



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

4FARMERS PTY LTD

**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 notice 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, Customs and Border Protection restarted the 20 day period for considering the application.

On 6 February 2012, following consideration of the application, the Australian Customs and Border Protection Service (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). 4Farmers Pty Ltd (4Farmers) was an interested party in this previous investigation and was visited by Customs and Border Protection officers.

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

2.2 Purpose of meeting

Following the initiation of the investigation, a search of Customs and Border Protection's import database indicated that the WPA Trust had imported formulated glyphosate from China during January 2011 to December 2011 (the investigation period). Customs and Border Protection was subsequently advised that the WPA Trust is the parent company of 4Farmers and that the importations of formulated glyphosate were made by 4Farmers and delivered to their company address.

Customs and Border Protection notified 4Farmers of the initiation of the investigation and sought their co-operation with the investigation and provided an importer questionnaire to the company to complete. 4Farmers was also provided with a list of its imports during the investigation period, extracted from Customs and Border Protection's import database, with selected consignments for further verification to source documentation.

4Farmers completed the importer questionnaire, providing details regarding the company, overseas supplier information, imports and importation and selling expenses. A copy of Part A (company and supplier details) of 4Farmers questionnaire response is at **Confidential Attachment GEN01**.

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The purpose of this visit was to:

- confirm that 4Farmers 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 4Farmers' sales and customers and determine sales volume, selling prices and costs;
- recommend how export price may be determined under section 269TAB of the *Customs Act 1901*¹; and
- provide 4Farmers with an opportunity to discuss any issues relevant to the investigation.

During the visit, we identified that 4Farmers supplied formulated glyphosate products which were toll manufactured by Australian manufacturers and manufactured at its own agrichemical chemical production facilities. Therefore we also sought 4Farmer's views on the following:

- factors that affected commercial decisions to source formulated glyphosate through, it's own production, through toll manufacture arrangements with other Australian producers or by importing product from China;
- changes in toll manufactured and imported formulated glyphosate volumes; and
- the Australian formulated glyphosate market.

2.3 Meeting

Details of the meeting were as follows:

Company	4Farmers
Address	70 McDowell Street, Welshpool, Western Australia (WA)
Telephone no.	08 9356 3445
Fax no.	08 9356 3447
Date	3 April 2012
4Farmers	Mr Neil Mortimore, General Manager Mr Keith D'Costa, Scientific Affairs Manager Other accounting and sales staff as required
Customs and Border Protection	Ms Joanne Reid, Director Operations 2 Ms Christie Sawczuk, Manager Operations 2 Ms Pamela Garabed, Supervisor Operations 1

¹ Herein all references to legislation in this report refer to the *Customs Act 1901*, unless otherwise specified.

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Prior to the meeting we forwarded an agenda to 4Farmers and advised that we would require supporting documentation for the selected consignments that had been previously identified. A copy of the visit agenda is at **Confidential Attachment GEN02**.

At the meeting we provided a summary of the investigation process and timeframes as follows:

- 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 (PAD) 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 PAD or at any time after the PAD 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 (SEF) will be placed on the public record by 28 May 2012 or such later date as the Minister allows - the SEF 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 SEF will be considered when compiling the report and recommendations to the Minister);
- Customs and Border Protection's report to the Minister is due by 10 July 2012, unless an extension to the SEF is approved by the Minister.

2.4 Visit report

We advised 4Farmers that we would prepare a confidential report on the visit. 4Farmers 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 4Farmers.

At the outset of the meeting, 4Farmers provided Customs and Border Protection with a copy of Edition 1, 2012 of its '4Front' newsletter that outlined its position in relation to the glyphosate application and investigation. A copy of this newsletter is at **Non-Confidential Attachment GEN01**.

4Farmers was co-operative and had the required documentation available for the meeting.

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3 THE GOODS**3.1 The goods**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"*².

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.

Litre (L)	360	41.6%
L	450	50.6%
L	570	61.5%
Kilogram (Kg)	680	75.7%

This table is indicative only³.

The application specifies that:

² Application for the publication of a dumping duty notice for formulated glyphosate exported from China (Application), page 7.

³ Application, page 8.

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*"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.

At the consideration stage of the investigation, Customs and Border Protection considered that the goods covered by the application and investigation, 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 the investigation do **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 the goods imported to Australia from China is 5%.

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

3.3 'Like' goods

4Farmers advised that formulated glyphosate produced domestically are like goods to the formulated glyphosate imported from China, in terms of product end use and functionality (i.e. as all formulated glyphosate is a herbicide designed to kill weeds / plants).

4Farmers noted that the Australian industry currently does not produce the dry (granule) glyphosate product, although considers that they are like goods to the

⁴ Application, page 8.

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liquid products as they have the same end use (as the farmer can adjust the product application rate).

Lower quality product***Active ingredient – glyphosate technical***

4Farmers noted that all product formulations (and packing types) must be registered with the Australian Pesticides and Veterinary Medicines Authority (APVMA). Therefore, formulated glyphosate sold in Australia must meet regulatory requirements for active ingredient strengths, although 4Farmers noted that there is a 5% tolerance (e.g. a 450 g/L product may be supplied at 427.5 g/L). 4Farmers advised that intentionally reducing the active ingredient strength (within allowed tolerances) reduces production costs and it is likely that there will be no discernable difference identified by the end user. 4Farmers advised they do not engage in or condone this cost efficiency strategy. It advised it generally insists glyphosate technical strengths of its products to be above tolerances. It also noted 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.

Inferior quality - surfactants

4Farmers advised that there is also a difference in the quality of the surfactants contained in formulated glyphosate products manufactured domestically and in China. It noted that the Australian industry and the significant Chinese exporters sourced surfactant from an Australian manufacturer (a Terwet 3780 tallow amine surfactant with 120 g/L for a 450 formulated glyphosate). It noted that imports from other Chinese manufacturers may contain inferior quality surfactants or where the ingredient level is less than 120g/L (as it is diluted). It noted production costs are reduced if inferior quality (and hence cheaper) surfactants are used. 4Farmers advised that the impact of the inferior surfactant may not be identifiable by the end user under favourable spraying conditions. Although it noted that if the end user (i.e. farmer) was not satisfied with the effectiveness of the product, they would cease sourcing from the relevant supplier.

Commercial - product differentiation

4Farmers advised that there is a commercial (product) differentiation for glyphosate formulations based on active ingredient strength. It noted that formulated glyphosate 360 g/L is predominately supplied to the horticulture / retail market and is not supplied to the broad acre market segment. It noted that the stock standard product utilised in the Australian market was formulated glyphosate 450 g/L, with increasing volumes of 510 g/L and 540 g/L formulated glyphosate. It advised that market demand for the 360 g/L formulated glyphosate was decreasing, as the overall market is transitioning away from this product (which initially was considered the base product). It noted that this transition was due to product branding and placement and efficacies associated with products with higher active ingredients and larger containers sizes.

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4Farmers also advised that there is significant product differentiation by packaging sizes (i.e. 1 L, 110 L and 1000 L (or IBCs) containers⁵). It noted that the 360 g/L product is predominantly supplied in smaller packing 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. It also noted that Nufarm does not hold a registration to supply formulated glyphosate 450 g/L in certain smaller containers.

Others issues related to like goods

At the visit we discussed the difference between the legislative provisions (and test) relevant in determining whether the goods produced by the Australian industry are substantially manufactured in Australia for the purposes of a dumping and subsidy investigation and for a TCO investigation. 4Farmers advised that it did not consider the production of formulated glyphosate with a potassium salt base to be a substantial process of manufacture.

⁵ The terms "containers" and "sizes" are used interchangeably in this report.

PUBLIC RECORD**4 COMPANY BACKGROUND****4.1 Company background**

4Farmers is a privately owned proprietary company, limited by shares, registered in Australia from 6 December 1994 under the ABN 55 067 443 485. 4Farmers is currently wholly owned by two shareholders (Philip Garry Patterson and Wendy Dianne Patterson). It was initially established as a partnership involving four farmers to address WA farmers concerns over high cost agricultural chemicals.

4 Farmers accounting period is July to June. It operates a computerised accounting system called Arrow Integrated Financial Software.

PUBLIC RECORD**4.2 Commercial operations**

operations].

[Commercial

4.3 Quality Assurance

4Farmers stated that it is invested in ensuring that it sources and supplies high quality formulated glyphosate. 4Farmers noted that a key factor in its commercial decision to source product from particular exporters was dependant on their reputation for producing a high quality product.

4Farmers stated that they had maintained sales volume because of this investment as it has established a reputation for selling a quality product (which it noted was important for farmers). 4Farmers also considered that its commercial decision to supply formulated glyphosate 470 g/L, which it indicated provided better value to farmers, has positively impacted its total sales volume.

PUBLIC RECORD**4.4 Relationship with suppliers**

4Farmers stated that during the investigation period it imported formulated glyphosate from [REDACTED]

4Farmers also noted [REDACTED] [relationship with supplier].

4Farmers states that it has no commercial relationship other than buyer or seller with [REDACTED] and that all [REDACTED].

At this stage, Customs and Border Protection is satisfied that relationships between 4Farmers and its supplier were normal commercial relationships (pending further verification [REDACTED]).

4.5 Relationships with customers

4Farmers advised that it predominately supplies formulated glyphosate products directly to their distributors (or agents) who on sell the product (which is consignment stock) to farmers or it sells directly to farmers. It advised that the distributors are 4Farmers agents and receive a commission for all sales of formulated glyphosate to the end user. These distributors / agents do not act independently (and sales are made through these agents to access regional based clientele). 4Farmers advised that a minor proportion of its sales of formulated glyphosate are made direct to farmers. It noted the relationship between 4Farmers and their customers (including agents) reflected normal commercial arrangements (of buyer and seller) and were arms length transactions.

Customs and Border Protection did not identify any information to indicate that the relationships between 4Farmers and its customers were not normal commercial relationships or were not arms length.

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5 IMPORTS**5.1 Introduction**

Customs and Border Protection's import database indicates that during the investigation period 4Farmers (shown as the WPA Trust) imported 25 consignments consisting of:

[imported goods description].

4Farmers import database spreadsheet is at **Confidential Attachment IMP01.**

4Farmers advised that the formulated glyphosate imported was in 20 L containers or 1000 L IBCs. The 1000 L imported product was either supplied to the customer in 1000 L IBCs or decanted and supplied in 110 L or 120 L containers. It noted it was more cost effective and efficient to source and supply product in larger containers. 4Farmers also advised that a very minor volume of the Chinese product is supplied in 110 L containers.

5.2 Rationale for importing

4Farmers advised that the decision to import formulated glyphosate was primarily driven by price. 4Farmers described that the glyphosate market is very dynamic with the price of glyphosate technical fluctuating. This impacts on 4Farmers decision to toll manufacture, manufacture on site or import fully formulated glyphosate. On a monthly basis 4Farmers consider the price of technical glyphosate (which it imports) and other raw materials (sourced locally) to be provided to Australian toll manufacturers compared to the price of the imported formulated glyphosate product. Where possible it will also consider product costs for manufacturing its own product to meet supply requirements. It also noted that the timeframe to import glyphosate technical (which can take five weeks) used to manufacture formulated glyphosate impacts supply decisions.

5.3 Ordering process and price

4Farmers outlined its process for ordering formulated glyphosate products sourced from China. In September (on an annual basis), 4Farmers review sales of formulated glyphosate products made during the previous two years in order to forecast orders for the following twelve months. 4Farmers subsequently adjust forecasts to reflect seasonal conditions. 4Farmers noted it provides incentives to customers that pre-order glyphosate products; which assists with forecasting their supply requirements.

In order to source imported products 4Farmers solicits quotes from at least two Chinese exporters. Purchasing decisions are based on price, payment terms, quality

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of product and reliability of supplier. Generally once quotes are received, 4Farmers select a supplier and submit a purchase order (six to eight weeks before the order is required or sometimes longer). Price is agreed at the time of the purchase order (in United States dollars (US) and does not vary). Goods are supplied to order and the exporter arranges for delivery of the goods to port, loading and shipping. 4Farmers are invoiced at the time of (or just before) shipping and payment is made for the goods based on the terms specified on the commercial invoice.

4Farmers advised that generally formulated glyphosate 470 g/L is shipped to Fremantle and delivered to 4Farmers warehouse and formulated glyphosate 450 g/L is shipped to Brisbane or Melbourne and delivered directly to 4Farmers distributors. 4Farmers engages a freight forwarding company to arrange importation of the goods, payment of importation costs and delivery of goods.

5.4 Verification

Prior to the visit we selected twelve shipments, representing 48% of the total number of importations during the period, so that 4Farmers could provide the necessary source documents in the form of shipment information and invoicing to allow Customs and Border Protection to reconcile the documents to the completed importer transaction (questionnaire) form. The completed importer questionnaire form is at **Confidential Attachment IMP02**.

For each of the selected consignments 4Farmers provided us with copies of:

- commercial invoices;
- purchase orders;
- shipping documents, including bills of lading;
- packing lists;
- certificates of analysis;
- post importation costs invoices provided by relevant Customs broker (showing port charges, Customs duty, cartage, delivery order, wharf booking fee, storage and other related importation charges);
- copies of the relevant Full Import Declarations (FIDs); and
- evidence of payment of the invoices to the commercial supplier.

The source documentation is at **Confidential Attachment IMP03**.

During the visit we reviewed the documentation and noted several minor discrepancies with post importation costs recorded in 4Farmers importer questionnaire form. We also noted that Customs duty had not been included for respective consignments. We subsequently amended the importer questionnaire form using actual costs as shown on commercial documentation, including Customs duty (of 5%) (**Confidential Attachment IMP04** refers). We are satisfied with the reconciliation of the commercial invoices to the revised importer questionnaire form.

5.5 Importation costs

For the selected consignments the terms of sales and payments varied, as shown below:

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- Free On Board (FOB) at Telegraphic Transfer (T/T) at 120 days from the bill of lading;
- Credit and Freight (CFR) at Documents Against Payment (D/P) 90 days from the bill of lading; and
- Cost, Insurance and Freight (CIF) at T/T60 and 120 days from the bill of lading. *[Payment terms]*.

For CFR and CIF, where the exporter organises and paid freight only or freight and insurance, 4Farmers provided source commercial documents related to these costs, provided by their freight forwarder Intergroup Shipping (WA) Pty Ltd (**Confidential Attachment IMP05** refers). We noted that insurance costs had been included in 4Farmers importer questionnaire form for CFR and FOB imports. 4Farmers were unable to provide supporting documentation for the insurance (or explain why it had been included for CFR or FOB sales), although we noted that the insurance amounts matched the amounts entered on the FIDs for the goods. We note that payment of insurance costs will be subject to further verification at Jiangsu Good Harvest company's premises in China.

5.6 Summary

We calculated the weighted average post FOB expenses for the selected shipments, which are summarised in the following table:

Cost Item	Weighted Average
Freight	
Insurance	
Post FOB Expenses	

5.7 Forward orders

4Farmers did not have any forward orders at the time of the visit.

5.8 Who is the importer

We noted that 4Farmers:

- is named as the customer on supplier invoices;
- is named as the consignee on the bill of lading;
- declares itself as the owner of the goods for entry to Customs; and
- pays the importation costs associated with the entry.

We consider 4Farmers was the beneficial owner of the goods at the time of importation and is therefore the importer.

PUBLIC RECORD**5.9 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.

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

When we reviewed the documentation provided in relation to the selected shipments of glyphosate it was identified that [REDACTED] sold the goods to 4Farmers and arranged for their transport to Australia. In summary, upon review of this documentation, we identified that:

- [REDACTED] is identified as the supplier in the commercial invoices;
- [REDACTED] is identified as the supplier in the bills of lading;
- [REDACTED] pays the relevant costs of ocean freight and insurance; and
- 4Farmers pays [REDACTED] for the goods.

Based on the information available we are satisfied that [REDACTED] is the exporter of the goods.

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6 AUSTRALIAN MARKET AND SALES**6.1 General**

4Farmers described the Australian formulated glyphosate market as very competitive. It noted that there were minimal barriers to entry, especially when compared to other international markets (i.e. in Australia a \$600 product registration fee (per product label) is payable to the AVPMA, however in the US registration costs can be in excess of a million dollars). It also noted that pricing in the market is very transparent and there is a relatively minor difference between costs of toll manufactured product (including importing raw ingredients) and the fully formulated imported product. 4Farmers advised that there is a cost advantage in importing glyphosate technical for toll manufacture, as a TCO is applicable to these imports (which is not applicable to imported fully formulated glyphosate).

4Farmers estimated that the market size for formulated glyphosate will either be maintained or increase in the foreseeable future, as a result of increasing crop levels, continued rainfall and increased utilisation of conservation or no tillage farming techniques. It noted that depending on seasonality farmers apply formulated glyphosate to their land up to three to four times per annum.

In their submission to the investigation (dated 31 March 2012) 4Farmers noted that they support the applicants' claim that the broad acre market segment represents approximately 85% of the total Australian formulated glyphosate market. 4Farmers claim that formulated glyphosate with active ingredients above 450 g/L are predominately supplied to this market segment. As discussed previously, there is also an increasing customer preference for products supplied in this market segment to be in larger containers (in particular 1000L IBCs), due to increased efficiency and cost effectiveness.

4Farmers stated that the distribution channels for agriculture chemicals have changed in the Australian market, which were historically dominated by large distributors (including Elders and Landmark etc). However it noted that there has been a significant increase in the number of small independent wholesalers/retailers that are supported by importers. This change has resulted in limiting supply at certain times for distributors.

4Farmers advised that the way that formulated glyphosate is traded has also changed, as it considers it is a commodity rather than a value added product. It noted that there has been an increased registration of potassium salt based formulated glyphosate products, with high active ingredients (i.e. formulated glyphosate 500 g/L and 540 g/L). It noted that while the supply of premium products has increased, end users still demand low cost standard formulated glyphosate 450 g/L.

6.2 Australian sales

4Farmers sells a range of agricultural chemicals, including formulated glyphosate products direct to farmers through its head office in WA and also through supply of its products to a broad network of local distributors (some of which are farmers).

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4Farmers provided a copy of its distributor / agent list by region (**Confidential Attachment SALES01** refers). It also made some sales to wholesalers and end users. During the visit 4Farmers provided a sales report by product for all sales of glyphosate (to their distributors and other customers) during the investigation period (**Confidential Attachment SALES02** refers).

Historically, 4Farmers has sold the following formulated glyphosate products (**which are either produced domestically or imported**):

- *Glyphosate 450* (20L, 120L, 200L, 1000L), which is usually formulated in Australia from imported active;
- *Glyphosate 470* (20L, 120L, 200L, 1000L), which is formulated in China;
- *Glyphosate 875 WG* (20Kg), which is formulated in China; and
- *Potassium Glyphosate 500* (200L, 500L, 1000L), which is produced domestically with domestically sourced raw materials.

In 2011, 4Farmers supplied different product formulations to different regional markets, as shown below:

Product	Region / market
Formulated glyphosate 450 g/L	NSW
Formulated glyphosate 470 g/L	QLD, SA, VIC and WA
Formulated glyphosate 875 SG	NSW, QLD, SA, VIC and WA

6.3 Price and distribution arrangements

To distributors / agents

4Farmers advised that their distributors (or agents) have their own customer base, provide storage of 4Farmers products and perform a basic marketing function. Distributors place sales orders to 4Farmers to satisfy product demand in their region. 4Farmers advised that the distributors predominantly hold consignment stock, although may have small excess volumes to meet customer requirements. Once a customer (end user) orders a product, the order is processed at 4Farmers head office. A 4Farmers distribution officer assesses stock availability to satisfy the order. The formulated glyphosate is usually delivered to distributors' warehouses and once delivered to these local distributors the goods location is changed in 4Farmers management system, although the goods still remain within 4Farmers management and control.

4Farmers control the price of formulated glyphosate in all regions. Price of the formulated glyphosate delivered to distributors does not differentiate between imported or locally produced goods.

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To end customer

Distributors can make their own arrangements with the customers in relation to delivery of the goods except in WA, where 4Farmers trucks can deliver direct to the customer. Generally the price of formulated glyphosate (ex distributor) varies between regions because of freight costs and local competitive prices. 4Farmers provided a price list for formulated glyphosate products (at the retail level) dated May 2011 (**Confidential Attachment SALES03** refers). The prices shown in the price list are ex distributor / agent to the end customer. 4Farmers advised that payment for formulated glyphosate supplied to the end customer is made directly to 4Farmers. When payment is received, 4Farmers pays its local distributor a commission for the goods sold.

4Farmers advised that pricing in the market is very competitive and transparent and that they are price takers. It noted that the profit margins on formulated glyphosate sales are very minor and that it is considered a base product in the range of agricultural chemicals supplied to farmers. It noted that other chemicals had higher margins and overheads for glyphosate were kept low to be able to offer the lowest price to customers.

6.4 Rebates and discounts

4Farmers confirmed that it offers rewards to customers who pre-order glyphosate products or who order a range of 4Farmers products (bundle sales). These rewards are through discounts or rebates which apply to pricing at the end user level (sales from the agents to the farmer). We were not able to verify this information / data.

6.5 Commission

4Farmers advised that all of its distributors / agents receive a sales commission. It noted that the commission amount changed just prior to the investigation period. The commission is an amount paid for each sale type (varying by product and packing size), as tabulated below.

Product	Packaging size	Commission
Formulated glyphosate 450 g/L	20L	██████
Formulated glyphosate 450 g/L	1000L	██████
Formulated glyphosate 470 g/L	20L	██████
Formulated glyphosate 470 g/L	110L	██████
Formulated glyphosate 470 g/L	200L	██████
Formulated glyphosate 470 g/L	1000L	██████
Formulated glyphosate 875 SG	20 Kg	██████

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4Farmers advised that the sales commission does not vary by region. 4Farmers provided Commission reports for formulated glyphosate 470 g/L for February, May, August and November 2011 to verify the commission amounts paid (**Confidential Attachment SALES04** refers). The price list for all products provided by 4Farmers also shows the commission rates applicable. We noted that the commission amounts matched.

We also noted that the importer transaction form provided by 4Farmers did not include commission amounts. However we included commission amounts as part of SG&A expenses in the revised importer questionnaire form, discussed at section 6.8.

6.6 Sales verification (accuracy)

As discussed at section 6.2, 4Farmers provided us with a sales report of glyphosate products for the investigation period (to end users), shown by product type (including packing size), month and price (**Confidential Attachment SALES02** refers) and a price list (ex retail) for all formulated glyphosate products (by packaging type and region) for May 2011 (**Confidential Attachment SALES03** refers).

4Farmers sell directly to end users invoices. We checked the unit prices in the sales reports with the unit prices in the price list for various pack sizes, however, and found that they matched. Information from the sales reports could also be cross-matched with data in the commission reports. We are satisfied that the sales reports accurately reflect 4Farmers' sales of the goods.

6.7 Upwards verification (completeness)

During the visit we sighted 4Farmers Profit and Loss (P&L) statements for the 2010/2011 financial year and for the half year 2011/12. We were able to identify total income / revenue, cost of goods manufactured, total expenses and operating profit for all sales for 4Farmers. 4Farmers stated that Customs and Border Protection were not able to retain copies of these statements due to commercial sensitivities.

6.8 Selling, general and administrative expenses (SG&A)

The initial importer transaction form provided by 4Farmers did not include SG&A expenses for sales of the imported formulated glyphosate. We advised 4Farmers that in order to determine the profitability of the imported goods (and test the arms length nature of the transactions) that SG&A expenses needed to be calculated. 4Farmers advised that SG&A expenses expressed as a percentage of revenue was not the most appropriate calculation method, as the P&L operating expenses covered sales of other agricultural chemicals (non – glyphosate related) and it was not easy to apportion these expense across specific products.

4Farmers advised that the company's internal costings summary for formulated glyphosate products (sold ex distributor level), would be the most appropriate methodology to calculate accurate SG&A expenses. 4Farmers provided costings for formulated glyphosate 470 g/L to highlight all costs from importation of the goods to distributor sales (including profit margins) (**Confidential Attachment SALES05** refers). We were able to use the costings summary to calculate SG&A expenses for

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the imported goods which included: overheads; packaging transportation to distributor; and distributor / agent Commission.

We checked that the percentage allowed for overheads in the internal costing sheet closely aligned to the relevant SG&A expense on the profit and loss statement. We were satisfied that no costs from the profit and loss statement had been omitted from 4Farmers' internal costing worksheet, and were therefore satisfied that it was an accurate representation of 4Farmers' SG&A expenses for our purposes.

6.9 Profitability of sales and selling price

In order to calculate the sales revenue for each consignment, we used selling prices (retail level) for formulated glyphosate 450 g/L and 470 g/L (by packaging size) by region, as shown in 4Farmers price lists. We calculated the net revenue for each consignment (less commission, which was calculated as a component of SG&A expenses).

4Farmers advised that it operates on a very low margin basis in respect of formulated glyphosate products (reflecting its corporate strategy of supplying low priced product to farmers).

[Redacted]
[Profitability].

As 4Farmers have indicated that formulated glyphosate is a very low margin product and as the company is overall profitable; we do not consider that this is an indication that 4Farmers will directly or indirectly be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or part of the price⁶ nor does it warrant a variation from the conclusion on arms length in section 5.9.

⁶ s. 269TAA(2)

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7 ARMS LENGTH

In determining export prices under s. 269TAB(1)(a) and normal values under s. 269TAC(1), the legislation requires that the relevant sales are arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Furthermore, where:

- goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

[REDACTED].
However we further noted that this reflected their corporate strategy of providing low cost goods to farmers (and we note that the company was profitable overall (based on P&L)). We did not find any evidence that:

- there is any consideration payable other than price; or
- that the price is influenced in 4Farmers' favour by a commercial or other relationship between 4Farmers and its suppliers.

We confirmed during our verification that the price invoiced by the exporter was the price paid by 4Farmers. Therefore, we consider that sales between [REDACTED] and 4Farmers were arms length transactions (pending further verification at the exporter's premises in China).

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8 MATERIAL INJURY AND CAUSATION

4Farmers does not consider that the Australian industry has suffered injury as a result of dumped imports of formulated glyphosate from China. It attributes any injury experienced by the Australian industry to the following factors:

- *Highly competitive market* - 4Farmers advised that the formulated glyphosate market is very competitive, with transparent market information and pricing which impacts consumer behaviour. For instance, the customer now monitors global glyphosate (including technical) pricing with expectations that this will be reflected in domestic pricing (which often places downwards pressure on prices).
- *Changed market composition* - 4Farmers advised that there is excess supply in the market, with an increased number of new suppliers that supply imported or toll manufacturer product. 4Farmers noted that several large farm holders have bought out smaller farmers, reducing the demand base.
- *Commodity versus value added product (glyphosate technical)* - 4Farmers stated that glyphosate technical is now considered a commodity, as its price fluctuates significantly as it is dependent on factors impacting the world market. Market distributors look to the world market and compare the fully formulated and technical prices before making commercial decisions to import or toll manufacture, which impacts on the profitability of manufacturing in Australia. Although it noted that the 5% Customs duty applicable to formulated product, which does not apply to glyphosate technical, actually increased the competitiveness of the domestically manufactured formulated glyphosate.
- *Commodity versus value added product (formulated glyphosate)* - 4Farmers stated that formulated glyphosate is considered as a commodity, with farmers seeking the cheapest product. These customers are not demanding a premium value add product (as supplied and marketed by Nufarm).
- *Inferior product* - As discussed previously, 4Farmers stated that an inferior formulated glyphosate product has been imported into the market, with a lower quality surfactant or with a diluted active ingredient. It noted that the costs of production for these products were significantly lower, which resulted in lower selling prices.
- *Other pricing factors* - 4Farmers advised that certain importers have been importing formulated glyphosate misclassified as technical glyphosate to avoid the 5% Customs duty applicable. As margins are low for glyphosate, 4Farmers believes this misclassification provides a pricing advantage and enables the Australian industry's prices to be undercut.
- *Nufarm's strategic decision to diversify its product portfolio* - 4Farmers referred to Nufarm's recent Annual Report, which stated that it was seeking to diversify its product portfolio and drive growth in product markets with higher value. Nufarm's Annual Report outlined that this would be achieved by moving its focus from glyphosate to other agriculture chemicals. It noted that Nufarm's reduced production / supply of formulated glyphosate was a result of this strategic direction and not as a result of dumped imports from China.

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- 4Farmers commented that the presentation of dumping margins in 1 L packaging sizes for the purposes of the application for duties was misleading and not indicative of pricing in the Australian formulated glyphosate market. They noted that 1 L packaged formulated glyphosate accounted for a very small percentage of the Australian glyphosate market and that this product is irrelevant to the broad acre market. 4Farmers advised that the pricing of a 1 L product (predominately supplied in the home market) to a 1000 L product (predominantly supplied top broad acre) is not comparable.
- 4Farmers also stated that the presentation of market size and share data in 360g/L equivalents contained in the application is not reflective of the Australian market. It noted that formulated glyphosate 450g/L is now stock standard product sold in Australia.

PUBLIC RECORD**9 UNSUPPRESSED SELLING PRICE**

Unsuppressed selling price and non-injurious price 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.

Customs and Border Protection generally derives the non-injurious price by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price.

Customs and Border Protection's preferred approach to establishing unsuppressed selling prices observes the following hierarchy:

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

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

At the time of the visit 4Farmers did not have any comments on the calculation of an unsuppressed selling price.

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10 RECOMMENDATIONS

As a result of the importer questionnaire submitted by 4Farmers and the verification conducted on site, we are of the opinion that the goods imported by 4Farmers are:

- goods that have been exported to Australia otherwise than by the importer;
- goods that have been purchased by the importer from the exporter;
- purchases of the goods by the importer were arms length transactions; and
- the goods are subsequently sold by the importer to a person who is not an associate of the importer.

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.

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11 ATTACHMENTS

Confidential Attachment No.	Title
Confidential Attachment GEN01	Part A of 4Farmers importer questionnaire response (confidential version)
Confidential Attachment GEN02	Verification visit agenda
Confidential Attachment IMP01	4Farmers' list of imports extracted from the import database
Confidential Attachment IMP02	Importer questionnaire form provided by 4Farmers for Part B of their importer questionnaire response
Confidential Attachment IMP03	Source documentation relating to importation of the selected consignments
Confidential Attachment IMP04	Revised importer questionnaire form
Confidential Attachment SALES01	4Farmers distributor / agent list (shown by region)
Confidential Attachment SALES02	Sales transaction listing for to 4Farmers to domestic customers in 2011
Confidential Attachment SALES03	4Farmers price lists for formulated glyphosate (price ex distributor / agent to end user)
Confidential Attachment SALES04	Commission reports
Confidential Attachment SALES05	4Farmers summary costings for formulated glyphosate for basis of SG&A
Non-Confidential Attachment GEN01	Edition 1, 2012, '4Front' newsletter