



ANTI-DUMPING NOTICE NO. 2022/034

Customs Act 1901 – Part XVB

2,4-Dichlorophenoxyacetic acid (2,4-D) exported from the People’s Republic of China

Initiation of Continuation Inquiry No. 604 into Anti-Dumping Measures

Notice under section 269ZHD(4) of the *Customs Act 1901*

I, Dr Bradley Armstrong PSM, the Commissioner of the Anti-Dumping Commission (Commissioner), have initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of 2,4-dichlorophenoxyacetic acid (2,4-D, or ‘the goods’) exported to Australia from the People’s Republic of China (China), is justified. The anti-dumping measures are due to expire on 24 March 2023 (the specified expiry day).¹

The Anti-Dumping Commission (commission) has assisted me in initiating this continuation inquiry and will assist me in undertaking the inquiry, pursuant to the commission’s function specified in section 269SMD of the *Customs Act 1901* (the Act).²

1. The goods

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

¹ On and from 25 March 2023, if the notice is discontinued, the anti-dumping measures no longer apply.

² All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

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

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)			
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 ⁴

Table 1: Tariff classification⁵

2. Background to the anti-dumping measures

On 24 March 2003, following consideration of *International Trade Remedies Report No. 58* (REP 58), the then Minister for Justice and Customs imposed the original anti-dumping measures. The original investigation followed an application made under section 269TB by Nufarm Limited (Nufarm) representing the Australian industry producing like goods.

The anti-dumping measures were continued in 2008, 2013 and 2018.⁶ The current measures are due to expire on 24 March 2023, unless continued.

Further details on the goods and existing measures are available on the Dumping Commodity Register on the commission's website (www.adcommission.gov.au).

3. Application for continuation of the anti-dumping measures

Division 6A of Part XVB sets out, among other things, the procedures to be followed when dealing with an application for the continuation of anti-dumping measures.

In accordance with section 269ZHB(1), I published a notice on the commission's website on 21 January 2022.⁷ The notice invited the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures (section 269ZHB(1)(b)(i)), or

³ 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 anti-dumping measures.

⁴ This tariff classification is to capture products which contain 2,4-D and another herbicidal active ingredient.

⁵ 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.

⁶ Respectively, following *Trade Measures Report No. 126*, *International Trade Remedies Report No. 189A* (REP 189A) and *Anti-Dumping Commission Report No. 430* (REP 430).

⁷ [Anti-Dumping Notice No 2022/008](#).

- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures (section 269ZHB(1)(b)(ii)).

On 22 March 2022, the commission received an application for the continuation of the anti-dumping measures from Nufarm. A non-confidential version of the application is available on the commission's public record.

Having regard to the application, the original investigation and the public record for the original investigation, I am satisfied that:

- Nufarm is the person under section 269ZHB(1)(b)(i) because its application under section 269TB resulted in the existing anti-dumping measures, and
- Nufarm is the person under section 269ZHB(1)(b)(ii) because it is an Australian producer of 2,4-D.

4. Consideration of application under section 269ZHD(1)

Pursuant to section 269ZHD(1), I must reject an application for the continuation of anti-dumping measures if I am not satisfied of one or more of the matters referred to in section 269ZHD(2). These matters are whether:

- the application complies with section 269ZHC (see section 269ZHD(2)(a)), and
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent (see section 269ZHD(2)(b)).

5. Assessment under section 269ZHD(2)(a) - compliance with section 269ZHC

I consider that the application complies with the requirements of section 269ZHC because it:

- is in writing
- is in a form approved by me for the purposes of that section
- contains the information that the form requires
- is signed in the manner indicated by the form, and
- was lodged in a manner approved under section 269SMS, being by email to the commission's email address provided in the instrument under section 269SMS.⁸

6. Assessment under section 269ZHD(2)(b) - reasonable grounds

As part of its application, Nufarm provided Australian Bureau of Statistics (ABS) import data for the goods to demonstrate that 2,4-D continues to be exported from China to Australia. Nufarm's estimates of export prices are based on the ABS data.

Nufarm provided an estimate of domestic pricing to form the basis of its normal value estimate. However, as noted below in my analysis, there is limited information publically available to the Australian industry.

⁸ A copy of the instrument is on the commission's website, www.adcommission.gov.au.

Applicant's claims

In its application, Nufarm makes the following claims:

- Import volumes of 2,4-D have continued since the measures were last continued in 2018.
- 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 2,4-D acid and formulated 2,4-D has been exported 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 they were dumped in 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 anti-dumping 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.

My consideration of the application

I have examined the information from the Australian Border Force (ABF) import database and found that exporters from China have continued to export the goods to Australia since the imposition of the anti-dumping measures. This confirms that manufacturers in China have maintained distribution links into the Australian market. My analysis of the ABF import database indicates that the volume of goods exported from China has declined since the last continuation of measures in REP 430. My analysis of the ABF import database is in **Confidential Attachment 1**.

I understand that the 2,4-D market in Australia is price sensitive, and demand reflects broader agricultural trends. Figure 1 shows that quantities of 2,4-D being imported to Australia declined in 2018 and 2019; Nufarm stated that the significant decrease in imports coincided with one of Australia's worst droughts on record across significant parts of the country in the same period. There appears to be ongoing demand for imported herbicide products.

Australian imports of 2,4-D by source

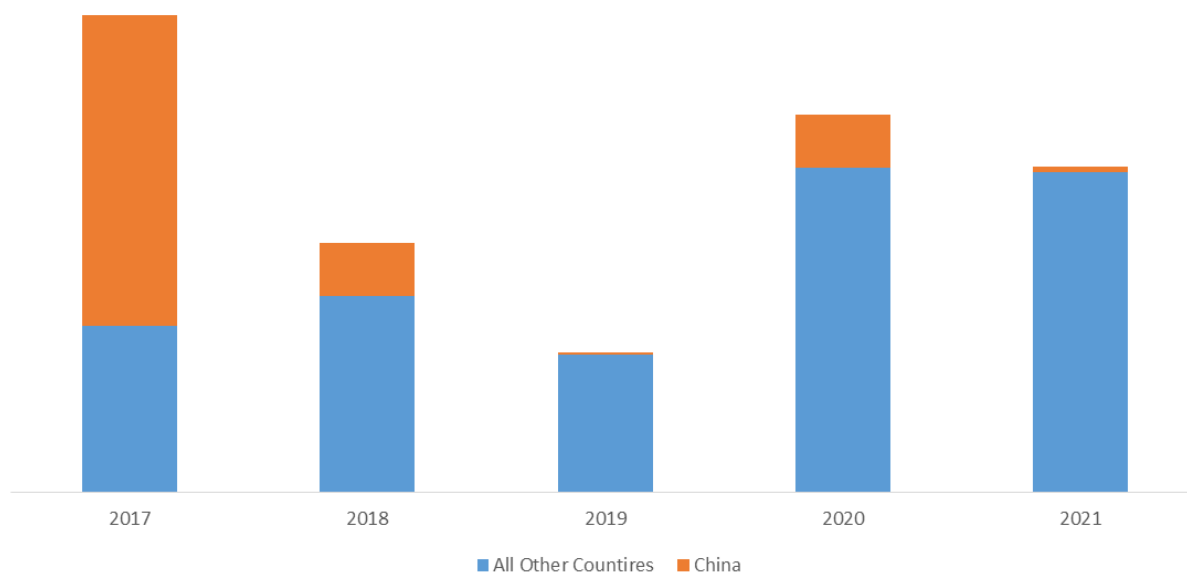


Figure 1: Volume of imports

Imports from a range of sources remains a feature of the Australian market. Evidence provided by Nufarm shows that exporters from China have grown their share of imports of herbicide formulations other than 2,4-D since 2018. The substantial decline in 2,4-D exported from China following the last continuation inquiry, which substantially increased the rate of measures applying to the goods exported from China in 2018,⁹ tends to support a view that price is a significant factor in purchasing decisions.

The original investigation (REP 58) found that the Australian industry producing 2,4-D (represented by Nufarm) had suffered injury in the form of loss of market share, price depression, price suppression, and reduced profits and profitability. Other cases have noted the Australian market for 2,4-D is price sensitive (REP 189A). REP 430 found that the Australian industry remained susceptible to injury from dumped imports. Nufarm's application stated that the Australian 2,4-D market remains price sensitive, and the number of competitors in the market has increased.

In the absence of the measures, I consider it reasonable for Nufarm to assert that Chinese exports would likely have a price advantage over 2,4-D from other sources. I consider it reasonable to assert that this price advantage, in the context of a market which appears to be price sensitive, might result in an increase in exports from China and that this might lead to a recurrence of injury to the Australian industry.

Finally, although not required for the purpose of considering the application, I have noted Nufarm's approach to calculating a normal value and estimating export prices of 2,4-D products. Using Nufarm's estimated export price and estimated normal value, it is possible to assert that dumping has continued to occur. My analysis is set out in **Confidential Attachment 2**.

⁹ From 0.0% for all exporters, increasing to 25.6% for Shandong Weifang Rainbow Chemical Co., Ltd and 35.3% for all other exporters; ADN No. 2018/021.

Conclusion

Having regard to the application, Nufarm's claims and other relevant information set out in this notice, I am satisfied that, in accordance with section 269ZHD(2)(b), there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Further, I am satisfied that, in accordance with section 269ZHD(2)(a), the application complies with section 269ZHC.

Accordingly, I have decided to not reject the application.

7. This continuation inquiry

For the purposes of this inquiry, I will examine the period from 1 April 2021 to 31 March 2022 (the inquiry period) to determine whether dumping has occurred and whether the variable factors relevant to the determination of duty have changed.

Following my inquiry, I will recommend to the Minister for Industry, Energy and Emissions Reduction (the Minister) whether the notice should:

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

8. Proposed model control code structure

The commission undertakes model matching using a Model Control Code (MCC) structure to identify key characteristics that will be used to compare the goods exported to Australia and the like goods sold domestically in the country of export.¹⁰ In developing the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.

The table below outlines the commission's proposed MCC structure for this inquiry.

¹⁰ Further information regarding the application of MCC structures is provided at Chapter 14 in the *Dumping and Subsidy Manual*, available at: www.adcommission.gov.au.

Category	Sub-Category		Sales Data	Cost Data
Form ¹¹	T	Technical	Mandatory	Mandatory
	F	Formulation		
Product Type	A	Acid	Mandatory	Mandatory
	E	Esters		
	S	Amines/Salts		
	M	Mixtures ¹²		
Strength	### ¹³	% (w/v) 2,4-D Acid	Mandatory	Mandatory

Table 2: Proposed MCC structure

Proposals to modify the proposed MCC structure should be raised as soon as is practicable, but no later than **20 May 2022**.

Interested parties are encouraged to make a submission on whether any proposed modifications to the MCC structure should be accepted by the commission. Any changes to the MCC structure will be considered by the commission and reported in verification reports, or in the statement of essential facts (SEF).

9. Public record

I must maintain a public record for this inquiry. The Electronic Public Record (EPR) hosted on the commission's website (www.adcommission.gov.au) contains, among other things, a copy of all non-confidential submissions from interested parties. Documents hosted on the EPR can be provided upon request to interested parties.

10. Submissions

I invite interested parties, as defined in section 269T(1), to lodge written submissions with me concerning the continuation of the measures, no later than close of business on **20 May 2022**, being 37 days after the date of publication of this notice. The commission's preference is to receive submissions by email to: investigations1@adcommission.gov.au.

Submissions may also be addressed to:

The Director, Investigations Unit 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

¹¹ 'Technical' are the active ingredient forms of 2,4-D that have herbicidal activity, but is not fit for use by end users. 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.

¹² 'Mixture' formulation category are for herbicide formulations which contain a second or third active ingredient along with the 2,4-D.

¹³ 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.

Interested parties wishing to participate in the inquiry must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received after the date indicated above, if to do so would, in my opinion, prevent the timely placement of the SEF on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked 'OFFICIAL: Sensitive'. Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked 'PUBLIC RECORD').

11. Statement of essential facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister within the legislative timeframe. I will place the SEF on the public record on, or before, **1 August 2022**, that is, within 110 days after the publication of this notice, or by such later date as I may allow in accordance with section 269ZHI(3).¹⁴

The SEF will set out the essential facts on which I propose to base a recommendation to the Minister concerning the continuation of the anti-dumping measures.

I invite interested parties to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record. I will take into account submissions received in response to the SEF within 20 days of the SEF being placed on the public record when completing my report and recommendation to the Minister. The email and physical addresses at which submissions can be lodged in relation to the SEF are the same as those specified above under the section titled 'Submissions'.

12. Report to the Minister

I will make a recommendation to the Minister in a report on, or before, **15 September 2022**. That is, within 155 days after the date of publication of this notice, or such later date as I may allow, in accordance with section 269ZHI(3).¹⁵

The Minister must make a declaration within 30 days after receiving the report, or if the Minister considers there are special circumstances, such longer period, ending before the specified expiry day, as the Minister considers appropriate. If the Minister receives the report less than 30 days before the specified expiry day, the Minister must make the declaration before that day.

¹⁴ On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

¹⁵ Ibid.

13. Contacting the commission

Enquiries about this notice may be directed to the case manager on +61 3 8539 2408 or investigations1@adcommission.gov.au.

Dr Bradley Armstrong PSM
Commissioner
Anti-Dumping Commission
13 April 2022