Australian Government
Australian Customs and Border Protection Service

R E P O R T

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

REPORT TO THE MINISTER

REP 189A

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES

2,4-DICHLOROPHENOXY-ACETIC ACID (2,4-D) EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

9 January 2013

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1 SUMMARY AND RECOMMENDATION

This continuation inquiry is in response to an application by Nufarm Limited (Nufarm) seeking the continuation of the anti-dumping measures applying to 2,4-Dichlorophenoxy-acetic acid (2,4-D) exported to Australia from the People's Republic of China (China).

This report sets out the facts on which Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) is basing his recommendation to the Minister for Home Affairs (the Minister) for measures applicable to 2,4-D from China.

This continuation inquiry is concurrent to a review of the measures applying to 2,4-D initiated by Customs and Border Protection in response to a request by the Minister for Home Affairs (the Minister) to conduct a review (the findings of which are contained in REP189B).

1.1 Applicable law

Division 6A of Part XVB of the *Customs Act 1901 (Cth)* (the Act)[1] provides for the CEO to alert interested parties to the impending expiry of measures and provide certain interested parties with an opportunity, before those measures expire, to apply for a continuation of those measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the CEO in dealing with an application and preparing a report for the Minister; and
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of measures.

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

The CEO must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the CEO is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

1.2 Findings and conclusions

Customs and Border Protection has found that the following factors support a finding that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent:

[1] A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the Act.

- the available evidence shows there were exports of 2,4-D from China in the period 1 July 2011 – 30 June 2012 (the review period)[2] that were dumped;
- in the absence of anti-dumping measures it is likely that exports from China to Australia would continue to be dumped; and
- in the absence of anti-dumping measures these likely to be dumped imports of 2,4-D from China would likely cause material injury to the Australian industry to continue or recur.

Based on these findings, the CEO recommends that the Minister takes steps to secure the continuation of anti-dumping measures applying to 2,4-D exported from China from the expiry date of 25 March 2013.

1.3 Recommendation

The CEO recommends that the Minister sign the requisite notice[3] (**Attachment 1**), to:

- declare that he has decided to take steps to secure the continuation of anti-dumping measures in respect of the goods exported from China; and
- determine that the dumping duty notice continues in force after 25 March 2013 for a further five years unless earlier revoked.

[2] The period selected in the concurrent review of measures to examine contemporary variable factors, but also used to assess whether 2,4-D has been recently dumped in the context of the continuation inquiry.
[3] s.269ZHG(1) and (4) notice.

2 INTRODUCTION

2.1 Continuation inquiry process

Dumping duty notices (that have not been earlier revoked) automatically expire five years after the date on which they were published, unless the Minister decides to continue them.

Not later than nine months before a dumping duty notice expires, Customs and Border Protection must publicly announce that those anti-dumping measures are due to expire and invite certain interested parties to apply within 60 days for continuation of the anti-dumping measures. If no application for continuation is received by Customs and Border Protection within the period allowed, the anti-dumping measures expire on the specified date.

If an application for continuation of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such longer period as the Minister allows, to inquire and report to the Minister on whether continuation of the anti-dumping measures is justified. Within 110 days of the initiation notice, or such longer period as the Minister allows, Customs and Border Protection must place on the Public Record a statement of essential facts (SEF) on which it proposes to base its recommendation to the Minister (see Section 2.3).

Before recommending the continuation of the anti-dumping measures, Customs and Border Protection must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent.

Where the Minister decides to continue anti-dumping measures, the dumping duty notice will remain in force after the specified date for a further period of five years (unless the relevant notice is revoked before the end of that period).

In making recommendations in its final report to the Minister, the CEO must have regard to:

- the application for continuation of the anti-dumping measures;
- any submission relating generally to the continuation of the anti-dumping measures to which the CEO has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by Customs and Border Protection within 20 days of the statement being placed on the Public Record.

The CEO may also have regard to any other matter that he or she considers to be relevant to the inquiry.

Following the Minister's decision, a notice will be published advising interested parties of the decision.

2.2 Notification and participation

The current anti-dumping measures applying to 2,4-D from China are due to expire on 25 March 2013.

On 7 May 2012, Customs and Border Protection published a notice in *The Australian* newspaper inviting certain persons to apply for the continuation of the anti-dumping measures that apply to 2,4-D exported to Australia from China. On 5 July 2012, Nufarm, a manufacturer of 2,4-D in Australia, lodged an application for the continuation of the anti-dumping measures.

Following consideration of the application, the inquiry was initiated on 10 August 2012. Public notification of initiation of the inquiry was made in *The Australian* newspaper on 10 August 2012. Australian Customs Dumping Notice No. 2012/39 provides further details of the continuation inquiry process and is available at www.customs.gov.au.

The concurrent Minister-requested review was initiated on the same day.

During the continuation inquiry, Customs and Border Protection visited Nufarm and verified data relating to costs and sales. A non-confidential report of the visit was placed on the Public Record.

Customs and Border Protection sent questionnaires to all known importers of 2,4-D from China with imports above a certain volume (considered to be 'major' importers). These importer questionnaires requested information relating to each importer's importations of 2,4-D and their sales of these imports into the Australian market.

Of the importers that were sent a questionnaire, Customs and Border Protection received responses of varying levels of completeness from:

- Accensi Pty Ltd (Accensi);
- Gulmohar Pty Ltd;
- Australian Independent Rural Retailers Pty Ltd (AIRR)/Agrichem Manufacturing Industries (AGRONOMIQ);
- Conquest Crop Protection Pty Ltd (Conquest); and
- Pacific Agriscience Pty Ltd.

Several importers did not provide detailed sales data of 2,4-D into the Australian market (noting in most cases this would relate to products that they have formulated domestically from imported 2,4-D acid or intermediate products).

Customs and Border Protection visited Accensi and verified data relating to costs and sales. A non-confidential report of the visit was placed on the Public Record.

Customs and Border Protection also sought and received copies of documents to verify the importation costs of selected Conquest importations of 2,4-D.

Customs and Border Protection also sent correspondence inviting all known exporters of 2,4-D from China during the period 1 July 2011 - 30 June 2012 to

complete an exporter questionnaire and cooperate with the continuation inquiry and related review. No exporter provided a completed exporter questionnaire.

Submissions were accepted during the inquiry and were received from Nufarm, Accensi and AGRONOMIQ.

2.3 Statement of Essential Facts (SEF)

On 28 November 2012, Customs and Border Protection placed its combined (for the continuation inquiry and review) SEF No. 189A and 189B on its Public Record.

That statement set out the essential facts on which Customs and Border Protection proposed to base its final recommendation to the Minister for both matters, and invited interested parties to lodge submissions in response to the preliminary findings of the statement by 18 December 2012.

Submissions received up to and including Friday 23 November 2012 were considered in arriving at the preliminary findings in the SEF for the review.[4]

2.4 Responses to the SEF

Customs and Border Protection received the following submissions after arriving at the preliminary findings contained in the SEF[5] (i.e. after 23 November 2012):

Date of submission	Submitting party	Submission title/description
25 November 2012	AGRONOMIQ	2,4-D Acid Anti-Dumping Duty (ADD) Continuation Investigation: Nufarm Verification Report
26 November 2012	AGRONOMIQ	Letter from AGRONOMIQ
5 December 2012	AGRONOMIQ	Email submission
13 December 2012	AGRONOMIQ	Response to SEF Dated 28th November 2012
17 December 2012	Nufarm	Response to SEF 189A and 189B
18 December 2012	AGRONOMIQ	Response to Record of Meeting Dated 5th December 2012
21 December 2012	Nufarm	Addendum to submission Response to SEF 189A and 189B
21 December 2012	Nufarm	Response to Importer Submissions

[4] Submissions received after 23 November 2012 were not considered in formulating the preliminary findings of the SEF, as it was considered to do so would delay the timely publication of that statement.

[5] Either in response to, or prior to the publication of the SEF.

24 December 2012	AGRONOMIQ	Response to Nufarm Letter Dated 21st December 2012
27 December 2012	AGRONOMIQ	Response to Nufarm Letter Dated 21st December 2012 Regarding Normal Value of 2,4-D
3 January 2013	AGRONOMIQ	Investigation into Dumping of Chinese 2,4-D

Non-confidential copies of these submissions were placed on the continuation inquiry and review's public record (combined for administrative reasons).

All submissions properly received (i.e. including an adequate non-confidential version of the submission for the Public Record) have been considered in formulating the findings and recommendation in this final report.

Customs and Border Protection's assessment of these submissions is discussed throughout this report (where appropriate/relevant).

2.5 History of 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.
5 July 2012	Nufarm applied for a further continuation of the anti-dumping measures on 2,4-D relating to China.
10 August 2012	Customs and Border Protection initiated an inquiry into the continuation of the anti-dumping measures on 2,4-D exported from China, and a review into those measures.

2.6 Review of the measures

On 10 August 2012, the CEO, following a request from the Minister, commenced a review of the variable factors applying to 2,4-D exported from China.

The review period (the period in which to examine the variable factors) was set as 1 July 2011 – 30 June 2012.

A separate report (REP 189B) was provided to the Minister on 9 January 2013 relating to that review.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Australian industry produces 2,4-D that has characteristics closely resembling those of 2,4-D manufactured in China and exported to Australia.

2,4-D manufactured by the Australian industry is considered like goods to the goods the subject of the dumping duty notice.

3.2 The goods

3.2.1 Description

The goods subject to anti-dumping measures are 2,4-Dichlorophenoxy-acetic acid, a selective herbicide exported to Australia mainly in the forms of 2,4-D acid and 2,4-D ester.

The 2,4-D covered by the measures include:

- 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); and
    - iso-propylamine (IPA);
- 2,4-D fully formulated products; and
- all other forms of 2,4-D.

3.2.2 Tariff classification

2,4-D is classified within sub-heading 2918.99.00 and 3808.93.00 in Schedule 3 to the *Customs Tariff Act 1995*. The applicable rate of duty for China is 5%.

3.3 Like goods

In previous investigations and continuation inquiries in respect of 2,4-D, Customs and Border Protection determined that Nufarm and domestic formulators of imported 2,4-D acid and intermediate products comprise the Australian industry producing like goods.

On the basis of information provided by Nufarm and Accensi to the continuation inquiry, Customs and Border Protection considers Nufarm and domestic formulators continue to be producers of like goods.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

There is an Australian industry that is producing like goods, consisting of Nufarm (that manufactures 2,4-D acid and formulates this into 2,4-D formulated products) and multiple other formulators that formulate 2,4-D acid and other intermediary salts and esters into 2,4-D formulated products.

4.2 Australian production

Nufarm is a public company listed on the Australian stock exchange. It produces a range of crop protection products at its facilities in Laverton North, Kwinana, Lytton and Welshpool.

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). Customs and Border Protection considers Nufarm is still the only fully integrated manufacturer of 2,4-D in Australia.

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 for 2,4-D formulated product. However, having concluded that Nufarm represented approximately 90% of the Australian industry by volume, the assessment of injury to the industry focussed on Nufarm. The previous continuation inquiry followed the same methodology.

Since the previous continuation inquiry, available evidence indicates that Nufarm's total market share has fallen (see below analysis), and there has been a trend of increasing volumes of imports of intermediate product for formulation in Australia.

This indicates that Nufarm has, by volume, decreased its percentage representation of the Australian industry (comprising formulators and Nufarm) since the previous continuation inquiry. However, available evidence indicates that Nufarm is still the predominant member of the Australian 2,4-D formulated product industry, as well as the sole fully integrated 2,4-D producer in Australia, and Customs and Border Protection again considers it reasonable to focus its assessment of the condition of the Australian industry on Nufarm's performance.

In any case, Customs and Border Protection is not in possession of further information that would enable it to assess the performance of other Australian industry members (domestic formulators).

4.3 Production process

4.3.1 Production of 2,4-D acid

2,4-D acid is produced from a chemical reaction involving chlorine, phenol, sodium monochloracetate acid and hydrochloric acid. This process is performed by Nufarm at its Laverton North facility.

2,4-D acid is supplied in its acid form[6] or converted to intermediate 2,4-D salts or esters (e.g. DMA or 2 ethyl hexyl ester).

The purpose of this conversion process is simply to convert 2,4-D acid into a soluble form.

4.3.2 Formulation process

After the 2,4-D acid is converted to either 2,4-D salts or esters, it is combined with other incipients and water into a fully-formulated product, ready for application as a herbicide.

[6] Not generally sold by Nufarm domestically, but imported in acid form by several entities.

5 AUSTRALIAN MARKET

5.1 Finding

The size of the Australian market grew considerably from the period of Nufarm's financial year (FY) 2008 to FY 2012 (Nufarm has an August to July financial year), with Nufarm's sales volume remaining relatively stable, though its market share decreased throughout that period.

As a proportion of total imports, imports of formulated 2,4-D product and intermediate products grew over the assessment period.

Imports of 2,4-D products from China grew in volume and as a proportion of total imports during the assessment period, overtaking India as the major source of import supply.

Customs and Border Protection's analysis of market size, share and import sources and export prices is included in **Confidential Appendix 1.**

5.2 Supply

The Australian market for 2,4-D formulated product can be described as being supplied by:

- Nufarm, through
    - Nufarm-produced formulated 2,4-D herbicide products, made using its own or imported acid or intermediary products;
    - some imports of fully-formulated products;
- domestic formulators (using imported 2,4-D acid and intermediate products then formulating 2,4-D products); and
- imported, fully-formulated 2,4-D products (i.e. imported already formulated).

Formulated 2,4-D is generally sold to large distributors of agricultural chemicals and various other agricultural products, who then distribute to resellers (usually the individual stores of the large distributor) where it is on-sold to end users (farmers) for application on agricultural land.

2,4-D acid is generally not sold by Nufarm or importers on the Australian market (i.e. they use their own production or imports to formulate 2,4-D products for sale on the Australian market).

5.3 Market size and share

Nufarm has submitted that it is difficult for it to obtain reliable Australian market volume and share data, as there is no industry research body that can provide this data.

During the most recent continuation inquiry into 2,4-D from China (Rep. 126), Customs and Border Protection estimated the size of the Australian 2,4-D market for the period FY 2003 – FY 2007 by converting:

- its own import statistics (derived from the Customs and Border Protection import database); and
- Nufarm's sales data (for its four most popular domestic products, totalling over 96% of sales volume)

into 2,4-D acid equivalent (100% acid), based on the known strength of 2,4-D acid in each item sold.

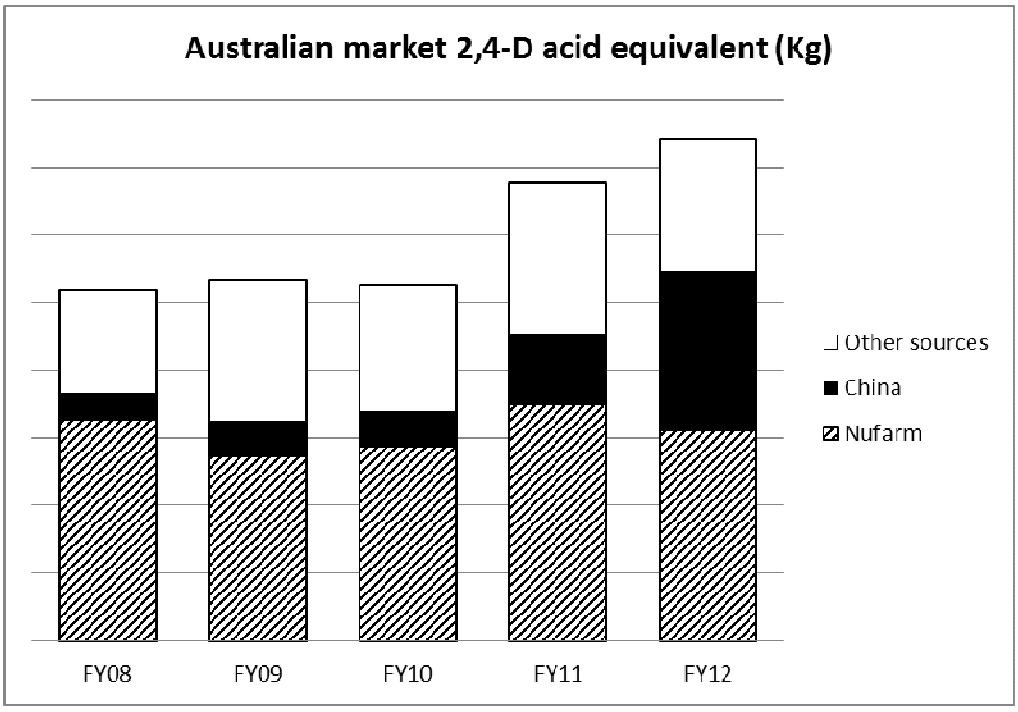
This conversion calculation is:

Volume X Concentration % = Acid Volume

Customs and Border Protection has undertaken this analysis for the period FY 2008 – FY 2012 (using Nufarm's August – July financial year), using converted import data from Customs and Border Protection's import database and converted Nufarm sales data (for all domestic product types sold).

> *Note: the accuracy of Customs and Border Protection's import data was tested during the verification of the importer questionnaire response with Accensi, and through examination of the information provided by Conquest to verify its selected imports data (see Section 2.2 above). In each case the data contained in Customs and Border Protection's import database was found to be reasonably accurate.*

This analysis is displayed in the below chart.



This analysis displays that:

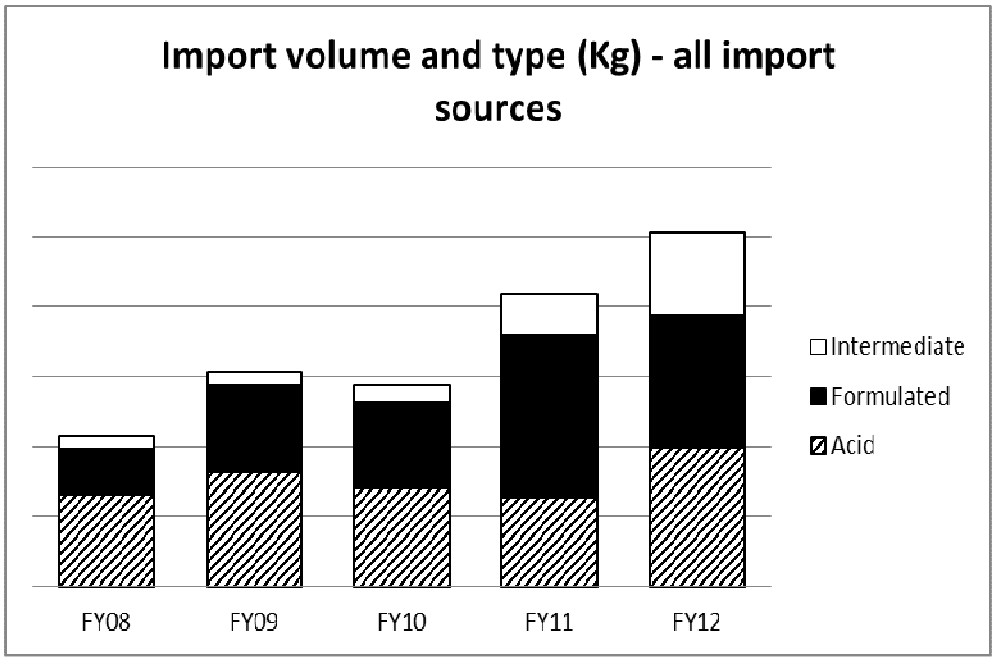
- the Australian 2,4-D market, measured as a 100% acid equivalent has increased over the period of Nufarm's FY 2008 – FY 2012;
- import volumes of 2,4-D 100% acid equivalent from China have increased over that period, as have imports from other origins;
- Nufarm's sales volume (100% acid equivalent) fell slightly over the period while Chinese imports increased in sales volume; and
- Nufarm's market share (100% acid equivalent) decreased over the period, while the Chinese imports market share increased.

5.4 Source of imports

Customs and Border Protection's import database indicates that significant sources of import supply of 2,4-D acid, intermediary and formulated product (other than China) include India, Poland, New Zealand, Austria and Malaysia.

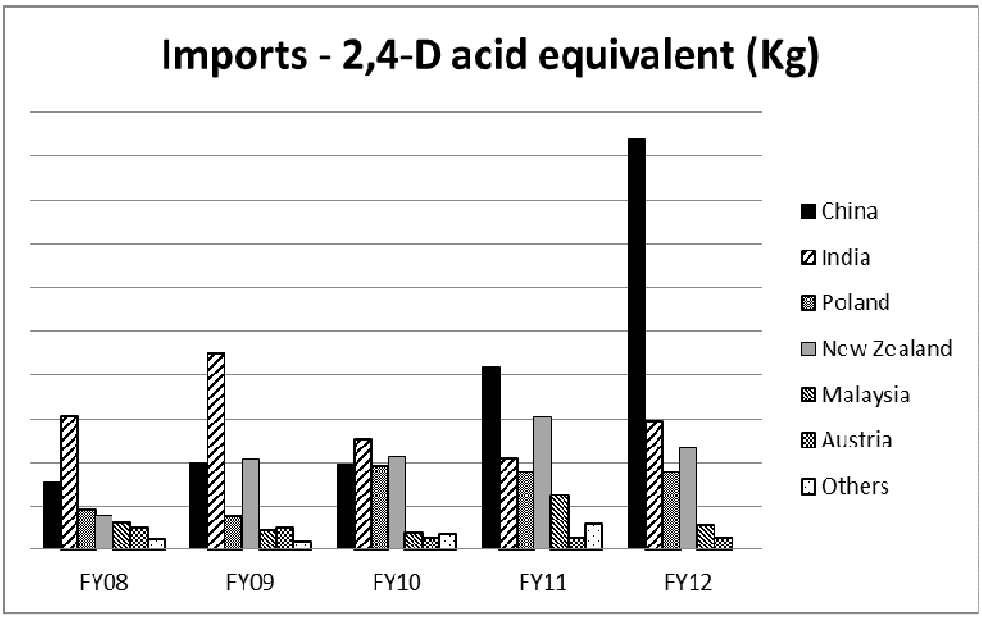
Using the data from its import database, Customs and Border Protection has identified (based on tariff classification, goods description and other factors) whether imported goods were 2,4-D acid, an intermediate product (2,4-D salts and esters) or a fully formulated 2,4-D based product.

The total import volume, split by each category of 2,4-D product, is charted below (based on Nufarm's August – July financial year).



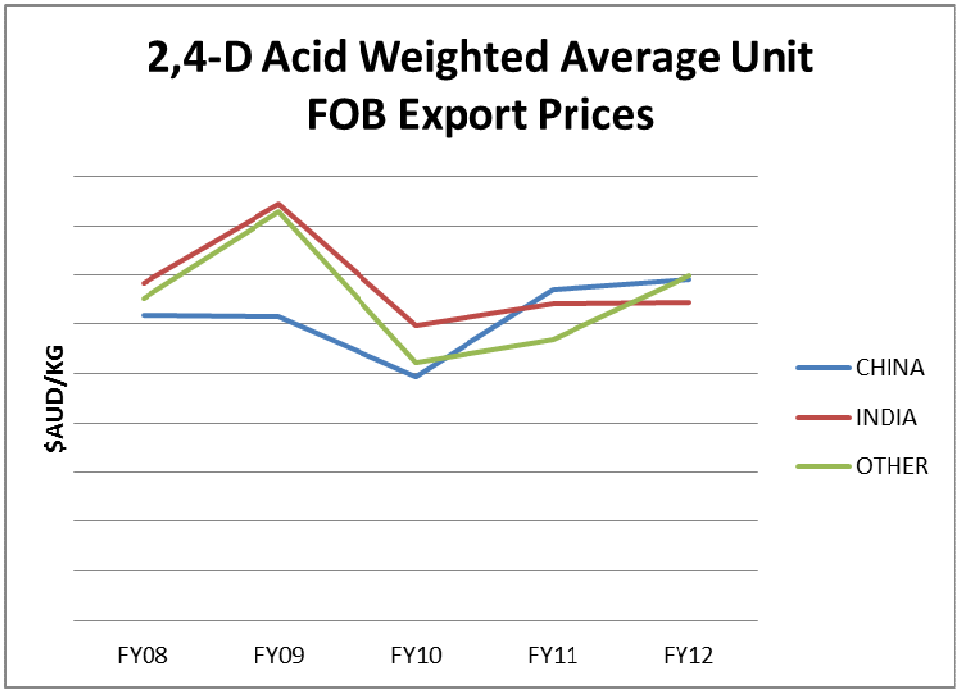
This analysis displays an overall increase in the volume of imports of total 2,4-D product categories over the period, as well as a decrease in the overall import share of 2,4-D acid accompanied by increases in the total import share of intermediate and formulated products.

Major import sources are outlined in the below chart (based on Nufarm's August – July financial year).



This analysis shows that, over the period FY 2008 – FY 2012, imports from China have sharply increased, overtaking India as the major source of import supply.

Weighted average unit free on board (FOB) export prices (in $AUD) for 2,4-D acid to Australia over the period of Nufarm's FY 2008 – FY 2012 are outlined in the below chart.



Note: 2,4-D acid is only one type of 2,4-D product covered by the measures.

This analysis shows a decline in weighted average acid export prices from all origins, from Nufarm's FY 2009 to FY 2010, before an increase in these prices into FY 2011 and FY 2012.

It shows an overall increase in weighted average acid export prices from China over the analysis period, while prices from India fell and the average price of all other origins ended the period at similar levels to the start of the period.

5.5 Market characteristics

The Australian 2,4-D market is seasonal, experiencing large fluctuations across the farming cycle. The market also depends on rainfall events that increase the demand for herbicides (after increased weed growth following rainfall).

Interested parties have informed Customs and Border Protection that the Australian market on the East Coast differs significantly from the West Coast of Australia, with the East being dominated by a variety of cropping, broad acre and vegetable farming and wide variations in climatic conditions, contrasted with the West which is dominated by broad acre cropping and more uniform climatic conditions.

These main factors (farming type and climatic conditions) influence demand for 2,4-D products.

6 ECONOMIC CONDITION OF THE INDUSTRY

6.1 Finding

The assessment of the economic condition of the Australian industry indicates that:

- the economic performance of the Australian industry in terms of profit and profitability generally improved from Nufarm's FY 2008 to FY 2012 (August – July financial year), after falling significantly in FY 2009 and into FY 2010;
- there has been a general decrease in cost to make and sell (CTMS) over the assessment period, accompanied by an increase in selling prices of some products;
- selling price of importers during Nufarm's FY 2012 was generally at comparable levels to the net selling prices of Nufarm for equivalent products and pack sizes, being sometimes higher and sometimes lower, with no clear trends of price undercutting; and
- while maintaining relatively stable sales volumes, Nufarm has been unable to maintain its market share in a growing market, while imports of Chinese 2,4-D have increased in volume and market share.

Customs and Border Protection considers that this indicates that Nufarm is susceptible to injury from dumped imports.

Customs and Border Protection's assessment of the economic condition of the Australian industry is contained in **Confidential Appendix 2**.

6.2 Introduction

In its application, Nufarm provided Appendix A6 (cost to make and sell, revenue and profit) appendices for its major domestic and export 'product families'. These accounted for in excess of 80% of Nufarm's domestic sales volume of 2,4-D product in Nufarm's FY 2012. These appendices included data for Nufarm's FY 2008 – FY 2012.

Nufarm also provided a line by line sales listing for the period 1 July 2011 – 31 July 2012. Within this listing, Nufarm calculated 'net, net' invoice prices for each sale, accounting for its various rebates and discounts offered to its customers.

Verification of sales and costs was undertaken with Nufarm and is detailed in the Australian Industry Visit Report, available on the Public Record.

Customs and Border Protection has examined this data to analyse the state of the Australian 2,4-D industry over the period August 2007 to July 2012. This examination of the economic condition of the industry can be one indicator of whether or not there is a likelihood of continued further injury.

In the original investigation and continuation inquiry into 2,4-D, Customs and Border Protection considered that the competitive market for 2,4-D in Australia is seen in the sales of fully formulated 2,4-D, as the Australian industry (Nufarm and formulators of imported acid, esters and salts) make nil or negligible sales of 2,4-D acid itself, or intermediate salts and esters.

Customs and Border Protection has again observed nil or negligible sales of 2,4-D acid, salts or esters by the Australian industry, and considers that its assessment of the economic condition of the industry should focus on the sales of formulated 2,4-D product.

For the analysis of total volumes to be undertaken, it was considered necessary and reasonable to convert all products to a common base of 100% acid equivalent (based on the strength of acid in grams/Litre (g/L) of the product) as the strength of 2,4-D acid in products can vary substantially.

Customs and Border Protection has used this approach for assessing volumes. However, prices have not been converted in a similar way, given the varying production costs of each formulation and attainable profit margins for each of the individual formulation types.

Note: the analysis in this Chapter has used CTMS information for formulated product made with Nufarm's domestically-manufactured 2,4-D acid.

6.3 Price effects

6.3.1 Price undercutting

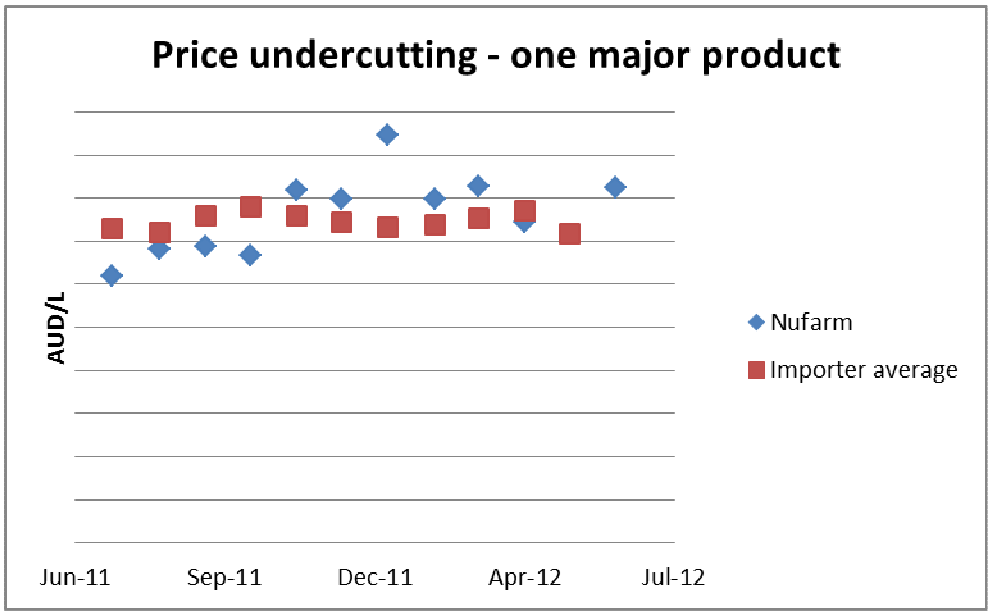
Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product.

Customs and Border Protection has compared the Australian industry prices in the period established for its concurrent review (1 July 2011 – 30 June 2012, the 'review period') for the fully formulated products, Estercide Xtra 680, Amicide 625 and Surpass 475 (in various pack sizes) to sales by importers of equivalent Chinese 2,4-D products at the same level of trade (distributor level).

These three products are commonly-sold formulations, and represent the greatest volume of products that Customs and Border Protection could reasonably conduct price undercutting analysis of, given the nature of the available Nufarm and importers' data.

Generally, Customs and Border Protection found the selling price of importers to be at comparable levels to the net selling prices of Nufarm for equivalent products and pack sizes, being sometimes higher and sometimes lower, with no clear trends of price undercutting.

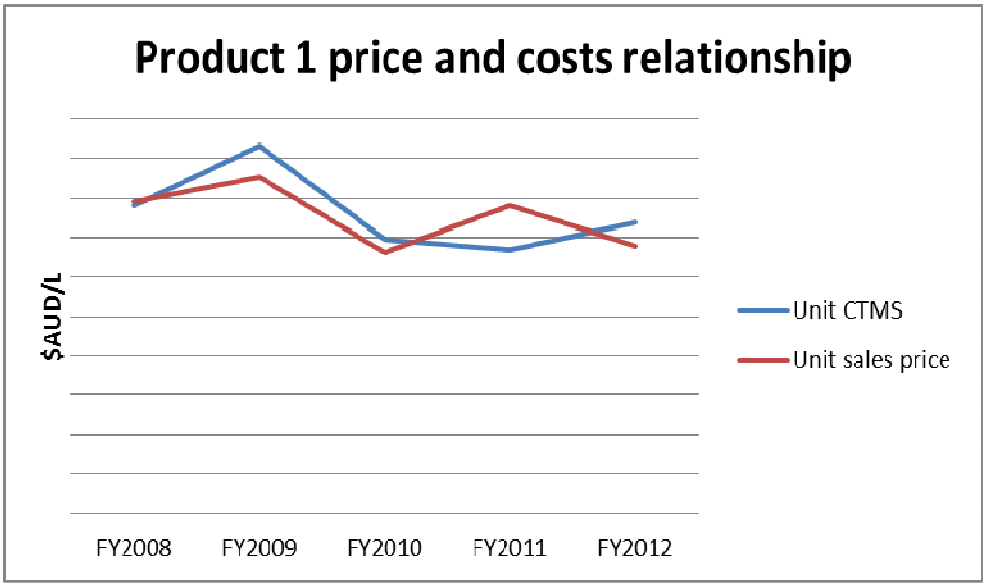
To demonstrate this, the net selling prices of two importers (averaged in one field) and Nufarm for a popular 2,4-D formulation in a common standard pack size, is charted below. This chart demonstrates the Nufarm selling prices being undercut by import prices in some months, and the reverse occurring in other months.

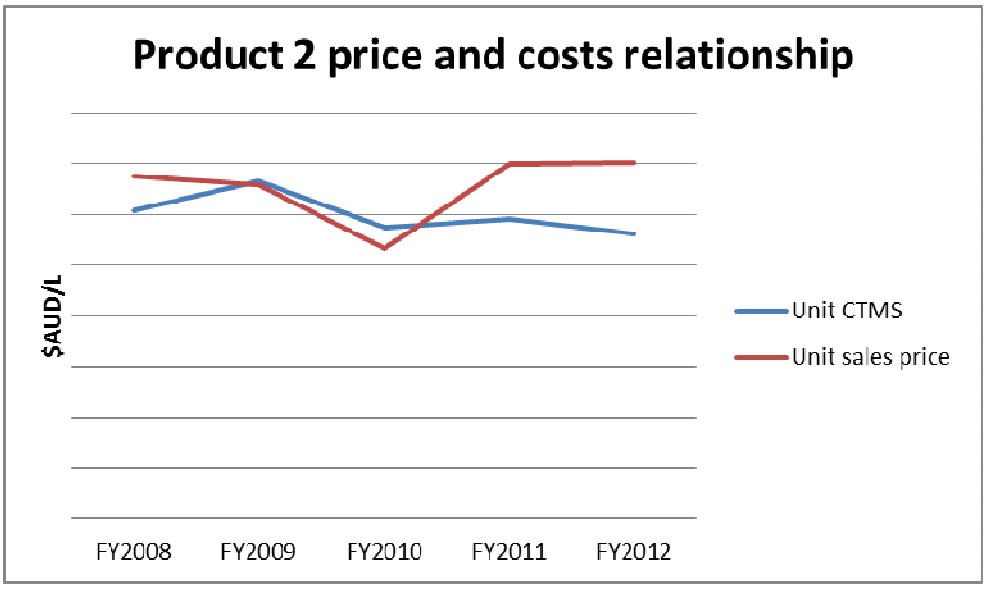


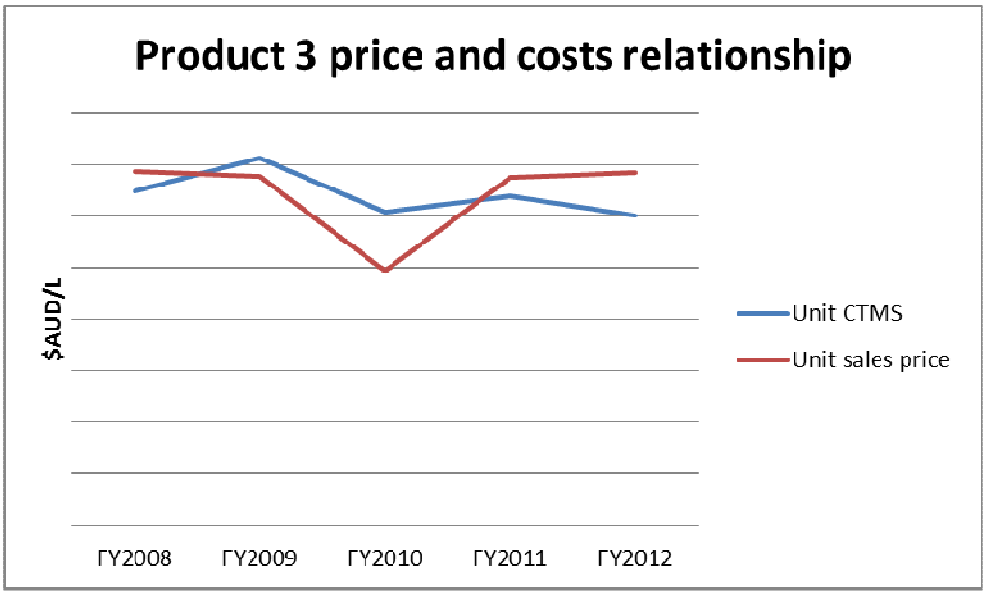
After examining these prices, Customs and Broder Protection performed the same analysis deducting the current level of interim dumping duty from importers' selling prices. The same trend as that observed above was found in this analysis.

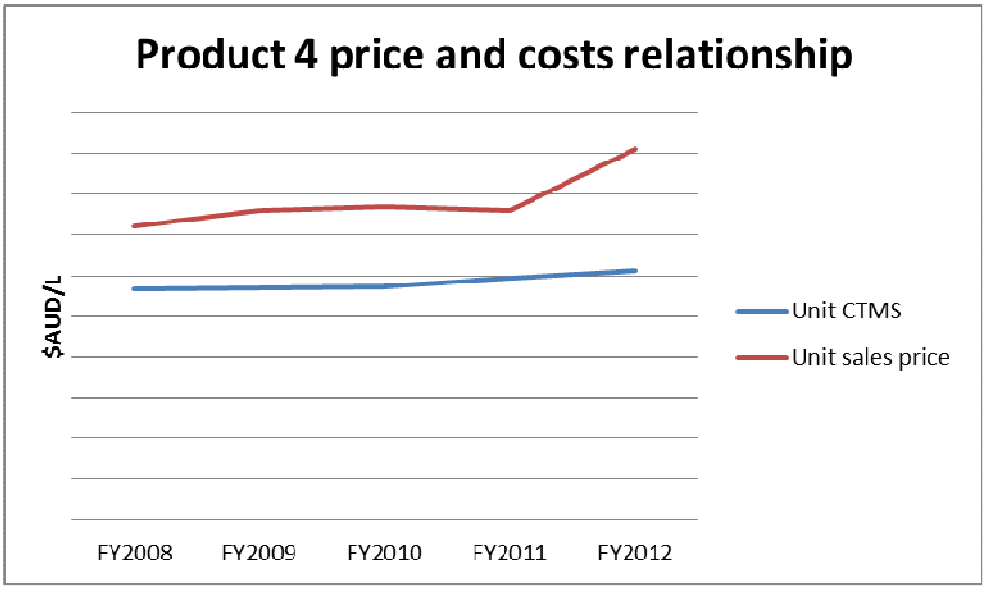
6.3.2 Price trends and relationship to costs

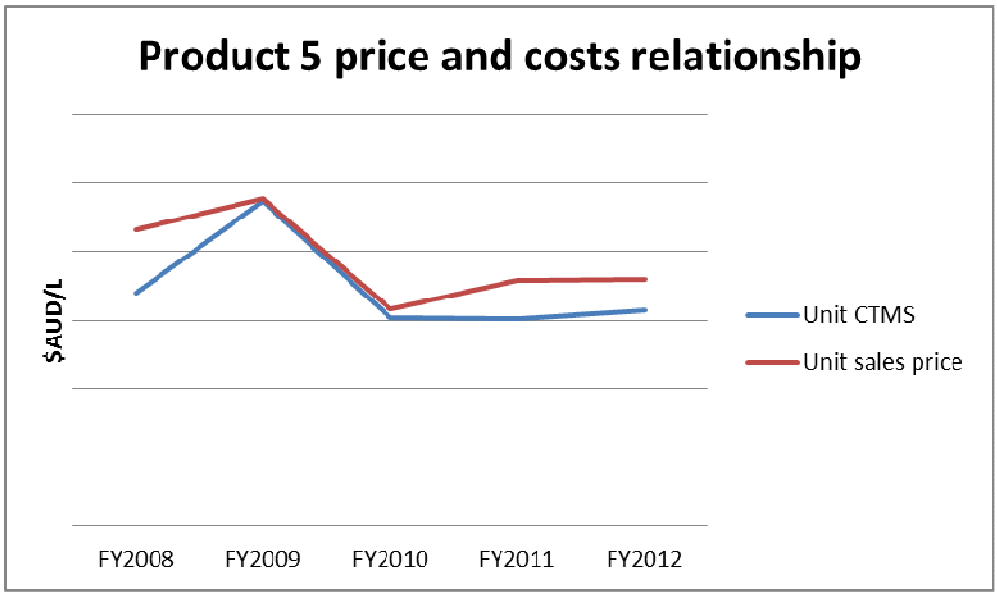
Movements in Nufarm's weighted average annual unit selling prices and CTMS for its five major 2,4-D products (representing 80% of its sales volume in FY 2012) are illustrated in the following charts.




Product 2 price and costs relationship
$AUD/L
FY2008
FY2009
FY2010
FY2011
FY2012
Unit CTMS
Unit sales price


Product 3 price and costs relationship
$AUD/L
FY2008
FY2009
FY2010
FY2011
FY2012
Unit CTMS
Unit sales price


Product 4 price and costs relationship
$AUD/L
FY2008
FY2009
FY2010
FY2011
FY2012
Unit CTMS
Unit sales price



These charts show somewhat inconsistent relationships between unit CTMS and unit price in the three years FY 2008 – FY 2010 when comparing the products.

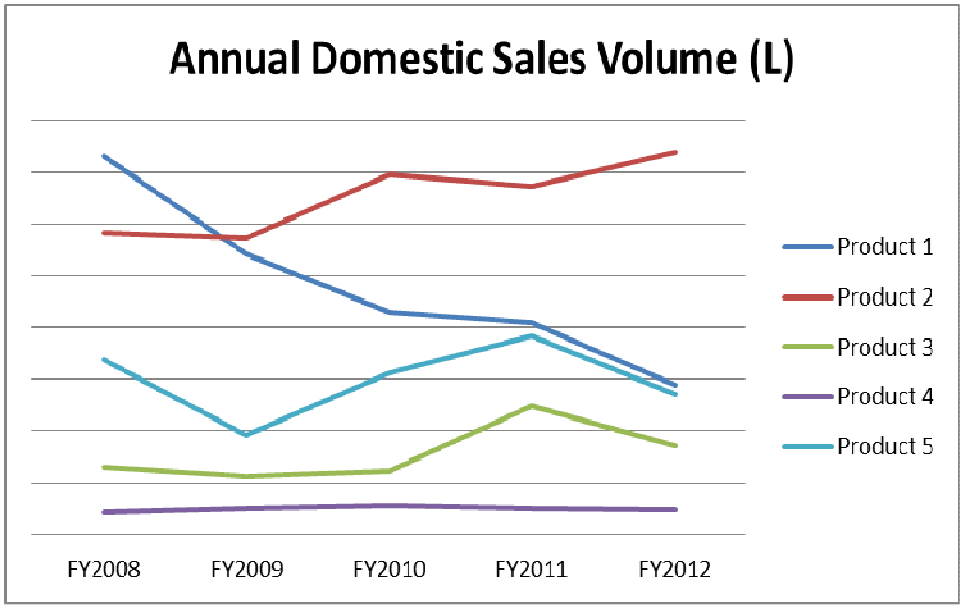
With the exception of Product 1 in FY 2012, it is evident that the unit selling prices exceeded unit CTMS in all products for FY 2011 and FY 2012.

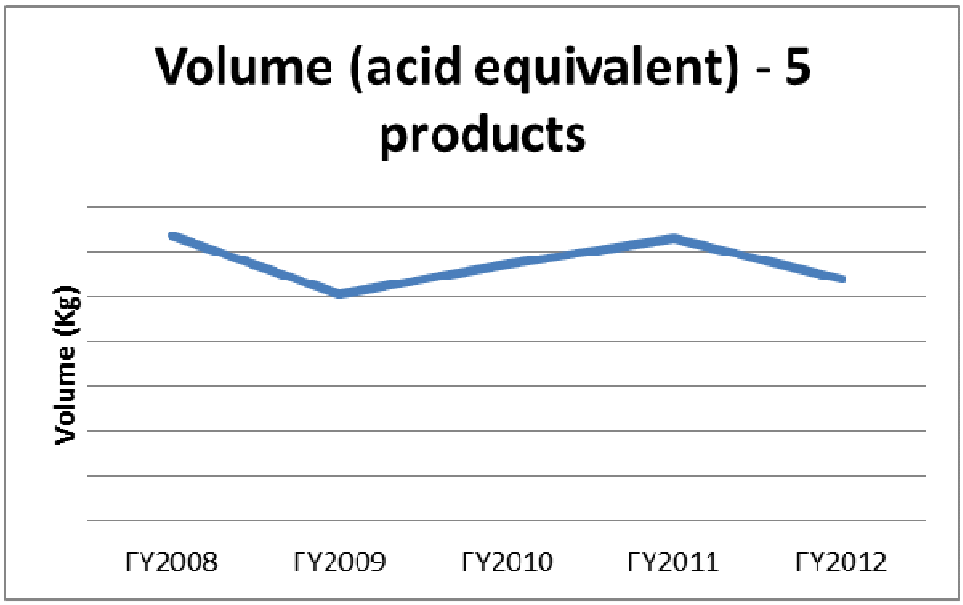
Movements in price were also somewhat inconsistent in comparing the products over the five year period, though a fall in unit prices in FY 2010 can be seen for all products except for Product 4.

6.4 Volume effects

6.4.1 Sales volumes

Nufarm's annual domestic sales volumes for the five examined formulations are charted below.





This analysis demonstrates that:

- for Product 5, Product 4 and Product 3, sales volumes in Nufarm's FY 2012 ended at similar levels as sales in FY 2008, after an increase in sales volume for Product 3 and Product 5 in the years up to FY 2011 then a decline into FY 2012;
- sales volumes of Product 1 decreased steadily over the period to end at levels in FY 2012 that were considerably below those of FY 2008;
- sales volumes of Product 2 increased year-on-year throughout the period (except for a small decline in FY 2011) to end at levels significantly higher than in FY 2008; and
- combined sales volumes of the five products, when converted to a 100% 2,4-D acid equivalent, shows a decline in sales volume from FY 2008 to FY 2009, before a recovery in sales volumes up to FY 2011, and another decline in FY 2012 to levels below those achieved in FY 2008 to be at levels approximately 15% below FY 2008.

6.4.2 Market share

Changes in the Australian market and market share are depicted in the chart above at Section 5.3.

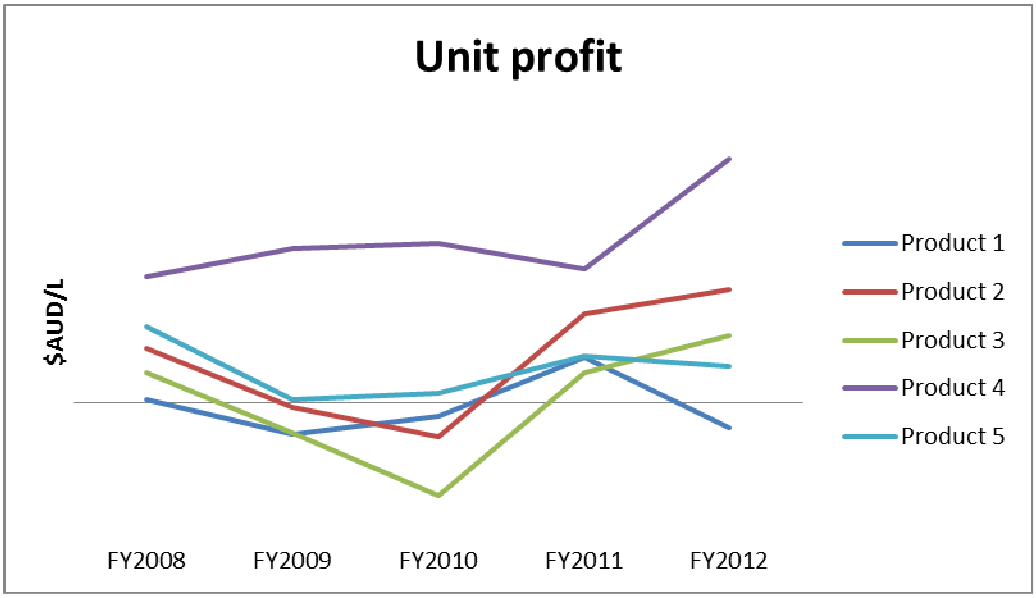
This analysis displays that:

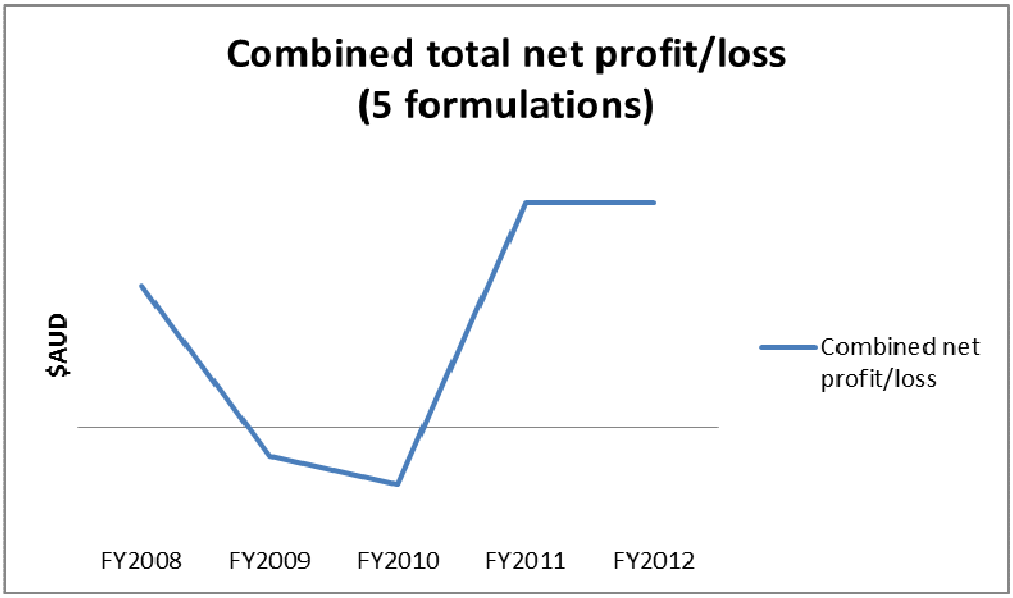
- the Australian 2,4-D market, measured as a 100% acid equivalent has increased over the period of Nufarm's FY 2008 – FY 2012;
- import volumes of 2,4-D 100% acid equivalent from China have increased over that period, as have imports from other origins;
- Nufarm's sales volume (100% acid equivalent) fell slightly over the period while Chinese imports increased in sales volume; and
- Nufarm's market share (100% acid equivalent) decreased over the period, while the Chinese imports market share increased.

6.5 Profits and profitability

6.5.1 Profit

Nufarm's profit (in relation to the five analysed formulations) over the analysis period is illustrated in the below charts:





This displays that, for Product 1, Product 2, Product 3, and Product 5:

- profits fell from Nufarm's FY 2008 to FY 2009 (to an unprofitable level for some products);
- this fall continued for both Product 2 and Product 3 into FY 2010, though Product 1 and Product 5 both saw unit profit increases in FY 2010;
- all four products saw increased unit profits from FY 2010 to FY 2011;

- the increase in unit profit continued for both Product 2 and Product 3 into FY 2012, though Product 1 and Product 5 saw a decrease in unit profits from FY 2010 to FY 2011; and

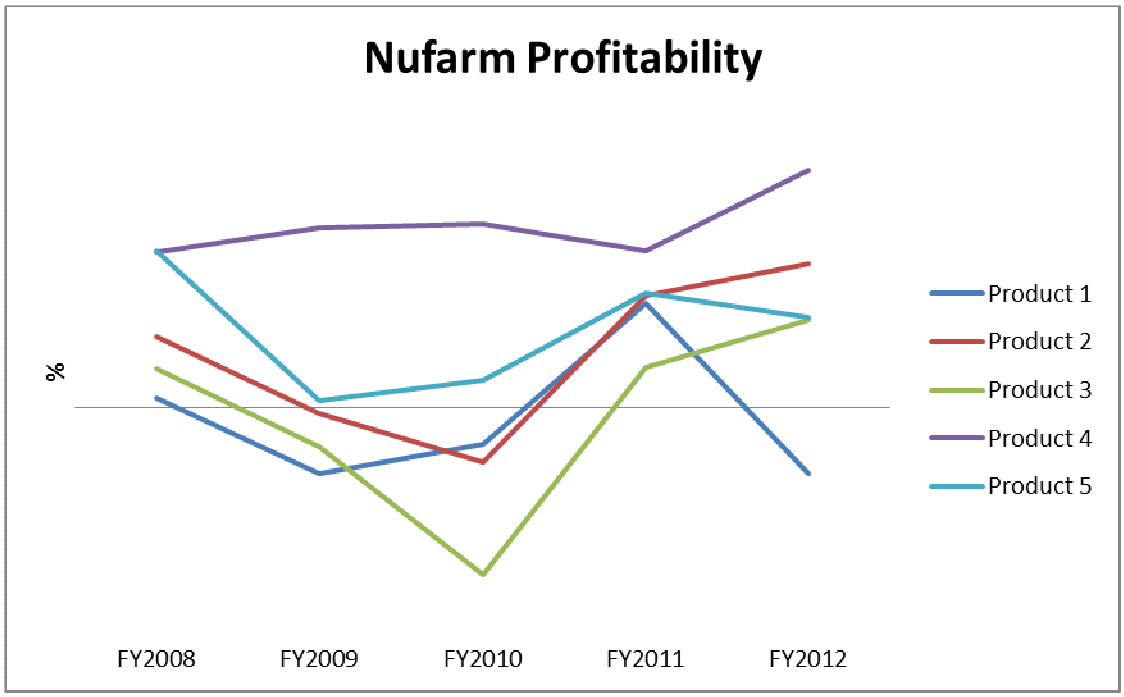
- overall, unit profit for products 2 and 3 ended at a higher level in FY 2012 from the base year of FY 2008, while unit profit for Product 1 and Product 5 ended lower in FY 2012 than in FY 2008.

Unit profit for Product 4 steadily increased from FY 2008 to FY 2010, before falling in FY 2011 but experienced a significant increase in FY 2012 to end the analysis period at levels significantly higher than in FY 2008.

Overall (for the five formulated products examined) there was a significant decrease in total profit from FY 2008 to FY 2010 to loss-making levels, followed by a significant increase in total profit in FY 2011, with total profit remaining steady in FY 2012.

6.5.2 Profitability

Movements in Nufarm's profitability for the five examined 2,4-D products over the analysis period are illustrated in the table below:



For all products except Product 4, profitability saw a decrease from Nufarm's FY 2008 to FY 2010, increasing in FY 2011, then continuing to increase for Product 2 and Product 3 but decreasing for Product 1 and Product 5 into FY 2012.

The profitability of Product 1 and Product 5 ended the analysis period at a rate lower than that seen in FY 2008 (the start of the analysis period).

Profitability for Product 4 was steady from FY 2008 to FY 2011 (with increases in the intermediate years), before a marked increase in FY 2012.

Profitability for Product 2 and Product 3 ended in FY 2012 at levels above those of FY 2008.

6.6 Customs and Border Protection's assessment

Nufarm's financial performance over the period of its FY 2008 to FY 2012 has been examined and the following has been found.

- Nufarm's 2,4-D profit and profitability has improved overall over the period FY 2008 to FY 2012, after suffering declines in FY 2009 and FY 2010 (though the improvement in overall profit has stabilised from FY 2011 and FY 2012);
- there has been a general decrease in CTMS over the assessment period, accompanied by an increase in selling prices of some products;
- Nufarm's unit selling prices fluctuated over the five year analysis period; and
- Nufarm's unit selling prices were sometimes lower than its unit CTMS in FY 2008 – FY 2010, but mostly in excess of CTMS for the next two years.

7 LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING

7.1 Findings

Customs and Border Protection is satisfied that:

- Nufarm is susceptible to injury from dumped 2,4-D;
- exports of 2,4-D acid from China during the review period were at dumped prices;
- China continues to be a large 2,4-D producer and exporter and Chinese 2,4-D producers are active in export markets;
- Chinese 2,4-D is now the major source of import supply and a significant source of the overall volume of 2,4-D in the Australian market; and
- distribution channels for 2,4-D exported from China to Australia are well established and have been active for several years.

Customs and Border Protection considers that the evidence currently available indicates that, in the absence of anti-dumping measures, it is likely that dumping and material injury would continue or recur.

7.2 Continuation test

Customs and Border Protection must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

To assist in determining whether this test has been satisfied, Customs and Border Protection has assessed whether, in the absence of anti-dumping measures:

1) imports of the goods are likely to continue or recur;
2) imports of the goods are likely to be dumped; and (if so)
3) continuing importations of dumped goods is likely to cause a continuation or recurrence of material injury to the Australian industry.

7.3 Likelihood of exports from China continuing or recurring?

7.3.1 Applicant's claims

In its application for the continuation of the measures, Nufarm submitted evidence that it considered that, in the absence of anti-dumping measures on 2,4-D, exports of the goods from China will continue and possibly increase.

Nufarm's application included Australian Bureau of Statistics (ABS) data that showed an increase in 2,4-D imports from China since the measures were last continued in 2008. Nufarm submitted that this indicates that, over that period, Chinese exporters

have maintained distribution links into the Australian market and have increased their presence in the Australian market.

Nufarm further submitted its concerns (repeated from the previous continuation inquiry) that there are up to 300 formulators[7] of 2,4-D in China and that there is significant under-utilised 2,4-D capacity in China, suggesting that in the absence of measures, Chinese exports of 2,4-D to Australia could increase and more suppliers could enter the market.

Nufarm has explained[8] that these formulators are able to supply formulated 2,4-D to the Australian market after a simple registration process with the Australian Pesticides and Veterinary Medicines Authority (APVMA), as long as the active 2,4-D ingredient used in these formulations is sourced from an APVMA-approved source.

Nufarm has submitted to Customs and Border Protection that the requisite APVMA approval process is not overly arduous. [9]

Nufarm has also submitted, in its meeting with Customs and Border Protection on Wednesday 5 December 2012,[10] that some Chinese exporters of 2,4-D with the requisite APVMA approvals may in fact be exporting product from unapproved sources and stating it is from the approved source.[11]

Consequently, Nufarm has submitted that it is of the view that, in the absence of measures, it is likely that:

> *Chinese exporters of 2,4-D will increase exports to Australia via maintained distribution links…*[12]

7.3.2 Importer claims

Customs and Border Protection has received submissions from Accensi and AGRONOMIQ during its inquiry. Accensi was also visited to discuss the continuation inquiry and verify that company's response to the importer questionnaire (see 2.2 above).

These importers did not indicate that they considered exports of 2,4-D from China would not continue.

However, both Accensi and AGRONOMIQ have disputed claims that there are a large number of Chinese producers of 2,4-D with under-utilised capacity ready to enter the Australian market should measures lapse. These parties submit that:

- there are a small number (less than ten) of producers of 2,4-D acid in China;
- in order to export 2,4-D to Australia, Chinese manufacturers need:

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[7] After some confusion by interested parties, Nufarm clarified in its submission of 29 October 2012 that this figure relates not only to 2,4-D acid manufacturers but also to 2,4-D formulators

[8] See Nufarm Industry Visit Report.

[9] See Nufarm Industry Visit Report.

[10] For which a Record of Meeting was placed on Customs and Border Protection's Public Record.

[11] Nufarm provided no evidence of this occurring, and AGRONOMIQ have since disputed this claim in its *Response to Statement of Essential Facts (SEF) Dated 29th November 2012* (submitted 13 December 2012)

[12] Nufarm Application for Continuation of Dumping Duty Notice, Page 6.

  - APVMA approval of the active 2,4-D source (the APVMA provides approval of the 2,4-D acid, and only formulated products made with these approved sources can be registered and sold in Australia) ; and
  - Chinese Institute for the Control of Agrochemicals (ICAMA) certification of approval to export;
- at the moment, only six Chinese exporters have the requisite approvals to supply 2,4-D technical to the Australian market, and the process for achieving these approvals is long and expensive.

Importers have submitted that this indicates there are a limited number of exporters of 2,4-D that can supply to Australia from China, and that the requisite approvals/registrations create barriers to entry to the Australian market that would inhibit new suppliers of 2,4-D to Australia should the anti-dumping measures lapse.

Nufarm has not addressed the issue of ICAMA export approval.

Further, in various submissions made prior to and following the publication of the SEF, [13] AGRONOMIQ has:

- disputed the very existence of approximately 300 Chinese suppliers of 2,4-D, as submitted by Nufarm;

- submitted that Australian importers have 'long standing relationships 'with Chinese companies and are unlikely to switch suppliers to one of the other multiple suppliers submitted by Nufarm to exist (and hence new entrants are unlikely to enter the market should anti-dumping measures not continue); and

- made comparisons between the size and characteristics of the markets for glyphosate (another popular herbicide) and 2,4-D both in Australia and China to refute the claim that multiple Chinese suppliers could flood the Australian 2,4-D market in the absence of anti-dumping measures.

While importers have submitted that the necessary import/export authorisation process inhibits new Chinese market entrants, these parties have noted that there has been an increase in APVMA registrations of formulated 2,4-D product in recent years (i.e. product formulated using approved acid sources) since the measures were last continued.

AGRONOMIQ has noted[14] that these increased registrations were overwhelmingly held by Australian companies who either source or plan to source 2,4-D from China or other markets, as opposed to Chinese entities registering their own formulations for importation and sale under their own labels. AGRONOMIQ further submitted that these new registrations are 'irrelevant' and 'counter-productive' to Nufarm's case as it shows a disinterest by Chinese formulators to enter the market under their own registrations.

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[13] Including its *Response to Statement of Essential Facts (SEF) Dated 29th November 2012* submission (submitted 13 December 2012), and the *Investigation into Dumping of Chinese 2,4-D* submission (dated 3 January 2013).

[14] AGRONOMIQ, *Response to Statement of Essential Facts (SEF) Dated 29th November 2012*.

AGRONOMIQ has also advised[15] that a new approval of 2,4-D acid (Good Harvest) was granted by the APVMA in November 2012.

Further, during its meeting with Customs and Border Protection, Accensi noted the increase in Chinese imports of 2,4-D in recent years and the decline of Indian imports, stating that it was unsure why these Indian imports have fallen, but that for some reason Indian offers of 2,4-D to the Australian market are less common.[16]

7.3.3 Customs and Border Protection's assessment

Available data and Customs and Border Protection analysis indicates:

- a marked increase in imports of 2,4-D from China over the period of Nufarm's FY 2008 – FY 2012, such that China is now the predominant supplier of imported 2,4-D (100% acid equivalent) into Australia, surpassing India in FY 2010; and

- that Chinese imports of 2,4-D have grown significantly in their market share (when examined as 100% acid equivalent) over the period of Nufarm's FY 2008 – FY 2012, increasing from roughly 10% market share in FY 2008 to approximately one-third of the market in FY 2012.

This increasing presence of imports from China in the market indicates that distribution links with Chinese exporters of 2,4-D have been maintained since the most recent continuation inquiry, and in some cases strengthened.

Customs and Border Protection notes Accensi's comments on the decrease in observed offers for Indian 2,4-D in the Australian market, indicating the supply of Indian 2,4-D to Australia is becoming increasingly difficult to access.

Customs and Border Protection notes the differing views of parties concerning:

- the ease of access to the Australian market for Chinese 2,4-D (approval/registration with the APVMA and ICAMA);

- the number of Chinese formulators that may potentially enter the market in the future; and

- the significance of the number of new registrations for formulated 2,4-D.

However, Customs and Border Protection notes that, even with the process of registration and approval currently in place, the number of current market participants, and the current anti-dumping measures being in force, imports from China have increased significantly in recent years.

This indicates that, while the approval and registration process may place barriers to entry to the Australian market (the extent of which is debatable as discussed above), these have not prevented increases in Chinese export volumes to Australia over the past five years.

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[15] AGRONOMIQ, *Response to Statement of Essential Facts (SEF) Dated 29th Novemerb 2012.*

[16] See the Accensi Importer Visit Report, available on the Public Record.

In addition, Customs and Border Protection's understanding is that the majority of 2,4-D product produced in China is exported. This is supported by the AGRONOMIQ submission of 15 October 2012,[17] which stated that 90% of Chinese-produced 2,4-D product is exported. This indicates that Chinese producers of 2,4-D are export-focussed and Customs and Border Protection considers they are likely to explore attractive export markets for 2,4-D, noting the Australian 2,4-D market would become more attractive in the absence of anti-dumping measures.

Furthermore, several importers indicated that they had multiple forward orders of 2,4-D placed for future supply, while other importers have indicated their intention to commence importation of 2,4-D acid or intermediate product and begin formulating 2,4-D product in Australia into the future.

Customs and Border Protection considers that the available evidence points to a strong likelihood that in the absence of anti-dumping measures, exports of 2,4-D from China to Australia would continue.

This position does not change from the preliminary position outlined by Customs and Border Protection in SEF189A and 189B.

In making this conclusion, Customs and Border Protection has not made a determination as to whether it considers that imports of 2,4-D from China will increase in the absence of anti-dumping measures (though recent trends indicate this may be the case), but that such exports are likely to continue in those circumstances.

7.3.4 Submissions in response to the SEF

In response to SEF189A and 189B, AGRONOMIQ submitted[18] that, within that statement, Customs and Border Protection:

> *… appears to have accepted Nufarm's view that 300 Chinese 2,4-D producers are "waiting in the wings" for the ADD* (i.e. anti-dumping measures) *to be removed.*

This submission further stated that:

> *We* (AGRONOMIQ) *are firmly of the view that no material damage is occurring at the moment and once the notion of "300" has been put to rest there can be no threat of material damage in the future.*

Within its submission, AGRONOMIQ appears to consider that, in coming to the conclusion that exports from China will continue in the absence of anti-dumping measures, heavy reliance has been placed on Nufarm's submissions that numerous potential new Chinese suppliers may enter the Australian market is the anti-dumping measures are allowed to expire.

Customs and Border Protection has observed the differing views on the existence and importance of multiple potential Chinese suppliers of 2,4-D in this report, and has

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[17] And confirmed in its submission of 13 December 2012.

[18] AGRONOMIQ, *Response to Statement of Essential Facts (SEF) Dated 29th November 2012*

come to the conclusion in that exports of 2,4-D to Australia are likely to continue from China in the absence of anti-dumping measures.

Customs and Border Protection considers this is likely to be the case irrespective of whether new Chinese exporters enter the Australian 2,4-D market, based on the observed trends of Chinese 2,4-D in the Australian market over recent years, and the anticipated behaviour of 2,4-D importers (observed through forward orders, and indications by imports that they are seeking to strengthen their ties with Chinese exporters and possibly increase imports in the future, and increased APVMA approvals and registrations of Chinese 2,4-D).

Customs and Border Protection has made no conclusion as to whether it is likely that, in the absence of anti-dumping measures, new Chinese exporters will enter the Australian 2,4-D market (the matter that seems to be in contention between interested parties).

For the purposes of this continuation inquiry, it is sufficient to conclude that imports of 2,4-D exported from China will continue in the absence of the measures.[19]

7.4 Likelihood of dumping continuing or recurring?

7.4.1 Applicant's claims

In its application, Nufarm submitted evidence of Chinese domestic pricing for a formulated 2,4-D product (2,4-D iso-butyl ester (IBE)) for FY2012, obtained through its associations in the Chinese chemical industry.

Nufarm then used its knowledge of formulation costs and estimates of certain costs and profit in China (also obtained from its associations in the Chinese chemical industry) to derive a 2,4-D acid price, which it compared to ABS information on 2,4-D acid 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% in 2011 and 4.5% in 2012.

Nufarm also submitted monthly Chinese export prices and volumes to all countries for 2011 and the first three months of 2012, sourced from an entity identified as 'CCM Data'. From the CCM Data information submitted, Nufarm observed that:

- Australia was the largest volume destination for Chinese 2,4-D exports in 2011; and
- average export prices to Australia were higher than to other destinations.

[19] However, observing the increasing trend of Chinese imports of 2,4-D in recent years, Customs and Border Protection considers it likely that, regardless of whether anti-dumping measures are in force, exports of 2,4-D from China to Australia will continue. This is not to say that Customs and Border Protection considers it likely that multiple new exporters will enter the Australian market (noting the recent APVMA approval of a Chinese active constituent supplier), but that these import volumes have rapidly increased over the past few years even with anti-dumping measures in place and no evidence has been presented to suggest that China will cease to be a source of import supply.

In addition, the ABS data submitted by Nufarm indicated that the average export prices from other sources of supply to Australia (notably India and Poland) remained lower than Chinese export prices in recent years.

Following publication of the SEF, Nufarm has submitted further data from TradeData International (TradeData), which Nufarm states confirms that:

> *…Chinese export prices to a number of destinations…are at levels below Chinese export prices to Australia.*[20]

Nufarm has suggested that this data demonstrates the current measures have influenced the export price level for Chinese 2,4-D exports to Australia, keeping them higher than they would otherwise be in the absence of anti-dumping measures.

Nufarm submitted the above to be evidence that, in the absence of anti-dumping measures, Chinese exporters would likely decrease their export prices to Australia to similar levels as those charged to other destinations, causing exports to Australia to be dumped at even greater margins than assessed by Nufarm in 2011 and 2012.

7.4.2 Importers' and exporters' claims

Importers of 2,4-D to Australia have repeatedly disputed Nufarm's submission that 2,4-D exported to Australia in 2011 and 2012 was at dumped prices.

Accensi has submitted it considers Nufarm's data in its application of acid prices at RMB 25,000 – 27,000 per metric tonne to be incorrect, submitting that Chinese domestic acid prices have been in the range of RMB 21,400 to 23,000 per metric tonne during the review period. It is noted that there appears to be some confusion on Accensi's part here, as the RMB 25,000 – 27,000 range submitted by Nufarm in its application refers to the selling price of IBE, and not the 2,4-D acid price derived by Nufarm from this price range.

Accensi further disputes the accuracy of ABS export price data included in Nufarm's application calculations, which it considers to be inaccurate through the use of incorrect exchange rates.

AGRONOMIQ has also disputed the normal value adopted by Nufarm in its application. AGRONOMIQ queries the choice of using an IBE formulation as the basis for deriving an acid price. It submits this product has been banned in Australia since 2007, considering any derived price for acid based on this price is irrelevant to the current inquiry.[21]

AGRONOMIQ has also queried[22] whether Nufarm's submitted normal value calculations accurately account for variations in Chinese VAT between domestic and export sales.

AGRONOMIQ further queried the accuracy of the CCM Data figures submitted by Nufarm.

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[20] Nufarm *Response to SEF189A and 189B* (dated 17 December 2012).

[21] Refer to AGRONOMIQ submission date 14 November 2012.

[22] Refer to above submission.

While no Chinese exporter of 2,4-D provided a completed response to the exporter questionnaire sent to all known exporters of 2,4-D in the review period, one Chinese exporter (a supplier of a major 2,4-D importer) supplied some data[23] to the investigation it contends proves that it has not dumped 2,4-D into the Australian market in the review period. This consisted of:

- a listing of a selection of export invoices for various exports of 2,4-D acid, intermediate products and formulated goods to various export destinations (including Australia) during the review period; and
- a listing of a selection of domestic invoices for domestic sales of 2,4-D acid, intermediate products and formulated goods during the review period.

These listings included the unit sales price of each product per invoice in $US.

This data was provided late in the continuation inquiry (on 9 November 2012), and has not been subject to verification with the submitting exporter (noting that the exporter did not provide a reasonably complete response to the exporter questionnaire, which is considered essential by Customs and Border Protection for an exporter to submit in order to fully cooperate with the investigation).

A comparison of these two listings indicates that the exporter was not dumping 2,4-D in Australia during the review period.

7.4.3 Customs and Border Protection's assessment

As part of the associated review of anti-dumping measures applicable to 2,4-D. Customs and Border Protection has undergone detailed analysis of the level of actual dumping of 2,4-D from China during the review period (1 July 2011 – 30 June 2012).

Detailed discussion of these calculations is contained in the review of measures final report, REP189B, however an outline of this analysis is provided below.

> *Note: Customs and Border Protection has assessed the export price and normal value for the goods, and made its dumping comparison at the 100% acid level. This has involved isolating only those export prices considered to be wholly for acid, not including exports of formulated or intermediate product in the weighted average export price, and comparing these with a normal value for acid, as discussed below.*
>
> *This is primarily due to the vast variations in the strength (2,4-D acid/Kg or L) of formulated and intermediary products, making it:*
>
> - *difficult to accurately identify precisely what each export transaction represents from the export data used; and*
> - *difficult to convert these to a 2,4-D acid equivalent price (noting the variable associated with formulation, profit and setting a price for formulated product vs. intermediate or acid).*

[23] This data not been released on the Public Record as Customs and Border Protection considers that the entire contents of the data is confidential and there is no way a summary of the data could be provided for the Public Record (further to the above description) to allow reasonable understanding of this data.

As Customs and Border Protection did not receive any responses to the exporter questionnaire from exporters of 2,4-D from China, it has relied on the best available information to assess whether dumping has occurred.

Export price

Customs and Border Protection established the export price for all Chinese exporters of 2,4-D having regard to all relevant information.[24]

Having gained some confidence in the price, volume and item description data contained in Customs and Border Protection's import database (see Section 5.3), Customs and Border Protection isolated all sales of 2,4-D acid made during the review period and calculated a period weighted average export price for 2,4-D acid exported to Australia during the review period by all Chinese exporters at FOB terms.

Export price calculations form **Confidential Appendix 3**.

Normal value

Customs and Border Protection established the normal value for the goods exported by all Chinese exporters having regard to all relevant information.[25]

Having regard to the available information, Customs and Border Protection established normal value as the estimated price of 2,4-D acid in China based on Chinese selling prices of IBE as submitted in Nufarm's application for the continuation inquiry, less reasonable deductions and additions (some of which have been amended by Customs and Border Protection for reasonableness), inclusive of an appropriate adjustment for differences in taxation to ensure fair comparison with export prices.

Normal value calculations form **Confidential Appendix 4**.

Dumping calculation

Customs and Border Protection compared the weighted average 2,4-D acid export price calculated for all Chinese exporters for the review period with the weighted average 2,4-D acid normal value calculated for all Chinese exporters for the review period.

This analysis demonstrated that the goods exported by all Chinese exporters during the review period were dumped, with a weighted average dumping margin for the review period of 2.6%.

Dumping margin calculations form **Confidential Appendix 5**.

Conclusion

[24] s. 269TAB(3) of the Act
[25] s. 269TAC(6) of the Act.

In light of the above assessment that dumping has occurred during the period 1 July 2011 – 30 June 2012, Customs and Border Protection considers it likely that dumping will continue in the absence of anti-dumping measures.

Customs and Border Protection has not encountered any evidence that would suggest that, in the absence of anti-dumping measures, Chinese 2,4-D exported to Australia would cease being dumped.

Consideration of whether anti-dumping is likely to increase in the absence of anti-dumping measures (including the integrity of data relied upon by Nufarm to assert this) is discussed in Section 7.5 below).

7.5 Likelihood of material injury continuing or recurring?

7.5.1 Applicant's claims

Nufarm has submitted that, in the absence of anti-dumping measures on 2,4-D from China, it is likely that material injury to the Australian industry will recur (caused by continued imports of dumped goods – examined above).

As discussed in Section 7.4.1, Nufarm has submitted that the removal of anti-dumping measures on 2,4-D exported from China will likely result in a decline of Chinese export prices to Australia.

At the time of making this submission in its application, Nufarm relied on CCM Data figures that indicated that export prices to Australia were higher than to other markets. As discussed in Section 7.4.1, this CCM information has been supplemented with information from TradeData.

Nufarm has suggested this data evidences that the current measures have had the effect of keeping export prices to Australia higher than they would be in the absence of those measures (i.e. higher than those to other countries). Further, Nufarm has submitted that this data leads to a determination that, in the absence of anti-dumping measures, export prices of Chinese 2,4-D are likely to decline to match those to other destinations. This suggests that Nufarm considers that the quantum of dumping of 2,4-D from China will increase in the absence of the anti-dumping measures.

Nufarm submits that the decline in export prices resulting from the above will result in the Australian industry having to reduce its selling prices to compete with lower priced imports (as its prices are connected to these import prices – see below), and a recurrence of the material injury suffered by the Australian industry would result.

In terms of the relationship between import and Nufarm's prices, Nufarm has submitted that the Australian 2,4-D market is extremely price sensitive, and it considers that selling prices are the overriding factor for end users in making their 2,4-D purchasing decisions. Nufarm explained this price pressure is fed up the distribution chain for 2,4-D back to Nufarm in its negotiations with its large distribution customers.[26]

[26] See Nufarm Industry Verification Visit Report.

Nufarm has submitted that, while it used to be the price leader in the 2,4-D market, this is no longer the case, and it considers that it has to set its prices in a manner that matches and competes with imported 2,4-D product.

Nufarm has therefore submitted that any decline in the price of 2,4-D imports from China will directly impacts its own selling prices in the Australian market

Further, Nufarm has submitted,[27] and AGRONOMIQ has confirmed[28] that observed export prices of 2,4-D acid from China have fallen significantly in and after October 2012. Nufarm has submitted[29] that export prices for 2,4-D acid have dropped as low as $2.78/Kg (in its application Nufarm assessed that export prices in the first half of 2012 to be A$3.69/Kg).

Nufarm notes[30] that these decreased prices are likely to undercut its selling prices, and to be below the non-injurious price[31] associated with the importation of 2,4-D from China.[32]

Nufarm has submitted[33] that this drop in Chinese export prices:

> *…confirm(s) that future export prices will be injurious to the Australian industry,*

7.5.2 Importer claims

As discussed above, importers of 2,4-D have queried the reliability of the CCM Data figures relied upon by Nufarm as the basis of its claim that Chinese 2,4-D export prices to Australia are likely to decline if anti-dumping measures were allowed to expire.

Importers have also queried the improved economic performance of Nufarm in its FY 2011 and FY 2012, at the same time as Chinese imports to Australia have increased, suggesting that Nufarm is not injured by imports from China. AGRONOMIQ has submitted that Nufarm's improved performance in FY 2011 and FY 2012 is attributable to increased export prices of 2,4-D from China (and hence Nufarm's ability to raise its own prices) as:

> *Chinese 2,4-D producers have increased their prices because of government mandate[34] and the revised prices have rendered the reason for the ADD obsolete. Once the ADD on Chinese 2,4-D is abolished, Nufarm will have to reduce its price to remain competitive.*[35]

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27 Nufarm *Response to SEF189A and 189B* and submission on Non-injurious price (dated 23 November 2012).

28 AGRONOMIQ *Response to Record of Meeting Dated 5th December 2012* (dated 18 December 2012).

29 Providing ABS data as supporting evidence.

30 Nufarm *Response to SEF189A and 189B*.

31 Assuming Customs and Border Protection were to approach the calculation of a non-injurious price in the manner requested by Nufarm (which has been accepted with some variations – see REP189B).

32 Nufarm, submission on Non-injurious price (dated 23 November 2012).

33 Nufarm *Response to SEF189A and 189B*.

34 GOC action to tighten environmental controls and compliance by Chinese 2,4-D acid producers.

35 Refer to AGRONOMIQ submission entitled *Submission to Australian Customs Seeking Discontinuation of the Anti-Dumping Duty on 2,4-D Imported from China*.

AGRONOMIQ has also made several submissions in relation to Nufarm's overall approach to sales of 2,4-D acid produced in Australia (i.e. an alleged focus on exports to the United States (US) and supplementing domestic 2,4-D acid needs with imported 2,4-D acid).

During the continuation inquiry, Nufarm has acknowledged that a significant proportion of its domestically-produced 2,4-D acid is exported to the United States, and that it imports 2,4-D acid to supplement its domestic formulations of 2,4-D product.

This practice is discussed within the Industry Verification Visit Report, which states:

> *…Nufarm advised that they import and formulate 2,4-D acid from [redacted] [confidential] to maintain their market share under price pressure from 2,4-D acid imports from China and to allow them to service the overseas 2,4-D acid export market where greater returns can [be] realised…This 2,4-D acid is mainly imported to maintain competitive pricing to service the toll manufacturing aspect of the business; however some customers are supplied only locally produced 2,4-D acid where it is requested as a quality issue.*

Nufarm has further submitted evidence that it has sought to explore options to invest in productivity improvements related to the production of 2,4-D at its Laverton North plant. Nufarm explained that the profitability and state of the Australian 2,4-D market will be a major driver in any decision related to this matter (suggesting that the ability to compete domestically with Chinese imports is a large part of this).

AGRONOMIQ has made various submissions on this point, indicating that it is AGRONOMIQ's understanding that virtually all 2,4-D acid produced by Nufarm domestically is exported to the US market, while its domestic sales of formulated goods are made from imported 2,4-D (from a non-Chinese source), with only a 'token' amount of domestic 2,4-D acid remaining in Australia.[36]

Consequently, AGRONOMIQ has submitted Nufarm's desire to continue the measures applicable to Chinese 2,4-D seeks to provide an unfair advantage for goods that are not in fact produced with Australian 2,4-D acid.[37]

AGRONOMIQ has further questioned whether Nufarm would in fact take steps to increase its Laverton North plant productivity or return focus to the Australian 2,4-D market should measures continue, noting that Nufarm has 'ignored the local market except for special customers who were obviously prepared to pay a premium'.[38]

AGRONOMIQ has further submitted its understanding that there are two types of 2,4-D acid (low dioxin (LD) and normal dioxin (ND)). AGRONOMIQ has submitted that:

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[36] AGRONOMIQ submission in response to Nufarm Verification Report (dated 25 November 2012).

[37] AGRONOMIQ submission in response to Nufarm Verification Report (dated 25 November 2012).

[38] AGRONOMIQ submission in response to Nufarm Verification Report (dated 25 November 2012).

- LD 2,4-D acid must be used in the US market, while ND acid is suitable for use in Australia;
- Nufarm makes LD 2,4-D acid and exports 'most of its output' to the US and uses imported (ND) acid in Australian 2,4-D formulations;
- LD acid is more expensive than ND acid;
- LD is in short supply from China while there is a surplus of ND acid – recent prices reflect this supply/demand relationship;
- Nufarm's suggestion that Chinese acid prices are falling refers to ND acid and a decline in Chinese ND prices will not affect Nufarm's production

AGRONOMIQ has submitted the above points based on 'recent discussions' with a 'major Chinese producer of 2,4-D acid' (a supplier to Australia).[39]

7.5.3 Customs and Border Protection's assessment

Likely impact of removal of measures on export price/selling prices in Australia

At the centre of Nufarm's submissions that material injury is likely to continue or recur in the absence of anti-dumping measures are its submissions that, in the absence of anti-dumping measures, export prices are likely to fall (and hence dumping is likely to increase).

Related to this is Nufarm's submissions that the current measures in place have served to keep export price of 2,4-D to Australia higher than they otherwise would be in the absence of measures.

Nufarm's claims in relation to this are based on data that demonstrates:

- Chinese export prices to other countries have been lower than those to Australia; and
- export prices to Australia from other origins have been lower than prices from China.

Customs and Border Protection has assessed this data submitted by Nufarm in Annexe 1 of this report and determined that:

- the CCM and TradeData information submitted by Nufarm does not reasonably demonstrate that export prices to Australia from China are generally higher than those from China to other destinations; and
- the ABS data indicating that export prices from China were at times higher than from other origins is not particularly useful and does not demonstrate that the anti-dumping measures have maintained export prices from China at a certain (higher) level).

[39] AGRONOMIQ submission *Investigation into Duping of Chinese 2,4-D* (dated 3 January 2012).

Notwithstanding the above, Customs and Border Protection considers that if the anti-dumping measures were removed, it is likely that Chinese export prices will fall by at least the quantum of the current measures (specifically, by the fixed duty amount). All other things being equal, this would result in a greater dumping margin than that already demonstrated in this report for the period 1 July 2011 – 30 June 2012.

In addition, it is considered that removal of the measures removes the incentive for exporters to avoid dumping so that importers might claim a refund of interim dumping duty through the duty assessment process.

Moreover, the price sensitive market for 2,4-D in Australia, where China is a significant supplier (see below for further discussion), provides demand pressures that are likely to encourage exporters to dump to remain competitive.

Relevance of recent falls in export prices

Customs and Border Protection also notes the submissions of interested parties that export prices of 2,4-D from China have fallen in recent months, and Nufarm's submission that this is evidence that 2,4-D imports from China will continue to be injurious to the Australian industry.

No explanation/evidence has been presented to determine why this decline may have occurred.

Customs and Border Protection acknowledges that its own data[40] indicates that export prices of 2,4-D have fallen (as a weighted average) during the second half of 2012. This data indicates individual exportations at levels similar to those submitted by Nufarm and AGRONOMIQ (and in some cases were below the non-injurious price assessed to be applicable to 2,4-D), though were generally higher on a weighted average basis.

Customs and Border Protection notes that it is not in possession of information to determine:

- the actual selling prices, or CTMS of the Australian industry in that period;
- the actual reason behind this fall in prices (e.g. this could be due to a global decline in raw material prices);
- the non-injurious price for this period (which itself may have fallen); or
- the normal value of these exports (and hence cannot determine whether they have been dumped at a greater level than the goods examined in this continuation inquiry and associated review).

Customs and Border Protection therefore does not consider it is able to determine that the observed falls in export prices:

[40] Sourced from the Customs and Border Protection import database.

- have been caused by increased dumping (without knowing the dumping margin of those goods); or

- have resulted in increased injury to the Australian industry caused by dumping.

However, Customs and Border Protection notes that, should the measures be set at the levels recommended by the concurrent review of anti-dumping measures (see REP189B), these measures would have resulted in the collection of anti-dumping duty in those cases where the export price of goods was below the non-injurious price.

Exports to the US

Customs and Border Protection has observed that a significant proportion of 2,4-D acid produced in Australia by Nufarm is exported to the US. However, Customs and Border Protection also observes that a substantial proportion of this domestically-produced 2,4-D acid is also used by Nufarm domestically for formulating its 2,4-D herbicide products. Nufarm maintains a considerable focus on using its domestically-produced 2,4-D acid to formulate products for the Australian market.

Customs and Border Protection therefore notes that Nufarm is not wholly dedicated to producing 2,4-D acid for export, as is suggested by AGRONOMIQ.

It is Customs and Border Protection's assessment that, having regard to the current proportion of Nufarm's Australian sales of product formulated with locally-produced 2,4-D acid, that importations of dumped Chinese imports are likely to cause injury to the Australian industry.

LD and ND 2,4-D acid

Firstly, Customs and Border Protection notes that the assertions as to different types of 2,4-D acid being required and supplied to different markets:

- is said to be based on 'discussions' between AGRONOMIQ and a Chinese exporter, who did not cooperate with Customs and Border Protection's continuation inquiry or the associated review of measures;

- was submitted late in the inquiry; and

- again assumes that Nufarm almost exclusively produces 2,4-D in Australia for the export (US) market (which has been shown to be incorrect – see above).

Consequently, Customs and Border Protection has been unable to thoroughly assess the veracity or relevance of these claims by AGRONOMIQ.

No regard has been had to this matter as a result.

Assessment of susceptibility to injury from dumping

It is noted that the analysis outlined in Chapter 6 above indicates that the economic performance of the Australian industry, in terms of profit and profitability, has improved from Nufarm's FY 2008 to FY 2012.

Customs and Border Protection notes AGRONOMIQ's submissions that this increased profit and profitability indicates that the Australian industry has not been injured by imports of 2,4-D from China (noting that AGRONOMIQ submits these are not dumped in any case).

Firstly, Customs and Border Protection notes that it is not a requirement for the continuation of measures to show that the Australian industry has been injured by dumping during the analysis period. Indeed, as anti-dumping measures have been in place during this time, it may be that these measures are effectively preventing any such injury from occurring (as is the aim of those measures).

Instead, Customs and Border Protection must determine whether, in the absence of anti-dumping measures, it is likely that the Australian industry will experience continuation or recurrence of material injury (by the continued dumping of imports, having previously determined this is likely occur).

Customs and Border Protection's analysis shows a significant decrease in Nufarm's economic performance in FY 2010, which appears to be driven by decreases in unit selling prices in that period. It is noted this corresponds to a significant decrease in the weighted average FOB 2,4-D acid export price from China and other origins (as shown in Chapter 5).

Further, over the injury assessment period, Nufarm maintained relatively stable sales volumes of 2,4-D, while the overall market size has increased (i.e. Nufarm has maintained sales volumes, though lost market share). This decrease in market share suffered by Nufarm is accompanied by a significant increase in Chinese imports of 2,4-D,[41] which have increased in market share over the assessment period such that Chinese 2,4-D is now the major source of import supply, and a significant source of the overall volume of 2,4-D in the Australian market.

Customs and Border Protection notes that this indicates that, while certain economic indicators have improved over the analysis period, other indicators have worsened (such as market share and a decline in selling prices in FY 2010).

Further, available evidence indicates that:

- Chinese 2,4-D is directly competitive with 2,4-D produced by the Australian industry, being virtually identical in composition, sold through similar distribution channels, and used for the same applications by end users (i.e. virtually interchangeable); and
- the Australian 2,4-D market is price sensitive, with pricing factoring heavily into the purchasing decisions of end users of 2,4-D formulations (the point at which Australian 2,4-D and Chinese imports are directly competitive).

This is supported by the observed relationship between Australian and imported 2,4-D prices discussed within this report. It is also confirmed by the comments made by AGRONOMIQ in its submission to the continuation inquiry (see above) that relates Nufarm's increased profit in the most recent two financial years to an increase in Chinese export prices (allowing Nufarm to increase its own prices) and noting that

[41] Now over 50% of the total volume of 2,4-D imports and over 30% of the volume of the overall Australian 2,4-D market (acid equivalent volumes).

removal of anti-dumping measures on 2,4-D will see a fall in Chinese prices that Nufarm will need to compete with.

Taking into account the fact that Chinese imports of 2,4-D now represent the majority of imports of 2,4-D (and is therefore a major competitor in the Australian 2,4-D market), it is considered likely that, if the anti-dumping measures were removed, Nufarm would have to lower its prices to compete with dumped Chinese imports, which will likely result in overall price and profit injury to the Australian industry (or volume injury if Nufarm fails to reduce its prices).

Examination of non-injurious price

As part of its review into 2,4-D exported from China, Customs and Border Protection has undertaken a review of the variable factor of non-injurious price (based on an unsuppressed selling price) for 2,4-D acid.

The unsuppressed selling price was established for 2,4-D acid, as:

- the Australian industry's costs of manufacture for 2,4-D acid for export (which is physically identical to 2,4-D acid manufactured by Nufarm for domestic consumption); plus
- a rate of selling, general and administrative costs based on the average of the five major formulations sold domestically by Nufarm;[42] plus
- a rate of profit achieved on domestic sales of the major formulation[43] during Nufarm's FY 2012.

The non-injurious price has been derived from the above unsuppressed selling price, by deducing the post-exportation expenses, and profit achieved by importers of 2,4-D, as submitted to the investigation by various importers.

Calculation of the non-injurious price is at **Confidential Appendix 6**, while further details of this assessment are discussed in REP 189B.

Customs and Border Protection has examined the relationship between export prices and the non-injurious price established as part of its review of the measures. In undertaking this assessment, Customs and Border Protection has found that the non-injurious price for 2,4-D acid from China during the review period (1 July 2011 – 30 June 2012) was in fact below the weighted average 2,4-D acid export price for that period.

However, Customs and Border Protection notes that certain individual exportations of 2,4-D acid from China during the review period were made at prices below the non-injurious price, and are therefore considered to have been injuriously dumped at times during the review period.

In addition, Customs and Border Protection observes that, in the context of a lack of exporter cooperation (which would have allowed for the submission and analysis of

[42] For which detailed CTMS and profit calculations were provided by Nufarm and verified with that company.
[43] Nominated by Nufarm in its submission of 23 November 2012.

more detailed export data), it has only been able to confidently and accurately isolate sales of 2,4-D acid in its imports database. Customs and Border Protection is unable to accurately assess the strength (in terms of 2,4-D acid concentration) of a large amount of importations of intermediate or formulated 2,4-D product. Consequently, Customs and Border Protection cannot accurately make comparisons between export prices and a non-injurious price for a formulated (or intermediate) product, should it arrive at such a price.

In the absence of more reliable information, it is reasonable to expect this relationship is likely to be similar to the one established by reference to the acid export prices and non-injurious prices (i.e. exportations of formulated or intermediate products would likely have been below the applicable non-injurious prices at times and therefore considered injurious).

Conclusion

Customs and Border Protection finds that it is reasonable to expect that, in the absence of anti-dumping measures, 2,4-D from China will continue to be exported to Australia at dumped prices, and that this dumping is likely to result in depressed and possibly supressed prices for Nufarm, and the consequent reduction in profits is likely to constitute material injury to the Australian industry.

8 RECOMMENDATION

It is Customs and Border Protection's assessment that, on balance, the facts so established cause the CEO to be satisfied that the expiration of the measures against 2,4-D exported to Australia from China would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

Consequently, the CEO recommends to the Minister that he declare that he will take steps to continue the anti-dumping measures that relate to 2,4-D exported to Australia from China at the level recommended by the review of variable factors (see REP 189B), and determines that the measures remain in force for a further five years past the date of 25 March 2013, unless earlier revoked.

9 ATTACHMENTS, APPENDICES AND ANNEXURES

Attachment 1	Section 269ZHG(1) and (4) notice
Confidential Appendix 1	Imports and market size and share analysis
Confidential Appendix 2	Economic condition of the Australian industry analysis
Confidential Appendix 3	Export price calculations
Confidential Appendix 4	Normal value calculations
Confidential Appendix 5	Dumping calculations
Confidential Appendix 6	Unsuppressed selling price and non-injurious price calculations
Annex 1	Assessment of whether dumping is likely to increase in the absence of anti-dumping measures.

ANNEXE 1 – CONSIDERATION OF NUFARM'S CLAIM THAT EXPORT PRICES WILL FALL IN THE ABSENCE OF ANTI-DUMPING MEASURES AND ASSESSMENT OF EFFECTIVENESS OF CURRENT MEASURES

Introduction

Part of Nufarm's claim for the need to continue anti-dumping measures on 2,4-D from China is that it considers that certain evidence indicates that, in the absence of these measures, the export price of 2,4-D to Australia will likely drop and the quantum of dumping will increase.

As discussed above, Nufarm has based its assertions that dumping is likely to increase in the absence of anti-dumping measures on:

- CCM data showing average export prices of Chinese 2,4-D to Australia were higher than to other destinations;
- ABS pricing data that indicated that the average export prices from other sources of supply to Australia (notably India and Poland) remained lower than Chinese export prices in recent years; and
- TradeData 2012 data of Chinese exports to all destinations.

Nufarm has submitted that this data suggests that the current anti-dumping measures on 2,4-D from China have been effective in keeping the Chinese export price to Australia higher than it would be in the absence of anti-dumping measures (and that it follows that the removal of these measures will see a decline in these export prices).

Customs and Border Protection has assessed these claims, and has undertaken its own assessment of the likely effectiveness of the current measures and their impact on export prices to Australia.

Assessment of Nufarm's claims

1) CCM and TradeData

Nufarm has submitted data sourced from CCM and TradeData to demonstrate that export prices of 2,4-D from China to other origins are below those to Australia, suggesting that the measures currently in place have kept these export prices to Australia higher than they would be in the absence fo these measures (i.e. likely to be closer to the export prices to other destinations).

Customs and Border Protection notes that concerns have been raised over the reliability of the CCM Data figures submitted by Nufarm (both by interested parties and Customs and Border Protection itself – see SEF189A and 189B).[44]

[44] Customs and Border Protection's concerns with this data related to the fact that it was inconsistent with (more reliable) ABS volume and value data, as well as Customs and Border Protection's data in relation to imports to Australia. This inconsistency has caused concerns over the suitability/applicability of the data as a whole.

These concerns led to Customs and Border Protection considering, at the time of publishing SEF189A and 189B, that this data is not reliable and placing no weight on the CCM data.

Consequently, Customs and Border Protection concluded in SEF189A and 189B[45] that:

> *…Nufarm has not demonstrated that the export price of Chinese exports of 2,4-D to countries other than Australia is substantially below the price to Australia. This is the basis of Nufarm's claim that, in the absence of anti-dumping measures, Chinese export prices to Australia are likely to fall.*

In response to the SEF, Nufarm has submitted[46] that it considers this data to be reliable and has 'no reason to consider otherwise'.

Customs and Border still considers that there are concerns over the utility of the CCM Data, considering it is unclear what this data relates to and noting that it is inconsistent with other reliable data. It has again been disregarded.

Customs and Border Protection notes that the TradeData information provided by Nufarm in response to the SEF does indicate that the prices recorded in this data from China to Australia were, at times during the examined period, higher than they were to some other destinations. At times these prices to Australia were below those to other export destinations.

Regardless, Customs and Border Protection observes that this TradeData relates broadly to the tariff classification number 2918.99.00, with no apparent provision for statistical code. Customs and Border Protection therefore considers that this data is likely to include a variety of products, not only 2,4-D acid.

2) ABS pricing data

Customs and Border Protection notes that ABS pricing data submitted by Nufarm demonstrates that export prices of 2,4-D from China were at times higher than export prices from other origins.

Again, Nufarm has suggested this to be evidence that the current measures have influence Chinese export prices to Australia, keeping them higher than they otherwise would be.

However, Customs and Border Protection notes that there are numerous reasons why export prices from one country of origin may differ from another country, including product mix, quality, customer characteristics, etc. Consequently, Customs and Border Protection does not consider comparisons of export prices between one origin to other seemingly unrelated origins to be particularly useful.

Accordingly, Customs and Border Protection does not consider Nufarm's submission related to this ABS data reasonably demonstrates that, the anti-dumping measures

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[45] At Section 7.4.3.

[46] Nufarm *Response to SEF189A and 189B.*.

currently in place have maintained Chinese 2,4-D export prices at higher levels than they would have been in the absence of measures.

> *Note: this does not mean that ABS data submitted by Nufarm has been disregarded entirety, but that it does not demonstrate that dumping will likely increase if anti-dumping measures lapse.*

Customs and Border Protection's assessment of current measures

The current measures on 2,4-D from China are based on Customs and Border Protection's assessment of dumping in its original investigation into 2,4-D (i.e. for the investigation period 1 January - 31 December 2001).

The current measures take the form of:

- a 'fixed' rate of duty expressed in $US/L; and
- a 'variable' rate of duty comprising of the ascertain export price (AEP) from the original investigation.

These measures operate such that importers are liable for payment of:

- the fixed rate of duty irrespective of the FOB export price of each shipment (referred to as the dumping export price or 'DXP'); and
- the difference between the DXP and the AEP, where the DXP is below the AEP.

These measures are applied uniformly regardless of whether the imported product is 2,4-D acid, an intermediate product or a formulated product.

Since the original imposition of these measures in 2003, average export prices of 2,4-D from China have risen substantially, such that no DXPs in the review period were below the AEP. In most cases the DXP was significantly above the AEP.

Customs and Border Protection notes that this suggests that the AEP is no longer an effective component of the measures on 2,4-D from China (noting that the variable factors related to the taking of measures on 2,4-D from China have been reviewed in the related review of measures – see REP 189B).

Customs and Border Protection therefore considers it unlikely that the current measures are having the effect of creating a level of price buoyancy on export prices of 2,4-D from China.

However, Customs and Border Protection notes that the fixed rate of duty remains applicable on all imports of 2,4-D from China to Australia. It is considered that this fixed rate of duty has the likely impact of effectively increasing selling prices of 2,4-D products into the Australian market post-importation (i.e. the duty rate is incurred and passed on by importers of the goods).