



Australian Government

**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

TERMINATION REPORT 183a

RESUMPTED INVESTIGATION

**ALLEGED DUMPING OF FORMULATED GLYPHOSATE
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

June 2013

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2 ABBREVIATIONS & SHORTENED FORMS

Abbreviation / shortened form	Full title / form
Accensi	Accensi Pty Ltd
ACDN	Australian Customs Dumping Notice
APVMA	Australian Pesticides and Veterinary Medicines Authority
CEO	Chief Executive Officer
China	People's Republic of China
CON183	International Trade Remedies Branch Consideration Report No. 183 (the Consideration Report for this investigation)
CTMS	cost to make and sell
Customs and Border Protection	Australian Customs and Border Protection Service
FOB	free on board
Good Harvest	Jiangsu Good Harvest Weien Agrochemical Co Ltd
MIPA	mono-isopropylamine
NIP	non-injurious price
Nufarm	Nufarm Limited
Rainbow	Shandong Weifang Rainbow Chemical Co., Ltd
SEF 183	Statement of Essential Facts 183
Selected cooperating exporters	exporters that provided adequate and timely responses to the exporter questionnaire, which were verified
Selected non-cooperating exporters	exporters that did not respond to the exporter questionnaire
SG&A expenses	selling, general and administration expenses
Tariff Act	<i>Customs Tariff Act 1995</i>
TCO	Tariff Concession Order
the Act	<i>Customs Act 1901</i>
the goods	the goods the subject of the application ('formulated glyphosate')
the Minister	Minister for Home Affairs
TMRO	Trade Measures Review Officer
Trade Measures Report No. 45	TM Report No. 45
USP	Unsuppressed selling price
Wynca	Wynca Import And Export Co., Ltd
Zhejiang Xinan	Zhejiang Xinan Chemical Industrial Group Co.,Ltd

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3 SUMMARY AND RECOMMENDATIONS

This resumed investigation is in response to an application made by Nufarm Limited (Nufarm) to the Trade Measures Review Officer (TMRO) on 28 August 2012. The application was in response to the Chief Executive Officer (CEO) of Australian Customs and Border Protection Services (Customs and Border Protection) terminating¹ the investigation into the alleged dumping of formulated glyphosate² exported to Australia from the People's Republic of China (China).

This Termination Report No. 183a (TER 183a) sets out the facts on which the Delegate of the CEO of Customs and Border Protection has based the decision to terminate the investigation.

3.1 Final Findings

As a result of the resumed investigation Customs and Border Protection has examined the substantive issues identified by the TMRO and considers the following:

- 62% IPA salt is not a like good;
- Unregistered formulated glyphosate is a like good;
- Zhejiang Xinan Chemical Industrial Group Co.,Ltd's (Zhejiang Xinan) dumping margin was negative 1.6%;
- Jiangsu Good Harvest Weien Agrochemical Co Ltd's (Good Harvest) dumping margin was negative 2.0%;
- Shandong Weifang Rainbow Chemical Co., Ltd's (Rainbow) dumping margin was negative 0.8%;
- Customs and Border Protection considers Good Harvest's normal values should not be calculated pursuant to s.269TAC(2)(d) of the *Customs Act 1901*³ (the Act); and
- Despite the changed view of like goods, Customs and Border Protection considers Rainbow's domestic sales were of a volume that was too low to be considered appropriate to calculate normal values pursuant to s.269TAC(1) and making adjustments pursuant to s.269TAC(8).

Customs and Border Protection found that there has been no dumping of formulated glyphosate by selected cooperating⁴ Chinese exporters. Customs and Border Protection found that the volumes of formulated glyphosate exported by selected non-cooperating⁵ exporters (all other Chinese exporters) was less than 3% of the total Australian import volumes and therefore was negligible.

¹ Termination Report 183 refers

² Refer to the full description of the goods in section 5 of this report.

³ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

⁴ Defined at section 8.3.2.

⁵ Ibid.

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Based on these findings, on 24 June 2013, in accordance with sections (ss).269TDA(1) and (3) of the Act, the CEO terminated the investigation in respect of formulated glyphosate exported from China.

A notice regarding the termination of the investigation was published in The Australian newspaper on 24 June 2013 and an Australian Customs Dumping Notice ACDN 2013/51 was also released.

3.2 Statement of Essential Facts (SEF)

The SEF for the resumed investigation (SEF 183a) was placed on the Public Record⁶ on 8 May 2013. In formulating the SEF 183a, the CEO had regard to the application concerned, all information received during the initial investigation, SEF 183, submissions received by Customs and Border Protection relating to the resumed investigation, responses to SEF 183a any other matters considered relevant.

SEF 183a should be read in conjunction with this report.

⁶ See Section 4.3 for details regarding the Public Record for the investigation.

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4 BACKGROUND

4.1 Introduction

On 21 December 2011, an application was lodged on behalf of Nufarm and Accensi Pty Ltd (Accensi) requesting that the Minister publish a dumping duty notice in respect of formulated glyphosate exported to Australia from China.

The applicants subsequently provided further information in support of their application. As a result, Customs and Border Protection restarted the 20 day period for considering the application.

On 6 February 2012, following consideration of the application, the CEO decided not to reject the application and Customs and Border Protection initiated an investigation. Public notification of initiation of the investigation was made in *The Australian* on 6 February 2012. Australian Customs Dumping Notice (ACDN) No. 2012/05 provides further details of this investigation and is available at www.customs.gov.au.

The investigation period is 1 January 2011 to 31 December 2011 (herein referred to as the investigation period). Customs and Border Protection has examined the Australian market from January 2008 for the purpose of analysing the condition of the Australian industry.

4.2 CEO's decision to terminate the investigation

On 25 June 2012, Customs and Border Protection placed SEF 183 on the Public Record. SEF 183 contained preliminary findings that:

- the Australian formulated glyphosate industry has experienced injury, including adverse price and profit effects;
- there has been no dumping of formulated glyphosate exported to Australia from China by selected cooperating exporters in the investigation period; and
- the volume of formulated glyphosate exported to Australia from China by non-cooperating exporters in the investigation period was negligible.

Consequently SEF 183 proposed, provided that no new information was put to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry, the CEO would terminate the investigation.

Following the responses to SEF 183, on 2 August 2012 the CEO decided to terminate the investigation pursuant s.269TDA(1)⁷ for selected exporters and for non-selected exporters, s.269TDA(3)⁸ of the Act.

⁷ The CEO is satisfied that there has been no dumping by the exporter, or if there is dumping, the dumping margin is less than 2%

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4.3 Application to the Trade Measures Review Officer

On 28 August 2012 pursuant to s.269ZZO of the Act, Nufarm applied to the TMRO for a review of the CEO's termination decision.

On 23 October 2012, the TMRO decided to revoke the CEO's termination decision. Although the TMRO can review certain decisions of the CEO, in this context it does not have power to direct the conduct of the resumed investigation. The TMRO did however identify three substantive issues that Customs and Border Protection should consider; namely;

- a) include 62 per cent IPA salt and the unregistered goods as like goods;
- b) consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s 269TAC(8), was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin; and
- c) give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s 269TAC(2)(d) of the Act.

4.4 Resumed investigation

Customs and Border Protection published an ACDN2012/54 on 21 November 2012 to invite interested parties to respond to the substantive issues identified by the TMRO.

Division 2 of Part XVB of the *Customs Act 1901* sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application.

Pursuant to s.269ZZT of the Act, the CEO is to publish a SEF under s.269TDAA of the Act as soon as practicable following the decision of the TMRO that revoked the CEO's decision.

The investigation of the application concerned resumes following the statement of essential facts being published⁹.

4.5 Relevant legislation – termination provisions

Sub-section 269TDA(1) of the Act provides:

- "If:*
- (a) application is made for a dumping duty notice; and*
 - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*
 - (i) there has been no dumping by the exporter of any of those goods; or*
 - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage*
-

⁸ The CEO is satisfied for that the total volume of goods exported to Australia, that have been, or may be dumped; is negligible.

⁹ S.269ZZT(3) of the Act. The investigation resumes following the publishing of a Statement of Essential Facts.

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of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%”;

the CEO must terminate the investigation so far as it relates to the exporter.

Sub-section 269TDA(3) of the Act provides:

“If:

- (a) application is made for a dumping duty notice; and*
- (b) in an investigation for the purposes of the application the CEO is satisfied that the total volume of goods the subject of the application:*
 - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and*
 - (ii) that have been, or may be, dumped;*

is negligible; the CEO must terminate the investigation so far as it relates to that country”.

A negligible volume is defined as follows in sub-section 269TDA(4) of the Act:

“For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and*
- (b) subsection (5) does not apply in relation to those first-mentioned goods”.*

4.6 Previous investigations and measures

4.6.1 Australian anti-dumping investigations

Customs and Border Protection has previously conducted two investigations in respect of glyphosate exported from China. The most recent investigation was in 2001-02, following an application lodged by Monsanto Australia Limited (Trade Measures Report 45 (TM Report No. 45) refers). Nufarm was an interested party (although not the applicant) in that investigation.

Currently, there are no anti-dumping measures imposed on formulated glyphosate exported to Australia from China.

4.6.2 International anti-dumping investigations

As detailed in Consideration Report No. 183 (CON 183), international anti-dumping and countervailing administrations in the United States, the European Union and South America have conducted investigations in respect of glyphosate (glyphosate technical and formulated glyphosate). CON 183 summarises the outcomes of these activities.

4.7 Submissions in response to the SEF 183a

Interested parties were invited to respond to the SEF 183a within 20 days (28 May 2013) from the date its publication. Following the publication of SEF 183a, Customs and Border Protection received only one submission. Nufarm provided a submission asserting the following points;

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- Agreeing with Customs and Border Protection with regard to unregistered formulated glyphosate products being like goods.
- Disagreed that Good Harvest's normal values be determined pursuant to s.269TAC (2)(c), asserting they be established pursuant to s.269TAC(2)(d) using the sales, to third countries in particular USA.
- Considered the volume of sales to relevant third countries was similar to the volume exported to Australia citing the sufficient volume test pursuant to s.269TAC (14) of the Act is the threshold test to determine such volume.
- Considered adjustments pursuant to s.269TAC(8) should apply when establishing normal values by third country sales. Nufarm contend Customs and Border Protection erred by not making such adjustments to take account of the differences between the product sold to the USA and those sold to Australia.
- Although disagreeing that Customs and Border Protection constructed Good Harvest's normal values, Nufarm contend that Customs and Border Protection should use the profit rate obtained on Good Harvests' sales to the USA for the constructed normal values.

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5 THE GOODS AND LIKE GOODS

5.1 Final Findings

Customs and Border Protection considers;

- locally produced formulated glyphosate are like goods to the goods the subject of the application (the goods).
- Dry formulated glyphosate are like goods
- Unregistered formulated glyphosate sold on the Chinese domestic market are like goods; and
- 62% IPA salt is not a like good.

5.2 The Goods

5.2.1 General description

The goods are formulated glyphosate. The initiation notice for the investigation specifies that:

“The imported product the subject of this application is formulated glyphosate, a non-selective herbicide, imported in varying strengths of the active glyphosate acid ingredient (“glyphosate technical”). A non selective herbicide is one that controls weeds in all situations”¹⁰.

Formulated glyphosate products are used for the non-selective control of weeds and are absorbed by the leaves and green tissue of susceptible plants. Translocated throughout the plant, formulated glyphosate based herbicides inhibit a specific enzyme, 5-enolpyruvylshikimate-3-phosphate (EPSP) synthase, which plants need in order to grow. Without that enzyme, plants are unable to produce other proteins essential to growth, so they yellow and die over the course of several days or weeks.

The application specifies that:

*“This application is concerned with imported Glyphosate in **all** its fully formulated liquid forms **including** Glyphosate 360, Glyphosate 450 and Glyphosate 570 and the fully formulated dry form including Glyphosate 680”¹¹.*

5.2.2 Glyphosate formulations

The application states that in the Australian market the different formulations of glyphosate are described according to grams of glyphosate technical per litre (g/L) or

¹⁰ Application for the publication of a dumping duty notice for formulated glyphosate exported from China (Application), page 7.

¹¹ Ibid.

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kilogram whereas on the global market the formulations are commonly described by the percentage of glyphosate technical contained in the formulations on a weight for weight basis.

The application contains the following indicative comparison of formulated glyphosate described according to grams of glyphosate technical per litre or kilogram (reflecting the Australian market) and described by the percentage of glyphosate technical contained in the formulations on a weight for weight basis (reflecting global markets).

Unit of product	Glyphosate content – measured as g/L or grams per Kg	Glyphosate content – measured on a weight per weight basis (expressed as a percentage)
Litre (L)	360	41.6%
L	450	50.6%
L	570	61.5%
Kilogram (Kg)	690	75.7%

Figure 2: Formulated glyphosate comparisons¹².

The applicants claim that:

- the imported formulated glyphosate products (at varying strengths) have the same end use;
- all formulation strengths are substitutable;
- the imported dry formulation can be substituted for liquid forms; and
- all imported formulations are applied within the approved application rates indicated on the product label, expressed on a litre per hectare basis.

At the consideration stage of the investigation, Customs and Border Protection considered that the goods covered by the application and investigation, included formulated glyphosate in any form (i.e. not limited to liquid forms) and at any concentration (whether described according to weight of glyphosate technical by volume or percentage).

5.2.3 Exclusion of certain goods from investigation

The application specifies that it is important to distinguish between formulated glyphosate (i.e. the goods) and glyphosate acid, which is one of the essential ingredients in the manufacture of formulated glyphosate. Glyphosate acid is **not** the subject of the application.

Customs and Border Protection considers that the goods covered by the application, and the investigation do **not** include glyphosate acid.

¹² Application, page 8. This table is indicative only.

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5.3 Tariff Classification

Formulated glyphosate is now classified to subheading 3808.93.00 (statistical code 49) to Schedule 3 of the *Customs Tariff Act 1995*. During the investigation period, formulated glyphosate was classified to subheading 3808.93.00 (statistical code 48) to Schedule 3 of the *Customs Tariff Act 1995*.

The current rate of duty applying to the goods imported to Australia from China is 5%.

There are currently no Tariff Concession Orders (TCOs) applicable to the relevant tariff subheadings.

5.4 Like Goods

5.4.1 General

Like goods are defined as:

“goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”¹³.

The application states that:

“The imported goods are alike to locally produced formulated glyphosate as they each possess the following essential characteristics:

- (i) Glyphosate technical is the dominant active ingredient in the locally produced formulated glyphosate products and the imported formulated glyphosate product;*
- (ii) The various formulations represent variations in the presentation of the glyphosate technical for both the locally produced and imported goods;*
- (iii) The production of formulated glyphosate (for both locally produced and imported goods) is a relatively standard process.*
- (iv) All glyphosate formulations whether locally produced or imported have the same end use.*
- (v) All glyphosate formulations whether locally produced or imported generally have the same channels of market distribution.*
- (vi) There is an absence of any clear dividing line in terms of market segmentation between the various formulations and product*

¹³ Subsection 269T(1) of the Act.

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substitution can occur between the formulated products (whether locally produced or imported)¹⁴.

Nufarm and Accensi advised that the formulated glyphosate produced domestically are like goods to the formulated glyphosate imported from China and that there is no discernable difference (excluding surfactants) between the products.

5.5 Customs and Border Protection - Assessment of like goods

5.5.1 SEF 183 summary

In SEF 183, Customs and Border Protection described at length the various factors and comments supporting its conclusion. The conclusions in this report consider the views in SEF 183, the information gathered during the investigation and submissions made during the course of the investigation.

In summary, SEF 183 concluded that formulated glyphosate is a non selective herbicide, where glyphosate technical acid base is neutralised and then is converted into a soluble form at varying concentrations, through the addition of water and surfactants. When packaged all products (imported and local) at varying formulation strengths are labelled for predominantly identical uses. This view was supported by the major importers and most of the exporters visited by Customs and Border Protection.

The SEF also concluded that formulated glyphosate products in dry forms was like to formulated glyphosate in liquid forms and concentrations of the active ingredient and variations of surfactants were not sufficient to consider those formulations not like.

SEF 183 considered 62% IPA salt was not a like good due to the scope of the application and the views of the majority of the interested parties who considered that 62% IPA salt cannot kill weeds successfully in that form. It was considered a critical fact that 62% IPA salt could not be used on weeds in that form to kill weeds. To kill the plant binding agents such as surfactants and other chemicals are required to enable the active ingredient to enter the plants circulatory system and inhibit the proper functioning of the EPSP synthase enzyme.

SEF 183 also considered Chinese formulated glyphosate products sold on the Chinese domestic market that were not registered products with the Australian Pesticides and Veterinary Medicines Authority (APVMA). The investigation team concluded that these products were not like goods as they were not registered with the APVMA.

It was found that glyphosate acid can be neutralised with different salt bases. The typical salt base is isopropylamine salt, but it was found that ammonium salts and potassium salt bases were also available. Again when formulated into a herbicide, the goods were considered like goods.

¹⁴ Application, page 10.

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5.5.2 Australian Pesticides and Veterinary Medicines Authority

To be used in Australia, all product formulations (and packing types) must be registered with the APVMA. The APVMA controls registration of formulated glyphosate in the Australian market. Registrations are held by Australian industry (including the applicants and other formulators), importers and Chinese suppliers. The APVMA registration approves the formulated glyphosate application rates as indicated on the product label. The regulatory requirements in respect of agrochemical products supplied in Australia are significantly more stringent than compared to Chinese requirements.

5.5.3 TMRO consideration – Include 62% Salt as a like good

In resuming the investigation and considering the comments held in the TMRO's decision, Customs and Border Protection reconsidered the issues of 62% IPA salt as a like good.

To examine the issue Customs and Border Protection has again referred to the following criteria;

- Physical likeness
- Commercial likeness
- Functional likeness
- Production likeness

Customs and Border Protection considers like goods in the context of the goods description in the application; inter alia formulated glyphosate. To analyse like goods Customs and Border Protection considers the characteristics of the goods and which characteristics should be given greater weight in forming its view.

Therefore, Customs and Border Protection considers formulated glyphosate has two essential characteristics, being, the goods contain the glyphosate acid as the active ingredient, and the goods can kill weeds.

Customs and Border Protection agrees that 62% IPA salt contains the necessary active ingredient, being glyphosate acid, which is required for formulated isopropylamine salt of glyphosate liquid formulated products. Nufarm has argued that there is no other use for 62% IPA salt other than it to be manufactured into a formulated glyphosate product.

Although the 62% IPA salt contains the active ingredient that kills the weeds, it cannot kill weeds successfully in this form as it requires surfactants and other adjuvants for this purpose.

In its application to the TMRO, Nufarm indicated to convert 62% IPA salt to formulated glyphosate is a simple process. Nufarm indicated it is simply the addition of surfactants, water and other adjuvants in the required amounts and then mixing to form the formulated glyphosate.

Customs and Border Protection found that the process is relatively simple for a formulator to make commercial grade quality formulated glyphosate from IPA salts of glyphosate. Although a relatively simple process, Customs and Border Protection considers that surfactants are critical for the formulated glyphosate to work as intended.

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All interested parties agree that surfactants are an essential part of formulated glyphosate for it to work as intended.

In their anti-dumping application, the Australian industry stated;

Without the addition of the surfactants, plants do not readily absorb the isopropylamine salt of glyphosate¹⁵

As a ratio of the finished product a typical litre of formulated glyphosate 450g/L active ingredient requires approximately 120g/L of surfactant. Per litre of formulated glyphosate that is approximately 12%. Relative to the active ingredient, the surfactant represents approximately 21%.

Whilst the surfactant is critical to kill the weeds, Customs and Border Protection also considers the surfactant is a significant (by volume) component as well.

Customs and Border Protection also found that 62% IPA salt is a product unto itself. In the trade, it is commonly referred to as 62% IPA salt or 62% glyphosate salt, it has a different tariff classification to formulated glyphosate, it is not substitutable for formulated glyphosate, it follows a distinct distribution channel, it has a different price structure, it is sold in different packaging and excludes health and safety labels, and it cannot be sold to end uses in this form.

Customs and Border Protection also found one Australian glyphosate formulator was seeking to use the tariff concession order that applies to glyphosate technical, and have it apply to 62% IPA salt.

Customs and Border Protection is satisfied that the original finding that 62% IPA salt did not possess characteristics closely resembling formulated glyphosate was reached after carefully applying the like goods framework. In considering the various factors, Customs and Border Protection gave greater weighting to the functional differences between the two goods.

5.5.4 TMRO consideration - are unregistered goods like goods

Customs and Border Protection found surfactants have different efficacies depending on the climate when used and the type of plant being applied to. Given Australia's climate is predominately dry and hot, the preferred surfactant is tallow amine based. Customs and Border Protection found many formulated glyphosate product instructions indicate the addition of surfactants and other adjuvants in spray preparations to increase performance for certain plants and temperature and water conditions. If Chinese formulated glyphosate that is not exported to Australia is not identical, an examination is required to determine if the goods are within the ambit of goods having characteristics that closely resemble those goods under consideration.

Although the goods under consideration are the goods exported to Australia and need APVMA approval, Customs and Border Protection needs to consider whether the goods sold on the Chinese domestic market and the Chinese export markets, excluding Australia, are similar despite no AVPMA approval.

¹⁵ Application page 10

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Customs and Border Protection found that these goods contain the glyphosate acid, are non-selective post emergent herbicides, use surfactants to break down the leaf's waxy surface, albeit different surfactants, would be classified to the same tariff classification as those goods exported to Australia and are called formulated glyphosate.

In applying the same like goods frame work used to consider 62% IPA salt, it would follow that the unregistered goods are like goods due to their functional and physical likeness. However it appears that the original finding was reached after giving greater weighting to registration differences over functional and physical likeness.

Customs and Border Protection considers that it was unreasonable to attach different weightings to the various characteristics in its like goods assessment of 62% IPA salt and unregistered formulated glyphosate. Despite the Chinese products being considered formulated glyphosate, but not registered with the APVMA, Customs and Border Protection considers that a product's APVMA registration is not a critical factor to defining the product's essential characteristic. In the context of anti-dumping, like goods can have slight physical differences to adapt them to the domestic or export markets in which they are sold.

5.5.5 Responses to the case management review report

On 17 January 2013, Customs and Border Protection released a case management review report relating to the three substantive issues raised by the TMRO. With regard to the like goods issue, Customs and Border Protection expressed its views as in section 5.5.3 and 5.5.4 above. Responses were sought from interested parties on the matters raised in the Case Management Review paper.

Whilst the paper supported the initial Customs and Border Protection's view on 62% IPA salt, Nufarm re-affirmed its view and did not support the finding with regard to the 62% IPA salt. Specifically, Nufarm questioned the validity of the tariff classification claiming that the 62% IPA salt can kill weeds. Customs and Border Protection considers the tariff classification issue has been examined in the Full Federal Court¹⁶ and, accordingly has adopted their position and does not consider the 62% IPA salt as imported is a herbicide and that it should not be classified to subheading 3808.93.00 to Schedule 3 of the *Customs Tariff Act 1995*.

Following comments that the 62% IPA salt may be sold to end users, Customs and Border Protection does not consider sales can't be made, rather, it is illegal to make sales of the 62% IPA salt to end users in this form. Following an examination of the APVMA website, it states;

"Before an agricultural and veterinary chemical product can be legally supplied, sold or used in Australia it must be registered by the Australian Pesticides and Veterinary Medicines Authority".

¹⁶ Collector of Customs v Chemark Services Pty Ltd [1993] FCA 291; (1993)

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Customs and Border Protection could not find any 62% IPA salt product registered in the APVMA database¹⁷. This database is updated nightly of registered products for use in Australia. Furthermore, section 18C of the *Agricultural and Veterinary Chemicals Code Regulations 1995* requires labels to be affixed to containers of chemical products that are sold. Therefore if sales are occurring of 62% IPA salt in the manner articulated by Nufarm, Customs and Border Protection considers Nufarm should pursue the APVMA on this point.

Customs and Border Protection considers that 62% IPA salt has a different distribution channel. This is despite Nufarm's views that it can operate in the same manner as formulated glyphosate. Given the APVMA registration requirements any 62% IPA salt that is sold directly to the end user is being done so illegally. The 62% IPA salt must be converted into a formulated product via a manufacturer, have labels approved and have the APVMA registration numbers affixed.

Importers supported this view of the APVMA registration requirements and one importer of 62% IPA salt disputed the contention that 62% IPA salt can be supplied to the Australian end user market legally without APVMA approval.

Nufarm questioned why Customs and Border Protection has come to a different view on like goods and referred to the 2002 glyphosate anti-dumping investigation findings on like goods. Customs and Border Protection considers the scope of that investigation included, glyphosate technical, wet cake, salts of glyphosate and formulated glyphosate. As part of the analysis all interested parties did not disagree on the like goods issue.

Given the scope of the current application being only formulated glyphosate, the demarcation between 62% IPA salt and formulated glyphosate needed an acute assessment. Most importers clearly indicated that the two products were not like whilst, in particular, Nufarm did consider they are like.

With regard to unregistered goods being like goods, Nufarm supported Customs and Border Protection's contention, however most importers did not provide a view on this issue.

5.5.6 Nufarm Response to SEF 183a

In its response to SEF 183a Nufarm stated that 62% IPA salt has 'characteristics closely resembling formulated glyphosate'. No further information was provided. Customs and Border Protection considers Nufarm's submission does not change its view that 62% IPA Salt is not a like good.

¹⁷ Public Chemical Registration Information System - PUBCRIS

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5.6 Conclusion

5.6.1 The goods

Customs and Border Protection considers that the following products are covered by the goods description and that the Australian industry manufactures like goods in respect of these goods:

- formulated glyphosate with varying salt bases (that are registered in Australia);
- formulated glyphosate with varying active concentrations (and surfactants) that meet AVPMA regulations; and
- formulated glyphosate in liquid and dry forms.

5.6.2 Like goods

Customs and Border Protection considers that:

- the primary physical characteristics of Chinese manufactured and locally produced formulated glyphosate are similar;
- the Chinese manufactured and locally produced formulated glyphosate are functionally alike as they have the same end-uses, notwithstanding different formulation for various climatic conditions;
- the Chinese manufactured and locally produced formulated glyphosate contain the glyphosate acid; and
- the Chinese manufactured and locally produced formulated glyphosate are commercially alike.

Therefore Customs and Border Protection considers that the goods produced by Nufarm and Accensi (representative of the Australian industry) are like goods to formulated glyphosate exported from China.

Following a reconsideration of TMRO's decision, Chinese manufactured formulated glyphosate sold on the Chinese domestic market, and although not registered with the APVMA, is also considered a like good however Customs and Border Protection considers the 62% IPA salt not like to the goods the subject of the application.

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6 AUSTRALIAN INDUSTRY

6.1 Final Findings

Based on the information available, Customs and Border Protection considers that:

- there are a number of Australian producers (including toll manufacturers) of formulated glyphosate;
- formulated glyphosate manufactured by Australian producers are like goods;
- the like goods were wholly or partly manufactured in Australia¹⁸;
- a substantial process of manufacture was carried out in Australia by the Australian producers¹⁹; and
- there is an Australian industry producing like goods²⁰.

6.2 Introduction

The application identified the following eleven companies, other than Nufarm and Accensi, as Australian toll manufacturers of formulated glyphosate.

Company
Autopack Pty Ltd
Bayer Australia Pty Ltd
Cheminova Manufacturing Pty Ltd
Chempak (Aust) Pty Ltd
Eureka Manufacturing Pty Ltd
Gemax Pty Ltd
Imtrade Australia Pty Ltd
Intec Industries Pty Ltd
Loral Ipsum Pty Ltd
Opal Australasia Pty Ltd
Rygel Australia Pty Ltd

Figure 3: Other Australian toll manufacturers

These toll manufacturers produce formulated glyphosate for third parties. These third parties either completely or partially supply raw material and packaging (including labels) to the toll manufacturers. Nufarm and Accensi toll manufacture formulated glyphosate on behalf of third parties (section 9.4 refers).

Nufarm provided estimates of the production capacity, operating rates and production volumes (for formulated glyphosate 360 g/L equivalents) of the other

¹⁸ Section 269T(2) of the Act refers.

¹⁹ Section 269T(3) of the Act refers.

²⁰ Section 269T(4)(a) of the Act refers.

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identified members of the industry (other than Nufarm and Accensi), based on market intelligence. The applicants identified market shares for the other Australian producers in 2010-11, which were not significant.

The applicants claim that, in 2011, they accounted for sales of more than 75% of the total local production of formulated glyphosate (excluding their third party sales). They claim that that by including third party sales, this is likely to exceed 85%.

The eleven companies listed in the table above were contacted by Customs and Border Protection and invited to participate in the investigation. Only one of the companies listed above indicated their willingness to participate. A submission (dated 30 March 2012) to the investigation was lodged on behalf of Cheminova (Aust) Pty Ltd which is the parent company of Cheminova (Manufacturing (MFG)) Pty Ltd (Cheminova) and Ospray Pty Ltd (an importer of formulated glyphosate). Cheminova (Aust) Pty Ltd manufactures formulated glyphosate with an MIPA salt base at their production facilities in Wyong (which were purchased from Bayer Australia Pty Ltd in 2008). Based on production data provided in the application and submitted on behalf of Cheminova (unverified), they are the third largest manufacturer of formulated glyphosate (behind Nufarm and Accensi).

Cheminova supports the application and claim that the significant import volume of formulated glyphosate from China immediately affected its production and profitability and resulted in a reduction in employees (in the investigation period). As Nufarm and Accensi represent the significant majority of the Australian production of formulated glyphosate and as data provided by Cheminova is unverified, further analysis of injury in the SEF is based on data provided by Nufarm and Accensi. Cheminova were willing to have their data verified, however as their proportion of the market is not significant and given the preliminary recommendation to terminate the investigation, they were not visited.

Other toll manufacturers

During verification visits to importers, Customs and Border Protection established that importers also sourced product through toll manufacture arrangements. Importers also were capable of manufacturing formulated glyphosate in minor volumes using their own production facilities (on an ad hoc basis). Given the complexity and ad hoc nature of these small volumes (which were not verifiable), and as the other toll manufacturers were not major market participants (in 2011); these sales volumes were not included in any subsequent market analysis.

6.3 Formulated Glyphosate Production Process

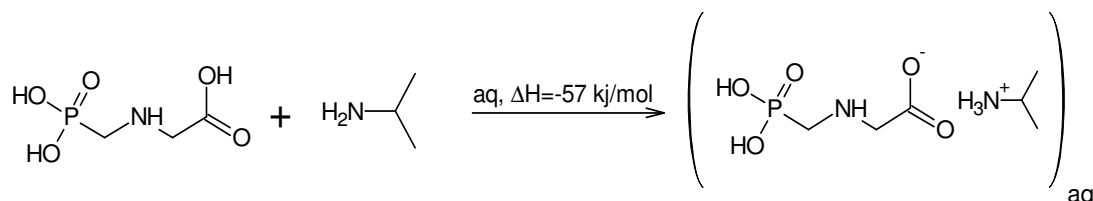
As specified in the application, Nufarm's formulated glyphosate (with a MIPA salt base and in liquid form) production process is as follows:

"The initial stage of the process involves the amination of glyphosate acid and mono- isopropylamine to produce the isopropylamine salt of the N-phosphonomethylglycine molecule (i.e. the active ingredient). The amination process is essentially a controlled acid-base chemical reaction. The amination process is an exothermic reaction that generates significant heat."

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The amination process is carried out in large purpose built reaction vessels that incorporates cooling equipment and microprocessor based process controls to maintain the temperature of the chemical reaction. This facilitates production in large-scale batches. The vessels are also equipped with sulphuric acid scrubbers to prevent emission of noxious fumes of mono-isopropylamine to the atmosphere.

The following depicts the chemical reaction that occurs during the amination process.



The second stage of the process involves formulation, where the isopropylamine salt of glyphosate is blended with surfactants and other ingredients to produce a glyphosate herbicide at the desired level of concentration (i.e. between 7.2 – 540 grams per litre). The addition of surfactants facilitates the absorption of the active ingredient by plants. Without the addition of the surfactants, plants do not readily absorb the isopropylamine salt of glyphosate.

After formulation, the glyphosate herbicide is packaged in a variety of retail containers ranging from 250 ml to 1000 litre. The herbicide is also loaded into bulk containers for transport to refilling stations located through regional Australia²¹.

Customs and Border Protection found that the production process described above also related to Accensi's production process, with variance in respect of packaging sizes and delivery. The application (Confidential Attachment A-3.6) contained a diagram which illustrated the production process of formulated glyphosate with an ammonium or potassium salt base.

6.3.1 Substantial process of manufacture

The application also claims that:

"Formulated glyphosate is made from imported glyphosate technical, there being no manufacturer of glyphosate acid in Australia. Similarly, some raw material surfactants (i.e. those not purchased locally from Huntsman Chemicals), mono-isopropylamine ("MIPA"), and antifoam consumed in the production of formulated glyphosate are all imported ingredients.

The formulation of glyphosate is considered a substantial process of manufacture where transformation of the glyphosate technical into a

²¹ Application, page 10.

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*commercial herbicide occurs*²².

An importer advised that it did not consider the production of formulated glyphosate with a potassium salt base to be a substantial process of manufacture. However they provided no further information in respect of this claim.

6.3.2 Production facilities

Nufarm operates two manufacturing facilities in Australia at which formulated glyphosate is produced:

- North Laverton (Victoria (VIC)), which contains two dedicated glyphosate vessels; and
- Kwinana (Western Australia (WA)), which contains one dedicated glyphosate vessel.

Accensi operates two manufacturing and warehousing facilities in Australia, at which formulated glyphosate is produced:

- Narangba (Queensland (QLD)), which contains two glyphosate vessels; and
- Kwinana (WA), which contains one glyphosate vessel.

Customs and Border Protection inspected Nufarm's and Accensi's production (and warehousing facilities) in North Laverton and Narangba respectively.

As a result of the information provided by the applicants and inspections of the applicants' production facilities, Customs and Border protection is satisfied that Nufarm and Accensi:

- produce formulated glyphosate in the method described above; and
- undertake at least one substantial process of manufacture in producing formulated glyphosate in Australia.

6.3.3 Salts and active ingredient levels – manufacturing range

Nufarm and Accensi manufacture formulated glyphosate with varying active concentrations and a salt based of MIPA or potassium. The applicants do not currently manufacture formulated glyphosate with an ammonium salt base or in dry (granular) form. The applicants' range of formulated glyphosate products which were supplied during the investigation period are tabulated below.

Formulation (g/L)	Product name	Packaging type
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²² Application, page 11.

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360	Roundup 360	1 L, 5L and 20L
	Roundup Biactive	5 L, 20 L and 110 L
	Weedmaster Duo	1 L, 5 L, 10 L, 20 L, 110 L and 1000 L
450	Gladiator 450	20 L, 110 L and 1000 L
	Glyphosate CT	25 L, 20L 110L and 1000L
	Roundup CT	20 L, 110 L and 1000 L
470	Roundup DST	20 L, 110 L, 500 L and 1000 L
510	Gladiator Maximus	20 L, 110 L and 1000 L
540	574	500 L and 1000L
	Credit + Bonus (Kit)	20 L, 110 L and 1000 L
	Credit	20 L, 110 L and 1000 L
	Gladiator Optimax	20 L, 110 L and 1000 L
	Roundup Powermax	15 L, 20 L, 110 L, 500 L, 1000 L and bulk
570	Mon 76453	20 L
	Nul 2359	15 L
	Roundup Attack	15 L, 20 L, 110 L , 500 L and 1000 L

Figure 4: Nufarm's formulated glyphosate product range

Formulation (g/L)	Package type
360	1L, 2.5L, 5L, 10L, 20L, 200L, 500L and 1000L
450	20L, 110L and 1000L
510	20L, 100L, 120L and 1000L
540	20L, 100L, 110L and 1000L

Figure 5: Accensi formulated glyphosate product range

6.3.4 Manufacturing types – own products versus toll manufacture

During 2008 to 2011, Nufarm supplied formulated glyphosate to the Australian market which it:

- manufactured (as its own sales);
- toll manufactured on behalf of other Australian companies; and
- imported.

Accensi is predominantly a toll manufacturer. It considers that all formulated glyphosate it supplied during 2008 to 2011 was toll manufactured for third parties. During the corresponding period Accensi toll manufactured formulated glyphosate:

- using glyphosate technical sourced by Accensi; and
- using glyphosate technical sourced by Accensi's toll customer.

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6.4 Conclusion

Customs and Border Protection is satisfied that there is at least one substantial process of manufacture performed in Australia (by the applicants) and, therefore, that the goods may be taken to have been produced in Australia.

Accordingly, Customs and Border Protection is satisfied that there is an Australian industry producing like goods to the imported goods.

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7 AUSTRALIAN MARKET

7.1 Final Findings

Customs and Border Protection estimates that in 2011 the size of the Australian market for formulated glyphosate was approximately 65 million litres measured in formulated glyphosate 450g/L equivalent litres (this excludes volumes of formulated glyphosate supplied by toll manufacturers, other than the applicants). Customs and Border Protection found that the Australian market volume and size was less than estimated in the application (which interested parties advised was overstated). Customs and Border Protection found that given that formulated glyphosate is subject to a tariff classification which encompasses other herbicides, market size estimates provided by other interested parties may have included imports which were not the goods.

Customs and Border Protection considers that the verified sales volume of the applicants and the import data in Customs and Border Protection's database provide a reasonable estimate of market size (noting that the market size would be higher with the addition of sales volume for other toll manufacturers).

Customs and Border Protection found that the formulated glyphosate market has increased since 2008, however decreased during the investigation period.

7.2 Introduction

The application states that formulated glyphosate is used as an herbicide for broad-acre weed control, along with certain horticulture and home and garden applications (requiring weed control).

Fully formulated products manufactured by the applicants, other Australian industry formulators and imported products are supplied to the Australian agricultural (including horticulture) market. The products are also sold to domestic / residential and industrial end-users for weed control purposes.

7.3 Market Supply

The Australian formulated glyphosate market is supplied by the Australian manufacturers (applicants and other formulators) and imports. Based on data from Customs and Border Protection's import database, in 2011 China was the predominant source of imports, representing 76%. Other significant import sources included Argentina, the United States, Malaysia and New Zealand.

The major importers of Chinese formulated glyphosate²³ included Landmark Operations Limited, 4 Farmers Pty Ltd, Titan AG, Farmoz Pty Ltd and Gemax Pty

²³ For the purposes of this SEF, a major importer imported more than 7% of the total import volume from China.

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Ltd. Customs and Border Protection visited and verified information provided by all these importers, except Gemax Pty Ltd²⁴.

7.3.1 Toll versus importing

Importers that were visited by Customs and Border Protection advised that to meet supply requirements for formulated glyphosate they:

- imported glyphosate technical and provided to Australian formulators to manufacture; and/or
- imported fully formulated product from China.

In addition to the above, several importers also advised that they were in the process of establishing their own toll manufacture facilities. In a submission dated 30 May 2012, AGRONOMIQ advised that they have commenced formulated glyphosate production (post the investigation period).

Interested parties claimed that the glyphosate market is very dynamic with the price of glyphosate technical, which is priced in USD and subject to exchange rate changes, fluctuating. This impacts on commercial decisions to toll manufacture, manufacture on site or import fully formulated glyphosate. Importers consider the price of technical glyphosate and other raw materials to be provided to Australian toll manufacturers compared to the price of the imported formulated glyphosate product. Interested parties submitted that the cost differential between toll and imported product could vary by up to 10%. If possible, importers also consider costs associated with manufacturing their own products in order to satisfy supply requirements. The timeframe to import glyphosate technical (which can take five weeks) impacts supply decisions.

7.4 Market Size

Customs and Border Protection estimated the size of the Australian market, expressed in litres of 450g/L equivalents, using data verified during visits to the applicants, importers, exporters, data provided by other interested parties, and data from Customs and Border Protection's import database.

As noted in CON 183, a broad range of herbicides are imported under tariff classification 3808.93.00, including the goods and non goods. The description of the goods is not always indicative. It also appears that formulated glyphosate may have been imported under other tariff classifications.

Given these factors, as further information was provided by importers and exporters (which was verified), Customs and Border Protection's import data was cleansed to remove errors. This included the addition of some goods classified as "*glyphosate technical*", which were confirmed to be formulated glyphosate, based on information obtained from importers and manufacturers.

²⁴ This company did not participate in the investigation.

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As the statistical unit for the applicable tariff classification and statistical code is kg, Customs and Border Protection applied a conversion factor supplied by the Australian industry of 1.197 to convert kilograms to litres, based on the specific gravity for formulated glyphosate 450 g/L.

For the purposes of presenting market volumes and market shares different product concentrations have been converted to 450 g/L equivalents. This approach varies from the application (and Nufarm's preferred approach), which converted formulated glyphosate products at varying concentrations to 360 g/L Roundup equivalents L²⁵.

Formulated glyphosate 450 g/L is the predominant product supplied in the Australian market by the Australian industry and importers. Interested parties submitted that formulated glyphosate 450 g/L is the stock standard product and contended that conversion rates to measure volume in 450 g/L equivalents were more appropriate and relevant. The majority of the Chinese imports were also formulated glyphosate 450 g/L.

Customs and Border Protection estimates that the size of the Australian market for formulated glyphosate²⁶ was approximately 65 million litres of 450g/L equivalents in 2011. Movements in the size of the Australian market are illustrated in the following chart. The market grew from 2008, peaking at 83 million litres of 450g/L equivalent in 2010 before decreasing in 2011.

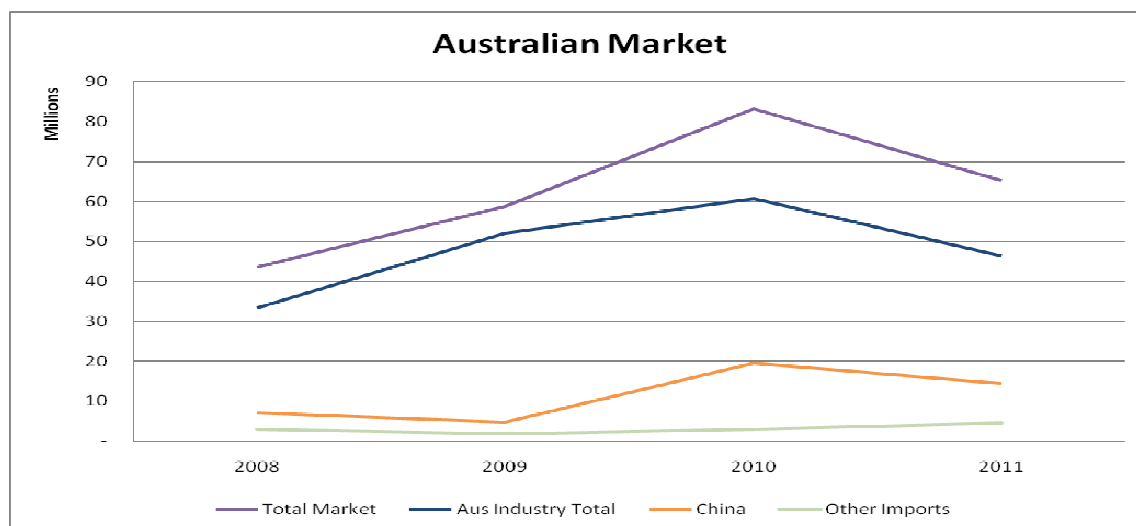


Figure 6: 2011 market size - 450g/L equivalent formulated glyphosate

7.5 Market Segmentation And Distribution Arrangements

7.5.1 Market segmentation

The application identified the following five typical market segments in the Australian formulated glyphosate market (in order of market size):

²⁵ The first patented formulated glyphosate product which was introduced into the Australian market by Monsanto.

²⁶ This includes the applicants' data only in respect of volumes for Australian formulators.

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Segment	Weed control	Peak period	Usage rates	Application
Pre plant winter cropping	Broadacre weed control	March to June	Low	Conservation tillage
Fallow weed control	Broadacre weed control	October to January	High	Moisture conservation
Pre plant summer cropping	Broadacre weed control	October to December	High	Conservation tillage
Industrial/retail and home	Railways, mining, forestry weed control	All year	Very high	Focus on perennial weeds
Horticulture	Trees, nuts, vines and vegetable weed control	Autumn and spring	High	Spraying programs

Figure 7: Australian formulated glyphosate market segments

The applicants explained that formulated glyphosate products are supplied to the agricultural sector for plant and weed control purposes and to retail and horticultural market segments and that preferences/customer choice for formulated glyphosate products may vary between market segments. An applicant advised that in Australia, there is approximately 21 million hectares of crops to which formulated glyphosate is applied (at approximately 1 to 2.5 applications in the winter pre plant period and 4 to 5 applications during the summer/fallow period).

7.5.2 Distribution

A diagram of distribution/supply channels to market was provided in the application²⁷.

This diagram provided a description of each of the market suppliers as follows:

- Traders / importers – traders are responsible for importing fully formulated glyphosate products from Asian manufacturers and then selling to other suppliers, distributors and end users.
- Formulators - are responsible for importing glyphosate technical to formulate glyphosate products in house and then sell the formulated product to other suppliers and distributors. Nufarm formulates products for its own sales whilst Accensi and Nufarm also formulate glyphosate on behalf of local suppliers in Australia.
- Other suppliers - are responsible for purchasing formulated glyphosate products from traders and other formulators and selling to distributors.
- Distributors - Distributors act as traders and import fully formulated product from Asian (and other overseas) manufacturers, but more generally are responsible for purchasing formulated product from traders, formulators and other suppliers.

²⁷ Application, page 14.

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The application noted that distributors can act as traders and import fully formulated product from Asian (and other overseas) manufacturers, but are more generally responsible for purchasing formulated product from traders, formulators and other suppliers.

Customs and Border Protection found that the majority of formulated glyphosate is supplied and sold through distributors to end-users. This reflected the large geographical size of Australia, as suppliers need connectivity with their end users (local farmers).

To further illustrate the formulated glyphosate market, Nufarm provided the following diagram²⁸:

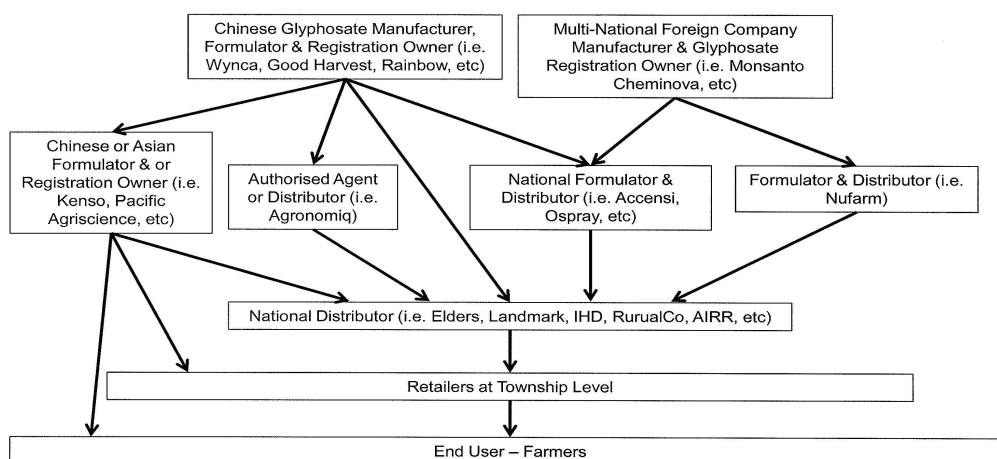


Figure 8: Market distribution channels

7.6 Factors Influencing Market Performance

7.6.1 Climatic variability, scarcity of natural resources and changing agricultural and farming practices

The Australian market for formulated glyphosate has grown significantly since 2007 - 08, reflecting increased market demand due to a change in local climatic conditions that supported improved conditions for use. Earlier season rainfall has also meant accelerated weed growth, necessitating higher formulated glyphosate usage rates. Changed agricultural practices (including conservation tillage) have resulted in increased usage of formulated glyphosate. Interested parties noted that future growth in the market may be impacted by increased weed resistance to formulated glyphosate and the growth of genetically modified crops.

7.6.2 Price

Interested parties advised that price is the primary driving factor in the Australian formulated glyphosate market. The applicants noted that the importers of the

²⁸ Australian Industry - Anti-Dumping Investigation Formulated Glyphosate Industry presentation to Customs and Border Protection dated 17th of April 2012, is available on the public record.

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Chinese goods are the price setters. While varying product strengths and formulation types are available, the recent market trend has been to take the lowest cost product available and set it as the benchmark because there is a direct relationship between pricing of the various products. That is, for example, pricing for formulated glyphosate 450 g/L products impacts the prices for formulated 540 g/L products.

7.6.3 Volatility in cost of goods and profitability

The volatility of costs and prices affect market demand / supply and inventory costs for formulated glyphosate. During 2007 to 2009, significant price volatility (in particular price decreases) for glyphosate technical occurred due to global supply shortages for glyphosate technical, simultaneous with an increasing number of Chinese glyphosate manufacturers and suppliers. As a result, due to potential significant price variations, market participants are cautious about holding high inventory stocks. This may be problematic and cause supply shortages for high demand periods (e.g. following an unforeseen substantial rain pattern).

7.6.4 Key demand factor - seasonality and climatic conditions

Interested parties advised that demand for formulated glyphosate is closely linked to seasonal conditions as demand reflects weather variations and agricultural output levels. For example, as rain stimulates weed growth, this impacts the Australian market through facilitating higher demand for formulated glyphosate. Market demand is dependent on the growth cycle for weeds and timing of crops. Interested parties claimed that, excluding seasonality impacts, overall the market demand (impacting total market size) has been fairly constant except for the past two years where it appears to have grown beyond what would be expected from normal seasonal variation.

7.6.5 Distribution channels to market

Several interested parties advised that as a result of the large volume of product registrants, "traditional" market distribution channels are changing. The factory to farm business model is currently being tested, which is achieved by removing one, two or even three distribution channel layers (e.g. products supplied directly from the exporter to the farm). An applicant claimed that this change combined with price cutting, where participants at one distribution level are being asked to match prices at lower distribution levels, is putting further downwards pressure on price.

7.6.6 Low barriers to entry

The barriers to entry for the Australian glyphosate market are relatively low. It is relatively inexpensive (approximately \$600) to register a product / label, and this resulted in a significant increase in registrants in the last two years. There has also been an increase in low cost businesses, some operating from residential homes (operating through the internet).

7.6.7 Differences in product quality

Interested parties claimed that as a result of continued downwards pressure on price, imported Chinese product at reduced quality is starting to emerge.

7.6.8 Product substitution

Formulated glyphosate has become the most predominantly utilised herbicide globally. Formulated glyphosate has a low cost as a farming input and has a superior performance to use rate compared to other products. Glyphosate's costs per hectare

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are low in comparison with other farm inputs. Formulated glyphosate is an environmentally safe product and is specific to plants, which require lower dose rates in comparison with other products and has low user toxicity. While there are other herbicides which may partially be substitutable for formulated glyphosate (including paraquat), there is no other non-selective herbicide as safe to use, as readily available and comparably priced.

7.7 Conclusion

Customs and Border Protection considered the submission made in response to the SEF 183a regarding the Australian market and is satisfied that the SEF 183a's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 7.1.

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8 DUMPING INVESTIGATION

8.1 Final Findings

Customs and Border Protection has considered the submissions made in response to the SEF 183a regarding export prices, normal values and dumping margins (the resumed investigation) and has found that no new information or evidence was provided that warrants revising the preliminary findings contained in SEF 183a.

Dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Preliminary dumping margins are summarised in the following table.

Exporter – (China)	Margin
Good Harvest	-2.0%
Zhejiang Xinan, including goods indirectly exported through Wynca IE	-1.6%
Rainbow	-0.8%

Figure 9: Preliminary dumping margins

The volume of the goods exported to Australia from China during the investigation period by the selected cooperating exporters²⁹ represented approximately 95% of the total volume. The exported goods by the selected cooperating exporters were found to be un-dumped.

The volume of the goods exported by selected non-cooperating exporters³⁰ represented less than 3% of the total Australian import volume and is therefore negligible.

Therefore, Customs and Border Protection proposes to recommend that the investigation be terminated.

8.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The dumping margin is the difference between the export price³¹ and the normal value³².

The investigation period, for the purpose of assessing dumping margins, was from 1 January 2011 to 31 December 2011. The investigation must be terminated so far as it relates to a particular country, if the volume of dumped goods from that country is negligible³³. The volume of dumped goods is negligible if this figure is less than 3% of the total Australian import volume³⁴. The investigation must be terminated so far

²⁹ Defined at section 8.3.2.

³⁰ Defined at section 8.3.2.

³¹ Section 269TAB of the Act.

³² Section 269TAC of the Act.

³³ Section 269TDA(3) of the Act.

³⁴ Section 269TDA(4) of the Act.

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as it relates to an exporter if there has been no dumping by that exporter, or there has been dumping but the dumping margin is less than 2%³⁵.

8.3 Number and categorisation of exporters

8.3.1 Number of exporters

At the commencement of the investigation, Customs and Border Protection interrogated its import database and identified potential exporters of formulated glyphosate from China³⁶. The application also nominated exporters (6) of formulated glyphosate from China.

Customs and Border Protection contacted all identified exporters (13) and invited them to cooperate in the investigation. Additional exporters (12) of goods described as “*herbicides*” in Customs and Border Protection’s import data base were also contacted, inviting them to make themselves known as a formulated glyphosate exporter and to cooperate with the investigation.

Three exporters contacted Customs and Border Protection and requested copies of the exporter questionnaire and associated spreadsheets to complete. Good Harvest, Zhejiang Xinan (including indirect exports through Wynca IE) and Rainbow completed the exporter questionnaire and associated spreadsheets, providing details regarding their company, production, exports, domestic sales, cost to make and sell (CTMS) expenses and adjustments. These three exporters represented approximately 95% of the total volume of formulated glyphosate exported to Australia from China for the investigation period.

As only three exporter questionnaire responses were received a sampling exercise in terms of subsection 269TACB(8) of the Act was not required for this investigation.

Customs and Border Protection visited the three exporters and verified the information provided in the exporter questionnaire responses.

8.3.2 Categorisation of exporters

Customs and Border Protection determined exporter-specific dumping margins after investigating the exportations of all exporters in the investigation period. Therefore, Customs and Border Protection regards all exporters to be ‘selected exporters’ in relation to section 269T.³⁷

In the case of the three exporters that provided adequate and timely responses to the exporter questionnaire, Customs and Border Protection was able to base the dumping margin calculations on the data submitted by those companies. For all other exporters that refused to provide the requested necessary information, normal values

³⁵ Section 269TDA(1) of the Act.

³⁶ As discussed in preceding sections, a range of herbicide products and formulation were imported under the relevant tariff subheading, including goods which are not the GUC.

³⁷ Section 269T(1) provides that “selected exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice.”

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and export prices have been determined having regard to all relevant information in accordance with s.269TAC(6) and s.269TAB(3) respectively.

The calculation of dumping margins for all exporters is at **Confidential Appendix 1**.

8.4 Zhejiang Xinan (Including Indirect Exports Through Wynca IE)

8.4.1 Submission – dry formulated glyphosate – out of investigation scope

In a submission dated 26 April 2012, Zhejiang Xinan claimed that there are significant differences between formulated glyphosate liquid and formulated glyphosate in granular ('dry') form and that granular glyphosate should be excluded from the scope of the investigation. However, Customs and Border Protection considers that the liquid and dry formulated glyphosate are covered by the goods description (as discussed at section 5.4.1). For the purposes of establishing export prices and normal values, dry formulated products exported to Australia and sold domestically in China were included.

During the investigation period Zhejiang Xinan exported formulated glyphosate directly and indirectly, as specified below:

- *direct exports*: comprising all export sales executed directly between Zhejiang Xinan and Australian importers from January 2011 to August 2011; and
- *indirect exports*: comprising all export sales made between Zhejiang Xinan and Australian importers through Wynca IE, in its capacity as intermediary export agent from September 2011 to December 2011.

For direct export sales to Australia by Zhejiang Xinan, Customs and Border Protection considers:

- that the goods have been exported to Australia otherwise than by the importer;
- that the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arms-length transactions.

8.4.2 Export prices

Export prices for direct export sales from Zhejiang Xinan were established in accordance with s.269TAB(1)(a) of the Act, by reference to the invoice from Zhejiang Xinan to the Australian customer less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

For indirect export sales to Australia by Zhejiang Xinan through Wynca IE, Customs and Border Protection considers:

- that the goods have been exported to Australia otherwise than by the importer; and
- the purchases of the goods were arms-length transactions.

However, as the goods were not purchased by the importer from the exporter, export prices for indirect export sales from Zhejiang Xinan were established in accordance with s.269TAB(1)(c) of the Act, with reference to the invoice price from Wynca IE to the Australian customer less any part of that price that represents a charge in

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respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

8.4.3 Normal values

In the investigation period, Zhejiang Xinan made domestic sales of formulated glyphosate which were made in the OCOT.

Normal values for formulated glyphosate³⁸ were established in accordance with s.269TAC(1) of the Act using Zhejiang Xinan's domestic selling prices of like goods sold in the OCOT.

To ensure the comparability of normal values to export prices the following adjustments were made:

- Specification adjustment – to ensure comparability of formulated glyphosate products sold domestically and exported to Australia;
- Negative adjustment – domestic packing;
- Negative adjustment – domestic inland freight;
- Negative adjustment – domestic credit terms;
- Positive adjustment – non-refundable Value Added Tax (VAT) (calculated as a percentage);
- Positive adjustment – export packing;
- Positive adjustment – export inland transportation and handling charges; and
- Positive adjustment – export credit terms.

8.4.4 Dumping margins

The dumping margin for Zhejiang Xinan was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The preliminary dumping margin for Zhejiang Xinan is negative 1.6%.

8.5 Good Harvest - Response to the TMRO

Substantive issue “C” the TMRO indicated the following;

Give substantive consideration to whether Good Harvest's normal value should be assessed in accordance with s. 269TAC(2)(d) of the Customs Act

³⁸ Customs and Border Protection considers that it is appropriate to compare industrial products exported to Australia with industrial products sold on the domestic market, according to the descriptions applied by Zhejiang Xinan. Furthermore, that the small volume of retail products exported to Australia should be compared with domestic selling prices of retail products, with appropriate adjustments for costs not incurred on the export market.

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8.5.1 Third country data submitted by Nufarm

On 9 July 2012, in response to SEF 183 and approximately two weeks after Customs and Border Protection had published the statement, Nufarm submitted information which summarised Good Harvest's third country export sales to other countries. The data was sourced from a third party consultant.

Nufarm calculated a dumping margin of 14.5% based on the new information and requested that, in light of the new information, Customs and Border Protection should re-establish Good Harvest's normal values pursuant to s.269TAC(2)(d).

Following the decision of the TMRO, Customs and Border Protection thoroughly examined the information provided by Nufarm.

The information provided had a number of significant failings of data quality which materialised when it was compared to Good Harvest's verified data. These failings include significant volumes differences, product exclusions and some erroneous countries being identified. Customs and Border Protection is not satisfied that the data provided by Nufarm is reliable.

Following the case management review paper, Nufarm identified United States of America as an appropriate third country for comparison purposes.

8.5.2 Nufarm's dumping margin calculation

Nufarm calculated a dumping margin of 14.5% by uplifting the third country export values by a mathematical formula to make it a notional 51% grade price. Customs and Border Protection used this formula on Nufarm's 41% Australian formulated glyphosate prices and found the uplifted 51% notional grade prices were substantially higher than existing 51% grade pricing. Due to this substantial difference, Customs and Border Protection is not satisfied that Nufarm's uplift methodology is sound, and considers it is not suitable for Customs and Border Protection to use.

Although Nufarm asserts the result of using the uplift factor demonstrates the 51% Australian formulated glyphosate market is depressed and suppressed, Customs and Border Protection considers the uplift factor fails to recognize market influences on the respective selling prices and the nature of trade. Customs and Border Protection acknowledges that the calculation provided by Nufarm was a model and not a method to calculate normal values and treated it as such.

Where it could, Customs and Border Protection compared Good Harvest's verified export prices to Nufarm's third country data on like models of 41% grade. Customs and Protection found that the prices of goods exported to Australia were significantly higher than those to the third countries.

8.5.3 Establishing normal values from a third country

The WTO Anti-Dumping Agreement places the manufacturing cost method and the third country sales method on an equal footing, as the two methods are mentioned as alternatives in Article 2.2 of the WTO Anti-Dumping Agreement, with neither given precedence. Under Australian domestic legislation, if the Minister is satisfied that a

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normal value cannot be ascertained by the methods mentioned in s.269TAC(1), then the normal value is determined under s.269TAC(2)(c) unless the Minister directs that s.269TAC(2)(d) applies. Thus the Minister may choose whether to determine normal value under s.269TAC(2)(c) (manufacturing costs method) or under s.269TAC(2)(d) (by reference to sales to an appropriate third country). Neither method is given precedence.

Paragraph 269TAC(2)(d) and subsection 269TAC(3) provide:

(2)(d) if the Minister directs that this paragraph applies - the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms-length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.

(3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.

In considering whether a third country is an appropriate third country for the purposes of s.269TAC(2)(d), and without limiting the generality of that provision, Customs and Border Protection may have regard to the following matters, as provided by s.269TAC(5C):

- a) whether the volume of trade by the exporter to the selected third country is similar to the volume of trade between the exporter and Australia; and*
- b) whether the nature of trade between the exporter and the third country is similar to that that occurs between the exporter and Australia.*

What constitutes "similar volume" is not defined in the legislation. An examination of the volume of trade to the third country with the highest volume shows that it represents less than 20% of the export volume to Australia. All other third countries had volume that represented less than 10% of the Australian export volume. Customs and Border Protection does not consider that the volume of trade between the exporter and any third country is similar to that which the exporter has with Australia.

Customs and Border Protection considers there is no third country which is an appropriate third country for the purposes of s.269TAC(2)(d) since there is no third country to which there was a similar volume of trade as the exports to Australia.

In response to the SEF, Nufarm submitted that the 5% low volume threshold set out at s.269TAC(14) should be considered in assessing whether exports to a third country were of similar volumes to the goods exported to Australia.

Customs and Border Protection disagrees. The low volume threshold test set out at s.269TAC(14) is relevant only to sales of like goods for home consumption in the

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country of export. Its purpose is to determine whether a 'low' volume of sales exist. This differs to the 'similar' consideration set out in s.269TAC(5C). Customs and Border Protection is of the view that a similar volume is not to be construed as a low volume test.

Having considered the issues raised by Nufarm in respect of similar volumes and adjustments, Customs and Border Protection recommends that normal values be determined pursuant to s.269TAC(2)(c).

8.5.4 Export prices

Section 269TAB of the Act establishes the basis for determining the export price for the goods exported to Australia. Section 269TAB(1)(a) of the Act provides that where a sale is between the importer and exporter, someone other than the importer has exported the goods, and the sale is an arms-length transaction, the export price is the price paid (or payable) to the exporter by the importer less any charges incurred after exportation.

Export prices were established in accordance with s.269TAB(1)(a) of the Act, by reference to the invoiced prices from Good Harvest to the Australian customer less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

8.5.5 Normal values

Following the TMRO decision to revoke the CEO's decision to terminate the investigation, Customs and Border Protection has reconsidered how normal values should be established.

Section 269TAC of the Act establishes the basis for determining the normal values for the goods exported to Australia. Section 269TAC(1) of the Act provides that

"...the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms-length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods."

Section 269TAAD of the Act establishes the conditions under which the Minister may be satisfied that the price of domestic sales is taken not to have been paid in the OCOT.

Customs and Border Protection compared Good Harvest's domestic selling prices to its CTMS and found that a substantial quantity³⁹ of transactions were not profitable, and not recoverable within a reasonable period⁴⁰. This finding did not change following the reconsideration of the like goods issue as all like goods irrespective of APVMA registration were considered in the original OCOT and sufficiency of sales tests.

³⁹ s.269TAAD(2) of the Act.

⁴⁰ s.269TAAD(1) of the Act.

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These transactions are therefore considered not to be in the OCOT. The remaining volume of domestic sales were a low volume, as defined in s.269TAC(14) and are not considered large enough to permit proper comparison.

As Good Harvest made some domestic sales of like goods of formulated glyphosate in the OCOT (even though in small volumes), using other sellers information as a basis for normal values in accordance with s.269TAC(1) of the Act is irrelevant.

As normal values cannot be ascertained under s.269TAC(1) of the Act, consideration must be given to determining normal values under either s.269TAC(2)(c) or s.269TAC(2)(d). For the reasons set out in 8.5.1 – 8.5.3 above, Customs and Border Protection has decided that s.269TAC(2)(d) should not be used in this instance.

The normal values for Good Harvest were established in accordance with s.269TAC(2)(c) of the Act, using Good Harvest's weighted average CTMS data, by each product formulation.

Section 269TAC(2)(c) of the Act states that profit should be added when constructing normal values. Therefore as prescribed by s.269TAC(5B) of the Act, an appropriate amount of profit was determined in accordance with Regulation 181A. Sub Regulation 181A(2) states that the Minister, must, if reasonably possible, work out the amount of profit using data relating to sales of like goods by the exporter in the OCOT. Notwithstanding that overall domestic sales were not made in the OCOT, there were some sales of like goods that were in the OCOT, but of a low volume.

The weighted average profit from these sales has been used to construct normal values.

Customs and Border Protection does not consider it appropriate to use a rate of profit, as asserted by Nufarm, derived from sales to the USA. A rate a profit has been used from domestic sales sold in the ordinary course of trade. Customs and Border Protection considers the proposed method by Nufarm does not change the preliminary finding.

To ensure the comparability of normal values to export prices the following adjustments were made:

- Negative adjustment – the inland freight and handling expenses in respect of the Free on Board (FOB) export price were adjusted downwards to establish ex-works price comparable to CTMS;
- Negative adjustment – inventory expenses;
- Positive adjustment – non-refundable VAT (calculated as a percentage); and
- Positive adjustment – export credit terms.

8.5.6 Dumping margins

The dumping margin for Good Harvest was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The preliminary dumping margin for Good Harvest is negative 2.0%.

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8.6 Rainbow - Response to the TMRO

Substantive issue “B” the TMRO indicated the following;

“consider further whether the low volume of domestic sales of unregistered goods by Rainbow, adjusted under s 269TAC(8), was nevertheless sufficient to allow a proper comparison to be made for the purposes of determining a dumping margin”.

Customs and Border Protection has recalculated the sufficiency test for Rainbow’s domestic sales of like goods sold in the OCOT including the unregistered goods and found the volume of sales continued to be significantly below 5%.

Domestic sales of the exporter will normally be disregarded as insufficient for the purposes s.269TAC(2)(a)(i) if their volume constitutes less than 5% of the sales volume of the goods exported to Australia. However, a lower volume of sales may be used if those sales and the prices charged are considered representative of the domestic market.

In this case, given the negligible volume and the nature of the sales of unregistered goods by Rainbow on the domestic market in China, Customs and Border Protection does not consider the OCOT sales to be representative of the domestic market.

8.6.1 Export prices

Export prices were established in accordance with s.269TAB(1)(a) of the Act, by reference to the invoice from Rainbow to the Australian customer less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

8.6.2 Normal values

In SEF 183, Customs and Border Protection considered that Rainbow made no like good domestic sales during the investigation period. Customs and Border Protection also considered whether Rainbow could use other seller’s information.

Following the resumed investigation and the revised position on like goods, Customs and Border Protection considers non APVMA registered Chinese manufactured formulated glyphosate is a like good. Consequently, Rainbow made some domestic sales of like goods and consequently the other seller’s provision pursuant to s.269TAC(1) does not apply.

However, the volume of these sales when compared to the volume of export sales to Australia was below 5%. Consequently Customs and Border Protection does not consider the low volume sales will permit a proper comparison.

8.6.3 Constructed normal values

As normal values cannot be ascertained under s.269TAC(1) of the Act, consideration must be given to determining normal values under either s.269TAC(2)(c) or s.269TAC(2)(d). No interested party has submitted that s.269TAC(2)(d) should be used, or provided export price data to third countries for the purposes of such a determination. Customs and Border Protection has verified cost and other data from Rainbow which is sufficient and appropriate to determine normal value under

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s.269TAC(2)(c). In these circumstances Customs and Border Protection has decided that it will use s.269TAC(2)(c) rather than s.269TAC(2)(d).

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Rainbow's weighted average CTMS data, by each product formulation with an amount included for profit⁴¹.

As prescribed by s.269TAC(5B) of the Act, an appropriate amount of profit was determined in accordance with Regulation 181A. This profit amount was based on Rainbow's sales of like goods sold in the OCOT (under Regulation 181A(2)).

To ensure the comparability of normal values to export prices the following adjustments were made:

- Positive adjustment – non-refundable VAT (calculated as a percentage);
- Positive adjustment – finance expenses (related to foreign exchange losses incurred for export sales);
- Positive adjustment – export inland freight, handling, loading and auxiliary costs; and
- Positive adjustment – premiums for export credit.

8.6.4 Dumping margins

The dumping margin for Rainbow was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The preliminary dumping margin for Rainbow is negative 0.8%.

8.7 Selected Non-Cooperating Exporters

The total volume of the goods exported by selected non-cooperating exporters (all other Chinese exporters excluding the three selected exporters), in the investigation period represented less than 3% of the total Australian import volume and is therefore negligible.

The calculation of negligible import volumes is at **Confidential Appendix 2**.

The negligible import volumes have not been investigated and export prices and normal values have not been determined for the selected non-cooperating exporters. These goods may be potentially dumped. Customs and Border Protection considers that if export prices and normal values for these exporters were required, they would be determined having regard to all relevant information.

8.8 Conclusion

Customs and Border Protection considered the submission made in response to the SEF 183a regarding the export price, normal values and dumping margins and is

⁴¹ As section 269TAC(13) of the Act is not applicable.

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satisfied that the SEF 183a's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 8.1.

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9 ECONOMIC CONDITION OF THE INDUSTRY

9.1 Final Findings

The Australian industry suffered injury in the form of:

- lost sales volume;
- reduced market share (for total sales);
- price depression;
- price suppression;
- reduced revenue;
- reduced profits and profitability;
- reduced production capacity utilisation;
- inadequate returns on investment;
- increased inventory levels (Nufarm only);
- reduced employee numbers (Nufarm only); and
- reduced total wages bill (for Nufarm only).

9.2 Applicants' Injury Claims

The application claims that formulated glyphosate has been exported to Australia from China at prices lower than its normal value and that this dumping has caused material injury to the Australian industry producing formulated glyphosate. The application identified the injurious effects as:

- loss of sales volume;
- loss of market share;
- reductions in prices and impacts on profit and profitability;
- reduced revenues;
- reduced capacity utilisation;
- increased inventory levels;
- inadequate returns on investment;
- reductions in capital expenditure;
- inability to attract capital to reinvest; and
- reduced employee numbers and subsequent reductions in wages bill.

9.3 Injury Analysis Period

9.3.1 Injury period

Customs and Border Protection examined the Australian market and the economic condition of the industry from 1 January 2008 for the purpose of injury analysis.

Nufarm's financial year is from 1 August to 31 July, whereas Accensi's financial year is 1 January to 31 December. As a result, Nufarm's and Accensi's quarters are misaligned by a month as illustrated in the table below:

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Month	Nufarm	Accensi
January	Qtr 2	Qtr 1
February	Qtr 3	
March		
April		Qtr 2
May	Qtr 4	
June		
July		
August	Qtr 1	Qtr 3
September		
October		Qtr 4
November	Qtr 2	
December		

Figure 10: Financial year of applicants

Nufarm and Accensi's quarterly financial data contained in the application was presented in accordance with respective financial years. In presenting combined Nufarm and Accensi data, the application aggregated each applicant's most comparable quarters. For example, Accensi's March quarter data was combined with Nufarm's April quarter data. The application then aggregated four quarters and presented annual data.

As monthly data could not be extrapolated for the purposes of analysing and assessing injury data, the period February to January was utilised by Customs and Border Protection as the closest equivalent period to a calendar year. This approach was considered reasonable for the purposes of assessing injury trends over time.

9.4 Injury Analysis Approach

9.4.1 Products – own sales versus third party sales

For the consideration of the application, the economic condition of the applicants was assessed excluding the applicants toll manufactured products. This approach was adopted as the sales volume for other Australian manufacturers, which were used to calculate the total Australian industry's sales volume, included Nufarm's and Accensi's sales of "toll" manufactured product. Therefore, to avoid double counting sales volumes of the toll manufactured products, the applicants consolidated sales and cost data did not include toll manufactured products. For the purpose of assessing reasonable grounds of injury caused by dumping, the exclusion of toll manufactured products from the analysis was acceptable, however, it was noted that the application claimed that injury *"is particularly evidenced in formulated glyphosate production that is toll manufactured..."*⁴².

⁴² Application, page 29.

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For the purposes of this SEF to provide a comprehensive analysis of the applicants' performance in respect of total formulated glyphosate production and sales; third party sales (the applicants' toll sales) have been incorporated in the injury analysis.

9.4.2 Data amalgamation

As detailed in the Australian industry visit reports⁴³, Nufarm and Accensi toll manufacture different types of formulated glyphosate products. Accensi toll manufactures formulated glyphosate using glyphosate technical sourced by Accensi or their toll customers. Nufarm also toll manufacture different types of formulated glyphosate products, however consider the specific types to be commercial in confidence.

Customs and Border Protection found that the cost structures and prices for different formulated glyphosate products varied significantly. The CTMS third party formulated glyphosate products in respect of the applicants can vary significantly from the CTMS of their own products (for instance, if glyphosate technical is sourced by the third party customer). There is also significant variance between the cost structures and prices of the applicants. This reflects their different corporate direction and commercial functions, as Nufarm supplies branded propriety products while Accensi is purely a toll manufacturer. The proportion of total sales volume and market share represented by each applicant also varies significantly. Nufarm represents the significant majority of volume and market share. The amalgamation of Nufarm and Accensi data is impacted by the weighting of Nufarm's financial results.

Given these complexities, Customs and Border Protection has not amalgamated price and cost data of the applicants for the purpose of analysing injury (excluding sales volumes and market share). As the trends for each injury factor identified over the investigation period for Nufarm and Accensi for each product type were similar, Customs and Border Protection considers:

- the approach to analyse data separately is reasonable; and
- the approach to assess injury for each product type as being reflective of the Australian industry as a whole is reasonable.

The following subsections further examine the treatment of different formulated glyphosate products for each applicant in analysing and assessing injury.

9.4.3 Nufarm

To provide a comprehensive analysis of Nufarm's performance in respect of total formulated glyphosate production and sales, the following section includes analysis for:

- "Nufarm's own" formulated glyphosate products – these are Nufarm's registered products and where Nufarm sources glyphosate technical; and

⁴³ "Visit Report Australian Industry Accensi Pty Limited (dated March 2012)" and "Visit Report Australian Industry Nufarm Limited (dated March 2012)" are available on the public record for Investigation no 183.

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- “Nufarm’s third party” formulated glyphosate products (which it toll manufactured on behalf of third parties).

Nufarm’s sales of imported formulated glyphosate 690 g/L have not been included in the analysis in this section (excluding market share analysis, where these import volumes have been included).

9.4.4 Accensi

To provide a comprehensive analysis of Accensi’s performance in respect of total formulated glyphosate production and sales, the following section includes analysis for:

- “Accensi technical” products, where Accensi sources glyphosate technical; and
- “Accensi toll” products, where the toll customer supplies the glyphosate glyphosate.

Customs and Border Protection notes Accensi is principally a toll manufacturer of formulated glyphosate. The product types listed above both relate to third party sales.

9.4.5 Australian industry

As discussed at section 6.2, the Australian industry analysis is based on data provided by the applicants only and is not inclusive of sales or production data for other Australian formulators.

For the purposes of presenting market volumes and market shares, different product concentrations have been converted to 450 g/L equivalents.

However, Customs and Border Protection established that the injury experienced by the Australian industry (discussed in this section) predominately related to 450 g/L formulated glyphosate products.

9.4.6 Factors impacting on injury analysis - Nufarm

We note that the following factors affect Nufarm’s financial data, which may impact analysis of injury factors:

- large returns of sales product (which was written off);
- bad debts;
- introduction of new (higher premium) product formulations to replace existing product formulations; and
- cessation of third party (toll manufactured) sales during certain period.

The first two factors impact on Nufarm’s financial data prior to the investigation period and for the purpose of this report, trends over time are being considered.

Presentation of data

As Accensi represents a significantly smaller proportion of the formulated glyphosate market, Accensi considers its injury analysis depicted graphically to be commercial in

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confidence. For consistency, graphs for Nufarm and Accensi have not been included in the SEF (excluding section 9.5 volume effects)⁴⁴.

9.5 Volume Effects

9.5.1 Sales volume

Customs and Border Protection combined both applicants' formulated glyphosate sales volumes, converted into 450g/L equivalent litres, to examine trends in the Australian industry's sales volumes. Sales volumes were categorised as *Australian industry own sales* and *Australian industry third party sales*. The following graph (Figure 11) illustrates movements for each sale category for the Australian industry during the period 2008 to 2011.

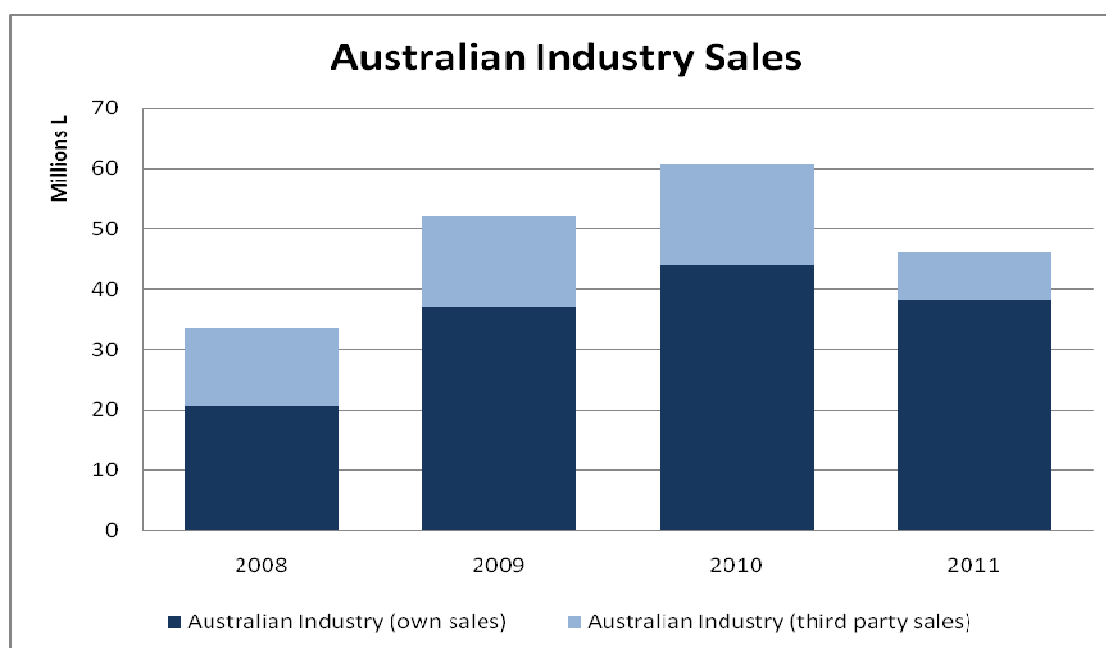


Figure 11: Australian industry volumes

The graph shows that total sales volumes increased from 2008 to 2010 before decreasing in the investigation period (2011). *Australian industry's own sales* decreased from 2010 to 2011 while *Australian industry's third party sales* also decreased over the corresponding period.

It appears that the Australian industry (represented by Nufarm and Accensi) as a whole experienced injury in the form of lost sales volume.

9.5.2 Market share

The overall Australian market for formulated glyphosate increased from 2008 to 2010 before decreasing in 2011, as demonstrated in section 7.4.

⁴⁴ Graphs depicting injury analysis for Nufarm are contained in the public record version of "Visit Report Australian Industry Nufarm Limited (dated March 2012)".

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The market share held by Australian Industry, as illustrated in Figure 12, reached 89% in 2009, before falling to 73% in 2010 and decreasing to 71% in 2011. During 2011, the Australian industry's share represented by *third party sales* decreased, however this was mostly offset by an increase in market share of its *own sales*, in a declining overall market.

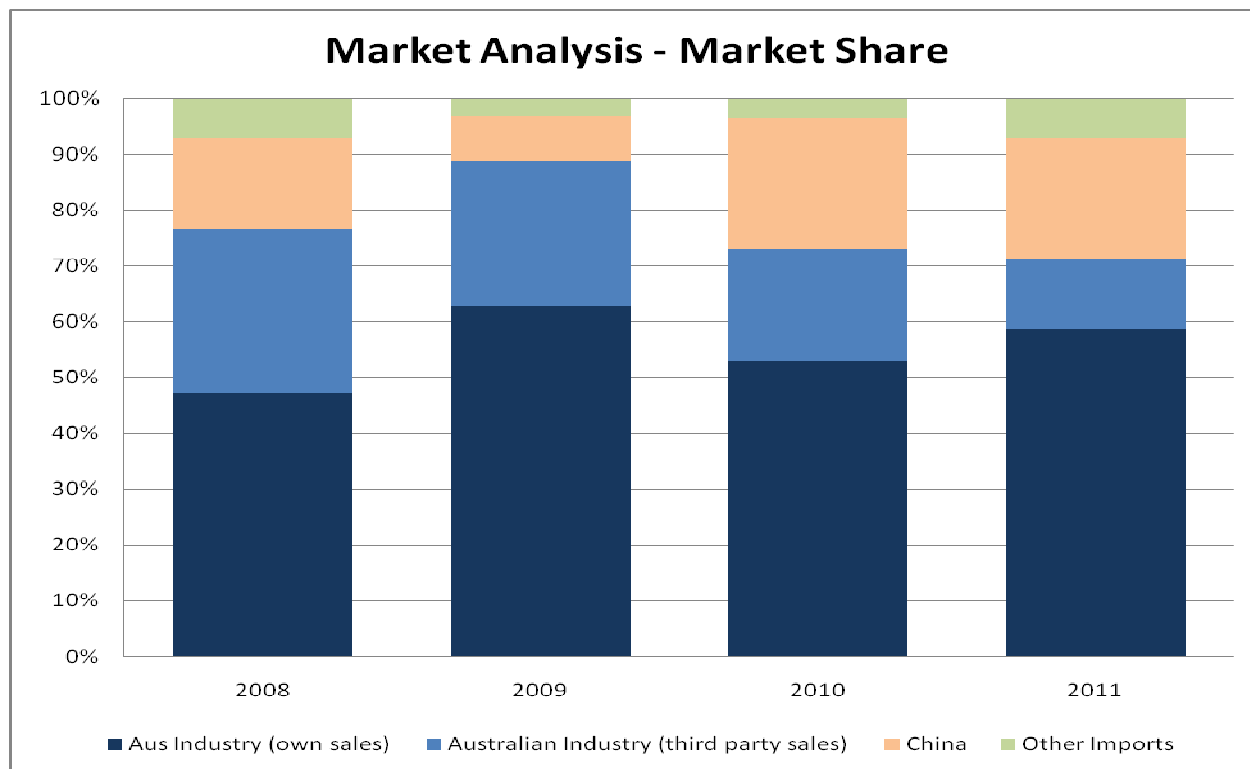


Figure 12: Market Share Analysis

Customs and Border Protection notes that the market share of Chinese imports decreased in 2009, increased in 2010 and decreased by 1.5% (in 2011), which is similar to the decrease experienced by the Australian industry. Imports from countries other than China accounted for the decrease in both Australian industry and China's market shares in 2011, with imports from other countries increasing by 3.5%⁴⁵.

9.6 Revenue Effects

Customs and Border Protection undertook an analysis of the verified data contained in the application (and provided subsequently) and found that:

9.6.1 Nufarm

- *Nufarm's own sales* revenue for all formulated glyphosate products decreased from 2008 to 2009, increased from 2009 to 2010 and decreased from 2010 to 2011, resulting in sales revenue at the lowest level since 2008;

⁴⁵ These imports included formulated glyphosate 690g/L imported by Nufarm.

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- *Nufarm's own* sales revenue experienced a constant downward trend from 2008 for formulated glyphosate 450 g/L;
- *Nufarm's third party* sales revenue for formulated glyphosate products increased significantly from 2008 to 2010 and decreased significantly from 2010 to 2011 (reflecting reduced or no sales volume); and
- Nufarm's overall sales revenue (including *Nufarm's own* and *Nufarm's third party* sales decreased from 2010 to 2011).

9.6.2 Accensi

- *Accensi's* total sales revenue for all formulated glyphosate products and for *Accensi toll* formulated glyphosate decreased from 2008 to 2011; and
- sales revenue for *Accensi technical* formulated glyphosate decreased from 2008 to 2010 and increased from 2010 to 2011 (which partially reflects increased sales volume for these products).

9.6.3 Australian industry

Even though the analysis indicates that the total sales revenue of Accensi's technical formulated glyphosate recovered in 2011, the overall sales revenue for Accensi declined throughout the injury analysis period. Combined with Nufarm's overall decline in sales revenue over the injury analysis period, it appears that the Australian industry as a whole experienced injury in the form of reduced revenue.

9.7 Price Depression and Price Suppression

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

9.7.1 Nufarm

Customs and Border Protection undertook an analysis of the verified data contained in the application (and provided subsequently) and found, in relation to *Nufarm's own* sales of formulated glyphosate, that:

- since 2008, there has been a downward trend in unit revenue for *Nufarm's own* formulated glyphosate products (which indicates price depression);
- there was a downward trend from 2008 to 2010 for unit CTMS for *Nufarm's own* formulated glyphosate products, however unit CTMS increased from 2010 to 2011;
- the relationship between unit prices and CTMS for *Nufarm's own* formulated glyphosate products has varied, as unit CTMS was greater than unit revenue from 2008 to late 2009 and in 2011, but was below unit revenue in 2010; and
- unit CTMS increased between 2010 and 2011 while unit revenue decreased, which indicates price suppression.

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In relation to *Nufarm's third party* formulated glyphosate sales, Customs and Border Protection found that:

- since 2009, there has been a downward trend in unit revenue for *Nufarm's third party* formulated glyphosate products (which indicates price depression); and
- unit CTMS decreased from 2009 to 2010, then increased from 2010 to 2011, reflecting CTMS trends for Nufarm's own products; however CTMS has remained above unit revenue throughout the injury analysis period (indicating price suppression).

9.7.2 Accensi

In relation to sales of formulated glyphosate by Accensi, Customs and Border Protection found that:

- there has been a downward trend (with slight variances by quarter) in unit prices for *Accensi technical* and *toll* formulated glyphosate products throughout the injury analysis period, which indicates price depression;
- there has been a downward trend (with slight variances by quarter) for unit CTMS for total *Accensi technical* and *toll* formulated glyphosate products;
- the relationship between unit prices and CTMS for *Accensi technical* has remained relatively constant, which indicates no price suppression; and
- the decrease in unit prices has been proportionately greater than the decrease in unit CTMS (showing reduced margins) for total Accensi *toll* formulated glyphosate products, which indicates price suppression.

9.7.3 Australian industry

Overall, the prices of all products sold by both Nufarm and Accensi declined during the injury analysis period. Therefore, it appears that the Australian industry as a whole experienced injury in the form of price depression.

Notwithstanding that the relationship between the prices and CTMS of *Accensi technical* formulated glyphosate remained relatively constant, the sales of *Accensi toll* and *Nufarm's own* and *third party* formulated glyphosate sales indicate price suppression. Therefore, it appears that the Australian industry as a whole also experienced injury in the form of price suppression.

9.8 Profit and Profitability Effects

9.8.1 Nufarm

Customs and Border Protection undertook an analysis of the verified data contained in the application (and provided subsequently) and found, in relation to *Nufarm's own* sales of formulated glyphosate, that

- profits for *Nufarm's own* formulated glyphosate sales decreased significantly from 2008 to 2009, increased from 2009 to 2010 and decreased from 2010 to 2011 to a level below the profits of 2008;

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- the profitability of *Nufarm's own* formulated glyphosate sales, followed similar trends compared to profits, which decreased from 2010 to 2011 but to levels higher than 2009 (which reflects the period in which Nufarm made significant sales returns due to highly overvalued inventory) although below 2008 overall; and
- between 2010 and 2011, there has been a significant decline in both profit and profitability of *Nufarm's own* formulated glyphosate sales.

In relation to *Nufarm's third party* formulated glyphosate sales, Customs and Border Protection found that:

- profits for *Nufarm's third party sales* have been negative from 2008 to 2011, although have improved since 2009; and
- profitability for *Nufarm's third party sales* followed similar trends (which was also negative during this period).

9.8.2 Accensi

In relation to sales of formulated glyphosate by Accensi, Customs and Border Protection found that:

- profit for *Accensi technical* formulated glyphosate sales have decreased significantly since 2008, although marginally increased from 2010 to 2011;
- profitability for *Accensi technical* increased from 2008 to 2009; decreased from 2009 to 2010 and marginally increased from 2010 to 2011; and
- since 2009 there has been a significant decline in profit and profitability of *Accensi toll* formulated glyphosate sales.

9.8.3 Australian industry

Both Nufarm and Accensi experienced overall diminished (and in certain cases negative) profit and profitability results through the injury analysis period, particularly in 2011. Therefore, it appears that the Australian industry as a whole experienced injury in the form of lost profit and profitability.

9.9 Other Economic Factors⁴⁶

The application contained data in respect of other injury factors for Nufarm and Accensi⁴⁷. The applicants provided additional data to support for other injury factors. The respective data (which was verified where applicable) indicates that trends for other injury factors vary between each company.

⁴⁶ Customs and Border Protection analysed other injury factors from 2008 to 2011. However depending on the format of the data set provided, analysis was only possible on financial years (as opposed to calendar years).

⁴⁷ The application did not provide contain consolidated data for the applicants in respect of other injury factors.

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9.9.1 Assets

The application makes no injury claims in respect of assets.

9.9.2 Capital investment

Since 2008 Nufarm's capital investment in respect of formulated glyphosate production has been fairly constant. In the corresponding period Accensi has made a significant investment in formulated glyphosate production, including upgrading glyphosate production facilities (including installation of new production equipment and technologies, upgrading warehousing facilities and packaging equipment) and procuring a site specifically for MIPA storage. Verified data for the applicants support Accensi's claim that they have experienced injury in the form of reduced capital expenditure.

It appears that Accensi experienced injury in the form of reduced capital investments. Given the smaller proportion of the Australian industry producing formulated glyphosate represented by Accensi, the injury (in the form of reduced capital expenditure) experienced by Accensi may not be indicative of the injury experienced by the Australian industry, as a whole.

9.9.3 Research and development (R&D)

The application makes no injury claims in respect of R&D.

9.9.4 Return on investment (ROI)

Nufarm and Accensi claim that their ROI in relation to formulated glyphosate decreased in 2011, which was supported by verified data. Therefore, it appears that the Australian industry as a whole experienced injury in the form of ROI.

9.9.5 Capacity

Data contained in the application (and verified) in respect of this indicator provided for Nufarm shows that during the investigation period, its three designated glyphosate manufacturing vessels were operating at below maximum capacity and less than practical capacity. Practical production capacity was calculated assuming existing resource constraints (with the plant operating at 24 hours for five days with current labour). Maximum physical capacity was calculated assuming the plants are operating at 24 hours on seven days per week, with additional labour. Data contained in the application (and verified) in respect of this indicator provided for Accensi shows that during the investigation period, its three designated glyphosate manufacturing vessels were operating at below operating at less than maximum capacity.

This reduced capacity utilisation predominately reflects declined volumes of formulated glyphosate produced. The applicants claim as the volume of goods manufactured by the Australian industry has declined (i.e. lower plant throughput) costs to manufacture have been higher for the Australian producers.

Therefore, it appears that the Australian industry as a whole experienced injury in the form of reduced production capacity utilisation.

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9.9.6 Employment

Data contained in the application (and verified) in respect of this indicator provided for Nufarm shows that since 2008 the average number of Full Time Employees (FTEs) fluctuated, with a significant increase from 2008-09 to 2009-10 and a decrease from 2009-10 to quarter two in 2011-12. The number of employees dedicated to production of formulated glyphosate decreased in 2010-11, although the number was still higher than in 2009-10. The hours (shifts) worked by FTEs also reduced for both formulated glyphosate plants in 2010-2011. However FTE levels (and number of hours worked) attributed to non like goods production increased in 2010-11.

Data contained in the application (and verified) in respect of this indicator provided for Accensi shows constant numbers of FTE (since 2008), however the hours (shifts) worked by FTEs has reduced. This is shown for glyphosate production in WA, where the plant is currently operating for one shift only.

Therefore, it appears that only Nufarm experienced injury in the form of reduced employees.

9.9.7 Productivity

The application makes no injury claims in respect of productivity.

9.9.8 Stocks

Data contained in the application (and verified) in respect of this indicator provided for Nufarm shows an increase in inventory of formulated glyphosate from 2009-10 to quarter two in 2011-12. Data contained in the application (and verified) in respect of this indicator for Accensi shows an increase in inventory of formulated glyphosate from 2010 to 2011, however it is not clear whether this relates to like goods only or other products.

Therefore, it appears that Nufarm only experienced injury in the form of increased inventory levels.

9.9.9 Cash flow measures

The application makes no injury claims in respect of cash flow measures.

9.9.10 Wages

Data contained in the application (and verified) in respect of this indicator provided for Nufarm data shows that the total wages bill associated with FTE in respect of formulated glyphosate reduced from 2009-10 to 2010-11. The average wage bill associated with these FTEs increased during the same period reflecting reduced FTE numbers. Data in respect of this indicator was not provided in respect of Accensi.

Therefore, it appears that Nufarm only experienced injury in the form of reduced total wages bill (which for Nufarm reflected the reduced FTE levels).

9.9.11 Recent changes to the Australian industry

On 5 March 2013 Nufarm announced that its distribution agreement with Monsanto Ltd to supply Roundup branded formulated glyphosate into the Australian and New Zealand markets is to be terminated. Nufarm indicated that this agreement will eliminate a licence fee paid to Monsanto for distribution rights.

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Although these products represented approximately 60% of Nufarm's formulated glyphosate sales, Nufarm stated that it will continue to supply the Australian market, and as a consequence of the terminated agreement, it should lead to an improvement in its costs position.

Nufarm indicated that it will continue to supply Roundup branded products into Australian and New Zealand markets until 28 August 2013.

9.10 Conclusion – Economic Condition of the Industry

Based on an analysis of the information contained in the application and verified during visit to the applicants, the Australian industry suffered injury in the form of:

- lost sales volume;
- reduced market share (for total sales);
- price depression;
- price suppression;
- reduced revenue;
- reduced profits and profitability;
- reduced production capacity utilisation;
- inadequate returns on investment;
- increased inventory levels (Nufarm only);
- reduced employee numbers (Nufarm only); and
- reduced total wages bill (for Nufarm only).

In response to SEF 183a Customs and Border Protection no new information and is therefore satisfied that the SEF 183a's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 9.1.

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10 HAS DUMPING CAUSED MATERIAL INJURY
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10.1 Final Findings

Customs and Border Protection has established that formulated glyphosate exported from China was not dumped. Therefore, any injury, including price depression and or undercutting, experienced by the Australian industry cannot be attributable to dumping.

No new information was provided in response to SEF 183a which would warrant overturning the SEF 183a's preliminary findings.

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11 NON INJURIOUS PRICE

11.1 Final Findings

Non-injurious prices (NIPs) have not been calculated because no new information has been submitted to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry. Customs and Border Protection proposes to terminate the investigation in relation to formulated glyphosate exported to Australia from China.

11.2 Introduction

Duties may be applied where it is established that dumped or subsidised imports have caused, or threatened to cause, material injury to the Australian industry producing like goods.

Under the *Customs Tariff (Anti-dumping) Act 1975*, the Minister must have regard to the desirability of ensuring that the amount of dumping duty and countervailing duty is not greater than is necessary to prevent injury, or a recurrence of injury.

Section 269TACA of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping and/or subsidisation.

Anti-dumping and countervailing duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

Customs and Border Protection generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

11.3 Assessment of NIP

The applicants have not made a submission in respect of the most appropriate approach for calculating USPs.

As Customs and Border Protection is terminating the investigation, on the basis of no dumping, NIPs have not been calculated.

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11.4 Conclusion

Customs and Border Protection is satisfied that the SEF 183a's preliminary findings do not need to be revised, as the investigation has been terminated. Custom and Border Protection's final findings are at Section 11.1.

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APPENDICES

Appendix No	Description
Confidential Appendix 1	Calculation of dumping margins - selected cooperating exporters
Confidential Appendix 2	Calculation of negligible import volumes