

16 November 2012

Ms Andrea Stone
Case Manager
Operations 3
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Public File Version

Dear Ms Stone

Re: Continuation and Review Inquiries – 2,4-Dichlorophenoxyacetic acid exported from the People's Republic of China

Summary

Nufarm Limited ("Nufarm") seeks to reaffirm its position that the continuation of anti-dumping measures on 2,4-Dichlorophenoxyacetic acid ("2,4-D") and its derivatives exported from China should be continued for a further five year period from 24 March 2013, and not be allowed to expire. It is Nufarm's firm view that in the absence of measures the Australian industry will likely experience a recurrence of the material injury that the measures were intended to prevent.

Additionally, Nufarm again submits that in the absence of verified information on domestic selling prices and costs in China for 2,4-D products, the most reliable information for normal value purposes is Nufarm's cost-to-make-and-sell ("CTM&S") financial data for 2,4-D for the 2011/12 year.

2,4-D Normal values

In Nufarm's correspondence of 31 October 2012, it was detailed that Chinese exporters of 2,4-D (including acid and formulated product) had failed to cooperate with Customs and Border Protection's investigations into the continuation and review of the 2,4-D anti-dumping measures. It was noted by Nufarm that the failure of the Chinese exporters to cooperate meant that normal values for 2,4-D exported from China could not be determined under sub-sections 269TAC(1) or (2) of the Customs Act.

The only verifiable data on 2,4-D available from a manufacturer is that provided by Nufarm (and has been verified by Customs and Border Protection).

Chinese exporters of 2,4-D also did not cooperate in Customs and Border Protection's inquiry into the continuation of measures in 2007 (refer Trade Measures Report No. 126). Chinese normal values were based upon information provided by Nufarm as to domestic selling prices in China for 2,4-D acid (adjusted for formulated 2,4-D products), and normal value information obtained from the original inquiry, adjusted for increases in raw material costs. Dumping margins were assessed at between 10 and 30 per cent in the 2007 inquiry.

The 2007 continuation investigation, however, did not involve the review of anti-dumping measures on Chinese 2,4-D. It was therefore not necessary for Customs and Border Protection to recommend to the Minister revised variable factors upon which future anti-dumping measures would apply.

In the current investigations, Customs and Border Protection is conducting a review of the variable factors applicable to 2,4-D exported from China. It is therefore necessary for



Customs and Border Protection to be satisfied as to the accuracy of the available information that it proposes to utilize for normal value purposes. It is Nufarm's contention that normal values for 2,4-D exported from China can only be determined on the basis of best available information under s.269TAC(6) and, that the only verifiable information on 2,4-D sales and/or costs is that provided to Customs and Border Protection by Nufarm.

In the event that Customs and Border Protection constructs a selling price for Chinese 2,4-D normal value purposes using Nufarm's CTM&S data, an appropriate level of profit should be applied. Nufarm considers that the level of profit it achieved in 2011/12 to be a representative level of profit to be applied to its 2011/12 costs for 2,4-D. The constructed normal value (whether for 2,4-D acid or a formulated 2,4-D) will therefore reflect Nufarm's average selling price achieved in 2011/12 (dependent upon whether acid or formulation).

Chinese normal values for 2,4-D exported during the 2011/12 will therefore be determined using the best available verified information (i.e. Nufarm's CTM&S, plus profit) obtained by Customs and Border Protection.

Unsuppressed Selling Price

Nufarm understands that Customs and Border Protection follows a preferred hierarchy in determining an unsuppressed selling price ("USP") from which a non-injurious price ("NIP") is determined for exporters of the goods under consideration ("GUC").

Customs and Border Protection's preferred basis for a USP is a market selling price unaffected by dumping. Nufarm contends that the Australian market for 2,4-D has been influenced by exports of 2,4-D from China in recent years. Recent prevailing prices for 2,4-D have not reflected shifts in raw material costs. As a result, Nufarm recommends that a USP be based upon Customs and Border Protection's second next preferred alternative – the Australian industry's CTM&S plus an amount for profit.

A USP for 2,4-D acid and Estercide 680 can be determined using Nufarm's 2,4-D 2011/12 CTM&S. As the 2,4-D acid Appendix A6 data is for export sales (same CTM&S as for domestic 2,4-D acid), the unit CTM&S plus profit from average Estercide 680 sales in 2011/12 (██████████) can be applied to the 2,4-D acid CTM&S to arrive at a USP for 2,4-D acid in 2011/12. The USPs for 2,4-D acid and Estercide 680 in 2011/12 were \$██████████ per kg and \$██████████ respectively.

Nufarm therefore considers USP's can be determined for 2,4-D acid and estericide using Nufarm's 2011/12 CTM&S plus the appropriate profit as indicated above.

Threat of material injury from Chinese exports of 2,4-D

In its application for the continuation of anti-dumping measures, Nufarm demonstrated that should the measures be allowed to expire it would be likely that:

- Chinese exports of 2,4-D to Australia would increase;
- Chinese exports to Australia would be at dumped prices;
- Nufarm's selling prices for locally-produced 2,4-D would be undercut by the Chinese export prices; and
- that the Australian industry would experience a recurrence of material injury that the anti-dumping measures were intended to prevent.

Nufarm's application included information on Chinese imports of 2,4-D acid and ester over the period 2007 to 2012². The ABS import data confirmed that Chinese exports of 2,4-D acid in 2011 and 2012 had increased and that it was likely that 2012 export volumes would be

¹ Refer attached Commercial-in-Confidence Nufarm 2011/12 CTM&S Summary – Confidential Attachment 1

² ABS data for 2012 was to April 2012 only.

greater than 2011. Similarly for Chinese exports of 2,4-D ester to Australia, the volumes in 2011 and 2012 were greater than earlier years and in 2012 it appears that the volume exported from China will be significantly greater than 2011.

It would appear that Chinese 2,4-D exporters have increased export volumes to Australia in anticipation of the possible expiration of anti-dumping measures in March 2013.

Nufarm would highlight that there are currently 10 APVMA³ approved sources for Chinese 2,4-D (in various forms) in operation in Australia. Any of these approved sources of 2,4-D active can be used as the basis for the registration of new 2,4-D products on to the Australian market. The cost of registration per product is relatively inexpensive at \$650 per product and provides no obstacle to entry for parties seeking to import from China (or any other source country). The inexpensive registration process is not a barrier to increased Chinese 2,4-D exports to Australia.

It is therefore noted by Nufarm that Chinese 2,4-D exporters have increased export volumes to Australia in 2011 and 2012 and it is reasonable to conclude that this increase will continue in the absence of measures.

Nufarm's continuation application also indicated that Chinese 2,4-D exporters are active on the global market with export prices during 2011 well below export prices to Australia. It is also reasonable to conclude that the anti-dumping measures have enforced a level of restraint on Chinese exporters, limiting their ability to reduce export prices to the levels of other export destinations, in order to secure increased sales for the under-utilized Chinese 2,4-D production facilities. In some instances in 2011 the Chinese 2,4-D acid export prices to other destinations (i.e. Malaysia) were up to 40 per cent below the Chinese export prices to Australia.

As Australia is a large market for 2,4-D products, in the absence of measures it would appear likely that Chinese export volumes to Australia would increase further and that Chinese export prices to Australia would fall (in line with export prices to other destinations). The direct affect would involve a decline in selling prices for 2,4-D in Australia. It is therefore likely, that the Australian industry would again experience material injury.

The following available information supports a conclusion that the expiration of the measures on 2,4-D exported from china would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the antidumping measures were intended to prevent:

- the available evidence indicates that exports of 2,4-D from China during 2011/12 were at dumped prices;
- the Chinese export prices were at prices that undercut the Australian industry's prices with increasing volumes to cause material injury to the Australian industry in the form of lost sales volumes and revenues, price suppressions and depression, and reduced profits and profitability;
- in the absence of anti-dumping measures it is likely that exports of 2,4-D from China to Australia would be dumped; and
- in the absence of anti-dumping measures, the dumping of 2,4-D from China would continue or recur, and would cause or threaten material injury to the Australian industry.

Nufarm requests Customs and Border Protection to recommend to the Minister that the anti-dumping measures on 2,4-D exported from China be extended for a further five year period.

Interim duty

³ Australian Pesticides and Veterinary Medicines Authority.



Nufarm notes that an interim duty has been applied to imports of 2,4-D from China since measures were imposed. The fixed amount of interim duty on all types of 2,4-D is intended to limit circumvention opportunities (on one type of 2,4-D over another). Nufarm requests that Customs and Border Protection again recommend the imposition of a fixed interim duty amount on all 2,4-D acid exported from China.

Conclusions

Nufarm requests Customs and Border Protection to recommend to the Minister that the anti-dumping measures on 2,4-D exported from China not be allowed to expire from 24 March 2013. Further, Nufarm considers that in the absence of cooperation from Chinese exporters of 2,4-D, normal values be determined on the basis of verified sales and/or CTM&S information obtained from Nufarm.

The available information supports a finding that in the absence of anti-dumping measures, future exports of 2,4-D from China to Australia will be at dumped prices that will cause, or threaten to cause, material injury to the Australian industry.

If you have any questions concerning this submission, please do not hesitate to contact me on (03) 9282 1444.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bernard Lee', with a stylized flourish at the end.

Bernard Lee
Manager Industry and Government Affairs