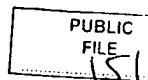




Australian Government
Australian Customs and
Border Protection Service



R E P O R T

INTERNATIONAL TRADE REMEDIES BRANCH

CONSIDERATION REPORT NO. 183

APPLICATION FOR A DUMPING DUTY NOTICE

FORMULATED GLYPHOSATE

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

February 2012

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2 SUMMARY AND RECOMMENDATIONS

This report provides the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) consideration of an application for the publication of a dumping duty notice on formulated glyphosate exported to Australia from the People's Republic of China (China).

2.1 Recommendations

Based on an assessment of the application, Customs and Border Protection recommends that the Chief Executive Officer of Customs and Border Protection (CEO) decide not to reject the application.

If the CEO accepts this recommendation, to give effect to that decision, the CEO must publish the notice at **Appendix A**; indicating that Customs and Border Protection will inquire into whether the grounds exist to publish a dumping duty notice.

2.2 Application of law to facts

Division 2 of Part XVB of the *Customs Act 1901*¹ (the Act) sets out procedures for considering an application for a dumping duty notice.

2.2.1 The role of the International Trade Remedies Branch

The International Trade Remedies Branch (ITRB) is responsible for preparing a report for the CEO examining an application for a dumping duty notice.

In this report, the following matters are considered in relation to the application:

- whether the application complies with sub section 269TB(4);
- whether there is, or is likely to be established, an Australian industry in respect of like goods; and
- whether there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2.2.2 The role of the CEO of Customs and Border Protection

Division 2 of Part XVB empowers the CEO, after having regard to the ITRB report, to reject or not reject an application for the publication of a dumping duty notice. Under section 269TC(1), the CEO must reach a decision based on the factors listed in section 3.4, within 20 days of the application being lodged.

If the CEO decides not to reject the application, the CEO must give public notice of the decision providing details of the investigation.

¹ All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

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The CEO's powers have been delegated to certain officers of the ITRB.

2.2.3 Findings and conclusions

Customs and Border Protection has examined the application and is satisfied that:

- the application complies with the requirements of sub section 269TB(4) (the reasons for being satisfied are set out in section 4 of this report);
- there is an Australian industry in respect of like goods (as set out in section 5 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 6 and 7 of this report).

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3 INTRODUCTION**3.1 Application**

On 21 December 2011, an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of formulated glyphosate exported to Australia from China, was lodged on behalf of Nufarm Limited (Nufarm) and Accensi Pty Limited (Accensi)², members of the Australian industry manufacturing formulated glyphosate.

On 6 and 23 January 2012, additional information and data was received in respect of the application. As a result, Customs and Border Protection restarted the 20 day period for considering the application.

Within the application, the applicants claim 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 has 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.

3.2 The goods the subject of the application**3.2.1 Description**General description

The goods the subject of the application (the goods) is formulated glyphosate. The application 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"*³.

² Unless otherwise specified, Nufarm and Accensi are herein referred to as "the applicants".

³ Application for the publication of a dumping duty notice for formulated glyphosate exported from China (Application), page 7.

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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, 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.

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 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 the glyphosate formulations described by grams per litre / kilogram or percentage basis of glyphosate technical.

Unit of product	Glyphosate content – measured as g/L or grams per kilogram	Glyphosate content – measured on a weight per weight basis (expressed as a percentage)
Litre	360	41.6%
Litre	450	50.6%
Litre	570	61.5%
Kilogram	680	75.7%

This table is indicative only⁴.

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"*⁵.

The applicants claim that:

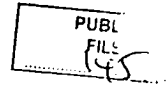
- the imported formulated glyphosate products (at varying strengths) have the same end use;
- all formulations strengths are substitutable;
- the imported dry formulation can be substituted for liquid forms; and
- all imported formulations are applied within the approved application rates indicated on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

Therefore, at this consideration stage, Customs and Border Protection considers that the goods covered by this application, and thus any subsequent investigation,

⁴ Application, page 8.

⁵ Application, page 8.

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includes 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 of glyphosate technical).

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 the primary ingredient 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 this application, and any subsequent investigation does **not** include glyphosate acid.

3.2.2 Tariff classification

The application states that the goods are classified to tariff classification 3808.93.00 statistical code 48 of Schedule 3 to the *Customs Tariff Act 1995*.

Based on information provided in the application, Customs and Border Protection's Trade Services Branch confirmed that the goods are correctly classified to this tariff subheading as at December 2011. Since 2007 there have been a number of tariff classification and statistical code amendments in respect of the goods, as detailed in the following table:

Period	Tariff classification	Statistical code
Prior to 2007	3808.30.00	50
01/01/2007 to 31/12/2009	3808.93.00	16
01/01/2010 to 31/12/2010	3808.93.00	43
01/01/2011 to 31/12/2011	3808.93.00	48
As of 01/01/2012	3808.93.00	49

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

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

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3.3 Previous investigations

3.3.1 Australia

Customs and Border Protection has previously conducted a dumping investigation for glyphosate⁶ exported from China, as detailed below.

3.3.2 2001/2002 Investigation (Report No. 45)

On 12 June 2001, following an application by Monsanto Australia Limited, the then Australian Customs Service (Customs) initiated an investigation into the alleged dumping of glyphosate exported to Australia from China. The investigation covered:

"The chemical substance known as glyphosate, in its many different forms including acid, salt or formulated".

On 21 January 2002, the final report in respect of this investigation was forwarded to the Minister responsible for Customs. This report detailed:

- Customs' findings that overall the goods were not dumped and that the consignments that were exported at dumped prices represented a negligible volume in terms of section 269TDA of the Act; and
- Customs' recommendation that the Minister should not publish a dumping duty notice in respect of the goods.

The Minister accepted the findings and recommendation and this decision was publically notified on 27 February 2002.

3.3.3 Current measures

There are no current measures on formulated glyphosate exported to Australia.

3.3.4 Other comparable anti-dumping and countervailing jurisdictions

The European Union (EU)

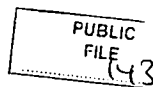
During the period 1998 to 2010, definitive anti-dumping measures in the form of a duty were imposed on exports of glyphosate originating in China to the EU. A brief summary of these measures and related investigations / reviews are detailed below:

- In February 1998 the European Council by Regulation (EC) No 368/98(2), imposed definitive anti-dumping measures in the form of a duty of 24 % on imports of glyphosate originating in China.
- In May 2000, that Regulation was amended by Council Regulation (EC) No 1086/2000(3) which increased the duty to 48 % following an anti-absorption investigation pursuant to Article 12 of the basic Regulation.
- Subsequently, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, Council Regulation (EC) No 163/2002(4) extended the 48 % duty imposed on imports of glyphosate originating in China to

⁶ Note anti-dumping action in respect of glyphosate acid which occurred in Australia prior to 1996 has not been addressed in this report.

⁷ Trade Measures Report Number 45, page1 (dated 21 January 2002).

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imports of glyphosate consigned from Malaysia and Taiwan (whether declared as originating in Malaysia or Taiwan or not), with the exception of those produced by one named company in each of these countries.

- By Decision 2009/383/EC (3), the Commission suspended the definitive anti-dumping duties for a period of nine months, with effect from 16 May 2009. Subsequently, by Implementing Regulation (EU) No 126/2010 (4), the Council extended the suspension for a period of one year, with effect from 14 February 2010.
- In June 2009, following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of glyphosate originating China, the Commission received a request for review pursuant to Article 11(2) of the basic Regulation.
- By a letter dated 21 September 2010 to the Commission, the applicant formally withdrew its request. The Decision 2010/1187 (dated 13 December 2010) terminated the anti-dumping proceeding on imports of glyphosate originating in China and the measures were repealed.

United States of America (US)

In 2010, anti-dumping action was instigated against exports of glyphosate from China to the US, as detailed below:

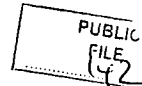
- On 7 April 2010, the US International Trade Commission publicly notified the commencement of preliminary phase anti-dumping investigation No. 731-TA-1178 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) in respect of glyphosate from China. This action was in response to a petition filed (on 31 March 2010) by Albaugh Inc.
- On 22 April 2010, a preliminary hearing was held.
- On 29 April 2010, following the withdrawal of the anti-dumping petition, the US International Trade Commission discontinued the anti-dumping investigation.

South America

Other anti-dumping actions have been instigated against exports of glyphosate from China to South America, as detailed below:

- Argentina – In February 2004, following an dumping investigation for exports of glyphosate from China to Argentina, the Minister of Interior Affairs signed a resolution declaring that Argentina decided not to levy anti-dumping duty on Chinese glyphosate imports. The investigation was a result of an appeal to the Argentine Foreign Trade Committee by the US company Monsanto and its Argentine partner.
- Brazil – In May 2010, following an investigation the Brazil's Foreign Affairs Ministry agreed to apply a dumping duty (representing 2.1%) to exports of glyphosate from China to Brazil. The investigation was a result of a complaint from Brazil's two glyphosate producers, US-based Monsanto and local firm Nortox.

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3.4 Consideration of the application

Under subsection 269TC(1) of the Act the CEO must examine an application for publication of a dumping duty notice upon its receipt and, within 20 days of lodgement (or 20 days of lodgement of further information received in support of the application), decide whether or not to reject the application.

In relation to this application, the CEO's decision must be made no later than **13 February 2012** (the next business day following day "20" (12 February 2012, which is a Sunday)).

Sub section 269TC(1) specifies that the CEO shall reject the application if the CEO is not satisfied that:

- the application complies with sub section 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application.

These matters are examined in the following sections of this report.

4 COMPLIANCE WITH SECTION 269TB(4)**4.1 Findings**

Customs and Border Protection is satisfied that the application complies with the requirements of sub section 269TB(4).

4.2 Legislative framework

Sub section 269TB(4) requires that the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

4.3 Customs and Border Protection assessment**4.3.1 Approved form**

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form.

The applicants submitted confidential and public record versions of the application along with numerous appendices and attachments. Customs and Border Protection considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information.

4.3.2 Supported by Australian Industry

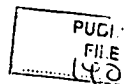
An application is taken to be supported by a sufficient part of the Australian industry if Customs and Border Protection is satisfied the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50% of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25% of the total production or manufacture of like goods in Australia.

The application specifies that the two largest manufacturers of formulated glyphosate in Australia are Accensi and Nufarm. The application claims that the two companies account for sales of more than 75% of Australian production of the goods the subject of the application. The applicants also toll manufacture formulated glyphosate on behalf of some of the other Australian producers of formulated glyphosate (and therefore the applicants claim their combined production of locally produced formulated glyphosate is likely to exceed 85%).

An assessment of whether the applicant has sufficient industry support must take into account all members of the Australian industry.

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The application identified the following other Australian producers 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

The applicants provided estimates of the production capacity, operating rates and production volumes (for formulated glyphosate 360 g/L equivalents) of the other identified members of the industry, based on market intelligence. The applicants identified market shares for the other Australian producers in 2010/11, which were not significant.

Based on the evidence provided in the application, Customs and Border Protection considers the application is supported by a sufficient part of the Australian industry and meets the legislative prescribed standing requirements.

Customs and Border Protection notes that due to the confidential nature of applications, prior to initiation, Customs and Border Protection has not contacted the listed other producers of formulated glyphosate to confirm their production volumes and verify the information provided by the applicant. These volumes will be investigated after initiation.

5 THE AUSTRALIAN INDUSTRY AND AUSTRALIAN MARKET**5.1 Finding**

Based on the information provided in the application, Customs and Border Protection is satisfied that there is an Australian industry producing like goods to the goods the subject of the application and that the data provided within the application is sufficient for the purpose of analysing the economic condition of the Australian industry.

5.2 Legislative framework

Sub section 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, the CEO is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the CEO must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Sub section 269T(1) defines like goods as:

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

This issue is examined in section 5.3 below.

The CEO must also be satisfied that the 'like' goods are in fact produced in Australia. Sub sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

This issue is examined in section 5.4 below.

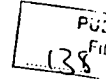
5.3 Locally produced like goods**5.3.1 Applicants' claims**

The applicants claim that the formulated glyphosate manufactured by the Australian industry is like to the imported formulated glyphosate. 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.*

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- (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 substitution can occur between the formulated products (whether locally produced or imported)⁸.*

The applicants advised that all formulations of glyphosate produced domestically are like goods to the goods imported from China. Formulated glyphosate is essentially the same product where glyphosate technical 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 identical uses. All imported and local formulations (at varying strengths) are applied within the approved application rates indicated on the product label, expressed on a litre per hectare basis.

5.3.2 Conclusion

Customs and Border Protection has examined the evidence presented in the application and considers the Australian industry produces like goods to the goods the subject of the application as defined in section 269T(1).

The applicants have demonstrated that:

- the primary physical characteristics of imported and locally produced formulated glyphosate are similar;
- the imported and locally produced formulated glyphosate are manufactured in a similar manner;
- the imported and locally produced formulated glyphosate are commercially alike as they are sold to common end users; and
- the imported and locally produced formulated glyphosate are functionally alike as they have the same end-uses.

5.4 Manufactured in Australia

The application states that Nufarm produces liquid formulated glyphosate herbicides at its Laverton North, Victoria and Kwinana, Western Australia plants. The applicants explained that Accensi manufactures formulated glyphosate at its plant in Narangba, Queensland.

The application provides the following description of the manufacturing process for formulated glyphosate:

"Formulated glyphosate is produced via a two-stage process, followed by packaging for transportation and sale."

⁸ Application, page 10.

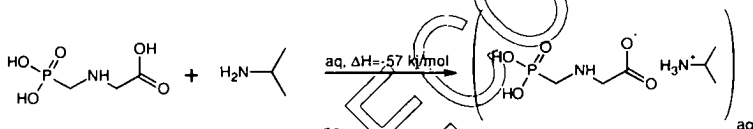
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The initial stage of the process involves the amination of glyphosate acid and mono- isopropylamine to produce the isopropylamine salt of the N-phosphonomethylglycine molecule (i.e. the active ingredient). The amination process is essentially a controlled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

The amination process is carried out in large purpose built reaction vessel 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 Australia⁹.

To substantiate the manufacturing process description, Nufarm's production flow diagram was provided.

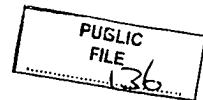
Substantial process of manufacture

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

⁹ Application, page 10.

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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 commercial herbicide occurs¹⁰.

Based on the above description of the manufacturing process, Customs and Border Protection is satisfied that there is at least one substantial process of manufacture performed in Australia 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.

5.5 Australian market

5.5.1 Background

The applicants state 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.

5.5.2 Market size

The applicant provided its estimate of the size of the Australian market for formulated glyphosate at the consolidated industry Appendix A2 of the application and summarised indexed movements in the market in section A4 of the application. The data was provided for the period 2007-08 to 2010-11.

The data within Appendix A2 in relation to the sales volumes and values for other Australian industry members were based on market intelligence. The consolidated industry sales data is discussed at section 7 of this report (including calculation and quantitative methodologies used for market and economic analysis).

For the purposes of constructing import levels at Confidential Appendix A2, the applicants sourced export data for Chinese exports and for other countries (including Argentina, Indonesia, Malaysia, New Zealand and Singapore). Import data from the Australian Bureau of Statistics (ABS) was not considered reliable for the purposes of establishing import levels. This issue is further examined later in this report.

5.5.3 Marketing and distribution

The applicants submit that the Australian formulated glyphosate market comprises local manufacturers, traders / importers, formulators (other Australian producers), other suppliers, distributors, resellers and end-users.

¹⁰ Application, page 11.

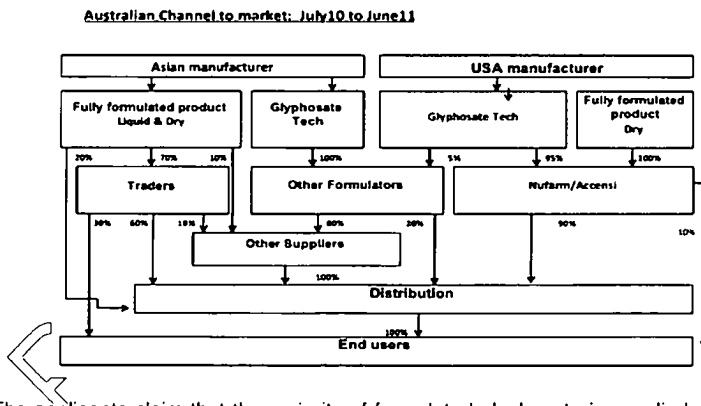
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The application provides a description of each of the market suppliers as follows:

- 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. Accensi and Nufarm 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 manufacturers, but more generally are responsible for purchasing formulated product from traders, formulators and other suppliers.

The application contained the following diagram, which depicts the 2010/11 market supply and distribution channels for locally produced and imported formulated glyphosate in the Australian market.

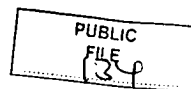


The applicants claim that the majority of formulated glyphosate is supplied and sold through traders and/or distributors to end-users.

5.5.4 Market segmentation

The applicants claim that formulated glyphosate products are supplied to five market segments in Australia, as tabulated below.

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Segment	Weed control	% of market
Pre plant winter cropping	Broadacre weed control	40%
Pre plant summer cropping	Broadacre weed control	15%
Fallow weed control	Broadacre weed control	30%
Horticulture	Trees, nuts, vines and vegetable weed control	5%
Industrial/retail and home	Railways, mining, forestry weed control	10%

The applicants claim that preferences / customer choice for formulated glyphosate products may vary between market segments. Market segmentation will be examined further during the investigation.

5.5.5 Demand variability

The application states that demand for formulated glyphosate varies according to seasons, 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 dependant on growth cycle for weeds and timing of crops.

The application notes that the peak demand period for formulated glyphosate is August to March.

5.5.6 Product inter-changeability

The application states that the locally produced product and imported formulated glyphosate are wholly interchangeable and can be substituted in all end use applications. Product inter-changeability will be examined further during the investigation.

5.5.7 Alternative products

The applicant states that there are other products substitutable for formulated glyphosate for the purposes of weed control. However they claim that formulated glyphosate is the preferred fit-for-purpose herbicide used in Australia.

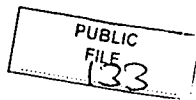
5.5.8 Imports

Customs and Border Protection's import database shows that in 2010-2011 the Australian market was also supplied by imports from China, Argentina and Taiwan. As mentioned previously the applicants sourced export data to make an assessment of import volumes and to estimate the size of the total Australian market. The applicants' and Customs and Border Protection's assessment in respect of imports of formulated glyphosate is discussed as sections 6.3 and 7.3.4 of this report.

5.5.9 Other factors impacting on the Australia market

The applicants consider that other influencing factors including technological advances and government regulations have not impacted the market in recent years.

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The application states that the recent increase in Chinese imports of formulated glyphosate can be partially attributed to the removal of the 9% export rebate on glyphosate acid in July 2010. Furthermore the Chinese Government's decision to retain a 5% export rebate on exports of formulated glyphosate has resulted in increased volumes of exported formulated glyphosate, instead of glyphosate acid. Relevant source documentation to substantiate these claims were provided in confidential appendices to the application.

5.6 Australian industry information

5.6.1 General accounting/administration information

Nufarm

Nufarm is a publically listed company on the Australian stock exchange. Two of Nufarm's Australian operating subsidiaries, Nufarm Australia Limited and Crop Care Australasia Pty Ltd, manufacture and sell formulated glyphosate products in Australia.

The application explains that Nufarm's financial accounting period is 1 August to 31 July. Nufarm's audited financial statements are consolidated at a global level. Nufarm Limited's Annual Reports for 2010 and 2011 were provided.

Accensi

Accensi is a 100 per cent owned subsidiary of Isnecca Pty Ltd.

The application explains that Accensi's financial accounting period is 1 January to 31 December. Accensi's financial statements are consolidated into Henrich Investments (the parent company for Isnecca Pty Ltd), which are audited annually. The application states that Accensi's parent company is ultimately owned by CK Life Sciences International Holdings Inc., (a company listed on the Hong Kong stock exchange).

Henrich Investments' Annual Reports for 2009 and 2010 were provided.

5.6.2 Australian industry's sales

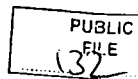
The applicant provided information in the application, including a summary of domestic and export sales (Nufarm only) volumes, revenue and rebates as required in Appendices A2, A3, A5 and A6. The relevant data periods for these appendices is discussed in section 7 of this report. Customs and Border Protection examined the detail in, and link between, these appendices, and considers them reliable for the purposes of assessing the economic condition of the industry.

As required by Appendix A4, the application includes detailed domestic sales of formulated glyphosate (including for toll manufactured formulated glyphosate) as follows:

- for Nufarm for the 12 month period ending July 2011; and
- for Accensi for the 12 month period ending September 2011.

Customs and Border Protection examined the detail in, and link between, relevant appendices and despite some minor discrepancies, considers that they reconcile

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reasonably. Australian sales of formulated glyphosate are discussed in further detail at section 7 of this report.

5.6.3 Australian industry's costs

The applicant completed an appendix A6 cost to make and sell spreadsheet for domestic sales, export sales (for Nufarm only) and for toll manufactured goods. According to the application Accensi did not export formulated glyphosate. The information provided in appendix A6 included production and sales volumes, manufacturing costs, selling, distribution and administrative expenses and sales volumes for:

- Nufarm for 1 August 2007 to 31 July 2011; and
- Accensi for 1 January 2008 to 30 September 2011.

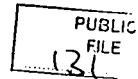
Appendix A1 was also provided to substantiate production volumes and capacity for the applicants (for the period 1 July 2010 to 30 June 2011).

Customs and Border Protection examined the detail in, and link between, relevant appendices and despite some minor discrepancies, considers that they reconcile reasonably. These issues are discussed in further detail at section 7 of this report.

5.6.4 Other economic factors

The applicants completed appendices A7 highlighting movements in assets, capital investment, research and development expenses, return on investment, capacity, capacity utilisation, employment, productivity, stocks, cash flow measures and wages. Other economic factors are discussed in further detail at section 7.9 of this report.

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6 REASONABLE GROUNDS – DUMPING

6.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, Customs and Border Protection is satisfied that there appear to be reasonable grounds to support the claim that:

- formulated glyphosate has been exported to Australia from China at dumped prices and calculated dumping margins are not negligible; and
- the individual total volume of the goods that have been dumped from China is greater than 3% of the total Australian import volume of the goods and therefore, not negligible.

6.2 Legislative framework

Sub section 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, the CEO is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice. Under section 269TG, one of the matters that the Minister must be satisfied of to publish a notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods.

6.3 Export sources - China

The applicants stated that ABS import data is not reliable to accurately depict import volumes or used as a basis for evidence of export prices, as import data for tariff classification sub heading 3808.93.00 includes a range of herbicide products and formulations. Customs and Border Protection examined its import data base and confirms that a range of herbicide products and formulation were imported under the relevant tariff subheading, including goods which are not the subject of the application. It also notes that:

- goods described as "glyphosate" were imported under different tariff subheadings;
- for specific consignments of goods imported under sub heading 3808.93.00, from the description of the goods formulation is not easily identifiable; and
- in 2010-11 under tariff sub heading 3808.93.00 no imports of 360 g/L (41% equivalent) were identifiable.

Discrepancies

Customs and Border Protection identified goods described as "glyphosate 41 %" and "glyphosate 360 formulated" imported under a tariff classification which falls within Chapter 29 [*Organic chemicals*]¹¹ from China in 2010/11. It is reasonable to assume that these imports are the goods. The total net volume of these imports in 2011 was

¹¹ Note, effective 1 January 2012, certain tariff classifications which fall under Chapter 29 were replaced, as part of the HS2012 amendments.

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approximately 3.4% of the total import volume of the goods¹² from China. Customs and Border Protection also notes that the nominated supplier and importer of these goods did not import formulated glyphosate under tariff classification 3808.93.00 in 2010/11. As the volume of these imports will not significantly impact total import volumes and market shares, for consideration purposes they have not been included. However, this issue will be addressed during the investigation.

For the purposes of assessing the application and to inform the CEO's consideration decision, Customs and Border Protection is satisfied that its import data classified to tariff sub heading 3808.93.00 is sufficient. However, as mentioned above, further investigation will be required to address identified deficiencies. The list of imports from Customs and Border Protection's import database is at **Confidential Attachment 1**.

The application identified the exporters / producers and importers of formulated glyphosate from China in 2010/11, as tabulated below.

Producer / exporter
Jiangsu Good Harvest Welen Agrochemical Co. Ltd
Shandong Rainbow Chemical Co., Ltd
Hangzhou Banghua Chemical Co., Ltd
Zhejiang LingHua Industry Company Limited
Zhejiang Wynca Chemical Group Co., Ltd
Zhejiang Biok K&P. Chemical Co. Ltd

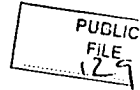
Importer
4 Farmers Pty Ltd
GenFarm Crop Protection Pty Ltd
Titan AG Pty Ltd
United Farmers
Ravensdown Ltd
United Phosphorous Limited

The applicants claimed that in 2010-11 Jiangsu Good Harvest Welen Agrochemical Co. Ltd and Shandong Rainbow Chemical Co., Ltd accounted for more than 90% of total imports of 450 g/L formulated glyphosate. Customs and Border Protection examined the data contained in its import database and:

- identified discrepancies between the exporters and importers of the goods listed in the application and database; and
- confirmed that the applicants claims in respect of the significant exporters of the goods were reasonable.

¹² These goods include formulated glyphosate imported under tariff classification sub heading 3808.93.00.

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6.4 Export prices

Given the issues with ABS import data, for the purposes of establishing export prices the applicants have:

- provided China Chemicals Market International (CCM) export data (CCM is a company which specialises in distribution of export sales data); and
- calculated deductive export prices.

These export prices and supporting calculations are examined below.

6.4.1 CCM export prices

The CCM export data provided includes exports to Australia from China of formulated glyphosate at varying strengths (including 41%, 51%, 62% and 75% equivalents) for the period July 2007 to September 2011.

The CCM export prices are shown in United States dollars (USD), calculated at free on board (FOB) and ex-wharf. The export prices are inclusive of local freight to the wharf from the manufacturer premises. Export quantities are measured in kilograms.

Customs and Border Protection has compared the CCM export prices for formulated glyphosate with export prices from its import database. As export prices in Customs and Border Protection's import database were in Australian dollars (AUD), average exchange rates for each quarter (based on forex data) were used for comparison purposes. The export prices in the import database were generally marginally lower than the CCM export prices.

However given the limitations of import data and as the prices were not significantly different, for the purposes of supporting the applicants claims, the database price and volume information supports the assertion that the CCM export prices are reasonable and representative of Chinese export prices. CCM export prices are at

Confidential Attachment 2.

The applicants have also calculated quarterly weighted average export prices for formulated glyphosate 360, 450, 570 and 680 g/L (1 litre pack size) for the period July 2010 to September 2011 (see section 6.8 for export prices provided by the applicant for the purposes of calculating dumping margins).

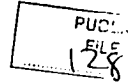
6.4.2 Deductive export prices

The applicants claim that the CCM export data is reasonable for the purposes of comparison with normal values and calculation of dumping margins. To substantiate this claim, the applicants also calculated weighted average deductive export prices for formulated glyphosate (360, 450, 570 and 680 g/L equivalents) exported to Australia from China for the period August 2010 to July 2011.

The applicants calculated FOB export prices using market intelligence regarding into store prices in Australia (to unrelated customers) less the following deductions:

- net profit (trader);
- delivery into store (to customer) costs;

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- warehousing / storage costs;
- selling, general and administrative (SG&A) expenses;
- freight costs from wharf to store;
- Customs duty – 5%;
- import clearance and handling fees and charges; and
- overseas freight and insurance.

All costs were exclusive of goods and services tax. Supporting documentation was provided to support “landed” / into store prices in the Australian market (which was also provided to substantiate the applicants’ injury claim in respect of price undercutting¹³). Offers for the supply of imported Chinese formulated glyphosate (dated 25 August 2010) and an importer price list of October 2011, highlighting FOB and Cost, Freight and Insurance prices were provided. Supporting documentation was also provided at confidential appendices to support importation costs and calculations.

Customs and Border Protection examined the deductive export price calculations and found that the applicant had made an error in regards to duplication of Customs duty, which was included in importation clearance fees. After this error was corrected, the deductive export prices increased by 5%. The applicants’ deductive export price calculations and the revised deductive export price calculations are at **Confidential Attachment 2**.

Customs and Border Protection also compared the applicants’ deductive calculation and the revised deductive export prices to CCM export prices. The CCM export prices were generally higher than the applicants’ deductive export prices but generally lower than the revised deductive export prices for each product formulation. Price variances are apparent each quarter, however are not considered significant.

6.5 Conclusion

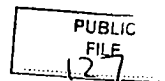
Article 5.2 of the World Trade Organisation *Anti-Dumping Agreement* states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Customs and Border Protection considers that, based on the information submitted in the application, the CCM export data and deductive export prices appear reasonable, with a correction made for duplication of Customs duty.

Customs and Border Protection therefore considers the export prices submitted for China to be reliable, relevant and suitable for establishing reasonable grounds that dumping has occurred for the purposes of initiation of an investigation.

¹³ Section A-9.2 of the application refers.

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6.6 Normal values

For the purposes of establishing normal values the applicants have:

- provided a commercial invoice for a domestic sale of 360 g/L (41% equivalent) formulated glyphosate dated September 2011;
- conducted a market survey of domestic selling prices with two domestic suppliers (dated October 2011); and
- calculated constructed normal values based on estimates for cost to make and sell plus SG&A and profit in China.

These normal values and supporting calculations are examined below.

6.6.1 Domestic selling prices

Commercial invoice

The application contained a commercial invoice for a domestic sale of formulated glyphosate 360 g/L (41% equivalent) dated September 2011, as supporting evidence for domestic Chinese selling prices. The domestic sale was for formulated glyphosate:

- sold in 1 litre containers at RMB 24,779 per litre; and
- sold in 200 ml containers at RMB 26,106 per litre.

Prices were value added tax (VAT) exclusive and Customs and Border Protection noted that terms of payment (e.g. credit / delivery) were not identifiable on the source documentation.

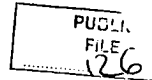
Domestic market survey

The application also contained a market survey conducted by an applicant company from two domestic suppliers of formulated glyphosate, covering the 12 month period ending September 2011, to provide supporting evidence of Chinese domestic prices. One of these suppliers is a manufacturer of formulated glyphosate and also purchases glyphosate technical from a large Chinese manufacturer. The other supplier is a retailer who supplies formulated glyphosate. A brief summary of the market surveys detailed below:

Domestic pricing

- In the months leading up to September 2011 domestic selling prices declined between 5-10%.
- Domestic prices for formulated glyphosate (product strength unspecified) supplied by Zhejiang Wynca Chemical Group (identified as the largest manufacturer of glyphosate) in 200ml containers declined to RMB 22,000 per kilo litre.
- One supplier advised that in August/September 2011 net selling prices for formulated glyphosate delivered to warehouse (VAT exclusive) ranged between RMB 18,000-26,000 per kilo litre.
- A second supplier (a retailer) advised that the domestic purchase prices sourced from two Chinese manufacturers for formulated glyphosate 360 g/L (41% equivalent) were RMB 17,500 and RMB 20,000 per kilo litre (VAT exclusive) (specific date not specified). Payment terms for these sales were described as "end of the season".

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Market / product

- Formulated glyphosate sold domestically incorporates a locally manufactured surfactant, however formulated glyphosate exported to Australia incorporates an imported surfactant (which is more expensive).

6.6.2 Constructed normal values

The applicants constructed domestic Chinese selling prices (normal values) based on the cost to make (packaging, freight and formulation costs inclusive) and including a margin encompassing SG&A expenses and profit. Constructed domestic selling prices were calculated for comparison with equivalent formulations of glyphosate exported to Australia and to reflect differences in surfactants and packaging used to manufacture domestically supplied and exported formulated glyphosate.

Costing methodology

The applicants calculated ex-factory domestic selling prices for the periods June 2010, June 2011 and August 2011. The applicants claim that it is considered reasonable to use the June 2010 data to construct normal values for the September and December 2010 quarters, the June 2011 data for the March and June 2011 quarters and the August 2011 data for the September 2011 quarter.

The applicants constructed normal value cost methodology is detailed below.

Glyphosate technical

An applicant secured 2010-11 cost of production data for glyphosate technical from two Chinese manufacturers. The applicants claim that glyphosate technical represents 60-70% of the total cost of production. It is not evident if this calculation is a proportion of variable, fixed or total cost to make and sell, and therefore, this claim has not been substantiated.

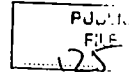
Average costs for glyphosate technical were calculated for June 2010, June 2011 and August 2011 for formulated glyphosate 360, 450, 570 and 680 g/L. Costs were calculated in RMB and USD and are VAT exclusive.

SG&A and profit were not applied to costs of glyphosate technical to reflect the applicants claim that Chinese manufacturers of formulated glyphosate also manufacture technical glyphosate. Customs and Border Protection does not consider this approach is appropriate, as it is reasonable to assume Chinese manufacturers of technical glyphosate will incur SG&A expenses. However Customs and Border Protection notes that including an SG&A and/or profit component for glyphosate technical is unlikely to impact on the constructed selling prices, given the applicants' constructed costing methodology. This is discussed further below.

Other raw material costs (e.g. surfactants)

The applicant constructed other raw material costs (including costs for locally produced and imported surfactant, MIPA and water). An applicant advised cost estimates for other raw materials were based on market intelligence obtained from Chinese manufactures (of surfactants and glyphosate). Other raw material costs were calculated for June 2010, June 2011 and August 2011 for formulated glyphosate 360, 450, 570 and 680 g/L. Costs were calculated in RMB and USD and are VAT exclusive.

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Customs and Border Protection noted that the locally produced cost was more than 50% less than cost of imported surfactant. Customs and Border Protection calculated that surfactant (imported and domestic) costs represent between 1-2% of the total cost to make and sell the different formulated glyphosate. The application did not provide any further details regarding the difference in surfactant costs.

Packaging and additional costs

The applicants calculated costs for packaging (including costs for pallets, stretch wrapping, labels, cartons and filling) and additional cost (e.g. formulation). An applicant advised cost estimates for these costs were based on market intelligence obtained from Chinese manufactures and suppliers.

Packaging and additional costs were calculated for June 2010, June 2011 and August 2011 for formulated glyphosate (standard costs applied to all formulations) sold in 200ml, 20 litres, 200 litres and 1000 litres pack sizes. Costs were calculated in RMB and USD and are VAT exclusive.

Freight costs

An inland freight cost was also calculated to transport the formulated glyphosate from the factory to the port as an equivalent cost for an export sale. This freight cost was based on market intelligence.

Margin - SG&A expenses and profit

To estimate SG&A expenses (other than packaging, freight and formulation costs) and a profit margin for the constructed selling prices, the applicants compared the constructed cost to make and sell to domestic selling prices obtained for August/September 2011 (from the domestic market survey). Although the domestic selling prices represent a single point in time, the applicants consider it is reasonable to use the derived selling margin (especially as prices were declining in 2011) and apply to costs to make and sell in June 2010, June 2011 and August 2011. Selling margins (encompassing SG&A and profit) were derived from the lowest net selling price obtained from one supplier in the market survey (RMB 18,000 per kilo litre) and the highest domestic selling price (RMB 26,000 per kilo litre).

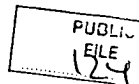
As previously noted, SG&A and profit were not calculated for derived glyphosate technical costs. Applying these factors would result in reducing the margin between the total constructed cost to make and sell formulated glyphosate and the net selling prices for domestic sales based on the domestic survey, but applying the margin to a higher cost base. Therefore, while their omission is not appropriate, it is noted that based on the applicants constructed selling price methodology, the inclusion of these costs and profit would have no impact on the overall constructed domestic selling prices. Therefore for the purposes of a consideration decision, these costs have not been recalculated.

Summary – constructed selling prices

In summary, to construct domestic selling prices for formulated glyphosate (as prima facie normal values) the applicants have:

- used average glyphosate technical costs;

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- added costs of other raw material (including surfactants);
- added packing, packaging and delivery costs; and
- applied an estimated margin (derived from lowest and highest prices provided in a domestic market survey) to reflect other SG&A expenses and profit.

The applicants constructed calculated domestic selling prices for formulated glyphosate 360, 450, 570 and 680 using locally and exported surfactant and in differing packing sizes (200ml, 20 litres, 200 litres, 1000 litres and 10 kilogram (kg) bags). Customs and Border Protection notes that constructed selling prices for formulated glyphosate (in 1 litre packaging) declined only from the second quarter in 2011. This does not support the applicants' claim that domestic prices decreased in the 12 months ending September 2011.

6.6.3 Adjustments

To ensure comparability to export prices the applicants have constructed normal values at FOB level (equivalent to export prices). The applicants have also made two adjustments to normal values for comparison to equivalent export prices.

The applicants have adjusted constructed normal values to reflect differences in VAT applied to sales and export rebates. The applicants uplifted the constructed selling prices by 12% to account for the difference between the 17% VAT which applies to domestic formulated glyphosate sales and the 5% export rebate which applies to formulated glyphosate exported to Australia.

The applicants also noted an adjustment for differences in surfactants used in manufacturing imported and exported formulated glyphosate. For the purposes of constructed normal values, the imported surfactant costs have been used to ensure comparability to export prices.

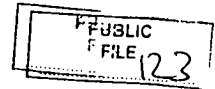
The applicants do not consider any other adjustments are necessary.

6.6.4 Conclusion

As noted previously, Article 5.2 of the World Trade Organisation *Anti-Dumping Agreement* states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Customs and Border Protection considers that, based on the information submitted in the application, the amounts used by the applicant to estimate domestic selling prices in China appear to be reasonable. The applicants have supported their constructed cost model with information that is reasonably available to it and, where assumptions have been made, have explained the basis for those assumptions. Where appropriate, the applicants have used market intelligence, to make adjustments to prices, if necessary, to make them appropriate to their understanding of industry conditions in China.

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The applicants have also included a profit margin (derived from the margin calculated representing the difference between costs to make and sell and net selling prices¹⁴) as part of the constructed normal value. Customs and Border Protection agrees that a reasonable level of profit where appropriate needs to be applied to the cost to make and sell formulated glyphosate in China. In this instance, whilst the applicants have not provided any supporting evidence for its estimate of profit, it is considered reasonable because it is based on a margin between evidenced costs and evidenced selling prices.

In the course of this investigation, Customs and Border Protection will seek information regarding an appropriate level of profit to apply should a constructed cost model be required for the determination of normal value.

Customs and Border Protection is also satisfied that, based on the information submitted in the application, no further adjustments to domestic selling prices are required. Constructed normal values and supporting calculations are at **Confidential Attachment 3**.

6.7 Import volumes - China

The application states that in 2010/11 imports of formulated glyphosate from China represented the largest volume (approximately 70%) of total imports into Australia.

From the information available from Customs and Border Protection's import database, it appears that imports from China (classified to tariff sub heading 3808.93.00) represented more than 3% of the total import volume of formulated glyphosate during 2010-11 and are therefore not in negligible volumes as defined in section 269TDA.

6.8 Dumping margins

The applicants have used constructed normal values for formulated product (360, 450, 570 and 680 g/L in 1 litre pack size) and compared to quarterly weighted average export prices, for equivalent formulations, to determine dumping margin calculations, as tabulated below (see page 30).

¹⁴ As previously noted the derived margin also includes SG&A.

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360 g/L strength formulate glyphosate (1 litre pack size)

Period	Low				High			
	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %
Qtr 3, 2010	2.68	1.45	1.23	85%	3.88	1.45	2.43	168%
Qtr 4, 2010	2.68	1.86	0.82	44%	3.88	1.86	2.02	109%
Qtr 1, 2011	2.81	1.94	0.87	45%	4.05	1.94	2.11	109%
Qtr 2, 2011	2.81	1.76	1.05	60%	4.05	1.76	2.29	130%
Qtr 3, 2011	2.76	1.62	1.14	70%	3.99	1.62	2.37	146%

450 g/L strength formulate glyphosate (1 litre pack size)

Period	Low				High			
	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %
Qtr 3, 2010	3.10	1.90	1.20	63%	4.48	1.90	2.58	136%
Qtr 4, 2010	3.10	2.05	1.05	51%	4.48	2.05	2.43	119%
Qtr 1, 2011	3.24	2.27	0.97	43%	4.68	2.27	2.41	106%
Qtr 2, 2011	3.24	2.18	1.06	49%	4.68	2.18	2.50	115%
Qtr 3, 2011	3.18	2.17	1.01	47%	4.60	2.17	2.43	112%

570 g/L strength formulate glyphosate (1 litre pack size)

Period	Low				High			
	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %	Normal Value US\$/L	China Export US\$/L	Margin US\$/L	Margin %
Qtr 3, 2010	3.15	1.99	1.16	58%	4.55	1.99	2.56	129%
Qtr 4, 2010	3.15	2.48	0.67	27%	4.55	2.48	2.07	83%
Qtr 1, 2011	3.29	2.75	0.54	20%	4.75	2.75	2.00	73%
Qtr 2, 2011	3.29	2.75	0.54	20%	4.75	2.75	2.00	73%
Qtr 3, 2011	3.23	2.06	1.17	57%	4.67	2.06	2.61	127%

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680 g/L strength formulate glyphosate (1 litre pack size)

Period	Low				High			
	Normal Value USD\$/L	China Export USD\$/L	Margin USD\$/L	Margin %	Normal Value USD\$/L	China Export USD\$/L	Margin USD\$/L	Margin %
Qtr 3, 2010	4.11	2.77	1.34	48%	5.94	2.77	3.17	114%
Qtr 4, 2010	4.11	2.72	1.39	51%	5.94	2.72	3.22	118%
Qtr 1, 2011	4.21	3.26	0.95	29%	6.08	3.26	2.82	87%
Qtr 2, 2011	4.21	3.32	0.89	27%	6.08	3.32	2.76	83%
Qtr 3, 2011	4.13	3.63	0.50	14%	5.96	3.63	2.33	64%

To test the applicants' dumping margin calculations, Customs and Border Protection calculated dumping margins for the period August 2010 to July 2011¹⁵ using revised deductive export prices, as tabulated below:

Glyphosate	Based on Low Normal Values USD\$/L	Based on High Normal Values USD\$/L
360	35-58%	96-128%
450	37-57%	98-127%
570	15-57%	66-127%
680	61-127%	69-109%

Customs and Border Protection's calculations, which fall within the range of 15% to 128% for the different formulations, are generally lower than those contained in the application (excluding dumping margins for formulated glyphosate 680 g/L which were higher). Dumping margin calculations (the applicants' and Customs and Border Protection's) are at **Confidential Attachment 4**.

Customs and Border Protection is satisfied that, based on the information submitted in the application, the applicant has demonstrated that there appear to be reasonable grounds for concluding that formulated glyphosate has been exported to Australia from China at dumped prices and;

- that the volume of these dumped imports was not negligible; and
- dumping margins were not negligible.

¹⁵ This period was used as price and cost data for deductive export prices were provided for quarters which align with Nufarm's financial year (August to July) and could not be extrapolated to calculate prices on a July to June financial year.

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7 REASONABLE GROUNDS – MATERIAL INJURY CAUSED BY DUMPED IMPORTS

7.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, Customs and Border Protection is satisfied that exports to Australia of formulated glyphosate from China at allegedly dumped prices appear to have caused material injury to the Australian industry.

7.2 Legislative framework

Sub section 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, the CEO is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice. Under section 269TG, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that, because of the dumping, material injury has been or is being caused or is threatened to the Australian industry producing like goods.

7.3 Approach to injury analysis

7.3.1 Financial data

As previously mentioned, the application states that 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 mis-aligned by a month as illustrated in the table below:

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

In presenting combined Nufarm and Accensi data, the application has aggregated each applicant's most comparable quarters. For example, Accensi's March quarter data has been combined with Nufarm's April quarter data. The application has then aggregated four quarters and presented annual data on a year ending June basis from 2007/08 to 2011/12. Customs and Border Protection considers that it is acceptable for the purpose of demonstrating that there appears to be material injury suffered by the Australian industry.

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Furthermore, as Accensi only commenced operations from January 2008, the 2007/08 combined financial data only includes six months of Accensi's financial data (or if relevant, the data has been presented on a pro rata basis).

Customer and Border Protection notes that the application includes data down to the formulated glyphosate product level (for varying formulations) for Nufarm and Accensi. However, for the purpose of assessing reasonable grounds of injury and causal link in this section, total annual aggregated figures have been used. Analysis at a lower product level, such as by product concentration, will be undertaken during the investigation.

7.3.2 Other Australian manufactured formulated glyphosate

As previously mentioned, the application states that the Australian formulated glyphosate industry comprises of a number of other Australian manufacturers apart from Nufarm and Accensi. The applicants have estimated the sales volume by the other Australian manufacturers for the purpose of determining the total Australian industry's sales volume. In doing so, the application has excluded Nufarm's and Accensi's sales of "toll" manufactured product in calculating the applicants own sales volume to avoid double counting.

In addition, the application has also presented costs data for its "toll" manufactured product separately in Appendix A6 for each applicant, however only presented combined Nufarm and Accensi costs data for own manufactured products (i.e. non-toll). Therefore, the analysis on price and profit effects also excludes "toll" manufactured products.

For the purpose of assessing reasonable grounds of injury caused by dumping in this section, Customs and Border Protection considers excluding toll manufactured products from the analysis to be acceptable. However, Customs and Border Protection notes that the application claims that injury *"is particularly evidenced in formulated glyphosate production that is toll manufactured..."*. In order to investigate and assess injury to the whole Australian industry, Customs and Border Protection will seek to contact other Australian producers to analyse sales and production of toll manufactured products during the investigation.

7.3.3 Aggregating different concentrations

The application presented market volume data in Appendix A2 by converting the volumes of different concentrations to 360 g/L equivalents, before aggregating the data, using the following conversion rates:

Concentration	Conversion rate to 360 g/L
360	1.000
450	1.250
470	1.306
510	1.417
540	1.500
570	1.583
680	1.889

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However, the application did not use 360 g/L equivalents in its combined costs spreadsheets at Appendix A6 and aggregated the cost data using actual volumes. Customs and Border Protection was able to convert the data in appendix A6 into 360 g/L equivalents.

7.3.4 Import data

As mentioned previously, Customs and Border Protection conducted a comparison of the import data contained in the application with data contained in Customs and Border Protection's import database. Despite the issues / discrepancies previously discussed, no significant variances in import volumes were identified and the applicants' estimates are therefore considered reasonable.

For the purpose of analysing the application in this report, the analysis of import volumes have been based on data contained in the application.

In this section, sales of imported formulated glyphosate by the applicants were included in the Australian industry's sales volume and excluded from the import volume.

7.4 Commencement of injury

The application claims that material injury to the Australian industry caused by dumping commenced after imports of formulated glyphosate exported to Australia from China increased by almost 400% in 2010/11.

7.5 The applicants injury claims

The application claims that due to imports of formulated glyphosate exported to Australia from China at dumped prices, Chinese exporters have undercut the Australian industry's selling prices by between 14.6% and 49.0%. The application argues that the price undercutting by the dumped imports have caused injury to the Australian industry in the form of:

- lost sales volumes;
- lost market share; and
- reductions in prices and impacts on profit and profitability.

The application also claims that, in certain circumstances, the Australian industry has reduced prices to compete with the dumped imports. However, it adds that the applicants have not sought to match all offers of the imported Chinese product as the offers were below the Australian industry's fully absorbed costs to make and sell.

The application further claims that lower production volumes due to an increase in import volumes of dumped formulated glyphosate in 2010/11 have caused the Australian industry's costs to be higher than it would otherwise be, impacting on profits and profitability.

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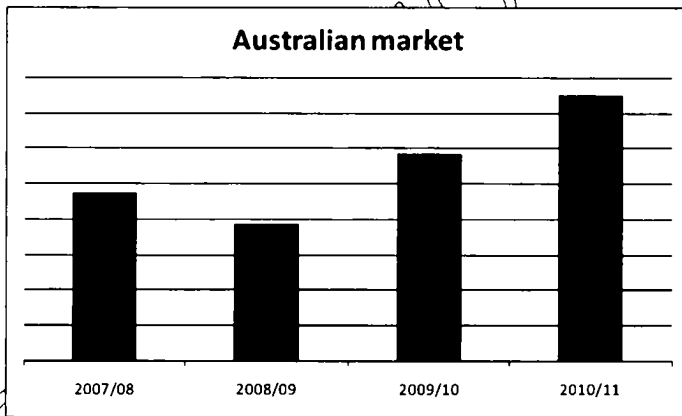
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In addition, the application claims that in 2010/11, the Australian industry has experienced injury caused by dumping in the following other economic injury indicators:

- 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.

7.6 Volume effects

The following graph shows the total volume of formulated glyphosate sales in Australia in 360 g/L equivalent (in litres) based on the data contained in the application.

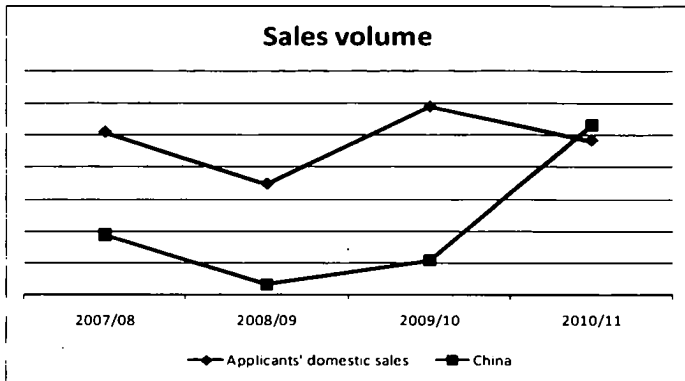


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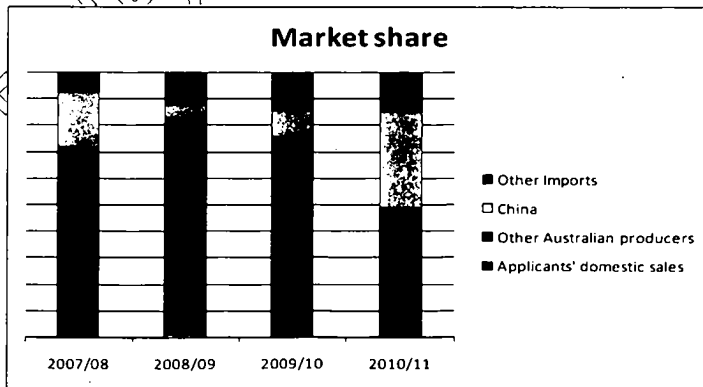
The following graph shows the applicants combined total sales volume (including imports and excluding "toll" manufactured products) and the import volume from China of formulated glyphosate in 360g/L equivalent litres based on data contained in the application.



In the graph above it appears that the applicants have lost sales volume between 2009/10 and 2010/11 to the allegedly dumped imports of formulated glyphosate from China.

The following graph shows the market share of formulated glyphosate in 360g/L equivalent litres based on data contained in the application broken down into:

- formulated glyphosate sales by the applicants (including imports);
- formulated glyphosate sales by other Australian industry members (including toll manufactured goods);
- imports of formulated glyphosate from China; and
- imports of formulated glyphosate from other countries.



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The graphs above show that the Australian formulated glyphosate market experienced an expansion between 2008/09 and 2010/11. This expansion was partially reflective of the end of drought periods in Australia. Despite this, it appears that the applicants lost sales volume between 2009/10 and 2010/11. In the same period, imports of formulated glyphosate significantly increased, capturing greater market share at the expense of the applicants and the overall Australian industry.

Consequently, it appears that the applicants have lost market share between 2009/10 and 2010/11 to the allegedly dumped imports of formulated glyphosate from China.

7.6.1 Conclusion – volume effects

Based on this analysis, there appear to be reasonable grounds to support the claim that dumped imports have caused injury to the applicants in the form of lost sales volume and market share.

7.7 Price effects

Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the locally manufactured product.

As previously mentioned, the applicants claim that the Australian industry's selling prices have been undercut by the imported Chinese formulated glyphosate (in the Australian market). They claim that a comparison of selling prices (at the distributor level of trade) for imported formulated glyphosate to the Australian industry's selling prices shows significant levels of price undercutting (ranging between 14.6% and 49.0%). The applicants also claim that for certain product lines they have not reduced prices to match the selling prices of the Chinese imports because the price reduction required would result in selling prices below the Australian industry's fully absorbed cost to make and sell. For these product lines the applicants claim that price undercutting is not substantial.

To support the claim of price undercutting (and evidence of into store costs for the Chinese imports), the application also refers to the deductive export prices which were calculated and the supporting documentation which was provided (section 6.4.2 refers).

In assessing these claims, Customs and Border Protection notes that based on the information provided there does appear to be some level of price undercutting for certain formulated glyphosate products.

As previously mentioned an error was identified with deductive export price calculations (through duplication of Customs duty). However based on the prices provided for comparison purposes (at application section A.9.2) for 360 and 450 g / L there does appear to be price undercutting for these products (even if an adjustment is made to account for the duplication of Customs duty).

However as noted at section 7.3.1, for the purposes of assessing reasonable grounds, injury is not being assessed down to product levels by concentration /

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formulation. Also, based on the applicant's own admission price undercutting is not evident across all product lines. While there appears to be price undercutting for certain products, the extent of this undercutting across all formulated glyphosate cannot be confirmed (at this stage). Therefore Customs and Border Protection cannot be satisfied that any price undercutting of the Chinese imports is causing injury to the applicants. This issue will be further investigated.

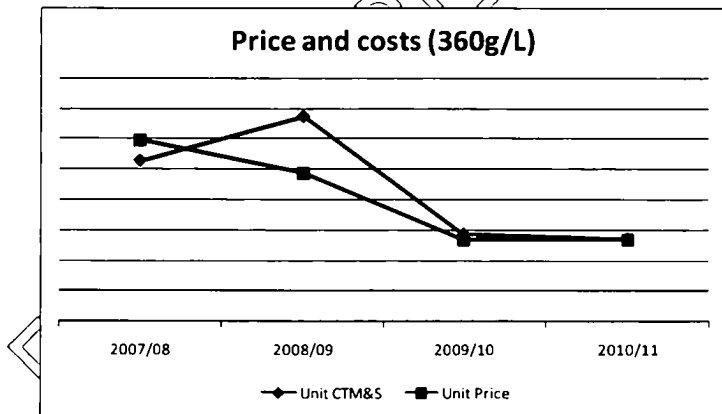
Price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices.

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

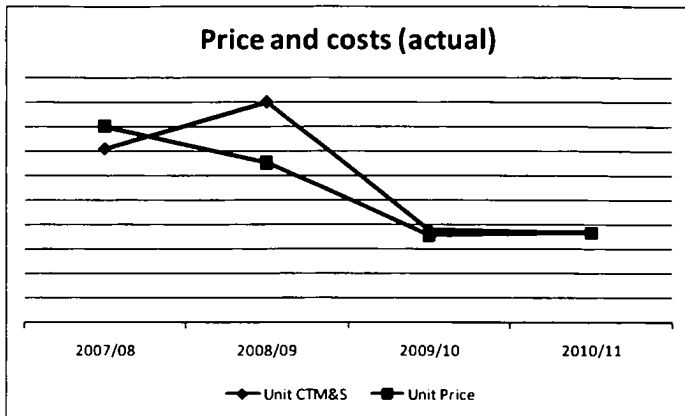
Although the application has not claimed injury in the form of price depression or price suppression, Customs and Border Protection nonetheless analysed the applicants' sales and cost data as part of the usual course of assessing whether there appear to be reasonable grounds for the publication of a dumping duty notice.

The following graphs show the applicants combined weighted average unit price and unit cost to make and sell based on data contained in the application. The first graph is presented in 360 g/L equivalents, while the subsequent graph uses actual volumes



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The graphs above show that the applicants' prices decreased between 2007/08 and 2009/10 then stabilised in 2010/11. Similarly, the applicants' costs observed a downward trend over the same period with costs peaking in 2008/09. The application explains that this peak was due to a shortage of glyphosate technical. The application also explains that glyphosate formulate prices did not follow costs higher in 2008/09 due to dry conditions in Australia at the time.

In 2010/11, the period the applicants claimed that injury from the alleged dumped imports from China commenced, it appears that prices increased slightly while costs decreased slightly.

7.7.1 Conclusion – price effects

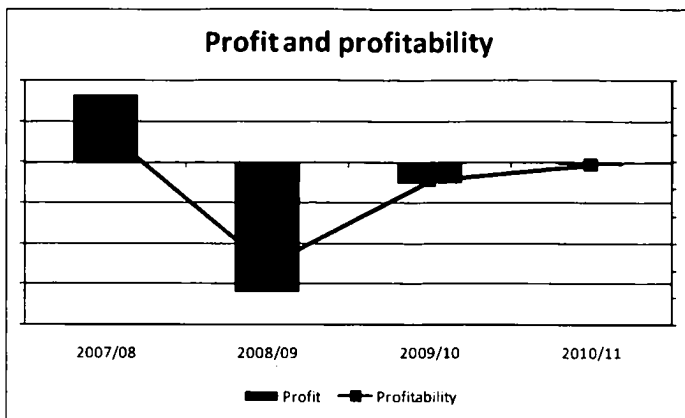
Based on this analysis, there does appear to be reasonable grounds to support the claim that dumped imports have undercut some of the locally manufactured goods, however Customs and Border Protection cannot be satisfied that this has caused injury to the applicants (at this stage). There also does not appear to be reasonable grounds to support a claim that dumped imports have caused injury to the applicants in the form of price depression and price suppression.

7.8 Profit and Profitability effects

The following table shows the applicants' combined total profit and profitability based on data contained in the application. Customs and Border Protection notes that calculating profitability using either actual or 360g/L equivalent volumes produce identical figures.

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The graph above shows that the applicants' financial position deteriorated rapidly between 2007/08 and 2008/09 from a profit to a loss. It appears that this was the consequence of the glyphosate technical shortage pushing costs higher on one hand and low demand for formulated glyphosate due to the drought pushing prices lower on the other. However, the applicants' financial position improved in 2009/10 as the cost fell from its peak, and then almost broke even in 2010/11.

As discussed in section 7.5 above, the application claims that the lost sales volume caused by dumped imports have resulted in costs to be higher than it otherwise would have been, presumably through higher unit fixed costs. Although this claim appears to be reasonable, a preliminary analysis of the applicants cost data, particularly the proportion of its unit cost that is fixed and the trend in fixed costs, indicates that any reduction in overall unit costs from higher sales and production volume in 2010/11 would be small.

Overall, it appears that there is insufficient evidence to find that the applicants have suffered lost profit or profitability due to the alleged dumped imports.

7.8.1 Conclusion – profit and profitability effects

Based on this analysis, there does not appear to be reasonable grounds to support the claim that dumped imports have caused injury to the applicants in the form of reduced profit and profitability.

7.9 Other economic factors (including revenue effects)

Customs and Border Protection examined the information provided in the Appendix A7 and notes that both applicants production capacity of formulated glyphosate is significantly underutilised throughout 2007/08 to 2010/11, with a significant fall between 2009/10 and 2010/11.

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The data also shows that the applicants experienced reduced revenue and higher inventory levels between 2009/10 and 2010/11, which is likely to be a consequence of lower sales volume experienced by the applicants (section 7.6 above).

7.9.1 Conclusion – other economic factors (including revenue effects)

Based on the information contained in the application there appears to be reasonable grounds to support the claim that dumped imports have caused injury to the applicants in the form of reduced revenue, reduced capacity utilisation and increased inventory levels.

Customs and Border Protection will further analyse the other economic (and revenue) indicators claimed in the application, including those discussed in this section, during the investigation.

7.10 Factors other than dumping

The application claims that there are no factors other than the alleged dumped imports of formulated glyphosate exported to Australia from China that have caused injury to the Australian industry.

Based on an analysis of the application, it appears that there were no other factors that caused injury to the Australian industry in 2010/11 other than the increase in imports of formulated glyphosate from China at allegedly dumped prices.

7.11 Comparison of export price and non injurious price

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice.¹⁶

The NIP is the minimum price necessary to prevent injury to the Australian industry producing like goods.¹⁷

Customs and Border Protection generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping and subsidies. This price is referred to as the USP.

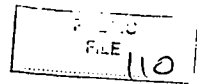
Customs and Border Protection's approach to establishing USPs observes the following hierarchy:

- industry selling prices at a time unaffected by dumping and subsidies; or
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of undumped/unsubsidised imports.

¹⁶ Sub section 269TC(1)(c)

¹⁷ Sub section 269TACA(a)

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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.

These deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The applicants have not provided USP or NIP estimates as this is not required by the application form. However, it is considered appropriate to compare the allegedly dumped and subsidised export prices to NIP estimates for the purposes of this report.

If the export prices are greater than the NIP, it would suggest that dumping and subsidies may not be causing material injury. If, on the other hand, the export prices are lower than the NIP, this would support a finding that dumped and subsidised imports have caused material injury to the applicant producing like goods.

Customs and Border Protection has undertaken a preliminary calculation of a USP and NIP for formulated glyphosate.

As discussed in section 7.4 above, the application claims that injury to the Australian industry caused by dumping commenced in 2010/11. Therefore, the USP has been calculated based on the applicants' selling prices in 2009/10, which at this preliminary stage appears reasonable, as unit costs to make and sell during this period were relatively stable.

To derive the NIP, an amount for selling, general and administration expenses and post exportation charges have been deducted from the USP based on data contained in Part B of the application.

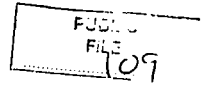
The analysis found that estimated export prices (based on those calculated in Section 6 above) were still all lower than the NIP. This finding supports the claim that dumping has caused injury to the Australian industry.

7.12 Conclusion on material injury caused by dumped imports

It appears that dumping has caused injury to the applicants in the form of lost sales volume, lost market share, reduced revenues and increased inventory levels. However, it does not appear, from the evidence presented in the application, that the applicants have suffered, or that dumping has caused the applicants to suffer, injury in the form of price depression, price suppression, lost profit or reduced profitability. Further investigation is required in respect of price undercutting claims. During an investigation, Customs and Border Protection will seek to gather more evidence from the Australian industry to support the material injury claims in the application.

Nonetheless, it is clear from the application that the increase in imports of formulated glyphosate from China in 2010/11 is significant and the consequential lost market share experienced by the applicants is not immaterial. The data provided in the application suggests that the applicants' production capacity of formulated glyphosate is under utilised and in the absence of the alleged dumped imports from

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China, the applicants could have achieved materially higher sales volume and captured a significantly greater share of the expanding Australian market.

Considering that the applicants represent the majority of the Australian industry, it is reasonable to conclude that it appears that the Australian industry, as a whole, has experienced material injury caused by dumped imports from China.

Therefore, Customs and Border Protection is satisfied that there appear to be reasonable grounds to support the claim that formulated glyphosate exported to Australia from China at dumped prices have caused material injury to the Australian industry.

The analysis contained in this section (and USP / NIP calculations) is at
Confidential Attachment 5.

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8 CONCLUSION

Customs and Border Protection has examined the application and is satisfied that:

- the application complies with section 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application exported from China.

Customs and Border Protection recommends that the CEO decide not to reject the application for the publication of a dumping duty notice under section 269TC(1).

For the purposes of the investigation:

- the investigation period to determine whether dumping has occurred will be from **1 January 2011 to 31 December 2011**; and
- Customs and Border Protection will examine the Australian market and the economic condition of the industry from **1 January 2008** for the purposes of injury analysis.

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9 ATTACHMENTS

Confidential Attachment Number	Title
Confidential Attachment 1	Imports
Confidential Attachment 2	Export prices (including deductive export prices and supporting costing methodology)
Confidential Attachment 3	Normal values (constructed and supporting costing methodology)
Confidential Attachment 4	Dumping margin calculations
Confidential Attachment 5	Injury analysis (including volume, price and profit effects) and USP / NIP calculations