



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 189B

**REVIEW OF
ANTI-DUMPING MEASURES**

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

9 January 2013

PUBLIC RECORD

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1 SUMMARY AND RECOMMENDATIONS

This review is in response to a request by the Minister for Home Affairs (the Minister) that the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) conduct a review 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), as one or more of the variable factors relevant to the taking of the measures may have changed.

The anti-dumping measures applicable to 2,4-D exported from China were imposed in March 2003 and have not been altered since.

This report sets out the facts on which the CEO is basing his recommendations to the Minister for the measures applicable to 2,4-D from China.

Customs and Border Protection examined information during the period 1 July 2011 – 30 June 2012 (the review period) to determine if the variable factors relevant to the taking of the anti-dumping measures have changed.

This review is concurrent to a continuation inquiry, initiated by Customs and Border Protection in response to an application by Nufarm Limited (Nufarm) seeking the continuation of the anti-dumping measures applying to 2,4-D from China past 25 March 2013 (the findings of that inquiry are contained in REP 189A).

1.1 Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (the Act)¹ enables affected parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the CEO in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

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

After conducting a review of anti-dumping measures, the CEO must give the Minister a report containing his recommendations in relation to the review.²

¹ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

² s.269ZDA(1).

1.2 Findings and conclusions

The CEO is satisfied that the export prices, normal values and non-injurious prices relevant to the taking of anti-dumping measures on 2,4-D exported to Australia from China have changed.

Chapter 6 of this report provides details of the assessments for export prices, normal values, and non-injurious prices.

1.3 Recommendation

Customs and Border Protection has found that the variable factors relevant to taking the measures on 2,4-D from China have changed.

As a result of these findings, the CEO recommends to the Minister that he re-ascertains the variable factors for all exporters of 2,4-D exported from China.

The CEO recommends that the Minister sign the attached public notice (including attached confidential table) and the attached related schedules (**Confidential Attachment 1**) to declare that the dumping duty notice in respect of 2,4-D exported from China has effect in relation to all exporters generally as if different variable factors had been ascertained.

2 INTRODUCTION**2.1 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may apply for, or the Minister may request that the CEO conduct, a review of those measures if it is considered that:

- one or more of the variable factors may have changed; or
- the anti-dumping measures are no longer warranted.

The Minister may initiate a review at any time, however, no interested party may apply for a review to take place earlier than 12 months from the publication of the dumping duty notice or the publication of a notice declaring the outcome of the last review of the notice.

The Minister requested the review because he considered one or more of the variable factors may have changed. Where a review is to cover only the variable factors, an affected party may apply within 40 days of the announcement of the review to extend the review to consider whether the measures are no longer warranted. No such application was lodged during the present review.

Where, as in this case, the Minister has requested that the CEO undertake a review, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures. Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the Public Record a statement of essential facts (SEF) on which it proposes to base its final recommendation to the Minister concerning the review of the measures.

In respect of a dumping duty notice, after conducting the review, the CEO must provide a recommendation to the Minister that the dumping duty notice either:

- remain unaltered; or
- be revoked in its application to a particular exporter, or to a particular kind of goods or revoked generally; or
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

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

- the application for a review of the anti-dumping measures (in this case, no such application was lodged);
- any submission relating generally to the review of the 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 placing the SEF on the Public Record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the review.

However, the Minister must not make a decision to revoke the anti-dumping measures unless first publishing a notice declaring that the review would consider the issue of revocation. No such notice was published in this case.

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

2.2 Notification and participation

Following a request by the Minister that the CEO of Customs and Border Protection conduct a review of the measures applying to 2,4-D exported to Australia from China, the review was initiated on 10 August 2012.

Public notification of initiation of the review was made in *The Australian* newspaper on that day. Australian Customs Dumping Notice No. 2012/39 provides further details of the review process and is available at www.customs.gov.au.

During the review, 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 during the review period.

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 many 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 made during the review period.

Customs and Border Protection also sent correspondence inviting all known exporters of 2,4-D from China during the review period to complete an exporter questionnaire and cooperate with the review and related continuation inquiry. No exporter provided a completed exporter questionnaire.

Submissions were accepted during the review 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 proposes to base its final recommendations 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.³

2.4 Responses to the SEF

Customs and Border Protection received the following submissions after arriving at the preliminary findings contained in the SEF⁴ (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 28 th November 2012

³ Submissions received after 23 November 2012 were not considered in formulating the preliminary findings of the statement of essential facts, as it was considered to do so would delay the timely publication of that statement.

⁴ Either in response to, or prior to the publication of the statement of essential facts.

17 December 2012	Nufarm	Response to SEF 189A and 189B
18 December 2012	AGRONOMIQ	Response to Record of Meeting Dated 5 th December 2012
21 December 2012	Nufarm	Addendum to submission Response to SEF 189A and 189B
21 December 2012	Nufarm	Response to Importer Submissions
24 December 2012	AGRONOMIQ	Response to Nufarm Letter Dated 21 st December 2012
27 December 2012	AGRONOMIQ	Response to Nufarm Letter Dated 21 st 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 Continuation inquiry

The CEO commenced an inquiry on 10 August 2012 into the continuation of measures applying to 2,4-D exported from China, following consideration of an application by Nufarm.

A separate report (REP 189A) was provided to the Minister on 9 January 2013 in relation to that inquiry.

3 GOODS SUBJECT TO THE REVIEW**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.

4.3 Production process

4.3.1 2,4-D acid and intermediate products

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

2,4-D acid is supplied in its acid form⁵ 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.

⁵ 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.

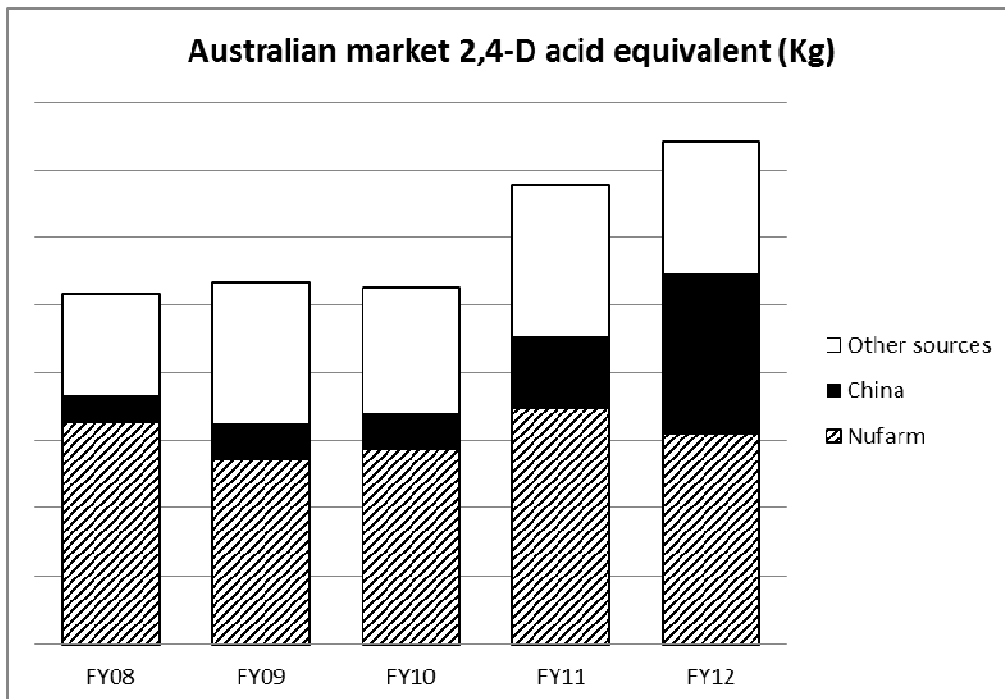
This conversion calculation is:

$$\text{Volume} \times \text{Concentration \%} = \text{Acid Volume}$$

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:

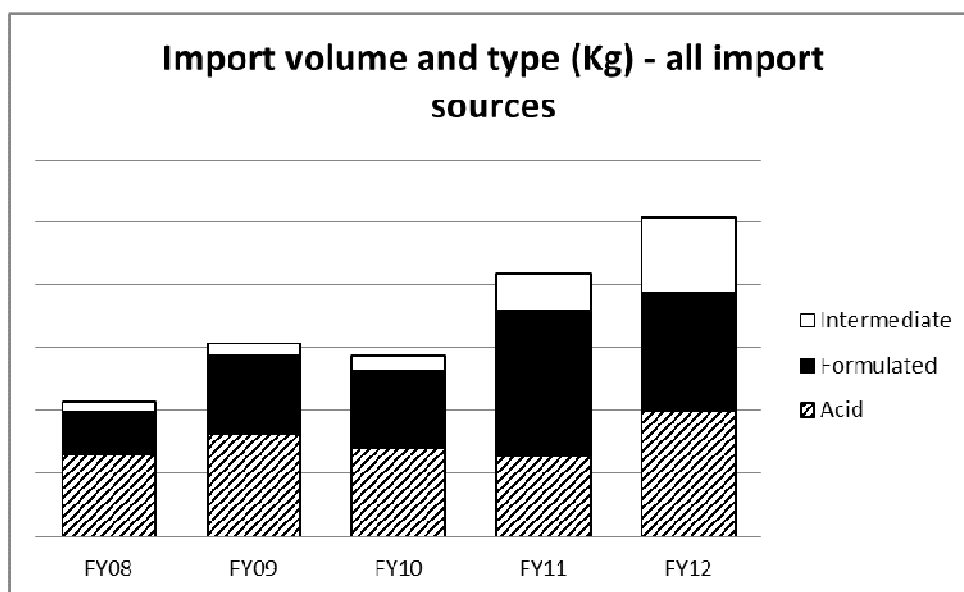
- the Australian 2,4-D market, measured as a 100% acid equivalent has increased over the period of Nufarm’s FY 2008 – FY 2012;
- import volumes of 2,4-D 100% acid equivalent from China have increased over that period, as have imports from other origins;
- Nufarm’s sales volume (100% acid equivalent)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

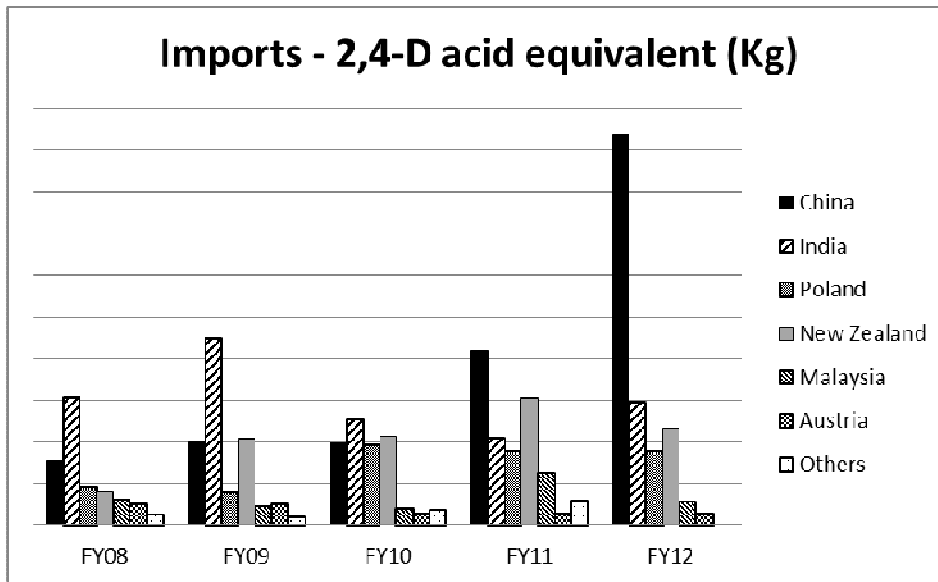
Using the data from its import database, Customs and Border Protection has identified (based on tariff classification, goods description and other factors) whether imported goods were 2,4-D acid, an intermediate product (2,4-D salts and esters) or a fully formulated 2,4-D based product.

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



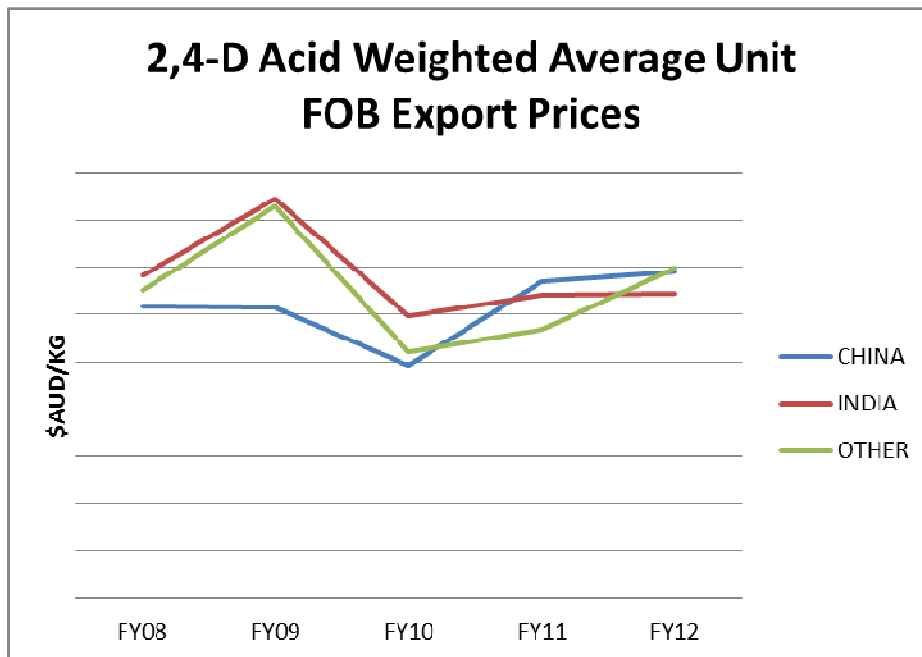
This analysis displays an overall increase in the volume of imports of total 2,4-D product categories over the period, as well as a decrease in the overall import share of 2,4-D acid accompanied by increases in the total import share of intermediate and formulated products.

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 REVIEW OF VARIABLE FACTORS**6.1 Finding**

The export price for the goods exported by all Chinese exporters should be determined having regard to all relevant information,⁶ as the weighted average FOB price for 2,4-D acid during the review period, as recorded in Customs and Border Protection's import database.

The normal value for the goods exported by all Chinese exporters should be determined having regard to all relevant information,⁷ as the estimated price of 2,4-D acid in China based on Chinese selling prices of a formulated 2,4-D isobutyl ester (IBE) less reasonable deductions and additions, inclusive of an appropriate adjustment for differences in taxation to ensure fair comparison with export prices.

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%.

The non-injurious price should be established by:

- using the Australian industry's costs to manufacture 2,4-D acid for export, plus domestic selling, general and administration (SG&A) expenses associated with domestic sales of certain formulated products, plus a rate of profit based on Nufarm's FY 2012 domestic profit for one major formulated product as the basis for an unsuppressed selling price;
- minus post-exportation expenses associated with exports of 2,4-D to Australian importers and a rate of profit achieved by those importers.

6.2 Importer cooperation

As discussed in Section 2.2, Customs and Border Protection identified and sent questionnaires to known importers of 2,4-D from China with imports above a certain volume (considered to be 'major' importers). Several other importers were sent letters informing them of the initiation of the review.

Responses of varying levels of completeness were received from:

- Accensi;
- Gulmohar Pty Ltd;
- AIRR/AGRONOMIQ;
- Conquest Crop Protection Pty Ltd (Conquest); and
- Pacific Agriscience Pty Ltd.

⁶ s.269TAB(3) of the Act.

⁷ s.269TAC(6) of the Act.

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.

Examination of this data provided confidence in the veracity of the price, volume and item description data contained within Customs and Border Protection's commercial database (see further discussion in Chapter 5).

6.3 Exporter cooperation

As discussed in Section 2.2, Customs and Border Protection identified multiple exporters of 2,4-D during the review period in its import database. All such exporters were invited to complete an exporter questionnaire and participate in the review.

No responses to the exporter questionnaire were received.

While no Chinese exporter of 2,4-D provided a completed response to the exporter questionnaire, one Chinese exporter (a supplier to a major 2,4-D importer) supplied some data⁸ 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 review (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).

In addition, Customs and Border Protection notes that AGRONOMIQ has, on several occasions, submitted that its Chinese exporters of 2,4-D are willing to cooperate with Customs and Border Protection in this matter, urging Customs and Border Protection to pursue the cooperation of these companies. This request has been accompanied by AGRONOMIQ's submission that the exporter questionnaire for the review is too onerous, and that a simplified version should be provided to, and accepted from, Chinese exporters.

⁸ 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.

However, Customs and Border Protection notes that these Chinese exporters were originally contacted and invited to cooperate with the review, and declined to do so.

Customs and Border Protection notes the voluntary nature of cooperation with its inquiries, and does not consider it appropriate to pursue the cooperation of exporters that have already declined the opportunity to cooperate, especially when this cooperation would extend well after the original due date for completed exporter questionnaire responses. This would likely have delayed the timely publication of the SEF on Customs and Border Protection's Public Record and delayed provision of this final report to the Minister by the due date.

Customs and Border Protection further notes that it does not consider the contents of the exporter questionnaire to be too onerous, and that the questionnaire requests cost to make and sell (CTMS), domestic and export sales information that is considered essential to Customs and Border Protection's assessment of the normal value, export price and dumping margin of those exporters in line with the provisions of the Act.

Customs and Border Protection considers that the provision of domestic and export invoice details by one exporter (late in the investigation and for a selection of invoices chosen by that exporter) does not represent cooperation or persuasive evidence that the concerned exporter has not dumped 2,4-D to Australia during the review period.

Customs and Border Protection therefore considers all exporters of 2,4-D to Australia from China to have been uncooperative with its review, and has assessed dumping for all exporters collectively using the same variable factors.

6.4 Approach – focus on acid variable factors

As with the 2003 investigation into 2,4-D and the 2007 continuation inquiry, Customs and Border Protection has established the variable factors (export price, normal value and non-injurious price) for 2,4-D acid, and conducted its dumping calculations at the 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 and non-injurious price 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 or intermediate 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 variables associated with formulation, profit and setting a price for formulated product vs. intermediate or acid).

While imports of 2,4-D acid as a percentage of total imports has decreased since Nufarm's FY 2008 (and from the time of the original investigation into 2,4-D), Customs and Border Protection notes that 2,4-D acid remains the largest type of 2,4-D product imported to Australia in the review period (i.e. out of acid, intermediate or formulated product). See Chapter 5 for further detail.

6.5 Export price

As no Chinese exporter cooperated with Customs and Border Protection's review, it is considered that sufficient information was not furnished or was not available to enable Customs and Border Protection to establish the export price for 2,4-D exported to Australia from China using:

- the price paid or payable for the goods by the importer;⁹
- the price at which the goods were sold by the importer less prescribed deductions;¹⁰ or
- the price determined having regard to all the circumstances of the exportation.¹¹

Customs and Border Protection therefore established the export price for all Chinese exporters of 2,4-D having regard to all relevant information.¹²

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 single 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 2**.

6.6 Normal value

In light of the lack of exporter cooperation, Customs and Border Protection considers it is unable to determine normal values for 2,4-D exported to Australia from China as the price paid for like goods sold in China in the ordinary course of trade¹³ or as the cost to make and sell the goods plus profit or exports to third countries.¹⁴

Normal value must therefore be determined having regard to all relevant information.¹⁵

⁹ s.269TAB(1)(a) of the Act

¹⁰ s.269TAB(1)(b) of the Act

¹¹ s.269TAB(1)(c) of the Act

¹² s.269TAB(3) of the Act

¹³ s.269TAC(1) of the Act

¹⁴ s.269TAC(2) of the Act.

¹⁵ s.269TAC(6) of the Act

Various approaches to determining normal value were considered during the review, having regard to the submissions of interested parties and the information available to Customs and Border Protection.

Customs and Border Protection assessed all relevant information (outlined below) to determine a normal value for 2,4-D in China considered to be the most reasonable normal value possible.

6.6.1 Options for determining normal value and available data

1) 'Derived' IBE-based acid price – submitted by Nufarm

In its application for continuation of the measures, Nufarm submitted evidence of Chinese domestic pricing for a formulated 2,4-D product (72% strength IBE) for FY 2012, obtained through its associations in the Chinese chemical industry.

This price for IBE was in the range of RMB 25,000 – RMB 27,000/MT.¹⁶

As part of this evidence, Nufarm included commentary that the most contemporary pricing for 2,4-D IBE in China (at the time of providing the evidence on 3 July 2012) was 25,000 RMB/MT, and that prices have been relatively stable (at that level) since mid-2011.

Starting with this selling price range, Nufarm used:

- its knowledge of formulation and selling costs;
- what it considered reasonable estimations for calculation elements such as profit, SG&A and packaging for China; and
- figures for certain elements obtained from its Chinese contacts, to derive a price for 2,4-D acid in China.

This included reasonable adjustments for differences in value added tax (VAT) between domestic and export sales of 2,4-D in/from China (accounting for the known VAT rebate provided to exports of 2,4-D acid from China).¹⁷

Nufarm's calculations arrived at a normal value of between \$AU 3.77 and 4.16/kg for 2,4-D acid.

Customs and Border Protection considers this approach, with some amendments, to be the most suitable method of calculating normal value for 2,4-D in China. The approach chosen is discussed in detail in Section 6.6.2 below.

2) 'Constructed' normal value based on Nufarm CTMS and profit

Following initiation of this review, Nufarm submitted¹⁸ that, as there had been no Chinese exporter cooperation in this case, Customs and Border Protection

¹⁶ In parts of Nufarm's application, this price was listed as per kg in error.

¹⁷ It is noted that AGRONOMIQ was concerned in its submission dated 14 November 2012 that these taxation differences may not have been accounted for in Nufarm's calculations. This concern is unfounded.

¹⁸ Nufarm submission of 16 November 2012

should calculate normal values for Chinese 2,4-D based on a constructed selling price of Nufarm's verified CTMS data and an appropriate level of profit. Nufarm submitted this profit should be based on the profit achieved by Nufarm in its FY 2012.

Nufarm further highlighted that the approach of constructing a normal value based on Australian industry's CTMS was considered reasonable in the investigation into processed dried currants from Greece (Trade Measures Report No. 140). Customs and Border Protection notes the case of currants from Greece, in the absence of exporter cooperation and other reasonable reliable information,¹⁹ Customs and Border Protection constructed normal values based on the Australian industry's CTMS with no amount for profit.²⁰

This suggested approach deviated from that originally submitted by Nufarm (IBE-based deduced acid prices – see above).

Customs and Border Protection has considered the merits of this suggested approach as an option for normal value, and considers that it is not the most reasonable in the circumstances.

Customs and Border Protection considers that a reasonable nexus must be demonstrated between the proposed constructed normal value approach (i.e. using Nufarm's CTMS and profit data), and Chinese selling prices, in order for that approach to be considered reasonable for determining the normal value of 2,4-D acid in China.

In proposing this approach,²¹ Nufarm did not provide explanation as to why it is a reasonable method of arriving at a normal value for 2,4-D in China, rather submitting that it considers this to be the 'best available information' due to the fact that it has been verified with Nufarm.

Customs and Border Protection considers there is no evidence that such costs and profit would reasonably reflect the domestic selling price of 2,4-D in China during the review period, and therefore arrive at a reasonable normal value.

While the approach taken in Greek currants case is noted, in this case, Customs and Border Protection considers that other available information (i.e. the deduced IBE-based 2,4-D acid price - discussed in Section 6.6.2) provides a more reasonable estimate of normal value without the need to resort to a constructed normal value based on Nufarm data.

¹⁹ Noting some exporter domestic sales data was submitted to the investigation, though this was dismissed as unreasonable as this was not verified and was found to not be in the ordinary course of trade when compared with Australian industry's CTMS (the only reasonable available CTMS information available to Customs and Border Protection).

²⁰ Customs and Border Protection considered that the addition of a rate of for profit was unnecessary given the conclusion that a comparison of CTMS to selling prices indicates prices for currants sold in Greece were not in the ordinary course of trade, as was considered consistent with s.269TAC(13).

²¹ Nufarm submission of 16 November 2012

3) Duty assessment data

Customs and Border Protection has in its possession export CTMS and profit data²² relating to one Chinese exporter of 2,4-D to Australia, submitted during a recent duty assessment of importations of 2,4-D during the importation period 23 March to 24 September 2011.

This CTMS data was provided in quarters for the period 1 January 2011 – 30 September 2011 (some overlap with the review period of 1 July 2011 – 30 June 2012).

This data, while not subject to full in-country verification with the exporter, was subject to some remote verification and considered reasonable for use in the duty assessment.

Customs and Border Protection considered this data as a possible option for normal value in relation to this review of 2,4-D. However, it is considered that this data is not suitable for definitively determining normal values of 2,4-D in China during the review period (i.e. not able to be relied on wholly in and of itself for normal value).

This is due to the fact that the duty assessment information, whilst considered acceptable for the purposes of that assessment:

- relates to one small Chinese exporter of 2,4-D;
- has not been fully verified; and
- is predominantly for a different period to the review period (with some overlap in one quarter of data only).

However, this data is considered suitable for use in a limited manner, in assessing the reasonableness of the chosen approach to normal value and making reasonable amendments to the derived IBE-based normal value (see Sections 6.6.2 and 6.6.3 for further discussion).

4) Information submitted by importers and exporters of Chinese 2,4-D

During the review, Accensi, AGRONOMIQ and one Chinese exporter have each submitted information that they consider more accurately reflects the selling price of 2,4-D in China during the review period, which these importers consider should be used to determine normal value in China.

This includes:

- an estimate by Accensi²³ that selling prices of 2,4-D acid in China during the review period were between RMB 21,400 and 23,000/MT;²⁴

²² No domestic sales of like goods were made by this exporter in China, hence no domestic CTMS or sales data provided.

²³ Accensi submission, lodged 9 November 2012.

²⁴ In submitting this price range for 2,4-D acid in China, Accensi questions the accuracy of the RMB 25,000 – 27,000 range quoted by Nufarm in its application. However, 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

- AGRONOMIQ's submission of a range of 2,4-D acid for export to Australia being quoted (for future exportations) at between \$US 3.30 and 3.48/kg during and shortly after the review period (since declining to as low as \$US2.85/kg), and the submission that AGRONOMIQ had polled all six Chinese producers with the relevant clearance to export to Australia with five of these informed that their domestic price is identical to their export price for 2,4-D acid;²⁵ and
- a listing of domestic invoice details provided by a Chinese 2,4-D exporter to Australia demonstrating the invoice price for 2,4-D acid, an intermediate and a formulated 2,4-D product in \$US/kg.

Customs and Border Protection has considered this normal value data submitted by importers/exporters to the review, but considers that it is not suitable for determining definitive normal values of 2,4-D in China during the review period.

This is due to the fact that the data provided by importers is a range of unsupported estimations and assertions submitted based on their liaison with Chinese 2,4-D exporters, while the invoice listing provided by the Chinese exporter:

- is for a selection of invoices presumably chosen by that exporter (and not a complete listing of domestic sales);
- was not accompanied by CTMS information (and hence unable to be accurately tested for ordinary course of trade in China);
- is not verified; and
- the terms of these sales are not clear, or whether they are VAT-inclusive or exclusive.

However, Customs and Border Protection has used this data in a limited fashion, to correlate its assessment of the normal value for 2,4-D acid in China (see Section 6.6.2).

6.6.2 Chosen normal value - IBE-based derived acid normal value

At the time of publishing SEF189A and 189B, Customs and Border Protection considered that a derived normal value based on the quoted selling price of IBE (72% strength) in China to be the most reasonable approach to determine normal value for 2,4-D in China.

In arriving at this normal value, Customs and Border Protection had regard to the reasonableness of derived normal value calculations submitted by Nufarm in its application for the continuation of anti-dumping measures, and made amendments where considered appropriate.

application refers to the selling price of IBE, and not the 2,4-D acid price derived by Nufarm from this price range.

²⁵ AGRONOMIQ *Response to Nufarm Letter* (dated 21 November 2012) and AGRONOMIQ's *Response to Record of Meeting Between Nufarm and C&BP Dated 5th December 2012* (dated 28 December 2012).

Customs and Border Protection again considers this approach to be the best available option to be used as a basis for determining the normal value of 2,4-D in China during the review period.

In response to the SEF,²⁶ Nufarm has endorsed this approach to calculating normal value in general. However, Nufarm raised certain concerns about the approach to deducing normal values (i.e. certain objections to the amendments made by Customs and Border Protection). These concerns are addressed in in Section 6.6.3.

In determining that the approach to normal value based on deducing 2,4-D acid selling prices from IBE selling prices is the most appropriate in this case, Customs and Border Protection:

1. assessed whether the approach of deriving acid prices from IBE selling prices is reasonable in itself;
2. assessed the reasonableness of the calculations submitted by Nufarm in its application for continuation of measures on 2,4-D to deduce a 2,4-D acid selling price in China; and
3. compared the (then amended) deduced 2,4-D acid selling price with available data to provide confidence in the reasonableness and accuracy of that price.

Customs and Border Protection's normal value assessment is detailed below.

1) Reasonableness of approach

In general, Customs and Border Protection has sought to arrive at a normal value for 2,4-D acid in China that reasonably reflects what selling prices for this product were in China during the review period, using the information available.

Customs and Border Protection notes the approach of deducing a 2,4-D acid price from IBE formulated product sales figures:

- is based on reported actual selling prices in China for that formulation; and
- includes reasonable deductions and calculations (once amended – see below).

In the absence of actual exporter 2,4-D sales and CTMS data, it is considered that this approach is reasonable to arrive at the normal value for 2,4-D acid in China.

Customs and Border Protection notes AGRONOMIQ's various submissions that IBE is not an appropriate base for normal values in China (with AGRONOMIQ suggesting the use of other formulations as a basis for normal values in China).

²⁶ Nufarm *Submission on Statement of Essential Facts No. 189A and 189B*, 17 December 2012.

Customs and Border Protection notes the difficulties that may be faced by the Australian industry in obtaining relevant and accurate 2,4-D acid prices in China (especially when it is considered that Chinese 2,4-D producers are known to be highly export-oriented). Customs and Border Protection therefore considers the use of a formulated product as a base for deriving a normal value for 2,4-D acid to be reasonable.

In terms of the formulation used for this calculation, Nufarm submitted²⁷ that IBE is one of the main 2,4-D formulations sold in the domestic Chinese market, and is a reasonable formulation used to derive acid prices from.

Customs and Border Protection notes that, as the formulated domestic price is simply used as a basis from which to derive an acid price, the formulation chosen is not material as long as the deductions used and calculations to convert to an acid price are reasonable. In theory, this approach should result in the same or very similar acid prices, regardless of the beginning formulation used.

2) Reasonableness of calculations

After assessing that IBE prices are reasonable to be used as a base for deriving a 2,4-D acid normal value, Customs and Border Protection sought to assess the reasonableness of Nufarm's normal value calculations.

To do so, Customs and Border Protection assessed each aspect of Nufarm's submitted calculations for objective reasonableness, and compared these calculations with the CTMS and profit data in its possession that had been submitted by a Chinese exporter of 2,4-D to the recent duty assessment of 2,4-D imported by one importer from that entity (see Section 6.6.1).

Following this comparison, Customs and Border Protection amended the derived IBE-based normal value as submitted by Nufarm in its application to more reasonably reflect:

- the exchange rate (RMB:AUD) used in the Nufarm application has been adjusted to a yearly average based on official data obtained from the Reserve Bank of Australia (RBA); and
- more accurate levels of profit and SG&A expenses based on the data submitted by the Chinese exporter of 2,4-D involved in the recent duty assessment.

All other calculations submitted by Nufarm in its application for the continuation of measures appeared to be reasonable.

3) Comparison with other data

Once amended, Customs and Border Protection tested the reasonableness of the IBE-based deduced normal value as outlined below.

²⁷ Nufarm submission of 29 October 2012.

- a) Ordinary course of trade - Customs and Border Protection conducted ordinary course of trade tests on the IBE-based derived normal values by comparison the final quarter of CTMS submitted by the Chinese exporter to the recent duty assessment (as this contained some overlap with the review period). The IBE-based price was found to be profitable and therefore in the ordinary course of trade.

It is noted that, even though Customs and Border Protection considers Nufarm's CTMS for 2,4-D acid to not be a reasonable basis for normal value in China (see above), ordinary course of trade tests were also conducted using Nufarm's CTMS, and the IBE derived normal values were still found to be in the ordinary course of trade.

- b) Duty assessment data - Customs and Border Protection compared the RMB/T acid CTMS calculated in the IBE-based normal value calculations to the CTMS data submitted by the exporter in the recent duty assessment. These were found to be reasonably similar.
- c) Other importer and exporter data - noting it is considered that limited weight should be placed on the normal value estimates and domestic selling price information submitted by importers and one Chinese exporter (see above), Customs and Border Protection compared the amended IBE-based derived 2,4-D acid normal value to this data, and found that the minimum of the range of IBE-based derived normal values was not dissimilar to those figures quoted by importers and exporters (in some cases within a few cents of each other).'

6.6.3 Interested party submissions

Following the publication of the above-outlined approach in the SEF, Nufarm has submitted²⁸ that it considers that approach to determining the normal value of 2,4-D acid in China to be acceptable, except for the approach to calculating SG&A costs and profit in the derived normal value (i.e. replacing the SG&A and profit figures submitted by Nufarm in its normal value calculations within the application for the continuation of measures, with those submitted by a Chinese exporter of 2,4-D to Customs and Border Protection for the purposes of a recent duty assessment – see Section 6.6.1).

In making this submission, Nufarm submits that the use of this exporter data is 'unsuitable'. Nufarm's concerns focus on its submission that the data is 'unverified', and Nufarm considers the acceptance of such data 'sets a dangerous precedent' for the use of unverified exporter data in determining normal values in the future where 'data integrity is critical'.

Alternately, Nufarm submits that its own verified SG&A and profit data should be used by Customs and Border Protection in deriving the normal value for 2,4-D acid in China from IBE selling prices.

²⁸ Nufarm *Submission on Statement of Essential Facts No. 189A and 189B*, 17 December 2012.

In response, AGRONOMIQ has submitted²⁹ its objection to this approach, stating that Nufarm is a high cost producer of 2,4-D, and that the use of its data in this way may distort the accuracy of the normal value.

Customs and Border Protection has assessed Nufarm and AGRONOMIQ's submissions on this point. Customs and Border Protection rejects Nufarm's claims that:

- the exporter data in question is not suitable for use in determining the derived 2,4-D normal value; and
- its own SG&A and profit data should be used in the IBE-based normal value deduction.

Suitability of exporter data

Customs and Border Protection notes Nufarm's concerns that the duty assessment exporter data used is 'unverified', and that use of the data may set a 'precedent' for the use of unverified data in determining normal value.

Firstly, it is noted that the data in question has undergone some verification for the purposes of the duty assessment for which it was submitted. However, it is acknowledged that this data has not undergone full in-country verification with the submitting exporter.

Customs and Border Protection does not consider the fact that the data has not undergone full verification should immediately eliminate it for use in part to determine normal value for 2,4-D acid in China. Without limiting the circumstances in which data that has not undergone detailed verification may be used by Customs and Border Protection, it is considered that, in certain cases where such data is available, and it can be shown to be reasonable, it may be used in determining normal value (or aspects thereof).

Customs and Border Protection also notes that there is no requirement that it only have regard to fully-verified information, and considers that any such information should be assessed on a case-by-case basis for suitability of use.

In this case, Customs and Border Protection assessed the available duty assessment exporter data, and concluded that it was not suitable for independently determining the normal value of 2,4-D acid in China for all exporters during the review period in and of itself (see Section 6.6.1).

However, Customs and Border Protection considers the data suitable for the purposes of use as a point of comparison with certain calculations submitted by Nufarm in arriving at a deduced normal value for 2,4-D acid in China in its application for the continuation of measures on 2,4-D.

This is due to the fact that:

²⁹ AGRONOMIQ *Response to Nufarm Letter Dated 21st December 2012 Regarding Normal Value of 2,4-D* (dated 27 December 2012)

- the data relates to an actual exporter of 2,4-D from China;
- there is some overlap between the duty assessment period and the review period;
- the data used in deducing the normal value relates to SG&A and profit, which are considered likely to be relatively stable from the period of the duty assessment to the review period; and
- the data was subject to some verification.

It is also noted that the data has been used in a limited way, to amend aspects of Nufarm's submitted normal value calculation that were considered unreasonable (and were in fact based on unsupported 'estimations' for China and not Nufarm data in any case).³⁰

Further, once this amendment was made to the deduced normal value, Customs and Border Protection performed various reasonableness checks of the deduced normal value (see Section 6.6.2 above), which provided confidence in the accuracy of the revised deduced normal value.

Suitability/reasonableness of Nufarm data

As with the 'constructed' approach to calculating normal values submitted by Nufarm (i.e. using Nufarm CTMS and profit data to construct a normal value - see Section 6.6.1), Nufarm has not provided sufficient reason why the use of its data would arrive at a more reasonable normal value for 2,4-D acid in China than the approach used by Customs and Border Protection, or why Nufarm's data more reasonably reflects the SG&A costs and profit that could be expected to be incurred by a Chinese manufacturer and exporter of the goods than the data used.

Customs and Border Protection has endeavoured to arrive at a reasonable normal value for 2,4-D acid sold domestically in China, using the information that is available and considered suitable for use.

Having assessed that the duty assessment exporter information is suitable for use in a limited way, it is considered that this data is the best available information to Customs and Border Protection for determining SG&A costs and profit for 2,4-D in China, as it is considered that this exporter data reasonably reflects data applicable to the sale of 2,4-D in China.

6.6.4 Conclusion – normal value

Customs and Border Protection has determined normal value for 2,4-D acid in China for all exporters having regard to all relevant information,³¹ being:

- Nufarm's submitted IBE (72%) selling price range information;

³⁰ See Confidential Attachment 1 of Nufarm's application for the continuation of measures on 2,4-D.

³¹ s.269TAC(6) of the Act

- converted to a selling price range for 2,4-D acid in China using Nufarm's reasonable calculations to derive these prices, amended by Customs and Border Protection for:
 - the exchange rate (RMB:AUD) used in the Nufarm application has been adjusted to a yearly average RBA data; and
 - more accurate levels of profit and SG&A expenses based on the data submitted by the Chinese exporter of 2,4-D involved in a recent 2,4-D duty assessment.

Customs and Border Protection has adopted the lowest price in this range of 2,4-D acid prices in China as the basis for normal value, noting that:

- the comparisons made by Customs and Border Protection with other available data demonstrated a close correlation to the bottom of the derived 2,4-D acid selling price range; and
- Nufarm-submitted evidence in its continuation application that the price of 2,4-D in China during the review period remained close to the bottom of the price range submitted by Nufarm, and was relatively stable at that level since mid-2011.

This approach to normal value has not changed from that adopted within SEF189A and 189B.

Normal value calculations form **Confidential Appendix 3**.

6.7 Dumping margin

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 4**.

6.8 Non-injurious price

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury,³² or a recurrence of the injury, caused to the Australian industry by the dumping.

³² The non-injurious price is defined in s.269TACA of the Act.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

6.8.1 Methods of calculating non-injurious price

The method of calculating a non-injurious price is not given in the Act, but it is generally derived from Australian industry's unsuppressed selling price. The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports, and may be established in multiple ways, including:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry CTMS plus an appropriate profit; or
3. selling prices of undumped imports.

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

In Trade Measures Report No. 58, the unsuppressed selling price for 2,4-D exported to Australia from China was established based on Nufarm's verified CTMS plus an average rate of profit of sales of 2,4-D product from 1997, a period unaffected by dumping.

The unsuppressed selling price has not been reviewed since that time.

6.8.2 Australian industry's claims

Nufarm submitted to Customs and Border Protection³³ that:

- an unsuppressed selling price for 2,4-D acid³⁴ be calculated as the Australian industry's FY 2012 CTMS 2,4-D acid for export, plus an amount for profit based on Nufarm's FY 2012 domestic profit for a major formulated product sold domestically; or
- an unsuppressed selling price for formulated Estercide 680 products should be calculated as Nufarm's FY 2012 CTMS for that product plus the FY 2012 average profit achieved on that product.

Nufarm submitted that industry selling prices are not suitable as the basis for a UNSUPPRESSED SELLING PRICE, as the market has been affected by dumping for several years including throughout the review period. Customs and Border Protection notes the approach outlined by Nufarm in the second point

³³ Nufarm submission dated 16 November 2012 and later amended in Nufarm's submission of 23 November 2012.

³⁴ Submitted to be the same as if the acid were sold in Australia.

above would be tantamount to selling prices for Estercide 680 formulations in any case.

6.8.3 Other interested party claims

Customs and Border Protection has not received any submissions from importers, exporters or other interested parties as to the appropriate basis for calculating an unsuppressed selling price for 2,4-D.

During its verification visit, Accensi considered Customs and Border Protection's established approaches to determining a UNSUPPRESSED SELLING PRICE and suggested that its preferred method would be to calculate the UNSUPPRESSED SELLING PRICE with reference to Nufarm's CTMS.³⁵

6.8.4 Customs and Border Protection's assessment

The views of Nufarm and other interested parties in relation to determining an unsuppressed selling price were considered.

In this case, as Customs and Border Protection has assessed dumping based on 2,4-D acid imports to Australia alone, Customs and Border Protection must determine an unsuppressed selling price (and subsequent FOB non-injurious price) for 2,4-D acid to allow comparison with the weighted average 2,4-D acid export price.

Customs and Border Protection considers it appropriate to determine an unsuppressed selling price 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 SG&A costs based on the average of the five major formulations sold domestically by Nufarm;³⁶ plus
- a rate of profit achieved on domestic sales of the major formulation³⁷ during Nufarm's FY 2012.

It is noted this approach differs from that submitted as the first option by the Australian industry, as it uses the domestic SG&A expenses for sales of domestic formulated 2,4-D, rather than for exports of 2,4-D acid. Customs and Border Protection considers it is more reasonable to construct the unsuppressed selling price using an amount for SG&A expenses that is based on domestic sales.

In a submission made in response to the SEF,³⁸ Nufarm has agreed with this

³⁵ Refer to Accensi Importer Visit Report, available on the Public Record.

³⁶ For which detailed CTMS and profit calculations were provided by Nufarm and verified with that company.

³⁷ Nominated by Nufarm in its submission of 23 November 2012.

³⁸ Nufarm *Submission on Statement of Essential Facts No. 189A and 189B*, 17 December 2012.

approach to calculating an unsuppressed selling price for 2,4-D acid.

Customs and Border Protection considered the option of deriving a domestic 2,4-D acid price based on the CTMS for the Estercide 680 products, but notes this arrives at a similar outcome to using 2,4-D acid for export CTMS as a starting point (as would be expected).

The non-injurious price for 2,4-D acid from China has been calculated by deducting from the unsuppressed selling price amounts for overseas freight, insurance, into store costs, importer expenses and profit. These deductions were based on importer data provided by major importers of 2,4-D acid or intermediate products (i.e. those that import these products and formulate 2,4-D formulations, as these were considered to be a similar level of trade to Nufarm).

This approach has not changed to that adopted within SEF189A and 189B.

Unsuppressed selling price and non-injurious price calculations form **Confidential Appendix 5**.

7 EFFECT OF THE REVIEW

As a result of this variable factors review, Customs and Border Protection has found that, in relation to 2,4-D (calculated based on 2,4-D acid) exported to Australia from China:

- the normal value for all exporters has increased;
- the weighted average FOB export price (applicable to all exporters) has increased; and
- the non-injurious price has increased.

Customs and Border Protection has also found that the non-injurious price for 2,4-D from China was below the weighted average export price of the goods exported during the review period.

Consequently, Customs and Border Protection recommends to the Minister that the anti-dumping measures be altered to include:

- an ascertained export price that is equal to the non-injurious price determined during the review period (such that the ascertained export price works as a 'floor price' and the 'variable' component of interim dumping duty will be the amount, if any, by which the export price of the goods is less than the ascertained export price); and
- a zero rate of fixed interim dumping duty.

8 RECOMMENDATIONS

Customs and Border Protection recommends that the Minister considers this report, and if agreed, sign the attached public notice (including attached confidential table) and related schedules (**Confidential Attachment 1**) to **declare**:

- under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice, that, with effect from the date of publication of the attached public notice, the dumping duty notice is taken to have effect in relation to exporters generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for 2,4-D exported to Australia from China by all exporters the subject of this review to be ascertained under the preceding subsections of s. 269TAB of the Act; and
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values for 2,4-D exported to Australia from China by all exporters the subject of this review to be ascertained under the preceding subsections of s. 269TAC of the Act.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices of 2,4-D for all exports to Australia from China by exporters the subject of this review is the amount having regard to all relevant information; and
- in accordance with s. 269TAC(6) of the Act, the normal value of 2,4-D for all exports to Australia from China for exporters the subject of the review is the amount having regard to all relevant information.

9 ATTACHMENTS AND APPENDICES

Confidential Attachment 1	Section 269ZDB public notice, confidential table and related schedules
Confidential Appendix 1	Market size and share analysis
Confidential Appendix 2	Export price calculations
Confidential Appendix 3	Normal value calculations
Confidential Appendix 4	Dumping calculations
Confidential Appendix 5	Unsuppressed selling price and non-injurious price calculations