,4-D including:

- sodium salt;
- 2,4-D acid;
- 2,4-D intermediate products (salts and esters), including:
 - iso butyl ester technical;
 - ethyl ester technical;
 - 2 ethyl hexyl ester technical;
 - dimethylamine (DMA);
 - iso-propylamine (IPA);
- 2,4-D fully formulated products; and
- all other forms of 2,4-D.

2.3 Tariff classification of the goods

The goods are classified to the following tariff items in Schedule 3 to the *Customs Tariff Act 1995*:

² In accordance with s.269ZHB.

³ In accordance with s.269ZHC(2).

2,4-D acid and intermediate products	2918.99.00
Formulated products consisting wholly of, or with a base of 2,4-D acid, its salts or esters	3808.93.00

The applicable rate of duty for China is 5%.

2.4 Australian industry producing like goods

In both the 2002 original investigation and the 2007 continuation inquiry, Nufarm was recognised as the sole fully integrated manufacturer of 2,4-D in Australia (producing 2,4-D acid for use in the manufacture of formulated products). Nufarm is a public company listed on the Australian stock exchange. It produces a range of crop protection products at its facilities in Lavelton, Victoria.

The original investigation found that Australian entities using imported 2,4-D acid and intermediate products to manufacture formulated 2,4-D also formed part of the Australian industry. However, having concluded that Nufarm represented approximately 90 percent of the Australian industry by volume, the assessment of injury to the industry focussed on Nufarm. The previous continuation inquiry also followed the same methodology.

2.5 Australian market

The original investigation found that the Australian market for 2,4-D products was in excess of 4,000 metric tonnes (based on 2,4-D acid content in the various 2,4-D products). The continuation inquiry found that the Australian market for 2,4-D had grown between 2002/03 and 2006/07. Nufarm claims that the Australian market has continued to grow since 2006/07.

The current size of the Australian market is difficult to assess on the available information, primarily due to the unknown 2,4-D acid content of the various imported forms of 2,4-D products. If a continuation inquiry is commenced, further information will be sought to assist in assessing movements in the Australian market over recent years.

3 Compliance with section 269ZHC

Nufarm's application complies with the requirements of s.269ZHC.

3.1 Legislative framework

Section 269ZHC(1) specifies that an application under s 269ZHB must:

- (a) be in writing;
- (b) be in an approved form;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Sections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

3.2 Customs and Border Protection assessment

Nufarm's application was in writing, in the approved form, contains such information as the form requires and is signed in the manner indicated in the form.

The applicant also provided a non-confidential version of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures.

4 Consideration of reasonable grounds

Having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that the expiration of anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

4.1 Legislative framework

Section 269ZHD(2)(b) requires consideration of whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

For the purposes of considering s.269ZHD(2)(b), the applicant's claims have been examined and assessed according to whether it is reasonable to assert that, in the absence of anti-dumping measures, exports of the goods might:

- 1) continue or recur;
- 2) be at dumped prices; and
- 3) lead to a continuation of, or recurrence of material injury.

4.2 Is it reasonable to assert that exports of the goods might continue or recur?

4.2.1 Applicant's claims

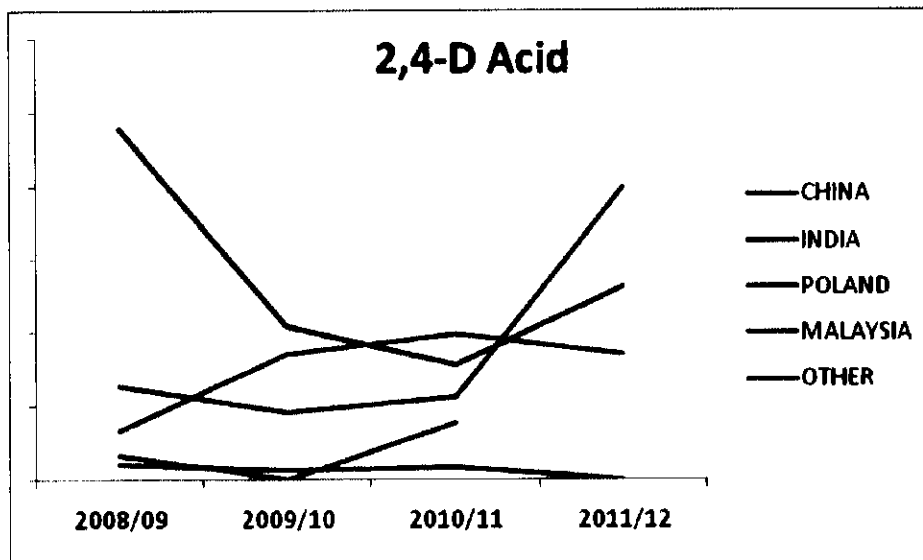
Nufarm has relied on Australian Bureau of Statistics (ABS) data to assert that exports of 2,4-D from China to Australia have increased substantially in recent times to become the largest source of imports in 2012. Nufarm separately analysed imports for 2,4-D acid and 2,4-D ester.

Nufarm referred to the conclusion of the 2007 continuation inquiry which stated that imports were likely to increase if the anti-dumping measures expired. Further, Nufarm claimed that the increasing Chinese export volumes indicate that Chinese exporters have maintained distribution links in Australia.

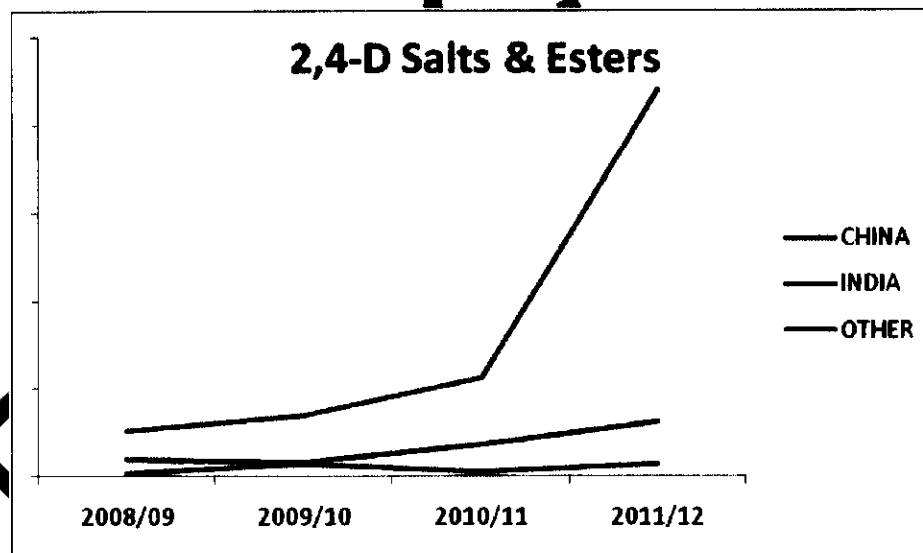
Nufarm has no current information on the production capacities of Chinese 2,4-D manufacturers and therefore maintains the claim made in the previous continuation inquiry that China appears to retain substantial under-utilised capacity.

4.2.2 Customs and Border Protection assessment

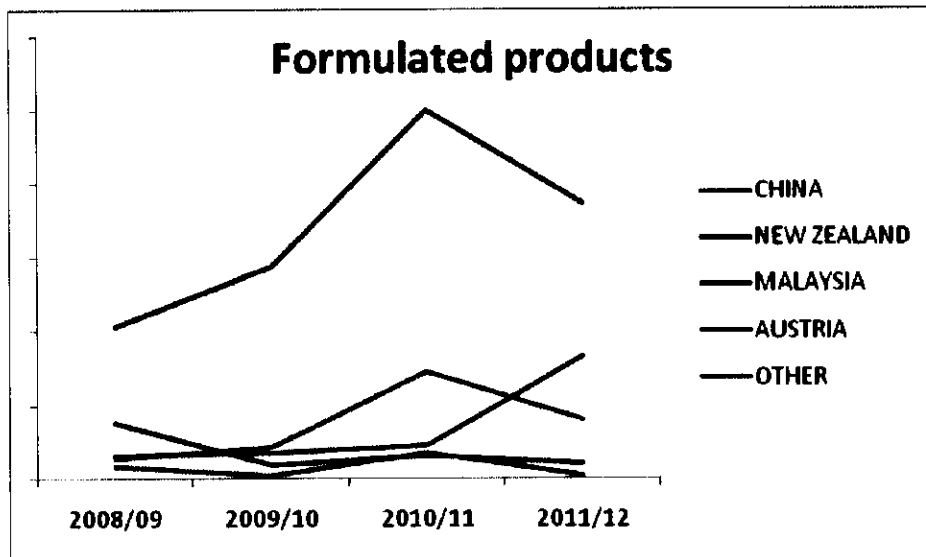
Customs and Border Protection's import database shows the following trends in imports of 2,4-D:

2,4-D acid

2,4-D acid imports from China increased significantly in 2011/12 compared to 2010/11. Imports from India declined to 2010/11 before rising in 2011/12. China became the major source of 2,4-D acid imports in 2011/12.

2,4-D Salts & Esters

Imports of Chinese 2,4-D salts and esters rose marginally between 2008/09 and 2010/11 before experiencing a significant increase in 2011/12.

2,4-D formulated products

Imports of formulated 2,4-D products are predominantly from New Zealand. However, in 2011/12, imports from New Zealand fell sharply while imports from China rose significantly.

In view of the rapid increase in imports of all forms of 2,4-D from China in 2011/12, it seems reasonable to assert that imports of 2,4-D from China would continue if anti-dumping measures were allowed to expire.

4.3 Is it reasonable to assert that exports of the goods might be at dumped prices?

4.3.1 Applicant's claims

Dumping to Australia

Nufarm obtained pricing information for a formulated 2,4-D product (2,4-D isobutyl ester) through its associations in the Chinese chemical industry. Nufarm used its knowledge of production costs to derive a 2,4-D acid price, which it compared to ABS information on 2,4-D export prices from China in 2011 and 2012 (to April).

Nufarm calculated that Chinese export prices to Australia were dumped by margins of 9.4 percent in 2011 and 4.5 percent in 2012.

Prices to third countries

Nufarm has obtained monthly Chinese export prices and volumes to all countries for 2011 and the first three months of 2012. The information shows that Australia was the largest volume destination for Chinese 2,4-D exports in 2011. Nufarm also observed that average export prices to Australia were higher than to other destinations, which it said confirmed that export prices would be likely to fall in the absence of anti-dumping measures.

Anti-dumping actions by other countries

Nufarm is unaware of any other countries that have anti-dumping measures in place on Chinese exports of 2,4-D.

4.3.2 Customs and Border Protection assessment

Nufarm adjusted a delivered, VAT inclusive price for the formulated product to derive a 2,4-D acid price. The adjustments (for such items as conversion costs, packaging and selling general and administrative expenses) appear to be reasonably based. The formulated product price is based on anecdotal rather than documentary evidence.

In its calculations, Nufarm used the midpoint of the range of price estimates for the formulated product to estimate normal values for 2,4-D acid for 2011 and 2012 (YTD April). However, Nufarm's source information indicated that the lower of the prices is the current pricing and that this has been reasonably stable since the middle of 2011.

Customs and Border Protection estimated its own dumping margins using the lower of the prices quoted for the intermediate product in the Chinese domestic market. Customs and Border Protection has also used weighted average export prices for 2,4-D acid taken from its import database to estimate export prices. These export prices are slightly higher than those estimated by Nufarm. The dumping margins estimated by Customs and Border Protection are 2.2% in 2011 and negative 0.3% in 2012.

Nufarm's Chinese export data for 2,4-D acid in respect to Australia does not correspond with the import information it obtained from the ABS, in respect of both volumes and values. This suggests that the Chinese export data may not be reliable or may relate to a broader group of goods than just 2,4-D acid. No information was provided to support the reliability of the source of the export data. Therefore, Customs has not placed any weight on the Chinese export data and associated claims.

Customs and Border Protection's assessment of dumping margins is at **confidential appendix 2**.

4.4 Is it reasonable to assert that exports of the goods might lead to a continuation of, or recurrence of material injury?

4.4.1 Applicant's claims

Nufarm provided schedules for each of its 2,4-D products showing the cost of production and selling prices from the beginning of its 2007/08 financial year to the end of its third quarter of the 2011/12 financial year.

Nufarm states that it has improved its profit performance in 2010/2011 and 2011/12 (year-to-date) following very low profit levels in 2008/09 and 2009/10.

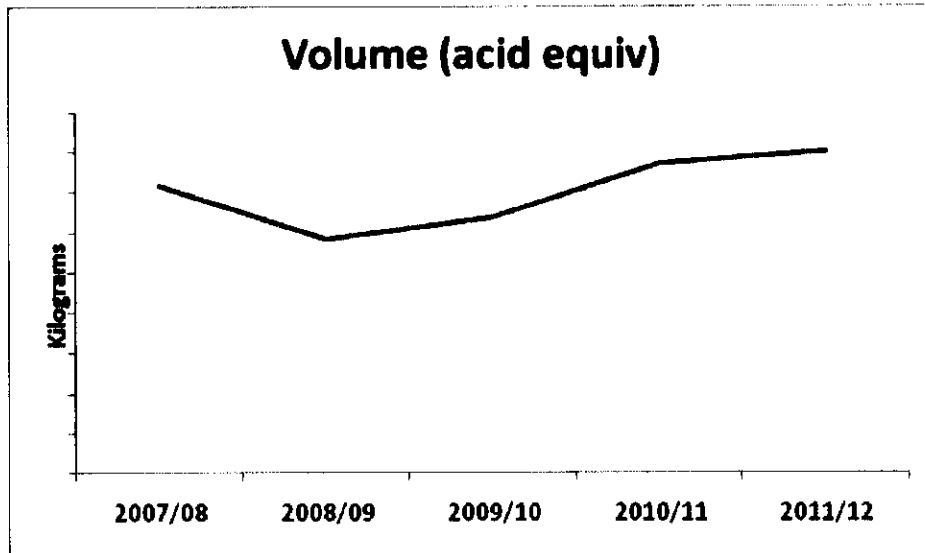
Nufarm contends that the removal of the anti-dumping measures would lead to a decline in export prices to Australia as indicated by the lower export prices from China to other countries. It states that the expected price decline and

undercutting of local industry prices would require the Australian industry to lower its prices, thereby eroding the industry's profit and profitability.

4.4.2 Customs and Border Protection assessment

Sales volumes

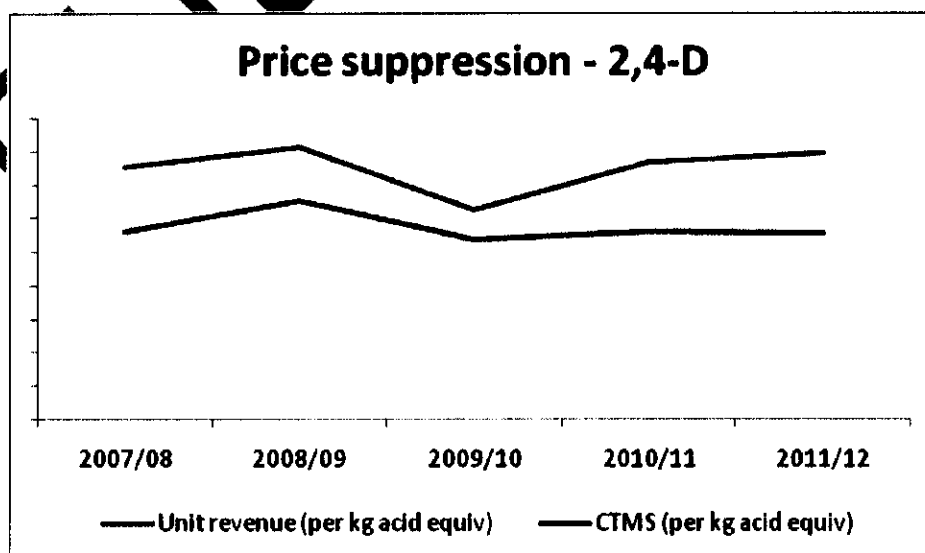
As shown in the following chart, the schedules provided by Nufarm show that its sales volumes (converted to a 100 percent acid equivalent) have increased since 2008/09.



Note: The sales volume for first three quarters of 2011/12 has been annualised on a pro-rata basis.

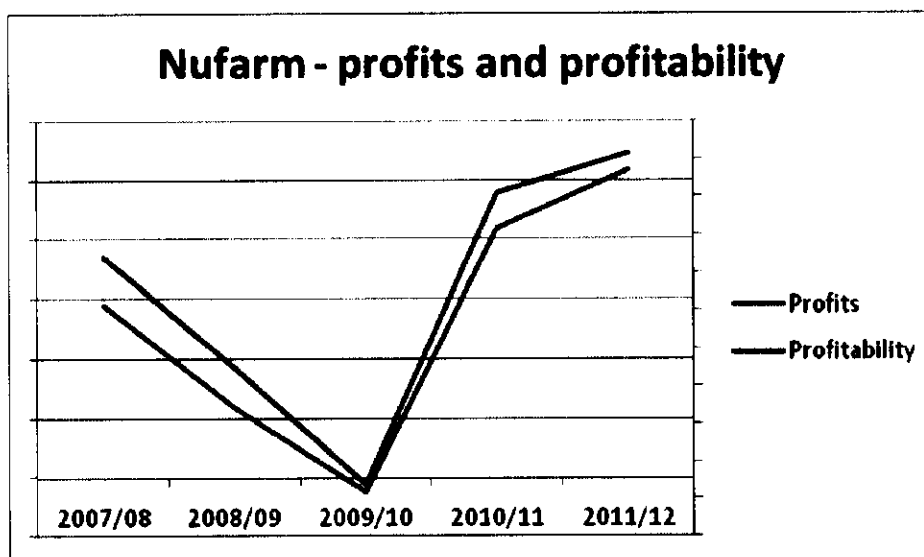
Price suppression

Nufarm's 2,4-D average domestic selling prices (adjusted to an acid equivalent) have risen since 2009/10. Average cost to make and sell (CTMS) fell in 2009/10 and have remained stable.



Profits and profitability

Nufarm's profits and profitability declined between 2007/08 and 2009/10 before rising significantly in 2010/11 and continued to improve in 2011/12.



Note: Profits for the first three quarters of 2011/12 have been annualised on a pro-rata basis.

Growth in Chinese imports

The recent growth in Chinese 2,4-D imports (as discussed in 4.2.2 above) increases the likelihood that, if dumped, these imports, due to their increasing prominence in the marketplace, could cause material injury to the Australian industry producing like goods.

Pricing of Chinese imports

Customs and Border Protection's import database indicates that Chinese 2,4-D imports have been at unit prices at or above prices of 2,4-D products from other sources.

A summary of import prices is at **confidential appendix 3**.

4.5 Conclusion on "reasonable grounds"

The CEO must reject an application for continuation if, inter alia, he or she is not satisfied that there appear to be reasonable grounds for asserting that the expiration of the measures might lead, or might be likely to lead to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. The test for not rejecting the application is considerably lower than the test for continuing the measures.

Nufarm's application for the continuation of the anti-dumping measures is not particularly persuasive. The company's performance on the sale of 2,4-D products has improved substantially in recent years - in respect of volumes sold, prices achieved and profits and profitability. Customs and Border Protection's estimates of recent dumping margins, based largely on information provided by Nufarm, indicate a barely actionable margin in 2011 and a negative margin in 2012.

Nufarm notes that the average prices of 2,4-D exports to Australia from China are above those from other major sources and states that Chinese prices to Australia appear to be influenced by the anti-dumping measures. Other than an argument that the possibility of the Australian industry seeking a review imposes some discipline on Chinese exporters, the outdated nature of the measures (not having been reviewed since their introduction) makes it unlikely that the measures are influencing export prices. Information provided in the application suggesting that Chinese export prices to Australia are above export prices to other export destinations is not considered reliable.

Nufarm has not provided any information indicating that the removal of the measures would be likely to lead to Chinese imports undercutting its own products.

Nevertheless, the volume of imports of Chinese 2,4-D products rose dramatically in 2011/12 compared to 2010/11. The removal of the anti-dumping measures would mean a decline in the duties payable by importers and therefore an increase in the competitiveness of Chinese imports. A fixed interim dumping duty has been paid on imports of 2,4-D products since 2003 and only one low volume importer has, in 2012, applied to have the interim duties refunded on the basis that the goods were not dumped. Distribution links continue to exist in Australia for Chinese 2,4-D products.

On balance, the available evidence indicates that there appear to be reasonable grounds for asserting that the expiration of the measures might lead to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. An inquiry will be able to examine in detail the impact of the recent increase in the import volumes from China on the Australian market and whether imports in the future are likely to be dumped if the measures expire.

Accordingly as the delegate of the CEO you are recommended not to reject the application.

In accordance with s 269(2)(4) you will need to publish a notice indicating that it is proposed to inquire into whether continuation of the measures is justified.

As the measures have not been reviewed since their introduction, it is recommended that the Minister be requested to initiate a review of the anti-dumping measures, to be conducted in conjunction with the continuation inquiry.

5 List of Appendices

Appendix 1	Delegate's instrument
Confidential appendix 2	Estimates of dumping margins
Confidential appendix 3	2,4-D import prices

PUBLIC FILE