



Australian Government

**Australian Customs and
Border Protection Service**

**INVESTIGATION INTO THE ALLEGED DUMPING OF
FORMULATED GLYPHOSATE**

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

IMPORTER VISIT REPORT

LANDMARK PROPRIETARY PRODUCTS GROUP

**THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED
THEREIN WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND
MAY NOT REFLECT THE FINAL POSITION OF CUSTOMS AND BORDER
PROTECTION**

April 2012

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2 BACKGROUND AND PURPOSE

2.1 The application

On 21 December 2011, Nufarm Ltd (Nufarm) and Accensi Pty Ltd (Accensi) lodged an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice¹ in respect of formulated glyphosate exported to Australia from the People's Republic of China (China). The applicants subsequently provided further information in support of their application. As a result, the Australian Customs and Border Protection Service (Customs and Border Protection) restarted the 20 day period for considering the application.

On 6 February 2012, following consideration of the application, Customs and Border Protection initiated an investigation. Public notification of initiation of the investigation was made in *The Australian* on 6 February 2012. Australian Customs Dumping Notice No. 2012/05 provides further details of this investigation and is available at www.customs.gov.au.

Customs and Border Protection has previously conducted two investigations into formulated glyphosate from China. The most recent investigation was in 2001-02, following an application lodged by Monsanto Australia Limited (Trade Measures Report No. 45 refers). Accensi, then trading as A&C Chemicals, was an interested party in this previous investigation. There are no current anti-dumping or countervailing measures on formulated glyphosate exported to Australia from China.

Following initiation of the investigation, a search of Customs and Border Protection's import database indicated that Landmark Proprietary Products Group (Landmark) had imported formulated glyphosate from China during the investigation period (January 2011 to December 2011). Customs and Border Protection wrote to Landmark advising the company of the initiation of the investigation, requesting co-operation with the investigation and provided the company with a copy of the importer questionnaire to complete. Landmark was also provided with a list of its imports during the investigation period, extracted from Customs and Border Protection's import database, and identified a number of transactions from the list for verification.

Landmark completed the importer questionnaire, providing details regarding the company, overseas supplier information, imports and expenses. Company details are summarised in the following table.

Company	Landmark Proprietary Products Group
Address	Suite 2, Level 3, 64 Talavera Road, MACQUARIE PARK
Telephone no.	02 9889 5400
Fax no.	02 9889 5411

¹ under s. 269TAB(1)(a) of the *Customs Act 1901*. A reference to a section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

2.2 Purpose of meeting

The purpose of this visit was to:

- confirm that Landmark was an importer of formulated glyphosate and obtain information to assist in establishing the identity of the exporter;
- verify information on imports of formulated glyphosate to assist in the determination of export prices from China;
- establish whether the purchases were arms length transactions;
- establish post exportation costs incurred in importing;
- identify Landmark's sales and customers and determine sales volume, selling prices and selling costs;
- recommend how export price may be determined under s. 269TAB; and
- provide Landmark with an opportunity to discuss any issues it believed relevant to the investigation.

2.3 Meeting

We provided a summary of the investigation process and timeframes as follows:

- the investigation period is January 2011 to December 2011;
- Customs and Border Protection will examine the Australian market from January 2008 for the purpose of analysing the condition of the Australian industry;
- a preliminary affirmative determination may be made no earlier than 10 April 2012 – which is the first working day after the Easter public holiday;
- provisional measures may be imposed at the time of the preliminary affirmative determination or at any time after the preliminary affirmative determination has been made, but Customs and Border Protection would not make such a determination until it was satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice;
- a statement of essential facts will be placed on the public record by 28 May 2012 or such later date as the Minister allows - the statement of essential facts will set out the material findings of fact on which Customs and Border Protection intends to base its recommendations to the Minister and will invite interested parties to respond, within 20 days, to the issues raised (submissions received in response to the statement of essential facts will be considered when compiling the report and recommendations to the Minister);
- Customs and Border Protection's report to the Minister is due no later than 10 July 2012, unless an extension to the statement of essential facts is approved by the Minister.

We advised Landmark that we would prepare a confidential report on the visit. Landmark would be given an opportunity to review the visit report for accuracy. A non-confidential version of this visit report would be prepared in consultation with Landmark.

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The meeting was held at Landmark's Macquarie Park offices on Tuesday 10 April 2012. The following people were present at various stages of the meeting.

Landmark	Mr Sean Ho, General Manager Ms Juliet Molam, Financial Controller
Customs and Border Protection	Mr Chris Vincent, Manager Operations 1 Mr An Chew, Supervisor Operations 2

Prior to the meeting we forwarded an agenda to Landmark and advised that we would require supporting documentation for the selected sales that had been previously identified.

Landmark was co-operative and had the required documentation available for the meeting.

3 THE GOODS

3.1 The goodsGeneral description

The good 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.

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 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 grams per litre 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%

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.*

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 stage of the investigation, Customs and Border Protection considers that the goods covered by this application, and thus any subsequent investigation, includes formulated glyphosate in any form (that is, 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 (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 Tariff classification

Formulated glyphosate is classified under the tariff subheading 3808.93.00 (statistical code 48) of Schedule 3 to the *Customs Tariff Act 1995*. The current rate of duty applying to formulated glyphosate imported to Australia from China is 5%.

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
1 January 2007 to 31 December 2009	3808.93.00	16
1 January to 31 December 2010	3808.93.00	43
1 January to 31 December 2011	3808.93.00	48
As of 1 January 2012	3808.93.00	49

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

3.3 Like goods

Landmark considers that domestically produced fully formulated glyphosate is a like good to the imported products. They are completely substitutable. Landmark claimed that the Australian industry does not make dry product, but stated that this is substitutable for liquid products.

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Landmark considers that glyphosate 62% is not a like good. This product has been solubilised, but the wetter and other chemicals have not been added (that is, it is not fully formulated glyphosate). Landmark considers that this product competes with glyphosate technical.

3.4 Substitutes

Landmark claimed that that Paraquat was a substitute for fully formulated glyphosate, but it was not as good.

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4 COMPANY BACKGROUND

Landmark Proprietary Products Group (Landmark) is a division of Landmark Operations Ltd (Landmark Operations). Landmark Operations is the largest retailer of farm chemicals in Australia with about █% of the market. It has █ stores with combined revenue of \$█. Landmark Operations is owned by a Canadian business, Agrium, which has a huge retail business in North America.

Landmark Operations sells █ [Sales arrangements between Landmark and its customers]. Landmark was █ [History of the formation of Landmark]. It has █ [Retail brands of the goods]. During the investigation period Landmark only imported the Genfarm brand of fully formulated glyphosate.

█

[Arms length nature of the sales between Landmark and its customers].

5 IMPORTS

5.1 Introduction

Customs and Border Protection's import database indicates that Landmark imported goods under tariff subheading 3808.93.00 (statistical codes 42, 43 48 and 49) from a number of suppliers. The quantity (in kilograms) imported from each supplier is summarised in the following table.

Exporter	2010	2011
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

The majority of these imports were glyphosate 450, but some solid material was imported. The liquid product was imported in 20 and 1000 litre containers.

Landmark stated that it is [REDACTED] [future plans on the importation of the goods].

Landmark stated that when [REDACTED] [decision making process on whether to import the goods].

Landmark stated that it [REDACTED] [ordering arrangements]. [REDACTED] [storage and transportation process].

5.2 Verification of the import costs

In its importer questionnaire response, Landmark completed Part B – Sales route spreadsheet of 13 selected shipments. During the visit, Landmark provided copies of source documents for each shipment including:

- commercial invoices;
- packing list;
- bills of lading;
- Customs Broker invoices;
- N10 Import Declarations; and
- purchase orders.

The documents provided by Landmark are at **confidential attachment IMP 1**.

Landmark explained that each purchase order [REDACTED] [relationship between purchase orders and shipments]. We note that each purchase order [REDACTED] [details of purchase orders]. We also noted that the Cost and Freight (CFR) unit prices on the purchase orders are the same for each purchase order regardless of the delivery port.

Landmark explained that each purchase order is entered into its accounting system ([REDACTED]) as a job which tracks the revenue and costs for each job and provided us with a Budget Analysis report for the jobs related to the selected shipments (confidential attachment IMP 2).

We then sought to verify the data contained spreadsheet by reconciling it to the source documents. In relation to the cost of the goods purchased, we were able to match the details on the commercial invoices to the spreadsheet.

5.2.1 Foreign exchange rate

As the invoiced price was in USD, we sought to establish the exchange rate for each shipment and therefore the invoiced price in AUD. We calculated the exchange rate for each job based on the total USD from the purchase order and the total AUD cost of purchases plus any foreign exchange currency gains/losses shown on the Budget Analysis report (confidential attachment IMP 2) and applied this exchange rate to the relevant shipment.

5.2.2 Ocean freight and marine insurance

As the invoiced price is at CFR or cost, insurance and freight (CIF), we calculated the ocean freight and marine insurance based on the T&I amount declared on the N10 Import Declaration.

5.2.3 Importation costs

We calculated the importation costs based on the total cost of sales for each job in the Budget Analysis report (confidential attachment IMP 2), less the purchase price and foreign exchange currency gains/losses, then pro-rata the residual cost based on volume.

In order to verify that the accuracy of the Budget Analysis report, Landmark provided Job Transaction ledgers (confidential attachment IMP 3) which provides detailed transaction listings of the revenue and costs for each job. We were then able to match the charges shown on the Customs Broker invoices for each shipment to the Job Transaction ledgers (confidential attachment IMP 3). In addition, we selected, and Landmark provided, a storage cost invoice (confidential attachment IMP 4) for further verification and were able to match the details on the invoice to the Job Transaction ledgers (confidential attachment IMP 3) for all but one item. Landmark explained that for that particular item, [REDACTED] [explanation of the variance] and only the difference entered into its

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accounting system and provided documentation supporting this (confidential attachment IMP 5).

5.2.4 Selling, General and Administration (SG&A) expenses

To calculate the SG&A expenses, Landmark provided us with a copy of its income statement for the 2011 calendar year (confidential attachment IMP 6). We calculated the SG&A expenses as a percentage of revenue for the whole of the investigation period.

5.2.5 Summary

Post FOB expenses for the 450g/L glyphosate and 680g/kg imported by Landmark are summarised in the following table (expressed in Australian dollars per litre or kg). Sales and the profitability of these shipments are discussed in section 6.

Cost item	450 g/L	680 g/kg
Ocean freight	████	████
Importation charges (including duty)	████	████
SG&A expenses	████	████

The updated sales route spreadsheet is at confidential attachment IMP 7.

5.3 Who is the importer

We noted that Landmark:

- is named as the customer on supplier invoices;
- is named as the consignee on the bill of lading; and
- arranges delivery of the goods to one of its warehouses or direct to its customers.

We consider Landmark was the beneficial owner of the goods at the time of importation and is therefore the importer.

5.4 Who is the exporter?

Customs and Border Protection will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

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Where there is no principal in the country of export Customs will normally consider the exporter to be the person who gave up responsibility for the goods as described above.

We reviewed the documentation provided in relation to the sample shipments. We are satisfied that:

- the commercial invoices identify the manufacturer as the supplier;
- the bills of lading identify the manufacturers as the shipper of the goods;
- the manufacturers arrange and pay for the goods to be transported to the wharf and loaded onto the ship in the country of export; and
- Landmark pays the supplier.

Based on the information available we are satisfied that the suppliers were the exporters of the goods.

5.5 Arms length

For sales between the suppliers and Landmark we did not find any evidence that:

- there is any consideration payable other than price; or
- the price is influenced by a commercial or other relationship between Landmark and the suppliers.

We confirmed during our verification that the price invoiced by the suppliers, was the price paid by Landmark. Therefore, we consider that sales between the suppliers and Landmark were arms length transactions.

6 AUSTRALIAN MARKET AND SALES**6.1 General**

Landmark could not estimate the market for fully formulated glyphosate. It claimed that it fluctuates with rain. Landmark stated that in Australia formulated glyphosate was almost exclusively used in the cultivation of crops and the market was from about September to March. Fully formulated glyphosate is a knock down pre-emergent herbicide. During the summer paddocks are sprayed when they green up after rain to preserve moisture in the soil. Recent rains had therefore increased demand for fully formulated glyphosate. When crops are planted in April formulated glyphosate can longer be used as it would also kill the crop; the paddocks cannot be sprayed until after harvest in spring. During the growing period selective post emergent herbicides must be used.

[REDACTED] [Comment on the prices and the seasonality of formulated glyphosate]. Landmark stated that fully formulated glyphosate is a commodity product and returns are not high. However, retailers need to have the product on the shelf so they can get better returns on other products.

Landmark stated that the most appropriate level to compare prices was Nufarm's sales to distributors with Landmarks sales to Landmark Operations.

6.2 Sales verification

[REDACTED]
[profits and the relationship between Landmark and its customers].

In order to calculate the sales revenue for each shipment, Landmark provided us with a spreadsheet that lists detailed sales transactions (**confidential attachment SALES 1**). We calculated the net revenue for each shipment based on [REDACTED].

Due to the nature of the relationship between Landmark and its customers (i.e. Landmark branded retail branches), we did consider that the goods that are imported by Landmark are subsequently sold to person who is an associate of Landmark. Therefore, we did not consider it necessary to further verify Landmarks' sales.

6.3 Profitability of sales

Notwithstanding the relationship between Landmark and its customers, we analysed the profitability of each shipment.

Of the 13 selected shipments, we found that [REDACTED] [profitability of the shipments]. Landmark advised that three of the unprofitable shipments attracted higher inland freight costs due to the Queensland

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floods requiring redistribution of the goods from its Queensland warehouses to other centres. The forth unprofitable shipment made a loss of less than 1%. As a result, we do not consider that this is an indication that Landmark will directly or indirectly be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or part of the price² nor does it warrant a departure from the conclusion on arms length in section 5.5 above. In addition, we found that of the selected shipments, the weighted average profitability for 450g/L was ■% and 680g/kg was ■%.

² s. 269TAA(2)

7 UNSUPPRESSED SELLING PRICE

We explained the concepts of unsuppressed selling price and non-injurious price to Landmark. Landmark did not have any comments on the calculation of an unsuppressed selling price.

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8 GENERAL COMMENTS

Landmark stated that it will be difficult to establish normal values using domestic sales in China. Glyphosate 450 is the predominant product exported to Australia, but this is not sold in China. The main product sold in China is 10% glyphosate – waste water from the production process is processed by Chinese manufacturers to make this product.

Landmark could not understand how an investigation could target fully formulated glyphosate and not glyphosate technical as at least 65% of the cost of production related to the production of glyphosate technical.

[REDACTED]

[REDACTED]

[REDACTED]

[Comment on the competitiveness of the Australian industry]

9 RECOMMENDATIONS

Based on the information available, for fully formulated glyphosate exported from China to Landmark:

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

Subject to further inquiries with the exporters, we are satisfied that the export prices can be established under s. 269TAB(1)(a) using the invoice prices less any costs in respect of matters arising after exportation. Export prices will be determined following visits to the exporters.