

17 December 2012

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

Public File

Dear Ms Stone

Re: Continuation and Review Inquiries – 2,4-Dichlorophenoxyacetic acid exported from the People's Republic of China – Nufarm Limited submission on Statement of Essential Facts No. 189A and 189B

Background

On 28 November 2012 Customs and Border Protection published Statement of Essential Facts ("SEF") No. 189A and 189B in respect of an inquiry into the continuation and review of anti-dumping measures on 2,4-Dichlorophenoxyacetic acid ("2,4-D") exported from the People's Republic of China ("China").

Customs and Border Protection's preliminary findings in respect of the continuation of the anti-dumping measures as published in SEF No. 189 found 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 upon this finding the CEO of Customs and Border Protection proposes to recommend that the Minister take steps to continue the measures for a further five-year period beyond the expiry date of 25 March 2013.

In respect of the review of variable factors inquiry, Customs and Border Protection has established that the export prices, normal values and non-injurious prices relevant to the applicable anti-dumping measures have changed since the measures were imposed in 2003.

Nufarm Limited ("Nufarm") welcomes the preliminary findings contained in SEF No. 189A and 189B:

- to recommend to the Minister the anti-dumping measures applicable to 2,4-D not be allowed to expire on 25 March 2013; and
- that there has been a change in each of the variable factors and that the variable factors upon which the anti-dumping measures are based, will be re-established.

Nufarm supports the continuation of the anti-dumping measures for a further five years at revised levels.

A. Continuation Inquiry

Nufarm notes that Customs and Border protection's inquiries have established that over the period 2008 to 2012, imports of 2,4-D from China *"have sharply increased, overtaking India as the major source of import supply"*. Further, Customs and Border Protection confirmed that the Australian market for 2,4-D "grew" over the period.

Whilst the Australian market for 2,4-D has expanded over the 2008 to 2012 period, Nufarm has lost market share to increasing volumes of Chinese 2,4-D exports.

Customs and Border Protection's analysis of the economic condition of the Australian 2,4-D industry (of which Nufarm accounts for approximately 90 per cent) confirmed that:

- Nufarm's 2,4-D profit and profitability improved over the period 2008 to 2012;
- there was a general decrease in the CTM&S over the assessment period, with price increases for some products;
- Nufarm's selling prices fluctuated over the period; and
- Nufarm's selling prices that were below its CTM&S in the 2008-2010 period were generally above the CTM&S in the 2011-2012 years.

Customs and Border Protection established that Nufarm had returned to profit in 2011 and 2012 in its sales of domestically produced 2,4-D. While it is evident that Nufarm's 2,4-D profit recovered in 2011 and 2012, Chinese export prices for 2,4-D in October 2012 declined significantly from earlier levels, including to levels below \$3.00 per kg for 2,4-D acid.

China's increased position on the Australian market – replacing India as the major source of import supply – combined with increased availability from Chinese suppliers, confirms China as a ongoing threat for injurious imports in the absence of anti-dumping measures. Customs and Border Protection's preliminary finding that the expiry of measures would likely result in a recurrence of the dumping and material injury that the measures were intended to prevent is well founded as:

- China is the largest import source for 2,4-D in 2011/12;
- imports of 2,4-D from China have increased market share from approximately 10 per cent in 2008 to about one-third of the market in 2011/12¹;
- China is a global supplier of 2,4-D with increased production levels following the last inquiry (refer to Agronomiq's submission re new production capacity);
- China exports the majority of 2,4-D product that is produced, and Chinese producers are therefore export focused²;
- importers of 2,4-D into Australia have maintained distribution links with Chinese exporters;
- exports of Chinese 2,4-D to Australia during 2011/12 were at dumped prices;
- importers have indicated that they have forward orders for supply of 2,4-D exported from China; and
- Chinese export prices for 2,4-D to Australia have declined following the investigation period, indicating a likelihood of reduced selling prices on the Australian market³.

Nufarm also notes the observation that the number of APVMA registrations of formulated 2,4-D in recent years is indicative of increased Chinese exporter supply to the Australian market. It is also worthy of note that shortly before the SEF a new active constituent approval for 2,4-D acid was granted to Good Harvest by the APVMA.⁴ That approval is clearly directed at an imminent entry of Good Harvest's new manufacturing capacity onto the Australian 2,4-D market based on the long term supply agreement with Agronomiq.⁵

¹ Refer SEF No. 189A and 189B, P. 29.

² Refer SEF No. 189A and 189B, P.29.

³ Refer to ABS Data provided with our submission of 23 November 2012

⁴ See Agronomiq submission, page 2, undated (placed on public file 17 December 2012

⁵ See Agronomiq submission, para 1.1, 14 November 2012

Nufarm concurs with Customs and Border Protection's assessment that Chinese exports of 2,4-D will continue. The recent decline in Chinese export prices suggests that the imported 2,4-D will be at prices that undercut Nufarm's 2,4-D selling prices.

At Section 7.3.3 of SEF No. 189A and 189B Customs and Border Protection refers to the reliability of CCM export data provided by Nufarm in its application. Nufarm considers the information to be reliable and does not have a reason to consider otherwise. Nufarm has also sourced ABS import data for 2,4-D imported into Australia and it is this ABS data that has confirmed a reduction in Chinese export prices to Australia (as evidenced in October 2012 import prices). In asserting the future threat of material injury from dumped 2,4-D exports from China, Nufarm has not relied solely on CCM export data information. Nufarm's concerns are also reflected in recently-published ABS data.

The ABS import data is considered to be reliable and is supportive of concerns that future Chinese 2,4-D export prices to Australia will be injurious to the Australian industry.

Nufarm notes Customs and Border Protection's comments at Section 7.4.3 where it is stated 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"*. Nufarm has obtained Chinese export data from [REDACTED] for all destinations⁶. The data confirms for 2012 that:

- Chinese export prices to a number of destinations (i.e. Argentina, Malaysia, Turkey, the Philippines, New Zealand) are at levels below Chinese export prices to Australia;
- In the period July to October 2012, export prices to Australia have declined (to \$3.00 per kg down from \$3.25-4.00/kg), and Chinese export prices to other destinations for similar export volumes were below the export prices to Australia; and
- China is active on global export markets with a demonstrated ability to supply in larger volumes than has been historically supplied to Australia.

The [REDACTED] information confirms that Chinese exporters have, during 2012, exported 2,4-D to destinations at prices below those to Australia.

Nufarm notes Customs and Border Protection's comments concerning its assessment of a non-injurious price for the Australian industry during the investigation period. Of concern to Nufarm is the finding that "individual exportations from China during the review period" were at prices below the Australian industry's non-injurious price. The recent reductions in Chinese export prices to Australia (post the review period) confirm that future export prices will be injurious to the Australian industry.

Nufarm submits that the available information on Chinese 2012 export prices to other destinations (as reflected in [REDACTED] information), the increase in market share of Chinese exports of 2,4-D to approximately one-third of the Australian market, that Chinese export prices to Australia were at dumped prices, and the recent reductions in Chinese 2,4-D export prices to Australia (as reflected in ABS data and the latest available [REDACTED]) confirms that in the absence of anti-dumping measures it is likely that the Australian industry would experience a recurrence of material injury that the measures were intended to prevent.

B. Review Inquiry

The Review inquiry examines each of the variable factors applicable to 2,4-D exported from China. The variable factors have not been the subject of a review since the measures were imposed in 2003.

Customs and Border Protection has indicated that it did not receive any cooperation from a Chinese exporter for the purposes of verifying normal value and export price information for the review period.

Customs and Border protection has, therefore, relied upon information supplied by Nufarm in its application for the continuation of the 2,4-D anti-dumping measures. In establishing that Chinese

⁶ Refer Confidential Attachment 1.

2,4-D exports to Australia were at dumped prices, Nufarm obtained information on 2,4-D formulated IBE (72 per cent strength) in China for the review period. From this information, Nufarm calculated a normal value for 2,4-D acid sold in China.

Customs and Border Protection has assessed this information and considered – in the absence of Chinese exporter cooperation – this to be the most reliable information available for assessing Chinese normal values for 2,4-D. The Nufarm information has been adjusted to include:

- exchange rate as published by the Reserve Bank of Australia;
- selling, general and administrative expenses ("S,G&A") based upon a Chinese exporter as submitted in a recent duty assessment investigation.

Customs and Border Protection has contrasted the "constructed" normal values with information it has obtained from a recent duty assessment inquiry and Nufarm's proposed-normal value based upon its verified CTM&S data.

Nufarm does not consider that unverified SG&A information provided by a Chinese exporter is suitable for inclusion in a "constructed" 2,4-D normal value for China. The acceptance of unverified data for use in normal values establishes a dangerous precedent in circumstances where data integrity is critical. Nufarm recommends that its verified S,G&A data is the most relevant data for inclusion in the Chinese 2,4-D normal value.

Subject to Nufarm's concerns with the S,G&A component of the 2,4-D normal values for China to be assessed under s.269TAC(6), Nufarm considers that Customs and Border Protection's proposed approach to determining normal values from the IBE-derived 2,4-D selling price to be acceptable.

Nufarm agrees with Customs and Border Protection's determination of an appropriate USP for the review period.

Customs and Border Protection's review of the variable factors for 2,4-D exported from China will result in increases in each of the normal value (for all exporters, including acceptance for Nufarm's verified S,G&A expenses), weighted average export price (for all exporters), and the non-injurious price.

Conclusion and Recommendations

Nufarm concurs with Customs and Border Protection's preliminary finding that in the absence of anti-dumping measures it is likely that Chinese exports of 2,4-D will be at dumped prices resulting in material injury to the Australian industry that the measures were intended to prevent.

Chinese exporters have increased market share in Australia since 2008 and have maintained distribution channels for supply into Australia. Indeed, as identified above, it is apparent that new Chinese manufacturing capacity has already established entry onto the Australian market. Import data for October 2012 confirms that Chinese 2,4-D prices have declined (i.e.

below A\$3.00 per kg) to be at levels well below Customs and Border Protection's determined non-injurious price.

Nufarm has also obtained Chinese export data (to all destinations) for 2012 that demonstrates Chinese export prices to other destinations (for countries such as Argentina, Malaysia, Turkey, the Philippines, and New Zealand) are at export prices below those to Australia. The [REDACTED] information also confirms that Chinese export prices to Australia have declined in October 2012.

As prices for 2,4-D in Australia are relatively transparent, it is likely that reduced Chinese export prices to Australia in the absence of measures will force reductions in the local industry's prices. This is consistent with the findings of the original investigation; the Australian crop protection market is highly competitive and price sensitive.

Nufarm therefore requests Customs and Border Protection to recommend to the Minister that the measures not be allowed to expire.



With regard to the review of variable factors inquiry, Nufarm does not consider that the Minister should include unverified data in a constructed normal value for Chinese 2,4-D products. The inclusion of unverified data establishes a precedent that undermines the integrity of data for normal value determination. Nufarm contends that the only available verified information is that supplied by Nufarm and its S,G&A costs should be included in the constructed 2,4-D normal values for China.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bernard Lee', written in a cursive style.

Bernard Lee
Manager Industry and Government Affairs