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CUSTOMS ACT 1901 - PART XVI


INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NUMBER 183

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

25 June 2012

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2 ABBREVIATIONS & SHORTENED FORMS

Abbreviation / shortened form	Full title / form
Accensi	Accensi Pty Ltd
ACDN	Australian Customs Dumping Notice
the Act	Customs Act 1901
APVMA	Australian Pesticides and Veterinary Medicines Authority
CEO	Chief Executive Officer
China	People's Republic of China
CON183	International Trade Remedies Branch Consideration Report No. 183 (the Consideration Report for this investigation)
CTMS	cost to make and sell
Customs and Border Protection	Australian Customs and Border Protection Service
FOB	free on board
the goods	the goods the subject of the application ('formulated glyphosate')
MIPA	mono-isopropylamine
NIP	non-injurious price
Nufarm	Nufarm Limited
Selected cooperating exporters	exporters that provided adequate and timely responses to the exporter questionnaire, which were verified
Selected non-cooperating exporters	exporters that did not respond to the exporter questionnaire
SG&A expenses	selling, general and administration expenses
the Minister	Minister for Home Affairs
USP	unsuppressed selling price
Tariff Act	Customs Tariff Act 1995
TCO	Tariff Concession Order
Trade Measures Report No. 45	TM Report No. 45

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3 SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application lodged on behalf of Nufarm Limited (Nufarm) and Accensi Pty Ltd (Accensi) (herein referred to as 'the applicants') in relation to the allegation that dumping of formulated glyphosate¹ exported to Australia from the People's Republic of China (China) caused material injury to the Australian industry producing like goods.

This statement of essential facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) for the investigation (Investigation No. 183) proposes to base their recommendations to the Minister for Home Affairs (the Minister) in relation to the application.

3.1 Preliminary findings

Customs and Border Protection found that there has been no dumping of formulated glyphosate by selected cooperating² Chinese exporters. Customs and Border Protection found that the volumes of formulated glyphosate exported by selected non-cooperating³ exporters (all other Chinese exporters) was less than 3% of the total Australian import volumes and therefore was negligible.

Provided that no new information is put to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry, Customs and Border Protection proposes that the CEO terminate the investigation in relation to formulated glyphosate exported to Australia from China.

3.2 Application of law to facts

3.2.1 Authority to make decision

Division 2 of Part 10B of the *Customs Act 1901*⁴ (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application.

3.2.2 Application

On 20 December 2011, an application was lodged on behalf of the applicants requesting that the Minister publish a dumping duty notice in respect of formulated glyphosate exported to Australia from China.

¹ Refer to the full description of the goods in section 5 of this SEF.

² Defined at section 8.3.2.

³ Ibid.

⁴ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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On 6 and 23 January 2012, additional information in respect of the application was received, which restarted the consideration period.

The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

3.2.3 Initiation of Investigation

After examining the application, the CEO was satisfied that:

- there was, or was likely to be established, an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

The CEO decided not to reject the application and notice of the initiation of this investigation was published on 6 February 2012.

3.2.4 Statement of essential facts

The CEO must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a SEF on which the CEO proposes to base his recommendation in relation to the application.

In formulating the SEF, the CEO must have regard to the application concerned, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant.

The SEF for the investigation was originally due on or before 28 May 2012. The Minister granted an extension to the timeframe and the revised SEF due date is 25 June 2012. The final report for this investigation is due to the Minister on or before 9 August 2012.

3.3 Preliminary findings and conclusions

Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation.

3.3.1 The goods and like goods (Chapter 5 of this report)

Locally produced formulated glyphosate are like goods to the goods the subject of the application.

3.3.2 Australian Industry (Chapter 6 of this report)

There is an Australian industry producing like goods, comprising at least two Australian producers (including toll manufacturers) of formulated glyphosate. The applicants accounted for more than 75% of the Australian production of like goods during the investigation period (1 January to 31 December 2011).

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In 2011, the estimated size of the Australian market for formulated glyphosate was approximately 65 million litres⁵ measured in formulated glyphosate 450g/L equivalent litres. In 2011, the Australian formulated glyphosate market was supplied by Australian production and imports, which were predominately from China. Formulated glyphosate is typically sold into the market by distributors who supply formulated glyphosate to other suppliers or end users.

3.3.4 Dumping (Chapter 8 of this report)

Customs and Border Protection has determined the following preliminary dumping margins for formulated glyphosate exported to Australia from China:

Exporter – (China)	Margin
Jiangsu Good Harvest Weien Agrochemical Co Ltd (Good Harvest)	-2.0%
Zhejiang Xinari Chemical Industrial Group Co.,Ltd (including goods indirectly exported through Zhejiang Wynca Import And Export Co., Ltd (Wynca IE))	-1.6%
Shandong Weifang Rainbow Chemical Co., Ltd (Rainbow)	-0.8%

Figure 1: Preliminary dumping margins

Customs and Border Protection has found that formulated glyphosate exported to Australia by selected cooperating exporters was not dumped. Customs and Border Protection found that the volume of the goods exported by the selected non-cooperating exporters was less than 3% of the total import volume, and therefore was negligible.


3.3.5 Economic condition of the industry (injury) (Chapter 9 of this report)

The Australian industry suffered injury in the form of:

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

⁵ In this SEF the terms "litre" and "L" and "kilogram" and "Kg" are used interchangeably.

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3.3.6 Has dumping caused material injury (Chapter 10 of this report)

Customs and Border Protection has preliminarily established that formulated glyphosate exports from China were not dumped by the selected cooperating exporters. The volume of formulated glyphosate exported by selected non-cooperating exporters is negligible. Therefore, any injury experienced by the Australian industry cannot be attributed to dumping.

3.3.7 Proposed recommendation

Based on these preliminary findings Customs and Border Protection proposes to recommend that the CEO terminate the investigation in respect of formulated glyphosate exported from China.

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4 BACKGROUND

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4.1 Introduction

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

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

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

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

4.1.1 Previous investigations and measures

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

There are no current anti-dumping or countervailing measures on formulated glyphosate exported to Australia from China.

4.1.2 International anti-dumping investigations

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

4.2 Responding to this SEF

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its final recommendations. This statement represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to

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note that the statement may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to the statement. Responses to this SEF should be received by Customs and Border Protection no later than **Monday 16 July 2012**. Customs and Border Protection is not obliged to have regard to any submission made in response to the SEF received after 16 July 2012, if to do so would prevent the timely preparation of its final report and recommendations.

Submissions should preferably be emailed to itrops2@customs.gov.au. Alternatively they may be sent to facsimile number +61 2 6275 6990, or posted to:

Director Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra ACT 2601
Australia

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Customs web site (follow the links to: Anti-Dumping > Reference Material > Guidance for Submissions).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection visit reports and other publicly available documents. It is available by request in Canberra (phone 02 6275 6547) or online at <http://www.customs.gov.au/anti-dumping/cases.asp>. This SEF should be read in conjunction with documents on the public record.

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5 THE GOODS AND LIKE GOODS

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5.1 Preliminary finding

Customs and Border Protection considers that locally produced formulated glyphosate are like goods to the goods the subject of the application (the goods).

5.2 The goods

5.2.1 General description

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

"The imported product the subject of this application is formulated glyphosate, a non-selective herbicide, imported in varying strengths of the active glyphosate acid ingredient ("glyphosate technical"). A non selective herbicide is one that controls weeds in all situations"⁶.

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

5.2.2 Glyphosate formulations

The application states that in the Australian market the different formulations of glyphosate are described according to grams of glyphosate technical per litre (g/L) or kilogram whereas in the global market the formulations are commonly described by the percentage of glyphosate technical contained in the formulations on a weight for weight basis.

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

⁶ Application for the publication of a dumping duty notice for formulated glyphosate exported from China (Application), page 7.

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

Figure 2: Formulated glyphosate comparisons⁷.

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"⁸.

The applicants claim that:

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

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

5.2.3 Exclusion of certain goods from investigation

The application specifies that it is important to distinguish between formulated glyphosate (i.e. the goods) and glyphosate acid, which is 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 the application, and the investigation do not include glyphosate acid.

⁷ Application, page 8. This table is indicative only.

⁸ Ibid.

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5.3 Tariff classification

Formulated glyphosate is now classified under the tariff subheading 3808.93.00 (statistical code 49) of Schedule 3 to the *Customs Tariff Act 1995*. During the investigation period, formulated glyphosate was 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 the goods imported to Australia from China is 5%.

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

5.4 Like goods**5.4.1 General**

Like goods are defined as:

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

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 products;*
- (ii) The various formulations represent variations in the presentation of the glyphosate technical for both the locally produced and imported goods;*
- (iii) The production of formulated glyphosate (for both locally produced and imported goods) is a relatively standard process.*
- (iv) All glyphosate formulations whether locally produced or imported have the same end use.*
- (v) All glyphosate formulations whether locally produced or imported generally have the same channels of market distribution.*
- (vi) There is an absence of any clear dividing line in terms of market segmentation between the various formulations and product substitution can occur between the formulated products (whether locally produced or imported)"*¹⁰.

⁹ Subsection 269T(1) of the Act.

¹⁰ Application, page 10.

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

Formulated glyphosate is a non selective herbicide, 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. This view was supported by the major importers and most of the exporters visited by Customs and Border Protection.

All product formulations (and packing types) must be registered with the Australian Pesticides and Veterinary Medicines Authority (APVMA). The APVMA controls registration and supply of formulated glyphosate in the Australian market. Registrations are held by Australian industry (including the applicants and other formulators), importers and Chinese suppliers. 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. The regulatory requirements in respect of agrochemical products supplied in Australia are significantly more stringent than compared to Chinese requirements.

5.4.2 Physical characteristicsRaw materials*Active ingredient – glyphosate technical*

Interested parties stated that formulated glyphosate products manufactured in Australia or imported from China contain similar concentrations of glyphosate technical. Formulated glyphosate sold on the domestic market in China was described on a weight to weight basis, whereas the products exported to Australia were described on a weight to volume basis and active content is calculated by glyphosate technical.

Formulated glyphosate sold in Australia must meet regulatory requirements for active ingredient strengths, although there is a 5% tolerance. Interested parties claimed that reducing the active ingredient strength (within allowed tolerances) reduces production costs and that there may be no discernable difference identified by the end user. These parties also claimed that formulated glyphosate may be imported illegally with active ingredient strengths below acceptable tolerances, although this issue is more relevant to the APVMA than the Customs and Border Protection investigation.

Customs and Border Protection considers that all formulated glyphosate described on a weight to weight basis of glyphosate technical are covered by the goods

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description and that the Australian industry produces like goods in respect of these goods.

Salts of glyphosate (excluding 62% IPA glyphosate)¹¹

Formulated glyphosate with different salt bases, including mono-isopropylamine (MIPA), potassium and ammonium are supplied to the Australian and domestic markets in China. There are different efficacies associated with the salts of glyphosate, however they all form part of the final fully formulated product with the same end use. MIPA (which is petroleum based) is a highly flammable input and is imported because it is not produced in Australia. There are cost advantages in manufacturing with a non MIPA salt base because importation and handling costs are not applicable.

In its submission dated 19 March 2012, Nufarm claimed that all salts of glyphosate are like goods. Nufarm advised that formulated glyphosate with an IPA salt base is the predominant product in the market, as it is highly effective. It noted that there is a cost differential between different salts. In advice to Customs and Border Protection dated 27 April 2012, Nufarm stated that formulated glyphosate with an ammonia salt base in liquid form is currently not registered in Australia, although it is sold domestically in China. It considers that these products would be illegal in Australia. The Australian industry does not manufacture like goods in respect of formulated glyphosate which would be considered illegal in the Australian market¹².

Several interested parties (including Agronomics Manufacturing Industries Pty Ltd trading as AGRONOMIQ) / Australian Independent Rural Retailers (AIRR)¹³ submitted that ammonium salt based glyphosate products (which are in dry form) should be outside the scope of the investigation, on the basis that the Australian industry cannot manufacture these products in sufficient quantities.

Customs and Border Protection found that the salt of glyphosate is identifiable for all APVMA registered formulated glyphosate products. Regardless of the salt type, these products are classified as formulated glyphosate for herbicide application. Customs and Border Protection found that the Australian industry manufactures formulated glyphosate with varying salt bases that are like (with similar characteristics) to formulated glyphosate with varying salt bases exported from China (including the dry formulated glyphosate with an ammonium salt base).

Customs and Border Protection considers that all formulated glyphosate with any registered salt base are covered by the goods description and that the Australian industry produces like goods in respect of these goods.

¹¹ A related goods / like goods issue in respect of another salt of glyphosate for a 62% glyphosate product is discussed separately at section 5.4.2.

¹² This may change in the event a new product was registered in the Australian market.

¹³ AGRONOMIQ / AIRR joint submission dated 31 May 2012 refers.

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Inferior quality – surfactants

The most significant variation between all formulated glyphosate products is the surfactant utilised, which represents a cost differential. The surfactant is the binding agent, which facilitates the absorption of active ingredient (glyphosate technical) to the plant / weed surface. Different surfactants are utilised in the different product formulations with varying glyphosate technical concentrations. A product with a higher glyphosate technical concentration requires a different surfactant on a per litre or kilogram basis compared to a product formulation with lower glyphosate technical concentration. The applicants and certain importers claimed that the surfactant used for products exported to Australia or sold on the domestic market in China differed.

Interested parties claimed that the Australian industry and the major Chinese exporters predominately sourced surfactant from an Australian manufacturer (a tallow amine surfactant with 120 g/L required for formulated glyphosate 450 g/L).

Interested parties claimed that products are prevalent in the Australian market that contained inferior quality surfactants or where the ingredient level is less than 120g/L (as it is diluted). Production costs are reduced if inferior quality (and hence cheaper) surfactants are used. These parties claimed that Chinese manufacturers also exported products to Australia containing lower quality surfactants. Importers claimed that the impact of the inferior surfactant may not be identifiable by the end user, although if the end user (i.e. farmer) was not satisfied with product effectiveness, it can be assumed that they would cease sourcing from the relevant supplier.

Customs and Border Protection considers that formulated glyphosate with any registered surfactant (applied in accordance with regulatory standards) are covered by the goods description and that the Australian industry produces like goods in respect of these goods.

Form – liquid versus dry (granular)

Formulated glyphosate products in liquid (aqueous solution) and dry (water based granules) are supplied in the Australian and Chinese markets. Formulated glyphosate with active ingredients in higher loading concentrations are usually in dry form, usually for formulated glyphosate 600 g/L and above.

Dry glyphosate formulations have particular advantages over a liquid product, including:

- that it is easier to handle during the manufacturing process (including clean up);
- it potentially is easier to handle by the end user (less chemical exposure);
- its compatibility with residue-free packages and unit-dose packages; and
- many environmentally or toxicologically attractive surfactants are physically compatible with glyphosate salts in a dry formulation.

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The application covers liquid and dry formulated glyphosate products because they have the same functionality and end use (water is added to both products and subsequently applied to weeds / plants). This claim was reiterated by Nufarm in its submission dated 19 March 2012. In 2011, Customs and Border Protection's import data base identified that liquid and dry products were exported to Australia by Chinese exporters. The applicants currently do not manufacture formulated glyphosate in dry form. Customs and Border Protection is cognisant that other Australian formulators can manufacture dry formulated glyphosate in minimal quantities.

Interested parties advised that the pricing and packaging of the liquid and dry products varies.

In a submission dated 26 April 2012, Zhejiang Xinan Chemical Industrial Group Co.,Ltd (Zhejiang Xinan) claimed that liquid formulated glyphosate manufactured in Australia was dry formulated glyphosate was not a like good to the liquid formulated glyphosate produced by Australian industry, due to differences in respect of chemical composition (raw materials), physical characteristics, manufacturing processes, packaging and usage. Zhejiang Xinan claimed that formulated glyphosate in dry form should be to be excluded from the investigation scope.

Other Chinese exporters, Australian formulators and importers submitted that liquid and dry formulated glyphosate are like goods as they have similar characteristics and both are soluble formulations which when added to water are applied as herbicides. The products are therefore interchangeable and substitutable.

In considering the views presented by interested parties, Customs and Border Protection considers that formulated glyphosate in liquid and dry form (both being soluble by water) are covered by the goods description and that the Australian industry produces like goods in respect of these goods.

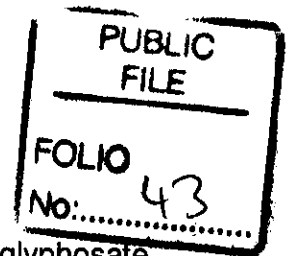
5.4.3 62% IPA salt forms of glyphosate (manufacturing concentrate)

Certain interested parties submitted that 62% IPA salt forms of glyphosate (manufacturing concentrate) were not like goods to formulated glyphosate and should be outside the investigation scope. This product is currently subject to a TCO application (following an application lodged by an importer).

The manufacturing concentrate glyphosate is an intermediary product produced following the first stage of the amination production process, where surfactants and water have not been added. This product requires further formulation (with addition of surfactants and dies etc). Currently, Nufarm manufactures and sells this product (in minor volumes) and Accensi does not manufacture this product.

In a submission dated 19 March 2012, Nufarm claimed that the IPA salt 62% glyphosate products are like goods to the goods with the same ultimate end use (as an herbicide). To support its claim, Nufarm referenced the findings of previous

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Australian¹⁴ and international anti-dumping investigations in respect of glyphosate products. These investigations concluded that 62% manufacturing concentrate glyphosate was covered by the goods description and that the Australian industry manufactured goods that were like to these goods.

The majority of other interested parties, including Apparent / AIRR claimed that 62% manufacturing concentrate glyphosate is like to the goods, as this product is an intermediary product, which has not been fully formulated. These interested parties claimed that the intermediate product cannot directly be applied for broad acre weed control or garden end use, as it needs further manufacturing. If applied directly to weeds it will have no effect as it is an active ingredient and contains no binding agent. Interested parties consider that the 62% glyphosate product is more comparable to glyphosate technical, which is excluded from the investigation scope (as it is not manufactured in Australia).

Customs and Border Protection established that the previous Australian and international anti-dumping investigations in respect of glyphosate included a broader range of products from glyphosate technical to the fully formulated product. However the current application is explicit in excluding glyphosate technical and only relates to fully formulated products. The manufacturing concentrate also has significantly different chemical properties. If the application covered glyphosate technical, the 62% manufacturing concentrate glyphosate would be covered by the goods description.

Reflecting the description of the goods contained in the application, and views of interested parties, Customs and Border Protection considers 62% manufacturing concentrate glyphosate is not covered by the description and that 62% manufacturing concentrate glyphosate produced by the Australian industry are not like goods to the goods. This product is considered to be out of the investigation scope.

5.4.4 Manufacturing processes

Customs and Border Protection found that formulated glyphosate manufacturing processes in Australia and in China (including but not limited to the glycine and iminodiacetic acid (IDA) production processes) varied.

For instance, in respect of producing glyphosate with an MIPA salt base, the initial production stage for formulated glyphosate in liquid forms involves the manufacture of glyphosate technical, which is then combined with MIPA to produce the isopropylamine salt of the N-phosphonomethylglycine molecule (the active ingredient). The next process involves formulation, where the isopropylamine salt of glyphosate is blended with surfactants and other ingredients through a filtration and

¹⁴ TM Report No 45 refers.

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sedimentation process to produce formulated glyphosate as an aqueous solution. The final product is packaged for sale.

The production process for dry formulated glyphosate is different to liquid formulated glyphosate, however the key steps are similar as glyphosate technical is blended with surfactants and other ingredients, although the product goes through granulation and drying processes.

Customs and Border Protection found that irrespective of production process used to manufacture formulated glyphosate, the end product is considered a like good.

5.4.5 Commercial likeness

Interested parties claimed that there is a commercial (product) differentiation between glyphosate formulations based on active ingredient strength, although the different formulated products can be interchanged because the end user can adjust the application and usage rate.

Formulated glyphosate 360 g/L is predominantly supplied to the smaller garden retail and horticulture markets, whereas formulated glyphosate at 450 g/L or above are supplied to agricultural markets. The stock standard product utilised in the Australian market is formulated glyphosate 450 g/L, with increasing volumes of 510 g/L and 540 g/L formulated glyphosate. There is also product differentiation by packaging sizes (i.e. 1 L, 110 L and 1000 L (or IBCs) containers¹⁵). Formulated glyphosate 360 g/L product is predominantly supplied in smaller packaging containers (in particular, 1 L bottles and 20 L drums), however the 450 g/L product and formulations with active ingredient strengths greater than 450 g/L are supplied in packaging sizes 20 L and above.

Australian customers predominantly demand formulated glyphosate in 1000 L Intermediate Bulk Container (IBCs), followed by 20 L and 110 L containers. The Australian industry product and Chinese imports are supplied in Schutz IBCs (sourced domestically or imported to Australia) as part of the Schutz container recycle system.

Interested parties advised that market demand for the 360 g/L formulated glyphosate has decreased in the last few years, as the overall market has transitioned away from this product (which initially was considered the base product). This transition is due to product branding and placement and efficacies associated with products with higher active ingredients and larger container sizes. The price of the 360 g/L product is also higher reflecting higher container and surfactant costs, which are higher). In the last few years, premium products with higher technical components have been supplied to the market.

¹⁵ The terms "containers" and "sizes" are used interchangeably in this report.

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Customs and Border Protection found that while there is commercial differentiation between certain formulated glyphosate products, overall (excluding formulated glyphosate 360 g/L) they are supplied to the broad acre agricultural market and are interchangeable. Commercial differences are reflected in price, which varies between products, however are not quantifiable or indicative that formulated glyphosate products manufactured by the Australian industry are not commercially like to the goods.

5.4.6 Functionality

When packaged all formulated glyphosate products (imported and local) at varying formulation strengths are labelled for identical uses and have the same functionality.

All imported and local formulations (at varying strengths) are recommended to be applied within the approved application rates indicated on the product label, expressed on a litre per hectare basis. Different formulated products can be interchanged, as the end user can adjust application and usage rates.

5.5 Conclusion

The goods

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

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

Customs and Border Protection considers that 62% manufacturing concentration glyphosate is not covered by the goods description.

Like goods

Customs and Border Protection considers that the applicants (through their application and verified information) demonstrated that (excluding 62% manufacturing concentration):

- 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.

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

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6 AUSTRALIAN INDUSTRY

6.1 Preliminary finding

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

- there are a number of Australian producers (including toll manufacturers) of formulated glyphosate;
- formulated glyphosate manufactured by Australian producers are like goods;
- the like goods were wholly or partly manufactured in Australia¹⁶;
- a substantial process of manufacture was carried out in Australia by the Australian producers¹⁷; and
- there is an Australian industry producing like goods¹⁸.

6.2 Introduction

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

Company
Autopack Pty Ltd
Bayer Australia Pty Ltd
Cheminova Manufacturing Pty Ltd
Chempak (Aus) Pty Ltd
Eureka Manufacturing Pty Ltd
Gemax Pty Ltd
Intrade Australia Pty Ltd
Intec Industries Pty Ltd
Loral Kosum Pty Ltd
Opal Australasia Pty Ltd
Rigel Australia Pty Ltd

Figure 3: Other Australian toll manufacturers

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

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

¹⁶ Section 269T(2) of the Act refers.

¹⁷ Section 269T(3) of the Act refers.

¹⁸ Section 269T(4)(a) of the Act refers.

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

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

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

Other toll manufacturers

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

6.3 Formulated glyphosate production process

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

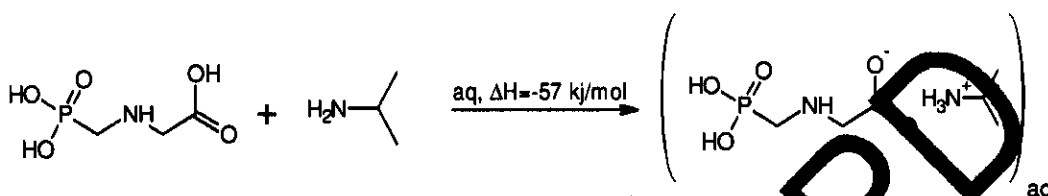
"The initial stage of the process involves the amination of glyphosate acid and mono- isopropylamine to produce the isopropylamine salt of the N-phosphonomethylglycine molecule (i.e. the active ingredient). The amination process is essentially a controlled acid-base chemical reaction. The amination process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

The amination process is carried out in large purpose built reaction vessels that incorporates cooling equipment and microprocessor based process controls to maintain the temperature of the chemical reaction.

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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 Australia.

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

6.3.1 Substantial process of manufacture

The application also claims that:

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

The formulation of glyphosate is considered a substantial process of

¹⁹ Application, page 10.

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*manufacture where transformation of the glyphosate technical into a commercial herbicide occurs*²⁰.

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

6.3.2 Production facilities

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

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

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

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

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

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

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

6.3.3 Salts and active ingredient levels – manufacturing range

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

²⁰ Application, page 11.

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

Figure 4: Nufarm's formulated glyphosate product range

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

Figure 5: Accensi formulated glyphosate product range

6.3.4 Manufacturing types – own products versus toll manufacture

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

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

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

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

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6.4 Conclusion

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

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

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7 AUSTRALIAN MARKET

7.1 Preliminary finding

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

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

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

7.2 Introduction

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

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

7.3 Market supply

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

The major importers of Chinese formulated glyphosate²¹ included Landmark Operations Limited, 4 Farmers Pty Ltd, Titan AG, Farmoz Pty Ltd and Gemax Pty

²¹ For the purposes of this SEF, a major importer imported more than 7% of the total import volume from China.

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Ltd. Customs and Border Protection visited and verified information provided by all these importers, except Gemax Pty Ltd²².

7.3.1 Toll versus importing

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

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

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

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

7.4 Market size

Customs and Border Protection estimated the size of the Australian market, expressed in litres of 45% L equivalents, using data verified during visits to the applicants, importers, exporters, data provided by other interested parties, and data from Customs and Border Protection's import database.

As noted in CO 183, a broad range of herbicides are imported under tariff classification 598.93.00, including the goods and non goods. The description of the goods is not always indicative. It also appears that formulated glyphosate may have been imported under other tariff classifications.

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

²² This company did not participate in the investigation.