



**TRADE MEASURES BRANCH**  
CUSTOMS ACT 1901 - PART XVB

**DICHLOROPHENOXY-ACETIC ACID (2,4-D)**

**THE PEOPLE'S REPUBLIC OF CHINA, INDIA AND THE UNITED  
KINGDOM**

**STATEMENT OF ESSENTIAL FACTS NO. 58**

**OCTOBER 2002**

# 1 CONTENTS

<b>1</b>	<b>CONTENTS</b> .....	<b>2</b>
<b>2</b>	<b>ABBREVIATIONS &amp; ACRONYMS</b> .....	<b>3</b>
<b>3</b>	<b>INTRODUCTION</b> .....	<b>4</b>
<b>4</b>	<b>PURPOSE</b> .....	<b>5</b>
<b>5</b>	<b>SUMMARY OF ESSENTIAL FACTS</b> .....	<b>6</b>
<b>6</b>	<b>SUBMISSIONS</b> .....	<b>7</b>
<b>7</b>	<b>THE GOODS UNDER CONSIDERATION</b> .....	<b>8</b>
7.1	PRODUCT INFORMATION .....	8
7.1.1	The product .....	8
7.1.2	Production process of the goods – acid and ester.....	8
7.2	TARIFF CLASSIFICATION .....	8
7.3	IMPORTS .....	9
7.3.1	Nominated countries .....	9
7.3.2	Volume of imports .....	9
<b>8</b>	<b>AUSTRALIAN INDUSTRY</b> .....	<b>11</b>
8.1	PRODUCED IN AUSTRALIA.....	11
8.2	AUSTRALIAN INDUSTRY .....	11
8.3	LIKE GOODS .....	12
8.3.1	Australian industry’s claims .....	12
8.3.2	Exporter’s views .....	13
8.3.3	Customs’ analysis .....	14
8.4	CONCLUSION .....	15
<b>9</b>	<b>AUSTRALIAN MARKET</b> .....	<b>16</b>
9.1	MARKET STRUCTURE .....	16
9.1.1	Nufarm .....	16
9.1.2	Major importers .....	16
9.1.3	Toll manufacturers .....	16
9.1.4	General .....	17
9.2	MARKET SIZE .....	18
<b>10</b>	<b>THE DUMPING INVESTIGATION</b> .....	<b>19</b>
10.1	BACKGROUND.....	19
10.2	COOPERATION.....	19
10.3	INDIA - ATUL LIMITED .....	19
10.3.1	Export Price.....	19
10.3.2	Normal value .....	21
10.3.3	Dumping margins.....	24
10.4	UNITED KINGDOM – AH MARKS AND COMPANY LIMITED .....	25
10.4.1	Export Price.....	25
10.4.2	Normal value .....	27
10.4.3	Dumping margins.....	30
10.5	CHINA - JIAMUSI HEILONG AGRICULTURAL AND INDUSTRIAL CHEMICAL Co. LTD .....	31
10.5.1	Export Price.....	32
10.5.2	Normal value .....	35
10.5.3	Dumping Margins .....	44
10.6	IMTRADE CHINA .....	44
10.6.1	Export Price.....	44

10.6.2	Normal value .....	46
10.6.3	Dumping Margins .....	49
<b>11</b>	<b>THE ECONOMIC CONDITION OF THE INDUSTRY .....</b>	<b>50</b>
11.1	INTRODUCTION .....	50
11.2	INDUSTRY'S CLAIMS .....	50
11.3	INJURY ANALYSIS.....	50
11.3.1	Industry data .....	50
11.3.2	Approach.....	51
11.3.3	Products .....	51
11.3.4	Source Countries .....	52
11.4	VOLUME EFFECTS .....	52
11.4.1	Sales volume.....	52
11.4.2	Market share .....	54
11.5	PRICE EFFECTS .....	54
11.5.1	Price undercutting .....	55
11.5.2	Price depression .....	59
11.5.3	Price Suppression .....	62
11.6	PROFITS AND PROFITABILITY .....	66
11.6.1	Loss of profits and profitability.....	66
11.7	OTHER INJURY FACTORS .....	73
11.8	CONCLUSIONS .....	74
<b>12</b>	<b>HAS DUMPING CAUSED MATERIAL INJURY? .....</b>	<b>77</b>
12.1	NUFARM'S CLAIMS.....	77
12.2	EXPORTER'S CLAIMS .....	77
12.2.1	Jiamusi Heilong Agricultural and Industrial Chemical Co Ltd (Jiamusi).....	77
12.2.2	Atul Limited (Atul).....	78
12.3	OTHER INTERESTED PARTIES CLAIMS .....	78
12.3.1	The Western Australian Farmers Federation (Inc.) .....	78
12.3.2	National Farmers' Federation Limited.....	79
12.3.3	Grains Council of Australia.....	79
12.4	CUSTOM'S ASSESSMENT .....	80
12.4.1	Cumulative effect of exportations in assessing material injury .....	80
12.4.2	Dumping.....	80
12.4.3	Price effects .....	80
12.4.4	Volume effects .....	81
12.4.5	Profits and profitability.....	81
12.5	OTHER POSSIBLE CAUSES OF INJURY .....	81
12.5.1	Low priced undumped imports from India and Imtrade China .....	81
12.5.2	Higher production cost of Nufarm .....	82
12.5.3	Global oversupply of 2,4-D.....	82
12.5.4	Export performance of Nufarm .....	82
12.6	CONCLUSION .....	82
<b>13</b>	<b>WILL DUMPING CONTINUE?.....</b>	<b>83</b>
<b>14</b>	<b>NON-INJURIOUS PRICE.....</b>	<b>84</b>
14.1	INTRODUCTION .....	84
14.2	UNSUPPRESSED SELLING PRICE .....	84
14.3	NON-INJURIOUS PRICE CALCULATION .....	85
14.4	CONCLUSION .....	85

## 2 ABBREVIATIONS & ACRONYMS

ACDN	Australian Customs Dumping Notice
China	People's Republic of China
CEO	Chief Executive Officer of Customs
CTMS	Cost to make and sell
EC	European Community
EU	European Union
FOB	Free on board
GUC	Goods under consideration
IBE	Iso butyl ester
Minister	Minister responsible for Customs
NIP	Non-injurious price
SEF	Statement of Essential Facts
the Act	The <i>Customs Act 1901</i>
the goods	The goods the subject of the application
U.K.	The United Kingdom
USP	Unsuppressed Selling Price
WTO	World Trade Organization
2EH	2 ethyl hexyl ester technical

### 3 INTRODUCTION

Under the provisions of s. 269TDAA of the *Customs Act 1901* (the Act), Customs is required to place on the public record a statement of the essential facts (SEF) on which it proposes to base its recommendations to the Minister for Justice & Customs (the Minister).

The following statement is made in relation to the anti-dumping investigation into dichlorophenoxy-acetic acid (2,4-D) exported to Australia from the People's Republic of China (China), India and the United Kingdom (U.K.). Customs initiated the investigation following an application by Nufarm Limited (Nufarm).

The investigation was notified in *The Australian Financial Review* on 2 April 2002 and Australian Customs Dumping Notice (ACDN) No. 2002/16.

Where there is an investigation of alleged dumping, the Act requires that an SEF be published by day 110 of the investigation or by such later date as the Minister may allow in accordance with s. 269ZHI of the Act. Customs requested an extension to the investigation because:

- the industry visit program was not completed until late June due to problems identified with industry data, with consequent delays in the analysis of material injury claims, threat of material injury and causal link;
- the completion of overseas investigations was delayed due to the travel warning issued by the Department of Foreign Affairs and Trade; and
- overseas investigations in China involve the economies in transition legislation and complex export arrangements.

The Minister approved an extension of time for the publication of the SEF by a maximum of 90 days to 18 October 2002. The extension of the SEF means that Custom's final report and recommendation to the Minister must be made no later than 2 December 2002.

## 4 PURPOSE

The SEF details the facts on which Customs proposes to base its recommendations to the Minister. The purpose of the SEF is to allow interested parties the opportunity to comment on the essential facts before Customs reports to the Minister.

Responses to this statement should be made before **7 November 2002**. Customs is not obliged to have regard to any submission received after this date, if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be limited to the issues of fact as outlined in that document. Because of the statutory time limit to make a report to the Minister, it will generally not be possible for Customs to consider new issues or facts raised at this stage.

Customs' address for submissions in response to this SEF is:

Director Operations 2  
Trade Measures Branch  
Australian Customs Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Interested parties intending to respond to the statement must include a non-confidential version of their submission for placement on the public record.

As well as the non-confidential submissions by interested parties, and the statement of essential facts, the public record also contains non-confidential versions of Customs' reports. These reports cover normal value, export price and material injury. The statement of essential facts should be read in conjunction with these documents.

Any party wishing to examine the public record before lodging a submission in response to this statement should contact the Trade Measures Office Management staff on (02) 6275 6547.

All Customs dumping notices are available on the internet at <http://www.customs.gov.au/notices/index.htm>.

## 5 SUMMARY OF ESSENTIAL FACTS

The essential facts are:

- an application for the imposition of dumping duties in respect of 2,4-D exported from China, India and the United Kingdom was received by Customs on 12 March 2002;
- Customs initiated an investigation on 2 April 2002;
- there is an Australian industry producing like goods;
- all forms of 2,4-D are considered to be like goods;
- exports of 2,4-D from China to Australia (excluding exports by Imtrade China) were at dumped prices;
- the dumping margin was between 5% and 10%;
- exports of 2,4-D from the U.K. to Australia were at dumped prices;
- the dumping margins were approximately 30%;
- exports of 2,4-D from India were not at dumped prices;
- exports of 2,4-D by Imtrade China were not at dumped prices;
- the industry producing like goods has suffered injury in the form of:
  - loss of market share;
  - price undercutting;
  - price depression;
  - price suppression; and
  - loss of profits & profitability
- there is a causal link between the dumped imports and the injury to the Australian industry and the injury is material; and
- exports in the future from China (excluding those by Imtrade China) and the U.K. are likely to be dumped.

## 6 SUBMISSIONS

Submissions from the following parties were received and are available on the public file.

- The Western Australian Farmers Federation (Inc.) (Wafarmers)
- National Farmers' Federation Limited (NFF)
- Grains Council of Australia
- Jiamusi Heilong Agricultural and Industrial Chemical Co Ltd (Jiamusi);
- Atul Limited (Atul)
- Nufarm Ltd

These submissions were taken into consideration by Customs during the preparation of the SEF.

## 7 THE GOODS UNDER CONSIDERATION

The goods under consideration (GUC) are:

- 2,4-D (dichlorophenoxy-acetic acid), a selective herbicide, exported to Australia from China, India and the United Kingdom, in the form of 2,4-D acid and 2,4-D ester

### 7.1 Product information

#### 7.1.1 The product

2,4 dichlorophenoxy acetic acid (2,4-D) is a herbicidally active molecule sold in various forms throughout the world for the control of broadleaf weeds. The most common forms sold are salts, principally sodium and dimethylamine, and esters, principally ethyl, iso-Butyl and ethyl hexyl. All products' performance are measured in terms of their efficacy (ability to kill plants) to the base active ingredient 2,4D acid. While there are various routes of manufacture for the various products the base molecule is 2,4D and this is used as the measuring tool for equivalence.

2,4-D was exported to Australia in the forms of acid and ester during the investigation period.

#### 7.1.2 Production process of the goods – acid and ester

2,4-D acid is produced from a chemical reaction involving chlorine, phenol and sodium monochloracetate acid and hydrochloric acid.

The 2,4-D esters (a soluble form of 2,4-D) are produced by reacting the 2,4-D acid with an alcohol (either an ethyl or butyl).

### 7.2 Tariff classification

The applicant classified the goods under investigation, as follows:<sup>1</sup>

Tariff sub-heading	Statistical Code	Goods
2918.90.00	44	2,4-D Acid
2918.90.00	45	2,4-D Salts and Esters

Nufarm stated the applicable duty rate under 2918.90.00 for product from all sources is 5%, with the exception of free rates for New Zealand, PNG, and Forum Island and developing countries as listed in Customs Tariff Schedule 1, Parts 1 & 3.

Nufarm also stated in the application that, although understood not to be currently imported, fully formulated products are classified to tariff sub-heading 3808.30.00.

<sup>1</sup> Non-confidential application, page 5.

1 **7.3 Imports**

2 **7.3.1 Nominated countries**

3 The applicant nominated China, India and the U.K. as the countries against  
4 which anti dumping action was sought.

5 7.3.1.1 China

6 Customs identified a number of exporters of 2,4-D acid to Australia from  
7 China during the investigation period. Customs visited the two major  
8 exporters:

- 9 • Jiamusi Heilong Agricultural and Industrial Chemical Co Ltd (Jiamusi);  
10 • Imtrade China;

11 7.3.1.2 India

12 Customs identified one exporter of 2,4-D acid and ester to Australia from  
13 India during the investigation period:

- 14 • Atul Limited (Atul)

15 7.3.1.3 U.K.

16 Customs identified one exporter of 2,4-D acid and ester to Australia from the  
17 U.K. during the investigation period:

- 18 • AH Marks and Company Limited (Marks)

19 **7.3.2 Volume of imports**

20 To determine the volume of imports during the investigation period Customs  
21 used a variety of sources including: verified data from exporters; verified data  
22 from Australian importers; and Customs database, especially for quantifying  
23 imports from countries other than those nominated.

24

1 Customs estimated that the volume of 2,4-D acid and ester (in acid  
2 equivalents) imported during the investigation period was approximately 1,200  
3 tonnes. The following chart depicts the proportions of imports from the  
4 nominated countries.



5

## 8 AUSTRALIAN INDUSTRY

Subsection 269TB(1) of the *Customs Act 1901* specifies that an application for publication of a dumping duty notice may be lodged where, inter alia, there is, or may be established, an Australian industry producing like goods.

### 8.1 Produced in Australia

Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as 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.

The applicant, Nufarm, claimed it produced 2,4-D in Australia. Customs inspected the company's manufacturing facilities and observed Nufarm's production of 2,4-D. Customs verified product information, including the cost to make, provided by Nufarm in its application.

### Conclusion

Customs is satisfied that 2,4-D is wholly manufactured in Australia.

### 8.2 Australian Industry

Nufarm, the applicant, is a public company, listed on the Australian Stock Exchange. It produces a range of agricultural and industrial chemicals and animal and human health products.

In the application, Nufarm identified the Australian industry as consisting of:

- Nufarm, the only fully integrated Australian manufacturer of 2,4-D; and
- other Australian producers (the formulators) of fully formulated 2,4-D products produced from imported forms of 2,4-D, i.e. 2,4-D acid and isobutyl ester technical.

The formulators are considered to form part of the industry as they perform a substantial process of manufacture. Formulators are considered to be those who import and formulate in their own right and those who import and outsource the formulation process. Nufarm has assumed that the formulators would oppose the application.

The WTO Dumping agreement provides that producers who are importers themselves may be excluded and the industry defined as referring to the rest of the producers. Australia's legislation does not have a similar provision and so the formulators remain part of the Australian industry.

1 Based on the production and import data provided in the application, Nufarm  
2 represents approximately 90% of the Australian industry by volume.  
3 Therefore Customs is satisfied that Nufarm represents a major proportion of  
4 the industry and consequently any assessment of injury to the industry can be  
5 based upon Nufarm's economic performance.

### 6 **8.3 Like Goods**

7 The identification of 'like goods' is fundamental to an anti-dumping  
8 investigation. Subsection 269T(1) of the *Customs Act 1901* states:

9 "like goods, in relation to goods under consideration, means goods that are identical in all respects  
10 to the goods under consideration or that, although not alike in all respects to the goods under  
11 consideration, have characteristics closely resembling those of the goods under consideration."

12 The identification of like goods affects decisions relating to injury, normal  
13 value and the scope of any measures that may be imposed.

14 Customs recognises that no single factor is conclusive in determining like  
15 goods.

16 Customs received a number of submissions on like goods. Those  
17 submissions are available on Customs' public file.

#### 18 **8.3.1 Australian industry's claims**

19 In its application Nufarm described the locally produced goods as follows:

- 20 • 2,4-D acid;
- 21 • 2,4-D salts (e.g. DMA & IPA);
- 22 • 2,4-D ester (e.g. butyl ester & ethyl ester); and
- 23 • 2,4-D fully formulated

##### 24 **8.3.1.1 The product and production process**

25 2,4-D is the active primary ingredient in the manufacture of phenoxy  
26 herbicides, which are used for the selective control of broadleaf weeds. After  
27 the production of 2,4-D acid there are two stages of formulation. The first  
28 stage is the formulation of the 2,4-D acid into:

- 29 • 2,4-D salts (dimethylamine (DMA) and iso-propylamine (IPA))
- 30 • 2,4-D esters (ethyl ester and iso-butyl ester)

31 The second stage is fully formulating the end product using the first stage  
32 (intermediate) products. The main fully formulated forms of 2,4-D include:

- 33 • Ester 800
- 34 • Amine 500
- 35 • Amine 500 Low Odour; and

- 1 • Amine 225

2 As discussed 2,4-D acid is a result of a chemical reaction involving chlorine,  
3 phenol, sodium monochloroacetate acid and hydrochloric acid.

4 For the formulation of the soluble intermediate products:

- 5 • 2,4-D esters are produced by reacting the 2,4-D acid with an alcohol  
6 (either an ethyl or butyl); and  
7 • 2,4-D salts are produced by the combination of the 2,4-D acid with a salt  
8 (usually dimethylamine).

9 Adding solvents and surfactants to the intermediate products then produces  
10 the fully formulated forms of 2,4-D.

### 11 8.3.1.2 Like goods claim

12 Nufarm claims it produces like goods to the goods under consideration that  
13 fall into two categories, identical goods and not identical goods. The  
14 company considers the 2,4-D acid and ester it produces to be identical to the  
15 imported forms of 2,4-D acid and ester. It also considers that, although not  
16 identical to the current imported forms of 2,4-D, 2,4-D salts and fully  
17 formulated forms of 2,4-D are like goods to 2,4-D acid and 2,4-D ester.

18 In reaching this view the following factors, from the application were  
19 considered by Nufarm:

- 20 - "2,4-D acid is the dominant active ingredient in the intermediate formulations;  
21 - The 2,4-D acid input is "like" the intermediate formulated product because:  
22     o 2,4-D acid imparts the essential characteristic; and  
23     o 2,4-D is dedicated to a single use (in weed control), there being no separate  
24         market or independent use for the 2,4-D.  
25 - Each of the above active constituents are classified to the same tariff sub-heading 2918.90.00;  
26 - While there are physical differences between the various forms they only represent variations  
27     in the presentation of the 2,4-D acid;  
28 - The production of 2,4-D acid and the intermediate formulations is a relatively integrated  
29     process;  
30 - All forms have the same end use;  
31 - All forms have the same channels of market distribution; and  
32 - There is an absence of any clear dividing line in terms of market segmentation between the  
33     various forms and product substitution can occur between the formulated products."<sup>2</sup>

### 34 8.3.2 **Exporter's views**

35 In contrast to Nufarm's claim, an exporter did not consider the fully formulated  
36 goods to be like goods to 2,4-D acid as they have different characteristics.

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<sup>2</sup> Non-confidential application, page 7.

1 2,4-D acid is a powder while the formulated products are liquids. The  
2 exporter believed that it would not be necessary for the 2,4-D to undergo the  
3 complex processes of amination and esterification, if the goods were in fact  
4 like goods. It was also argued that the products do not have the same uses  
5 and do not compete against each other.

### 6 **8.3.3 Customs' analysis**

7 In determining like goods, Customs generally considers the following

- 8 • physical characteristics
- 9 • inter-changeability;
- 10 • channels of distribution;
- 11 • common manufacturing facilities and production employees;
- 12 • customer or producer perceptions; and
- 13 • price.

14 However, it should be noted that this list relates to the 'horizontal' approach to  
15 determining like goods (goods at the same stage of the production cycle).  
16 Another approach to determining like goods is the 'vertical' approach (goods  
17 at different stages of the same production cycle, when one is used to produce  
18 another).

19 As the goods in the investigation are at different stages of the one production  
20 cycle, the vertical approach would appear more appropriate.

21 In determining like goods in a vertical context, the following conditions are  
22 considered

- 23 • the necessity for and cost of further processing;
- 24 • the degree of inter-changeability of articles at different stages of  
25 production;
- 26 • whether the article at the earlier stage of production is dedicated to use in  
27 the finished article;
- 28 • whether there are significant independent uses or markets for the finished  
29 or unfinished articles; and
- 30 • whether the article at an earlier stage of production embodies or imparts  
31 to the finished article an essential characteristic or function.

32 In a recent Australian case involving glyphosate from China, Customs  
33 considered the formulated product to be a like good to the acid because there  
34 were no basic differences in the chemical characteristics and properties and  
35 all forms are dedicated to the same ultimate use. This view was consistent  
36 with the European Union (EU), as discussed in the report (Trade Measures  
37 Branch Report number 45):

1 “Customs notes that the European Union (EU) supports the view that formulated product is like goods  
2 to glyphosate acid. Chinese glyphosate was the subject of an anti-dumping investigation in the EU  
3 (Council Regulation (EC) No. 368/98 of 16 February 1998), where the question of like goods was  
4 considered. Despite strong argument put forward by Chinese exporters and some Community  
5 importers, the EU found that acid and formulated product were like goods.”

6 Based on the criteria above, Customs considers all forms of 2,4-D, including  
7 sodium salt, acid, intermediate and fully formulated forms to be like goods for  
8 the following reasons:

- 9 • the necessity of further processing (e.g. acid and intermediates are not  
10 useable forms of 2,4-D until fully formulated);
- 11 • the sole use of 2,4-D acid is in the production of the intermediate and fully  
12 formulated forms of 2,4-D;
- 13 • 2,4-D acid is the major input and cost component in the production of the  
14 intermediate and fully formulated forms of 2,4-D;
- 15 • while there may be markets at each stage of the product, the market into  
16 which acid and intermediate forms are sold involve sales to formulators  
17 who further process the product, and then compete in the same fully  
18 formulated market as Nufarm. Sodium salt is generally sold as a finished  
19 product; and
- 20 • while there are physical differences between the products 2,4-D active  
21 ingredient imparts the essential characteristic or function to the finished  
22 product .

#### 23 Conclusion on like goods

24 Customs considers that all forms of 2,4-D including sodium salt, acid,  
25 intermediate and fully formulated forms to be like goods to the goods under  
26 consideration.

## 27 **8.4 Conclusion**

28 Having considered the information provided by Nufarm, submissions on the  
29 issue of like goods, and following a plant inspection, Customs is satisfied that:

- 30 • Nufarm produces like goods as defined under s. 269T of the Act; and
- 31 • a substantial process of manufacture takes place;

32 Therefore pursuant to the requirements of s. 269T(2), (3) and (4) of the Act,  
33 Nufarm forms a major proportion of the industry producing like goods.

## 9 AUSTRALIAN MARKET

### 9.1 Market structure

The Australian market for 2,4-D is in its fully formulated state as a selective herbicide.

The Australian market is supplied by Nufarm, the only fully integrated producer of 2,4-D, and importers of 2,4-D acid and ester who either formulate in-house or outsource to a toll manufacturer.

#### 9.1.1 Nufarm

Nufarm formulates 2,4-D products from acid or ester, which it produces at its Laverton North plant. Nufarm sells formulated 2,4-D to rural distributors who on-sell to resellers (who are generally the individual branches of the distributors) who in turn sell to the end-users, farmers.

#### 9.1.2 Major importers

The major importers of 2,4-D are:

- A&C
- Artfern
- Binary
- Chemag
- Crop Care
- Farmoz

#### 9.1.3 Toll manufacturers

##### A&C

A&C formulates a small quantity of its own products from imported acid. A&C also toll formulates for customers from acid and ester imported by its customers.

##### Binary

Binary toll formulates for customers from acid it has imported or that has been imported by its customers.

##### Autopak

Autopak toll formulates for customers from acid and ester imported by its customers.

1 Each product is labelled with the seller's own brand and sold to distributors for  
2 retail sale to end-users. The end-users for the goods are predominantly  
3 farmers.

#### 4 **9.1.4 General**

5 Market segmentation is based on four main areas:

- 6 • pasture upgrade;
- 7 • post emergent broadleaf control;
- 8 • fallow/summer weed control; and
- 9 • turf/lawn (selective weed control).

10 The choice of product (amine or ester) depends on the market segments and  
11 the growth cycle of weeds and the timing of crops.

12 The main factor influencing demand for 2,4-D products is rain. Rain  
13 promotes the growth of weeds and hence sales of 2,4-D products fluctuate  
14 with the seasonal rain patterns.

15 Formulated 2,4-D is sold in containers ranging from 20 litre drums to 1000  
16 litre tanks. The most common containers sold in Australia are 20 litre drums.

17 Marketing, distribution and end-use of 2,4-D fully formulated products are  
18 similar for all sources of supply in Australia. The majority of suppliers sell  
19 their products nationally.

20 There appears to be no commercially substitutable products for 2,4-D.

21 The Australian market for 2,4-D, like other foreign markets, is regulated by the  
22 government. The National Registration Authority for Agricultural and  
23 Veterinary Chemicals (NRA) states on its website that it:

24 ".....has overall responsibility for the regulation of active constituents used in agricultural and  
25 veterinary chemical products. Each Technical Grade Active Constituent (TGAC) used in the  
26 formulation of an agricultural chemical product requires approval or exemption. A separate  
27 approval is required for every manufacturing source (or plant) and for each specification of the  
28 active constituent."

29 "To a large degree, the safety, efficacy and environmental impact of agricultural and veterinary  
30 chemical products are dependent on the composition of the TGAC. The NRA has Minimum  
31 Compositional Standards for all active constituents that require TGAC approval."

32 "For all sources of TGAC the minimum active constituent content" is strictly enforced and "no  
33 allowance for analytical deviation is permitted. Where the standard is for an impurity, maximum  
34 criteria apply."

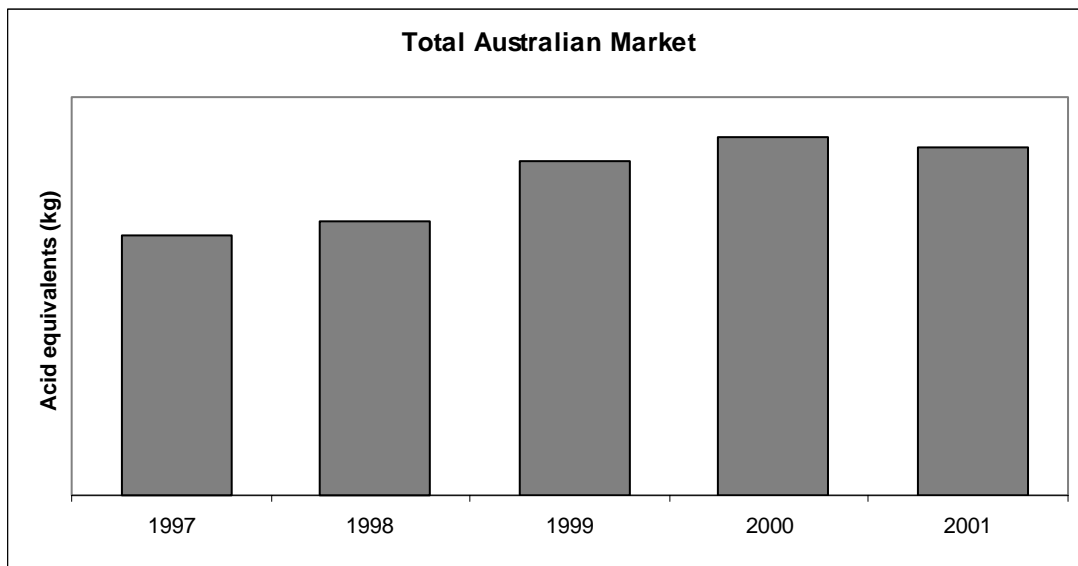
35 The NRA establishes the minimum content for TGACs before approval will be  
36 given for a new source of a TGAC. For example, for 2,4-D acid the minimum  
37 content is 960 g/kg.

## 9.2 Market size

The Australian market for 2,4-D is supplied by local production and imports from a number of countries. The main sources of imports are China, India, the U.K. and Malaysia.

Customs has estimated the size of the Australian market for 2,4-D using its commercial database and verified sales information gathered from Nufarm, importers and exporters.

The Australian market for 2,4-D products in 2001 was in excess of 4 million kgs (in acid equivalents). The major products are Ester 800 and Amine 500. These products appear to comprise approximately 75% of all domestic sales. The size of the Australian market increased by 34% over the injury period, as demonstrated in the chart below:



13

## 10 THE DUMPING INVESTIGATION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. This section explains the results of Customs' investigations into whether 2,4-D has been exported from China, India and the U.K. at dumped prices during the investigation period.

### 10.1 Background

Customs set the investigation period as 1 January to 31 December 2001.

Customs contacted all entities identified in its database as "suppliers" and "owners" of 2,4-D exported from China, India and the U.K. during the investigation period. Subsequently, submissions were received from the following companies:

Country	Exporter/manufacturer	Responded in full	Visited	Cooperated
India	Atul Limited	Yes	Yes	Yes
United Kingdom	AH Marks and Company Limited	Yes	Yes	Yes
China	Jiamusi Heilong Agricultural and Industrial Chemical Co. Ltd	Yes	Yes	No

### 10.2 Cooperation

The degree of cooperation with Customs' investigation received from Atul, Marks and Jiamusi is described in the visit report to each company. Atul and Marks were cooperative, providing open access to systems and documentation. In the case of Jiamusi, difficulties were experienced with the verification.

### 10.3 India - Atul Limited

Atul Limited (Atul) is a chemical manufacturer located in Gujarat state, and produces over 500 products including agrochemicals, bulk drugs, dyes and epoxy resins.

#### 10.3.1 Export Price

Atul produced and sold 2,4-D acid to two Australian customers during the investigation period. Customs undertook visits to both companies and was able to confirm the list of exportations by Atul during the investigation period.

Customs considers Atul to be the exporter because, in addition to manufacturing the goods, it:

- 1       • approved the prices negotiated by its agents with Australian  
2 customers, and the terms and conditions of export;  
3       • packed the GUC ready for export;  
4       • made arrangements and paid for the goods to be delivered to the port,  
5 stowed on the vessel, insured and shipped to Australia; and  
6       • selected the market for export.

7 Customs established that Atul's Australian customers:

- 8       • sought supply of the goods and negotiated the purchase price with  
9 Atul's Australian agent, subject to approval from Atul;  
10       • raised purchase orders directly with Atul;  
11       • were identified as the "owners" on the Entry for Home Consumption  
12 form;  
13       • appeared on the bill of lading as the notifiable party upon arrival in  
14 Australia;  
15       • were invoiced directly by Atul; and  
16       • paid the price invoiced by Atul;

17 Customs considers Atul's Australian customers to be the beneficial owners  
18 and the importers of the goods.

19 Customs is satisfied that in respect of sales by Atul to its Australian  
20 customers there is no evidence of:

- 21       (a) any consideration payable for or in respect of the goods other than their  
22 price; or  
23       (b) the price being influenced by a commercial or other relationship between  
24 the buyer, or an associate of the buyer, and the seller, or an associate of  
25 the seller; or  
26       (c) any reason for the Minister to form the opinion that the buyer, or an  
27 associate of the buyer, will, subsequent to the purchase or sale, directly or  
28 indirectly, be reimbursed, be compensated or otherwise receive a benefit  
29 for, or in respect of, the whole or any part of the price.

30 Customs is therefore satisfied that sales of 2,4-D by Atul to Australian  
31 importers are sales that are arms length transactions in terms of  
32 s. 269TAA.

33 Customs concludes that:

- 34       • the goods have been exported to Australia from India otherwise than  
35 by the importer;  
36       • the goods have been purchased by the importer from the exporter; and  
37       • the purchases of the goods by the importer were arms length  
38 transactions.

#### 39 10.3.1.1 Conclusion on export price for Atul

40 Customs proposes to assess export prices for Atul under  
41 s. 269TAB(1)(a) using the price paid by the importers less any charges in  
42 respect of transport or any other matter arising after exportation.

1 **10.3.2 Normal value**

2 10.3.2.1 Domestic sales

3 Domestic sales by Atul

4 Atul sold 2,4-D acid, sodium salt and ethyl ester technical to distributors  
5 and/or manufacturers in the domestic market during the investigation period.

6 Atul considers:

- 7 • the acid sold on the domestic market to be identical to that exported to  
8 Australia; and  
9 • the sodium salt and ethyl ester sold domestically to be not identical to  
10 the acid exported to Australia.

11 Sodium salt is a selective herbicide used mainly as post-emergent control for  
12 broad-leaved weeds in tea plantations, paddy field and sugar cane fields.  
13 Ethyl ester is used in the formulation of estercides, which are used in the  
14 eradication of weeds in cereals and other crops.

15 Customs has addressed the issue of like goods at section 8.3 of this report  
16 and has concluded that all forms of 2,4-D are like goods. Therefore, Customs  
17 concludes that the sodium salt and ethyl ester sold on the domestic market by  
18 Atul are also like goods to the acid exported to Australia.

19 *Sufficient Volume*

20 Subsection 269TAC(14) requires domestic sales to be of sufficient volume  
21 and provides a threshold of 5% of the volume of exports, although a lesser  
22 volume may be considered suitable.

23 While the domestic sales of acid were beneath the 5% threshold, a  
24 comparison of volumes of all forms of 2,4-D, on an acid equivalent basis, sold  
25 on the domestic market and exported to Australia showed that the volume of  
26 domestic sales exceeded 5% of Atul's export sales of 2,4-D to Australia.

27 These sales were also examined to determine whether they were in the  
28 ordinary course of trade and at arms length.

29 *Ordinary course of trade tests*

30 Customs conducted ordinary course of trade tests in accordance with  
31 s. 269TAAD on sodium salt and ethyl ester as sales of those products  
32 accounted for almost 100% of all domestic 2,4-D sales over the investigation  
33 period.

34 Just under half of all sodium sales made during the investigation period and  
35 less than 10% of the volume of ethyl ester sales were in the ordinary course  
36 of trade. Customs' assessment also showed that a sufficient volume of those  
37 products, when compared with the goods exported to Australia, were in the  
38 ordinary course of trade.

1 *Arms length transactions*

2 In relation to acid sold domestically, Customs found that the price had been  
3 influenced as a result of Atul's equity interest in its customer and that the  
4 customer was reimbursed in respect of part of the price subsequent to the  
5 sale. Customs is therefore satisfied that sales of acid were not arms length  
6 transactions in terms of s. 269TAA.

7 In relation to domestic sales of sodium salt and ethyl ester, Customs found no  
8 evidence of any consideration payable other than the price or evidence that  
9 the price was influenced by a relationship between the parties. It concluded  
10 that reimbursements paid to some domestic customers in respect of part of  
11 the price for sales of one product was an established trading arrangement  
12 based on volume discounts.

13 Customs is satisfied that sales of sodium salt and ethyl ester were arms  
14 length transactions in terms of s. 269TAA.

15 *Timing of sales*

16 The investigation established that there were no relevant domestic sales of  
17 like goods in the first quarter of the investigation period. As will be discussed  
18 later in this report, Customs has based the normal value for the March 2001  
19 quarter on the weighted average quarterly normal value for the June quarter  
20 2001. To ensure a fair comparison, a timing adjustment based on cost  
21 differences of acid between the two quarters was made.

22 *Conclusion on normal values based on domestic sales by Atul*

23 Customs is satisfied that sufficient sales of sodium salt and ethyl ester by Atul  
24 in the domestic market were in the ordinary course of trade and arms length  
25 and that the invoiced price was paid. Therefore Customs is satisfied that  
26 those sales of 2,4-D are suitable for assessing normal values under  
27 s. 269TAC(1).

28 Sales by other sellers

29 Atul advised Customs that there were only two other manufacturers of 2,4-D  
30 products in India and that those sales represented a small share of the  
31 domestic market. Given the information obtained and verified in respect of  
32 domestic sales by Atul, Customs did not seek cooperation from the other  
33 domestic sellers of 2,4-D products.

34 10.3.2.2 Normal value based on sales to a third country by Atul

35 Atul exported like goods from India to several countries other than Australia  
36 during the investigation period. Customs selected exports of acid to Malaysia  
37 because those goods were sold in similar volumes, at a similar level of trade  
38 and on similar delivery terms to the goods exported to Australia.

1 *Ordinary course of trade*

2 Customs conducted ordinary course of trade tests in accordance with  
3 s. 269TAAD on sales of 2,4-D acid to Malaysia and found acid sales to  
4 Malaysia during the investigation period were in the ordinary course of trade.

5 *Arms Length Transactions*

6 Customs is satisfied that in respect of sales by Atul to its Malaysian  
7 customers there is no evidence of:

- 8 (a) any consideration payable for or in respect of the goods other than their  
9 price; or
- 10 (b) the price being influenced by a commercial or other relationship between  
11 the buyer, or an associate of the buyer, and the seller, or an associate of  
12 the seller; or
- 13 (c) any reason for the Minister to form the opinion that the buyer, or an  
14 associate of the buyer, will, subsequent to the purchase or sale, directly or  
15 indirectly, be reimbursed, be compensated or otherwise receive a benefit  
16 for, or in respect of, the whole or any part of the price.

17 Customs is therefore satisfied that Atul's export sales of 2,4-D products to  
18 Malaysia were arms length transactions in terms of s. 269TAA.

19 *Conclusion on normal value based on sales to a third country*

20 Customs is satisfied that Atul was paid the amounts invoiced to its Malaysian  
21 customers and that those sales are in the ordinary course of trade and at  
22 arms length. Customs is satisfied it obtained and verified sufficient  
23 information to determine normal values for 2,4-D acid under  
24 s. 269TAC(2)(d) of the Act, if the need arose.

25 10.3.2.3 Constructed normal value

26 Customs obtained sufficient verified information to establish the cost to make  
27 and sell 2,4-D for sales to the domestic and Australian markets. Customs  
28 also calculated a profit margin from Atul's price and cost data which would be  
29 suitable for use in determining normal values in accordance with s.  
30 269TAC(2)(c), if the need arose.

31 10.3.2.4 Adjustments

32 Customs is satisfied that the following adjustments are necessary to ensure  
33 normal values based on domestic sales prices of sodium salt and ethyl ester  
34 are properly comparable to export prices:

- 35 • an adjustment is required for credit terms because the terms varied  
36 between domestic and export sales;
- 37 • a negative adjustment for domestic inland freight is required where  
38 applicable;

- 1 • a positive adjustment is required to ex-factory prices in respect of
- 2 export inland freight;
- 3 • a positive adjustment is required for handling, loading, fumigation and
- 4 ancillary expenses;
- 5 • a negative adjustment is required to take account of duty drawback
- 6 applicable to export sales;
- 7 • a negative adjustment is required for commissions paid on domestic
- 8 sales;
- 9 • a positive adjustment is required to take account of the selling
- 10 commissions paid on export sales;
- 11 • a positive adjustment is required to take account of specification
- 12 differences between the 2,4-D products sold on the domestic market
- 13 and the goods exported to Australia;
- 14 • an adjustment in respect of packing materials is not warranted as there
- 15 was no significant difference between the packing costs for domestic
- 16 and export sales; and
- 17 • an adjustment to the weighted average normal value for the June
- 18 quarter 2001 is required to take account of the difference in the cost of
- 19 production for 2,4-D acid between the June and March quarters.

#### 20 10.3.2.5 Conclusion on normal value

21 Customs will recommend that normal values be established pursuant to  
22 s. 269TAC(1) based on the domestic selling prices of Atul. Customs will also  
23 recommend that adjustments to the domestic selling prices be made pursuant  
24 to s. 269TAC(8) to ensure fair comparison with export prices.

### 25 **10.3.3 Dumping margins**

26 In accordance with s. 269TACB(2)(a), Customs calculated a weighted  
27 average export price and corresponding normal value in respect of parts of  
28 the investigation period as if each of those parts were the whole of the  
29 investigation period.

30 Customs' dumping assessment resulted in a dumping margin of less than  
31 2 per cent of the export price.

#### 32 10.3.3.1 Negligible dumping margins

33 Subsection 269TDA(1) of the Act requires the CEO to terminate an  
34 investigation, in relation to an exporter, where there has been:

- 35 • no dumping by the exporter; or
- 36 • where the exporters' dumping margins are negligible, i.e. where
- 37 margins calculated under s.269TACB of the Act, when expressed as a
- 38 percentage of the export price or weighted average of export prices,
- 39 are less than 2 per cent.

40 Customs is satisfied that the margin calculated for exports of 2,4-D acid from  
41 India by Atul under s. 269TACB is negligible.

1 Conclusion

2 Customs' analysis showed that the dumping margin calculated for goods  
3 exported to Australia by Atul was negligible. Customs will therefore  
4 recommend the investigation be terminated in relation to Atul, following  
5 consideration of submissions received in response to this SEF.

6 **10.4 United Kingdom – AH Marks and Company Limited**

7 AH Marks and Company Limited (Marks) is a manufacturer of chemicals  
8 located at Bradford, specialising in the supply of herbicides to the agricultural  
9 sector.

10 **10.4.1 Export Price**

11 Customs' inquiries confirmed that Marks produced and sold 2,4-D acid and  
12 iso butyl ester (IBE) for export to Australia during the investigation period.  
13 Three Australian formulators and/or distributors imported the goods and were  
14 visited by Customs. From those visits, and with the information from  
15 Customs' database and from the visit to Marks, Customs was able to confirm  
16 the list of exportations by Marks during the investigation period.

17 Customs considers Marks to be the exporter because, in addition to  
18 manufacturing the goods, it:

- 19
- 20 • conducted sales negotiations, including the terms and conditions of  
21 export, with its Australian customers;
  - 22 • packed the GUC ready for export; and
  - 23 • made arrangements with the international freight forwarder for the  
24 goods to be transported from Marks' factory to Australia.

24 For shipments other than consignment stock, Customs established that  
25 Marks' Australian customers:

- 26
- 27 • placed the orders with the exporter;
  - 28 • were identified as the "buyer" on the invoice for the sale of the goods;
  - 29 • were identified as the "owners" on the Entry for Home Consumption  
30 form;
  - 31 • arranged for clearance of the goods and were invoiced the broker's  
32 disbursement; and
  - were identified as the "consignee" on the bill of lading.

33 Customs therefore considers, for these shipments, Marks' Australian  
34 customers to be the beneficial owners and the importers of the goods.

35 For consignment shipments Customs established that Marks retained  
36 ownership of the goods at the time of their arrival in Australia. Customs  
37 therefore considers, for these shipments, Marks was the beneficial owner of  
38 the goods at the time of their arrival in Australia and therefore the importer as  
39 well as the exporter of the goods.

1 Customs is satisfied that, in respect of sales by Marks to its Australian  
2 customers, there is no evidence of:

- 3 (a) any consideration payable for or in respect of the goods other than  
4 their price; or
- 5 (b) the price being influenced by a commercial or other relationship  
6 between the buyer, or an associate of the buyer, and the seller, or an  
7 associate of the seller; or
- 8 (c) any reason for the Minister to form the opinion that the buyer, or an  
9 associate of the buyer, will, subsequent to the purchase or sale,  
10 directly or indirectly, be reimbursed, be compensated or otherwise  
11 receive a benefit for, or in respect of, the whole or any part of the  
12 price.

13 Customs is therefore satisfied that sales of 2,4-D from Marks to Australian  
14 importers are sales that are arms length transactions in terms of  
15 s. 269TAA.

16 Customs concludes that, for goods shipped to Australia other than those “on  
17 consignment”:

- 18 • the goods have been exported to Australia from the U.K. otherwise  
19 than by the importer;
- 20 • the goods have been purchased by the importer from the exporter; and
- 21 • the purchases of the goods by the importer were arms length  
22 transactions.

23 Customs also concludes that, for goods shipped on consignment during the  
24 investigation period:

- 25 • the goods have been exported to Australia from the U.K. by Marks who  
26 is also the importer; therefore
- 27 • the export price for consignment shipments during the investigation  
28 period cannot be established under s. 269TAB(1)(a) or (b); and
- 29 • there is sufficient information to establish the export price under  
30 s. 269TAB(1)(c).

#### 31 10.4.1.1 Conclusion on export price for Marks

32 Customs concludes that the export price for non-consignment shipments  
33 during the investigation period be established under s. 269TAB(1)(a) using  
34 the price paid by the importers less any charges in respect of transport or any  
35 other matter arising after exportation.

36 Customs also concludes that export prices for goods shipped on consignment  
37 during the investigation period be established under s. 269TAB(1)(c).

1 **10.4.2 Normal value**

2 10.4.2.1 Domestic sales

3 Domestic sales by Marks

4 Marks sold four different forms of 2,4-D in the domestic market during the  
5 investigation period – 2,4-D acid, 2 ethyl hexyl ester technical (2EH tech),  
6 formulated dimethylamine (DMA) and formulated 2EH (2EH).

7 Marks stated that the acid sold on the domestic market was identical to acid  
8 exported to Australia and that 2EH tech was similar to the IBE exported to  
9 Australia. It also claimed the formulated DMA and 2EH sold in the domestic  
10 market were not like goods to the 2,4-D acid and IBE exported to Australia.

11 Customs has addressed the issue of like goods at section 8.3 of this report  
12 and has concluded that all forms of 2,4-D are like goods. Therefore, it  
13 concludes that the 2EH tech, DMA and 2EH sold on the domestic market by  
14 Marks are like goods to the acid and IBE exported to Australia.

15 *Sufficient Volume*

16 Subsection 269TAC(14) requires domestic sales to be of sufficient volume  
17 and provides a threshold of 5% of the volume of exports, although a lesser  
18 volume may be considered suitable.

19 While the domestic sales of acid were beneath the 5% threshold, a  
20 comparison of the volume of all forms of 2,4-D, on an acid equivalent basis,  
21 sold on the domestic market and exported to Australia showed that the  
22 domestic sales exceeded 5% of the sales to Australia.

23 These sales were also examined to determine whether they were in the  
24 ordinary course of trade and at arms length.

25 *Ordinary course of trade tests*

26 Customs conducted ordinary course of trade tests in accordance with  
27 s. 269TAAD on domestic sales of all 2,4-D products during the investigation  
28 period. Sales in the ordinary course of trade were not of sufficient volume  
29 under s. 269TAC(14).

30 *Arms length transactions*

31 Customs is satisfied that in respect of the majority sales by Marks to its  
32 domestic customers there is no evidence of:

- 33 (a) any consideration payable for or in respect of the goods other than their  
34 price; or
- 35 (b) the price being influenced by a commercial or other relationship between  
36 the buyer, or an associate of the buyer, and the seller, or an associate of  
37 the seller; or

1 (c) any reason for the Minister to form the opinion that the buyer, or an  
2 associate of the buyer, will, subsequent to the purchase or sale, directly or  
3 indirectly, be reimbursed, be compensated or otherwise receive a benefit  
4 for, or in respect of, the whole or any part of the price of the goods other  
5 than their price.

6 Customs identified instances during the investigation period where rebates  
7 had been provided for one 2,4-D customer. Pursuant to s. 269TAA(1A),  
8 Customs examined documentation obtained from Marks and established that  
9 there was no agreement between Marks and the buyer in respect of the  
10 rebate at the time the goods were sold, that the rebates were not part of an  
11 ongoing arrangement and that the amount of the reimbursement was not  
12 quantifiable at the time of the sale. Customs concludes that sales affected  
13 by rebates are not arms length.

14 Customs is therefore satisfied that domestic sales, apart from those  
15 subsequently adjusted by rebates, are arms length in terms of  
16 s. 269TAA.

17 *Conclusion on normal values based on domestic sales by Marks*

18 Customs was satisfied that the amounts invoiced by Marks were paid by its  
19 customers and that, apart from certain sales to one customer, the sales were  
20 at arms length. However, in accordance with s. 269TAC(14) it found that  
21 those sales were not relevant in determining normal values as a result of the  
22 low volume of the arms length transactions sold in the ordinary course of  
23 trade. Customs therefore considered that it is not appropriate to establish  
24 normal values for 2,4-D acid or 2,4-D IBE pursuant to s. 269TAC(1) using  
25 domestic sales by Marks.

26 Sales by other sellers

27 Customs considered in accordance with s. 269TAC(2)(b) that it was not  
28 practicable to obtain, within a reasonable time, information in relation to sales  
29 by other sellers of like goods that would be relevant for the purpose of  
30 determining a price under s. 269TAC(1) of the Act.

31 10.4.2.2 Normal value based on sales to a third country by Marks

32 Marks exported like goods to several countries other than Australia during the  
33 investigation period. Customs examined, on a transaction-by-transaction  
34 basis, Marks' sales to all third countries.

35 *Ordinary course of trade*

36 Customs conducted ordinary course of trade tests in accordance with  
37 s. 269TAAD on sales of all 2,4-D products to third countries during the  
38 investigation period. The comparison established that most sales of 2,4-D  
39 products were not in the ordinary course of trade. The assessment also  
40 established that sales in the ordinary course of trade for each country were  
41 less than 5% of the volume (on an acid equivalent basis) of sales to Australia.

1 *Arms Length Transactions*

2 Customs is satisfied that in respect of sales by Marks to its third country  
3 customers there is no evidence of:

- 4 (a) any consideration payable for or in respect of the goods other than  
5 their price; or
- 6 (b) the price being influenced by a commercial or other relationship  
7 between the buyer, or an associate of the buyer, and the seller, or an  
8 associate of the seller; or
- 9 (c) any reason for the Minister to form the opinion that the buyer, or an  
10 associate of the buyer, will, subsequent to the purchase or sale,  
11 directly or indirectly, be reimbursed, be compensated or otherwise  
12 receive a benefit for, or in respect of, the whole or any part of the  
13 price of the goods other than their price.

14 Customs was therefore satisfied that Marks' export sales of 2,4-D products to  
15 third countries were arms length transactions in terms of s. 269TAA.

16 *Conclusion on normal value based on sales to a third country*

17 Customs was satisfied that Marks was paid the amounts invoiced to its third  
18 country customers and that those sales were at arms length. However, it  
19 concluded that those sales were not relevant in determining normal values as  
20 a result of the low volume of the arms length transactions sold in the ordinary  
21 course of trade. Customs therefore considered that it was not appropriate to  
22 determine normal values for 2,4-D acid or 2,4-D IBE under s. 269TAC(2)(d).

23 10.4.2.3 Constructed normal value

24 Customs obtained sufficient verified information to establish the cost to make  
25 and sell 2,4-D which would be suitable as a basis for determining normal  
26 values in accordance with s.269TAC(2)(c).

27 From that data Customs calculated the cost to make and sell for 2,4-D acid  
28 and IBE based on:

- 29 • the cost of production of the goods (sub s. 269TAC(2)(c)(i));
- 30 • on the assumption that the goods were sold on the domestic market,  
31 the administrative, selling and general costs associated with the sale  
32 (sub s. 269TAC(2)(c)(ii));
- 33 • on the assumption that the goods were sold on the domestic market  
34 the profit, if any, associated with the sale (sub s. 269TAC(2)(c)(ii) and  
35 s. 269TAC(13)); and
- 36 • any adjustments, in determining the costs under s. 269TAC(2)(c) as  
37 are necessary to ensure that the normal value is properly comparable  
38 to the export price of the goods (s. 269TAC(9)).

39 Pursuant to s. 269TAC(13) a zero rate of profit was included.

1 **10.4.2.4 Adjustments**

2 Customs is satisfied that the following adjustments are necessary to ensure  
3 normal values are properly comparable to export prices:

- 4
- 5 • a positive adjustment is required to assess cost to make and sell at  
6 FOB level by adding export inland transport cost (same as domestic  
7 delivery) to the ex-works cost;
- 8 • a positive adjustment is required for handling, loading, fumigation and  
9 ancillary expenses because they are not incurred on the domestic  
10 market;
- 11 • an adjustment is required for credit terms because the terms varied  
12 between domestic and export sales;
- 13 • an adjustment is not required for packing because Customs has used  
14 the packing costs for the exported goods in constructing normal values;
- 15 • an adjustment is not warranted for level of trade differences because  
16 the majority of U.K. sales were to the same level of trade as exports  
17 and there was no price or cost differential due to differences in the  
18 level of trade in the U.K.; and
- 19 • no adjustment is required for value added tax because Marks' cost  
20 records do not include VAT.

21 **10.4.2.5 Conclusion on normal value**

22 Customs will recommend that normal values be determined pursuant to  
23 s. 269TAC(2)(c).

24 Customs will also recommend that adjustments be made in determining the  
25 costs under s. 269TAC(2)(c), pursuant to s. 269TAC(9) to ensure fair  
26 comparison with export prices.

27 **10.4.3 Dumping margins**

28 In accordance with s. 269TACB(2)(a) Customs compared the weighted  
29 average of export prices over the whole of the investigation period with the  
30 weighted average of corresponding normal values over the whole of that  
31 period.

32 Exports of acid and IBE during the investigation period were dumped by a  
33 margin of approximately 30%.

34 **10.4.3.1 Negligible volume of dumped goods**

35 Subsection 269TDA(3) of the Act requires the CEO to terminate an  
36 investigation if satisfied that the total volume of dumped goods that have or  
37 may be exported to Australia over a reasonable examination period from a  
38 particular country of export is negligible, i.e. dumped goods are less than 3  
39 per cent of the total Australian import volume.

1 Customs' analysis showed that all of the exports of 2,4-D from the U.K. during  
2 the investigation period were dumped and is therefore satisfied that the  
3 volume of dumped goods is not negligible pursuant to s. 269TDA(4).

## 4 **10.5 China - Jiamusi Heilong Agricultural and Industrial** 5 **Chemical Co. Ltd**

6 Jiamusi Heilong Agricultural and Industrial Chemical Co. Ltd (Jiamusi) is a  
7 manufacturer of agricultural and industrial chemicals located in Heilongjiang  
8 Province.

9 Jiamusi submitted a response to the exporter questionnaire and also  
10 responded to requests for further information by the investigation team in the  
11 form of two submissions dated 28 June 2002. On the basis of the information  
12 submitted, it was decided that a verification visit to Jiamusi was warranted.

13 Certain events during the verification visit caused Customs to have serious  
14 concerns regarding the reliability of the information submitted by Jiamusi and  
15 led to the early termination of the visit.

16 Difficulties were experienced in obtaining an accurate account of the export  
17 arrangements in respect of certain shipments to Australia. The account  
18 provided by Jiamusi differed from the importer's account of the arrangements.  
19 Jiamusi eventually amended its account. However, significant differences still  
20 exist between the amended account provided by Jiamusi and the importer's  
21 account.

22 Staff of Jiamusi provided a verbal explanation of the events that were claimed  
23 to have resulted in certain arrangements being put in place for a number of  
24 export shipments to Australia. The investigation team requested copies of  
25 documents to substantiate the explanation. No supporting documentation  
26 was produced during or following the visit in relation to the explanation.  
27 Consequently, Customs was unable to establish the veracity of the  
28 explanation or determine the full extent or scope of the activities.

29 Concerned that the explanation provided by Jiamusi was not supported by  
30 any documentary evidence, Customs requested that an explanation be  
31 provided in writing on company letterhead by the senior management of  
32 Jiamusi. Jiamusi did not accede to the request.

33 Following advice received as to the extent of senior management's  
34 knowledge of the matters in question, Customs concluded that it was  
35 inappropriate to continue the visit and advised Jiamusi that the visit was to be  
36 suspended pending production of the requested explanation.

37 The provision of conflicting information by Jiamusi, the failure to provide a  
38 written explanation by the company, and the fact that senior management of  
39 Jiamusi appeared to be unaware of the matters in question caused Customs  
40 to have serious concerns regarding:

- 41 • the appropriateness of continuing the verification visit;

- 1           • the extent of the activities; and  
2           • how those activities might impact on Jiamusi’s business activities,  
3           record keeping and in particular how the matters in question might  
4           affect the accuracy of the financial statements of Jiamusi.

5       With no written explanation forthcoming and insufficient time to complete the  
6       verification process Customs decided to terminate the visit.

7       Early termination of the visit resulted in certain information submitted by  
8       Jiamusi remaining unverified.

9       Customs’ produced two reports dealing specifically with Jiamusi; the ‘Visit  
10       Report’ deals in detail with the events that took place during the visit and  
11       extent of the verification undertaken, while a second report titled ‘Export  
12       Price, Normal Value and Dumping Margin Report’ details Customs’  
13       consideration of the available information and the assessment of dumping  
14       margins.

15       In drawing conclusions as to the reliability of certain information submitted  
16       by Jiamusi, the matters described above were taken into account.

### 17       **10.5.1     Export Price**

18       Customs’ inquiries confirmed that Jiamusi produced and sold 2,4-D acid for  
19       export to Australia during the investigation period. In its submission, Jiamusi  
20       included only shipments sold direct to Australian companies, but from  
21       information obtained from traders, importers and its commercial database,  
22       Customs identified:

- 23           • goods shipped direct from Jiamusi to Australian  
24           formulators/distributors;  
25           • goods shipped by Jiamusi to Australian formulators/distributors via  
26           Australian-based agents; and  
27           • goods shipped by Jiamusi to Australian formulators/distributors via  
28           both China-based traders and Australian-based agents.

#### 29       10.5.1.1   Shipment direct to an Australian formulator

30       For the shipment direct from Jiamusi to an Australian formulator Customs is  
31       satisfied that Jiamusi is the exporter because it:

- 32           • conducted sales negotiations, including the terms and conditions of  
33           export, with its Australian customers;  
34           • packed the GUC ready for export; and  
35           • made arrangements for the goods to be transported from Jiamusi’s  
36           factory in China to Australia.

37       Customs established that Jiamusi’s Australian customer:

- 38           • placed the order with the exporter;  
39           • was identified as the “buyer” on the invoice for the sale of the goods;

- 1       • was identified as the “owners” on the Entry for Home Consumption  
2 form;  
3       • arranged for clearance of the goods and was invoiced the broker’s  
4 disbursement; and  
5       • was identified as the “consignee” on the bill of lading.

6 Therefore, for this shipment, Customs considers Jiamusi’s Australian  
7 customer to be the beneficial owner and the importer of the goods.

8 Customs is also satisfied that in respect of this sale there is no evidence of:

- 9               (a)       any consideration payable for or in respect of the goods other than  
10 their price; or
- 11               (b)       the price being influenced by a commercial or other relationship  
12 between the buyer, or an associate of the buyer, and the seller, or an  
13 associate of the seller; or
- 14               (c)       any reason for the Minister to form the opinion that the buyer, or an  
15 associate of the buyer, will, subsequent to the purchase or sale,  
16 directly or indirectly, be reimbursed, be compensated or otherwise  
17 receive a benefit for, or in respect of, the whole or any part of the  
18 price.of the goods other than their price.

19 Customs is therefore satisfied that the sale of 2,4-D from Jiamusi direct to the  
20 Australian importer is an arms length transaction in terms of  
21 s. 269TAA.

22 Customs concludes that, for this shipment:

- 23       • the goods have been exported to Australia from China otherwise than  
24 by the importer;  
25       • the goods have been purchased by the importer from the exporter; and  
26       • the purchase of the goods by the importer was an arms length  
27 transaction; but  
28       • it was not possible to identify separate port and dock charges and  
29 ocean freight and therefore it is not possible to isolate the costs of  
30 transport from matters arising prior to exportation. Consequently it is  
31 not possible to establish export price pursuant to s. 269TAB(1)(a);  
32       • sales are arms length so s. 269TAB(1)(b) does not apply; and  
33       • it is not possible for Customs to establish export price pursuant to  
34 s. 269TAB(1)(c) because all the circumstances of the sale are not  
35 known, i.e. it is not possible to isolate the costs of transport from port  
36 and dock charges.

37 Customs will therefore recommend that export price for this shipment be  
38 determined under s. 269TAB(3) using all relevant information.

1 10.5.1.2 Shipments to formulators/distributors via Australia-based traders

2 For the shipments from Jiamusi to Australian formulators/distributors via  
3 Australia-based traders, Customs is satisfied that Jiamusi is the exporter  
4 because it:

- 5 • conducted sales negotiations, including the terms and conditions of  
6 export, with its Australian customers;
- 7 • packed the GUC ready for export; and
- 8 • made arrangements for the goods to be transported from Jiamusi's  
9 factory in China to Australia.

10 Customs established that the Australian formulators/distributors:

- 11 • placed the orders with the Australia-based traders;
- 12 • were identified as the "owners" on the Entry for Home Consumption  
13 form;
- 14 • arranged for clearance of the goods and were invoiced the broker's  
15 disbursement;

16  
17 Customs considers the Australian formulators/distributors to be the beneficial  
18 owners and the importers of the goods.

19 Customs concludes that:

- 20 • the goods have been exported to Australia from China otherwise than  
21 by the importer;
- 22 • the goods have not been purchased by the importer from the exporter;
- 23 • because there was no sale between the exporter and the importers,  
24 the provisions of s. 269TAB(1)(a) and s. 269TAB(1)(b) are not  
25 available; and
- 26 • it is not possible for Customs to establish export price pursuant to  
27 s. 269TAB(1)(c) because all the circumstances of the sale are not  
28 known, i.e. it is not possible to isolate the costs of transport from port  
29 and dock charges.

30 Customs will therefore recommend that, export price be determined under  
31 s. 269TAB(3) using all relevant information.

32 10.5.1.3 Shipments to formulators/distributors via China-based agents and  
33 Australia-based traders

34 For the multipartite sales arrangements involving Jiamusi and China-based  
35 traders and Australia-based traders and formulator/distributors, Customs is of  
36 the view that Jiamusi is the exporter as it causes the exportation of the goods  
37 by:

- 38 • producing the goods to order;
- 39 • organising the sales;
- 40 • negotiating the price between itself and the China-based agents;
- 41 • negotiating the price between the China and Australia-based traders;

- 1 • negotiating other relevant terms of the sales such as the quantity and
- 2 timing;
- 3 • selling to the China-based agents in sales that involve the goods being
- 4 brought to or past the point of exportation;
- 5 • arranging transport of the goods from the factory to or past the point of
- 6 exportation; and
- 7 • reducing the role of the Chinese traders to that of an agent of Jiamusi.

8 Customs established that the Australian formulators/distributors:

- 9 • placed the orders with the Australia-based traders;
- 10 • were identified as the “owners” on the Entry for Home Consumption
- 11 form; and
- 12 • arranged for clearance of the goods and were invoiced the broker’s
- 13 disbursement; and
- 14 • the Australia-based trader sells the goods on the water to the
- 15 formulators/distributors.

16

17 Therefore Customs considers the Australian formulators/distributors to be the

18 beneficial owners and the importers of the goods.

19 Customs concludes that:

- 20 • the goods have been exported to Australia from China otherwise than
- 21 by the importer;
- 22 • the goods have not been purchased by the importer from the exporter;
- 23 • because there was no sale between the exporter and the importers,
- 24 the provisions of s. 269TAB(1)(a) and s. 269TAB(1)(b) are not
- 25 available; and
- 26 • Customs was unable to visit the China-based agents to determine their
- 27 role in the transactions. Consequently all the circumstances of the
- 28 sale are not known and it is therefore not possible to establish export
- 29 price pursuant to s. 269TAB(1)(c).

30 Customs will recommend that export price be determined under s. 269TAB(3)

31 using all relevant information. The basis for the determination of export price

32 is the invoiced price between the exporter and China-based traders, less

33 transport and any other matter arising after exportation where applicable.

## 34 **10.5.2 Normal value**

### 35 **10.5.2.1 China as an Economy in Transition**

36 The People’s Republic of China was previously considered to be a centrally

37 planned economy where the government had a monopoly, or a substantial

38 monopoly, of China’s trade and determined, or substantially influenced, the

39 domestic price of goods in that country.

40 The Australian government now considers China to be an ‘economy in

41 transition’ (EIT). Australian anti-dumping legislation specifically provides for

42 determination of normal values for a country whose economy is in transition

1 and the relevant provisions for such determination are s. 269TAC(5D) to  
2 269TAC(5J) inclusive.

3 The Minister also issued Ministerial Guidelines in relation to a price control  
4 situation in an economy in transition, which sets out the relevant  
5 considerations which Customs should have regard to in determining whether  
6 a price control situation applies in relation to like goods sold by the exporter in  
7 the domestic market. These Ministerial Guidelines can be found in Australian  
8 Customs Dumping Notice No.2001/42.

9 In reaching a conclusion on the issue of price control, Customs also had  
10 regard to:

- 11 • relevant parts of the application made by the Australian industry;
- 12 • relevant parts of Customs' recent Glyphosate investigation, Report  
13 Number 45;
- 14 • the responses by Jiamusi to the supplementary questions in the  
15 exporter questionnaire applicable to economies in transition;
- 16 • the operations of Jiamusi and information provided by Jiamusi in  
17 respect of its sales of like goods in the domestic market; and
- 18 • information obtained from discussions with the Ministry of Foreign  
19 Trade and Economic Cooperation (MOFTEC), Ministry of Land &  
20 Resources (MOLR), China Pesticide Industry Association (CPIA),  
21 China Chamber of Commerce of Metals, Minerals & Chemicals  
22 Importers & Exporters (CCPIT) and State Development and Planning  
23 Commission (SDPC) of China during Customs' visit to China.

#### 24 The application by the Australian Industry

25 Nufarm claimed that even though there are approximately 300 major pesticide  
26 manufacturers in China only six companies produce 2,4-D in significant  
27 volumes. Nufarm also claimed that five or six companies are State-Owned  
28 Enterprises (SOEs) and that the broad market for 2,4-D is dominated by  
29 SOEs, as well as certain major raw material inputs being supplied by SOEs.  
30 Nufarm further claimed that evidence exists that selling prices of like goods in  
31 China are subject to indirect price control and that accounting standards of  
32 the SOEs would not be in line with international accounting standards.

33  
34 As a result of these factors Nufarm is of the view that s. 269TAC(5F) should  
35 be applied for the determination of a normal value in China. Nufarm  
36 proposed that India be used as a surrogate for that purpose.

#### 37 Customs Report Number 45 – Glyphosate

38 In its report on glyphosate from China, Customs concluded that, on the basis  
39 of "its discussions with MOFTEC and CCPIT and its on-site verification" no  
40 price control situation existed in respect of China's domestic market for  
41 agricultural chemicals.

42 The Chinese exporter claimed that this conclusion was sufficient to address  
43 the issue of price control in this investigation. However, Customs is of the

1 view that the finding in glyphosate should be read in the context of that  
2 investigation and the finding should be confined to glyphosate.

### 3 Response to the Supplementary Section of the Exporter Questionnaire

4 In its submission Jiamusi stated it is a joint stock company that is  
5 synonymous with “a company limited by shares” under Chinese law and  
6 provided relevant documentation supporting its claim.

7 Jiamusi also provided explanations and documentation that addressed such  
8 issues as shareholding, membership of the board of directors, management,  
9 commercial operations, ownership of suppliers, bankruptcy provisions,  
10 accounting practices and employment practices.

### 11 The operations of Jiamusi and information provided by Jiamusi in respect of 12 its sales of like goods in the domestic market

13 During the visit to Jiamusi, Customs obtained documentation supporting the  
14 company’s claim that “genuine private companies” hold the majority  
15 shareholding of Jiamusi. It also obtained further information and  
16 documentation relating to issues such as supply contracts, utilities, land use  
17 rights, licences and accounting practices.

### 18 Information obtained from discussions with the MOFTEC, MOLR, CPIA, 19 CCPIT, and SDPC of China

20 The information obtained by Customs from discussions with the above  
21 authorities is detailed in a separate report which appears on Customs’ public  
22 file.

23 Those discussions indicated that China is at the final stage of its transition  
24 from a controlled economy to a market economy. Even though there are a  
25 number of herbicide producers that are still SOEs, Customs was informed by  
26 the authorities that these companies are moving towards privatisation and are  
27 subject to the Company Law in China.

28 Customs also discussed a range of other issues with the authorities including  
29 any restrictions in respect of the production, sale, supply, capital investment  
30 and import of herbicide products including 2,4-D acid, interference by the  
31 State in the ordinary business activities in the herbicide industry in China, as  
32 well as bankruptcy law and company law of China.

### 33 Conclusion on the applicability of the EIT provisions

34 On the information available and verified by Customs and in terms of the  
35 Ministerial Direction, it appears the only form of control the Chinese  
36 government might have imposed on the price of like goods sold by Jiamusi in  
37 the domestic market during the investigation period was by way of issuing a  
38 guided price in respect of coal used by Jiamusi in generating electricity.

1 The Ministerial Direction provides several considerations in determining  
2 whether or not a price control situation applies. One of these is whether  
3 major production inputs of the relevant producer or exporter are supplied by  
4 state-owned or controlled enterprises at prices that do not substantially reflect  
5 free market conditions.

6 The energy costs provided by Jiamusi, inclusive of water, are not a major  
7 proportion in Customs' view (representing approximately 10% of total  
8 production costs claimed for 2,4-D acid).

9 Customs considers that there is no price control in respect of like goods, and  
10 proposes to recommend that s. 269TAC(5D) is not applicable.

11 Furthermore, since none of the raw materials, which account for more than  
12 10% of the total costs of production of the 2,4-D acid, was in whole or in part  
13 supplied directly to Jiamusi by a SOE, Customs does not recommend the  
14 application of s. 269TAC(5G) in this case.

#### 15 10.5.2.2 Domestic sales

##### 16 Domestic Sales by Jiamusi

17 Jiamusi considers other forms of 2,4-D to be not like goods to the 2,4-D acid it  
18 exports and consequently stated in its response to the exporter questionnaire  
19 that it did not sell like goods (2,4-D acid) on the domestic market.

20 However, following a request from Customs, Jiamusi provided domestic sales  
21 information in respect of other forms of 2,4-D. Those forms were sodium salt  
22 85%, 2,4-D iso butyl ester tech 90% and 2,4-D iso butyl ester E.C. 72%.

23 Customs has addressed the issue of like goods at section 8.3 of this report  
24 and has concluded that all forms of 2,4-D are like goods. Therefore, it  
25 concludes that the sodium salt 85%, iso butyl ester tech 90% and 2,4-D iso  
26 butyl ester E.C. 72% sold on the domestic market by Jiamusi are like goods  
27 to the acid exported to Australia.

##### 28 *Sufficient Volume*

29 Subsection 269TAC(14) requires domestic sales to be of sufficient volume  
30 and provides a threshold of 5% of the volume of exports, although a lesser  
31 volume may be considered suitable.

32 A comparison of volumes of all forms of 2,4-D, on an acid equivalent basis,  
33 sold on the domestic market and exported to Australia showed that the  
34 domestic sales exceeded 5% of the sales to Australia. When the domestic  
35 sales of like goods were considered on a product basis, all sales except  
36 sodium salt met the sufficiency test of 5% set out in s. 269TAC(14).

37 In order to assess whether those sales would be relevant for establishing a  
38 normal value under s. 269TAC(1) those sales had to be examined to

1 determine whether they were in the ordinary course of trade and at arms  
2 length.

### 3 *Assessment of domestic sales by product*

#### 4 Sodium Salt 85%

5 These sales were claimed to be the result of a trial production run. They are  
6 not considered to be representative as they are not in sufficient volume and,  
7 being the result of a trial run, may not reflect true market conditions. The  
8 sales could not be tested for ordinary course of trade due to the unreliability of  
9 Jiamusi's cost information. No assessment of arms length was possible due  
10 to the termination of the verification visit.

11 Consequently the sales of sodium salt are not suitable for establishing normal  
12 values pursuant to s. 269TAC(1).

#### 13 Isobutyl Ester (Tech) 90%

14 While this sale met the 5% test of s. 269TAC(14), it is claimed to be a 'one  
15 off' sale and as such it is not possible to ascertain whether or not it is  
16 representative of sales of iso butyl ester tech 90%. The sale could not be  
17 tested for ordinary course of trade due to the unreliability of Jiamusi's cost  
18 information. No assessment of arms length was possible due to the  
19 termination of the verification visit.

20 Consequently the sale of iso butyl ester tech by Jiamusi is not suitable for  
21 determining normal values pursuant to s. 269TAC(1).

#### 22 Isobutyl Ester E.C. 72% in 200 kilogram drums and 500 gram bottles

23 Information submitted by Jiamusi on domestic sales of Isobutyl Ester E.C.  
24 72% has not been verified. The examination of sales documentation  
25 submitted after the visit raised concerns regarding the reliability of the  
26 information submitted in respect of sale dates, payments and consequently  
27 the credit terms applicable. Furthermore, the sales could not be tested for  
28 ordinary course of trade due to the unreliability of Jiamusi's cost information.  
29 No assessment of arms length was possible due to the termination of the  
30 verification visit.

31 For those reasons the sales of iso butyl ester E.C. 72% would not be suitable  
32 for determining normal values pursuant to s. 269TAC(1). Customs also  
33 considers the information provided by Jiamusi on sales of iso butyl ester E.C.  
34 72% to be unreliable pursuant to s. 269TAC(7) and that the information  
35 should therefore be disregarded.

#### 36 Conclusion on domestic sales by Jiamusi

37 It is not appropriate to establish normal values for 2,4-D acid under  
38 s. 269TAC(1) of the Act using domestic sales by Jiamusi. Customs also  
39 concludes that the information relating to sales of iso butyl ester E.C. 72% is  
40 unreliable and that the information in respect of those sales should be  
41 disregarded pursuant to s. 269TAC(7).

1 Sales by other sellers

2 Customs was aware that there are a number of other sellers of 2,4-D  
3 products on the domestic market in China. Customs contacted two  
4 companies identified as not being SOE's, and one SOE, but received no  
5 replies to its requests for information.

6 Customs also asked Jiamusi to provide information on other sellers. Jiamusi  
7 provided information it had obtained from the Internet on two companies it  
8 thought were selling formulated herbicide using self-produced 2,4-D acid.

9 Customs is satisfied that, in accordance with s. 269TAC(2)(b) it is not  
10 practicable to obtain, within a reasonable time, information in relation to sales  
11 by other sellers of like goods that would be relevant for the purposes of  
12 determining a price under s. 269TAC(1).

13 10.5.2.3 Normal value based on sales to a third country by Jiamusi

14 Jiamusi exported 2,4-D products to five countries other than Australia during  
15 the investigation period. It submitted details of those sales in its response to  
16 the exporter questionnaire, but did not specify which products were exported.

17 As a result of the termination of the visit before adequate verification could  
18 take place, Jiamusi's third country sales are unverified and have not been  
19 tested for ordinary course of trade and arms length.

20 Conclusion on normal value based on sales to a third country

21 Jiamusi's third country sales were not verified or tested for ordinary course of  
22 trade and arms length and therefore are not suitable for determining normal  
23 values pursuant to s. 269TAC(2)(d).

24 The problems encountered with the verification visit to Jiamusi also caused  
25 concern regarding the reliability of Jiamusi's records. For that reason and  
26 because the sales were not verified, Jiamusi's third country sales are  
27 considered to be unreliable pursuant to s. 269TAC(7) and have been  
28 disregarded.

29 10.5.2.4 Constructed normal value

30 Jiamusi submitted annual cost to make and sell information for 2,4-D iso butyl  
31 ester E.C 72% in 200 kilogram drums, iso butyl ester E.C 72% in 500 gram  
32 bottles, and iso butyl ester tech 90%.

33 Verification of Jiamusi's cost information was not undertaken. As detailed in  
34 the Visit Report, and outlined at section 10.5 above, Customs has serious  
35 concerns about the reliability of Jiamusi's records. Consequently Customs is  
36 not satisfied that the cost information submitted by Jiamusi is reliable.

1 Conclusion on constructed normal value

2 Customs considers Jiamusi's cost information to be unreliable and has  
3 disregarded that information pursuant to s. 269TAC(7), for the purposes of  
4 assessing normal values.

5 10.5.2.5 Subsection 269TAC(6) – All relevant information

6 Customs is satisfied that sufficient information has not been furnished or is  
7 not available to enable normal value to be determined under the preceding  
8 subsections and that normal value should be determined having regard to all  
9 relevant information pursuant to s. 269TAC(6).

10 Customs examined the following information in determining normal values  
11 pursuant to s. 269TAC(6):

- 12 • certain domestic sales information submitted by Jiamusi;
- 13 • domestic sales information submitted by Nufarm;
- 14 • normal values determined for 2,4-D acid exported from the U.K.;
- 15 • normal values determined for 2,4-D acid exported from India; and
- 16 • the Australian industry's costs and sale prices.

17 Jiamusi's information in respect domestic sales of iso butyl ester E.C. 72%  
18 has not been considered as a basis for determining normal values pursuant to  
19 s. 269TAC(6) because it is considered to be unreliable and has previously  
20 been disregarded pursuant to s. 269TAC(7).

21 Jiamusi's costs have not been used as a basis for determining normal values  
22 pursuant to s. 269TAC(6) because it is considered to be unreliable and has  
23 previously been disregarded pursuant to s. 269TAC(7).

24 Similarly, Jiamusi's sales to third countries have not been used to determine  
25 normal values pursuant to s. 269TAC(6) because it is considered to be  
26 unreliable and has previously been disregarded pursuant to s. 269TAC(7).

27 Domestic sales information provided by Jiamusi

28 As discussed earlier in this report, the two sales of sodium salt have not been  
29 considered because they do not meet the volume requirements set out in  
30 s. 269TAC(14), and they reflected significantly different sale prices and were  
31 a trial run only.

32 The sale of iso butyl ester (Tech) 90% has also been excluded because it  
33 was a single transaction and Customs was not satisfied whether that sale was  
34 representative of all sales of iso butyl ester tech 90%.

35 Were these sales to have been used as a basis for normal value, Customs  
36 would be required to make a specification adjustment to ensure fair  
37 comparison with the exported 2,4-D acid. This represents an additional  
38 reason for the rejection of these sales, as Customs does not have reliable  
39 costs and other data from Jiamusi to enable such an adjustment to be made.

1 Customs considered whether it could make the adjustment using information  
2 from other sources in respect of relative costs and profits associated with the  
3 various steps in the production and the sale process. However, due to the  
4 number of assumptions that would be necessary, such an adjustment was  
5 considered to be impracticable.

6 Consequently Customs has not used the domestic sales information relating  
7 to sales of sodium salt or iso butyl ester tech as a basis for normal value  
8 under s.269TAC(6).

#### 9 Domestic sales information provided by Nufarm

10 The Australian industry submitted information in relation to market prices and  
11 conditions in the herbicide market in China. That information included  
12 reported prices and distributor margins for sales of 2,4-D products.

13 However, as with Jiamusi's domestic sales, any reported price supplied by the  
14 Australian industry would require a specification adjustment to ensure  
15 comparability to the exported 2,4-D acid. For the reasons stated in the  
16 preceding section that was not practicable due to significant information  
17 deficiencies.

#### 18 2,4-D acid normal values established in the U.K. and India

19 Customs also considered using the normal values established for exports of  
20 2,4-D acid from the U.K. and India, adopting the same principles that would  
21 apply in selecting an appropriate third country for the purposes of  
22 s.. 269TAC(2)(d) or (4)(d).

23 The Australian industry submitted in its application that normal values should  
24 be ascertained by reference to a surrogate country and provided data to  
25 support its claim that India was an appropriate country, detailing a number of  
26 economic indices it obtained from the International Monetary Fund website.

27 Having considered the general economic indices and the factors referred to in  
28 s. 269TAC(5C), Customs concludes that India would be the more appropriate  
29 source of normal values for use in China.

#### 30 Australian Industry's costs and profit

31 Use of the Australian industry's costs and profit required similar  
32 considerations to those involved in selecting an appropriate source of normal  
33 values from either the U.K. or India. Customs considers India to be a more  
34 appropriate country for the purposes of establishing normal values than  
35 Australia.

1 Conclusion on Subsection 269TAC(6) – All relevant information

2 Customs will recommend that normal values for exports of 2,4-D acid by  
3 Jiamusi from China be determined pursuant to s. 269TAC(6) using normal  
4 values for 2,4-D acid from India.

5 10.5.2.6 Adjustments

6 Customs is satisfied that the following adjustments are necessary to ensure  
7 normal values from India are properly comparable to export prices from  
8 China:

- 9 • a positive adjustment is required for packing costs because the normal  
10 values obtained from India are for the unpacked product;
- 11 • a positive adjustment is required to the Chinese normal value for  
12 export inland freight because normal values obtained from India have  
13 been assessed at the ex-factory point. This adjustment was based on  
14 external documentation provided by Jiamusi;
- 15 • a positive adjustment is required for handling, loading and ancillary  
16 charges because normal values obtained from India have been  
17 assessed at the ex-factory level. That adjustment was based on  
18 external documentation provided by Jiamusi;
- 19 • an adjustment is required for the difference between the cash terms  
20 included in the normal values obtained from India and the 30 day credit  
21 terms for export sales. The adjustment was made on the basis of  
22 documentation from the Bank of China;
- 23 • no adjustment can be made for level of trade. Normal values obtained  
24 from India are for sales to distributors/formulators and export prices are  
25 to a variety of levels, including traders in China, traders in Australia and  
26 a formulator. However, because there is no reliable data available to  
27 quantify any adjustments that might be warranted, such adjustments  
28 are not possible;
- 29 • no adjustment is required for specification because normal values  
30 obtained from India have been established for 2,4-D acid; and
- 31 • were normal values to be based upon domestic sales inclusive of VAT  
32 then an adjustment equivalent to the VAT refunded on exports would  
33 be warranted. In this case the normal values obtained from India have  
34 been brought in net of VAT. Therefore no further adjustment is  
35 necessary.

36 10.5.2.7 Conclusion on normal value

37 Customs will recommend that normal values be determined pursuant to  
38 s. 269TAC(6) based on normal values for 2,4-D acid from India which have  
39 been brought into Jiamusi's normal value calculations at the ex-factory,  
40 unpacked, cash level.

41 Customs will also recommend that adjustments be made to ensure fair  
42 comparison with export prices.

1 **10.5.3 Dumping Margins**

2 Dumping margins were established by comparing the weighted average  
3 export price over the investigation period with the weighted average normal  
4 value over the same period, pursuant to s. 269TACB(2)(a).

5 Customs assessed dumping margins in the range of 5%-10%.

6 **10.5.3.1 Negligible volume of dumped goods**

7 Subsection 269TDA(3) of the Act requires the CEO to terminate an  
8 investigation if satisfied that the total volume of dumped goods that have or  
9 may be exported to Australia over a reasonable examination period from a  
10 particular country of export is negligible, i.e. dumped goods are less than 3  
11 per cent of the total Australian import volume.

12 Customs' analysis showed that 75% of the goods exported by Jiamusi from  
13 China during the investigation period were dumped and Customs is therefore  
14 satisfied that the volume of dumped goods is not negligible pursuant to  
15 s. 269TDA(4).

16 **10.6 Imtrade China**

17 Imtrade China is a joint venture representative office of a foreign company. It  
18 sources and facilitates the exportation of products including 2,4-D products,  
19 from China to Australia by using its export agent, Sinopack, which is an import  
20 and export company owned by the State.

21 Imtrade China does not produce or sell 2,4-D in China. For that reason the  
22 issue of price control was not pursued with the company.

23 **10.6.1 Export Price**

24 Customs inquiries confirmed that Imtrade China sold 2,4-D acid for export to  
25 Australia during investigation period. The goods were imported by one  
26 (related) Australian company. From Customs' visit to that importer, the visit to  
27 Imtrade China and from Customs' database, Customs was able to confirm the  
28 accuracy of the list of exportations provided by Imtrade China during the  
29 investigation period.

30 Customs considers Imtrade China to be the exporter because it:

- 31 • negotiated the terms and conditions of the purchase of the goods from  
32 the producer;
- 33 • negotiated the terms and conditions of the sale contract with its  
34 Australian customer, including the price for the shipments;
- 35 • arranged for the physical exportation of the goods by engaging the  
36 services of the shipping company;
- 37 • was the beneficial owner of the goods when the goods were exported  
38 from China; while

- 1           • Sinopack acted merely as a nominal export agent to comply with the  
2           export licensing requirements in China.

3 For the shipments Customs established that Imtrade China's Australian  
4 customer:

- 5           • negotiated the price of the goods;  
6           • was invoiced for, and paid for the goods;  
7           • appeared as the consignee and the party to be notified in all the bills of  
8           lading;  
9           • arranged for clearance of the goods and were invoiced the broker's  
10          disbursement; and  
11          • appeared to be entitled to all the benefits associated with ownership of  
12          the goods.

13  
14 Therefore, Customs considers the Australian customer to be the beneficial  
15 owner and consequently the importer of the goods.

16 From the documentation obtained from Imtrade China, Sinopack and the  
17 importer it appears that the invoiced price is paid consistent with the terms of  
18 the sale.

19 Imtrade China and the Australian importer are related companies. However,  
20 Customs is satisfied that in respect of sales between the parties there is no  
21 evidence of:

- 22           (a)       any consideration payable for or in respect of the goods other than  
23           their price; or  
24           (b)       the price being influenced by a commercial or other relationship  
25           between the buyer, or an associate of the buyer, and the seller, or an  
26           associate of the seller; or  
27           (c)       any reason for the Minister to form the opinion that the buyer, or an  
28           associate of the buyer, will, subsequent to the purchase or sale,  
29           directly or indirectly, be reimbursed, be compensated or otherwise  
30           receive a benefit for, or in respect of, the whole or any part of the  
31           price.

32 Customs is therefore satisfied that sales of 2,4-D from Imtrade to the  
33 Australian importer are sales that are arms length transactions in terms of  
34 s. 269TAA.

35 Customs concludes that:

- 36           • the goods have been exported to Australia from China otherwise than  
37           by the importer;  
38           • the goods have been purchased by the importer from the exporter; and  
39           • the purchases of the goods by the importer were arms length  
40           transactions.

41 **10.6.1.1 Conclusion on export price for Imtrade**

42 Customs concludes that the export price for acid exported by Imtrade during  
43 the investigation period be established under s. 269TAB(1)(a) using the price

1 paid by the importer less any charges in respect of transport or any other  
2 matter arising after exportation.

### 3 **10.6.2 Normal value**

#### 4 10.6.2.1 Domestic sales

##### 5 Domestic sales by Imtrade China

6 Imtrade China stated that it does not sell 2,4-D products on the domestic  
7 market. The statement is consistent with its role. Customs is therefore  
8 satisfied that normal values cannot be established pursuant to s. 269TAC(1)  
9 using domestic sales of Imtrade China.

##### 10 Sales by other domestic sellers

11 Customs' investigation identified a major producer and seller of 2,4-D  
12 products on the Chinese domestic market. However, as insufficient reliable  
13 data was available from that producer, Customs is unable to establish the  
14 normal value for Imtrade China using domestic sales by that producer under  
15 the other sellers provision in s. 269TAC(1).

16 Customs also contacted three of a number of other known sellers on the  
17 domestic market but received no replies to its requests for information.

18 Customs is satisfied that, in accordance with s. 269TAC(2)(b), it is not  
19 practicable to obtain, within a reasonable time, information in relation to sales  
20 by other sellers of like goods that would be relevant for the purposes of  
21 determining a price under s. 269TAC(1).

#### 22 10.6.2.2 Normal value based on sales to a third country by Imtrade

23 Imtrade China does not export 2,4-D products to third countries. This is  
24 consistent with its role as a representative office for its related Australian  
25 company. Customs is satisfied that normal values cannot be determined  
26 pursuant to s. 269TAC(2)(d) using sales to third countries.

#### 27 10.6.2.3 Constructed normal value

28 Imtrade China stated that it does not produce 2,4-D. The statement is  
29 consistent with Imtrade China's role. As such, no further discussion of costs  
30 was necessary. Customs is satisfied that normal values cannot be  
31 determined pursuant to s. 269TAC(2)(c) using Imtrade China's costs.

#### 32 10.6.2.4 Subsection 269TAC(6) – All relevant information

33 Customs is satisfied that sufficient information has not been furnished or is  
34 not available to enable a normal value to be determined under the preceding  
35 subsections and that normal value should be determined having regard to all

1 relevant information pursuant to s. 269TAC(6). Customs established the  
2 following information in determining normal values pursuant to s. 269TAC(6):

- 3 • domestic sales by other sellers;
- 4 • domestic sales information submitted by Nufarm;
- 5 • normal values determined for 2,4-D acid exported from the U.K. and  
6 India;
- 7 • Australian industry's costs and sale prices.

#### 8 Domestic sales by other sellers

9 As discussed at section 10.5.2.5, Customs concluded that the domestic sales  
10 information available from Jiamusi was not suitable for the purposes of  
11 assessing normal values under s. 269TAC(6). Logically that information is  
12 also unsuitable for assessing normal values for Imtrade.

#### 13 Domestic sales information provided by Nufarm

14 The Australian industry submitted information in relation to market prices and  
15 conditions in the herbicide market in China. That information included  
16 reported prices and distributor margins for sales of 2,4-D products.

17 However, any reported price supplied by the Australian industry would require  
18 a specification adjustment to ensure comparability to the exported 2,4-D acid.  
19 Customs considered this to be an impractical exercise due to significant  
20 information deficiencies.

#### 21 2,4-D acid normal values established in the U.K. and India

22 Customs considered using the normal values established for exports of 2,4-D  
23 acid from the U.K. and India, adopting the same principles that would apply in  
24 selecting an appropriate third country for the purposes of s. 269TAC(2)(d) or  
25 (4)(d).

26 The Australian industry submitted in its application that normal values should  
27 be ascertained by reference to a surrogate country and provided data to  
28 support its claim that India was an appropriate country, detailing a number of  
29 economic indices it obtained from the International Monetary Fund website.

30 Having considered the general economic indices and the factors referred to in  
31 subsection 269TAC(5C), Customs concludes that India would be the more  
32 appropriate source of normal values for use in China.

#### 33 Australian Industry's costs and profit

34 Use of the Australian industry's costs and profit required similar  
35 considerations to those involved in selecting an appropriate source of normal  
36 values from either the U.K. or India. Customs considered India to be a more  
37 appropriate country for the purposes of establishing normal values than  
38 Australia.

1 Conclusion on Subsection 269TAC(6) – All relevant information

2 Customs will recommend that normal values for exports of 2,4-D acid by  
3 Imtrade from China be determined pursuant to s. 269TAC(6) using normal  
4 values in India for 2,4-D acid.

5 10.6.2.5 Adjustments

6 Customs is satisfied that the following adjustments are necessary to ensure  
7 normal values obtained from India are properly comparable to export prices:

- 8 • a negative adjustment equalling the VAT included in the Indian normal  
9 values is required to domestic sales prices. Even though VAT is  
10 included in the export price it appears it is refunded upon receipt of  
11 payment from the overseas customers and is therefore similar to the  
12 situation where there is no VAT on export;
- 13 • a positive adjustment is required for packing costs because the normal  
14 value obtained from India is for the unpacked product;
- 15 • a positive adjustment is required to the Chinese normal value for  
16 export inland freight, based on invoiced prices, because normal values  
17 obtained from India have been assessed at the ex-factory point.
- 18 • a positive adjustment is required for port and dock charges, based on  
19 information provided by Imtrade, because normal values obtained from  
20 India have been assessed at the ex-factory level;
- 21 • an adjustment is required for the difference between the cash terms  
22 included in the normal values obtained from India and the 60 day credit  
23 terms for export sales, based on evidence of interest rates submitted  
24 by another exporter in China;
- 25 • no adjustment can be made for level of trade. Normal values obtained  
26 from India are predominantly for sales to distributors/formulators and  
27 export prices are between a trader and distributor. It would appear  
28 there are no clearly comparable transactions within each chain of  
29 transactions and there may be a difference in the level of trade of the  
30 two sales. However, no information is available to quantify any such  
31 adjustment; and
- 32 • no adjustment is required for specification because normal values  
33 obtained from India have been established for 2,4-D acid.

34 10.6.2.6 Conclusion on normal value

35 Customs will recommend that normal values be determined pursuant to  
36 s. 269TAC(6) based using normal values for 2,4-D acid from India which have  
37 been brought into Imtrade China's normal value calculations at the ex-factory,  
38 unpacked, cash level.

39 Customs will also recommend that, certain adjustments be made to ensure  
40 fair comparison with export prices.

1 **10.6.3 Dumping Margins**

2 Customs has calculated dumping margins under s. 269TACB(2)(a) by  
3 comparing weighted average export prices established under s. 269TAB(1)(a)  
4 over the whole of the investigation period with weighted average normal  
5 values determined under s. 269TAC(6) over the whole of that period.

6 Customs' analysis established that exports by Imtrade China were not  
7 dumped.

8 **10.6.3.1 Negligible dumping margins**

9 Subsection 269TDA(1) of the Act requires the CEO to terminate an  
10 investigation, in relation to an exporter, where there has been:

- 11 • No dumping by the exporter; or
- 12 • where the exporters' dumping margins are negligible (de minimus), i.e.  
13 where margins calculated under s. 269TACB of the Act, when  
14 expressed as a percentage of the export price or weighted average of  
15 export prices, are less than 2 per cent.

16 Customs is satisfied that the margins calculated for Imtrade China under  
17 s. 269TACB is negligible pursuant to s. 269TDA(1).

18 **Conclusion**

19 Customs analysis showed that when compared on a weighted average basis  
20 over the investigation period Imtrade China's exports to Australia were not  
21 dumped. Customs will therefore recommend the investigation be terminated  
22 in relation to Imtrade China, following consideration of submissions received  
23 in response to this SEF.

24

25

## 11 THE ECONOMIC CONDITION OF THE INDUSTRY

### 11.1 Introduction

This section reports Customs' consideration of the economic condition of the industry, that is, its assessment as to whether the industry has suffered injury.

The industry claimed injury commenced in the financial year 1997/98. As stated in the application:

“Prior to 1998/9 there were no reported imports of 2,4-D from India and the U.K., and only 2 small shipments from China.

Imports of 2,4-D from China began to emerge in significant quantities in the March quarter of 1998, at FOB prices well below other import sources. Regular import volume from China throughout 1998 was joined by the emergence of imports from India in the December quarter.

Coinciding with this period the market share held by Nufarm declined rapidly.....

Nufarm initially held price at the expense of market share but price effect injury had become apparent in 1999/0 and 2000/1. Around this time Nufarm reduced selling prices to remedy volume loss, but its market share has continued to decline.”

Customs examined data for the period February 1997 to January 2002, the injury period, in order to assess this claim.

### 11.2 Industry's Claims

Nufarm claimed injury in the following forms:

- loss of volume;
- loss of market share;
- price undercutting;
- price depression;
- price suppression; and
- loss of profit & profitability

### 11.3 Injury Analysis

#### 11.3.1 Industry data

During the course of the investigation Customs visited Nufarm and verified the accuracy of the data it submitted in support of its claims. Customs is satisfied that as a result of that process the data provided by Nufarm is reliable.

1 **11.3.2 Approach**

2 Based on the production and import data provided in the application, Nufarm  
3 represents approximately 90% of the Australian industry. Nufarm claimed  
4 that since it constitutes such a large proportion of the industry, injury to  
5 Nufarm is indicative of injury to the Australian industry as a whole. Customs  
6 agrees.

7 As stated in the application, the competitive market is seen in the sales of the  
8 fully formulated forms of 2,4-D, as there were negligible sales of 2,4-D acid  
9 and intermediate products. Therefore Customs has generally analysed injury  
10 at the fully formulated level.

11 For the analysis of total volumes to be undertaken, it was necessary to  
12 convert all the products to a common base (100% acid equivalent), as the  
13 acid content of fully formulated forms of 2,4-D can vary considerably  
14 (between 22.5% to 80%). In the application this conversion was undertaken  
15 on the basis of the concentration of acid in the formulated product:

16  $\text{Volume} \times \text{concentration percentage} = 100\% \text{ acid equivalent.}$

17 Customs accepts this approach for assessing volumes. However, it has not  
18 been used for converting prices, given the varying processing costs and  
19 attainable profit margins of the individual fully formulated forms of 2,4-D.

20 **11.3.3 Products**

21 Nufarm's products included in the analysis of injury are:

- 22 • Ester 800;
- 23 • Ester 600;
- 24 • Ester 400;
- 25 • Amine 500;
- 26 • Amine 625;
- 27 • Amine LO;
- 28 • Surpass/Amine 225;
- 29 • Surpass 300;
- 30 • Iso Butyl Ester; and
- 31 • Acid.

32

### 11.3.4 Source Countries

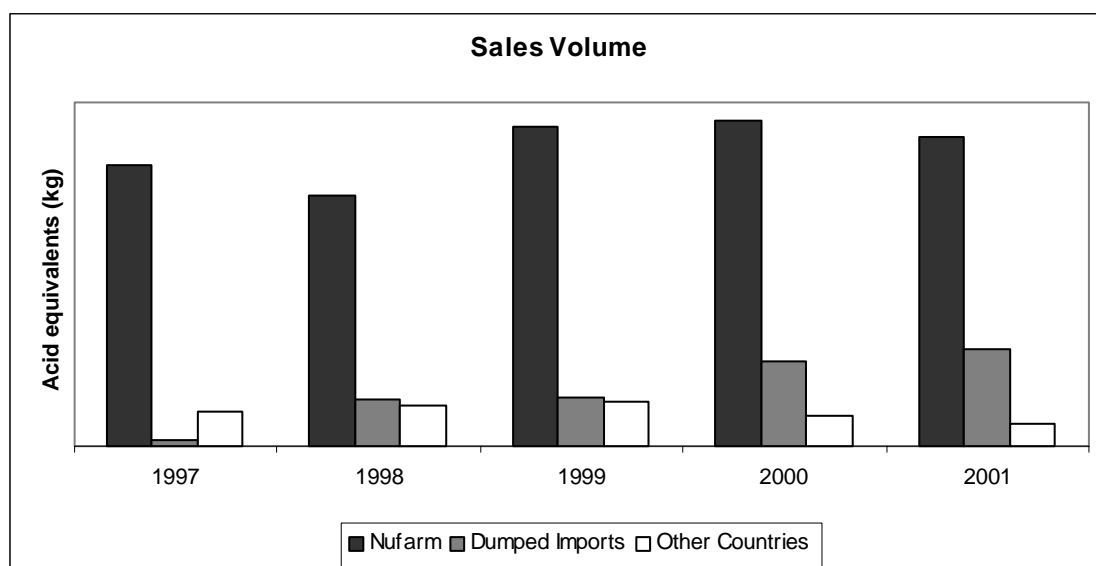
The investigation has established that goods from India were dumped but the margin was negligible pursuant to s. 269TDA(1). It has also established that the goods exported by Imtrade China were undumped. In the following injury analyses, those exports have been included in the “other countries” category.

## 11.4 Volume effects

### 11.4.1 Sales volume

#### 11.4.1.1 Sales volumes – domestic

Customs examined sales volumes of Nufarm, dumped imports and other imports over the injury period; the analysis is presented in the chart below.



A comparison of sales volumes in 2001 to the base year (1997) shows that Nufarm’s domestic sales volumes have increased over the injury period.

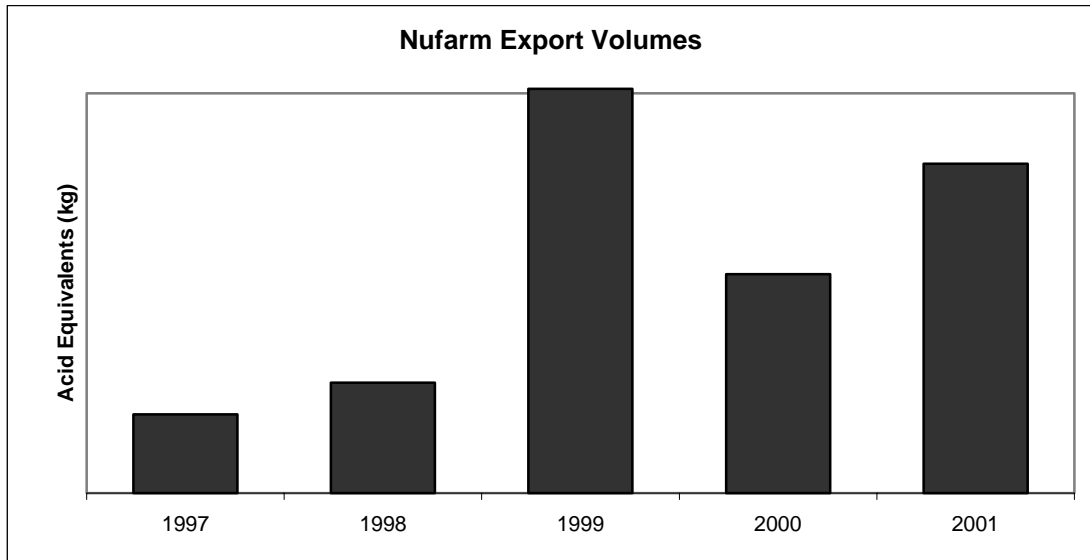
The change from base year of Nufarm’s domestic sales is detailed in the table below:

Year	1997	1998	1999	2000	2001
Nufarm	Base	-11%	14%	16%	10%

Customs concludes that Nufarm has not lost 2,4-D sales volume. However it should be noted that the 2,4-D market expanded over this period by 34% from the base year.

#### 11.4.1.2 Sales volumes – exports

Customs analysed Nufarm’s export sales over the injury period. The following chart illustrates the volume of Nufarm’s export sales of 2,4-D products on an annual basis:



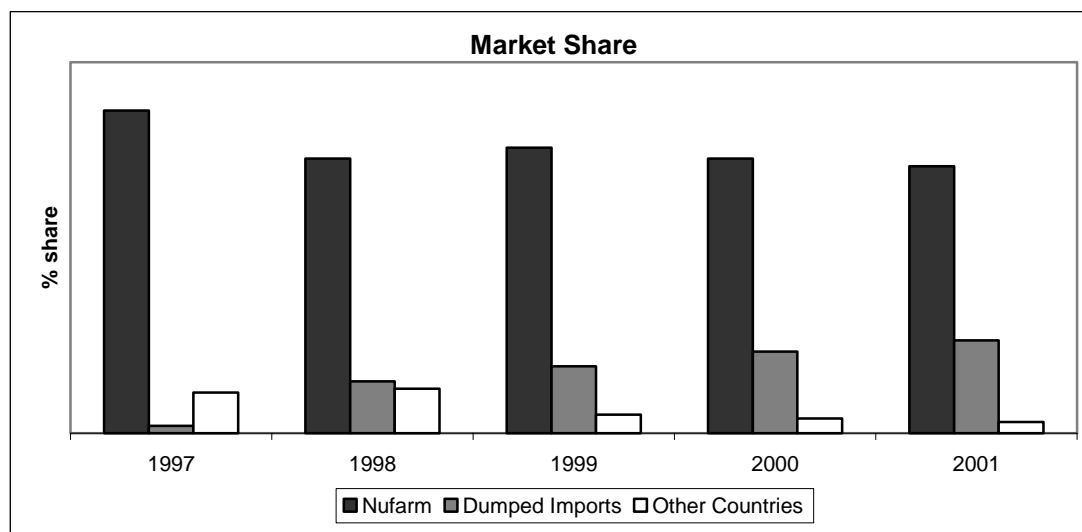
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2 The chart shows that Nufarm's export sales volumes have increased over the  
3 injury period.

4

## 11.4.2 Market share

Customs examined Nufarm's sales volumes and the volume of dumped imports and imports from other sources (as a percentage of total market) over the injury period. The analysis of market share is presented in the chart below:



The change in percentage market share from base year is detailed in the table below:

Year	1997	1998	1999	2000	2001
Nufarm	Base	-13%	-10%	-13%	-15%
Dumped Imports – China & U.K.	Base	12%	16%	20%	23%
Imports – Other Countries (Including India & Imtrade China)	Base	1%	-6%	-7%	-8%

Nufarm's market share has decreased over the injury period. This share appears to have been taken up by dumped imports from China and the U.K..

## 11.5 Price Effects

Customs has examined the prices of Nufarm's fully formulated forms of 2,4-D and the prices of fully formulated imported products to determine whether Nufarm has experienced price undercutting, price depression and price suppression.

As the major market for 2,4-D products is at the fully formulated product level and as Customs considers it to be inappropriate to convert a fully formulated price to an acid equivalent price, the price effect analysis was performed on a product-by-product basis. This approach and the inability of importers generally, to provide detailed sales information over the injury period has resulted in the price undercutting analysis being limited to the investigation period. The analysis is also limited to comparable products.

1 **11.5.1 Price undercutting**

2 Price undercutting occurs where the imported product, or in this case the  
3 imported product after formulation, sells below the price of the Australian  
4 manufactured product.

5 Customs compared the price of importer's formulated products to Nufarm's  
6 prices for comparable products over the investigation period.

7 **11.5.1.1 Information collected**

8 Seven companies, which imported during the investigation period, were  
9 visited by Customs. Their volume of imports constitutes approximately 99%  
10 of exports to Australia. Of the seven importers visited, Customs was able to  
11 gather sufficient sales data from six of the importers to conduct a price  
12 undercutting analysis for the investigation period. The volume of imports by  
13 these six importers covered approximately 77% of exports to Australia.

14 **11.5.1.2 Level of Trade**

15 The majority of sales of fully formulated forms of 2,4-D by Nufarm are to  
16 distributors. Sales by importers, with the exception of two, were considered to  
17 be at the same level of trade as the sales by Nufarm. The two importers  
18 selling at a different level of trade were excluded from the analysis.

19 **11.5.1.3 Terms of sale**

20 Nufarm and importers provided data on their average monthly net selling  
21 prices over the period 1 January 2001 to 31 December 2001. For comparison  
22 purposes all sales have been adjusted to an ex-factory level.

23 **11.5.1.4 Products**

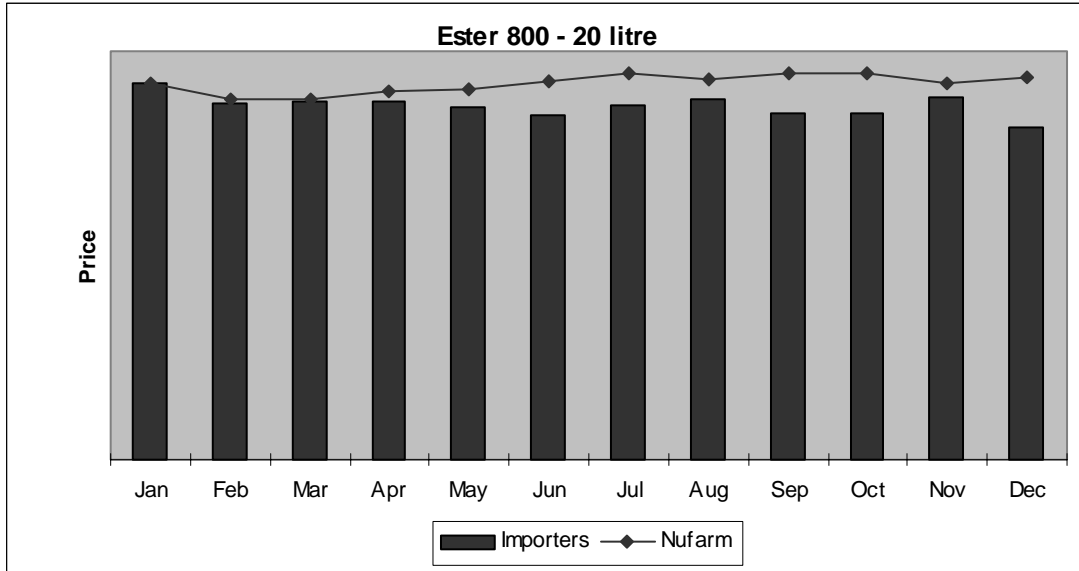
24 The following products were used in the price undercutting analysis, as there  
25 were sales by Nufarm and at least one importer:

- 26 • Ester 800 (20 litre)
- 27 • Amine 500 (20 litre)
- 28 • Amine 500 (110 litre)
- 29 • Amine 500 (200 litre)
- 30 • Surpass/Amine 225 (20 litre)

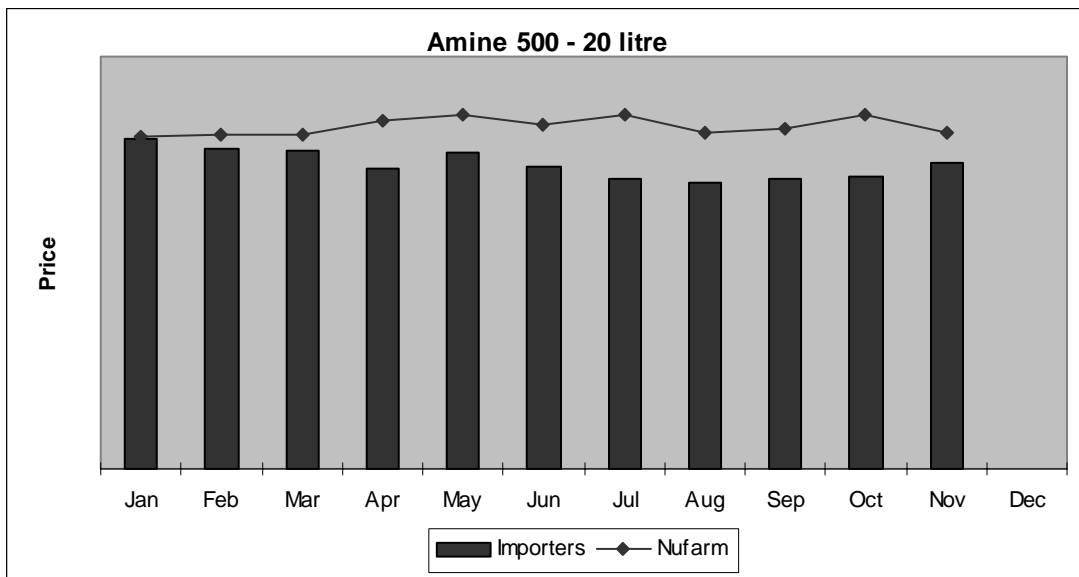
31 These five products make up 92% of sales of those importers used in the  
32 price undercutting analysis.

1 11.5.1.5 Analysis

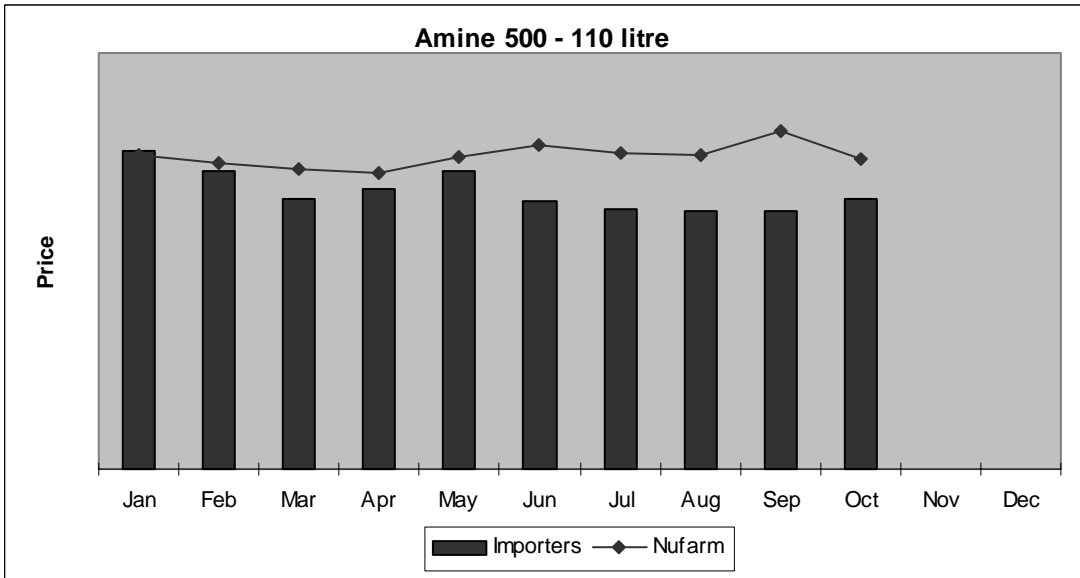
2 The following charts demonstrate the difference between the importers  
3 weighted average ex-factory price and Nufarm's weighted average ex-factory  
4 price over the investigation period:



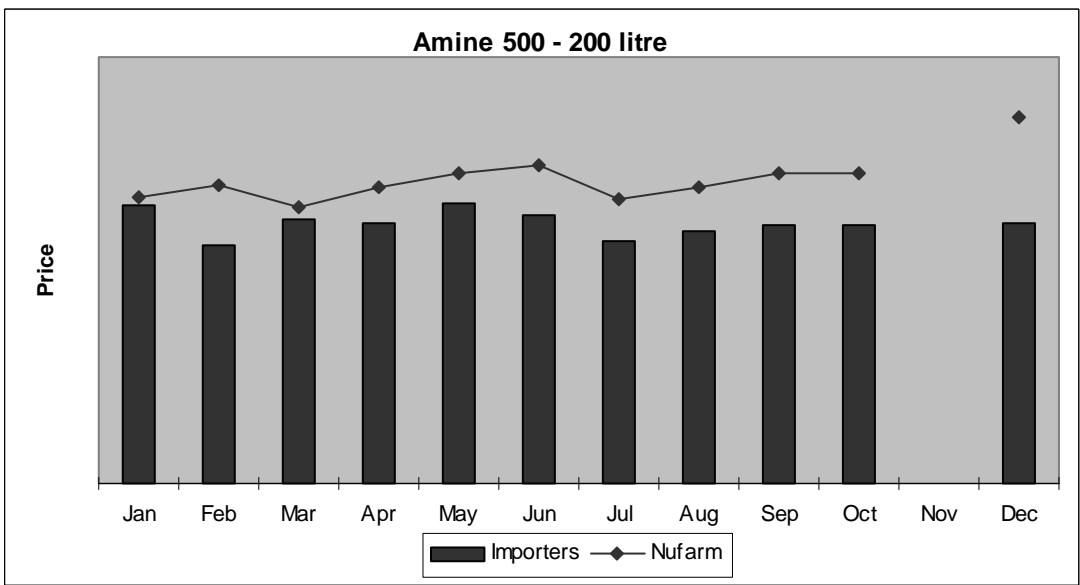
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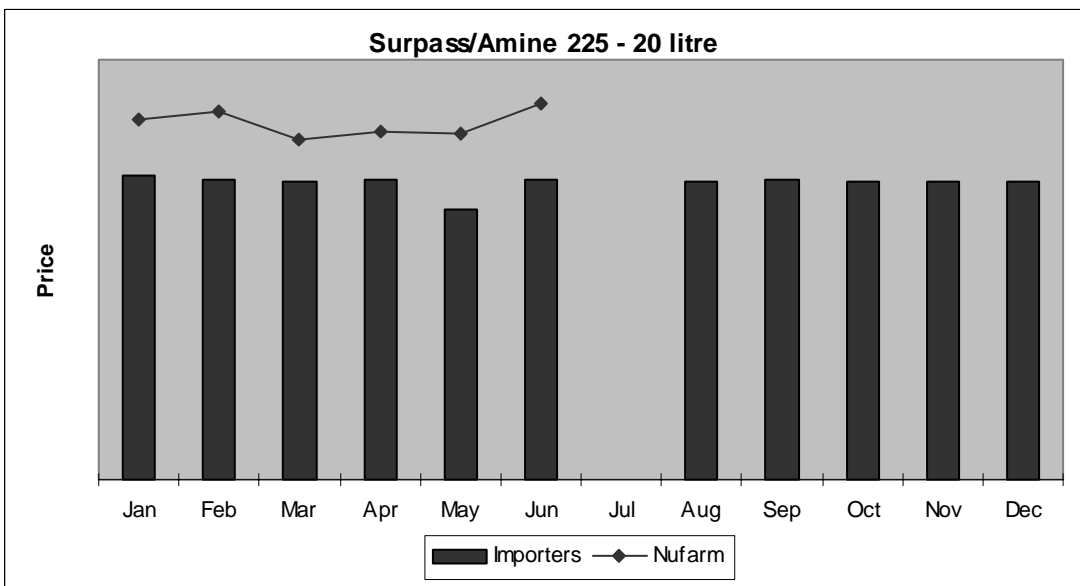
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1 11.5.1.6 Conclusion

2 In light of Nufarm's claim that injury commenced in 1997/98, Customs  
3 considered that it was less likely that significant price undercutting would be  
4 identified in an analysis confined to 2001.

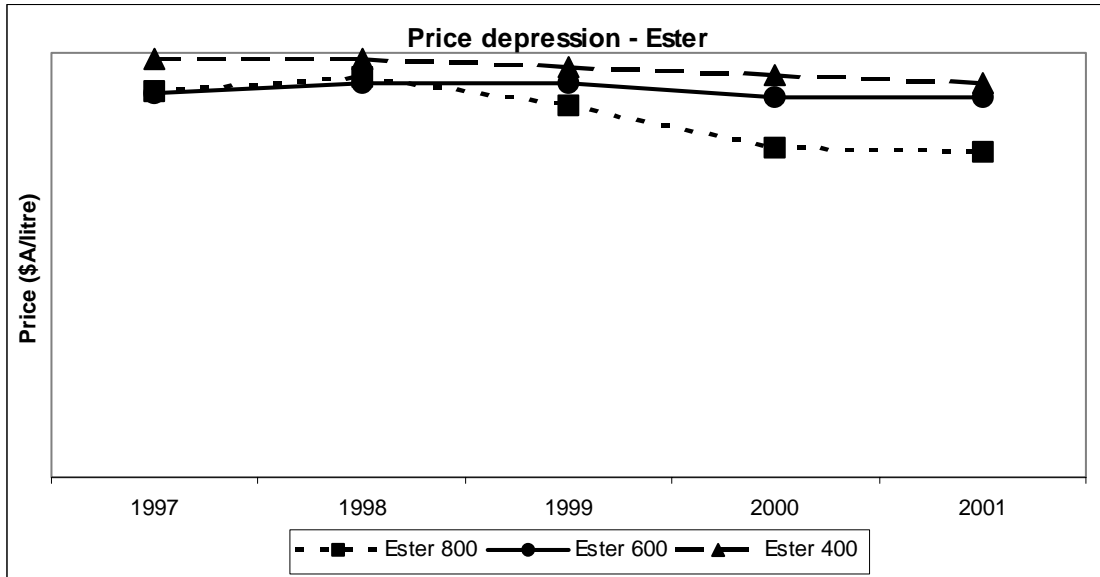
5 However, Customs' analysis of selling prices established that products  
6 manufactured from imported 2,4-D have undercut Nufarm's prices in 2001, by  
7 between 6%-15%.

8

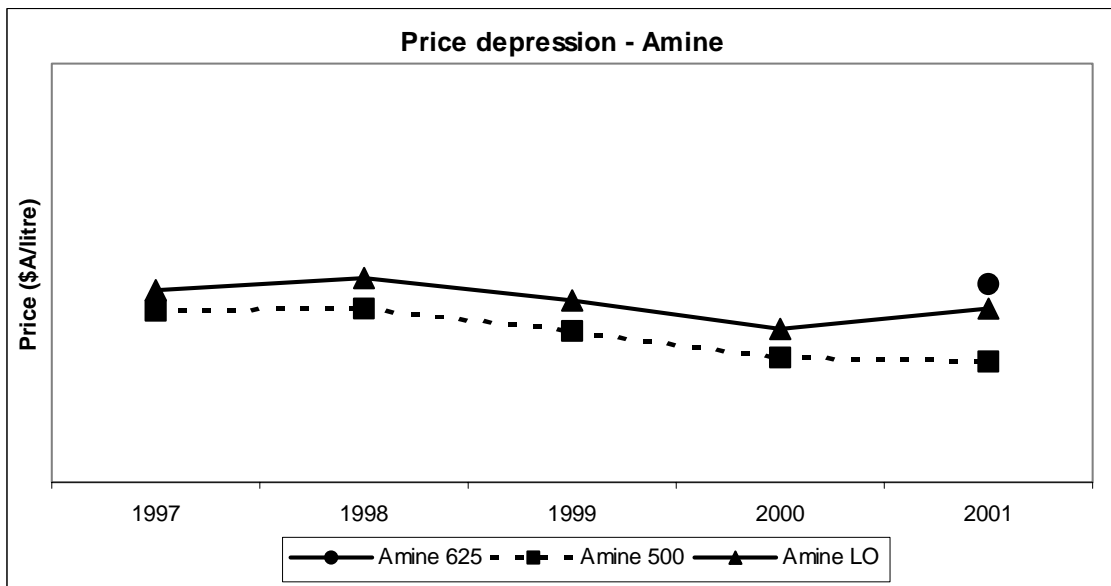
1 **11.5.2 Price depression**

2 Price depression is the reduction in industry's prices.

3 Customs examined the change in Nufarm's prices of products over the injury  
4 period. The analysis is presented in the charts below:

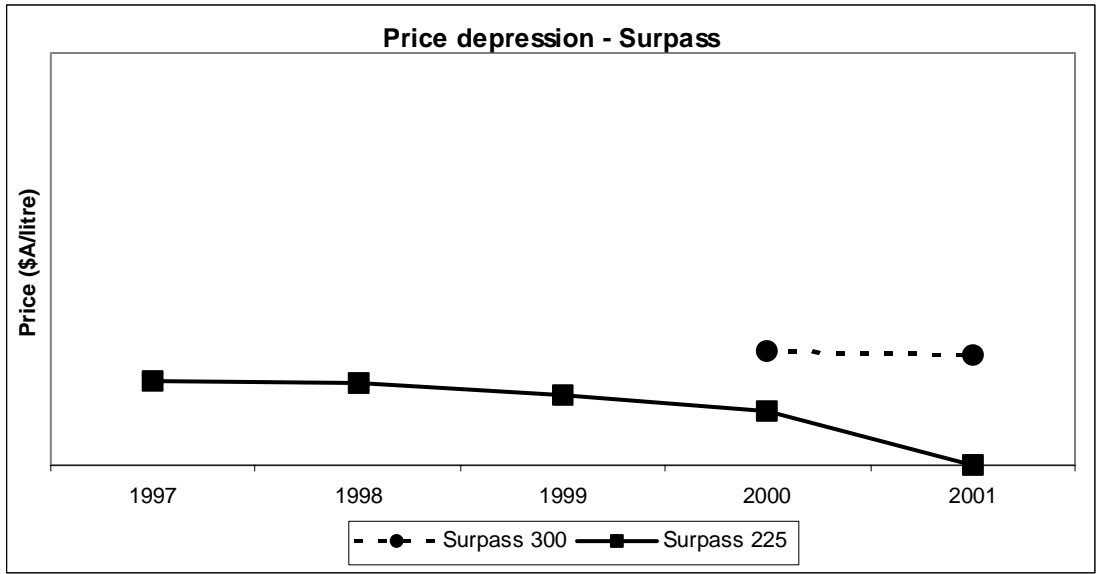


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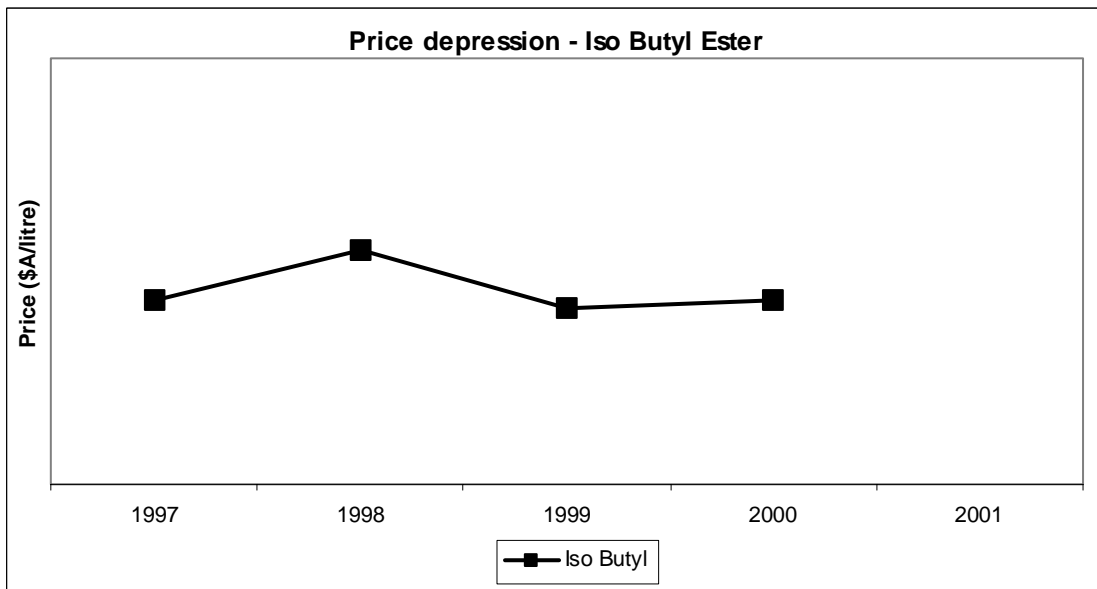


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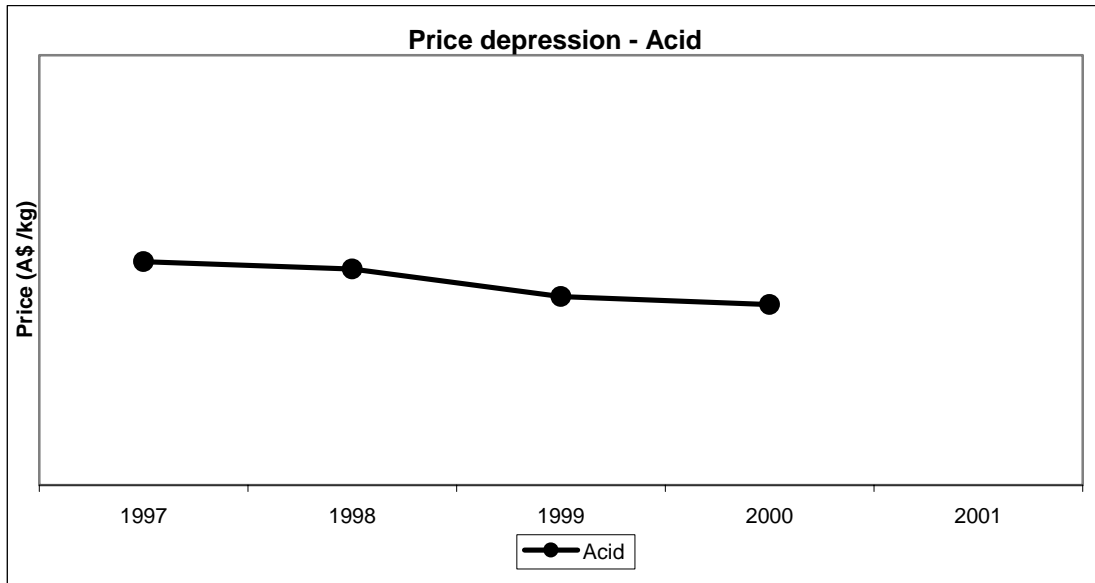
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There were no sales of iso butyl ester in 2001.



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2 There were no sales of acid in 2001.

3 Prices for the major products have generally decreased over the injury period.

4 11.5.2.1 Conclusion

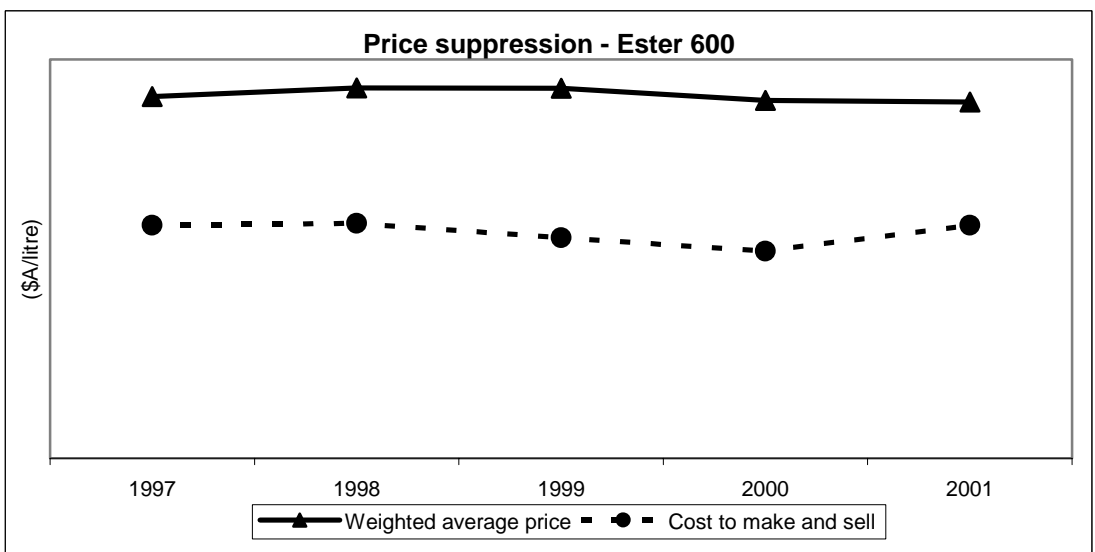
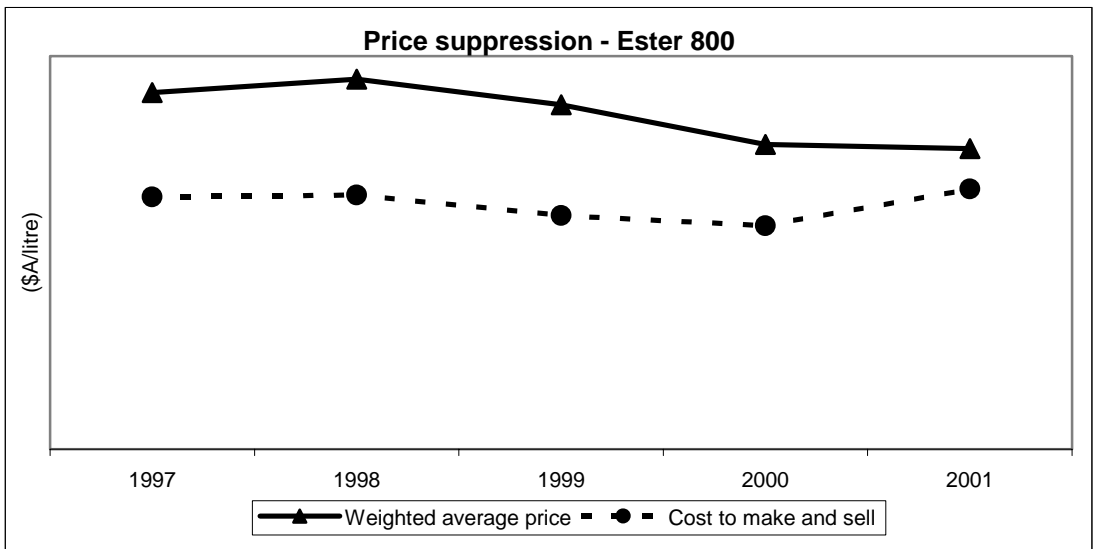
5 Customs' analysis established price depression in the range of 10%-20%, on  
6 products, which constitute 81% of sales during the injury period.

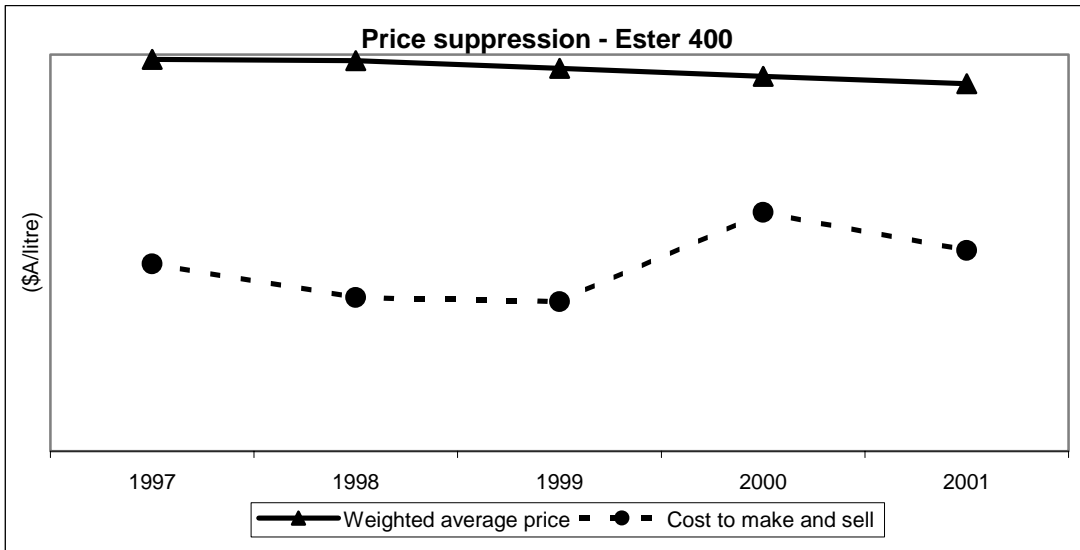
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1 **11.5.3 Price Suppression**

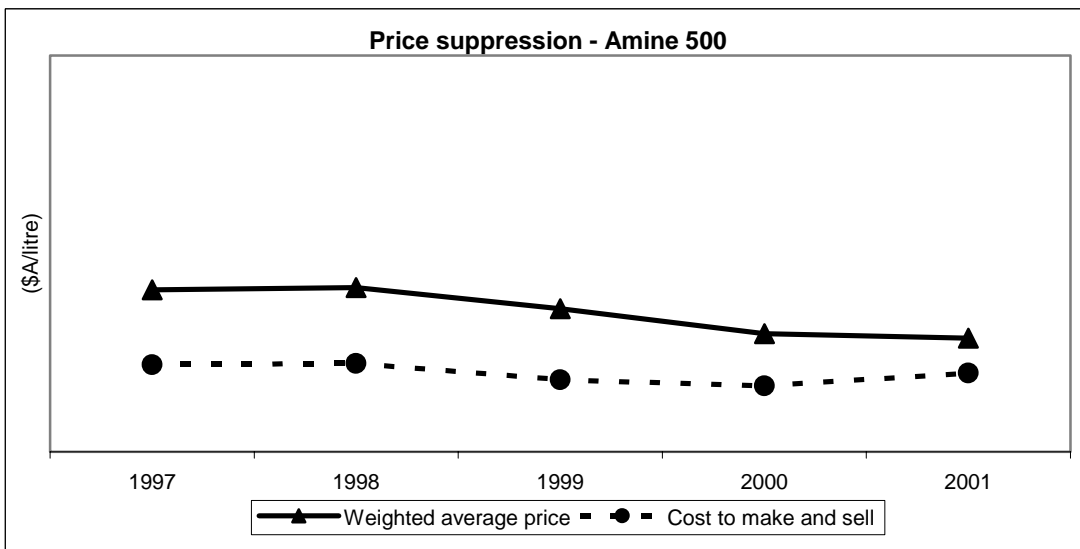
2 Price suppression is the inability to raise prices in line with cost increases.

3 Customs examined the change in Nufarm's prices and cost to make and sell  
4 (CTMS) of products over the injury period. This analysis is presented in the  
5 charts below (no analysis has been performed for Amine 625 as sales only  
6 commenced in 2001):

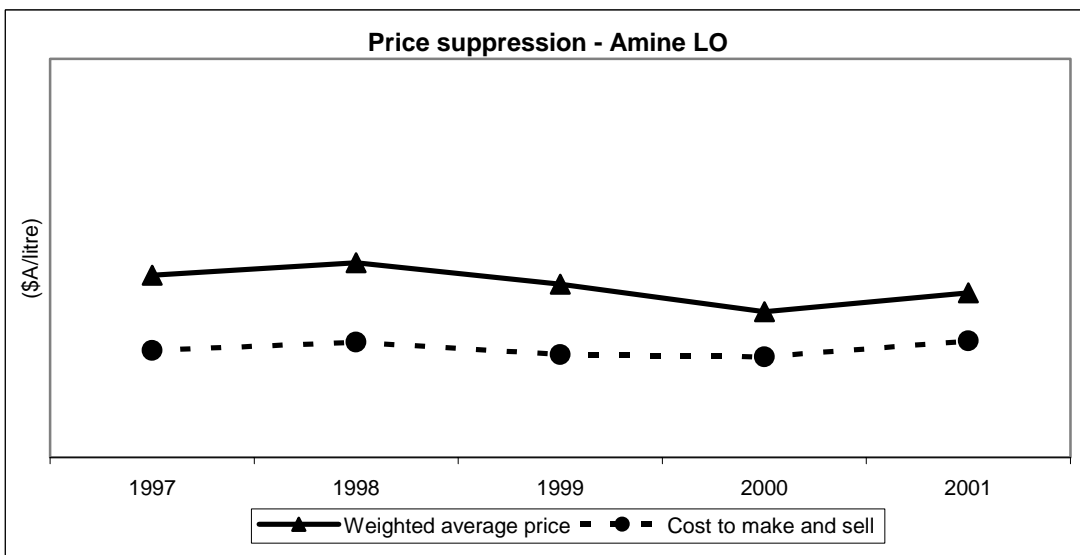




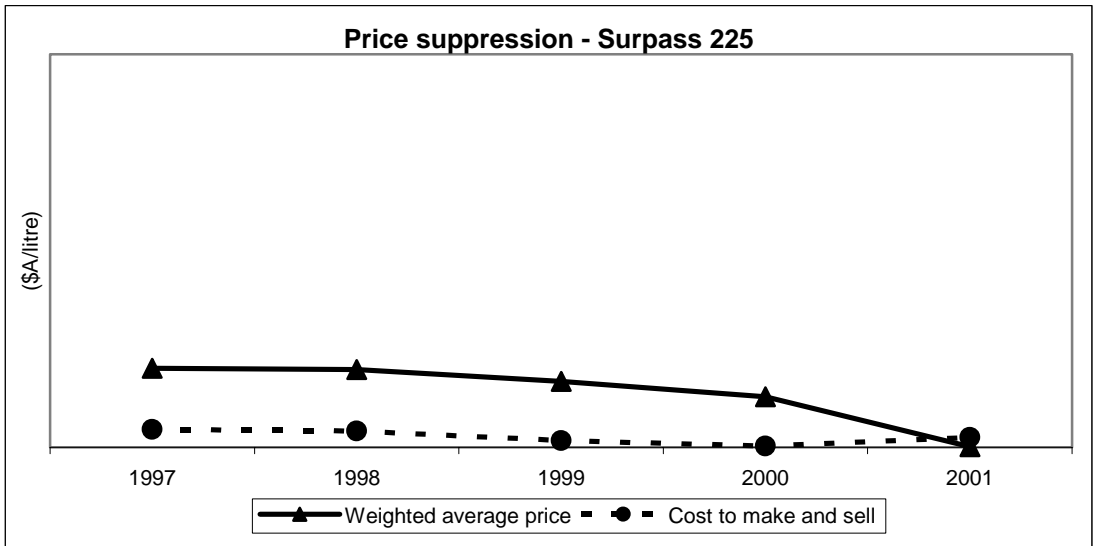
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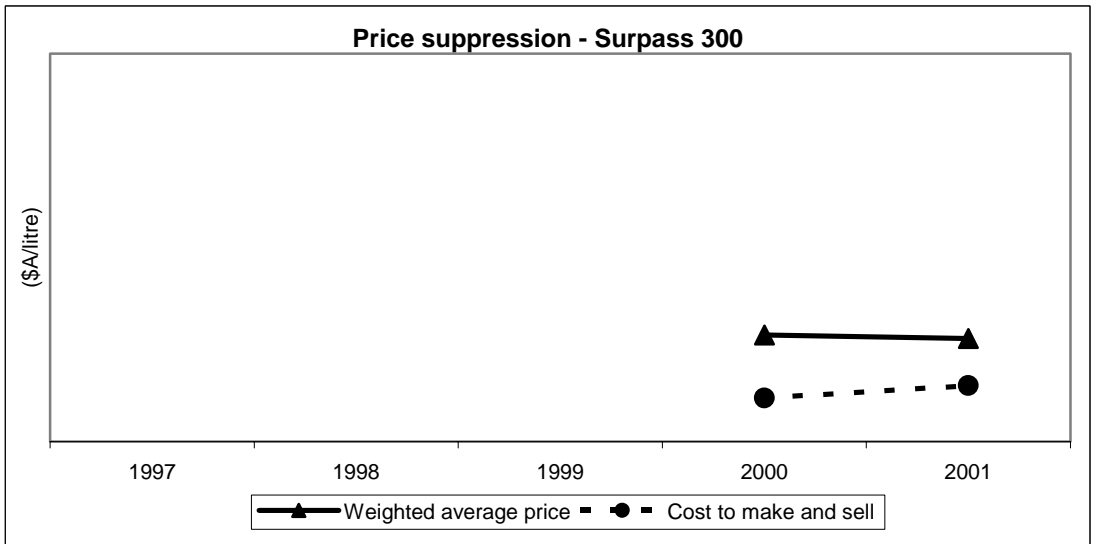
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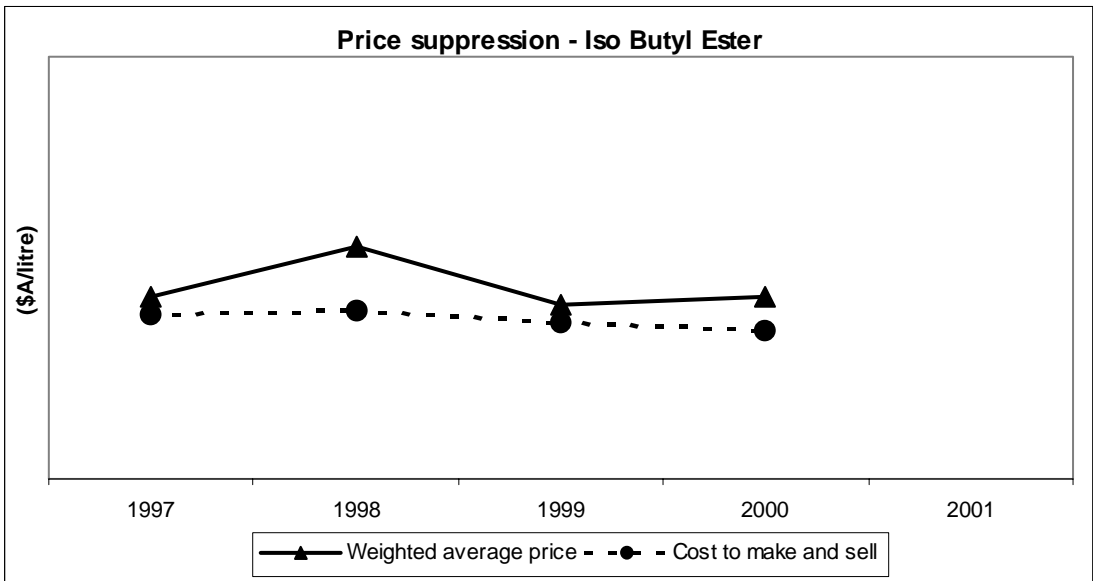
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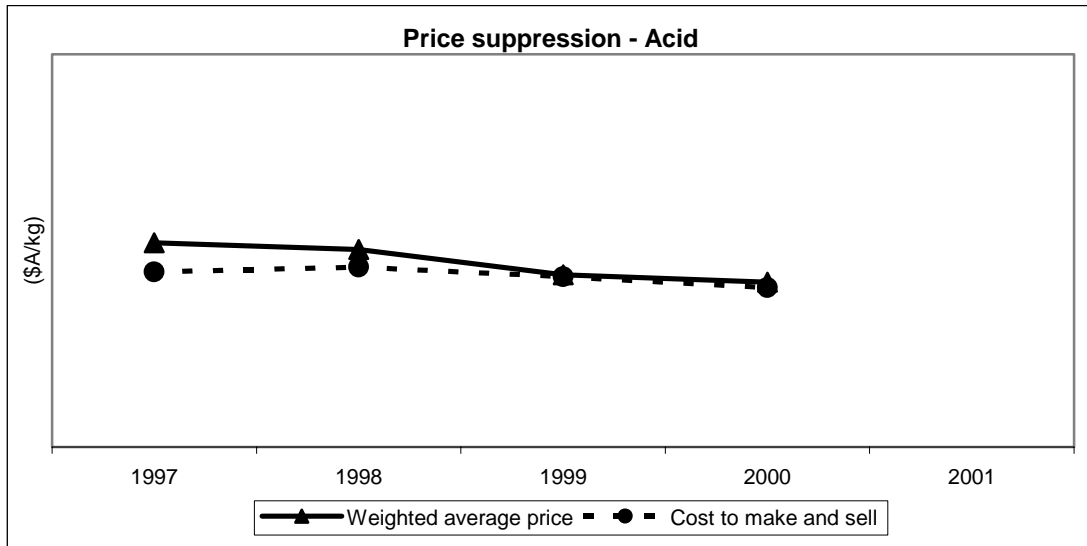
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There were no sales of iso butyl ester in 2001.



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There were no sales of acid in 2001.

Customs' analysis showed that the CTMS for Ester 800, Ester 400 and Amine LO have increased while their selling prices have decreased at a higher rate, demonstrating price suppression. It should also be noted that, while the CTMS for the remaining products has either remained constant or decreased slightly, the decrease in the selling price is generally greater.

#### 11.5.3.1 Conclusion

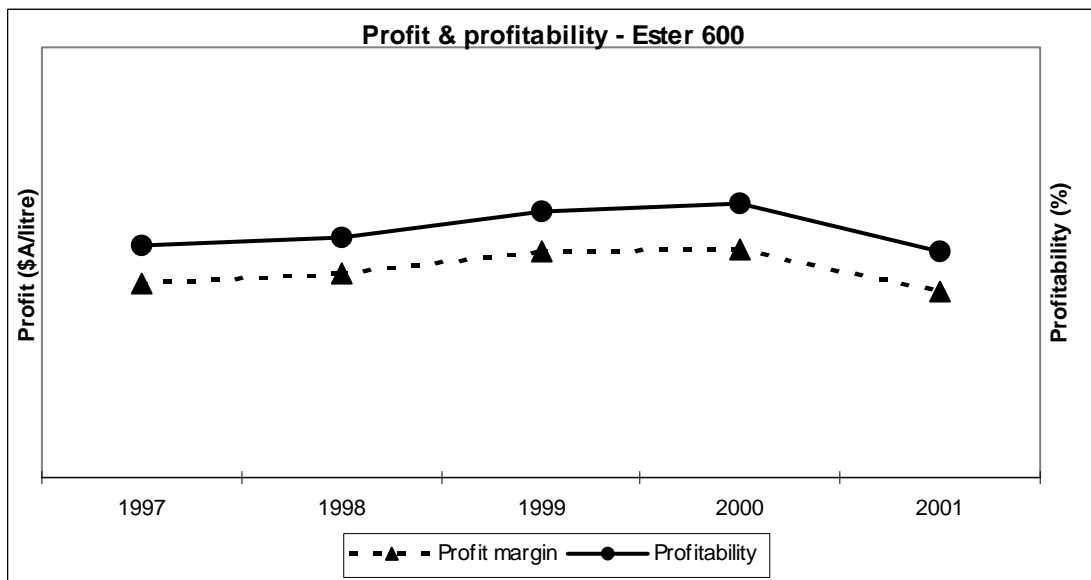
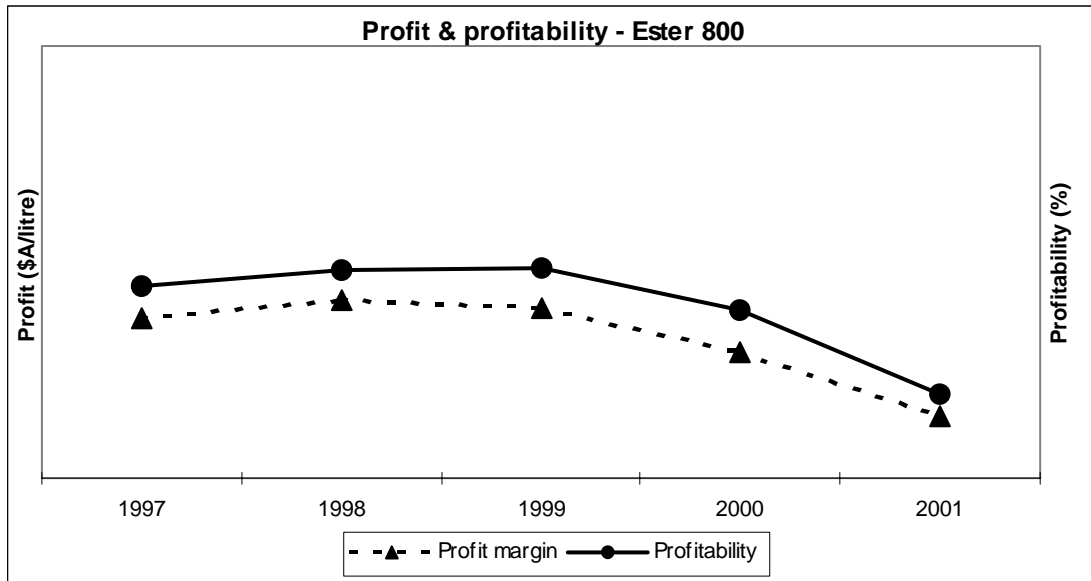
Customs' analysis of price established price suppression on all products, which had experienced an increase in their CTMS over the injury period. These products constitute 46% of sales over the injury period.

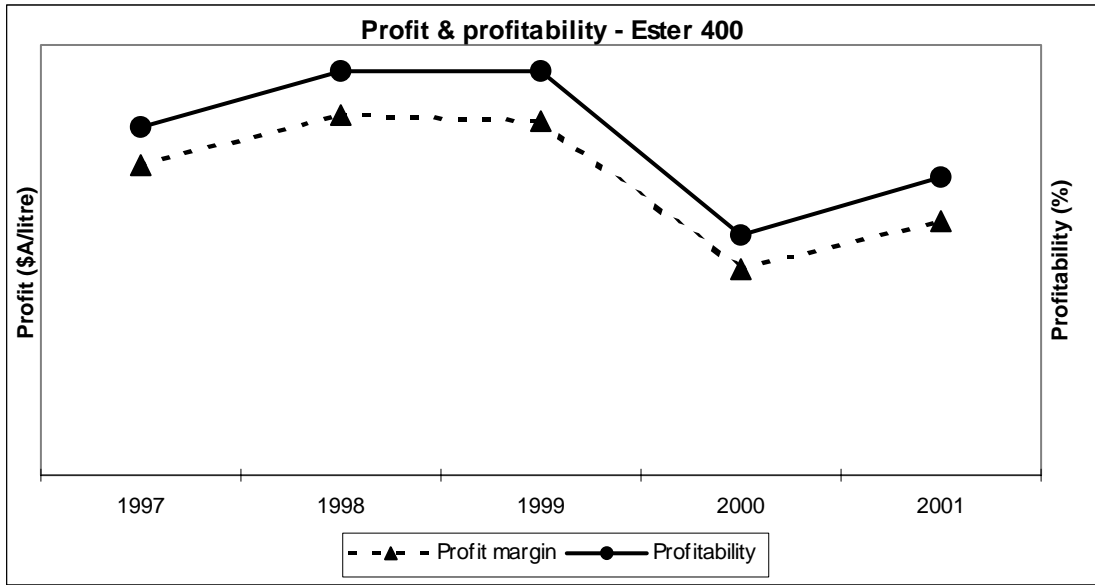
1 **11.6 Profits and Profitability**

2 **11.6.1 Loss of profits and profitability**

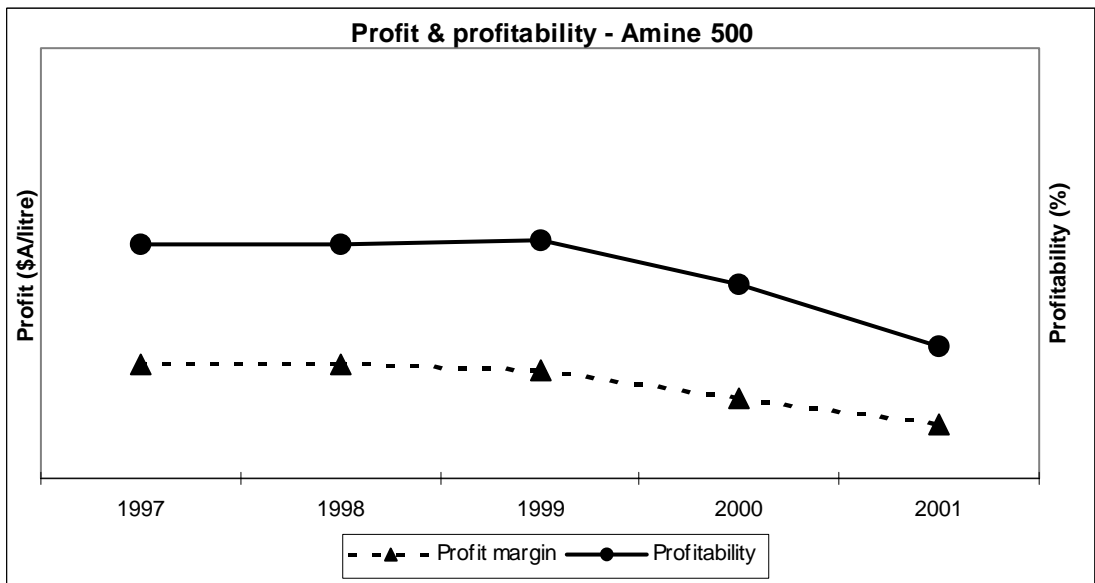
3 **11.6.1.1 Loss of profits and profitability on individual products**

4 Customs examined the change in profits and profitability of Nufarm's products  
5 over the injury period. This analysis is presented in the charts below (no  
6 analysis has been performed for Amine 625 as sales only commenced in  
7 2001):

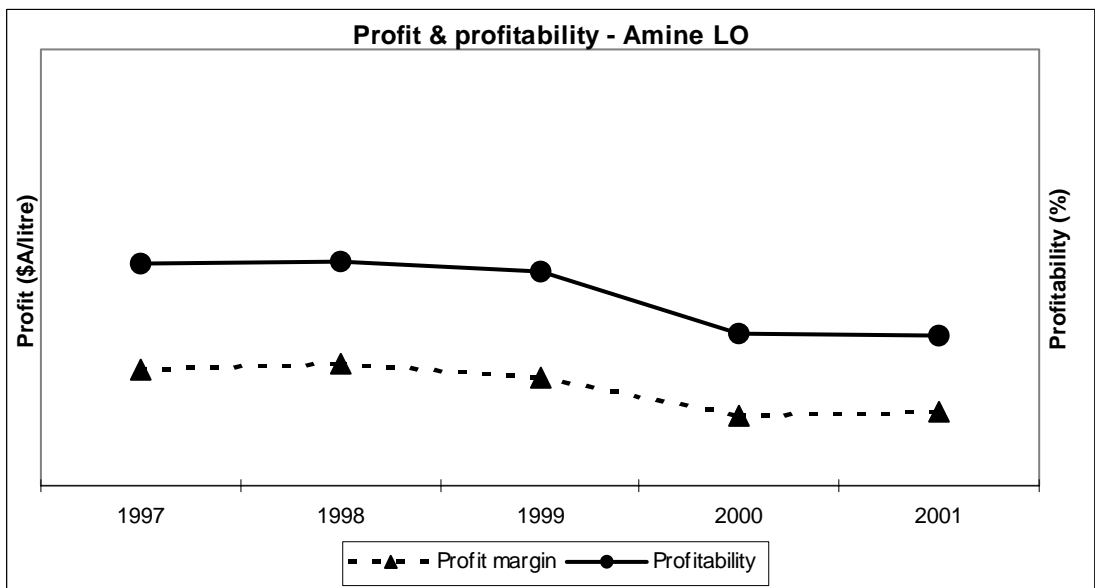




1

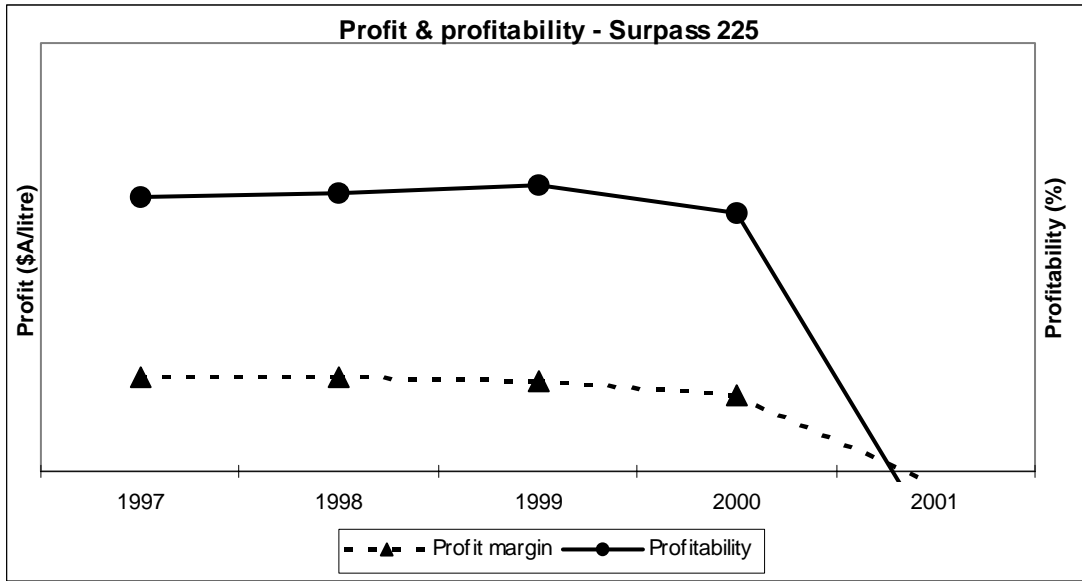


2

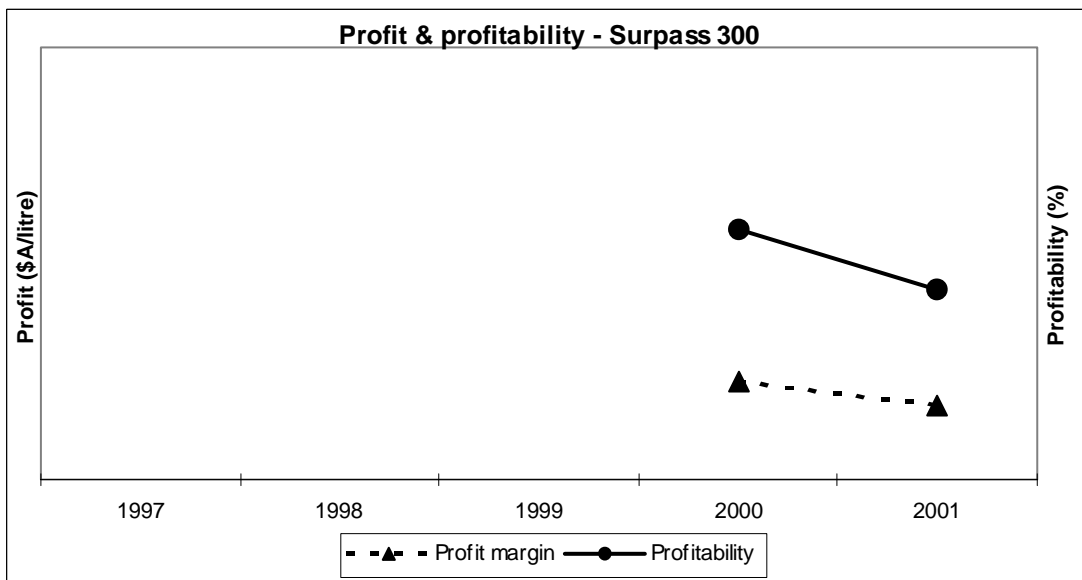


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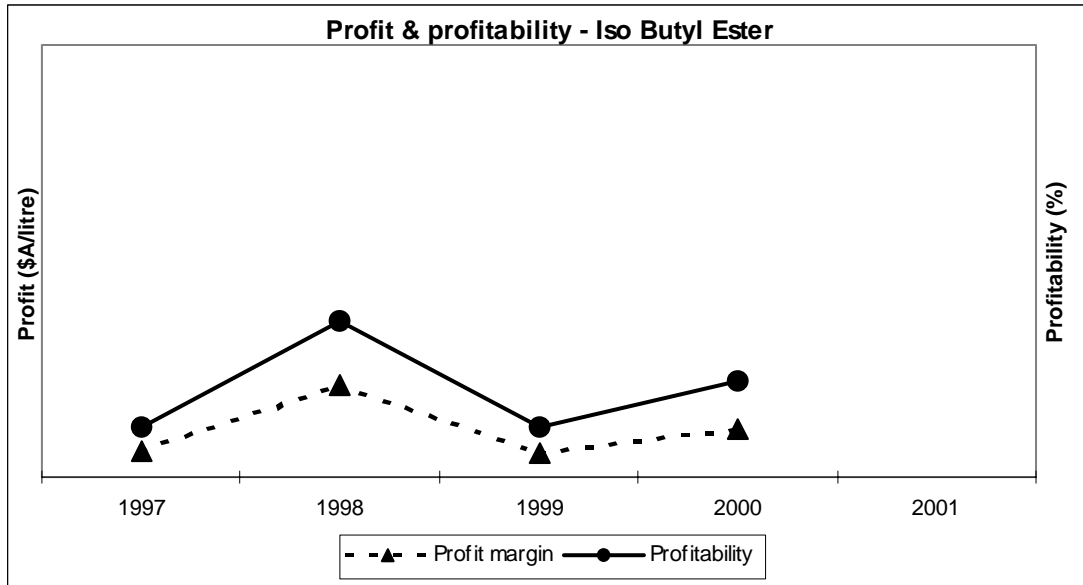
4



1

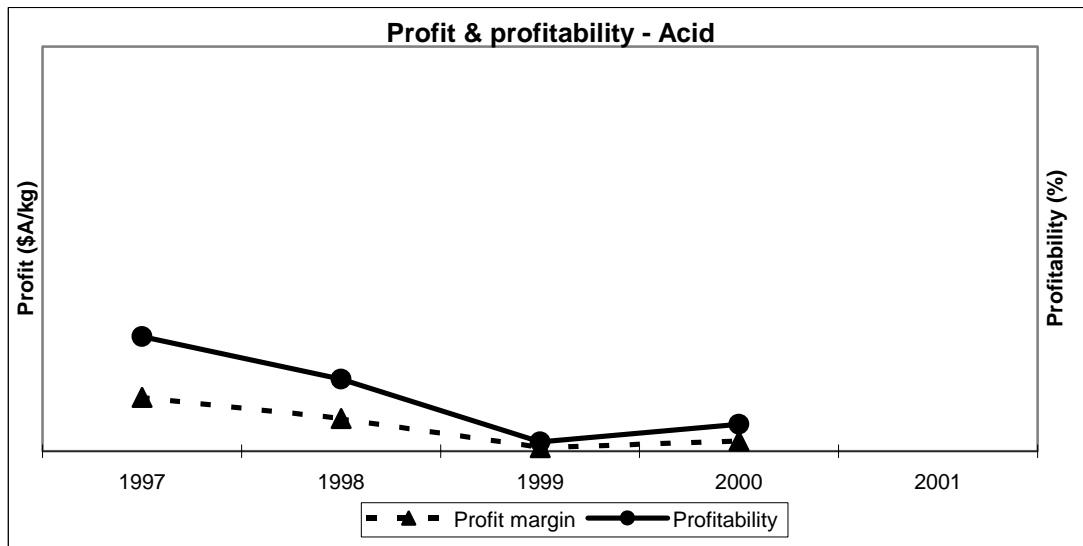


2



1  
2

There were no sales of iso butyl ester in 2001.



3  
4

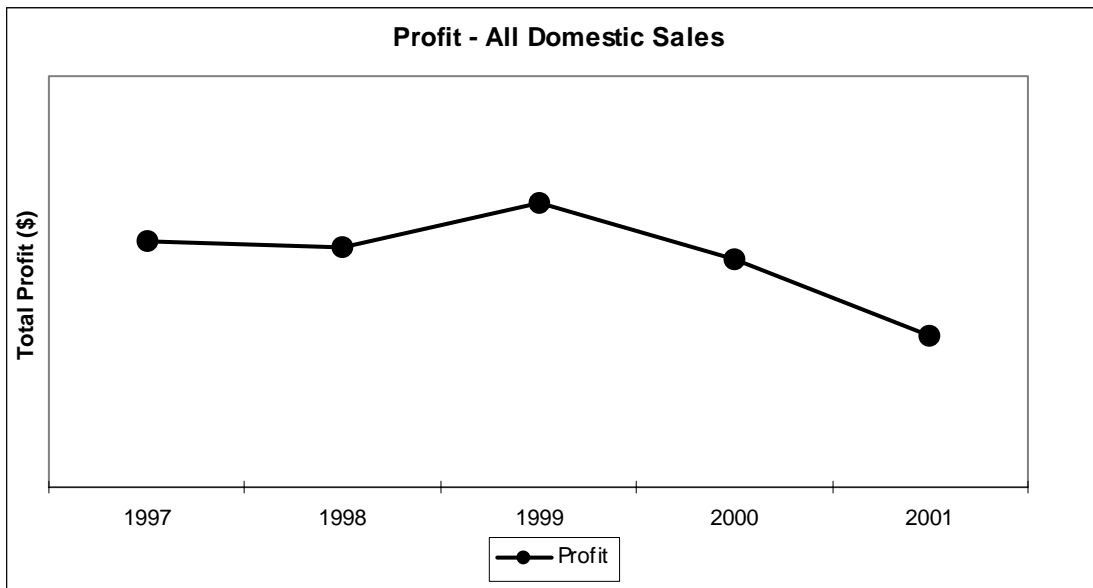
There were no sales of acid in 2001.

5  
6  
7

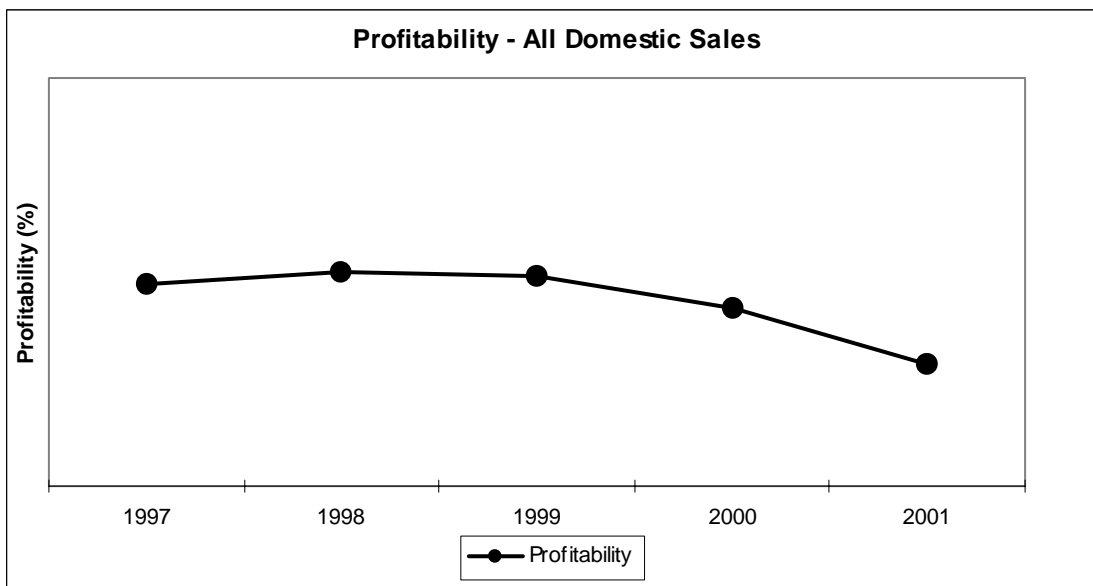
The profit margin and profitability of the major products have generally decreased over the injury period.

1 11.6.1.2 Loss of profits and profitability on all domestic sales

2 Customs' analysis of total profit and profitability of all domestic sales, as  
3 presented is presented in the charts below:



4



5

6

Total profits decreased by 39% and profitability decreased by 10% over the  
7 investigation period.

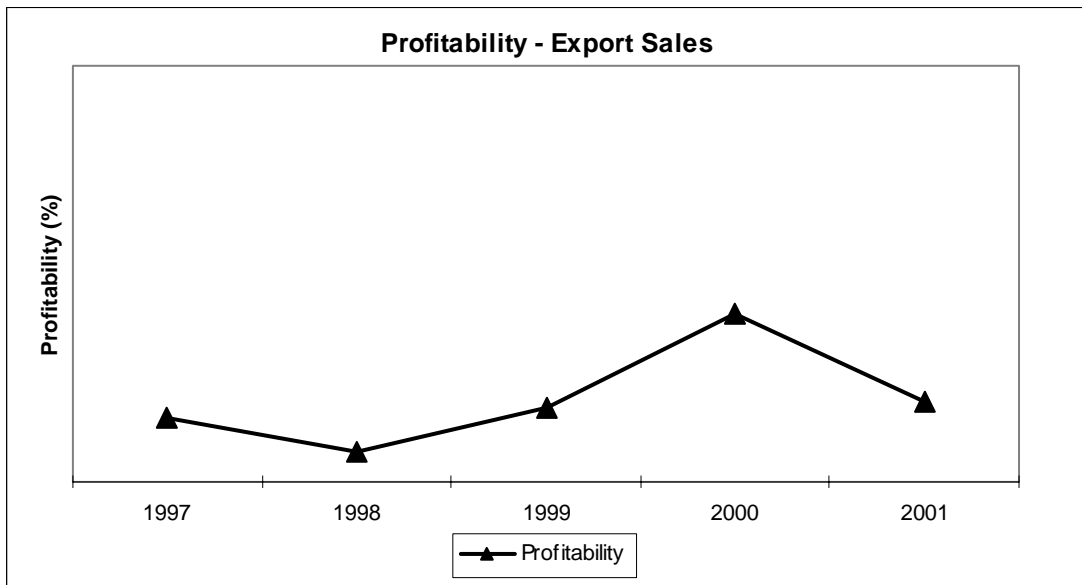
8

1 11.6.1.3 Loss of profits and profitability on export sales

2 Customs' analysis of the total profit and profitability on export sales, is  
3 presented in the charts below:



4



5

6 There was a sudden increase in profit margins and profitability in 2000, with  
7 an increase in total profit of over 400% and an increase in profitability of 2%  
8 over the injury period.

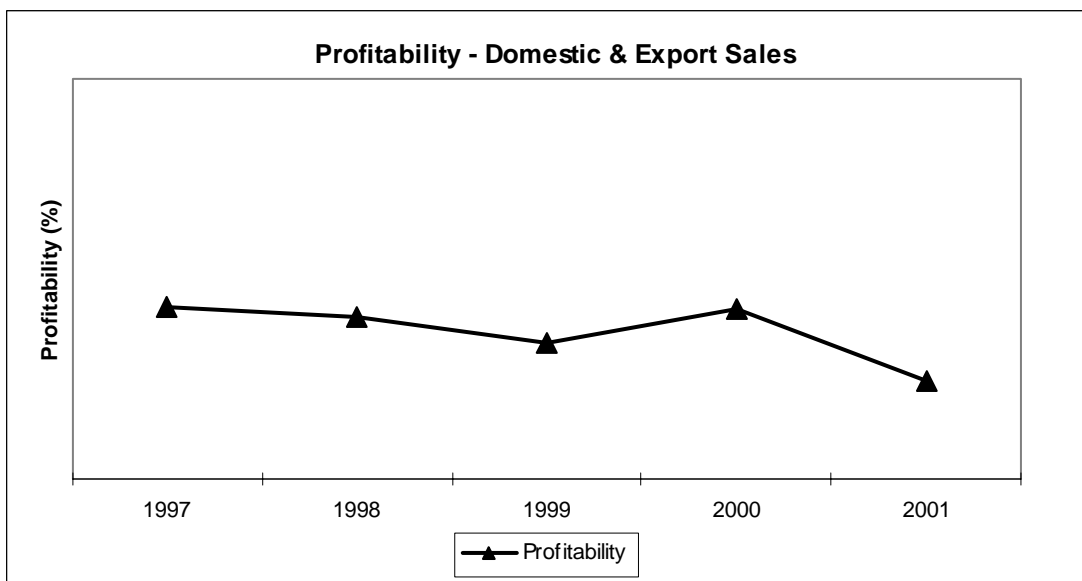
9

1 11.6.1.4 Loss of profits and profitability on all sales

2 The analysis of all 2,4-D sales (both domestic and export) is presented in the  
3 charts below:



4



5

6 There was a decrease in total profit of 3% and a decrease in profitability of  
7 10% over the injury period.

8 11.6.1.5 Conclusion

9 Customs' analysis of profit and profitability established a decrease in profit  
10 per litre on products, which constitute 88% of sales during the injury period,  
11 an overall decrease in total profits of 3% and an overall decrease in  
12 profitability of 10%.

13

1 **11.7 Other injury factors**

2 Article 3.4 of the WTO Agreement and s. 269TAE of the Act identify potential  
3 injury factors.

4 Nufarm did not claim any other factors as injury indicators. However, Nufarm  
5 did submit data, which Customs analysed. The results of the analysis are as  
6 follows:

- 7 • assets employed in 2,4-D production decreased slightly over the injury  
8 period, due to normal depreciation charges;
- 9 • capital investment in 2,4-D production decreased over the injury period;
- 10 • research and development expenses in 2,4-D production appear to be  
11 fairly consistent over the injury period;
- 12 • revenues have increased over the injury period;
- 13 • capacity utilisation levels in 2,4-D production increased over the injury  
14 period;
- 15 • employment levels in 2,4-D production remained consistent over the  
16 injury period;
- 17 • productivity in 2,4-D production increased over the injury period; and
- 18 • wages remained consistent over the injury period.

19 Customs was also advised of the following:

- 20 • return on investment and cash flows are not calculated for the 2,4-D  
21 business; and
- 22 • as 2,4-D production is consumed annually/seasonally no records are  
23 maintained on historical inventory levels.

24

1 **11.8 Conclusions**

2 Customs' findings in respect of injury suffered by Nufarm is detailed in the  
 3 table below:

<b>Product</b>	<b>Form of injury</b>	<b>Injury suffered over the injury period (Yes/No)</b>
All (acid equivalents)	Loss of sales volume	No
	Loss of market share	Yes
Ester 800	Price undercutting	Yes
	Price depression	Yes
	Price suppression	Yes
	Loss of profits	Yes
	Loss of profitability	Yes
Ester 600	Price depression	No
	Price suppression	No
	Loss of profits	No
	Loss of profitability	No
Ester 400	Price depression	Yes
	Price suppression	Yes
	Loss of profits	Yes
	Loss of profitability	Yes
Amine 500	Price undercutting	Yes
	Price depression	Yes
	Price suppression	No
	Loss of profits	Yes
	Loss of profitability	Yes
Amine 625	Price depression	(a)
	Price suppression	(a)
	Loss of profits	(a)
	Loss of profitability	(a)
Amine LO	Price depression	Yes
	Price suppression	Yes
	Loss of profits	Yes
	Loss of profitability	Yes

4

1

Product	Form of injury	Injury suffered over the injury period (Yes/No)
Surpass/Amine 225	Price undercutting	Yes
	Price depression	Yes
	Price suppression	No
	Loss of profits	Yes
	Loss of profitability	Yes
Surpass 300	Price depression	(b)
	Price suppression	(b)
	Loss of profits	(b)
	Loss of profitability	(b)
Iso Butyl Ester	Price depression	No
	Price suppression	No
	Loss of profits	No
	Loss of profitability	No
Acid	Price depression	Yes
	Price suppression	No
	Loss of profits	Yes
	Loss of profitability	Yes

2 Customs further concludes on other forms of injury:

Form of injury	Injury suffered (Yes/No)
Assets employed	No
Capital investment	No
Research & development expenses	No
Revenue	No
Capacity utilisation	No
Employment levels	No
Productivity	No
Wages	No
Return on investment	(c)
Cash flow	(c)
Inventory holding	(c)

3 (a) product not included in final analysis as sales only commenced in 2001.

4 (b) product not included in final analysis as sales only commenced in 2000

5 (c) no analysis performed due to insufficient information

- 1 In summary, over the injury period, there was:
- 2 • no loss of sales volume;
  - 3 • no loss of sales revenue;
  - 4 • loss of market share of 15%;
  - 5 • price undercutting of between 6-15% on products which constitute 80% of
  - 6 sales;
  - 7 • price depression in the range of 10-20% on products which constitute
  - 8 81% of sales;
  - 9 • price suppression on all products which experienced an increase in CTMS
  - 10 (46% of sales);
  - 11 • loss of profit per litre on products which constitute 88% of sales
  - 12 • an overall loss in total profit of 3% (resulting from the accumulation of a
  - 13 decrease in total profit on domestic sales of 39% and an increase in total
  - 14 profit on export sales of over 400%); and
  - 15 • an overall loss of profitability of 10% (resulting from the accumulation of a
  - 16 decrease in profitability on domestic sales of 10% and an increase in
  - 17 profitability on export sales of 2%)

18 Customs was unable to draw any firm conclusions from an examination of  
19 other factors, but consider that they do not indicate that there are any trends  
20 inconsistent with observed injury factors.

21 Customs concludes that Nufarm has suffered injury in the form of:

- 22 • loss of market share
- 23 • price undercutting
- 24 • price depression
- 25 • price suppression; and
- 26 • reduced profits and profitability.

## 12 HAS DUMPING CAUSED MATERIAL INJURY?

This section considers whether the effect of dumping on Nufarm is such that the dumping has caused material injury to the Australian industry.

It also considers whether injury was caused by other factors and if so, such injury must not be attributed to the dumping.

### 12.1 Nufarm's claims

Nufarm claimed that injury commenced in the financial year 1997/98. In the application injury was claimed in the following forms:

- loss of volume;
- loss of market share;
- price undercutting;
- price depression;
- price suppression; and
- loss of profit & profitability

On the issue of 'causal link' Nufarm stated in its application:

"From 1997/8 the total volume of imports increased by around 250% over the three year period 1998/9 to 2000/1"

"...the growth in imports was dominated by the rapid increase in imports from the nominated countries"

"It is equally apparent that the growth in dumped imports from the nominated countries has coincided with the sharp decline in Nufarm's market share in 1998/9."

"It is understood that imported 2,4-D acid and ester technical is fully formulated into products which compete directly with the fully formulated product lines of Nufarm."

"The active constituent, 2,4-D acid technical is the major cost component of fully formulated product. Accordingly, importation of 2,4-D technical, at dumped prices, confers an unfair price advantage in selling fully formulated product."

"Similarly, importation of 2,4-D ester technical, at dumped prices, allows importers to leverage a price advantage in the selling price of fully formulated ester products."

### 12.2 Exporter's claims

#### 12.2.1 Jiamusi Heilong Agricultural and Industrial Chemical Co Ltd (Jiamusi)

Jiamusi claimed that other factors, such as differences in the efficiency & costs of production and increasing cost to make and sell for some products, have caused injury.

1 Jiamusi also claims Nufarm's decision not to sell acid and intermediate  
2 products has impacted on its performance (although no evidence of this claim  
3 was presented).

4 Jiamusi questioned the impact of any claimed injury given their continued  
5 acquisition of businesses in the same industry, as stated:

6 "Nufarm, despite its claimed injury, continues to acquire existing formulation businesses in  
7 Australia, the latest being Cropcare. This does not suggest that it has suffered material injury, nor  
8 that imports have caused Nufarm any inability to attract investment capital. If Nufarm was truly  
9 affected by imports and suffering injury in a material sense, would it be happily investing in the  
10 same industry?"

## 11 **12.2.2 Atul Limited (Atul)**

12 Atul suggests that the declining prices of 2,4-D products are the result of a  
13 reduction in the cost of key raw materials, such as phenol, which is common  
14 to 2,4-D producers around the world and the significant increase in worldwide  
15 capacity for 2,4-D production. It states:

16 "The overall profitability of Nufarm's 2,4-D domestic business reflects the position of 2,4-D  
17 producers around the world. Nufarm is not in a unique situation. Production for 2,4-D globally is  
18 in an oversupply position. Raw material prices have fallen throughout 2001. By contrast, the years  
19 of 1997, 1998 and 1999 were considered robust years in the agro-chemical industry. Profitability  
20 has declined in 2001 as a consequence of a number of factors impacting the farmer's uptake of  
21 products (including 2,4-D). These factors include adverse climate conditions, substitution for other  
22 products e.g. MCPA, and affordability of the customer to purchase the product."

23 Atul's information was sourced from Phillips McDougall AgriService Report for  
24 2001.

25 Atul explained that as a result of Nufarm's acquisitions there has been a  
26 reduction in the avenues available for sale of imported 2,4-D acid and ester.  
27 These limited avenues would mean limited future imports, which may not  
28 present a significant or material threat to Nufarm.

29 Atul in the submission also commented on Nufarm's efforts to purchase  
30 market share through acquisitions. It was stated:

31 "...Nufarm has purchased market share by acquiring distributors and formulators which provide  
32 the Australian market with alternative sources of competitively-priced 2,4-D products....a  
33 reduction in the number of formulators and distributors on the Australian market has assisted  
34 Nufarm in maintaining sales volume for 2,4-D products in 2001 – despite there being a downturn in  
35 the market during this period".

## 36 **12.3 Other interested parties claims**

### 37 **12.3.1 The Western Australian Farmers Federation (Inc.)**

38 The WAFarmers believe that as China is now a full member of the World  
39 Trade Organization and a free trade economy, the surrogacy argument  
40 cannot be used. They also believe that there are economic efficiencies

1 present in China due to the adoption of an integrated manufacturing process  
2 and the Chinese can therefore manufacture competitively priced products.

3 They believe that loss of market share suffered by Nufarm should be seen as  
4 a change in the structure of the Australian 2,4-D market due to the entry of a  
5 new, lower priced competitor.

6 They stated that Australian farmers currently operate under very tight margins  
7 and even a slight increase in the cost of chemicals could wipe out what little  
8 profit margin is left.

9 They believe that the imposition of dumping margins will put farmers in a less  
10 competitive position in the international market place and remove their ability  
11 to source 2,4-D products from competitive sources such as those countries  
12 nominated.

13 Lastly, WAFarmers do not believe that Nufarm has demonstrated in the  
14 application that it has suffered material damage, nor proven a connection to  
15 the imports from the nominated countries.

### 16 **12.3.2 National Farmers' Federation Limited**

17 In their submission the National Farmer's Federation Limited stated:

18 "NFF have strong concerns that any impediment to importation of 2,4-D in the form of a dumping  
19 duty will impact upon the availability and price of this critical agricultural input."

20 NFF advised that the decrease in price of 2,4-D within the Australian market  
21 is the consequence of oversupply of the chemical on the global market. NFF  
22 believe that the decrease in Nufarm's market share reflects an adjustment in  
23 the Australian 2,4-D market, driven by increased availability of competitively  
24 priced 2,4-D products.

25 NFF also believe that due to economic efficiencies present in China, the  
26 prices charged for Chinese 2,4-D acid and ester may truly represent the  
27 manufacturing costs for such products.

28 NFF stress the importance of considering the effect of the imposition of  
29 dumping duties, in particular, that any increase in the cost of a major  
30 agricultural product will further erode an already decreasing profit for farmers.

### 31 **12.3.3 Grains Council of Australia**

32 In their submission the Grains Council of Australia believe that an increase in  
33 the price of 2,4-D will increase farm expenses and reduce profitability of  
34 farmers. This may in turn result in farmers moving to fuel intensive traditional  
35 weed control, which has adverse environmental implications. The Grains  
36 Council believe the recent 2,4-D price decreases reflect a fundamental  
37 restructuring of the world chemical market and it is unlikely to be the result of  
38 dumping.

## 12.4 Custom's assessment

### 12.4.1 Cumulative effect of exportations in assessing material injury

Subsection 269TAE(2C) provides for consideration of the cumulative effect of exports by different exporters from the same country or exports from different countries; if, after having regard to:

- the conditions of competition between the exported goods; and
- the conditions of competition between the exported goods and the like goods that are domestically produced;

the Minister is satisfied that it is appropriate to do so.

During the investigation it has been established that:

- a number of importers have been acquiring 2,4-D from both China and the U.K. to use in the production of fully formulated forms of 2,4-D;
- the market for the fully formulated forms of 2,4-D does not distinguish between forms based on the source of the 2,4-D; and
- as discussed under section 8.3 the goods produced by Nufarm have been determined to be like goods to the GUC and sell into the same market.

Customs is satisfied that:

- there is direct competition between the exported 2,4-D products themselves; and
- there is direct competition between the exported 2,4-D products and the like goods produced by Nufarm;

therefore Customs considers it appropriate to consider the cumulative effect of exports by the different exporters from China and the U.K..

### 12.4.2 Dumping

Customs has established that all sales of 2,4-D acid from China (excluding exports from Imtrade China) and all sales of 2,4-D acid and ester from the U.K. during the investigation period were made at dumped prices. The dumping margins were significant, ranging from 5% to 30%.

### 12.4.3 Price effects

Customs's analysis of price effects established that products made from imported 2,4-D acid and ester consistently undercut Nufarm's prices during 2001. The existence of price undercutting resulted in the depression of Nufarm's prices since 1998. The price depression, in turn, created a situation of price suppression as costs have increased over the injury period for some products.

#### 12.4.4 Volume effects

Nufarm did not lose sales volume in an expanding market. However, they have lost a significant share of the market over the injury period. The share was taken up by dumped imports from China and the U.K., as the market share of undumped imports (from India, Imtrade China and other countries) also decreased over this period. The change in market share from base year is presented in the table below:

Year	1997	1998	1999	2000	2001
Nufarm	Base	-13%	-10%	-13%	-15%
Dumped Imports – China & U.K.	Base	12%	16%	20%	23%
Imports – Other Countries (Including India & Imtrade China)	Base	1%	-6%	-7%	-8%

The data shows the dumped imports have taken market share from both Nufarm and undumped sources.

Customs is satisfied that the reduction in Nufarm's market share coincided with the increase in market share of dumped 2,4-D imports from China and the U.K..

#### 12.4.5 Profits and profitability

Nufarm has lost profits and profitability, which it attributes to decreasing prices and decreasing market share. The injury analysis demonstrated price depression and price suppression caused by dumped imports and changes in market share indicative of increasing losses to dumped imports.

Customs is satisfied that lost profits and profitability are substantially caused by dumped imports.

### 12.5 Other possible causes of injury

Subsection 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than the dumped imports.

#### 12.5.1 Low priced undumped imports from India and Imtrade China

A possible cause of injury is the low priced undumped imports from India and Imtrade China. However, given their low volume over the injury period when compared to China and the U.K. (generally less than 5% market share), their impact is not considered by Customs to be significant. Also as the data above suggests, the undumped sources have lost market share to dumped imports. For these reasons, Customs do not consider that undumped imports have caused significant injury to Nufarm.

1 **12.5.2 Higher production cost of Nufarm**

2 It has been claimed that a possible cause of injury to Nufarm could be a  
3 reduced ability to compete due to higher production costs for Nufarm when  
4 compared to importers/formulators. If the importers are able to formulate the  
5 imported product into the saleable fully formulated product at a lower cost  
6 they are able to enter the market at a lower price. (No evidence has been  
7 presented to support this claim).

8 However, on review of importers and industry data, Customs noted that  
9 Nufarm's formulation costs are not higher than those of importers.

10 **12.5.3 Global oversupply of 2,4-D**

11 It has been claimed that a possible cause of the decrease in sales price is the  
12 oversupply of 2,4-D on the global markets (an independent study was  
13 presented to support this claim).

14 The study appears to support this claim, with the resultant down turn in  
15 prices. However, whilst noting this, Customs has identified exports from the  
16 U.K. and some from China at dumped prices. While there were low priced  
17 undumped exports identified, the low price possibly arising from global  
18 oversupply, it has been determined that the injury caused by them is not  
19 significant.

20 **12.5.4 Export performance of Nufarm**

21 Customs examined Nufarm's exports in terms of overall economic  
22 performance and established that Nufarm's export performance has not  
23 contributed to the injury suffered.

24 **12.6 Conclusion**

25 Customs is satisfied that dumped imports from China and the U.K. of 2,4-D  
26 acid and ester have caused injury to Nufarm in the form of loss of market  
27 share, price undercutting, price depression, price suppression, loss of profits  
28 and loss of profitability and that this injury is material.

### 13 WILL DUMPING CONTINUE?

In the case where the Minister is satisfied that material injury has been caused to the industry, anti-dumping measures may be imposed on future exports if the Minister is also satisfied that the future exports may be dumped. By signing a notice under s. 269TG(2) to this effect, the measures are made prospective.

Customs notes that all shipments of 2,4-D acid and ester from China (excluding exports from Imtrade China) and the U.K. in the investigation period were at dumped prices.

Customs is of the view that failure to put in place a prospective dumping duty notice would result in further exports from China and the U.K., most likely at dumped prices.

Customs is therefore satisfied that exports in the future from China and the U.K. may be at dumped prices.

## 14 NON-INJURIOUS PRICE

### 14.1 Introduction

Dumping duties may be applied where it has been established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that a lesser level of duty is sufficient to remove the injury. This lesser duty provision is contained in the WTO Anti-Dumping Agreement. Australian legislation reflects the principle of this provision in ss8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

A non-injurious price (NIP) is calculated to determine the level of dumping duty that needs to be applied to dumped imports to remove the injury suffered by the Australian industry. The NIP is defined in s. 269TACA of the Act.

Anti-dumping and countervailing duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is also calculated in FOB terms for the country of export. The method of calculating a NIP is not defined in the legislation, however Customs will generally derive a NIP from the Australian industry's unsuppressed selling price (USP).

### 14.2 Unsuppressed selling price

An unsuppressed selling price (USP) is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to establish the USP including:

- the price for locally produced goods when the Australian market was not affected by dumping and adjusting that price to the current date;
- the Australian industry's cost to make and sell plus an estimated profit (if any) that the industry could achieve in a market unaffected by dumping; or
- using the lowest Australian domestic price for non-dumped imports, if it can be shown that those imports set the market price or that those imports influence the price.

Customs notes that Nufarm has claimed that injury commenced in 1998 so consideration would have to be given to the appropriateness of adjusting selling prices from the base year of 1997 to current prices.

Customs is of the view that the lowest undumped imports in the marketplace represent a relatively small volume and therefore would not be a reasonable basis for the USP.

1 If Customs were to use Nufarm's cost to make and sell plus an estimated  
2 profit (if any) that the industry could achieve in a market unaffected by  
3 dumping, the issue of what profit to use arises. The two models generally  
4 used by Customs are:

- 5 • Profit on sales by closely related industries using published profit surveys  
6 (e.g. from stock exchange information, business publications or the ABS);  
7 or
- 8 • The margin on sales that Nufarm had previously achieved in a market  
9 unaffected by dumping, i.e. in 1997.

### 10 **14.3 Non-injurious price calculation**

11 To calculate the NIP, post FOB exportation costs such as: overseas freight  
12 and insurance; costs incurred in Australia; and where appropriate an amount  
13 for the importer's profit; are deducted from the USP. An example of this  
14 calculation is as follows.

Unsuppressed selling price	100
Less post exportation costs	
Ocean freight & marine insurance	10
Duty	5
Port & broker charges	1
Cartage to store	2
SG&A expenses	8
Profit	10
Total	<u>36</u>
Non-injurious price	<u>64</u>

15  
16 Customs will use this method to calculate a NIP at the FOB level, based on  
17 verified information obtained on Customs visits to the importers.

### 18 **14.4 Conclusion**

19 At this stage in the investigation Customs has not determined the NIP.  
20 However Customs would propose that it calculate NIP's from an USP based  
21 on:

- 22 • The Nufarm's most recent verified CTMS; plus
- 23 • an amount for profit (if any) determined from an independent source.

24 Customs seeks comment from interested parties as to:

- 25 • the appropriate method to calculate the USP; and
- 26 • were a cost based approach used, the amount of profit to be included.