



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

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**R E P O R T**

**INTERNATIONAL TRADE REMEDIES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO. 189A and 189B**

**INQUIRY INTO THE CONTINUATION OF  
ANTI-DUMPING MEASURES & REVIEW OF ANTI-DUMPING  
MEASURES**

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

**28 November 2012**

# PUBLIC RECORD

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## **1 SUMMARY AND RECOMMENDATIONS**

This continuation inquiry (Case 189A) 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).

In addition to the continuation inquiry, the Minister for Home Affairs (Minister) requested that the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) conduct a review of the measures applying to 2,4-D as one or more of the variable factors relevant to the taking of the measures may have changed. The review is numbered Case 189B.

This combined statement of essential facts sets out the facts on which CEO proposes to base his recommendations to the Minister for both cases 189A and 189B.

### **1.1 Preliminary findings and conclusions – continuation inquiry**

Based on the evidence currently available, Customs and Border Protection's preliminary view is 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:

- in the absence of anti-dumping measures exports from China would continue; and
- in the absence of anti-dumping measures, dumping of 2,4-D from China would continue or recur and would cause material injury to the Australian industry to continue or recur.

Based on these preliminary findings, and subject to any submissions received in response to this combined statement of essential facts, the CEO proposes to recommend that the Minister take 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, at the level ascertained by the review of variable factors (see below).

### **1.2 Preliminary findings and conclusions – review of variable factors**

Based on available evidence, Customs and Border Protection is preliminarily satisfied that the export prices, normal values and non-injurious prices relevant to the taking of anti-dumping measures have changed since the imposition of those measures in 2003.

Consequently, in light of the preliminary findings of the continuation inquiry, Customs and Border Protection proposes to recommend that the Minister ascertain new variable factors relating to 2,4-D exported to Australia from China.

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### **1.3 Final report**

The final report to the Minister which outlines Customs and Border Protection's findings and recommendation is due on or before **14 January 2013**.

## **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 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 on which it proposes to base its recommendation to the Minister.

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 statement of essential facts;
- this combined statement of essential facts; and
- any submission made in response to this combined statement of essential facts 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.

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### **2.2 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 has 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.

Where, as in this case, the Minister has requested that the CEO to 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 on which it proposes to base its recommendation to the Minister concerning the review of the measures.

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 considering whether the measures are no longer warranted. No such application was lodged during the present review.

In respect of a dumping duty notice, the CEO must provide a proposed recommendation to the Minister that the dumping duty notice:

- 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 its final report to the Minister, the CEO must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the CEO has had regard for the purpose of formulating the statement of essential facts;
- this combined statement of essential facts; and
- any submission made in response to this combined statement of essential facts that is received by Customs and Border Protection within 20 days of being placed 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.

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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.

### 2.3 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. The Minister-requested review was initiated on the same day. Public notification of initiation of the inquiry and review was made in *The Australian* newspaper on 10 August 2012. Australian Customs Dumping Notice No. 2012/39 provides further details of the process and is available at [www.customs.gov.au](http://www.customs.gov.au).

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.

In particular, 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.

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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 continuation inquiry and review. No exporter provided a completed exporter questionnaire to the continuation inquiry or review.

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

Submissions received up to and including Friday 23 November 2012 have been considered in arriving at the preliminary findings in this combined statement. Submissions received after the above date have not been considered as to do so would, in the opinion of the CEO, prevent the timely placement of this statement on the public record.

Submissions received after 23 November 2012 will be considered in formulating Customs and Border Protection's final recommendations to the Minister.

### **2.4 Responding to the statement of essential facts**

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its final recommendations to the Minister.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. Submissions received in response to this SEF will be considered in formulating Customs and Border Protection's final recommendations to the Minister.

However, Customs and Border Protection is not obliged to have regard to any submissions received after **18 December 2012** if to do so would prevent the timely preparation of the report to the Minister.

It is important to note that the SEF may not represent the final views of Customs and Border Protection.

Submissions should be sent to:

The Director  
International Trade Remedies Branch Operations 3  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can also be faxed to 02 6275 6990 or emailed to [itrops3@customs.gov.au](mailto:itrops3@customs.gov.au).

Interested parties intending to respond to this combined statement of essential facts must include a non-confidential version of their submission for placement on the



## PUBLIC RECORD

Public Record<sup>1</sup>. Submissions provided in confidence must be clearly marked “**FOR OFFICIAL USE ONLY**”.

The Public Record contains non-confidential submissions received from interested parties, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s initiation report. These documents should be read in conjunction with this combined statement of essential facts. The Public Record for this inquiry may be viewed at Customs House, Canberra by contacting the case team on 02 6245 5434.

All documents on the Public Record are also available on Customs and Border Protection’s electronic Public Record which may be accessed on the internet at [www.customs.gov.au](http://www.customs.gov.au) by following the prompts for “anti-dumping”.

### 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

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

The review period is 1 July 2011 to 30 June 2012 and covers all exporters of the goods from China.

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<sup>1</sup> In preparing a non-confidential version interested parties should take account of the requirements set out in Australian Customs Dumping Notice 2012/42.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Preliminary 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. Therefore, 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 and review, Customs and Border Protection considers Nufarm and domestic formulators continue to be producers of like goods.

## **4 THE AUSTRALIAN INDUSTRY**

### **4.1 Preliminary 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 small scale 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 manufacture 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, 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 of 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 2,4-D 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 monochloroacetate acid and hydrochloric acid. This process is performed by Nufarm at its Laverton North facility.

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2,4-D acid is supplied in acid form or converted to 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.

### **4.3.1 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 AUSTRALIAN MARKET

### 5.1 Preliminary 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.

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 total proportion of 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 (DMA);
  - imports of fully-formulated products (small quantities);
- 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).

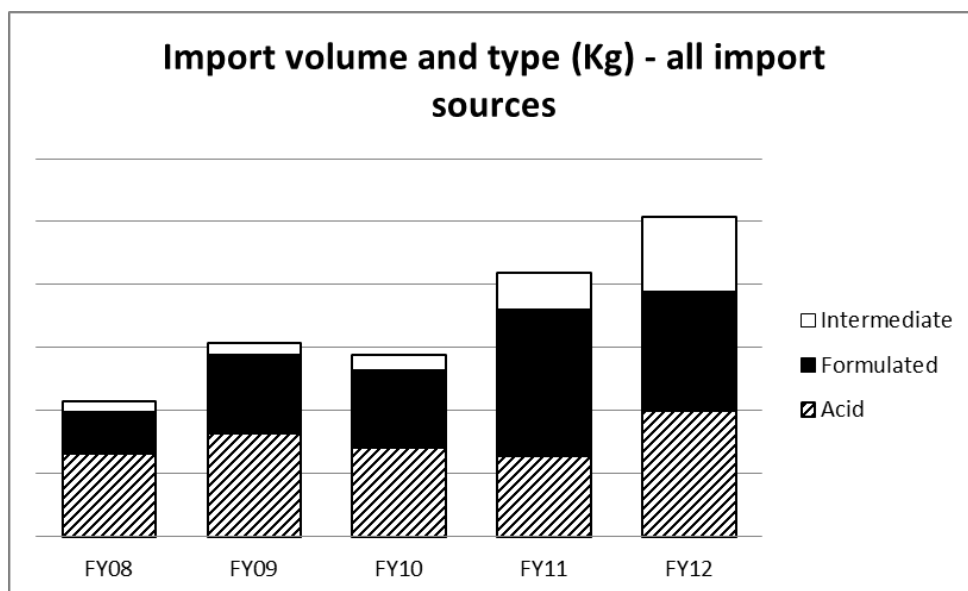
### 5.3 Source of imports

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.

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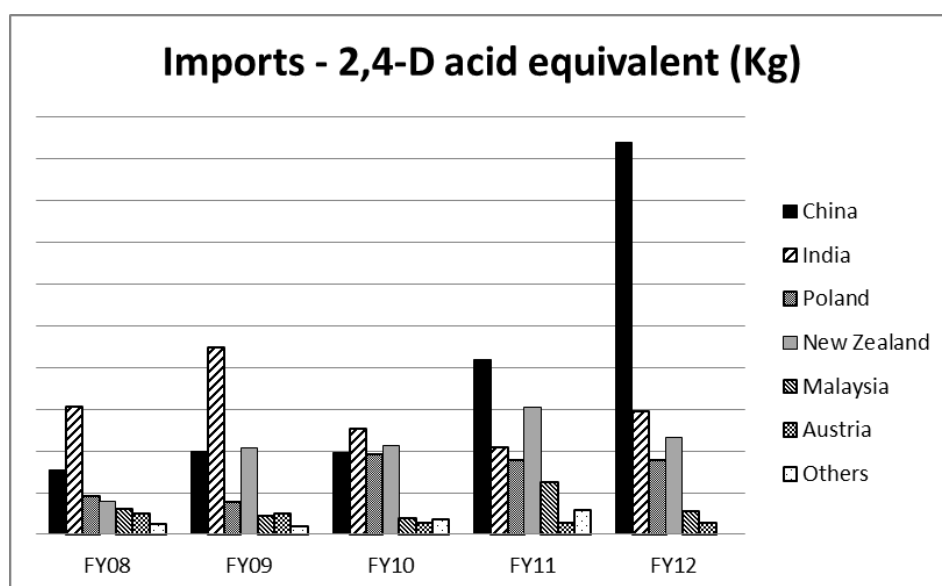
Using the data from its import database, Customs and Border Protection has identified (based on tariff classification, goods description and other factors) whether imported goods were 2,4-D acid, an intermediate product (2,4-D salts and esters) or a fully formulated 2,4-D based product.

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.

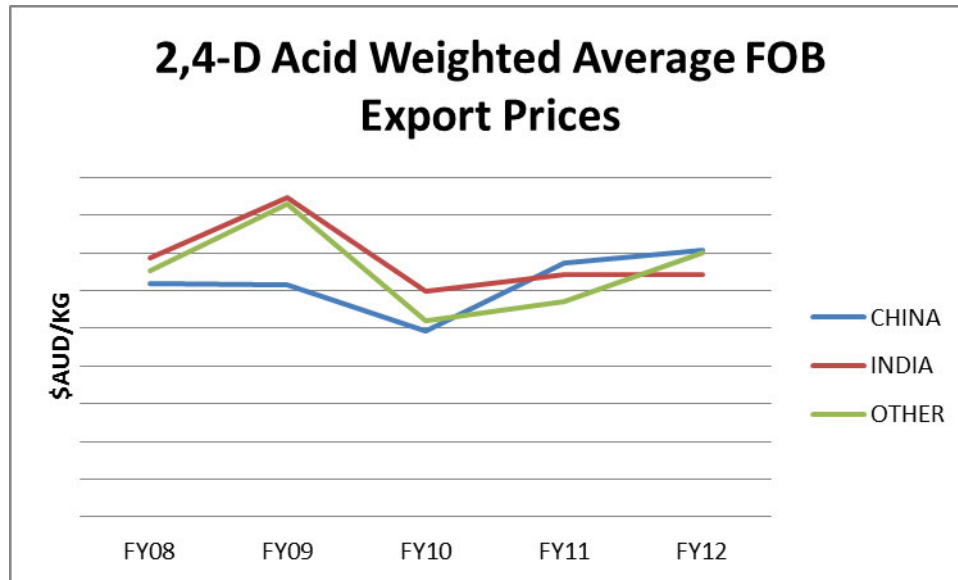
Major import sources are outlined in the below chart (based on Nufarm's August – July financial year).



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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 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 and imports of intermediate and formulated products have increased.*

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.

### 5.4 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 (1005 acid), based on the known strength of 2,4-D acid in each item sold.

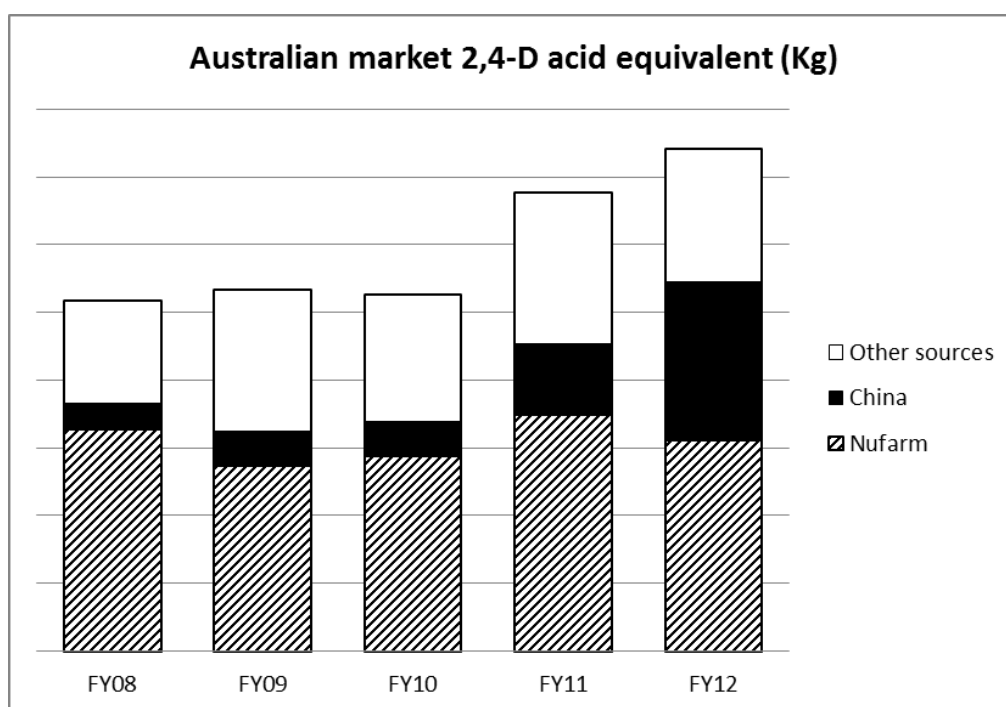
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This analysis demonstrated that the Australian market for 2,4-D grew over the examined period.

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 and converted Nufarm sales data (for all domestic product types sold).

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 2.3 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.



Further discussion of this chart is at Section 6.4.2.

### 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 across the region.



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

## 6 ECONOMIC CONDITION OF THE INDUSTRY

### 6.1 Preliminary 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 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 July 2011 – 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.

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Customs and Border Protection has again observed nil or negligible sales of 2,4-D acid 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 formulated products to a common base of 100% acid equivalent (based on the strength of acid in grams/Litre (g/L) of the formulated product) as the strength of 2,4-D acid in formulated products can vary substantially.

This conversion calculation is:

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

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.

### **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.

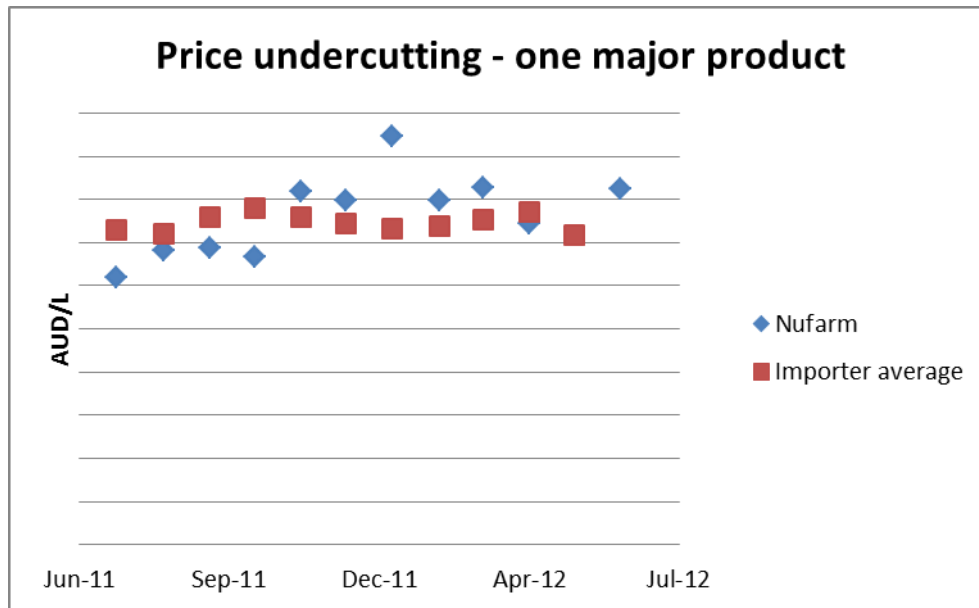
Customs and Border Protection has compared the Australian industry prices in the review period (July 2011 – June 2012) for the fully formulated products, Estercide Xtra 680, Amicide 625 and Surpass 475 (in various pack sizes) to sales by importers of equivalent Chinese 2,4-D products at the same level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

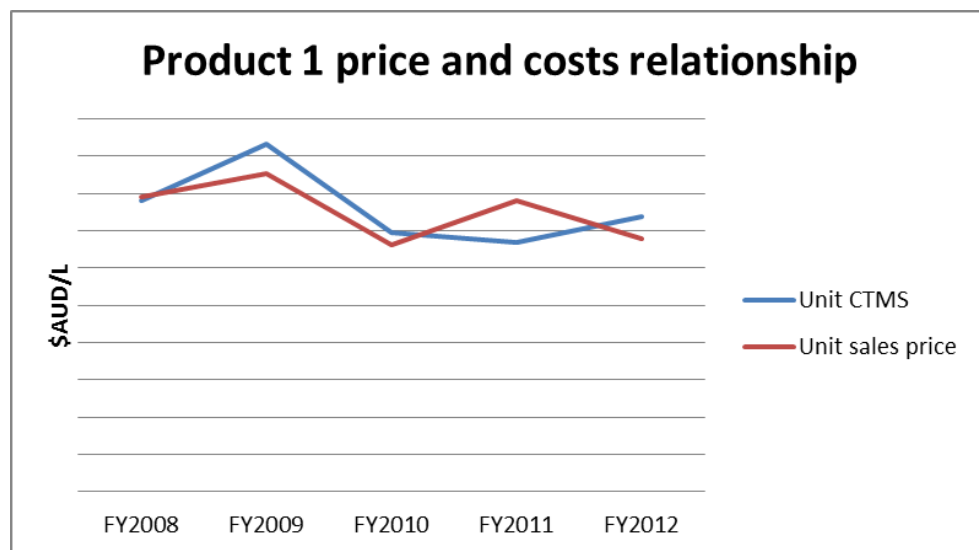
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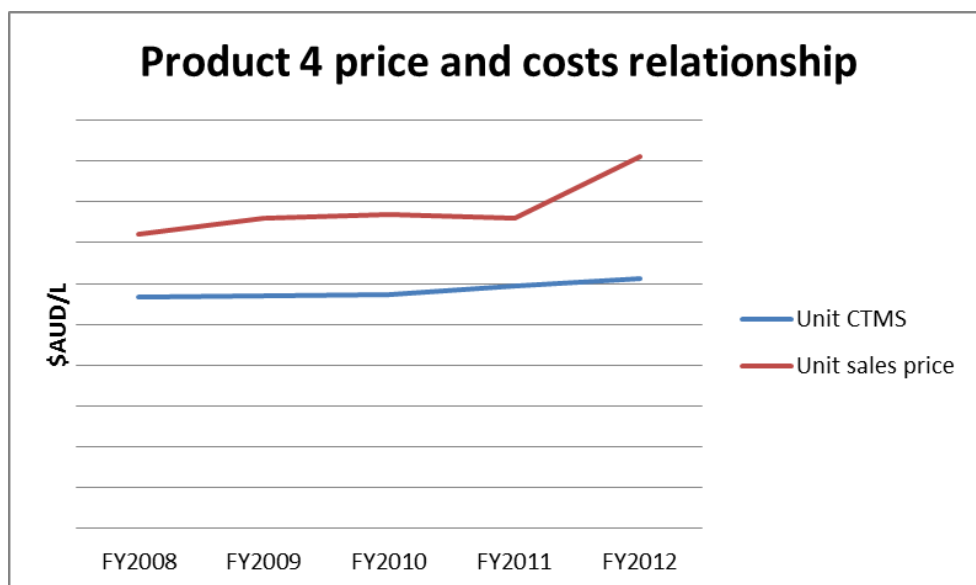
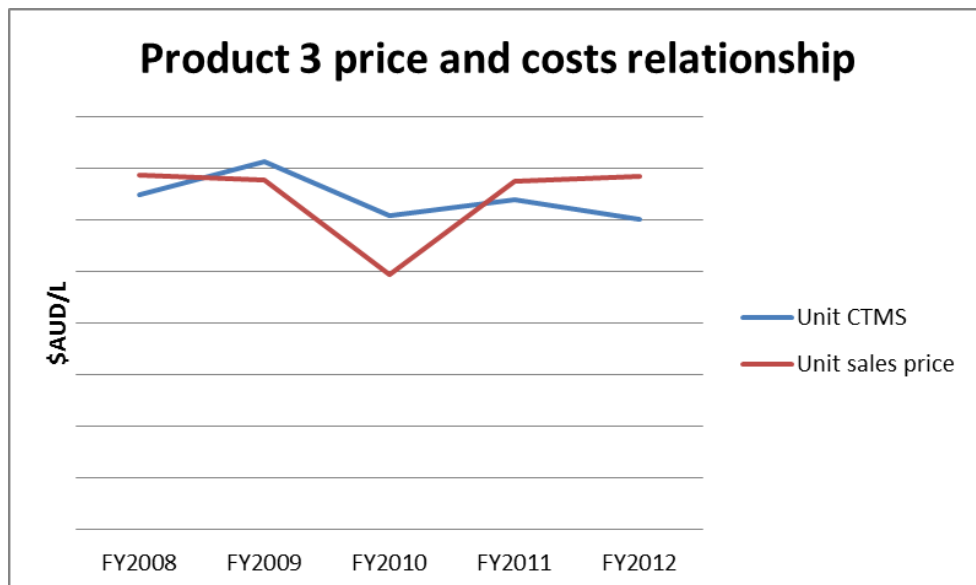
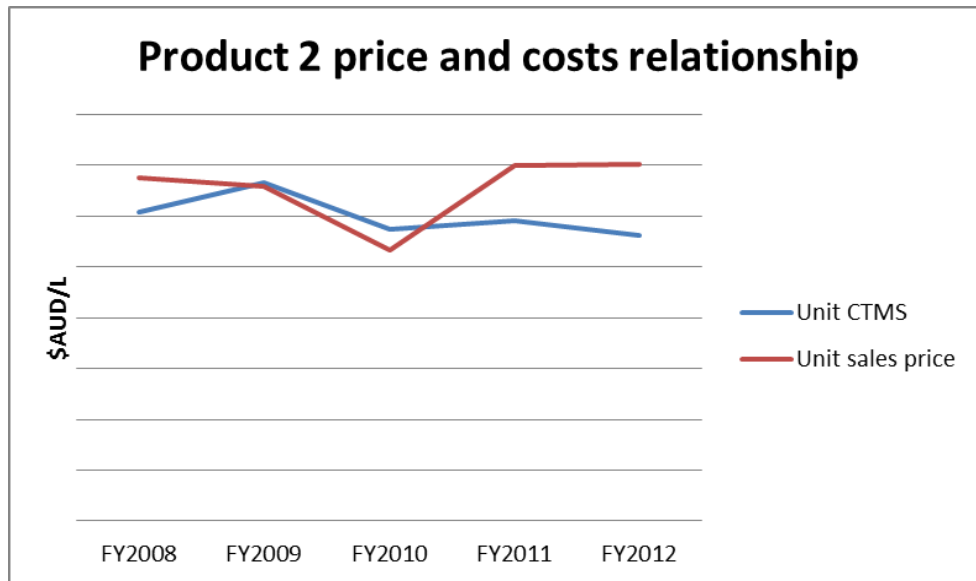
After examining these prices, Customs and Border Protection performed the same analysis deducting the current level of interim dumping duty from importers' selling prices. The same trend as that observed above was found in this analysis.

### 6.3.2 Price trends and relationship to costs

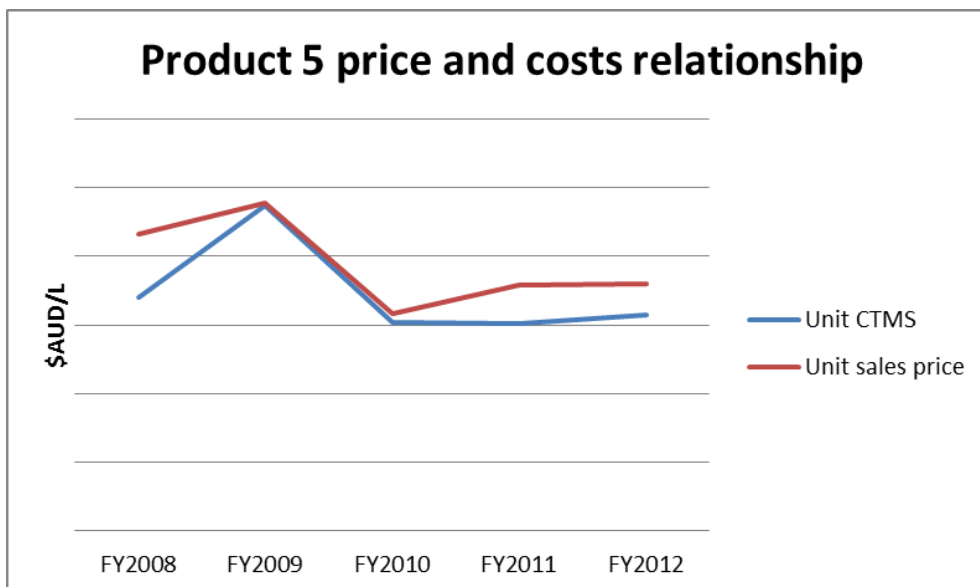
Movements in Nufarm's weighted average annual unit selling prices and CTMS for its five major 2,4-D products (representing 80% of its sales volume in FY 2012) are illustrated in the following charts.



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

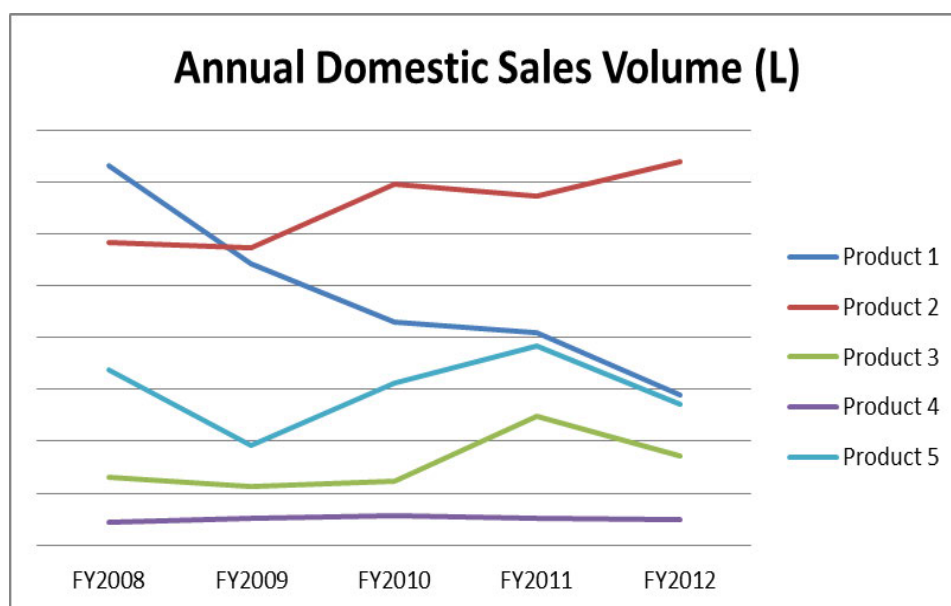
With the exception of Product 1 in FY 2012, it is evident that the unit selling prices exceeded unit CTMS in all products for FY 2011 and FY 2012.

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

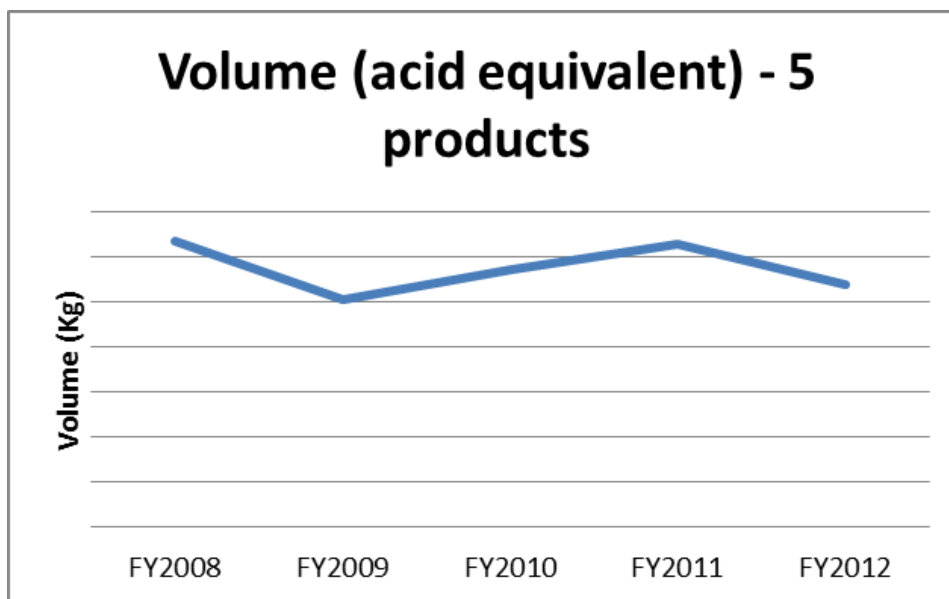
### 6.4 Volume effects

#### 6.4.1 Sales volumes

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



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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 to FY 2011, and another decline in FY 2012 to levels below those achieved in FY 2008.

From this analysis, Customs and Border Protection concludes that overall (for the five main formulations examined) Nufarm's total sales volumes of 2,4-D formulated products have decreased from FY 2008 to FY 2009, then increased in FY 2010 and FY 2011, then again decreasing in FY 2012 (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 5.4.

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;

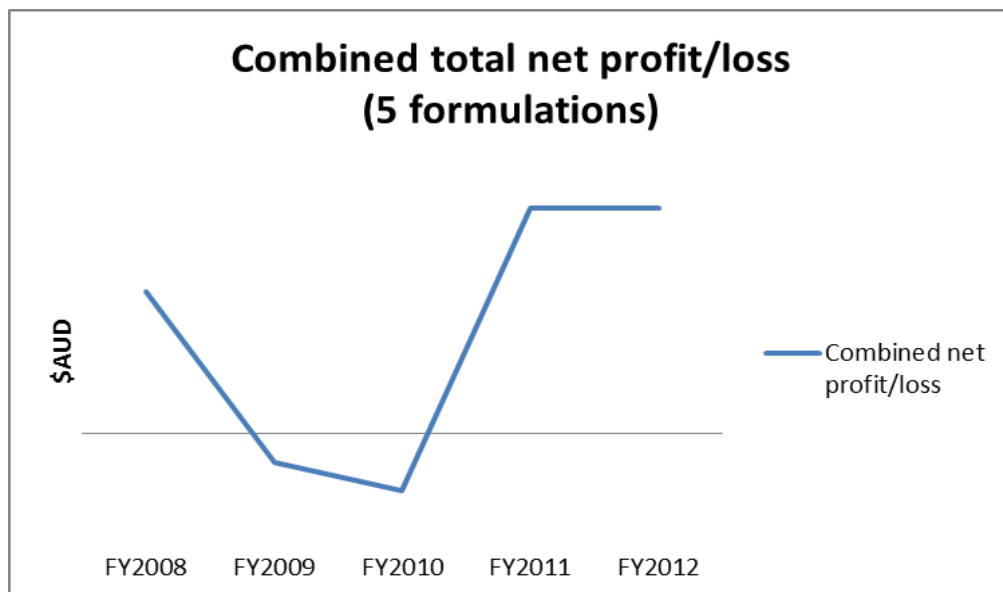
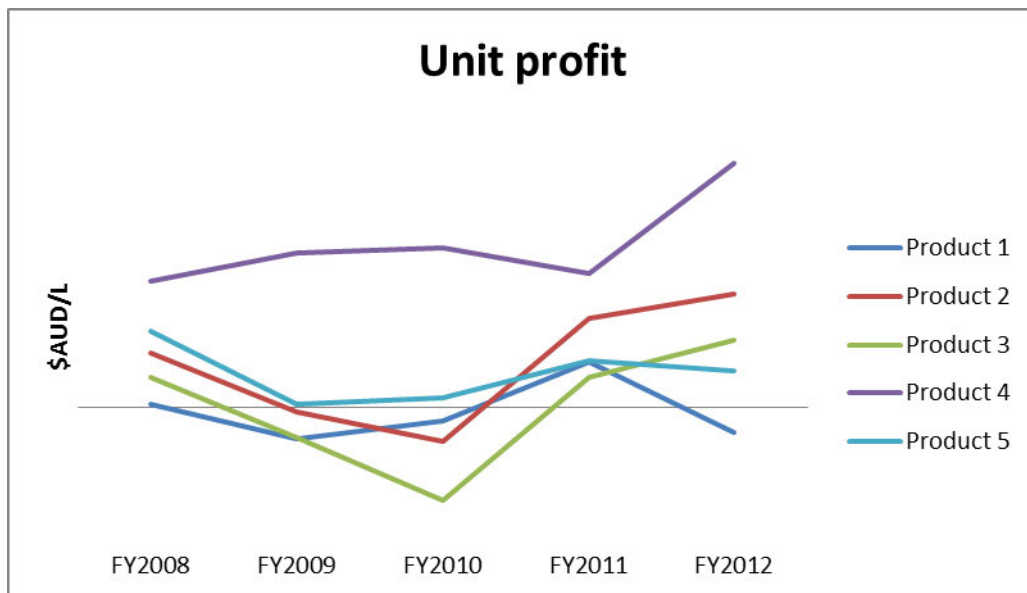
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- import volumes of 2,4-D 100% acid equivalent from China have increased over that period, as have imports from other origins;
- Nufarm's sales volume (100% acid equivalent) fell slightly over the period while Chinese imports increased in sales volume; 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:



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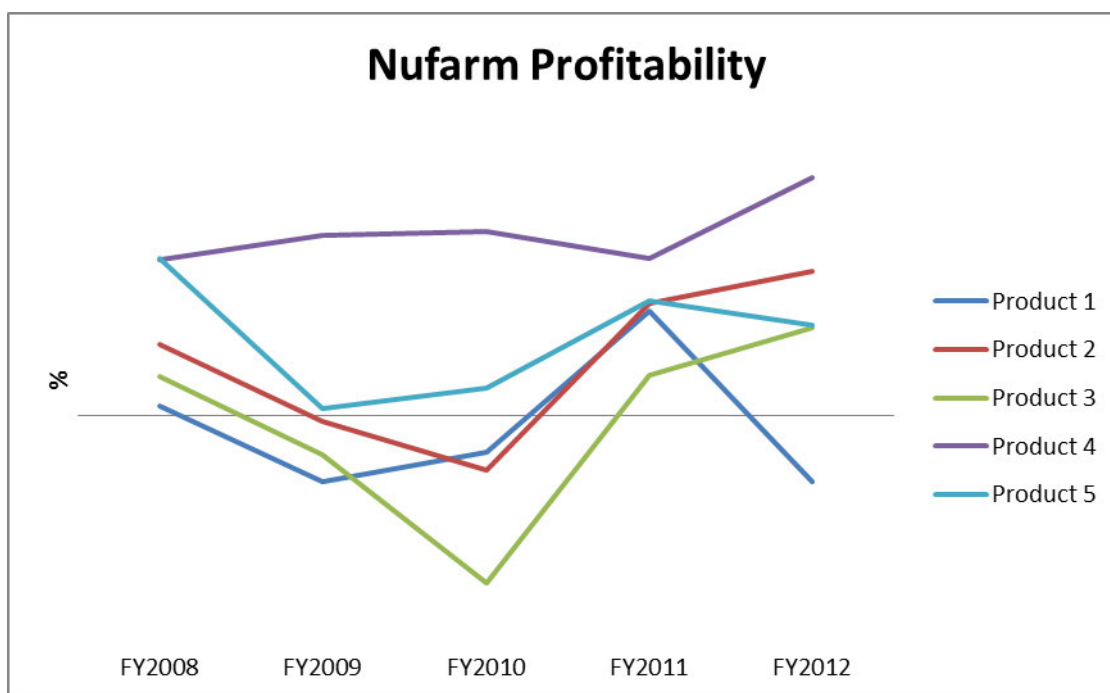
- profits fell from Nufarm's FY 2008 to FY 2009 (to an unprofitable level for some products);
- this fall continued for both Product 2 and Product 3 into FY 2010, though Product 1 and Product 5 both saw unit profit increases in FY 2010;
- all four products saw increased unit profits from FY 2010 to FY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

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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 5 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 WILL DUMPING AND MATERIAL INJURY CONTINUE OR RECUR**

### **7.1 Preliminary findings**

Customs and Border Protection is preliminarily 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;
- 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 suggests that, in the absence of anti-dumping measures, it is likely that dumping and material injury would continue or recur.

### **7.2 Will exports from China continue?**

#### **7.2.1 Applicant's claims**

In its application for a continuation of the measures, Nufarm submitted Australian Bureau of Statistics (ABS) data that showed an increase in 2,4-D imports from China since the measures were continued in 2008. Nufarm submitted that this indicates Chinese exporters have maintained distribution links into the Australian market and have increased their presence in the Australian market, following the continuation of anti-dumping measures in 2008.

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. Nufarm asserted that this suggests that 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.

In addition, Nufarm submitted its concerns (repeated from the previous continuation inquiry) that there are up to 300 producers of 2,4-D in China (Nufarm later 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) 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.

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

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*“Chinese exporters of 2,4-D will increase exports to Australia via maintained distribution links at prices that will likely undercut the export prices of exports from other countries.”<sup>2</sup>*

### 7.2.2 Importer claims

Customs and Border Protection received submissions from Accensi and AGRONOMIQ during its inquiry. Accensi was also visited to discuss the continuation inquiry and review and verify that company's response to the importer questionnaire (see 2.3 above).

These importers did not give any indication in their submissions/discussions with Customs and Border Protection, 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 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:
  - Australian Pesticides and Veterinary Medicines Authority (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.

However, importers 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).

As discussed above, Nufarm has clarified that its estimation of 300 Chinese manufacturers of 2,4-D is not restricted to acid manufacturers, but also includes formulators of 2,4-D product. Nufarm has explained that these formulators are able to supply formulated 2,4-D to the Australian market after a simple registration process with the APVMA, as long as the active 2,4-D ingredient used in these formulations is sourced from an APVMA-approved source.

Nufarm has also submitted to Customs and Border Protection that the requisite APVMA approval process is not overly arduous. Nufarm has not addressed the issue of ICAMA export approval.

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

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<sup>2</sup> Nufarm Application for Continuation of Dumping Duty Notice, Page 6.

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fallen, but that for some reason Indian offers of 2,4-D to the Australian market are less common.<sup>3</sup>

### 7.2.3 Customs and Border Protection's assessment

Customs and Border Protection's import data 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.

Additionally, Customs and Border Protection's analysis of the Australian market indicates 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.

The differing views of the ease of access to the Australian market for Chinese 2,4-D (approval/registration with the APVMA and ICAMA) are noted.

However, even with the process of registration and approval currently in place, and with current anti-dumping measures 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.

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, 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.

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<sup>3</sup> See the Accensi Importer Visit Report, available on the Public Record.

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Nufarm's submission that these imports will be at prices that will likely undercut the export prices of exports from other countries<sup>4</sup> is discussed below.

### **7.3 Will dumping continue or recur?**

#### **7.3.1 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 the review period, 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.

Nufarm considered this 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.

Following initiation of the continuation inquiry and review, Nufarm has submitted<sup>5</sup> that, as there has been no Chinese exporter cooperation in this case, Customs and Border Protection 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 has submitted this profit should be based on the profit achieved by Nufarm in its FY 2012.

Nufarm submits this method would adopt the 'best available verified information' to arrive at a normal value for Chinese 2,4-D.

#### **7.3.2 Importers' and exporters' claims**

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

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<sup>4</sup> Nufarm Application for Continuation of Dumping Duty Notice, Page 6.

<sup>5</sup> See Nufarm submission of 16 November 2012

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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, asserting that it has evidence of Chinese domestic acid prices of RMB 21,400 to 23,000 per metric tonne. 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.<sup>6</sup>

AGRONOMIQ has also queried<sup>7</sup> 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.

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<sup>8</sup> 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 inquiry/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).

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<sup>6</sup> Refer to AGRONOMIQ submission entitled *Submission to Australian Customs Seeking Discontinuation of the Anti-Dumping Duty on 2,4-D Imported from China*.

<sup>7</sup> Refer to above submission.

<sup>8</sup> 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.

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

### 7.3.3 Customs and Border Protection's assessment

#### Reliability of CCM Data figures

The concerns of various importers over the CCM Data figures submitted by Nufarm are noted.

In the Consideration Report for the continuation inquiry (CON189), Customs and Border Protection also raised concerns about the CCM Data figures submitted by Nufarm.

CON189 notes (at page 10):

*Nufarm's Chinese export data<sup>9</sup> for 2,4-D acid in respect to Australia does not correspond with the import information it obtained from the ABS, in respect of both volumes and values. This suggests that the Chinese export data may not be reliable or may relate to a broader group of goods than just 2,4-D acid. No information was provided to support the reliability of the source of the export data. Therefore, Customs has not placed any weight on the Chinese export data and associated claims.*

During the continuation and review, Nufarm has not addressed these concerns, or provided reason why it considers the data to be reliable, but has repeated its submissions that this data indicates that, in the absence of anti-dumping measures, export prices of 2,4-D from China to Australia are likely to decrease.

Customs and Border Protection again considers that this data may not be reliable. In particular, the CCM Data figures (particularly export volumes) do not correspond with other data that is considered more reliable (e.g. ABS data and Customs and Border Protection's own commercial database data).

Customs and Border Protection has again placed no weight on the CCM Data figures.

#### Use of exporter data

Customs and Border Protection has also placed limited weight on the invoice details submitted by a Chinese exporter on 9 November. Further discussion of this is within Section 8.5.

#### Assessment

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

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<sup>9</sup> The CCM Data figures.



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Customs and Border Protection calculated dumping margins by comparing:

- the Nufarm-submitted domestic Chinese 2,4-D acid selling price,<sup>10</sup> adjusted by Customs and Border Protection for reasonableness; to
- weighted average export prices for 2,4-D acid as recorded in the Customs and Border Protection import database.

This comparison arrived at a weighted average dumping margin for the review period of 2.6%.

Customs and Border Protection notes that 2,4-D acid exported to Australia from China in the review period was dumped, despite the existence of anti-dumping measures in that period. Customs and Border Protection considers that, in the absence of anti-dumping measures, dumping of 2,4-D from China is likely to continue.

### **7.4 Will material injury continue or recur?**

#### **7.4.1 Applicant's claims**

In its application, Nufarm 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 (relying on the CCM Data figures submitted that indicated that export prices to Australia were higher than to other markets).

Nufarm further submitted that this likely decline in export prices will require the Australian industry to reduce its selling prices to compete with the lower priced imports, and the Australian industry would therefore experience price suppression as selling prices are reduced, eroding the industry's profit and profitability.

During discussions at Nufarm's industry verification visit, Nufarm 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.

Nufarm 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.

#### **7.4.2 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,

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<sup>10</sup> Derived by Nufarm from the quoted IBE selling prices in China during the period.

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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<sup>11</sup> 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.<sup>12</sup>*

### 7.4.3 Customs and Border Protection's assessment

#### General discussion

Customs and Border Protection notes that it has assessed the CCM Data figures relied upon by Nufarm to be unreliable and has placed no weight on this data.

Consequently, Customs and Border Protection considers 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.

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

However, 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,<sup>13</sup> 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.

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

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<sup>11</sup> GOC action to tighten environmental controls and compliance by Chinese 2,4-D acid producers.

<sup>12</sup> Refer to AGRONOMIQ submission entitled *Submission to Australian Customs Seeking Discontinuation of the Anti-Dumping Duty on 2,4-D Imported from China*.

<sup>13</sup> 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).

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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 the pricing of imports over Australian product 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 discussed within this report. It is also confirmed by the comments made by AGRONOMIQ in its submission to the inquiry and review (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 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, it is considered likely that Nufarm will 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 continuation inquiry and review into 2,4-D, 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 from China. The details of this assessment are discussed in Chapter 8 of this report.

Customs and Border Protection has examined the relationship between export prices and the non-injurious price as part of its inquiry and review. 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 (July 2011 – 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 individual exportations from China during the review period were made at prices below the non-injurious price, and are therefore considered to have been injuriously dumped.

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 more detailed export data), it has only been able to confidently and accurately isolate sales of 2,4-D acid in its imports database (see Section 8.3 for further discussion). 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

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products would likely have been below the applicable non-injurious prices at times and therefore considered injurious).

### **Conclusion**

In light of the above, 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. This is likely to result in depressed and suppressed prices for Nufarm, and the consequent reduction in profits is likely to constitute material injury to the Australian industry.

## **8 REVIEW OF VARIABLE FACTORS – EXPORT PRICE, NORMAL VALUE, AND NIP**

### **8.1 Preliminary findings**

- The export price for the goods exported by all Chinese exporters should be determined having regard to all relevant information, <sup>14</sup> being 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<sup>15</sup> being the estimated price of 2,4-D acid in China, based on Nufarm's submitted IBE selling price less reasonable deductions and additions, and inclusive of appropriate adjustments 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 expenses associated with domestic sales, 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.

### **8.2 Introduction**

#### **8.2.1 Importers**

As discussed in Section 2.3, 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 continuation and review.

Responses of varying levels of completeness were received from:

- Accensi Pty Ltd (Accensi);
- Gulmohar Pty Ltd;
- Australian Independent Rural Retailers Pty Ltd (AIRR)/Agrichem Manufacturing Industries (AGRONOMIQ);

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<sup>14</sup> s. 269TAB(3) of the *Customs Act 1901* (the Act).

<sup>15</sup> s. 269TAC(6) of the Act.

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- Conquest Crop Protection Pty Ltd (Conquest); and
- Pacific Agriscience Pty Ltd.

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 provided data provided confidence in the veracity of the price, volume and item description data contained within Customs and Border Protection's commercial database.

### 8.2.2 Exporters

As discussed in Section 2.3, Customs and Border Protection also 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 continuation and review.

No responses to the exporter questionnaire were received.

However, as outlined in Section 7.3.2, one exporter provided listings of selected export and domestic invoices of 2,4-D acid, intermediate products and formulated 2,4-D during the review period. This included unit price information (in \$US/kg or \$US/L).

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 continuation inquiry and review is too onerous, and that a simplified version should be provided to, and accepted from, Chinese exporters.

However, Customs and Border Protection notes that these Chinese exporters were originally contacted and invited to cooperate with the continuation inquiry and 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 would extend well after the original due date for completed exporter questionnaire responses. This would likely delay the timely publication of the statement of essential facts on Customs and Border Protection's Public Record.

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 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 *Customs Act 1901* (the Act).

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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 continuation inquiry and review, and has assessed dumping for all exporters collectively using the same variable factors.

### 8.3 Approach – focus on acid variable factors

As with the 2007 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, and 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 these 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).

While imports of 2,4-D acid as a percentage of total imports has decreased since Nufarm's FY 2008 (and indeed from the time of the original investigation into 2,4-D), Customs and Border Protection notes that 2,4-D acid remains the largest form 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.

### 8.4 Export price

As no Chinese exporter cooperated with Customs and Border Protection's continuation inquiry or 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;<sup>16</sup>
- the price at which the goods were sold by the importer less prescribed deductions;<sup>17</sup> or

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<sup>16</sup> s. 269TAB(1)(a) of the Act

<sup>17</sup> s. 269TAB(1)(b) of the Act

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- the price determined having regard to all the circumstances of the exportation.<sup>18</sup>

Customs and Border Protection therefore established the export price for all Chinese exporters of 2,4-D having regard to all relevant information.<sup>19</sup>

Having gained some confidence in the price, volume and item description data contained in Customs and Border Protection's import database (see Section 8.2.1), Customs and Border Protection isolated all sales of 2,4-D acid made during the review period and calculated a single quarterly and period weighted average export price for 2,4-D acid exported to Australia during the review period by all Chinese exporters at free on board (FOB) terms.

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

### 8.5 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 trade<sup>20</sup> or as the cost to make and sell the goods plus profit or exports to third countries.<sup>21</sup>

Normal value must therefore be determined having regard to all relevant information.<sup>22</sup>

#### 8.5.1 Available data

##### 1) 'Derived' IBE-based acid price

As outlined in Section 7.1, Nufarm submitted evidence of Chinese selling prices of formulated IBE (72% strength) for the review period, obtained through its associations in the Chinese chemical industry. This price was in the range of RMB 25,000 – RMB 27,000/MT.<sup>23</sup>

This selling price range was obtained from an employee of a Nufarm entity in Shanghai involved in the sourcing of chemicals in China for the Nufarm group.

As part of this evidence, Nufarm included commentary that the most contemporary pricing for 2,4-D acid 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 since mid-2011.

Starting with this selling price range, Nufarm used its knowledge of formulation and selling costs, what it considered reasonable estimations for China, and figures for

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<sup>18</sup> s. 269TAB(1)(c) of the Act

<sup>19</sup> s. 269TAB(3) of the Act

<sup>20</sup> s.269TAC(1) of the Act

<sup>21</sup> s.269TAC(2) of the Act.

<sup>22</sup> s.269TAC(6) of the Act

<sup>23</sup> In parts of Nufarm's application, this price was listed as per kg in error.



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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 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).<sup>24</sup>

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

As noted in Section 7.1, Australian importers of 2,4-D and other parties have raised their concerns with this approach, many providing their own estimates of the selling price of 2,4-D acid in China, and one Chinese exporter providing a confidential listing of invoice details of its domestic selling prices of 2,4-D acid during the review period. These estimates/invoice details are discussed separately below.

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

As discussed at Section 7.1, Nufarm has more recently submitted<sup>25</sup> that Customs and Border Protection 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 (its own FY 2012 profit).

### 3) Duty assessment data

Customs and Border Protection also has in its possession export CTMS and profit data<sup>26</sup> 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 July 2011 – 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.

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

During the continuation inquiry and 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.

This includes:

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<sup>24</sup> It is noted that AGRONOMIQ was concerned in its *Submission to Australian Customs Seeking Discontinuation of the Anti-Dumping Duty on 2,4-D Imported from China* that these taxation differences were not accounted for in Nufarm's calculations. This concern is unfounded.

<sup>25</sup> See Nufarm submission of 16 November 2012.

<sup>26</sup> No domestic sales of like goods made in China by this exporter hence no domestic CTMS or sales data provided.

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- an estimate by Accensi<sup>27</sup> that selling prices of 2,4-D acid in China during the review period were between RMB 21,400 and 23,000/MT;
- 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, and the submission that AGRONOMIQ had polled all six Chinese producers with the relevant clearance to export to Australia and five of these informed that their domestic price is identical to their export price for 2,4-D acid;<sup>28</sup> 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.

### 8.5.2 Assessment of reasonableness and chosen normal value

Customs and Border Protection assessed all relevant information to determine a normal value for 2,4-D in China, to arrive at the most reasonable normal value possible.

#### Nufarm's preferred approach – constructed normal value

Customs and Border Protection considers that Nufarm's proposed normal value option of constructing normal value based on Nufarm's CTMS and profit (option 2 above) is not reasonable. 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.

Customs and Border Protection considers that a reasonable nexus must be demonstrated between Nufarm's proposed constructed normal value approach, and the selling prices of 2,4-D in China. Nufarm has not provided any reasonable explanation as to why this approach 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.

Nufarm further submitted 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,<sup>29</sup> Customs and Border Protection constructed normal values based on the Australian industry's CTMS with no amount for profit.<sup>30</sup>

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<sup>27</sup> Accensi submission, lodged 9 November 2012.

<sup>28</sup> AGRONOMIQ submission dated 21 November 2012.

<sup>29</sup> 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).

<sup>30</sup> 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).

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In the case of 2,4-D from China, Customs and Border Protection considers that other available information (discussed below) provides a more reasonable estimate of normal value without the need to resort to a constructed normal value based on Nufarm data.

### Duty assessment data

Customs and Border Protection considers that the data provided in the recent 2,4-D duty assessment, is not suitable for 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).

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 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 below for further discussion).

### Importer/exporter data

Customs and Border Protection considers that the data by importers/exporters to the continuation inquiry and review, is not suitable for 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).

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 below).

### IBE-based derived acid normal value

Customs and Border Protection considers that a derived normal value based on the quoted selling price of IBE (72% strength) in China to be the most reasonable available data in this case.

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Firstly, Customs and Border Protection assessed whether the approach of deriving acid prices from IBE selling prices is reasonable in itself.

The IBE-derived price is based on reported actual selling prices in China for a 2,4-D formulation and includes reasonable deductions and calculations to arrive at what is considered to be a reasonable 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).

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 – see Section 7.3.2). 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 submitted<sup>31</sup> 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 end up with the same or very similar acid prices, regardless of the beginning formulation used.

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.

In doing so, Customs and Border Protection has amended the derived IBE-based normal value as submitted by Nufarm in its application to more reasonably reflect the following amendments:

- 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 selling, general and administrative 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 calculations appeared to be reasonable.

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<sup>31</sup> Nufarm submission of 29 October 2012.

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This assessment arrived at a normal value for 2,4-D acid in China below that submitted by Nufarm, although with some overlap ( including the adjustment for VAT differences between export and domestic sales, considered warranted in this case).

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

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.

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.

Further, 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 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).

Noting the above comparisons, and the Nufarm evidence submitted in the application that the minimum price has been relatively stable since mid-2011, Customs and Border Protection considers:

- the IBE-derived 2,4-D acid selling price, as adjusted by Customs and Border Protection for reasonableness, to be a reasonable basis for determining normal value; and
- it is reasonable to use the minimum of the range of IBE-based derived prices as the normal value for 2,4-D acid in China during the investigation period.

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

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

### 8.6 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.

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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, or a recurrence of the injury, caused to the Australian industry by the dumping.<sup>32</sup>

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.

### 8.6.1 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;
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.

### 8.6.2 Australian industry's claims

Nufarm submitted to Customs and Border Protection<sup>33</sup> that:

- an unsuppressed selling price for 2,4-D acid<sup>34</sup> be calculated as the Australian industry's FY 2012 CTMS 2,4-D acid, plus an amount for profit based on Nufarm's FY 2012 domestic profit for the Estercide Xtra 680 product (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.

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

<sup>33</sup> Nufarm submission dated 16 November 2012.

<sup>34</sup> Submitted to be the same as if the acid were sold in Australia.

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Nufarm submitted that industry selling prices are not suitable as the basis for a USP, 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 above would be tantamount to selling prices for Estericide 680 formulations in any case.

### 8.6.3 Other interested party claims

Customs and Border Protection has not received any submissions 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 USP and suggested that its preferred method would be to calculate the USP with reference to the CTMS of the goods.<sup>35</sup>

### 8.6.4 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; plus
- a rate of selling, general and administrative costs based on the average of the 5 major formulations sold domestically and examined for the purposes of determining the economic condition of the industry in this report; plus
- a rate of profit achieved on domestic sales of Estericide Xtra 680 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 selling, general and administrative 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 selling, general and administrative expenses that is based on domestic sales.

Customs and Border Protection considered the option of deriving a domestic 2,4-D acid price based on the CTMS for the Estericide Xtra 680 product, 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).

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<sup>35</sup> Refer to Accensi Importer Visit Report, available on the Public Record.

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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).

Unsuppressed selling price and non-injurious price calculations form **Confidential Appendix 6**.



## **9 EFFECT OF THE REVIEW OF VARIABLE FACTORS**

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 propose to recommend 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.

## 10 RECOMMENDATIONS

### 10.1 Continuation

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 measure is intended to prevent.

Subject to any submissions made in response to this SEF and also any further inquiries that Customs and Border Protection may make, it is Customs and Border Protection's preliminary assessment that, on balance, the facts so established would cause the CEO to be satisfied that the expiration of the measures against 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 measure is intended to prevent.

Consequently, the CEO proposes to recommend to the Minister that he 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 below).

### 10.2 Review

The CEO proposes to recommend to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained.

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### 11 LIST OF APPENDICES

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