PUBLIC RECORD

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO 604

INQUIRY CONCERNING THE CONTINUATION OF ANTI-DUMPING MEASURES APPLYING TO 2,4-DICHLOROPHENOXYACETIC ACID (2,4-D) EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA

24 October 2022

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ABBREVIATIONS

2,4-D	2,4-Dichlorophenoxyacetic acid
ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ABF	Australian Border Force
ACDN	Australian Customs Dumping Notice
the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant	Nufarm Limited
APVMA	Australian Pesticides and Veterinary Medicines Authority
BOM	Bureau of Meteorology
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
EPR	electronic public record
the goods	2,4-D exported from China as defined in section 3.3
IDD	interim dumping duty
initiation notice	ADN No 2022/034
inquiry period	the period from 1 April 2021 to 31 March 2022
the Manual	Dumping and Subsidy Manual
the measures	the anti-dumping measures / dumping duty notice
MCC	model control code
the Minister	the Minister for Industry and Science
Nufarm	Nufarm Limited
OECD	Organisation for Economic Co-operation and Development
Rainbow	Shandong Weifang Rainbow Chemical Co., Ltd
REP 58	Trade Measures Report No 58
REP 189A	Anti-Dumping Report No 189A
REP 430	Anti-Dumping Report No 430
REQ	response to the exporter questionnaire
SEF	statement of essential facts
UK	United Kingdom

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry into whether continuation of the anti-dumping measures applying to 2,4-Dichlorophenoxyacetic acid (2,4-D) (the goods) exported to Australia from the People's Republic of China (China) is justified. This SEF sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base their recommendations to the Minister for Industry and Science (the Minister).

The anti-dumping measures are in the form of a dumping duty notice (the measures). The measures are due to expire on 24 March 2023.[1]

The Commissioner initiated this inquiry on 13 April 2022 after Nufarm Limited (Nufarm, the applicant) applied for a continuation of the measures.[2]

1.2 Preliminary findings

The Commissioner has formed the preliminary view that the expiration of the measures would be likely to lead to a recurrence of dumping and the material injury that the measures intend to prevent. The findings in this report are based on evidence currently available to the Anti-Dumping Commission (the commission).

Chapters 3 to 7 of this SEF detail the Commissioner's preliminary findings. The following sections provide a summary of these findings.

1.2.1 Australian industry producing like goods (chapters 3 and 4)

The Commissioner has made a preliminary finding that there is an Australian industry, consisting of Nufarm, the sole fully integrated manufacturer of 2,4-D in Australia producing like goods, and a small number of firms engaged in the production of formulated 2,4-D products (also like goods).

1.2.2 Australian market (chapter 5)

The Commissioner has made a preliminary finding that Australian industry and imports from multiple countries, including China, supply the Australian market for 2,4-D.

1.2.3 Economic condition of the Australian industry (chapter 6)

The commission has based its findings on the Australian industry's economic condition on Nufarm's data. The commission has not been able to assess the Australian industry as a whole as it did not receive cooperation from other Australian formulators of 2,4-D.

Nufarm is the only fully integrated manufacturer of 2,4-D in Australia. Nufarm accounted for a market share of approximately 67% of the whole Australian market for 2,4-D formulated products during the inquiry period, and an estimated 73% of Australian industry production. The commission therefore considers it is appropriate that Nufarm is representative of the Australian industry as a whole.

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[1] Under section 269TM of the *Customs Act 1901* (the Act), dumping duty notices expire 5 years after the date of publication, unless revoked earlier. If not continued the measures would no longer apply on and from 25 March 2023. All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

[2] Anti-Dumping Notice (ADN) No 2022/034. The current measures are listed in Table 2 in section 2.2.

The commission notes that the economic condition of the Australian industry, represented by Nufarm, had varied results over the period examined.[3] However, since 1 April 2018 the Commissioner has made a preliminary finding that Nufarm has:

- increased its sales volume
- remained profitable, despite fluctuations year on year, and
- increased its market share overall.

1.2.4 Recurrence of exports from China (section 7.5)

The commission considers that if the measures were to expire, exports from China would likely recur. There were no exports during the inquiry period, although there were some exports leading up to this period.

In making this finding, the commission had regard to:

- import volumes of the goods from China from prior to the last continuation of measures in 2018 (ie volumes from China were higher before measures were amended from a floor price to an *ad valorem* method)
- the production capacity and export focus of Chinese exporters, and
- the maintenance of distribution channels or links to the Australian market.

1.2.5 Recurrence of dumping (section 7.6)

The commission considers that if the measures expire, this would likely lead to a recurrence of dumping of the goods exported to Australia. In making this finding, the commission had regard to past dumping findings and that there is no evidence of any change in pricing strategies, distribution arrangements or general market trends.

1.2.6 Recurrence of material injury (section 7.7)

The commission considers that if the measures expire, this would likely lead to a recurrence of the material injury that the measures are intended to prevent. In making this finding, the commission had regard to the pricing behaviour of Chinese exporters since imposing measures and the likely impact on Nufarm's market share, prices and profits.

1.2.7 Review of variable factors (section 8.3)

Should the Minister decide to secure the continuation of the measures, the Commissioner proposes to recommend that the dumping duty notice remain unaltered.

There is no requirement for the commission to ascertain variable factors for exporters in a continuation inquiry. In addition, the commission has limited information and data in this case to determine how the variable factors relevant to the determination of duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

1.3 Proposed recommendations

Based on the preliminary findings contained in this report, the Commissioner proposes to recommend that the Minister take steps to secure the continuation of the measures.

The Commissioner further proposes to recommend that the dumping duty notice remain unaltered.[4]

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[3] Nufarm provided sales volume and revenue data from 1 April 2016. Nufarm provided costs and other economic condition indicator data from 1 April 2018. As a result, the commission assessed sales volume and market share from 1 April 2016, and assessed all other economic indicators from 1 April 2018.

[4] Section 269ZHF(1)(a)(i).

The above recommendations may change when the Commissioner prepares the final report and recommendations to the Minister.

1.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base their recommendations to the Minister. This SEF represents an important stage in the inquiry. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner invites interested parties to make submissions in response to this SEF within 20 days of the date of publication of this SEF. The Commissioner will consider these submissions in preparing the final report to the Minister.

Interested parties are to lodge written submission in response to this SEF no later than the close of business on **14 November 2022**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The email addresses for receipt of submissions is investigations2@adcommission.gov.au. Alternatively, interested parties may post submissions to:

Director, Investigations Unit 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the electronic public record (EPR) maintained for the inquiry. Information in relation to making submissions is available on the commission's website at www.adcommission.gov.au.

1.5 Report to the Minister

The Commissioner must provide a report and recommendations to the Minister within 155 days after the publication of a notice under section 269ZHD(4) or such longer period as is allowed.[5]

The Commissioner will consider submissions made in relation to this SEF in making their final report to the Minister.

The Commissioner must report to the Minister by no later than **9 December 2022**.

[5] Section 269ZHF(1). On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner; see ADN No 2017/010.

2 BACKGROUND

2.1 Legislative framework

Division 6A of Part XVB sets out, among other things, the procedures the Commissioner is required to follow when considering an application for the continuation of measures.

Section 269ZHE(1) requires the Commissioner to publish a SEF on which they propose to base their recommendations to the Minister concerning the continuation of the measures. Section 269ZHE(2) specifies that, in formulating the SEF, the Commissioner:

- must have regard to the application and any submissions received within 37 days of the initiation of the inquiry, and
- may have regard to any other matters that the Commissioner considers relevant.

Pursuant to section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and/or subsidisation and the material injury that the measure is intended to prevent.

Pursuant to section 269ZHF(1)(a), in giving the Minister a report, the Commissioner must recommend that the relevant notice:

- remain unaltered, or
- cease to apply to a particular exporter or to a particular kind of goods, or
- have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained, or
- expire on the specified expiry day.

2.2 Initiation and current measures

Anti-Dumping Notice (ADN) No 2022/034 (initiation notice) sets out the Commissioner's reasons for initiating the current continuation inquiry.[6]

The measures were initially imposed on 24 March 2003 by the then Minister for Justice and Customs following consideration of Trade Measures Report No 58 (REP 58).

The measures currently apply to all exporters of 2,4-D from China. The measures are due to expire on 24 March 2023.[7]

A background to key cases in relation to the goods is summarised in Table 1 below.

[6] EPR 604, document number 2.

[7] From 25 March 2023, if not continued, the measures would no longer apply.

Case type and number	Notice / report	Date	Country of export	Findings
Investigation No 58	Australian Customs Dumping Notice (ACDN) 2003/11	24 March 2003	China, India and the United Kingdom (UK)	Measures imposed on China and the UK. Investigation terminated in relation to India.
Continuation Inquiry No 126	ACDN 2008/04	17 January 2008	China	Measures continued for China. No application was made for continuation in relation to the UK, so the measures for the UK expired in March 2008.
Continuation Inquiry No 189A	ACDN 2013/13	31 January 2013	China	Measures continued for China.
Review of Measures No 189B	ACDN 2013/12	31 January 2013	China	Variable factors altered for all exporters from China.
Continuation Inquiry No 430	ADN 2018/21	5 March 2018	China	Measures continued and variable factors altered for all exporters from China.
Reinvestigation Report No 430	ADRP Report No 79	9 October 2018	China	Variable factors altered for exports by Rainbow.

Table 1: Background to key cases for Continuation 604[8]

Table 2 below sets out the current measures applying to exports of the goods to Australia. All exporters from China are subject to the *ad valorem* duty method. The *ad valorem* duty method applies as a proportion of the actual export price of the goods. Importers are liable to pay interim dumping duty (IDD) calculated by multiplying the dumping export price by the applicable *ad valorem* duty rate.

Country	Exporter	Effective rate of duty	Duty Method
China	Rainbow	22.3%	Ad valorem
China	All other exporters	35.3%	Ad valorem

Table 2: Current measures applying to exports of the goods

Further details on the measures is available on the Dumping Commodity Register on the commission's website.

2.3 Conduct of inquiry

The initiation notice advised that the SEF was initially due to be published by 1 August 2022 and the final report was due to be provided to the Minister by 15 September 2022. The commission obtained an extension of time to these due dates.[9] The SEF is now due by 25 October 2022 and the final report is due by 9 December 2022.

2.3.1 Inquiry period

As part of this inquiry, the Commissioner established an inquiry period of 1 April 2021 to 31 March 2022 (the inquiry period) for the purposes of making recommendations concerning the dumping duty notice.

[8] ADNs, reports, and documents for these cases are available on the commission's website.

[9] ADN No. 2022/076. EPR 604, document number 6.

The commission has also examined data from the Australian Border Force (ABF) import database for the period covering 1 April 2016 to 31 March 2022 and financial data from the Australian industry from 1 April 2016 to 31 March 2022 for the purpose of analysing trends in the market for the goods and assessing potential injury factors.

2.3.2 Australian industry

The Commissioner is satisfied that the Australian industry applicant for the continuation of the measures, Nufarm, is the person specified under section 269ZHB(1)(b)(ii), being the person representing a portion of the Australian industry producing like goods to the goods covered by the measures.

The commission conducted a verification visit to Nufarm's premises in August 2022. The report made in relation to the verification is available on the EPR.[10]

2.3.3 Importers

The commission identified several importers in the ABF import database that imported 2,4-D from China in the past. The commission forwarded importer questionnaires to 7 importers. The commission also placed a copy of the importer questionnaire on the commission's website for completion by other importers who the commission did not contact directly. The commission did not receive any questionnaire responses from importers.

2.3.4 Exporters

The commission forwarded questionnaires to major exporters that were involved or contacted during the previous continuation inquiry. The commission also placed a copy of the exporter questionnaire on the commission's website for completion by other exporters who the commission did not contact directly. The commission received a completed response to the exporter questionnaire (REQ) from one exporter, Rainbow.

The commission verified the data provided by Rainbow. A copy of the commission's verification report for Rainbow is available on the EPR.[11] The commission is satisfied that Rainbow is a producer of like goods and is satisfied that the information provided by Rainbow is accurate and reliable.

The commission found Rainbow did not export the goods during the inquiry period. Rainbow has previously exported the goods to Australia from China prior to the inquiry period up until early 2021.

Rainbow listed a small number of export sales to Australia in its REQ. However, as outlined in the commission's verification report, Rainbow made these sales outside the inquiry period.[12] While Rainbow's Australian customers ordered the goods during the inquiry period, Rainbow invoiced and exported the goods after the inquiry period. The commission therefore considers that the exporter sold the goods after the inquiry period.

Rainbow submitted a response to the exporter verification report on 13 September 2022.[13] Rainbow disputed the commission's view that the goods exported after the inquiry period were also sold after the inquiry period. Rainbow argued the 'date of sale' of those exports is the order date, which was inside the inquiry period. The submission outlined the following points:

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[10] EPR 604, document number 8.

[11] Ibid.

[12] Ibid.

[13] EPR 604, document number 9.

- There is no legal hierarchy in selecting the date of sale from the order date and invoice date, and that the commission should have decided that the order date be used as the date of sale.
- The facts on record have already substantiated Rainbow's claim that the order date best reflects the establishment of the terms of sale. The commission should consider the order date as the date of sale, as it best reflects the first date the material terms were established, as explicitly demonstrated and fully supported by the verified evidence.
- Rainbow noted there is a precedent that the Anti-Dumping Review Panel (ADRP) prefers the date 'confirming and establishing the material terms of the sale between the parties'.
- The date of sale should be whichever date allows the best comparison of prices.
- Rainbow submits that the commission should not disregard its exports after the inquiry period.

In a continuation inquiry, the commission assesses matters such as whether dumping has occurred (as distinct from whether dumping will continue or recur) based on exportations to Australia during the inquiry period. For these matters, the inquiry period is akin to an investigation period.

In practice, the commission sets an inquiry period for a continuation inquiry in a similar way to an investigation period for an original investigation. For an investigation, section 269TC(4)(bf) provides that public notice of the Commissioner's decision to not reject the application must indicate that the Commissioner will make a report to the Minister 'on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period' [emphasis added].

Therefore, regardless of the date of sale, if exporters physically exported the goods outside of the inquiry period, they are not exports that the Commissioner has committed to examine for past dumping and variable factors as per the initiation notice. In the case of the exports claimed by Rainbow to be within the inquiry period, evidence provided to the commission showed that these occurred after the inquiry period. ABF data also supported the commission's finding, listing these sales as being exports occurring after the inquiry period. The valuation, original lodgement and first arrival dates were all after the inquiry period. This is in addition to the invoice and bill of lading dates on source documents provided by the exporter falling after the inquiry period.

Regarding the date of sale, the Dumping and Subsidy Manual (the Manual), states that the commission will normally use the date of invoice as it best reflects the material terms of sale. For the goods exported, the date of invoice also usually approximates the shipment date. Further, where a party claims that a date other than the date of invoice better reflects the date of sale, the commission will examine the evidence provided.[14]

Rainbow did not provide sufficient evidence during the verification to support using order date as the date of sale. During the verification, it was identified that sales revenue is recognised in Rainbow's accounting system after the exportation date. The commission considers the invoice date as the date of sale as it best reflects the material terms of sale and is the closest day to the exportation date as identified on the bill of lading.

In addition, the initiation notice states that for the purposes of this inquiry, the Commissioner will examine the period from 1 April 2021 to 31 March 2022 to determine whether dumping has occurred and whether the variable factors relevant to the determination of duty have changed.

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[14] Dumping and Subsidy Manual (December 2021), p 51.

2.3.5 Governments

To advise the inquiry had been initiated, the commission notified the Government of China (GOC) at the outset of the inquiry on 13 April 2022. The GOC has not made a submission to the inquiry.

2.3.6 Submissions received from interested parties

The commission received the following submissions prior to publishing this SEF. The non-confidential version of the submission is available on EPR 604.

Public record document number	Interested party	Date published on EPR
9	Exporter - Rainbow	13 September 2022

Table 3: Submissions received

The Commissioner, in preparing their findings outlined in this SEF, has considered the submission noted in Table 3.

2.3.7 Public record

The public record contains non-confidential submissions received from interested parties, non-confidential versions of the commission's verification reports and other publicly available documents. Interested parties should read this SEF in conjunction with documents on the public record.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commissioner considers that the Nufarm's locally manufactured 2,4-D is like to the goods the subject of the measures.

3.2 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping or subsidisation and the material injury that the measure is intended to prevent, the Commissioner assesses whether the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

> *…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations including:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

3.3 The goods

2,4-D is a selective herbicide exported to Australia from China, mainly in the forms of 2,4-D acid and 2,4-D ester.

The 2,4-D covered by the anti-dumping measures includes:

- *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 and*
    - *iso-propylamine*
- *2,4-D fully formulated products, and*
- *all other forms of 2,4-D.*

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:[15]

Tariff code	Statistical code	Unit	Description
2918.99.00	43	Kg	2,4-Dichlorophenoxyacetic acid (free acid) (2,4-D) (CAS 94-75-7)
2918.99.00	44	Kg	Salts and esters of 2,4-dichlorophenoxyacetic acid
2918.99.00	48	Kg	Other
3808.93.00	61	Kg	Goods with a basis of 2,4-dichlorophenoxyacetic acid, its salts or esters
3808.93.00	71	Kg	Goods wholly of, or with basis of 2,4-dichlorophenoxyacetic acid, its salts or esters
3808.93.00	79	Kg	Other[16]

Table 4: Tariff classification of the goods[17]

3.5 Model control code

The commission undertakes model matching using a model control code (MCC) structure to identify key characteristics used to compare the goods exported to Australia and the like goods sold domestically in the country of export.[18] The MCC structure in Table 5 outlines the commission's proposed MCC structure for this inquiry.

Category	Sub-category		Sales Data	Cost data
Form[19]	T	Technical	Mandatory	Mandatory
	F	Formulation		
Product Type	A	Acid	Mandatory	Mandatory
	E	Esters		
	S	Amines/Salts		
	M	Mixtures[20]		
Strength	###[21]	% (w/v) 2,4-D acid	Mandatory	Mandatory

[15] These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the measures.

[16] This tariff classification is to capture products that contain 2,4-D and another herbicidal active ingredient.

[17] Tariff classification 2918.99.00.48 was not included in Nufarm's application as it now only applies to other carboxylic acids and not 2,4-D.

[18] Guidance on the commission's approach to model matching is in the Anti-Dumping Commission, *Dumping and Subsidy Manual (December 2021)* (the Manual).

[19] 'Technical' are the active ingredient forms of 2,4-D that have herbicidal activity, but is not fit for use by end users. It includes 2,4-D acid and intermediaries (salts and esters) which are inputs for formulated products. Note that amine/salt forms are rare as a saleable unit, as they are typically formed as part of the formulation process. 'Formulation' are the products that end users apply as herbicides, which contain an active ingredient form of 2,4-D.

[20] 'Mixture' formulation category are for herbicide formulations which contain a second or third active ingredient along with the 2,4-D.

[21] Use a separate identifier for the percentage strength of 2,4-D (% w/v) e.g. 62.5%, 68%, 70%, 72%, 80%. The commission may group certain categories of '% strength' in formulating a final MCC.

Table 5: MCC Structure

3.6 Like goods

The commission considers that the like goods manufactured by Nufarm are identical to, or have characteristics closely resembling, the goods subject to the measures.

Due to the absence of exports of the goods to Australia from China during the inquiry period, the commission has relied on the application, the verification visit to Nufarm, and the most recent continuation outlined in Anti-Dumping Report No 430 (REP 430) in its assessment.

3.6.1 Physical likeness

The commission considers the 2,4-D produced by Nufarm are physically like the goods. Nufarm produces 2,4-D acid and esters in their technical or intermediate form, which are sold to other Australian formulators or on the export market. Nufarm also produces 2,4-D formulations, which are made with a basis of technical 2,4-D and produced in either water (amine/salt) or solvent (ester) based formulations with varying degrees of volume and concentrations of 2,4-D as the active ingredient, and in a variety of preparations. During the verification process the commission found that Nufarm's 2,4-D formulations and technical 2,4-D use similar raw material bases as the goods, and that the goods that are 2,4-D formulations also are either an amine or ester base.

3.6.2 Commercial likeness

The commission found Nufarm's 2,4-D products to be commercially like the goods as they compete and sell in the same market sector. Nufarm sells technical 2,4-D in the form of acid and esters to other Australian formulators, and also sells formulated 2,4-D products to end users through an Australian reseller network. Nufarm sells its formulations in all major markets for 2,4-D throughout Australia. For both 2,4-D formulation and technical 2,4-D, Nufarm competes directly with imported 2,4-D products.

3.6.3 Functional likeness

The commission found that Nufarm's 2,4-D products function in the same manner as those imported into Australia. Nufarm's formulated products are made of a base of either water (amine) or solvent (ester), and diluted with water before spraying it onto acreage, similar to the goods. All producers of 2,4-D formulations specifically design them to combat broad leaf weeds. Additionally, Nufarm's technical 2,4-D products and the goods are both sold to Australian formulators for the purpose of becoming 2,4-D formulations.

3.6.4 Production likeness

The commission found the manufacturing process used at Nufarm's manufacturing facilities to be identical or closely resemble the processes used to produce the goods. The commission, when conducting its verification, observed various plant and equipment involved in the production of 2,4-D products.

3.6.5 MCC's sold and produced by Nufarm

Nufarm sold and produced goods with the following MCCs during the investigation period:

Technical	Formulated
T-A-98%	F-E-68%
T-E-65.1%	F-S-70%
T-E-81.2%	F-S-62.5%
T-E-88.2%	F-E-80%
	F-S-47.5%
	F-M-30%
	F-S-50%[22]
	F-S-80%

Table 6: List of MCCs that Nufarm sold during investigation period

Consistent with the previous continuation inquiry, Nufarm sold a main range of branded products of formulated 2,4-D. Table 7 below displays the relationship between Nufarm's brand names and MCC categories.

Nufarm product	MCC
Amicide Advance 700	F-S-70%
Amine 625	F-S-62.5%
Estercide Xtra 680	F-E-68%
Estercide 800	F-E-80%
Cobber 475	F-S-47.5%
Trooper 75-D	F-M-30%

Table 7: MCC mapped to Nufarm product name

F-S-50% and F-S-80% were only sold or supplied in small volumes, while Nufarm sold its technical based products mainly for export or to Australian formulators.

3.6.6 Preliminary assessment – Like goods

Based on the above findings the commission considers that the 2,4-D products manufactured by Nufarm have characteristics closely resembling the goods subject to the measures, as the:

- primary physical characteristics of the goods and locally produced goods are similar
- goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market
- goods and locally produced goods are functionally alike as they have a similar range of end uses, and
- manufacturing process for the goods and locally produced goods is similar.

In light of the above, the Commissioner is satisfied that Nufarm produces like goods to the goods subject to the measures (as defined in section 269T(1)).

[22] Nufarm did not sell this product during this period but supplied it to third parties under a research permit issued by the Australian Pesticide and Veterinary Medicines Authority.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry producing like goods. The largest Australian producer of like goods is Nufarm. There are also a small number of firms engaged in the production of formulated 2,4-D products (also like goods) using locally produced and imported intermediate forms of 2,4-D, e.g. technical.

4.2 Legislative framework

The Commissioner must be satisfied that like goods are produced in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.[23]

4.3 Australian industry

Section 269T(4) provides that the Australian industry consists of the producers of like goods in Australia.

In the original investigation (initiated in 2002), and 3 subsequent continuation inquiries (initiated in 2007, 2012 and 2017) the applicant, Nufarm, was recognised as the only fully integrated manufacturer of 2,4-D in Australia, in that it produces 2,4-D acid and 2,4-D esters for use in the manufacture of formulated products. Based on the information available in this inquiry, the Commission considers that Nufarm remains the only fully integrated of manufacturer of 2,4-D in Australia.

There are a small number of firms engaged in the production of 2,4-D esters (from imported 2,4-D acid) and formulated 2,4-D products (also like goods) using technical (intermediate) forms of 2,4-D sourced from both Nufarm and exporters. The commission estimates that there are approximately 10 formulators of 2,4-D in Australia.

2,4-D herbicides are used by Australian broadacre farmers as a selective herbicide, which kills many broadleaf weeds, but not grasses. Approximately 90% of the annual volume in a typical year is applied in the 'fallow' phase (which is the period between harvesting of the main crop, and the sowing of the next) of broadacre[24] crops, such as grains, oilseeds and other crops (especially wheat, barley, canola, oats, chickpeas, lupins, lentils and sorghum).

The biggest consumers of 2,4-D are farmers who purchase from local farm merchandise retailers.

In this inquiry, the commission's analysis of the ABF import data indicates that a relatively large proportion of 2,4-D imported to Australia is intermediate material. Prior to the last continuation and publication of REP 430, China was the largest source of 2,4-D exports to Australia. The commission identified that at least 5 Australian companies imported intermediate material from China since 2017.

Further analysis of the entities who are importing intermediate material, together with the data and evidence provided by the applicant, strongly suggests Australian companies continue to import intermediate material in order to produce 2,4-D formulations. As a result, the Australian industry producing 2,4-D is comprised of one large-scale fully

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[23] Section 269T(3).

[24] Organisation of Economic Co-operation and Development (OECD) – Glossary of statistical terms

integrated manufacture, i.e. Nufarm, and several smaller scale enterprises who focus solely on the formulation process.

The commission therefore considers that Nufarm is still the predominant member of the Australian 2,4-D formulated product industry, as well as the sole fully integrated 2,4-D producer in Australia.

4.4 Production process

Sections 269T(2) and (3) specify that for goods to be 'produced in Australia' they must:

- be wholly or partly manufactured in Australia, and
- where the goods have been partly manufactured in Australia, then at least one substantial process in the manufacture of the goods must be carried out in Australia.

During the verification visit of the applicant, the commission observed the production process of like goods. Finished goods containing 2,4-D as an active ingredient is the result of a formulation process, which starts with 2,4-D acid. Nufarm produces 2,4-D acid, which it either sells or uses in the production of its 2,4-D formulation products.

4.4.1 Production of 2,4-D acid

Nufarm purchases imported phenol from a third-party local storage facility, which is then reacted with chlorine (which is produced on site through an electrolysis process requiring energy that passes through a brine solution prepared with locally mined sodium chloride) to form 2,4-dichlorophenol.

A by-product of this chlorine production is sodium hydroxide which is reacted with 2,4-dichlorophenol and imported monochloroacetic acid to form a 2,4-D sodium salt which is then converted to 2,4-D acid via acidification with hydrochloric acid (which is also a by-product of the electrolysis process). Nufarm performs this process at its Laverton North facility in Melbourne.

Nufarm then supplies the 2,4-D acid in acid form, or converts it to 2,4-D salts or esters (e.g. dimethylamine or 2 ethyl hexyl ester).

The purpose of this process is to convert 2,4-D acid into a soluble form. As stated previously, Nufarm is the only member of the Australian industry who possesses the capability to produce 2,4-D acid, also known as intermediate 2,4-D.

Nufarm use the majority of the 2,4-D acid it produces in its own formulated 2,4-D products. Nufarm also sells some technical 2,4-D in the form of acid and esters to other Australian formulators, or on the export market.

4.4.2 Formulation process

Producers combine the converted 2,4-D salts or esters with other components (incipients) and water into a fully formulated product, which is then ready for application as a herbicide. Based on the observations made during the verification visit to Nufarm undertaken for this inquiry, the commission observed that the formulation manufacturing process compared to the acid process is less complex and requires significantly lower levels of plant and equipment usage.

In Australia, Nufarm undertakes the production of formulated 2,4-D products, as well as numerous other Australian firms who use local and imported intermediate 2,4-D material sourced from China and other countries.

4.5 Summary

The commission is satisfied that there is an Australian industry that continues to produce like goods. Namely, that the manufacture of 2,4-D, both in formulated and intermediate form, is wholly or at least substantially carried out in Australia.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found that the Australian market for 2,4-D is supplied by Australian industry, and imports from multiple countries, including China.

5.2 Australian market structure

5.2.1 Marketing segmentation and end uses

The Australian 2,4-D market is supplied by Australian industry and imports. The Australian industry is made up of Nufarm, which is the sole Australian manufacturer of 2,4-D acid, and formulators. Formulators either purchase 2,4-D acid, salts and esters in their technical or intermediate form from Nufarm, or from exporters. Formulated 2,4-D sold by other Australian industry members competes directly with Nufarm's formulated products.

Nufarm also produces some 2,4-D formulated products for third party providers through tolling arrangements. These products are not branded as a Nufarm product.

2,4-D herbicide segmentation is typically broken into two formulations: ester formulations and amine formulations.

Imports of ester formulations compete directly with Nufarm on a price and volume basis. Ester formulations are generally more popular in the Western Australia market.

Amine formulation imports compete indirectly with Nufarm on a product formulation basis. Nufarm has claimed that exporters cannot supply an exact equivalent formulation to Nufarm's Amicide Advance 700, so these exporters will undercut prices with either alternative amine formulations or ester formulations. Exporters can supply Amine 625 and Cobber 475 equivalents, while the Amicide Advance 700 formulation is under a patent.

Figure 1 below illustrates the structure of the Australian market for 2,4-D, supplied by:

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

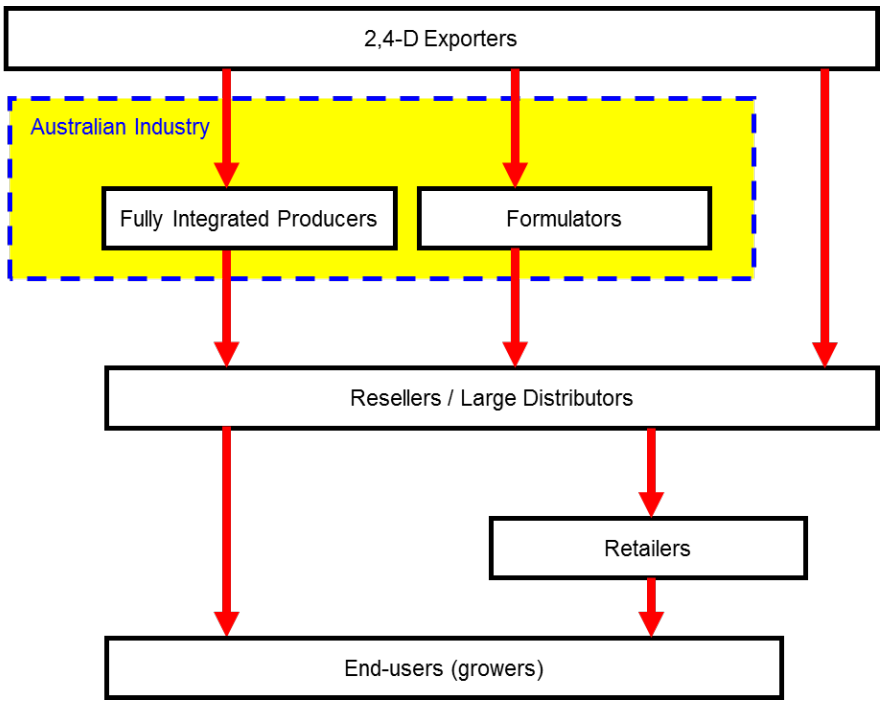

Figure 1: Australian 2,4-D Market Structure

Generally, producers sell formulated 2,4-D to large distributors of agricultural chemicals and various other agricultural products, who then distribute to resellers (usually the individual stores of the large distributor). It is then on-sold to end users (growers) for application onto fields.

5.2.2 Distribution and supply arrangements

Nufarm predominantly supplies the market through short-term trading agreements. However, they are not binding contracts. These agreements contain specific details around rebates and discounts that each customer can be eligible for based on volume targets. The agreements also detail any provision of advertising support.

Producers generally sell formulated 2,4-D to large distributors of agricultural chemicals and various other agricultural products, who distribute to resellers (usually the individual stores of the large distributor) where it is on-sold to end users (growers) for application onto fields. Nufarm utilise distribution centres situated around Australia in order to have its product located close to customers and end users.

The effect that these distribution and supply agreements have on the likely future supply and demand in the market are discussed in section 7.6.3.

5.2.3 Demand

Weather outcomes drive demand for 2,4-D. Dry seasons typically see low demand. Conversely, if there is substantial rain throughout the season, there is a higher demand for 2,4-D.

There is a narrow window of demand, with 90% of the yearly volume of 2,4-D consumed in 5 months. Nufarm stated that typically 14 to 15 million litres of 2,4-D formulated product is required in a year with high levels of rainfall. If the climate is not favourable, demand can decrease to approximately 6 to 7 million litres.

The future supply and demand conditions of the Australian market that are likely in the future are discussed in section 7.6.3.

5.3 Australian market pricing

If climate conditions are favourable, increased demand for 2-4-D will cause more production of the product and support price sensitivity. Nufarm will then compete directly with the overseas competition, which will likely drive down prices.

Nufarm competes directly with importers on 2,4-D formulation products sold under the Nufarm brand or under a tolling arrangement for third parties. Nufarm also competes with imports of 2,4-D technical (acid and intermediaries) products when supplying Australian domestic formulators.

Nufarm's price negotiations with customers are competition driven. Nufarm will offer its customers a price based on monthly price lists. Nufarm's customers may then attempt to negotiate the final price from this starting point.

Producers and customers predominately negotiate prices on a sale-by-sale basis. There are also tenders and specific sales campaigns that make up a small proportion of Nufarm's business. Nufarm can also provide additional benefits such as development of novel formulations in its Australian laboratories (such as Nufarm DROPZONE Herbicide), flexibility of supply, a distribution network close to its customers, and support training programs for customers (such as farmers) on the best spray techniques and other technical aspects of 2,4-D use.

The commission's findings on the likely effect on prices should the measures expire is at section 7.7.4.

5.4 Australian market size

As discussed in section 5.2.1, the Australian industry for 2,4-D consists of Nufarm, which is a fully integrated producer of 2,4-D (including technical and formulated products), and other Australian formulators who either import 2,4-D acid or intermediate material, or purchase acid or intermediate material from Nufarm.

This analysis of the Australian market size forms the basis for the commission's findings in section 7.5, in regards to whether exports are likely to continue or recur. In particular it forms the basis for the commission's analysis of import volumes in section 7.5.1.

The commission notes that the goods previously imported from China were comprised of acid, intermediate materials and formulated 2,4-D products. The commission understands that relevant importers process imported intermediate material into formulated 2,4-D. Depending on the level of active ingredient contained in locally produced formulations, the volume of formulated 2,4-D produced from imported intermediate 2,4-D will be higher.

In estimating the size of the Australian market, the commission has relied on Nufarm's sales data, Nufarm's estimate of other Australian formulators' sales, and the ABF import database.

The commission estimates that in March 2018 (after the last continuation of measures) the Australian market for 2,4-D experienced a reduction in size over a 2-year period from April 2018 to March 2020 due to drought. However, the size of the Australian market subsequently increased significantly from April 2020. These trends, are shown in Figure 2, which outlines the annual volume of 2,4-D sold in the Australian market since 1 April 2016.

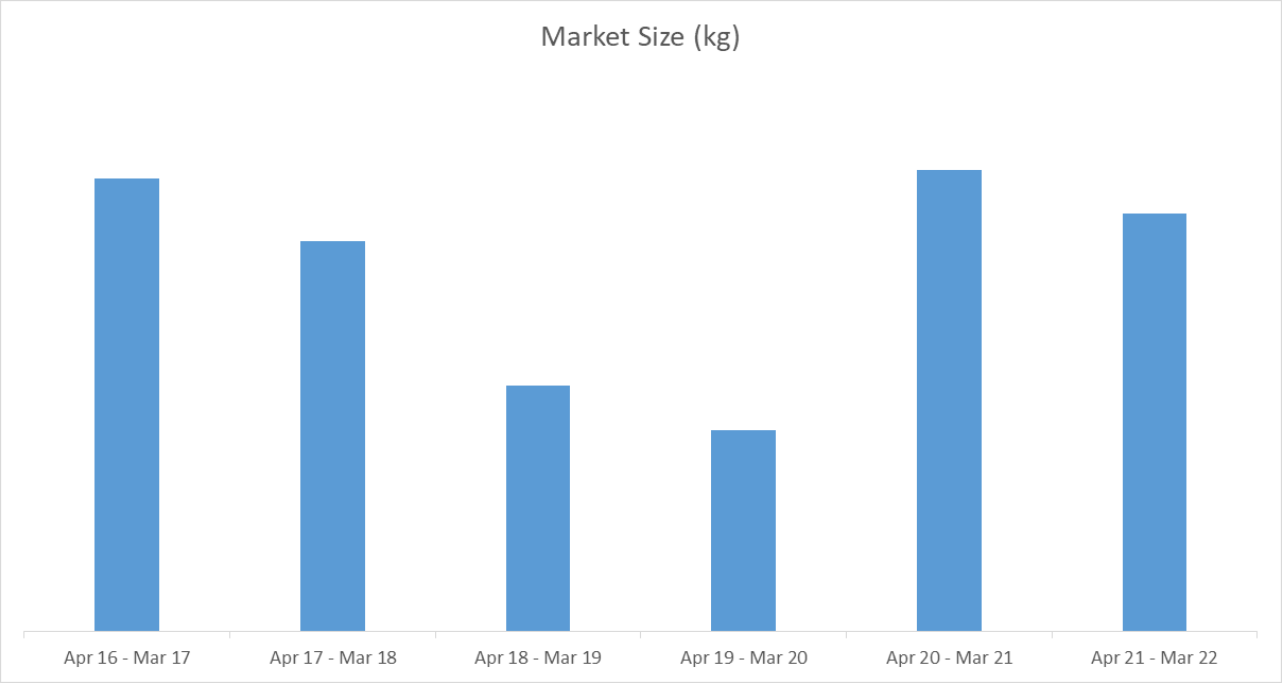

Figure 2: Australian market size for 2,4-D

Figure 3 below shows the Australian 2,4-D market sales volume in terms of the country of origin for formulated product. The data represented is inclusive of all forms of 2,4-D sold by the applicant and the volumes of imported goods. Other Australian industry members are split into source of purchased technical/intermediary input 2,4-D, imported or Nufarm sourced.

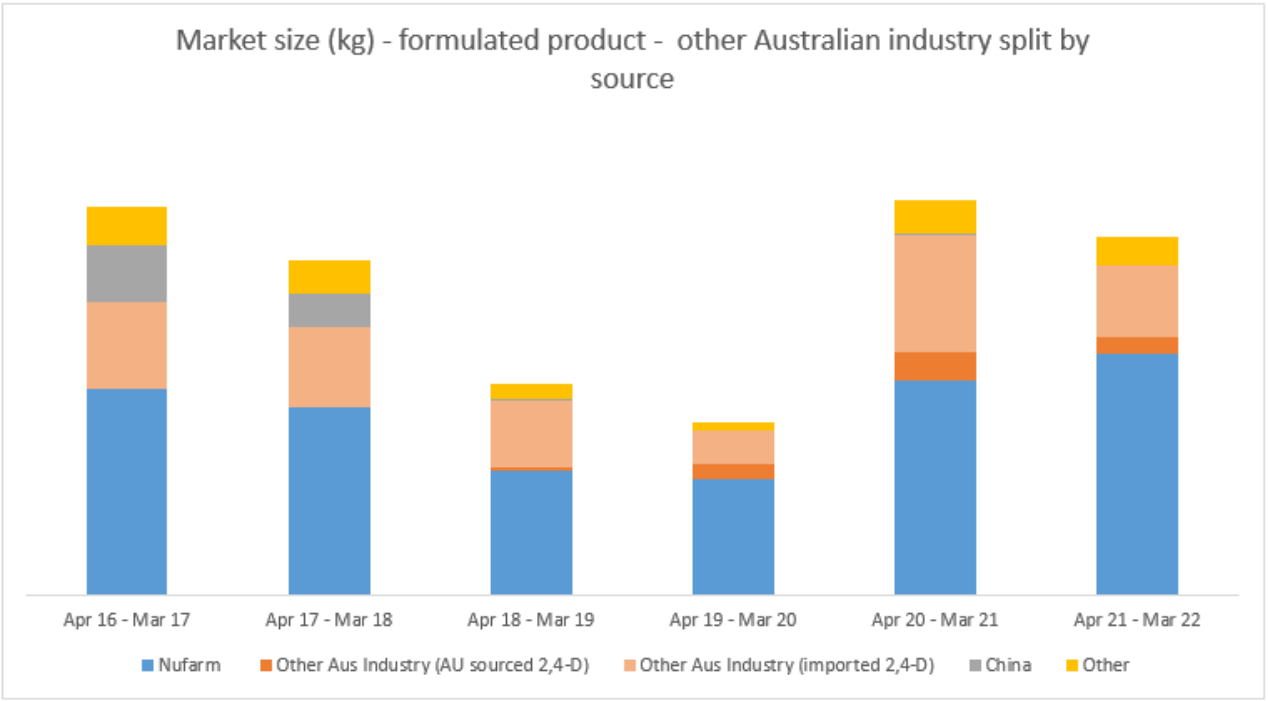

Figure 3: Australian market size – formulated product – other Australian industry split by source of 2,4-D input product.

Figure 3 indicates that prior to the conclusion of the last continuation inquiry in March 2018, China was the largest source of exported 2,4-D formulated products to Australia. Following REP 430, exports of formulated products from China reduced to near zero. At the same time, Nufarm began to supply other Australian formulators with 2,4-D acid and

intermediary products. As the market size rebounded from April 2020, export volumes from China did not return.

Volumes of formulated products for both Nufarm and other Australian industry members increased considerably in the year ending March 2021. However, in this period, other Australian industry members sourced the majority of their 2,4-D base products from imported 2,4-D. The total volume of imported 2,4-D formulated products and Australian industry members producing formulated products from imported 2,4-D reduced again during the inquiry period. This was in contrast to Nufarm, which increased volumes of formulated sales in the same period.

The commission has analysed imports of 2,4-D acid (technical) and intermediate products using ABF import data in Figure 4. Australian industry members, excluding Nufarm, use the majority of these imports to produce formulated 2,4-D products for end users.

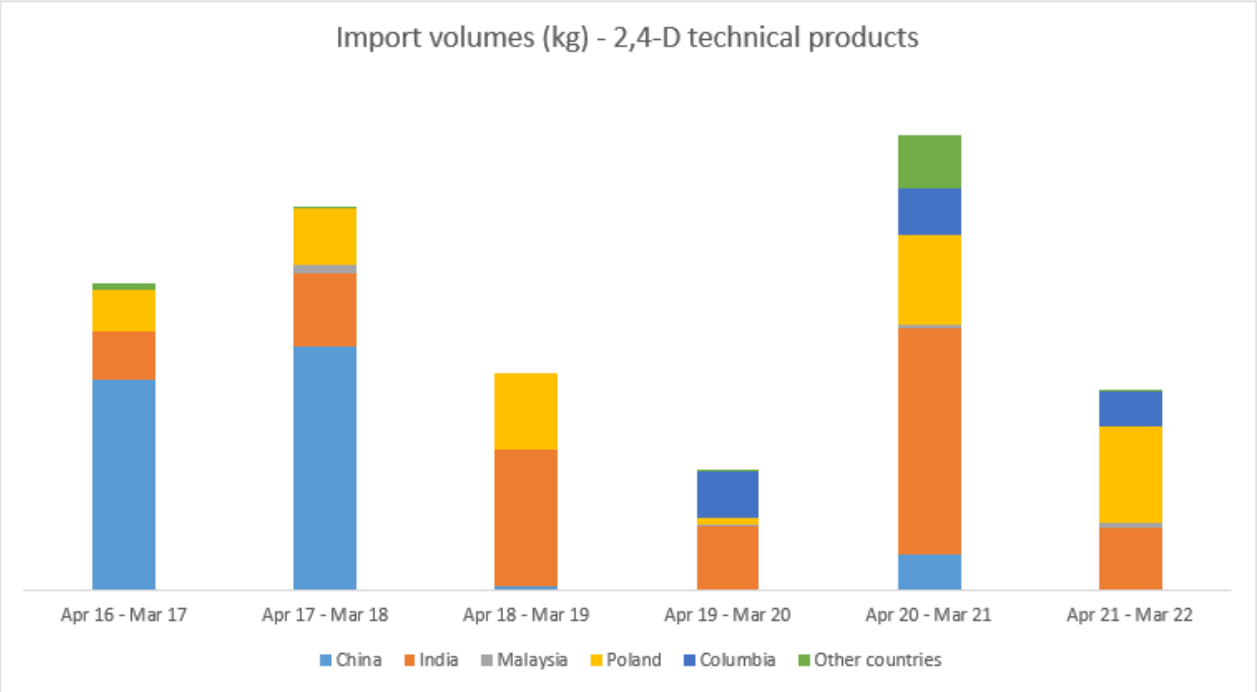

Figure 4: Import volumes of technical 2,4-D used in formulated 2,4-D products

Figure 4 shows that prior to the last continuation of measures, the largest source country of 2,4-D used by other Australian industry members in formulated products was China. Similar to the patterns shown with exports of actual 2,4-D formulated products from China (Figure 3 refers), exports of 2,4-D acid and intermediate products declined to almost zero following the finalisation of the last continuation of measures (REP 430). India became a larger source country of 2,4-D acid and intermediate products from the 12 months commencing April 2018. Volumes remained reasonably steady from Poland, while exports from Columbia began in 2019. There were some export volumes from China again in the year ended 31 March 2021. This coincides with the largest year for volumes of all 2,4-D products sold in Australia since the year ending 31 March 2017.

The commission's market analysis is at **Confidential Attachment 1**.

5.5 Climate and global geopolitical factors influencing demand

Based on the information received from Australian industry and research conducted below, the commission finds it likely that demand for 2,4-D in Australia will continue, based on the following:

- Actual, estimated, and forecasted increases published by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) in terms of winter and summer crop production.
- Actual, estimated, and forecasted increases published by ABARES in the total area allocated for crop production.
- Favourable climate forecasts published by the Bureau of Meteorology (BOM), including continuing La Niña and negative Indian Ocean Dipole (IOD) events, which are both associated with above-average rainfall across Australia. The ABARES crop yield, and crop area forecasts and estimates also reflect favourable climate forecasts.
- Extra emphasis placed by the Organisation for Economic Co-operation and Development (OECD) on food security in the current global economic climate. By 2031, Australia expects to account for 60% of wheat produced in the 'Developed and East Asia region'.
- The OECD also notes Australia as a potential supplier of importance should wheat exports from the 'Black Sea region' be constrained by the conflict between Russia and the Ukraine.

These findings assist in forming the basis for the commission's analysis in Chapter 7, in regards to the likelihood that exports, dumping and material injury will recur if measures are not continued. In particular, section 7.6.3 discusses the likely future supply and demand conditions.

5.5.1 Future demand for 2,4-D in Australia

Referring to data provided by Nufarm during the commission's verification visit, the commission understands that the application of 2,4-D is required at two particular stages of crop development: the fallow stage and the post-emergent stage.

As mentioned in section 5.2.3, 2,4-D use is cyclical. It is dependent on summer or winter cropping periods, and subject to a range of factors such as the size of the cropping area, the type of farming system adopted by growers (e.g. no-till farming)[25], the level and frequency of rainfall and the region where crops that require 2,4-D weed control are located.

Following on from the data provided by Nufarm, the commission has examined the available evidence of the demand drivers for 2,4-D in Australia.

A review of data obtained in the June 2022 edition of the Australian Crop Report[26] prepared by ABARES indicates that the predominant cropping activity in Australian growing regions occurs in relation to the winter cropping period.

The winter cropping period represents the largest area of land sown in each year and results in the majority of crop production. On this basis, activities that would occur in the fallow and pre-emergent stages of the crop development period (i.e. the winter cropping period) largely drive the application of 2,4-D. The commission acknowledges that cropping area alone is not the only factor driving demand, though it is one of the most significant and for the purpose of this discussion, the commission considers it relevant.

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[25] No-tillage (no-till) or zero tillage farming is a system in which seeds are directly placed into untilled soil which has retained the previous crop residues.

[26] Australian Crop report – ABARES – June 2022

Figure 5 below shows data obtained from the June 2022 edition of the Australian Crop Report prepared by ABARES.

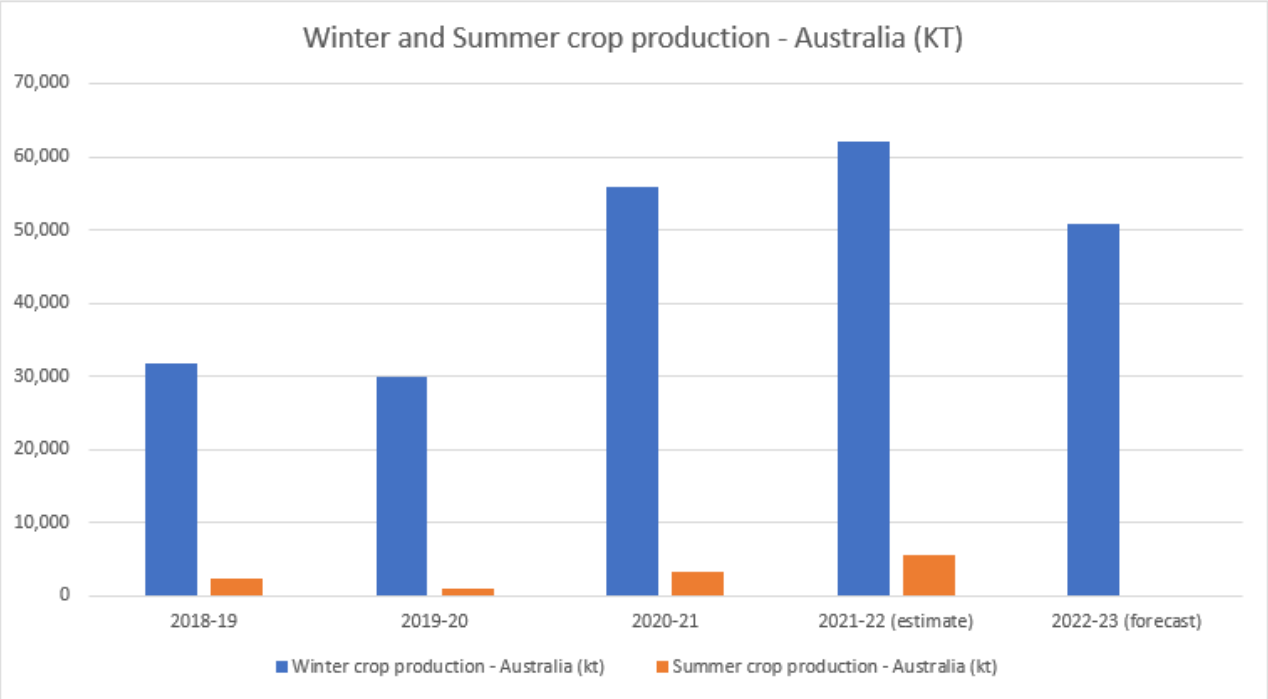

Figure 5: Winter versus summer crop production in kilotonnes[27]

The ABARES data records the total area allocated to Australian crop production and the total crop production output (aggregate of summer and winter). The periods referred to are the cropping years for each 12-month period ending 30 June. The data presented in Figure 6 shows that in the periods 2018-19 to 2021-22, the area of crop production has modestly increased, and yields have significantly increased. Based on the observation that crop area does not appear to be expected to fall in the near future, it is likely that demand for 2,4-D will continue.

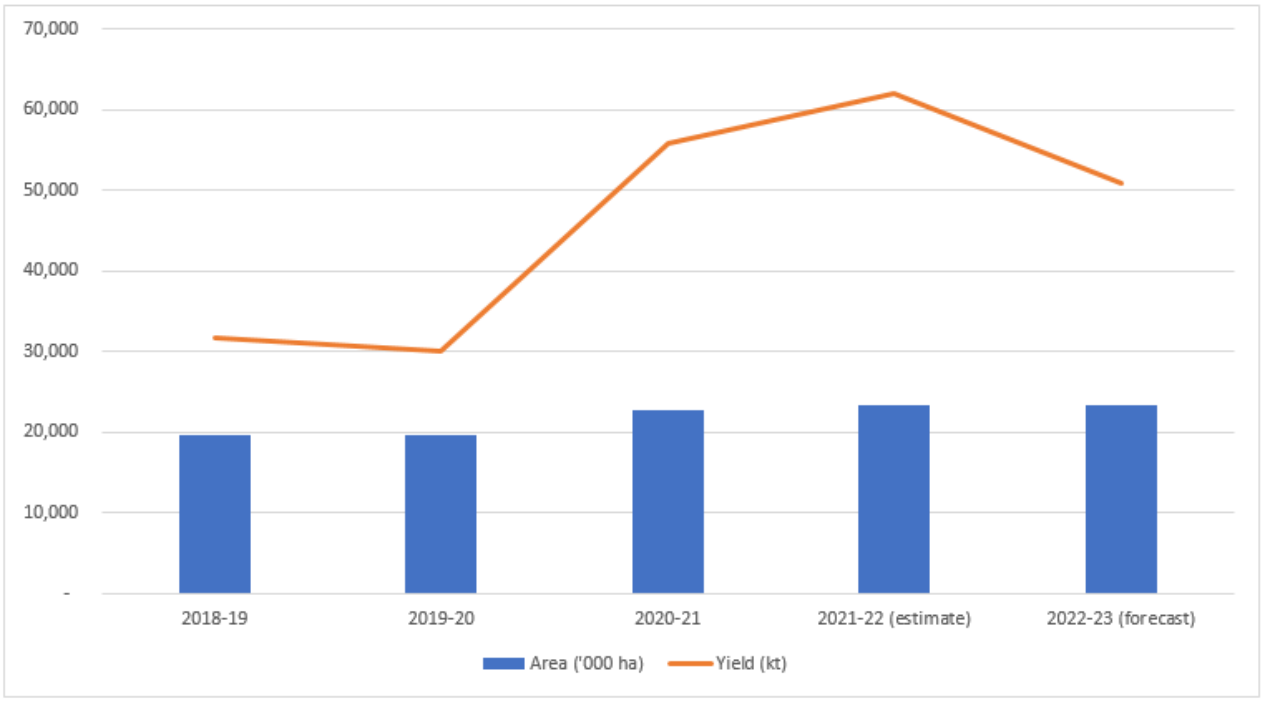

Figure 6: Australian crop area and yield

[27] Note the summer 2022-23 crop production forecast data was not available at time of publication.

5.5.2 Climate and economic factors related to 2,4-D and broadacre crop production

The June 2022 ABARES Crop Report has confirmed high costs of fertilisers and chemicals have caused growers to economise on their use when planting and establishing crops, with the majority of growers securing sufficient volumes earlier in the year. ABARES expects the cost and availability of chemicals (i.e. herbicides) to be less of a constraint to production prospects.

Well above average rainfall between February and March 2022 led to flooding, weather damage, harvest delays, and the inundation and loss of some summer crops. The extent of damage was significant for some growers but was localised and did not have a major impact on national volumes.

In terms of climate predictions, the BOM El Nino-Southern Oscillation Outlook released on 13 September 2022 advised key atmospheric and oceanic indicators show established La Niña climate conditions. Models indicate this La Niña event may peak during the spring and return to neutral conditions early in 2023. La Niña events increase the chances of above-average rainfall for northern and eastern Australia during spring and summer. The negative Indian Ocean Dipole (IOD) event continues, and is likely to continue into late spring. A negative IOD event is typically associated with above average winter–spring rainfall for much of Australia, particularly in the western regions.[28]

The OECD and the Food and Agricultural Organization (FAO) jointly published the Agricultural Outlook 2022-2031 on 29 June 2022, which provides a consensus assessment of the 10-year prospects for agricultural commodities at national, regional and global levels.[29] Russia's long-standing situation with Ukraine escalated in February 2022, affecting global markets and threatening global food security at the time of already elevated global commodity prices.

The OECD-FAO confirmed, 'given necessary adjustments to the global cereal trade to find alternative supplies should exports from Ukraine, and to a lesser extent Russia, remain disrupted, it is important to keep trade in food and fertilisers open to prevent the negative affect on global production and consumption needs. Any policy measures put in place as a response to high prices must be carefully weighed against their potential detrimental effect on international markets.'[30]

The Developed and East Asia region (which includes Australia) is a notable contributor to global output for several crops, including rice, maize and wheat. The OECD-FAO expects Australia, where yield gains in excess of 11% on a stable area contribute to an 8% increase in production by 2031, to account for almost 60% of wheat produced in the region. Though Australia's share in global wheat exports will decline to just below 10%, in the short term, it may be an important supplier should exports from the Black Sea be constrained.[31]

The data supporting the above analysis is at **Confidential Attachment 6**.

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[28] Bureau of Meteorology Climate Driver Update, accessed on 15 September 2022.

[29] OECD-FAO Agricultural Outlook 2022-2031

[30] OECD-FAO Agricultural Outlook 2022-2031 'Agricultural and food markets: Trends and prospects'

[31] OECD-FAO Agricultural Outlook 2022-2031 'Regional briefs'

6 ECONOMIC CONDITION OF THE INDUSTRY

6.1 Preliminary finding

The commission notes that the economic condition of the Australian industry, represented by Nufarm, has had varied results in the 4-year period from 1 April 2018 to 31 March 2022.[32] However, since 1 April 2018 the Commissioner finds that Nufarm has:

- increased sales volume
- remained profitable, despite fluctuations year on year, and
- increased market share overall.

Following the continuation of measures in 2018, and prior to the inquiry period, the Australian industry's economic condition showed signs of vulnerability, particularly in terms of reduced profits and profitability. Nufarm's market share has fluctuated year to year from the year commencing 1 April 2018, however, overall it has been higher than prior to March 2018 when the measures were last continued and variable factors were changed.

From 1 April 2020, Australian industry achieved substantial growth in sales volume, while profit and profitability improved in the inquiry period. The commission notes that the demand for 2,4-D is driven substantially by the weather, i.e. high rainfall will increase demand.

6.2 Approach to injury analysis

An assessment as to whether the expiration of measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the measures intend to prevent involves a consideration of future outcomes based on an evaluation of the present position. The economic condition of the Australian industry examined in this chapter, provides the basis for the commission's findings in section 7.7 into whether material injury is going to continue or recur.

Nufarm provided sales volume and revenue data from 1 April 2016 to 31 March 2022, and costs and other economic conditions data from 1 April 2018 to 31 March 2022.

In the original investigation (REP 58), Customs and Border Protection found the Australian industry producing 2,4-D (represented by Nufarm) had suffered the following forms of injury:

- loss of market share
- price depression
- price suppression
- reduced profits and profitability.

In the previous continuation inquiry completed in 2018 (REP 430), Nufarm's performance in the period 1 July 2014 to 30 June 2017 was examined.

The commission based the analysis detailed in this chapter on verified financial information submitted by Nufarm, estimated sales of other Australian industry members provided by Nufarm, and data from the ABF import database. Nufarm's estimated sales of other Australian industry members is based on their own sales of acid and intermediate products to Australian formulators, converted to formulated products, and import data based on technical 2,4-D tariff codes, converted to formulated products. The commission

[32] Sales volumes and market share was assessed from 1 April 2016.

checked the accuracy of the import data provided by Nufarm by comparing it to ABF import data.

The commission has not been able to assess the economic condition of the Australian industry as a whole, as it did not receive cooperation from Australian formulators of 2,4-D. The commission considers these formulators to be members of the Australian industry.

Based on Australian sales of formulated 2,4-D products only, Nufarm accounts for an estimated 73% market share of Australian production, and 67% of the whole Australian market. Formulated 2,4-D are the products that end users apply as herbicides, which contain an active ingredient form of 2,4-D.

Noting that it is the only fully integrated producer of 2,4-D in Australia, its large market share, and the fact it competes in all 2,4-D market sectors (including the production and sale of both technical and formulated 2,4-D products), the commission views Nufarm as representative of Australian industry as a whole. Therefore, Nufarm's economic performance is indicative of the entire Australian industry.

The commission has assessed sales and market share from 1 April 2016, and all other economic indicators from 1 April 2018. The commission has compiled the figures presented on an annual basis for years ending 31 March. This preliminary assessment is at **Confidential Appendix 2**.

6.3 Volume effects

6.3.1 Sales volume

Sales volumes from Nufarm remained stable from March 2018 (when measures were last continued) until the end of March 2020. Nufarm experienced a significant increase in sales in the year ending 31 March 2021 and a slight increase again in the year ending 31 March 2022. Nufarm's sales volumes from 1 April 2016 are shown below in Figure 7.

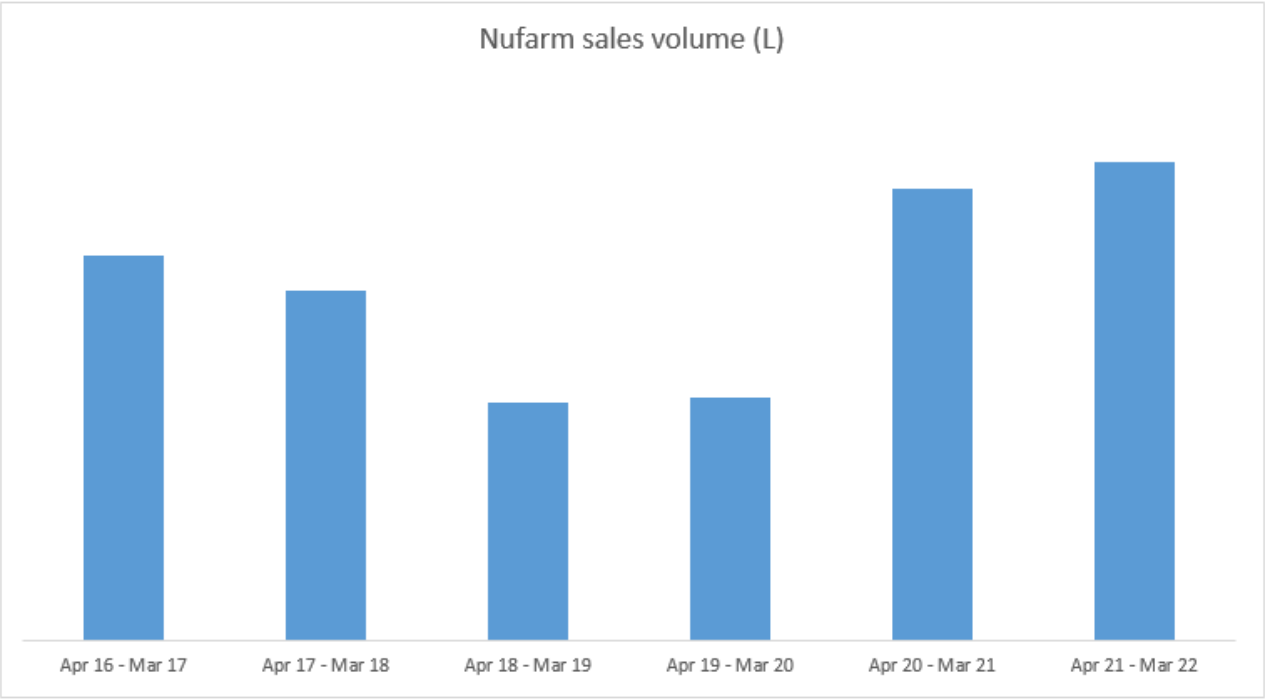

Figure 7: Nufarm's domestic sales volume of 2,4-D[33]

[33] Nufarm's domestic sales volume of 2,4-D includes Nufarm branded formulated products, formulated products sold to third parties (on tolling arrangement), and technical (intermediate) products that are then formulated by other Australian industry members.

The increases in Nufarm's sales follow a similar trend to the overall Australian market size displayed in Figure 2. As the size of the whole market has increased, Nufarm has increased its sales volume.

6.3.2 Market share

The commission has examined the market share of Nufarm, other Australian industry members made up of formulators, and importers (based on source country).

Figure 8 below shows the market share for formulated products by each sector. The basis for the market share of other Australian industry members is their estimated sales, calculated using data provided by Nufarm and from the ABF import database. These other Australian industry members formulate 2,4-D end products for sale using 2,4-D acid, esters and salts in their raw or intermediate form sourced from both Nufarm and imports.

Since March 2018 when the measures were last continued, Nufarm increased its market share from 1 April 2018 to 31 March 2020. During the same period the market share for imports of formulated 2,4-D from China has decreased to zero. Nufarm did experience a decrease in market share in the year ending 31 March 2021. This appears to be due to other Australian industry members and imports from countries other than China both increasing market share. Nufarm's market share increased again in the year ending 31 March 2022.

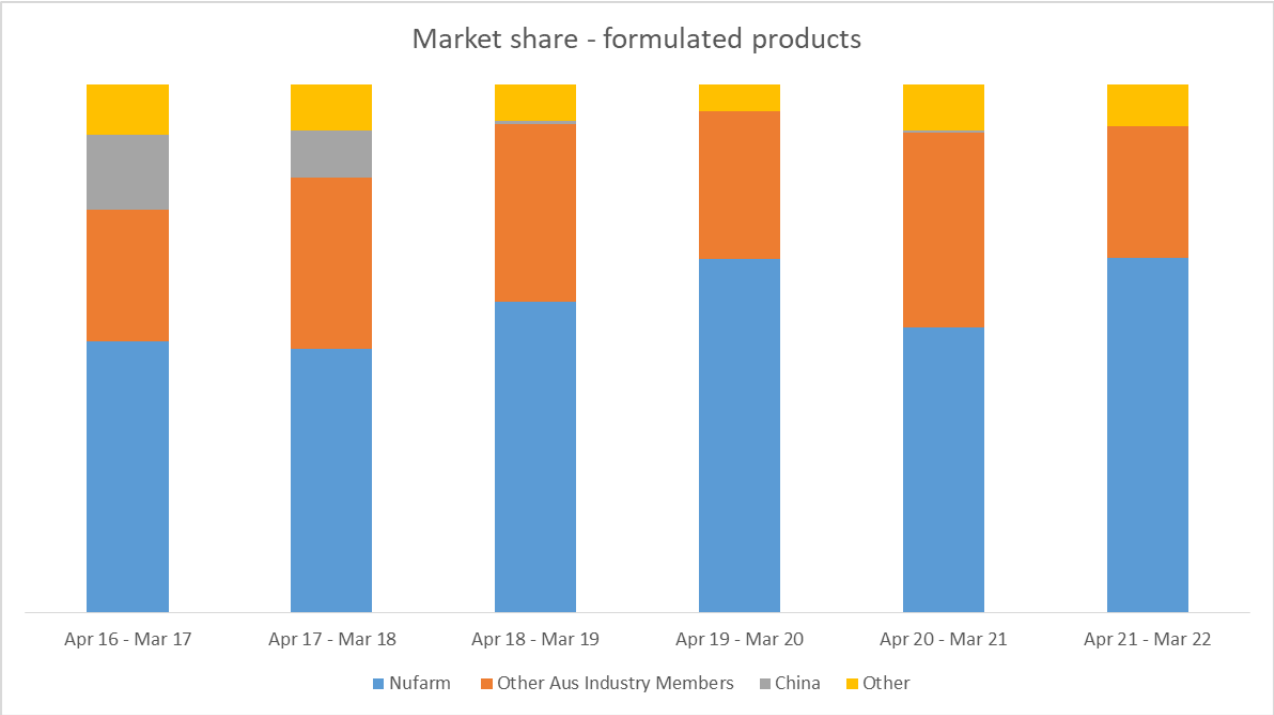

Figure 8: Market share – formulated products[34]

[34] The basis of market share is formulated sales, calculated using a combination of verified data from Nufarm, Nufarm estimates of other Australian industry members (formulators), and ABF import data. Note that the 'Other Australian Industry Members' market share includes both formulated 2,4-D using technical (intermediaries) 2,4-D from Nufarm, and imported technical 2,4-D.

As mentioned above, other Australian industry members source 2,4-D technical acids, salts and esters (intermediate products), from both Nufarm and imports to produce formulated 2,4-D products. The commission has also examined the market share split by the source of the 2,4-D shown in Figure 9.

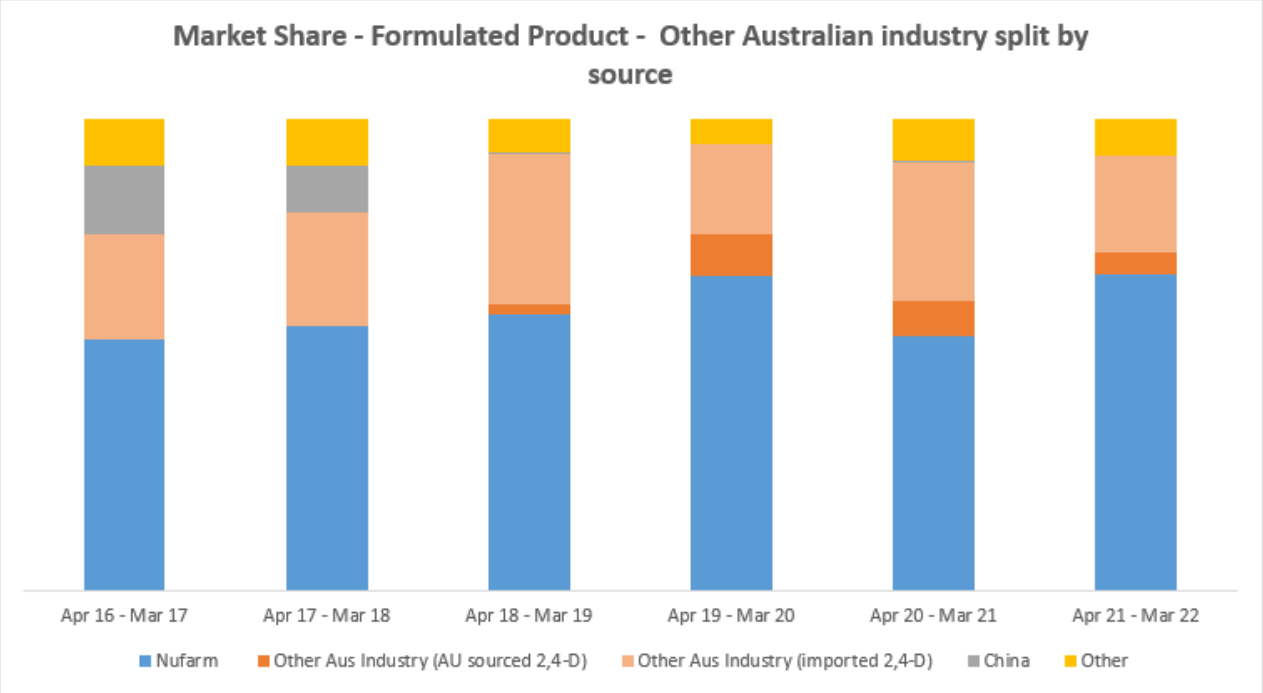

Figure 9: Market share – formulated products by source of input 2,4-D[35]

Figure 9 shows that Nufarm started supplying input 2,4-D to other Australian industry members (formulators) from April 2018. This was just after measures were last continued. While other industry members have still predominantly sourced 2,4-D technical acids, salts and esters (intermediate products) from imported sources, locally sourced 2,4-D technical products have increased its share in this area.

6.4 Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Figure 10 show's Nufarm's weighted average unit selling prices and weighted average unit cost to make and sell (CTMS) from 1 April 2018 to 31 March 2022.

[35] Other Australian Industry members imported 2,4-D data includes formulated product using imported technical 2,4-D (acid and intermediaries) from China and other countries.

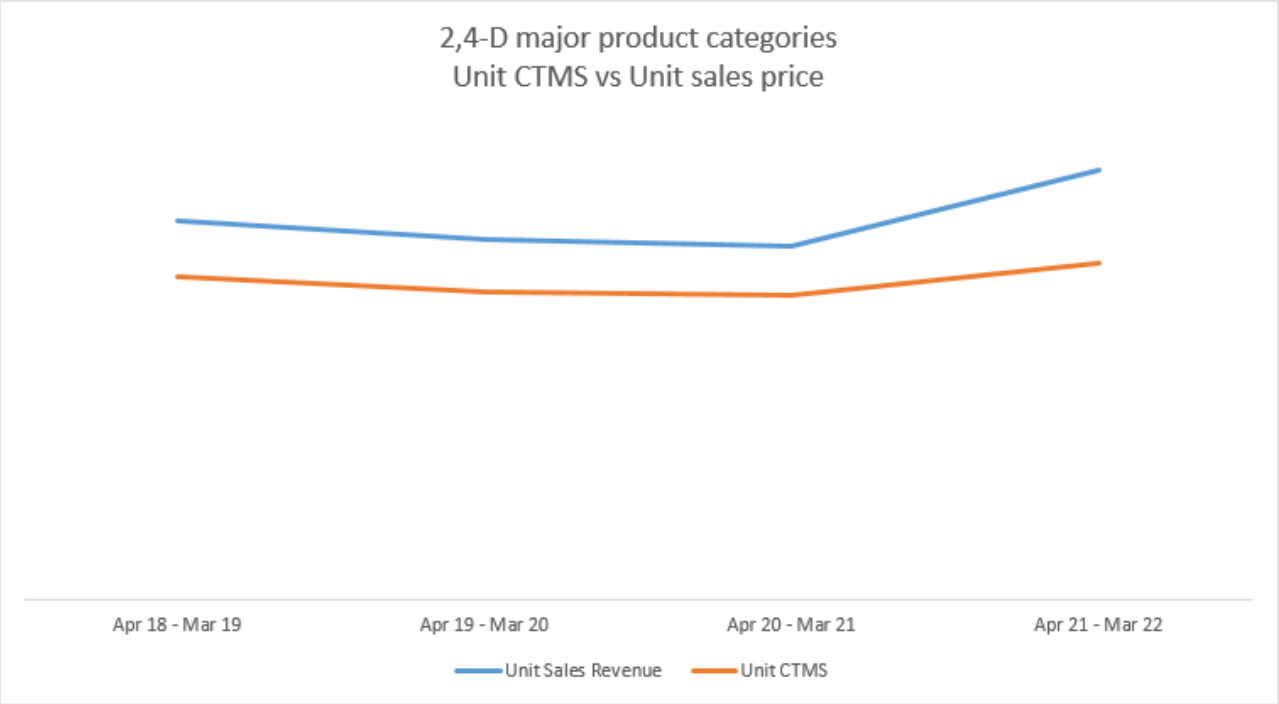

Figure 10: Unit price and CTMS – Nufarm major formulated products (AUD per kg)

Based on the trends illustrated in Figure 10, the commission notes the following:

- Nufarm's unit selling prices reduced from 1 April 2018 to 31 March 2021, before experiencing a sharp increase in the year ending 31 March 2022.
- Nufarm's unit CTMS also decreased until 31 March 2021, before rising in the year ending 31 March 2022.
- During the period examined, Nufarm's unit selling prices exceeded its unit CTMS.
- For the period 1 April 2018 to 31 March 2021, Nufarm's unit selling prices reduced at a steeper rate than its unit CTMS, although the difference was minor.
- From 1 April 2021, Nufarm increased its unit selling prices at a steeper rate than its unit CTMS.
- The export pricing of 2,4-D to Australia reflects this increase from 1 April 2021, as demonstrated by the price of imported 2,4-D acid in **Figure 11** below. Nufarm stated that increases in raw material and transport costs is driving these increases in prices.

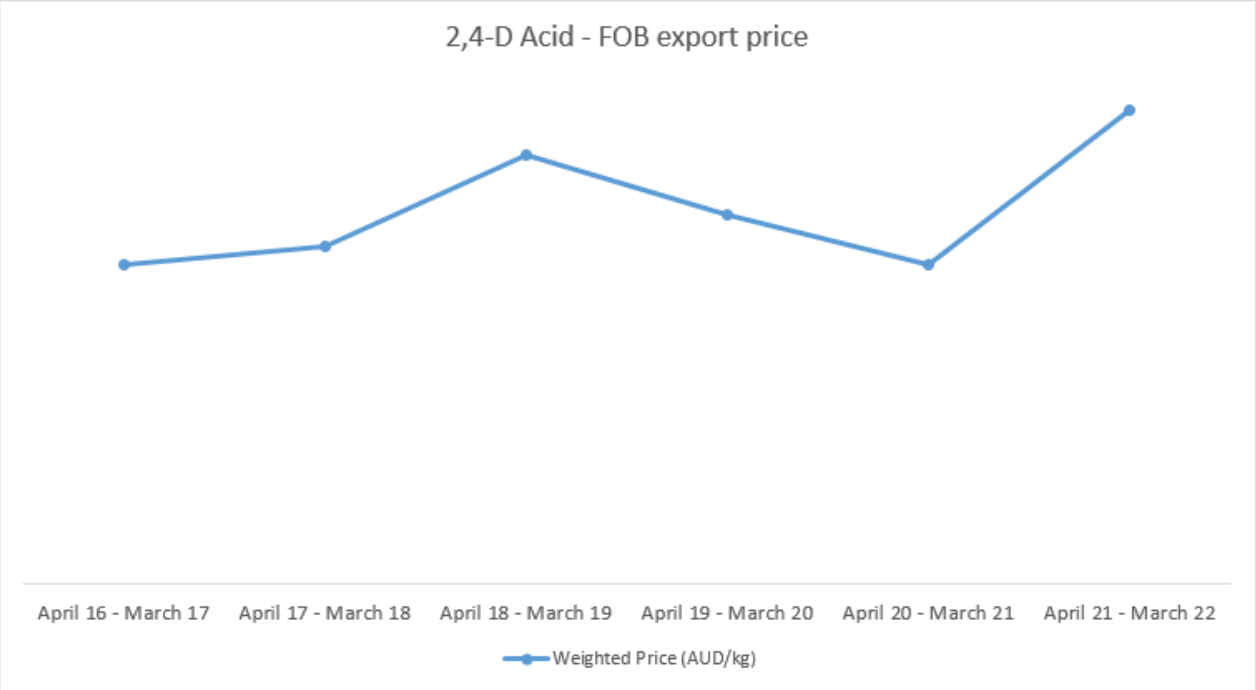

Figure 11: Export prices of 2,4-D acid from all countries to Australia

6.5 Profit and profitability

Figure 12 charts Nufarm's profit and profitability (expressed as a percentage of revenue). This relates to its sales of like goods for its main formulated product categories listed in earlier in Table 7 from 1 April 2018 to 31 March 2022.

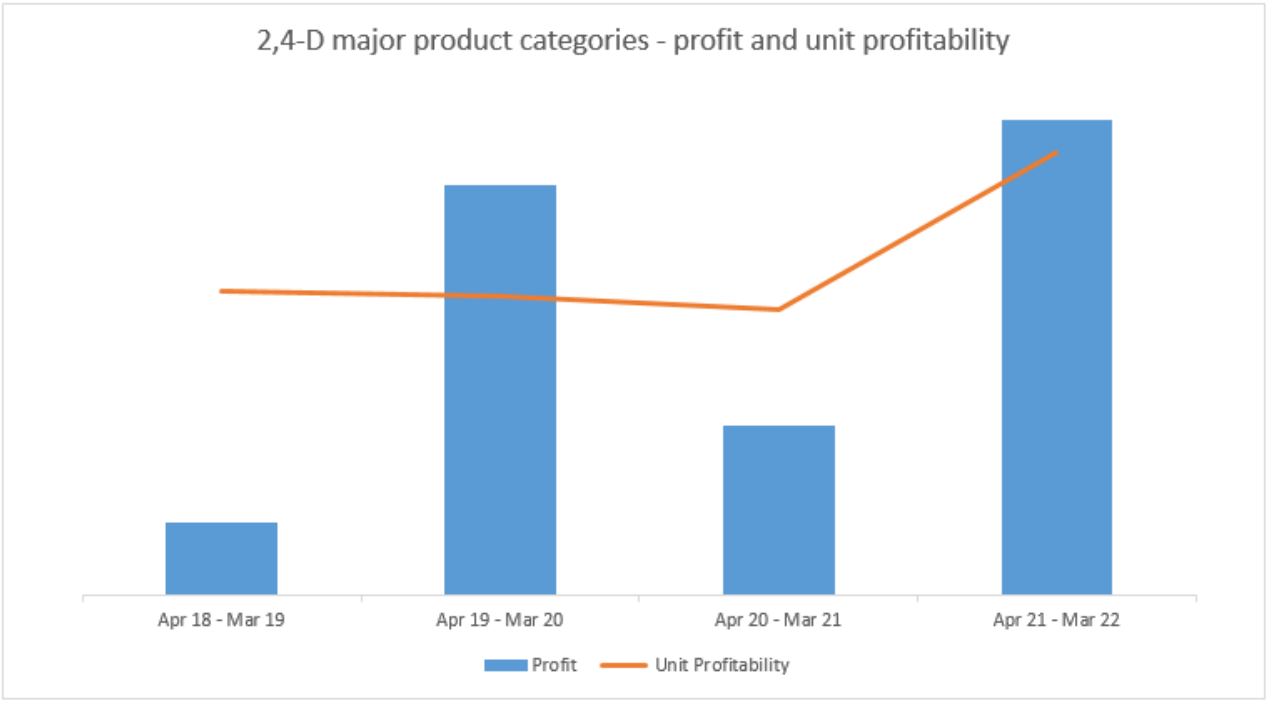

Figure 12: Total profit (AUD) and profitability (profit as a percentage of revenue)

Figure 12 shows that Nufarm's profit and profitability fluctuated throughout the period examined. However, Nufarm's sales of like goods have remained profitable in each year over the examined period.

The commission notes that the increase in unit prices at a greater rate than unit costs in the year ending 31 March 2022 has had a direct impact on the increase in Nufarm's profit during this period.

As noted earlier in section 5.2.3, demand for 2,4-D is dependent on rainfall and focused on certain periods of the year prior to the planting of crops. As a result profit and profitability can fluctuate year to year. In years where demand decreases, Nufarm will retain production at levels to then cover subsequent years where demand increases. Figure 13 outlines these fluctuations.

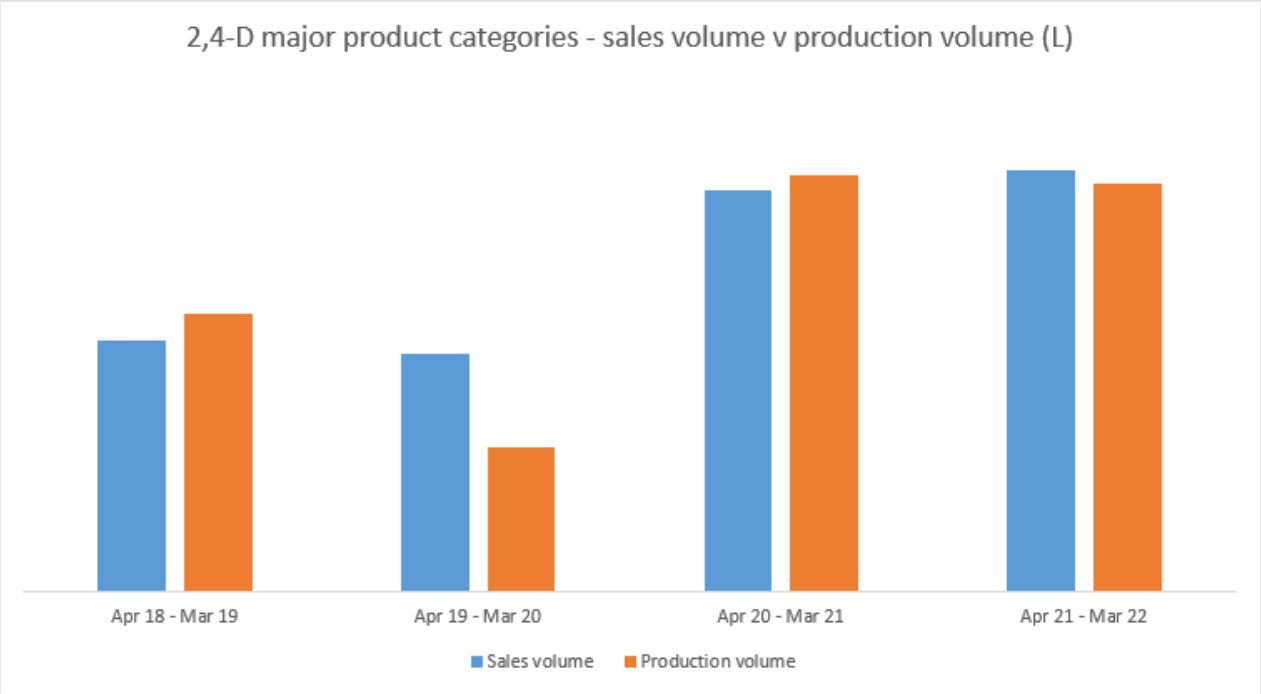

Figure 13: Sales volume and production volume of 2,4-D

6.6 Other economic factors

At the request of the commission, Nufarm provided data in relation to a range of other economic factors that may also be indicative of injury to the Australian industry. This data covers the period 1 April 2018 to 31 March 2022:

- the value of assets employed in production of like goods and at a company level
- capital investment relevant to the production of like goods and at a company level
- revenue relating to the sales of like goods and at a company level
- return on investment
- production capacity utilisation
- employment relevant to the production of like goods and at a company level
- wages relevant to the production of like goods and at a company level
- productivity based on production of 2,4-D acid per hour worked.

Nufarm did not make any specific claims in relation to the above factors. However, the commission observes the following in regards to like goods:

- the value of assets employed in the production of 2,4-D has increased
- revenue from 2,4-D sales increased slightly in years ending March 2020 and March 2021, before a significant increase in year ending March 2022
- there was a small reduction in return on investment in year ending March 2021 before bouncing back in year ending March 2022
- there was a reduction in employment numbers for 2,4-D from April 2020

- capital investment for 2,4-D has reduced over the 4 years after heavy investment on new equipment in the 12 months ending March 2019
- overall capacity of 2,4-D acid production has remained steady over the 4 years examined, and Nufarm has run at near full capacity over this time
- the percentage of capacity utilisation has increased significantly for formulated products in the periods ending March 2021 and March 2022
- overall wage bill for 2,4-D acid production has decreased while it has increased for formulated product production
- productivity in both the 2,4-D acid, and formulation areas has increased.

Analysis of other economic factors is at **Confidential Appendix 2**.

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Preliminary finding

On the basis of the available evidence, the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, a recurrence of, the dumping and material injury that the measures are intended to prevent.

The commission is preliminarily satisfied that:

- exports from China would likely recur if the measures expire
- dumping by exporters from China would likely recur if the measures expire, and
- material injury to the Australian industry would likely recur if the measures expire.

7.2 Legislative framework

Section 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of measures unless the Commissioner 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 or subsidisation and the material injury that the anti-dumping measure is intended to prevent. As noted in the Manual, the commission considers 'likely' to mean more probable than not.[36]

The commission notes that the assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires a forward-looking assessment, including an assessment of a hypothetical situation. The Anti-Dumping Review Panel, which supports this view, noted that the commission must consider what would happen (or would be likely to happen) in the future should a certain event, being the expiration of the measures, occur. However, the Commissioner must nevertheless base their conclusions and recommendations on facts.[37]

7.3 The commission's approach

The commission considered a number of factors that are relevant for assessing the likelihood of whether dumping and material injury will continue or recur as outlined in the Manual.[38] The commission's view is that the relevance of each factor varies depending on the nature of the goods and the nature of the export market. In this instance, no one factor provided decisive guidance. The following analysis therefore examines a range of factors that the commission considers relevant to this inquiry.

We refer to a recurrence (rather than continuation) of dumping and material injury because exports from China have sharply decreased since the last continuation of measures, to the point that there were no exports from China during the inquiry period.

7.4 Australian industry's claims

In its application for the continuation of the measures,[39] Nufarm made the following claims:

- Imports of 2,4-D have continued since the commission last continued measures in 2018.

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[36] Dumping and Subsidy Manual (The Manual), *December 2021*, p 136.

[37] Anti-Dumping Review Panel (2016), *Anti-Dumping Review Panel Report No. 44*.

[38] The Manual, December 2021, pp 136-138.

[39] EPR 604, document number 1.

- Exporters of 2,4-D in China have maintained strong distribution links in Australia between 2018 and 2021, evidenced through continued exports of 2,4-D and an increase in exports of other herbicides from the same exporters.
- On a *prima facie* basis, in 2020-21 it appears that there were exports of 2,4-D acid and formulated 2,4-D from China, with a dumping margin between negligible and 35 per cent.
- Should export prices decline, Nufarm will encounter aggressive price competition from Chinese exports such that its margin will be eroded, resulting in reduced profits and profitability, demonstrating that Nufarm is therefore susceptible to a recurrence of material injury from dumping.
- Chinese exporters have grown excess capacity and increased export volumes of the 2,4-D ester 680 equivalent formulation to other countries compared to when Chinese exporters dumped the formulation into Australia in 2016 and 2017. The removal of measures would provide an opportunity for exporters to further increase export volumes to Australia to 2016 and 2017 levels (at dumped prices).
- Should the measures on 2,4-D acid and other derivative forms of 2,4-D (including salts, esters and formulations) expire, it is likely that the Australian industry manufacturing like goods would experience a recurrence of material injury.

7.5 Are exports likely to continue or recur?

The commission considers that if the measures were to expire, exports from China would likely recur.

For the Commissioner to be satisfied that the expiration of the measures would lead, or would likely lead, to a continuation of, or recurrence of dumping, it would need to be demonstrated that exports are likely to continue or recur. In determining whether exports of the goods from the subject countries would likely continue or recur should the measures expire, the commission had regard to the following:

- import volumes of the goods from China from prior to the last continuation of measures in 2018
- production capacity and export focus of Chinese exporters
- maintenance of distribution channels or links to the Australian market.

The following sections of this report outline the commission's assessment in respect of each of the above considerations. The commission's assessment is contained in **Confidential Attachments 3**, **4** and **5**.

7.5.1 Import volumes

The commission notes there were no exports of the goods from China during the inquiry period. Volumes from China have also decreased significantly since the measures were last continued, in the years prior to the inquiry period.

In section 5.4, the commission established that prior to the conclusion of REP 430 in 2018, China was the largest exporter of 2,4-D to Australia. This included both 2,4-D acid and intermediaries (technical products), and formulated 2,4-D products (Figure 3 and Figure 4 refer). Following REP 430, volumes of 2,4-D exported to Australia from China reduced dramatically, while exports to Australia from other countries increased.

The commission has provided an overview of all 2,4-D imports from 1 April 2016 in Figure 14 below. This data includes 2,4-D in its technical form (acid and intermediaries), as well as formulated 2,4-D.

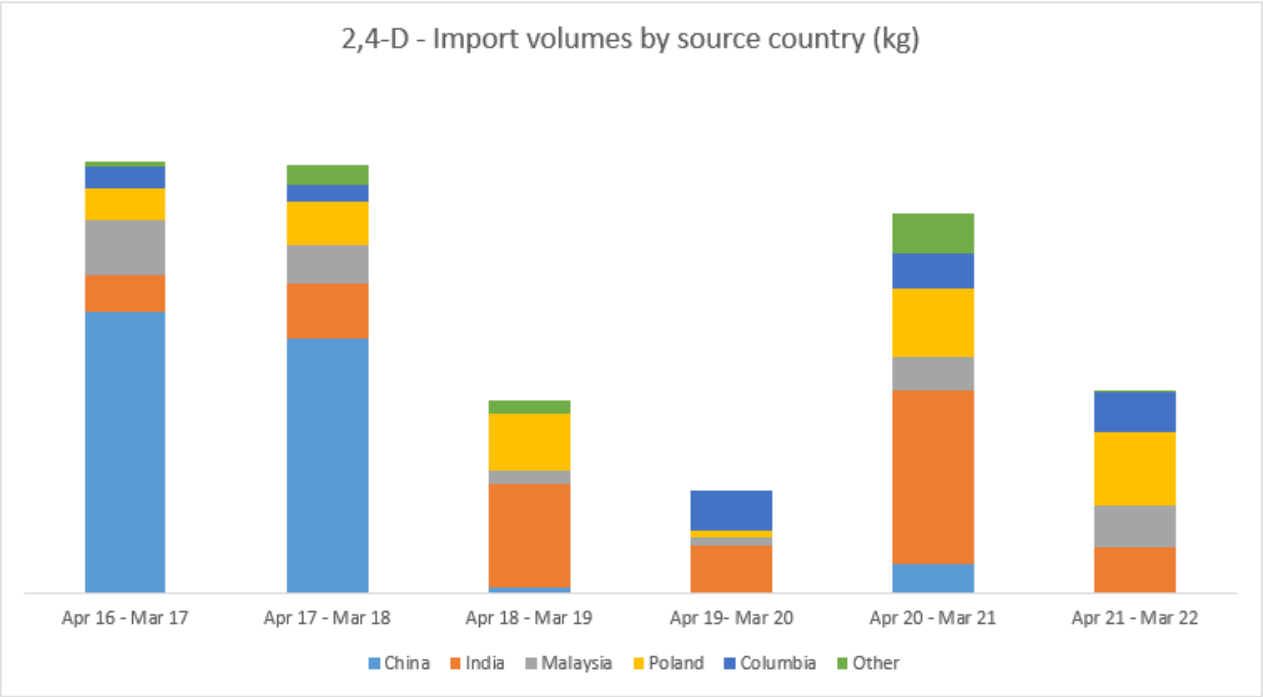

Figure 14: Import volumes of all 2,4-D by source country[40]

Figure 14 further shows that prior to the conclusion of REP 430 in March 2018, China made up the largest volume of 2,4-D imports. Imports from China reduced from approximately 60% of all 2,4-D imports in the year ending 31 March 2018, to approximately 3% in the following year. It is clear from the ABF data presented in Figure 14, that the change in variable factors on measures from China following REP 430 had a significant impact on volumes of 2,4-D exported from China.

While imports of 2,4-D overall have decreased, the reduction in the 2 years from 1 April 2018 to 31 March 2019 have also coincided with overall reduction in market size over these two years. This reduction, shown earlier in Figure 2, also coincided with lower than average rainfall which, as mentioned, reduces demand for 2,4-D. Imports have continued, and returned to significant levels in the year ending 31 March 2021, including imports from China at around 7% of all 2,4-D imported into Australia.

Figure 14 shows that there is still demand from both Australian formulators and importers of formulated products, to source imports of 2,4-D from other countries. The reduction in volumes of Chinese imports from April 2018 resulted in import volumes increasing from other sources (particularly India and Columbia from April 2019). Import volumes from Poland were also significant.

While there were no exports of the goods from China during the inquiry period, there have still been exports of the goods from China, albeit in diminished volumes since the conclusion of REP 430. Importers still have a desire to source 2,4-D products from multiple countries.

As discussed in section 5.4, and outlined in Figure 3, other Australian industry members source 2,4-D acid and intermediate products from importers and Nufarm to produce formulated products. Figure 4 outlined the volumes of imported 2,4-D technical products used in formulated 2,4-D products. This showed that import volumes from China decreased significantly following the last continuation of measures. Figure 15 below provides an overview of what this represents in market share for imports of 2,4-D.

[40] Data includes all 2,4-D products including technical and formulated 2,4-D products.

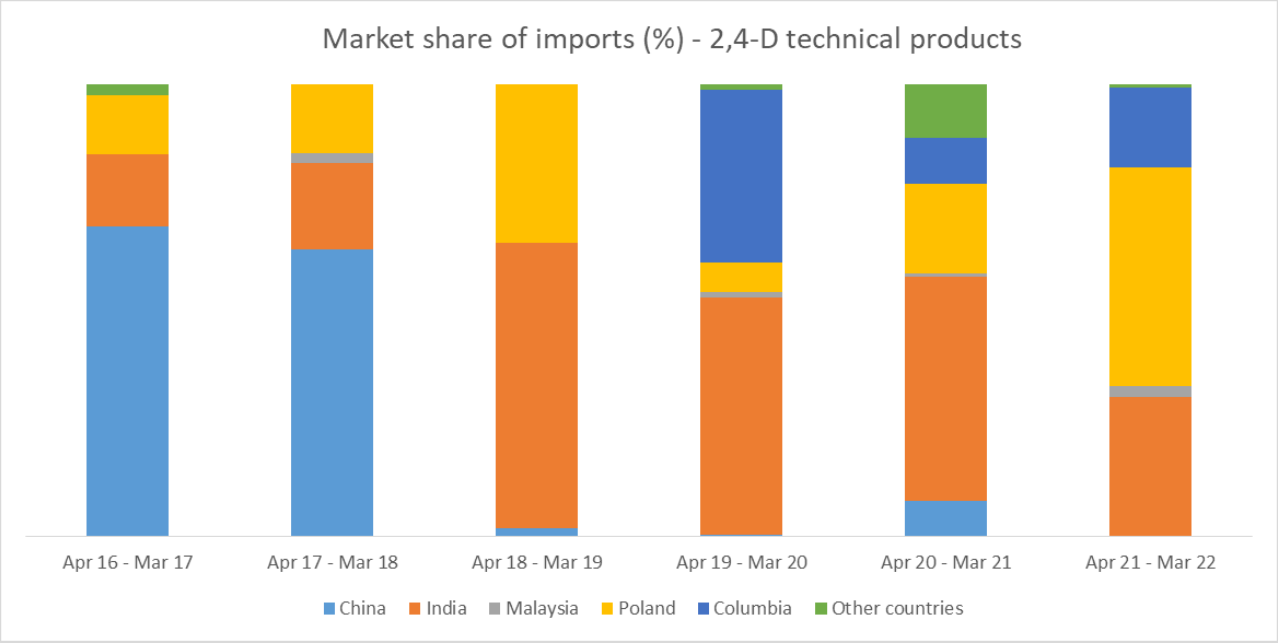

Figure 15: Market share – Imported 2,4-D technical acid, salts and esters used in formulated product by Australian formulators

As shown above in Figure 15, the market share of technical 2,4-D products from China reduced significantly from April 2018 following REP 430. Market share for India, Poland and Columbia increased as a result as importers sourced 2,4-D from countries other than China. It further outlines that there is still a propensity for importers to seek 2,4-D technical products from various sources, including imports.

The commission's analysis is contained in **Confidential Attachment 5**.

7.5.2 Production capacity and export focus

The commission has examined the production capacity utilisation and export focus of the cooperating exporter, Rainbow. Rainbow was previously the largest exporter of the goods from China. Based on the data Rainbow submitted to this inquiry, the commission considers that there is an excess capacity in China.

Information provided in Rainbow's verified REQ data, shows that it had a capacity utilisation rate of approximately 65% (and, therefore, had excess production capacity) during the inquiry period. Rainbow also had excess production capacity in previous years. Given that Rainbow was the largest exporter to Australia in REP 430, and that it has excess capacity, it is reasonable to assume that other 2,4-D producers in China also have surplus capacity.

Information provided by Rainbow for this inquiry reaffirms findings from the previous continuation inquiry in REP 430, that Rainbow is export focused in its sales of 2,4-D. During the inquiry period, exports of 2,4-D by Rainbow to countries other than Australia accounted for approximately 87% of its 2,4-D sales revenue. Rainbow's highest volumes of exports of 2,4-D products were to Latin America (including Mexico) and Asia. Rainbow also exported significant volumes of 2,4-D to Europe and Africa. It is reasonable to infer that the large volume of exports from Rainbow indicates it could export the goods to Australia.

The commission acknowledges that the low level of participation from exporters in the inquiry means that the market focus of other exporters may be different compared to Rainbow. However, in the absence of other information and cooperation from other exporters, the commission infers that the capacity utilisation rate of other Chinese exporters is at least as low as Rainbow's, and possibly even lower.

The commission's analysis is contained in **Confidential Attachment 4**.

7.5.3 Maintenance of distribution links to the Australian market

While sales of 2,4-D have significantly decreased since the last continuation inquiry concluded in March 2018, with no exports of the goods to Australia since early 2021 until the end of the inquiry period, Chinese exporters have maintained links with Australian importers of other herbicides during the inquiry period.

ABF data examined by the commission indicates that Chinese exporters have continued to export 2,4-D to Australia since the last continuation, although in reduced quantities. The data also shows that these same exporters, including Rainbow, have exported other non-2,4-D herbicides to similar importers that the commission identified in REP 430. Rainbow remains a significant exporter of other herbicides into Australia. This behaviour appears to be not limited to Rainbow, with other Chinese 2,4-D producers also exporting other non-2,4-D herbicides to Australia.

In addition, as discussed in section 2.3.4, Rainbow made a small number of sales after the end of the inquiry period. This also indicates that Rainbow has maintained distribution links with Australian importers.

7.5.4 Low barriers to entering the Australian market

There are low barriers for a Chinese producer of 2,4-D to continue or recommence exporting the goods to Australia. Exporters, including Rainbow still hold the relevant approved registrations to export the goods to Australia.

Unless an exemption applies, the Australian Pesticides and Veterinary Medicines Authority (APVMA) must register an agricultural chemical product before anyone can legally supply, sell or use it in Australia.[41] For farmers, food producers, the chemical industry and the public, registration means that they can supply, sell and/or use the product safely, according to the label directions.[42] Each registered product must have a label containing the instructions approved by APVMA, including adequate instructions for the safe and effective use of the product and for its storage, handling and disposal, and no one can legally supply the products without a label.

APVMA approval of an active constituent contained in a chemical product, registration of the associated chemical product, and approval of the product label requires a full assessment of the active constituent and product.

A search of the APVMA Public Chemical Registration Information System (PubCRIS)[43] indicates that Rainbow holds current and relevant approved product labels to export various 2,4-D products into Australia.[44] These labels are valid for 12 months, renewed annually, and the APVMA must approve any variations to these labels prior to use.

7.5.5 Conclusion

In view of the above analysis, the commission considers there is sufficient evidence to conclude that:

- Chinese exporters have maintained distribution links into the Australian market
- Chinese producers are export oriented
- Chinese producers of 2,4-D have excess capacity, and

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41 https://apvma.gov.au/

42 APVMA - Which products/chemicals require registration

43 APVMA PubCRIS database

44 Confidential Attachment 7.

- there are low barriers to entry for Chinese exporters to either recommence or begin exporting 2,4-D to Australia.

As a result, the commission considers that exports of 2,4-D from China are likely to recur if the measures currently in place are not continued.

7.6 Is dumping likely to continue or recur?

The commission preliminarily concludes that the expiration of the measures would likely lead to a recurrence of dumping of the goods exported to Australia.

In assessing the likelihood of dumping continuing or recurring, the Manual outlines a number of relevant factors and considerations. Such factors may include exporters' dumping margins, the volume of exports before and after the measures were imposed, the effect of the measures, the level of dumping compared with the level of measures, and any change in those measures (e.g. as the result of a review).[45]

The commission considers its examination of the relevant factors will vary depending on the available information, the nature of the goods and the sales market of the goods.[46] No one factor can necessarily provide decisive guidance. Therefore, the analysis in this section of the report examines a range of factors that the commission considers are relevant to this inquiry.

7.6.1 Australian industry's claims on dumping likely to continue or recur

Following the Australian industry verification, the commission published claims from Nufarm, in regards to dumping continuing or recurring, on the EPR.[47]

Nufarm stated in its application that the current *ad valorem* measures are effective across all types of 2,4-D. This is opposed to the floor pricing methodology in place prior to March 2018. The floor price that was in place only took into account the proportion of 2,4-D acid in the different forms of 2,4-D products exported to Australia from China. It did not take into consideration the value of the different forms of 2,4-D products. For instance, the cost to make for 2,4-D salt/amine is substantially lower than 2,4-D ester even with the same proportion of 2,4-D acid input. Therefore, while the floor price may have come into effect against lower cost 2,4-D products, it did not against the higher cost based products.

Nufarm submitted that the floor price was clearly ineffective given dumping was still proven to have been occurring at a rate of 22.3% to 35.3% in REP 430 despite a floor price being in place. Nufarm requested that the commission consider these circumstances when assessing this inquiry.

Nufarm noted during the verification visit that exports of 2,4-D into Europe from China have increased since the measures were last continued. Nufarm suggests that Chinese 2-4,D producers have redirected 2,4-D volumes to Eastern Europe, which the producers were previously exporting to Australia. This includes 2,4-D ester, which the producers are selling for less than 2,4-D acid. Nufarm stated that this could indicate dumping of 2,4-D into Eastern Europe from China, as 2,4-D acid is cheaper to produce than 2,4-D ester, as esters are a further processed product from 2,4-D acid.

Nufarm also noted that the low barriers of entry to the Australian market would make it relatively easy for Chinese exporters to recommence dumping 2,4-D into Australia if the measures expire

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[45] The Manual, p 137.

[46] Ibid.

[47] EPR 604, document number 10.

7.6.2 Analysis of dumping margins within the inquiry period and previous assessments

As noted in section 8.3, no export sales of the goods from China during the inquiry period means that the commission does not have contemporary information to ascertain the export price of the goods, or determine a normal value for the goods. As a result, the commission did not calculate a dumping margin for the inquiry period.

Considering the dumping margins calculated during the original investigation, and previous reviews or inquiries (as shown in Table 8), the commission has found a consistent pattern of dumping by Chinese exporters since the measures were imposed in 2003. Levels of dumping have also increased, particularly as determined during the previous continuation inquiry in REP 430. In REP 430 the commission found dumping margins from between 25.6% to 35.3%, using verified information.[48] This suggests there is a long-term pattern of Chinese exporters relying on dumping to compete on price.

Case type and number	ADN number	Date	Dumping margins
Investigation No 58	ACDN 2003/11	24 March 2003	Estimated dumping margins in the range of **5–10%**
Continuation Inquiry No 126	ACDN 2008/04	17 January 2008	Estimated dumping margins in the range of **10–30%**
Review of Measures No 189B[49]	ACDN 2013/12	31 January 2013	Weighted average dumping margin for all exporters **2.6%**
Continuation Inquiry No 430	ADN 2018/21	5 March 2018	Dumping margin for Rainbow **25.6%** Uncooperative and all other exporters **35.3%**
Reinvestigation Report No 430	ADRP Report No 79	9 October 2018	Dumping margin for Rainbow **22.3%**

Table 8: Previous dumping margins of 2,4-D exported from China

7.6.3 Likely future supply and demand conditions in the Australian market

As discussed in 5.2.2, Nufarm predominately supplies the market through short-term trading agreements through a distribution network around Australia. However, these agreements are not binding contracts. Therefore, there is the ability for customers to change suppliers at short notice. Customers are likely to be attracted to lower dumped prices from China should the measures be removed.

In addition, as discussed in section 5.2.3, the commission considers it likely that weather conditions will continue to drive demand in the Australia market. Further, as mentioned in section 5.5 the commission finds it likely that demand for 2,4-D in Australia will continue at current levels for the foreseeable future. While there may be periods of low rainfall in the future, lowering demand for 2,4-D products, the cyclical nature of weather patterns, and by analysing historical patterns of demand, any decline in demand for 2,4-D will be only for a finite period.

With demand for 2,4-D in Australia expected to continue, and Chinese exporters possessing excess capacity, there is the incentive for Chinese exporters to continue to supply the Australian market, or recommence supplying the Australian market. As shown in REP 430, Chinese exporters sold 2,4-D at dumped prices to gain sales and supply the Australian market. If measures were to expire, it appears likely that Chinese exporters will

[48] Following Reinvestigation Report No 430, the commission amended the dumping margin for Rainbow from 25.6% to 22.3%.
[49] Review of Measures No 189B was conducted concurrently with REP 189A.

recommence exporting 2,4-D at dumped prices to ensure that they regain the sales volumes and market share that they lost following the completion of REP 430.

As shown above in Table 8, Chinese exporters have continued to export 2,4-D at dumped prices since measures were first imposed. The commission also found Chinese exporters had their highest rate of dumping during the previous continuation inquiry (REP 430). This was a period where Chinese sourced 2,4-D accounted for approximately 40% of the Australian market.[50]

In the absence of any evidence to the contrary, it is reasonable to infer that the competitive environment, and the incentives that led to Chinese exporters capturing 40% of the Australian market while dumping, are unchanged. This suggests that the sharp decrease in exports from China since the commission last continued measures is because of the enhanced effectiveness of the measures themselves.

7.6.4 Conclusion

In view of the above analysis, the commission considers there is sufficient evidence to conclude that:

- Chinese exporters have continued to export 2,4-D at dumped prices since measures were first imposed
- REP 430 found dumping margins between 22.3% and 35.3%
- with demand for 2,4-D expected to continue, and Chinese exporters possessing excess capacity, it appears likely that Chinese exporters will recommence exporting 2,4-D at dumped prices to regain the sales volumes and market share that they lost following the completion of REP 430, should the measures expire.

There has been no contrary evidence provided by any other party and there is no other evidence indicating that if the measures were to expire, Chinese exporters would price future exports differently. There is no evidence of any change in pricing strategies, distribution arrangements or general market trends that would cast doubt on this conclusion.

As a result, the commission considers that dumping of 2,4-D from China is likely to recur if the measures are not continued.

7.7 Is material injury likely to continue or recur?

The commission considers that if the measures expire, this would likely lead to a recurrence of the material injury that the measures are intended to prevent.

7.7.1 Forms of material injury found in the original investigation

As discussed in section 6.2, in the original investigation REP 58, Customs and Border Protection found the Australian industry producing 2,4-D (represented by Nufarm) had suffered the following forms of injury caused by dumped goods from China:

- loss of market share
- price depression
- price suppression
- reduced profits and profitability.

[50] REP 430, p.45.

7.7.2 Nufarm's claims concerning the continuation and recurrence of injury

Nufarm stated in its application that the Australian 2,4-D market remains price sensitive in 2022 with the number of competitors increasing since the conclusion of the last continuation inquiry in 2018. Nufarm stated that the underlying threat for dumping remains, and if measures are not continued, imports from China would quickly return. Nufarm further stated that imports from China would act as a volume and price setter for 2,4-D in the Australian market, setting market conditions at an unsustainable level that Nufarm would not be able to respond to effectively.

In its application, and reaffirmed at the verification visit, Nufarm listed the investments that it made in its 2,4-D business since 2017. This included investing $33.8 million directly on 2,4-D acid synthesis through:

- a recently completed $26.5 million investment into 2,4-D synthesis plant maintenance and upgrades
- a $7.3 million investment to modernise the 2,4-D synthesis plant, which was supported by an Australian Government supply chain resilience initiative grant of $2 million.[51]

In addition, Nufarm made other investments over the same period, which totalled $15.5 million in the plant that handles 2,4-D along with other herbicides:

- $3.3 million for replacing esterification reactors (required to convert 2,4-D acid to 2,4-D esters)
- $2.6 million on upgrades and maintenance to its formulation vessel and packaging equipment
- $9.6 million for maintenance and upgrades that benefit production across the site.

Nufarm further stated in its application that Customs and Border Protection determined in Anti-Dumping Report No 189A (REP 189A) that the Australian market for 2,4-D is extremely price sensitive and that Nufarm continues to consider that selling prices are the key consideration for end-users in the decision to purchase product. Nufarm considers it likely that Chinese exporters would seek to dump 2,4-D into Australia to secure sales volumes.

Nufarm submitted that should the measures expire, it is likely that Chinese exporters of 2,4-D (acid and formulated product) will reduce export prices to Australia to increase sales volumes, resulting in a recurrence of dumping and material injury that the measures are intended to prevent.

7.7.3 Likely effect on volumes and market share

The commission expects that, should the measures expire, it it is likely Chinese exporters will endeavour to recapture their market share in the Australian 2,4-D market, at the expense of Australian industry's market share and volume.

Export volumes of 2,4-D from China were higher before measures were amended from a floor price to an *ad valorem* method following REP 430 in 2018. This indicates that the current measures have been effective.

In Chapter 6 of this report, the commission analysed the market share of formulated 2,4-D of Nufarm, other Australian industry members, and importers (based on source country) prior to and immediately following the last continuation of measures in March 2018. Between 1 April 2018 and 31 March 2020, Nufarm and other Australian industry members

[51] https://business.gov.au/grants-and-programs/supply-chain-resilience-initiative/grant-recipients

almost completely absorbed the volume of 2,4-D formulated products previously supplied by exporters from China. Over the same period, the market share for imports of formulated 2,4-D from China decreased to nearly zero and Nufarm increased its market share significantly.

Nufarm experienced a decrease in market share in the year ending 31 March 2021 (Figure 8 refers), most of which was absorbed by other Australian industry members. Nufarm then increased its market share in the year ending 31 March 2022, recapturing the portion absorbed by other Australian industry members. During these periods, exporters of formulated products experienced only small changes to their market share, while Figure 3 shows that exports of input 2,4-D acid and intermediaries continued to be purchased by Australian industry members to produce formulated products. Figure 4 outlines the sources of technical 2,4-D imports that are used in formulating 2,4-D products.

As mentioned in section 7.6.3, prior to the completion of REP 430, Chinese exporters accounted for approximately 40% share of the Australian market. This diminished significantly from March 2018. Based on the evidence before it, since the last continuation of measures:

- Australian industry captured most of the 2,4-D formulated product volumes previously supplied by Chinese exporters,
- Nufarm increased its supply of technical 2,4-D acid and intermediaries to other Australian industry members who formulate 2,4-D, and
- 2,4-D volumes of formulated products from other countries remained relatively stable (that is, exporters from other countries may have captured only minimal, if any, volumes of formulated products previously supplied by Chinese exporters).

7.7.4 Likely effect on prices, profits and profitability

As per REP 430, in the Australian 2,4-D market, price is one of the key factors in customers' purchasing decisions. In particular, 2,4-D users are likely to switch product if a lower priced option exists, even if the product on offer is less effective or may require numerous applications. There has been no new evidence to dispute this finding still being applicable today.

Nufarm's price negotiations with customers are competition driven. Nufarm will offer its customers a price based on monthly price lists. Nufarm's customers may then attempt to negotiate the final price from this starting point. Producers and customers predominately negotiate prices on a sale-by-sale basis, but there are tenders and specific sales campaigns that make up a small proportion of Nufarm's business.

Following the last continuation of measures in March 2018, Nufarm's unit selling prices and CTMS both decreased from 1 April 2018 to 31 March 2021, before both experiencing a sharp increase in the year ending 31 March 2022. As discussed in Chapter 6, Nufarm's profits and profitability fluctuated over this same period, but remained profitable in each year. The commission identified fluctuating demand for the product, driven by varying weather conditions over the period, as the main driver of these profit fluctuations.

Through the verification process and previous inquiries, the commission understands that import prices can influence Australian industry pricing. Namely, if climate conditions are favourable, increased demand for 2-4-D will support price sensitivity, and Nufarm will then compete directly with overseas competition.

An analysis of import pricing in **Confidential Attachment 3** shows that the 2,4-D market is still price sensitive, and Nufarm's pricing does come under pressure from exports. Imports of 2,4-D are still influencing prices in the market.

In the absence of probative data since the last continuation of measures, the commission has relied on the pricing behaviour of Chinese exporters since they imposed measures (including the price undercutting analysis conducted in REP 430). While REP 430 found that Chinese 2,4-D formulations undercut the prices of Australian produced 2,4-D at various times through that inquiry period, the prices of Australian produced 2,4-D was at parity with imported products for most part. REP 430 considered that the price parity between imported and Australian produced 2,4-D was the result of price depression.

This pricing behaviour suggests that Chinese exporters engage in robust price competition to increase their market share. In the absence of the measures, Nufarm's customers would likely refer to the price of 2,4-D from China to negotiate better prices. This would in turn put pressure on Nufarm to reduce its prices, materially affecting its profit and profitability.

7.7.5 Is injury likely to be material

In sections 7.7.3 and 7.7.4, the commission outlined that:

- since the last continuation of measures, Australian industry significantly increased its share of the domestic market for 2,4-D, which correlated with a sharp reduction and almost absence of imports from China
- the past pattern of pricing behaviour by Chinese exporters (including price undercutting) suggests they will engage in robust price competition to recapture their market share
- if the measures expire, the price of the goods exported from China would likely have a depressive or suppressive effect on prices that the Australian industry could achieve.

Taken together, these factors suggest that if the measures expire, Australian industry would need to lower its prices to compete with the prices of Chinese imports (materially affecting its profit and profitability) and/or risk Chinese exporters recapturing significant market share at the expense of Australian industry. The commission therefore considers that if the measures were to expire, the injury Australian industry would experience would be material.

7.7.6 Other injury factors

The commission examined whether the submissions of interested parties or any other record evidence substantiated the existence of other factors that could effectively sever the link between the expiry of the measures on the one hand, and a likely recurrence of injury, on the other.

As mentioned in section 5.2.3, Nufarm stated that the level of rainfall has a substantial effect on the demand for 2,4-D. Nufarm track rainfall and use various services to try to predict rainfall over the next 6 months in order to estimate demand and budget for production. In many periods where part of the country has been in drought, other parts have experienced heavy rainfall. However, drought across the whole country would significantly affect demand. This would cause injury to Nufarm's operations.

The production of 2,4-D is energy intensive. Nufarm mentioned that the increase in gas and energy prices in Australia has put upwards pressure on Nufarm's costs and as a result prices.

Nufarm also stated that it has suffered from global supply chain disruptions. Shipping costs to import certain input materials, such as phenol, for the production of 2,4-D have increased significantly in the last 2 years. The increase in shipping costs and availability have put upwards pressure on costs and prices.

These factors do not detract from the finding that material injury would recur if the measures expire. Rather, they add to Nufarm's fragility and make Nufarm more vulnerable to dumped imports if the measures expire.

7.8 Conclusion

Based on the information currently available, the commission is preliminarily satisfied that:

- exports from China would likely recur if the measures expire
- dumping by exporters from China would likely recur if the measures expire, and
- material injury to the Australian industry would likely recur if the measures expire.

The Commissioner has formed a preliminary view that the expiration of the measures would lead, or would be likely to lead, to a recurrence of the dumping and material injury that the measures are intended to prevent. The Commissioner therefore proposes continuation of the measures.

8 PROPOSED MEASURES

8.1 Preliminary recommendations

The Commissioner is proposing to recommend that the dumping duty notice remain unaltered, and that the method for working out the amount of IDD on exports remains unaltered.

The current method for determining the amount of IDD payable in relation to exports from China is the *ad valorem* method. The current measures are listed in Table 2 of section 2.2.

8.2 Forms of measures available

The *Customs Tariff (Anti-Dumping) Regulation 2013* prescribes the following forms of dumping duty available to the Minister when imposing the measures:

- fixed duty method (e.g. $X per tonne)
- floor price duty method
- combination duty method, or
- *ad valorem* duty method (i.e. a percentage of the export price).[52]

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, certain forms of duty will better suit particular circumstances. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping DutyNovember 2013* and relevant factors in the market for the goods.[53]

8.3 Review of variable factors

There is no requirement for the commission to ascertain variable factors for exporters in a continuation inquiry. In addition, in this case, the commission has limited information and data to determine how the variable factors relevant to the determination of duty payable under the Dumping Duty Act have changed.

As noted in section 2.3.4, the commission verified the data received in the REQ from Rainbow. As outlined in Rainbow's exporter verification report, the commission did not determine any exports of goods under consideration to Australia occurred during the inquiry period.[54]

More broadly, based on ABF data, there were no exports of the goods from China during the inquiry period. As a result, the commission does not have contemporary information to precisely ascertain the export price of the goods, or determine a normal value for the goods.

In respect of the information provided by Rainbow, the commission utilised this information in its assessment of the likelihood of dumping continuing or recurring, as outlined in chapter 7 of this SEF.

For the above reasons, should the Minister decide to secure the continuation of the measures, the Commissioner proposes to recommend that the dumping duty notice remain unaltered.

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[52] Section 5 of the Customs Tariff (Anti-Dumping) Regulation 2013.

[53] Available on the commission's website: Guidelines on Forms of Dumping Duties

[54] EPR 604, document number 8.

9 PROPOSED RECOMMENDATIONS

For the reasons outlined in Chapter 7 of this SEF, the Commissioner is preliminarily satisfied that the expiration of the measures would likely lead to a recurrence of the dumping and the material injury that the measures are intended to prevent. Therefore, the Commissioner proposes to recommend that the Minister should take steps to secure the continuation of the measures applying to the goods exported to Australia from China.

The Commissioner further proposes to recommend that the dumping duty notice remain unaltered.[55]

[55] Section 269ZHF(1)(a)(i).

10 ATTACHMENTS

Confidential Attachment 1	Australian market analysis
Confidential Attachment 2	Economic condition of the Australian Industry
Confidential Attachment 3	Market price analysis
Confidential Attachment 4	Recurrence of dumping analysis
Confidential Attachment 5	Import analysis
Confidential Attachment 6	ABARES Crop report and analysis June 2022
Confidential Attachment 7	APVMA 2,4-D product list 28 September 2022

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