



**Australian Government**

**Australian Customs and  
Border Protection Service**

---

***CUSTOMS ACT 1901 - PART XVB***

**INTERNATIONAL TRADE REMEDIES BRANCH**

**TERMINATION REPORT NO. 183**

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

**2 August 2012**

---

# PUBLIC RECORD

## 1 CONTENTS

1	CONTENTS .....	2
2	ABBREVIATIONS AND SHORTENED FORMS .....	4
3	SUMMARY AND RECOMMENDATIONS .....	5
3.1	Introduction .....	5
3.2	Final findings .....	5
3.3	Application of law to facts .....	6
3.4	Findings .....	7
3.5	TER 183 .....	8
4	BACKGROUND .....	9
4.1	Application .....	9
4.2	Previous investigations and measures .....	9
4.3	Current investigation .....	9
4.4	SEF 183 .....	10
4.5	Relevant legislation – termination provisions .....	11
5	THE GOODS AND LIKE GOODS .....	13
5.1	Final findings .....	13
5.2	The goods .....	14
5.3	Tariff classification .....	15
5.4	Like goods .....	16
5.5	Submissions following the publication of SEF 183 .....	17
5.6	Conclusion .....	25
6	AUSTRALIAN INDUSTRY .....	26
6.1	Final findings .....	26
6.2	Background .....	26
6.3	Formulated glyphosate production process (substantial and other), manufacturing range and types .....	28
6.4	Submissions following the publication of SEF 183 .....	28
6.5	Conclusion .....	29
7	AUSTRALIAN MARKET .....	30
7.1	Final findings .....	30
7.2	Background .....	30
7.3	Australian formulated glyphosate market .....	31
7.4	Submissions following the publication of SEF 183 .....	31
7.5	Conclusion .....	31
8	DUMPING INVESTIGATION .....	32
8.1	Final findings .....	32
8.2	Background .....	33
8.3	Number and categorisation of exporters .....	33
8.4	Selected cooperating exporters .....	34
8.5	Dumping margins for selected cooperating exporters - China .....	35
8.6	Selected non-cooperating exporters .....	41
8.7	Submissions following the publication of SEF 183 .....	41
8.8	Conclusion .....	53
9	ECONOMIC CONDITION OF THE INDUSTRY .....	54
9.1	Final findings .....	54
9.2	Injury analysis period and approach .....	54
9.3	Injury analysis approach .....	55

# PUBLIC RECORD

9.4	Injury analysis.....	57
9.5	Submissions following the publication of SEF 183.....	58
9.6	Conclusion.....	58
10	HAS DUMPING CAUSED MATERIAL INJURY.....	59
10.1	Final findings .....	59
10.2	Submissions following the publication of SEF 183.....	59
10.3	Conclusion.....	60
11	NON INJURIOUS PRICE.....	61
11.1	Final findings .....	61
11.2	Background .....	62
11.3	Submissions following the publication of SEF 183.....	62
11.4	Conclusion.....	63
	APPENDICES.....	64

# PUBLIC RECORD

## 2 ABBREVIATIONS AND SHORTENED FORMS

Abbreviation / shortened form	Full title
Accensi	Accensi Pty Ltd
ACDN	Australian Customs Dumping Notice
the Act	<i>Customs Act 1901</i>
APVMA	Australian Pesticides and Veterinary Medicines Authority
CEO	Chief Executive Officer
China	People's Republic of China
CON 183	International Trade Remedies Branch Consideration Report No. 183 (the Consideration Report for this investigation)
CTMS	cost to make and sell
Customs and Border Protection	The Australian Customs and Border Protection Service
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	free on board
the goods	the goods the subject of the application ("formulated glyphosate")
Good Harvest	Jiangsu Good Harvest Weien Agrochemical Co Ltd
IPA	isopropylamine
MIPA	mono-isopropylamine
NIP	non-injurious price
Nufarm	Nufarm Limited
Rainbow	Shandong Weifang Rainbow Chemical Co., Ltd
SEF 183	Statement of Essential Facts No. 183 (for this investigation)
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 invitation to participate in the investigation
SG&A expenses	selling, general and administrative expenses
the Minister	Minister for Home Affairs
USP	unsuppressed selling price
Tariff Act	<i>Customs Tariff Act 1995</i>
TCO	Tariff Concession Order
TM Report No. 45	Trade Measures Report No. 45
Wynca IE	Zhejiang Wynca Import And Export Co., Ltd
Zhejiang Xinan	Zhejiang Xinan Chemical Industrial Group Co., Ltd

# PUBLIC RECORD

## 3 SUMMARY AND RECOMMENDATIONS

### 3.1 Introduction

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 glyphosate<sup>1</sup> exported to Australia from the People's Republic of China (China) caused material injury to the Australian industry producing like goods.

This Termination Report No. 183 (TER 183) 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 Investigation No. 183 based the decision to terminate the investigation.

### 3.2 Final findings<sup>2</sup>

As a result of Customs and Border Protection's investigation, the Delegate of the CEO of Customs and Border Protection:

- in relation to Jiangsu Good Harvest Weien Agrochemical Co Ltd (Good Harvest), Shandong Weifang Rainbow Chemical Co., Ltd (Rainbow) and Zhejiang Xinan Chemical Industrial Group Co.,Ltd (Zhejiang Xinan) (including goods indirectly exported through Zhejiang Wynca Import And Export Co., Ltd (Wynca IE)), is satisfied that there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, has decided to terminate the investigation in accordance with section (s)<sup>3</sup>.269TDA(1) of the *Customs Act 1901*<sup>4</sup> (the Act) so far as it relates to those exporters; and
- is satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from China that have been dumped from all other Chinese exporters is negligible and, therefore, has decided to terminate the investigation so far as it relates to China in accordance with s.269TDA(3) of the Act.

As a result of these findings, on 2 August 2012, the Delegate of the CEO<sup>5</sup> terminated the investigation.

---

<sup>1</sup> Refer to the full description of the goods in Section 5.2 of this report.

<sup>2</sup> On which the Delegate's termination decision was based.

<sup>3</sup> The terms "section", "sub-section" and "s." are used interchangeably in this report.

<sup>4</sup> 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.

<sup>5</sup> The terms "the Delegate of the CEO" and "the CEO" are used interchangeably in this report.

# PUBLIC RECORD

## 3.3 Application of law to facts

### 3.3.1 Authority to make decision

Division 2 of Part XVB of 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.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

### 3.3.2 Application

On 21 December 2011, an application was lodged on behalf of the applicants requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of formulated glyphosate exported to Australia from China.

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.

### 3.3.3 Initiation of investigation

After examining the application, the delegate of 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 in *The Australian* newspaper on 6 February 2012.

### 3.3.4 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 statement of essential facts (SEF) on which the CEO proposes to base their recommendations in relation to the application.

The SEF for the investigation was originally due to be published on or before 28 May 2012 (the next business working day following day 110, 26 May 2012). In June 2012, the Minister granted Customs and Border Protection's request for an extension to the timeframe and the revised SEF due date was 25 June 2012. Australian Customs Dumping Notice (ACDN) 2012/19 relates to the SEF extension. ACDNs are available on the Customs and Border Protection website at [www.customs.gov.au](http://www.customs.gov.au) (through following the anti-dumping hyperlinks).

## PUBLIC RECORD

The SEF for the investigation (SEF 183) was placed on the Public Record<sup>6</sup> on 25 June 2012. In formulating the SEF, the CEO had regard to the application concerned, any submissions concerning publication of the notice that were received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant.

SEF 183 should be read in conjunction with this report.

### 3.3.5 Submissions in response to the SEF 183

Interested parties were invited to respond to the SEF 183 within 20 days from the date of the SEF's publication, by 16 July 2012. Following the publication of SEF 183, Customs and Border Protection received eight submissions, four from the applicants and four from exporters and their representatives.

### 3.3.6 Final report

Within 155 days after the initiation of an investigation, or such a longer period as the Minister allows<sup>7</sup> the CEO must give to the Minister a final report in respect of the goods the subject of the application. The final report due date is 9 August 2012<sup>8</sup>. A final report to the Minister is not required as the investigation has been terminated.

## 3.4 Findings

Following the consideration of submissions and information supplied by interested parties, SEF 183, submissions in response to the SEF 183 and other relevant information, Customs and Border Protection made the following final findings:

- the Australian formulated glyphosate industry has experienced injury, including adverse price and profit effects;
- there has been no dumping of formulated glyphosate exported to Australia from China by selected cooperating exporters in the investigation period<sup>9</sup>; and
- the volume of the goods exported by selected non-cooperating exporters (all other Chinese exporters) represented less than 3% of the total Australian import volume and was negligible.

Based on these findings<sup>10</sup>, on 2 August 2012, in accordance with sections (ss).269TDA(1) and (3) of the Act, the CEO terminated the investigation in respect of formulated glyphosate exported from China (Section 3.2 refers).

---

<sup>6</sup> See Section 4.3 for details regarding the Public Record for the investigation.

<sup>7</sup> If the date by which the SEF must be published is extended the date by which the final report is due to the Minister is extended by a corresponding period (s.269TC(4) of the Act refers).

<sup>8</sup> The final report was initially due 28 May 2012; however this due date was extended resulting from the extension to the SEF.

<sup>9</sup> See Section 4.1 for relevant investigation period.

<sup>10</sup> To be read in conjunction with Section 3.2.

## PUBLIC RECORD

A notice regarding the termination of the investigation was published in *The Australian* newspaper on 2 August 2012. ACDN 2012/37 also relates to the termination.

### 3.5 TER 183

This report sets out reasons for the termination, including the material findings of fact or law upon which this determination is based.

Customs and Border Protection found that no new information and evidence was provided following the publication of SEF 183 which warrants revising and overturning the preliminary findings contained in the SEF.

This report summarises SEF 183's key preliminary findings, the significant issues raised in submissions in response to the SEF, Customs and Border Protection's assessment of these submissions<sup>11</sup> and Customs and Border Protection's final findings. This report does not detail Customs and Border Protection's analysis and assessment in respect of the goods and like goods, Australian formulated glyphosate production and the Australian industry, the Australian formulated glyphosate market and the economic condition (injury factors) of the Australian industry (the applicants). This analysis and assessment has not been included as it has not varied from SEF 183.

This report should be read in conjunction with SEF 183.

---

<sup>11</sup> In relation to the key issues only.

## 4 BACKGROUND

### 4.1 Application

As discussed at Section 3.3.2, 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 CEO decided not to reject the application and Customs and Border Protection initiated an investigation. Public notification of initiation of the investigation was made in *The Australian* on 6 February 2012. ACDN 2012/05 provides further details of this investigation.

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

### 4.2 Previous investigations and measures

#### 4.2.1 Australia

Customs and Border Protection has previously conducted two investigations in respect of glyphosate exported from China. Prior to the current investigation, 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.

#### 4.2.2 International

As detailed in Consideration Report No. 183 (CON 183), international anti-dumping 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.

### 4.3 Current investigation

During the current investigation, Customs and Border Protection visited two Australian industry members (the applicants), seven importers and three Chinese exporters, to seek their views regarding the application and to verify information provided to Customs and Border Protection in the application, questionnaire responses and submissions.

# PUBLIC RECORD

Interested parties including those representing the Australian industry, importers and Chinese exporters also made submissions to the investigation.

The Public Record for the investigation (no. 183)<sup>12</sup> contains non-confidential submissions made by interested parties, the non-confidential versions of Customs and Border Protection's visit reports, and other publicly available documents. It is available by request in hard copy in Canberra (phone (02) 6275 6547 to make an appointment), or online at <http://www.customs.gov.au/anti-dumping/cases.asp>.

Documents on the Public Record should be read in conjunction with this report.

## 4.4 SEF 183

As discussed at Section 3.3.4, on 25 June 2012, Customs and Border Protection placed SEF 183 on the Public Record. SEF 183 contained preliminary findings that:

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

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

### 4.4.1 Submissions following the publication of SEF 183

As discussed at Section 3.3.5, interested parties were invited to respond to the SEF within 20 days from the date of the SEF's publication, by 16 July 2012. Following the publication of the SEF, eight submissions were received from interested parties, as follows:

#### Australian industry

- Nufarm and Accensi made three submissions in response to the exporter verification visit reports and one submission in response to the SEF.

---

<sup>12</sup> Unless otherwise specified, all references in this report to the Public Record refer to the Public Record for this investigation (no. 183).

# PUBLIC RECORD

## Chinese exporters and their representatives

- Corrs Chambers Westgarth representing the China Chamber of Commerce of Metals, Minerals and Chemicals made a submission in response to the SEF.
- Beijing B&H Associates P.R.C Lawyers representing Good Harvest made a submission in response to the applicants' submission in respect of the Good Harvest exporter verification visit report.
- Moulislegal representing Zhejiang Xinan / Wynca IE made a submission in response to the applicants' submission in respect of the Zhejiang Xinan / Wynca IE exporter verification visit report, and to the SEF.
- Zhong Lun Law Firm representing Rainbow made a submission in response to the applicants' submission in respect of the Rainbow exporter verification visit report.

Non-confidential versions of these submissions are available on the Public Record.

## **4.5 Relevant legislation – termination provisions<sup>13</sup>**

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

*"If:*

- (a) application is made for a dumping duty notice; and*
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*
  - (i) there has been no dumping by the exporter of any of those goods; or*
  - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%";*

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

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

*"If:*

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

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

---

<sup>13</sup> As relevant to the formulated glyphosate investigation.

# PUBLIC RECORD

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

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

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

## 5 THE GOODS AND LIKE GOODS

### 5.1 Final findings

Customs and Border Protection has considered the applicants' submission made in response to the SEF regarding the goods and like goods and has found that no new information or evidence was provided that warrants revising the preliminary findings contained in SEF 183.

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

#### 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 Australian Pesticides and Veterinary Medicines Authority (APVMA) 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.

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

# PUBLIC RECORD

The following section of this report should be read in conjunction with Section 5 of SEF 183.

## 5.2 The goods

### 5.2.1 General description

The goods are formulated glyphosate. The initiation notice for the investigation specified 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”<sup>14</sup>.*

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

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

---

<sup>14</sup> Application for the publication of a dumping duty notice for formulated glyphosate exported from China (Application), page 7.

# PUBLIC RECORD

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 1: Formulated glyphosate comparisons<sup>15</sup>.

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”<sup>16</sup>.*

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.

Based on the application 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.

## 5.3 Tariff classification

Formulated glyphosate is now classified under the tariff classification subheading 3808.93.00 (statistical code 49) of Schedule 3 to the *Customs Tariff Act 1995* (Tariff

<sup>15</sup> Application, page 8. This table is indicative only.

<sup>16</sup> Application, page 7.

# PUBLIC RECORD

Act). During the investigation period, formulated glyphosate was classified under the tariff classification subheading 3808.93.00 (statistical code 48) of Schedule 3 to the Tariff Act.

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”<sup>17</sup>.*

The application states that:

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

- (i) Glyphosate technical is the dominant active ingredient in the locally produced formulated glyphosate products and the imported formulated glyphosate product.*
- (ii) The various formulations represent variations in the presentation of the glyphosate technical for both the locally produced and imported goods.*
- (iii) The production of formulated glyphosate (for both locally produced and imported goods) is a relatively standard process.*
- (iv) All glyphosate formulations whether locally produced or imported have the same end use.*
- (v) All glyphosate formulations whether locally produced or imported generally have the same channels of market distribution.*
- (vi) There is an absence of any clear dividing line in terms of market segmentation between the various formulations and product substitution can occur between the formulated products (whether locally produced or imported)”<sup>18</sup>.*

---

<sup>17</sup> Section 269T(1) of the Act refers.

<sup>18</sup> Application, page 10.

# PUBLIC RECORD

## 5.5 Submissions following the publication of SEF 183

Following the publication of SEF 183, Customs and Border Protection received a submission from the applicants in respect of the good and like goods. No other submissions were received in respect of this issue.

### Applicants' claims

In their submission in response to the SEF, the applicants rejected Customs and Border Protection's preliminary findings<sup>19</sup> in relation to the goods and like goods, specifically in respect of:

- a tolerance for active ingredients (for glyphosate technical);
- inferior quality surfactants<sup>20</sup>;
- 62% manufacturing concentrate glyphosate;
- registered and unregistered products.

### 5.5.1 Active ingredient – glyphosate technical

#### Applicants' claims

At Section 5.4.2 of SEF 183, Customs and Border Protection stated that formulated glyphosate sold in Australia must meet regulatory requirements for active ingredient strengths (in respect of glyphosate technical), 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<sup>21</sup>.

In their submission in response to the SEF, the applicants:

*"reject the claimed position of Chinese exporters that they manufacture formulated glyphosate to the "minimum" requirements permitted by the regulations"*<sup>22</sup>.

Furthermore, *"Customs is requested to re-calculate normal values for the three exporters based on a zero tolerance of a reduction in the active ingredient used in formulated glyphosate manufacture"*<sup>23</sup>.

---

<sup>19</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), pages 1 to 5.

<sup>20</sup> This issue also relates to registered and unregistered products.

<sup>21</sup> SEF 183, page 14.

<sup>22</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 2.

<sup>23</sup> Ibid.

# PUBLIC RECORD

## Customs and Border Protection's assessment

Customs and Border Protection considers that the applicants' inference that claims made in respect of a 5% tolerance for active ingredient strengths (for glyphosate technical) as being made by Chinese exporters is incorrect. The Chinese exporters of formulated glyphosate did not make any claims in respect of reduced tolerances of the active ingredient strength for formulated glyphosate they manufactured and exported to Australia.

Customs and Border Protection's reference regarding claims made by "*interested parties*" in respect of active ingredient strength tolerances related to Australian importers of the goods. Several importers of the goods noted that by reducing the active ingredient strength of the goods within allowable tolerances, cost efficiencies could be gained. These comments were provided in discussions regarding the goods and like goods, in general, and were not made in respect of the goods exported by the selected cooperating exporters. For the importers that were visited (and which sourced imported goods from the selected cooperating exporters), they advised they do not engage in or condone this cost efficiency strategy<sup>24</sup>.

No evidence was found during the exporter verification visits that a 5% tolerance was relevant to formulated glyphosate manufactured or that "*discounts*" to account for this tolerance were applied to the cost to make formulated glyphosate<sup>25</sup>. The source documentation provided and verified at the exporter and importer visits, including certificates of analysis and quality control documentation, highlighted that the goods were manufactured to the APVMA's tolerances prescribed for formulated glyphosate supplied in the Australian market. Therefore no adjustment was or is required to be made to normal values in respect of this claim.

### **5.5.2 Inferior quality surfactants**

#### Applicants' claims

In their submission in response to the SEF<sup>26</sup> and in response to the exporter verification visit reports<sup>27</sup>, the applicants "*reject*":

---

<sup>24</sup> For example, *4Farmers Importer Verification Visit report*, dated May 2012, page 8.

<sup>25</sup> That was exported to Australia.

<sup>26</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), pages 2-4.

<sup>27</sup> Applicants' submission in response to the *Good Harvest Exporter Verification Visit report*, dated 6 July 2012 (and received by Customs and Border Protection 9 July 2012) (Applicants' submission regarding Good Harvest visit report), Applicants' submission in response to the *Rainbow Exporter Verification Visit report*, dated 6 July 2012 (and received by Customs and Border Protection 9 July 2012) (Applicants' submission regarding Rainbow visit report) and Applicants' submission in response to *Zhejiang Xinan / Wynca IE Exporter Verification Visit report*, dated 10 July 2012 (and received by Customs and Border Protection 12 July 2012) (Applicants' submission regarding Zhejiang Xinan / Wynca IE visit report).

# PUBLIC RECORD

*“the acceptance of inferior quality surfactants by Chinese producers in the exported formulated glyphosate, resulting in lower cost of production for Chinese producers/exporters”<sup>28</sup>.*

Furthermore, the applicants submit that “*no due allowance adjustments*” were made to normal values in relation to the use of different quality surfactants (which should have been made to reflect goods exported to Australia which contained a higher quality surfactant).

To support their position the applicants noted that interested parties also submitted that there is a difference regarding the quality of surfactants in the formulated glyphosate supplied to the Australian and Chinese markets.

In their submissions in respect of each of the exporter verification visit reports<sup>29</sup> the applicants raised concerns regarding the verification and treatment of surfactants. In particular the applicants dispute the findings that the selected cooperating Chinese exporters utilise a range of surfactants in the formulated glyphosate manufactured and exported to Australia, as they claim only higher quality surfactants (i.e. tallow amine surfactant, predominately a Terwet 3780) are used for these goods.

In respect of *Good Harvest’s Exporter Verification Visit* report the applicants dispute the finding that Good Harvest utilises the same quality surfactants for formulated glyphosate with an isopropylamine (IPA) salt base which is supplied to the Australian and Chinese markets. They claim that lower quality surfactants are exclusively used in respect of these like goods sold on the domestic market in China. The applicants claim that the surfactant issue has distorted the Ordinary Course of Trade (OCOT) test and findings for Good Harvest domestic sales.

In respect of *Rainbow’s Exporter Verification Visit report* the applicants dispute the finding that Rainbow utilises a range of surfactants (of varying quality) in the formulated glyphosate manufactured and exported to Australia. In particular, the applicants contest the finding that Rainbow utilise a Gernonol surfactant for the exported goods, as they claim that this surfactant cannot be utilised in manufacturing formulated glyphosate with an active concentration level exceeding 360 g/L. To support this claim the applicants’ provided a “*Glyphosate Adjuvents*” publication.

## Other interested parties submissions

In respect of the claims made regarding surfactant types and quality, each of the selected cooperating exporters disputed the applicants’ claims<sup>30</sup>. The exporters

---

<sup>28</sup> Applicants’ submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 1.

<sup>29</sup> Applicants’ submissions regarding Good Harvest, Rainbow and Zhejiang Xinan visit reports.

<sup>30</sup> Good Harvest submission in response to the applicants’ claims regarding the *Good Harvest Exporter Verification Visit report*, dated 11 July 2012 (and received by Customs and Border Protection 11 July 2012) (Good Harvest’s post SEF submission), Rainbow submission in response to the applicants’ claims regarding the *Rainbow Exporter Verification Visit report*, dated 17 July 2012 (and received by Customs and Border Protection 18 July 2012) (Rainbow’s post SEF submission), Zhejiang Xinan / Wynca IE submission in response to the

## PUBLIC RECORD

confirmed that the relevant and appropriate surfactant costs for the goods and like goods were verified.

### Customs and Border Protection's assessment

#### *(i) General*

The applicants assert that higher quality surfactants are used exclusively in the goods exported to Australia and lower quality surfactants are used exclusively in the like goods sold on the domestic Chinese market. However, Customs and Border Protection considers that these claims are unsubstantiated and are contrary to the cost and sales information and data verified during exporter verification visits.

Customs and Border Protection found that Chinese exporters utilised a range of surfactants (including the high quality surfactants) in the formulated glyphosate they exported to Australia.

Based on the information provided (and verified) Customs and Border Protection found that formulated glyphosate (especially 450 g/L) with a tallow amine surfactant base is predominantly, although not exclusively, supplied to the Australian market by the selected cooperating exporters. Customs and Border Protection found that formulated glyphosate with surfactants which were either not tallow amine based or were a lower quality tallow amine surfactant were supplied to the Australian market by these exporters. This finding was supported by Australian importers and Chinese exporters, which both asserted that the surfactant utilised in the formulated product was specified by the Australian customer. Interested parties also advised that the APVMA is empowered to analyse product samples to ensure compliance with associated regulations (for all goods, including imports).

Customs and Border Protection also notes that all interested parties<sup>31</sup>, including the selected cooperating exporters, claimed that formulated glyphosate with inferior quality surfactants were prevalent on the Chinese market. However this does not preclude like goods with higher quality surfactants being supplied on the domestic market in China.

Customs and Border Protection found that only one of the selected cooperating exporters predominantly supplies formulated glyphosate to the Chinese market. The other two Chinese exporters were export market orientated. There are a number of other domestic Chinese suppliers of formulated glyphosate that either did not cooperate in the investigation or did not export the goods to Australia (the latter being more likely given the selected cooperating exporters represented 95% of the volume of formulated glyphosate imported to Australia from China<sup>32</sup>). Given that two

---

applicants' claims regarding the *Zhejiang Xinan / Wynca IE Exporter Verification Visit report*, dated 16 July 2012 (and received by Customs and Border Protection 16 July 2012) (Zhejiang Xinan's / Wynca IE's post SEF submission).

<sup>31</sup> Like the applicants.

<sup>32</sup> During the investigation period.

## PUBLIC RECORD

of the selected exporters were export market focused, it is reasonable to assume that a moderate volume of like goods sold to the domestic market was not investigated. Customs and Border Protection only verified surfactant costs as provided by the selected cooperating exporters and the surfactants utilised by these companies may not be reflective of other like goods sold in China.

### *(ii) Good Harvest*

In respect of Good Harvest, Customs and Border Protection found it supplied formulated glyphosate on the domestic market that was not IPA based, which contained a range of surfactants. However, as discussed in the Good Harvest exporter verification visit report, to ensure fair comparison of export prices and normal values, formulated glyphosate with an IPA salt base was used for comparison. It was for these specific products that Good Harvest contended that the same surfactants were utilised, and this was verified by Customs and Border Protection.

Customs and Border Protection verified the actual surfactants used by Good Harvest in the production of formulated glyphosate and the associated costs. Source documentation including production / workshop reports, warehouse dockets, general ledgers and sub ledgers (also showing inventory), accounting vouchers and commercial documents for export and domestic<sup>33</sup> sales, all of which substantiated the exporter's claims regarding surfactants.

### *(iii) Rainbow*

In respect of Rainbow, Customs and Border Protection verified the actual surfactants used by Rainbow in the production of formulated glyphosate and the associated costs. Source documentation including production / workshop reports, warehouse dockets, general ledgers and sub ledgers (also showing inventory), accounting vouchers and commercial documents for export sales<sup>34</sup>, all of which substantiated the exporter's claims regarding surfactants.

Customs and Border Protection also found that the product information publicly available (including on websites of relevant surfactant suppliers) notes that the Geronol surfactant can be utilised to manufacture formulated glyphosate at concentrations up to 500 g/L.

---

<sup>33</sup> Where relevant.

<sup>34</sup> Rainbow made no domestic sales of like goods (which is discussed later in this report).

# PUBLIC RECORD

## *(iv) Zhejiang Xinan / Wynca IE*

In respect of Zhejiang Xinan / Wynca IE, Customs and Border Protection verified the actual surfactants used by Zhejiang Xinan (the manufacturer) in the production of formulated glyphosate and the associated costs. Source documentation including production / workshop reports, warehouse dockets, general ledgers and sub ledgers (also showing inventory), accounting vouchers and commercial documents for export and domestic<sup>35</sup> sales, all of which substantiated the exporter's claims regarding surfactants.

## *(v) Normal values<sup>36</sup>*

As discussed at Section 9 of SEF 183 and supported by exporters in their submissions in response to the applicants' claims, the normal values for the selected cooperating exporters reflect the costs for higher quality surfactants where relevant. The normal values for Rainbow and Good Harvest were based on the cost to make and sell (CTMS) the exported formulated glyphosate, by concentration and packaging size (as appropriate). These costs are reflective of costs for the exported goods and are inclusive of costs for higher quality surfactants. Therefore an adjustment for higher quality surfactants is not required for the normal values in respect of these exporters.

In respect of Zhejiang Xinan / Wynca IE a specification adjustment was applied to normal values calculated to account for surfactant differences between the formulated glyphosate exported to Australia and sold in the domestic market in China. Therefore a further adjustment for higher quality surfactants is not required for the normal values for this exporter.

## **5.5.3 Exclusions - 62% manufacturing concentrate glyphosate and registered and unregistered products**

### Applicants' claims

In their submission in response to the SEF, the applicants' reject "*the exclusion of 62% IPA salt from the goods under consideration*"<sup>37</sup>. The applicants' claim that Customs and Border Protection has not made a clear assessment to support the conclusion that the 62% manufacturing concentrate glyphosate (also referred to as 62% IPA salt) cannot be substituted for formulated glyphosate.

The applicants assert that the 62% manufacturing concentrate glyphosate was not specifically excluded from the description of the goods contained in the application.

---

<sup>35</sup> Where relevant.

<sup>36</sup> While this issue relates to normal values it has been included in this section of the report as it is pertinent to the applicants' concerns regarding inferior surfactants.

<sup>37</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 1.

## PUBLIC RECORD

The applicants also claim that the SEF does not provide any reasoning to support the findings that:

*“formulated glyphosate with any registered surfactant (applied in accordance with regulatory standards) are like goods”<sup>38</sup>; or*

to support the converse *“that unregistered formulated glyphosate are not like goods”<sup>39</sup>.*

### Customs and Border Protection’s assessment

#### *(i) 62% manufacturing concentrate glyphosate*

At Section 5.4.3 in SEF 183, Customs and Border Protection provided a rationale in relation to the exclusion of the 62% manufacturing concentrate glyphosate from the scope of the investigation. The predominant factor for this preliminary finding was that it is an intermediate product that does not have the same end use as formulated glyphosate, as it cannot directly be applied for broad acre weed control or garden end use, because 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 supported this view and submitted that the 62% manufacturing concentrate glyphosate is more comparable to glyphosate technical, which is excluded from the investigation scope (as it is not manufactured in Australia).

In their submission in response to the SEF the applicants assert that this product should be included in the scope of the goods and is a like good to formulated glyphosate, as the end user can “*simply*” blend the required volume of IPA salt 62% with surfactants and water to produce a formulated product. Customs and Border Protection considers that this statement actually supports the SEF’s findings that the 62% IPA salt is an intermediate product which cannot be applied as an herbicide without further processing.

The application also specifically noted that the goods covered by the application were “*fully formulated*” products. Customs and Border Protection notes that while the IPA 62% product was not specifically excluded from the goods description, that it was also not specially included and it clearly does not meet the description of a “*fully formulated*” product.

Customs and Border Protection found that only two of the selected cooperating exporters supplied the 62% manufacturing concentrate glyphosate to the Australian market in the investigation period. The volume of these goods as a proportion of total export sales made by these exporters was minimal (and related to a few export sales transactions only). Customs and Border Protection found that only two of the

---

<sup>38</sup> SEF 183, page 16.

<sup>39</sup> Applicants’ submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 4.

## PUBLIC RECORD

selected cooperating exporters supplied the 62% manufacturing concentrate glyphosate to the Chinese market in the investigation period. Of these one exporter's domestic sales of 62% manufacturing concentrate glyphosate were not made in the OCOT. For the other exporter, while some of their domestic sales of 62% manufacturing concentrate glyphosate were made in the OCOT, the total volume of these sales was low. Customs and Border Protection found that the inclusion of these domestic sales does not impact on OCOT and low volume threshold assessments for the selected cooperating exporter (given their low volume).

If Customs and Border Protection were required to calculate normal values for the 62% manufacturing concentrate glyphosate, as it has a significantly different cost structure (as it is an intermediate product), several adjustments would need to be made to ensure comparison to the formulated glyphosate product.

Interested parties (including the applicants) also submitted that very small volumes of this product are currently supplied by the Australian industry (noting that currently very few Australian industry members are manufacturing this product).

Customs and Border Protection has found that no new evidence has been provided to warrant revising the SEF's preliminary findings in respect of 62% manufacturing concentrate glyphosate.

### *(ii) Registered and unregistered products*

In their submission in response to the SEF, the applicant rejected:

*“the conclusion that “formulated glyphosate with any registered surfactant” are covered by the goods description and by inference, any formulated glyphosate with a non registered surfactant is excluded<sup>40</sup>”.*

The applicants assert that formulated glyphosate with an unregistered surfactant cannot be readily excluded from the goods the subject of the application and investigation. Given that all interested parties raised concerns regarding formulated glyphosate with unregistered surfactants, Customs and Border Protection specifically considered these goods in SEF 183.

However Customs and Border Protection considers confining the goods and like goods to formulated glyphosate that are registered to be supplied in the Australian market is appropriate<sup>41</sup>. If an unregistered product was to be legitimately imported from China and supplied in the Australian market, it would be required to be registered with the APVMA and would therefore be included in the scope of the goods.

---

<sup>40</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 1.

<sup>41</sup> As explained for the following reasons.

## PUBLIC RECORD

In relation to like goods, formulated glyphosate sold on the Chinese market that would be considered illegal in Australia is not considered by Customs and Border Protection to be a like good to the goods exported to Australia. As submitted by the applicants, these goods have significantly different (i.e. lower) costing structures. There is also a significant commercial differentiation in respect of these products. It is also apparent that these products would have different functional uses and efficacies, which would limit the substitutability of the illegal like goods with the goods.

Notwithstanding the discussion above, Customs and Border Protection found that these concerns were general and not in relation to the selected cooperating exporters.

Customs and Border Protection found that the selected cooperating exporters supplied formulated glyphosate market to the Australian market in accordance with the APVMA regulations (and which were manufactured according to product labels registered by their Australian customers<sup>42</sup>). The exporters did not manufacture and supply formulated glyphosate with unregistered surfactants to the Australian market (or any other formulated glyphosate which would be considered illegal if imported).

### 5.6 Conclusion

Customs and Border Protection considered the applicants' submission made in response to the SEF regarding the goods and like goods and is satisfied that the SEF's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 5.1.

---

<sup>42</sup> As relevant.

## 6 AUSTRALIAN INDUSTRY

### 6.1 Final findings

Customs and Border Protection has considered the applicants' submission made in response to the SEF regarding the Australian industry and has found that no new information or evidence was provided that warrants revising the preliminary findings contained in SEF 183.

Customs and Border Protection has found 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 Australia<sup>43</sup>;
- a substantial process of manufacture was carried out in Australia by the Australian producers<sup>44</sup>; and
- there is an Australian industry producing like goods<sup>45</sup>.

The following section of this report should be read in conjunction with Section 6 of SEF 183.

### 6.2 Background

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

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

**Figure 2: Other Australian toll manufacturers**

The applicants' claim 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 also toll manufacture formulated glyphosate on behalf of third parties.

<sup>43</sup> Section 269T(2) of the Act refers.

<sup>44</sup> Section 269T(3) of the Act refers.

<sup>45</sup> Section 269T(4)(a) of the Act refers.

## PUBLIC RECORD

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<sup>46</sup>, which were not significant.

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

The eleven companies identified by the applicants were contacted by Customs and Border Protection and invited to participate in the investigation. Only one of the companies 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 manufactures formulated glyphosate with a mono-isopropylamine (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, the analysis of injury in SEF 183 was 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 in SEF 183 that the investigation would be terminated, 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 were also 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 Australian market analysis for the investigation.

---

<sup>46</sup> While this period does not cover the whole investigation period it is considered sufficient to provide an indication of the volume of formulated glyphosate toll manufactured by other Australian producers.

# PUBLIC RECORD

## 6.3 Formulated glyphosate production process (substantial and other), manufacturing range and types

This report does not include Customs and Border Protection's analysis or assessment of the formulated production process, substantial process of manufacture, manufacturing range and types, which was contained in SEF 183, as tabulated below.

SEF Section	Heading – production issue	Page (commences)
6.3	Formulated glyphosate production process	23
6.3.1	Substantial process of manufacture	24
6.3.2	Production facilities	25
6.3.3	Salts and active ingredient levels – manufacturing range	25
6.3.4	Manufacturing types – own products versus toll manufacture	26

Figure 3: SEF 183 – The Australian industry

This report should be read in conjunction with Section 6 of SEF 183.

## 6.4 Submissions following the publication of SEF 183

Following the publication of SEF 183, Customs and Border Protection received a submission from the applicants in respect of the Australian industry. No other submissions were received in respect of this issue.

### Applicants' claims

In their response to SEF 183 the applicants claimed that it would have been expected that a verification visit would have been undertaken to Cheminova, to support and substantiate the applicants claims, given that Cheminova was not party to the application. They noted that Cheminova's data would have been relevant in assessing an appropriate unsuppressed selling price (USP) for the Australian industry.

The applicants consider that:

*“Customs claimed position not to visit Cheminova would have preceded the preliminary recommendation to terminate the investigation and therefore cannot be used as a basis for explaining why Customs did not visit”<sup>47</sup>.*

---

<sup>47</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 5.

# PUBLIC RECORD

## Customs and Border Protection's assessment

As detailed in SEF 183, Customs and Border Protection found that the market share represented by Cheminova was not significant. However in forming SEF 183, Cheminova's views were taken into account, but their data was not incorporated in the market analysis and in assessing the economic condition of the industry. Given that Cheminova represented a small proportion of the Australian industry producing like goods, it is expected that the inclusion of their data would not have impacted on Customs and Border Protection's overall injury assessment (although noting it is likely to have supported the claims made by the applicants).

### **6.5 Conclusion**

Customs and Border Protection considered the applicants' submission made in response to the SEF regarding the Australian industry and is satisfied that the SEF's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 6.1.

## 7 AUSTRALIAN MARKET

### 7.1 Final findings

Customs and Border Protection received no submissions or new information regarding the Australian formulated glyphosate market which warrants revising the preliminary findings contained in the SEF 183.

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<sup>48</sup> (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 the estimated figures 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.

The following section of this report should be read in conjunction with Section 7 of SEF 183.

### 7.2 Background

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.

---

<sup>48</sup> For the purposes of presenting market volumes and market shares different product concentrations were converted to 450 g/L equivalents. Formulated glyphosate 450 g/L is the predominant product supplied in the Australian market by the Australian industry and importers. Interested parties submitted that formulated glyphosate 450 g/L is the stock standard product and contended that conversion rates to measure volume in 450 g/L equivalents were appropriate and relevant to be able to compare the varying formulated glyphosate products in the market. The majority of the Chinese imports were also formulated glyphosate 450 g/L.

# PUBLIC RECORD

## 7.3 Australian formulated glyphosate market

This report does not include Customs and Border Protection's analysis and assessment of the Australian formulated glyphosate market, which was contained in SEF 183, as tabulated below.

SEF Section	Heading – market factor / issue	Page (commences)
7.3	Market supply	28
7.3.1	Toll versus importing	29
7.4	Market size	29
7.5	Market segmentation and distribution arrangements	31
7.5.1	Market segmentation	31
7.5.2	Market distribution	31
7.6	Factors influencing market performance	32
7.6.1	Climatic variability, scarcity of natural resources and changing agricultural and farming practices	32
7.6.2	Price	33
7.6.3	Volatility in cost of goods and profitability	33
7.6.4	Key demand factor - seasonality and climatic conditions	33
7.6.5	Distribution channels to market	33
7.6.6	Low barriers to entry	34
7.6.7	Differences in product quality	34
7.6.8	Product substitution	34

Figure 4: SEF 183 – The Australian market

This report should be read in conjunction with Section 7 of SEF 183.

## 7.4 Submissions following the publication of SEF 183

No submissions were made in response to SEF 183 in respect of findings regarding the Australian formulated glyphosate market.

## 7.5 Conclusion

Customs and Border Protection is satisfied that the SEF's preliminary findings regarding the Australian formulated glyphosate market do not need to be revised. Custom and Border Protection's final findings are at Section 7.1.

## 8 DUMPING INVESTIGATION

### 8.1 Final findings

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

Customs and Border Protection has calculated final dumping margins for the investigation period by comparing weighted average export prices with the corresponding weighted average normal values. Final dumping margins are summarised in the following table.

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

Figure 5: Final dumping margins

The volume of the goods exports to Australia from China during the investigation period represented by the selected cooperating exporters<sup>49</sup> is approximately 95%. The exports of the goods by the selected cooperating exporters were found to not be dumped.

The final calculation of dumping margins for each selected cooperating exporter is at **Confidential Appendix 1**.

The volume of the goods exported by selected non-cooperating exporters<sup>50</sup> represented less than 3% of the total Australian import volume and is therefore negligible.

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

Therefore, as a result of Customs and Border Protection's investigation, the Delegate of the CEO of Customs and Border Protection:

- in relation to Good Harvest, Rainbow and Zhejiang Xinan (including goods indirectly exported through Wynca IE), is satisfied that there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, has decided to terminate the investigation in accordance with s.269TDA(1) of the Act so far as it relates to those exporters; and

<sup>49</sup> Defined at Section 8.3.2.

<sup>50</sup> Defined at Section 8.3.2.

## PUBLIC RECORD

- is satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from China that have been dumped from all other Chinese exporters is negligible and, therefore, has decided to terminate the investigation so far as it relates to China in accordance with s.269TDA(3) of the Act.

The following section of this report should be read in conjunction with Section 8 of the SEF 183.

### 8.2 Background

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The dumping margin is the difference between the export price<sup>51</sup> and the normal value<sup>52</sup>.

The investigation period, for the purpose of assessing dumping margins, was from 1 January 2011 to 31 December 2011.

Sections 8.3 – 8.6 of this report cover pertinent information that formed the basis for the SEF's preliminary findings in respect of export prices, normal values and dumping margins for the selected cooperating and non-cooperating Chinese exporters of formulated glyphosate. These sections of SEF 183<sup>53</sup> have been included in this report to provide background to Section 8.7 which describes the submissions made by interested parties in response to the SEF's preliminary findings.

### 8.3 Number and categorisation of exporters

#### 8.3.1 Number of exporters

At the commencement of the investigation, Customs and Border Protection interrogated its import database and identified potential exporters of formulated glyphosate from China<sup>54</sup>. The application also nominated exporters (6) of formulated glyphosate from China.

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

---

<sup>51</sup> Section 269TAB of the Act.

<sup>52</sup> Section 269TAC of the Act.

<sup>53</sup> SEF 183, pages 36 to 44.

<sup>54</sup> Section 7.4 of the SEF discusses the identification of exporters / suppliers of a range of herbicide products and formulations which were imported under the relevant tariff classification subheading, including goods which were not the goods the subject of the application.

## PUBLIC RECORD

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

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

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

### 8.3.2 Categorisation of exporters

Customs and Border Protection determined exporter-specific dumping margins after investigating the exportations of all exporters in the investigation period. Therefore, Customs and Border Protection regards all exporters to be '*selected exporters*' in relation to s.269T of the Act<sup>55</sup>.

In the case of the three Chinese exporters that provided adequate and timely responses to the exporter questionnaire, Customs and Border Protection was able to base the dumping margin calculations on the data submitted. These exporters were considered to be '*selected cooperating exporters*'.

In the case of those exporters that did not respond to the invitation to participate in the investigation (and did not provide questionnaire responses), Customs and Border Protection regarded these exporters as '*selected non-cooperating exporters*'. The total volume of formulated glyphosate exported by selected non-cooperating exporters represented less than 3% of the total volume imported to Australia (for the investigation period). These export volumes were negligible. Dumping margins were not determined for these exporters given the negligible import volumes (Section 8.6 refers).

### 8.4 Selected cooperating exporters

Customs and Border Protection undertook verification visits to three selected cooperating exporters and based dumping margin calculations upon that verified data.

---

<sup>55</sup> Section 269T(1) of the Act provides that "*selected exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice.*"

# PUBLIC RECORD

As mentioned previously, these exporters were as follows:

- Good Harvest;
- Zhejiang Xinan (including indirect exports through Wynca IE); and
- Rainbow.

Reports for verification visits to these exporters are available on the Public Record.

## 8.5 Dumping margins for selected cooperating exporters - China

### 8.5.1 Good Harvest

#### Export prices

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

In SEF 183, export prices were established in accordance with s.269TAB(1)(a) of the Act, by reference to the invoice from Good Harvest to the Australian customer less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

#### Normal values

Section 269TAC of the Act establishes the basis for determining the normal values for the goods exported to Australia. Section 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

Section 269TAAD of the Act establishes the conditions under which the Minister may be satisfied that the price of domestic sales is taken not to have been paid in the OCOT. As detailed in SEF 183, Customs and Border Protection compared Good Harvest's domestic selling prices to its CTMS and found that a substantial quantity<sup>56</sup> of transactions were not profitable, and not recoverable within a reasonable period<sup>57</sup>. These transactions were therefore considered not to be in the OCOT. The remaining volume of domestic sales were a low volume, as defined in s.269TAC(14) of the Act and were not considered large enough to permit proper comparison.

---

<sup>56</sup> Section 269TAAD(2) of the Act refers.

<sup>57</sup> Section 269TAAD(1) of the Act refers.

## PUBLIC RECORD

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

As normal values could not be ascertained under s.269TAC(1) of the Act, they were established in accordance with s.269TAC(2)(c) of the Act, using Good Harvest's weighted average CTMS data, by each product formulation.

In the *Good Harvest Exporter Visit* report<sup>58</sup>, no profit was added to the constructed normal values due to the low volume of sales of like goods made in the OCOT and the absence of profit made on the same general category of goods. However, s.269TAC(2)(c) of the Act states that profit should be added when constructing normal values. Therefore as prescribed by s.269TAC(5)(B) of the Act, an appropriate amount of profit was determined in accordance with Regulation 181A. Sub Regulation 181A(2) states that the Minister, must, if reasonably possible, work out the amount of profit using data relating to sales of like goods by the exporter in the OCOT. Notwithstanding that overall domestic sales were not made in the OCOT, there were some sales of like goods that were in the OCOT. The weighted average profit from these sales has been used to construct normal values.

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

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

### Dumping margins

In SEF 183, the dumping margin for Good Harvest was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Good Harvest was -2.0%.

### **8.5.2 Zhejiang Xinan (including indirect exports through Wynca IE)**

#### Submission – dry formulated glyphosate – out of investigation scope

In a submission made to the investigation, Zhejiang Xinan / Wynca IE claimed that there are significant differences between formulated glyphosate liquid and

---

<sup>58</sup> *Good Harvest Exporter Verification Visit report*, dated May 2012.

## PUBLIC RECORD

formulated glyphosate in granular ('dry') form and that granular glyphosate should be excluded from the scope of the investigation<sup>59</sup>. However, Customs and Border Protection considers that the liquid and dry formulated glyphosate are covered by the goods description. In SEF 183, for the purposes of establishing export prices and normal values, dry formulated products exported to Australia and sold domestically in China were included.

### Treatment of export sales

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

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

### Export prices

In SEF 183, for direct export sales to Australia by Zhejiang Xinan, Customs and Border Protection considered:

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

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

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

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

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

---

<sup>59</sup> Submission dated 26 April 2012.

## PUBLIC RECORD

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

### Normal values

SEF 183 specified that in the investigation period, Zhejiang Xinan made domestic sales of formulated glyphosate which were made in the OCOT.

Therefore, normal values for formulated glyphosate<sup>60</sup> were established in accordance with s.269TAC(1) of the Act using Zhejiang Xinan's domestic selling prices of like goods sold in the OCOT.

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

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

### Dumping margins

In SEF 183, the dumping margin for Zhejiang Xinan was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Zhejiang Xinan was -1.6%.

### **8.5.3 Rainbow**

#### Export prices

In SEF 183, export prices were established in accordance with s.269TAB(1)(a) of the Act, by reference to the invoice from Rainbow to the Australian customer less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

---

<sup>60</sup> Customs and Border Protection considers that it is appropriate to compare industrial products exported to Australia with industrial products sold on the domestic market, according to the descriptions applied by Zhejiang Xinan. Furthermore, that the small volume of retail products exported to Australia should be compared with domestic selling prices of retail products, with appropriate adjustments for costs not incurred on the export market.

# PUBLIC RECORD

## Normal values

SEF 183 specified that during the investigation period, Rainbow made no sales of like goods on the domestic market in China.

In the *Shandong Weifang Rainbow Chemical Co., Ltd Visit* report<sup>61</sup>, Rainbow supplied very low volumes of a formulated glyphosate product domestically that is different from the goods (as covered by the goods description). Rainbow advised that the formulated glyphosate it exported to Australia has different chemical and physical properties to the formulated glyphosate sold on the domestic market. The formulated glyphosate sold domestically is not registered in Australia and would be illegal to import into the Australian market. In the *Shandong Weifang Rainbow Chemical Co., Ltd Visit* report Customs and Border Protection found that these domestic sales represented less than 5% of the volume of formulated glyphosate exported to Australia and are not considered large enough to permit proper comparison.

Customs and Border Protection considers that formulated glyphosate that is not registered in Australia is not covered by the goods description and not considered like goods to the goods.

SEF 183 specified that as Rainbow made no sales of like goods that could be used for the purpose of establishing normal values, in accordance with s.269TAC(1) of the Act, the suitability of domestic sales information obtained from other sellers for establishing normal values was considered.

Customs and Border Protection identified one other Chinese seller<sup>62</sup> of formulated glyphosate (Zhejiang Xinan) with verified information that had sufficient domestic sales made in the OCOT. However the other seller's information was deemed not suitable for establishing normal values for Rainbow due to; insufficient volumes of like goods made by the other seller, which represented less than 5% when compared to Rainbow's export volumes<sup>63</sup>, the inability to ensure fair comparison of export prices and normal values and commercial confidentiality. These issues are discussed below.

### *(i) Insufficient volumes*

In establishing normal values based on the other seller's information, Customs and Border Protection examined whether those sales were relevant and suitable for the purposes of determining a price under s.269TAC(1) of the Act (subject to s.269TAC(2)(a)). Customs and Border Protection found that there was a low volume (less than 5%<sup>64</sup>) of the other seller's like goods made in the OCOT when compared to the volume of the goods exported to Australia by Rainbow. The sales of the other seller were not considered large enough to permit proper comparison. The other

---

<sup>61</sup> *Rainbow Exporter Verification Visit report*, dated May 2012.

<sup>62</sup> That participated in the investigation.

<sup>63</sup> In accordance to s.269TAC(14) of the Act.

<sup>64</sup> Section 269TAC(14)(c) of the Act refers.

## PUBLIC RECORD

seller's domestic sales information was not considered suitable for establishing normal values for Rainbow due to insufficient volumes of domestic sales by the other seller.

### *(ii) Fair comparison (confidentiality and adjustments)*

Ensuring a fair comparison between export prices and normal values is a fundamental principle in determining dumping margins. The verified information provided by the other seller is considered to be highly commercially sensitive. SEF 183 found that even if there were sufficient sales volumes of like goods by the other seller, due to the confidentiality of the other seller's information, Customs and Border Protection would be unable to ensure fair comparison. Rainbow would be unable to make any claims in respect of relevant adjustments, due to their limited access to the other seller's information.

As detailed in *Zhejiang Xinan / Wynca IE Exporter Visit* report<sup>65</sup> to ensure fair comparison of export prices and normal values, a specification adjustment to account for cost differentials (i.e. surfactant) between formulated glyphosate sold domestically and other formulations exported to Australia was applied. This adjustment is based on Zhejiang Xinan's cost data. The specification adjustment determined for Zhejiang Xinan is not relevant to Rainbow, which exported different formulated glyphosate products to Australia. Due to data confidentiality, the relevant cost basis cannot be provided to Rainbow to determine an exporter specific specification adjustment to ensure fair comparison of normal values with their export sales. Therefore the other seller's information could not be used for establishing normal values.

### *(iii) Commercial interests*

If normal values were established using other seller's information Rainbow would have limited access to the information, inhibiting the exporter's ability to safeguard their commercial interests.

### Constructed normal values

SEF 183 stated that as normal values cannot be ascertained under s.269TAC(1) of the Act, they were established in accordance with s.269TAC(2)(c) of the Act using Rainbow's weighted average CTMS data, by each product formulation with an amount included for profit<sup>66</sup>. As prescribed by s.269TAC(5)(B) of the Act, an appropriate amount of profit was determined in accordance with Regulation 181A. This profit amount was based on Rainbow's profitability for the sector including the goods (under Regulation 181A(3)), as profit for this exporter cannot be determined under Regulation 181A(2), due to the absence of domestic sales of like goods.

---

<sup>65</sup> *Zhejiang Xinan and Wynca IE Exporter Verification Visit* report, dated May 2012.

<sup>66</sup> As s.269TAC(13) of the Act is not applicable.

## PUBLIC RECORD

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

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

### Dumping margins

In SEF 183, the dumping margin for Rainbow was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Rainbow was -0.8%.

## **8.6 Selected non-cooperating exporters**

SEF 183 specified that the total volume of the goods exported by selected non-cooperating exporters (all other Chinese exporters excluding the three selected exporters), in the investigation period represented less than 3% of the total Australian import volume and is therefore negligible.

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

## **8.7 Submissions following the publication of SEF 183**

### **8.7.1 Applicants' claims and counter claims made in respect of exporter verification visit reports**

Following the publication of SEF 183, the applicants provided submissions regarding the non-confidential exporter verification visit reports<sup>67</sup>. The applicants strongly contested the preliminary findings in these reports. They claimed that several inconsistencies were apparent, in particular, regarding the determination of normal values and dumping margins. The applicants' submission in response to SEF 183

---

<sup>67</sup> See footnote 27.

## PUBLIC RECORD

reiterated these concerns<sup>68</sup>. No other submissions were received in respect of this issue.

The selected cooperating exporters also made submissions which refuted the applicants' claims and corrected misinterpretations and inaccuracies<sup>69</sup>.

The following section of this report addresses the applicants' key concerns<sup>70</sup> regarding the selected cooperating exporters.

### 8.7.2 Good Harvest

#### *(i) Application of OCOT provisions*

Section 8.5.1 of this report discusses Customs and Border Protection's application of OCOT to Good Harvest's domestic sales of like goods.

#### Applicants' claims

In their submission in response to SEF 183, the applicants claim that:

*"Customs has erred in the application of Section 269TAAD with respect to the finding that Good Harvest sold any goods in the OCOT"*<sup>71</sup>.

The applicants claim that when applying the OCOT to an exporter's domestic sales of like goods, if at least 20% by volume of these like goods are not sold in the OCOT (i.e. if the price of those goods is below their CTMS) then "all [emphasis added] of those goods are taken under s.269TAAD, not to have been sold in the OCOT"<sup>72</sup>. They consider that Customs and Border Protection has erred in applying the OCOT provisions, by not deeming all domestic sales to have not been made in the OCOT, given that at least 20% of these were unprofitable and unrecoverable. On this basis the small volume of profitable domestic sales made by Good Harvest should not have been deemed to have been made in the OCOT. Customs and Border Protection should have then had regard to using other sellers information as a basis for normal values in accordance with s.269TAC(1) of the Act.

#### Customs and Border Protection's assessment

Customs and Border Protection considers that the applicants' interpretation of s.269TAAD of the Act is flawed.

---

<sup>68</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012).

<sup>69</sup> See footnote 30.

<sup>70</sup> These concerns relate predominantly to issues which were contained in the applicants' submission in response to SEF 183.

<sup>71</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 8.

<sup>72</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 8.

## PUBLIC RECORD

Section 269TAAD (1) of the Act does not refer to all domestic sales of like goods. It explicitly concerns those particular domestic sales that have been sold below cost (at a loss), in substantial quantities (s.269TAAD(1)(a) of the Act refers), and which are not recoverable within a reasonable period (s.269TAAD(1)(b) of the Act refers).

This interpretation is consistent with Article 2.2.1 of the World Trade Organisation (WTO) Anti-Dumping Agreement (ADA), which by its terms only concerns sales at a loss on the exporter's domestic market. This interpretation is supported by WTO Dispute Settlement Body findings (*European Communities – Anti-Dumping Measure on Farmed Salmon from Norway* (WT/DS337/R), 15 January 2008 refers).

Section 269TAAD of the Act is concerned with the question whether loss making sales have occurred in substantial quantities. It is not concerned with the treatment of sales which are made in the OCOT (and are profitable).

The applicants' claims are also contrary to Customs and Border Protection's long standing policy and practice in applying the OCOT provisions.

*(ii) Sections 269TAC(2)(a)(i) and 269TAC(14) are not restricted to the goods sold in the OCOT*

### Applicants' claims

In their submission in response to SEF 183, the applicants imply that Customs and Border Protection have incorrectly applied the low volume<sup>73</sup> threshold test as prescribed at s.269TAC(14) of the Act. The applicants submit that in applying s.269TAC(14) of the Act "*the volume of sales of like goods for home consumption in the country of export by the exporter*" should be compared to the volume of the exported goods, regardless of whether the domestic sales of like goods were made in the OCOT. They consider that Customs and Border Protection erred by using only the volume of domestic sales that remained after excluding sales which were not in the OCOT in the comparison with the volume of export sales. This meant that not all of the sales of the like goods were used in applying the low volume test.

### Custom and Border Protection's assessment

Customs and Border Protection's policy and practice has been to read s.269TAC(14) of the Act in conjunction with s.269TAC(2)(a) of the Act, which refers to a low volume of like goods which are "*relevant*" for the purpose of determining normal values under s.269TAC(1) of the Act. The word "*relevant*" is taken to mean like goods which were sold in the OCOT<sup>74</sup> and are suitable for normal value purposes. If domestic sales are not made in the OCOT they could not, in Customs and Border Protection's view, be considered to be "*relevant*" for a normal value determination. Therefore, Customs and Border Protection completes the OCOT analysis before the low volume test.

---

<sup>73</sup> Also referred to as the "*sufficiency of sales test*".

<sup>74</sup> As prescribed by s.269TAC(1) of the Act.

## PUBLIC RECORD

This approach is also adopted by other WTO members, including Canada<sup>75</sup>.

(iii) *Low volume of sales*

### Applicants' claims

In addition to the applicants' claims in respect of s.269TAC(14) of the Act, they also consider that:

*"Section 269TAC(2)(a) of the Act only applies where the normal value cannot [emphasis added] be ascertained under subsection(1)"<sup>76</sup>.*

They claim that the reference to "cannot" "connotes prevention and impossibility. It creates a high threshold"<sup>77</sup>. In respect of Good Harvest, they claim that sufficient reasoning was not provided to explain why even though a low volume of domestic sales was identified, that these sales were still not sufficient to permit normal values to be determined under s.269TAC(1) of the Act. They consider that even where the low volume threshold test is not satisfied, that this is not sufficient alone to deem that these sales cannot be used as a basis for normal values under s.269TAC(1) of the Act.

The applicants claim that the low volume of domestic sales for Good Harvest (or even those made by another seller) could still have been used to determine normal values. On this basis normal values could not therefore not be determined under s.269TAC(2)(c) or s.269TAC(2)(d) of the Act.

### Customs and Border Protection's assessment

In SEF 183, Customs and Border Protection found that the remaining volume of domestic sales made by Good Harvest were a low volume, as defined in s.269TAC(14) of the Act and were not considered large enough to permit proper comparison. Customs and Border Protection is also satisfied that the remaining low volume are not sufficient for determining normal values under s.269TAC(1) of the Act. Specifically, commercial sensitivities in regards to OCOT do not permit the results to be made publicly available; however Customs and Border Protection found that the small volume of domestic sales related to specific formulated products and packaging types which were not representative of the goods exported to Australia. For instance, exporter A exports 100 widgets (small, medium and large) to Australia and sells 70 widgets (small and medium) on the domestic market, for which one widget (small) only is sold in the OCOT. In this scenario (comparable to Good Harvest's circumstances<sup>78</sup>), the one sale may not be suitable to ensure proper comparison and as a basis for determining normal values in accordance with s.269TAC(1) of the Act.

---

<sup>75</sup> Canada Border Services Authority.

<sup>76</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 12.

<sup>77</sup> Ibid.

<sup>78</sup> By proportion rather than number of sales.

## PUBLIC RECORD

(iv) *Third country sales – basis for normal values*

### Applicants' claims

In their submissions in response to the exporter verification visit reports, the applicants claim that Customs and Border Protection should have verified third country export sales (prices and costs) of the selected cooperating exporters (including Good Harvest), to enable the Minister to assess whether or not these could be used as a basis for normal values. The applicants assert that the use of third country export sales is likely to generate significant dumping margins. The applicants claim that the verification teams "*usurped the power of the Minister ... [As] It is the Minister, not the verification team which determines how the normal values is determined*"<sup>79</sup>.

### Customs and Border Protection's assessment

Where the conditions of s.269TAC(1) of the Act are not met, the Minister may determine a price by either a constructed value under s.269TAC(2)(c) of the Act or may direct that s.269TAC(2)(d) of the Act applies and use prices for like goods exported to a third country. While the Act, reflecting the WTO ADA, treats these provisions on an equal basis, it is not unreasonable that one of the methods might be used more often or, indeed, almost exclusively. Customs and Border Protection's long standing policy preference is to use the costs based method in the first instance. Cost data is available from a selected cooperating exporter and these costs are always verified in order to examine the profitability of the exporter's domestic sales. Verified costs are considered to be the most reliable indicator for normal values (in the absence of relevant domestic selling prices).

Customs and Border Protection usually requests summary data on export sales to third countries and this data forms the basis for a more detailed examination only if normal values cannot be determined by domestic prices or a constructed price based on costs. Customs and Border Protection does not undertake a detailed examination of third country prices if there is sufficient information to establish normal value under the other methods. Customs and Border Protection's verification of third country sales was completed as appropriate. The applicants' assertion that no verification of third country sales data occurred is incorrect.

Where circumstances are such that normal values are required to be determined using third country sales, an appropriate third country for comparison with exports to Australia will be determined. In determining whether a third country is an appropriate third country, the volume and nature of trade from the country of export to the selected third country will be compared to the volume of trade from the country of export to Australia.

---

<sup>79</sup> Applicant's submission regarding Good Harvest's visit report, page 4.

## PUBLIC RECORD

Good Harvest and Rainbow exported formulated glyphosate to several third countries. The applicants did not nominate a third country which they considered would be suitable to be used as a basis to determine normal values. In identifying an appropriate third country, several complexities would be apparent. These include the need to consider different market characteristics (i.e. barriers to entry, market regulations and level of competition), product differences (i.e. variances in formulated glyphosate active concentrations levels and surfactants (including quality)), packaging type variances and different commercial relations (i.e. number of customers, levels of trade and any commission arrangements). The OCOT and low volume threshold test would also have been required to be applied to third country export sales. Customs and Border Protection found that for Good Harvest's third country export sales, the low volume threshold would not have been met when assessing export volumes to certain individual third countries.

The applicants' claim that the Minister determines normal values based on information provided for all normal value options (including third country sales) is incorrect. Customs and Border Protection is not aware of any other anti-dumping administration that determines a normal value under every possible alternative.

Section 269TE of the Act provides that, if, in making a recommendation in a report prepared by the CEO under s.269TEA, the CEO is required to determine any matter ordinarily required to be determined by the Minister under the Act<sup>80</sup>, the CEO must determine the matter "*in like manner as if he or she were the Minister*" and

*"having regard to the considerations to which the Minister would be required to have regard if the Minister were determining the matter"*<sup>81</sup>.

The CEO must within 110 days after the initiation of an investigation place a SEF on the public record, detailing the facts on which the CEO proposes to base a recommendation to the Minister for the investigation<sup>82</sup>. The preliminary findings for normal values in SEF 183 were consistent with the Act. The findings in the exporter verification visit report contained preliminary assessments and formed the basis for the SEF preliminary findings.

### 8.7.3 Rainbow

#### (i) Like goods

#### Applicants' claims

SEF 183 found that Rainbow supplied very low volumes of a formulated glyphosate product domestically, which was different from the goods (as covered by the goods description). This formulated glyphosate product sold domestically is not registered in Australia and would be illegal to import into the Australian market. In SEF 183,

---

<sup>80</sup> Or under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

<sup>81</sup> Sections 269TE(1) and (2) of the Act refer.

<sup>82</sup> In respect of the application.

## PUBLIC RECORD

Customs and Border Protection found that formulated glyphosate which is not registered in Australia, is not covered by the goods description and is not considered like goods to the goods the subject of the application (and therefore not suitable to be used for the basis of normal values).

As discussed at Section 5.5.3, the applicants disputed the SEF findings that formulated glyphosate which is illegal to supply to the Australian market is not considered to be within the scope of the investigation and that the Australian industry does not produce goods which are like to these goods. The applicants infer that these domestic sales by Rainbow could have been used as a basis for normal values.

### Customs and Border Protection's assessment

Customs and Border Protection's findings in respect of excluding illegal formulated glyphosate products from the goods / like goods have not varied from the SEF (Section 5.5.3 refers). Customs and Border Protection established that even if these sales were considered to be like goods, the volume of these domestic sales would not satisfy the low volume test (when compared to the volume of the goods exported by Rainbow) as prescribed at s.269TAC(14) of the Act. These formulated glyphosate products relate to a few domestic sales transactions only. The rationale provided for Good Harvest regarding circumstances when very small volumes of like good sales would not be considered still large enough to permit proper comparison and form the basis for determining normal values under s.269TAC(1) of the Act (page 44 refers) also applies to Rainbow.

*(ii) Sections 269TAC(2)(a)(i) and 269TAC(14) are not restricted to the goods sold in the OCOT*

### Applicants' claims

As discussed at Section 8.5.3, as Rainbow made no sales of like goods<sup>83</sup> which could be used for the purpose of establishing normal values, in accordance with s.269TAC(1) of the Act, the suitability of domestic sales information obtained from other sellers (i.e. Zhejiang Xinan) for establishing normal values was considered.

In respect of Rainbow, the applicants also asserted similar claims regarding s.269TAC(2)(a)(i) and s.269TAC(14) of the Act not being restricted to the goods sold in the OCOT. In addition they also claimed that Custom and Border Protection erred in applying the low volume threshold test as prescribed at s.269TAC(14) of the Act, by comparing domestic sales of like goods made by the other seller (Zhejiang Xinan) to the volume of goods exported by Rainbow.

---

<sup>83</sup> Notwithstanding the applicants' claims that the sales of formulated glyphosate which Rainbow made should have been considered like goods. But for the reasons presented Customs and Border Protection found that these goods were not like goods.

# PUBLIC RECORD

## Customs and Border Protection's assessment

Customs and Border Protection considers that the assessment made regarding this matter in respect of Good Harvest (relating to Good Harvest domestic sales of like goods) is also applicable to Rainbow (relating to domestic sales of like goods by the other seller) (pages 43-44 refer).

### *(iii) Low volume of sales*

#### Applicants' claims

The applicants also asserted similar claims that sufficient reasoning was not provided to justify that even though a low volume of domestic sales of the other seller was identified, that these sales were still not sufficient to permit normal values for Rainbow to be determined under s.269TAC(1) of the Act.

## Customs and Border Protection's assessment

Customs and Border Protection considers that the assessment made regarding this matter in respect of Good Harvest is also applicable to Rainbow (page 44 refers).

### *(iv) Rationale for not determining normal values under s.269TAC(1) – fair comparison and confidentiality*

#### Applicants' claims

The applicants assert that Customs and Border Protection's rationale for not using the other seller's information (if sufficient volumes were determined), as a result of the inability to ensure fair comparison of export prices and normal values and commercial confidentiality were not relevant factors in determining whether normal values could be determined under s.269TAC(1) of the Act.

## Customs and Border Protection's assessment

Customs and Border Protection considers that the applicants' claims are inaccurate. Ensuring a fair comparison between export prices and normal values is a fundamental principle in determining dumping margins. SEF 183 found that even if there were sufficient volumes of sales of like goods made in the OCOT by the other seller, due to the confidentiality of the other seller's information, Customs and Border Protection would be unable to ensure fair comparison. A specification adjustment (based on Zhejiang Xinan's cost data) to account for cost differentials (i.e. surfactant) between formulated glyphosate sold domestically and other formulations exported to Australia would also be required to ensure fair comparison. And for the reasons articulated (pages 39-40 refer), it would not be possible to determine an appropriate adjustment to be made to normal values. The use of the other seller's information (if

## PUBLIC RECORD

possible<sup>84</sup>), in this circumstance, would also inhibit procedural fairness for Rainbow, as they would have limited access to the data of the other seller.

(v) *Third country sales – basis for normal values*

### Applicants' claims

The applicants also claim that Customs and Border Protection should have verified Rainbow's third country export sales (prices and costs) to enable the Minister to assess whether or not these could be used as a basis for normal values.

### Customs and Border Protection's assessment

Customs and Border Protection considers that the assessment made regarding this matter in respect of Good Harvest is also applicable to Rainbow (pages 45-46 refer).

Customs and Border Protection also established that for Rainbow's third country export sales, the low volume threshold would not have been met when assessing export volumes to certain individual third countries.

#### **8.7.4 Zhejiang Xinan / Wynca IE**

### Applicants' claims

In their submissions in response to the Zhejiang Xinan / Wynca IE exporter verification visit report, and to SEF 183, the applicants agree with normal values for Zhejiang Xinan / Wynca IE being determined under s.269TAC(1) of the Act, however raised concerns regarding:

- the specification (including surfactant) adjustment to normal values;
- packaging expenses (including treatment of a related packaging supplier);
- SG&A (and other expenses); and
- the treatment of Zhejiang Xinan and Wynca IE as a single entity for the purposes of establishing normal values.

### Customs and Border Protection's assessment

Customs and Border Protection considers that Zhejiang Xinan / Wynca IE's response to the applicant's submission<sup>85</sup> addressed the key concerns raised by the applicants, which predominately related to misinterpretations and factual errors.

In relation to the amalgamation of data provided by Zhejiang Xinan and Wynca IE to determine normal values (and a dumping margin), this approach has previously been adopted by Customs and Border Protection in *Termination Report no. 178 – electric cables exported from China* (TER 178). TER 178 highlighted that this issue was

---

<sup>84</sup> If fair comparison could be made.

<sup>85</sup> Zhejiang Xinan's / Wynca IE's post SEF submission.

## PUBLIC RECORD

considered by a WTO Dispute Settlement Body in 2005 dealing with *Korea–Anti-Dumping Duties on Imports of Certain Paper from Indonesia (WT/DS312/R)*. The WTO panel considered that the investigating authority *"has to determine that these companies are in a relationship close enough to support that treatment"*<sup>86</sup>. In view of their ownership linkages and commercial operations, Customs and Border Protection considers it appropriate to treat Zhejiang Xinan and Wynca IE as a single exporter.

### 8.7.5 Importers of formulated glyphosate – sales at a loss

#### Applicants' claims

In their submission in response to the SEF 183, the applicants expressed their concerns regarding the incidence of sales at a loss (of the goods in the Australian market) and the treatment of those sales. The applicants infer that Customs and Border Protection's findings that the formulated glyphosate market is very competitive and that low product margins indicate that there is *"a broad incidence of sales at a loss"*<sup>87</sup>. However the applicants assert that glyphosate is not a loss leader and that importers could not sell at a loss for sustained period unless they were receiving some form of compensation, claiming that:

*"the prevalence of sales of imported formulated glyphosate at a loss should have raised concerns that the sales were not arms' length sales between the relevant importer(s) and exporter(s)"*<sup>88</sup>.

The applicants consider that Custom and Border Protection has not adequately investigated any identified sales at a loss by importers of formulated glyphosate and that the price of the goods has been the only consideration observed in respect of the imported goods.

The applicants consider that the arms length provisions in s.269TAAD of the Act *"provide a safeguard against sales dumping"*<sup>89</sup> and enable the *"Minister to deem sales not to be at arms length when the imported goods are sold at a loss"*<sup>90</sup>. Furthermore s.269TAAD(2) of the Act provides a *"statutory inference"*<sup>91</sup> that rebates, reimbursements or benefits were provided to the importer *"or an associate of the importer"*<sup>92</sup> when sales are at a loss. The applicants submitted (in response to the SEF, and to importer visit reports<sup>93</sup>) that export commissions / rebates were provided

---

<sup>86</sup> *Korea–Anti-Dumping Duties on Imports of Certain Paper from Indonesia (WT/DS312/R)* / DSR 2005: XXII, 10637, Panel report, page 13.

<sup>87</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 6.

<sup>88</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 11.

<sup>89</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 6.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Nufarm's submission, dated 25 May 2012.

## PUBLIC RECORD

to Australian importers by the selected cooperating exporters, including through third party affiliates (which may be based in third countries).

### Other submissions from interested parties

Importers of formulated glyphosate provided their views regarding the factors which impacted on the profitability of sales of formulated glyphosate. These factors included; market demand and supply forces (including seasonality), structural changes to the market, exchange rate fluctuations, and market performance trends (since 2008).

Importers of the goods<sup>94</sup> dispute the applicants claim that export commissions and / or rebates were applicable to formulated glyphosate imported from China. The selected cooperating exporters also strongly refute this claim.

### Customs and Border Protection's assessment

As part of the verification process, Customs and Border Protection selects a certain number of consignments for the purpose of undertaking a sales route exercise, which includes assessing the profitability of the imported goods sold in the Australian market. These selected consignments are representative (a sample) of the total volume of formulated glyphosate that is imported.

Taking into consideration the applicants' claims, Customs and Border Protection reviewed the importer visit reports and profitability analysis.

For six out of seven of the importers visited, Customs and Border Protection found that while specific consignments of imported formulated glyphosate were sold at a loss, the overall net profit results for the company were positive. Furthermore, Customs and Border Protection found that for several importers not only were total sales of all agrochemical (and other) products profitable, but that total sales (and not confined only to the selected consignments) of all imported formulated glyphosate sold during the investigation period were profitable.

The applicants' claim that the majority of imported formulated glyphosate was sold at a loss (assuming these losses were also significant) is misleading and inaccurate. Due to the commercial sensitivities of the overall profitability results of the selected consignments, the specific quantum of results was not published. Also, for two importers, the non-confidential visit reports provided no indication regarding the outcome of the profitability analysis; however the applicants have assumed that these results were negative. Customs and Border Protection has identified that for one importer, which made sales at a loss of the selected consignments of formulated glyphosate, SG&A expenses had been over estimated. The revised calculation for

---

<sup>94</sup> Australian Independent Rural Retailers submission, dated 30 May 2012.

## PUBLIC RECORD

this importer significantly altered the profitability results, so that the sales of the selected imported consignments were marginally profitable.

Customs and Border Protection found that for almost all importers any losses incurred in respect of sales of formulated glyphosate were minimal. None of the importers incurred significant losses. The profitability analysis<sup>95</sup> was also limited to the selected consignments only, which may not be indicative of total sales of formulated glyphosate (as mentioned previously). This is distinct from the OCOT test in respect of domestic sales of formulated glyphosate by exporters (where the profitability of all sales made in the investigation period was assessed).

All of the importers also supplied a range of agrochemical products, where glyphosate sales represented varying proportions of their total product portfolios. Interested parties submitted that formulated glyphosate was a base product with relatively low margins and higher margins were applicable in respect of other products sold. This claim is supported by the positive profit results in respect of total products sold by the importers.

The inference by the applicants that there was a broad incidence of sales at a loss given Customs and Border Protection's assessment that the formulated market was highly competitive and low margins are experienced by suppliers is inaccurate and misleading.

Interested parties submitted that the formulated glyphosate market was perfectly competitive, with a large number of market participants (customers and suppliers), transparent market information and very low barriers to entry. They also claimed that suppliers of formulated glyphosate are price takers not price setters, especially in respect of the predominant formulated glyphosate product (i.e. formulated glyphosate 450 g/L). In a highly competitive market it would not be expected that high profits would be achieved. Furthermore, it may also not be expected that in a period in which the Australian industry experienced reduced profits and profitability that importers would be expected to achieve high profit levels and profitability<sup>96</sup>.

All interested parties during the course of the investigation submitted that the profit levels achieved for formulated glyphosate have significantly diminished since 2008, driven predominately by a significantly declined price<sup>97</sup>. The formulated glyphosate market is also driven by seasonality (i.e. including floods and increased rainfall) which impacts on demand and supply (including inventory decisions). Interested parties claimed that these factors impacted on profitability of formulated glyphosate sales in the investigation period. Importers of the goods also claimed that exchange rate fluctuations was a major factor which impacted on their profitability, which would be sufficient alone to attribute the minor losses made on selected consignments in the investigation period.

---

<sup>95</sup> Contained in the importer verification visit reports.

<sup>96</sup> Although noting that the Australian industry claim that the reduced profits and profitability are a result of dumped goods.

<sup>97</sup> Reflecting the price / cost of glyphosate technical.

# PUBLIC RECORD

During verification visits to importers and exporters, Customs and Border Protection did not find that:

- there is any consideration payable in respect of the goods other than price; or that;
- 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.

Importers and exporters refute the claims that export commissions are received for formulated glyphosate imported from China. No evidence was provided by the applicants to support their claim.

Based on the information and evidence presented (and verified where applicable) by interested parties, Customs and Border Protection has no basis to recommend that s.269TAA(2) of the Act should be applied or to deem that import sales transactions were not arms length.

## 8.8 Conclusion

Customs and Border Protection considered the submissions made in response to the SEF regarding export prices, normal values and dumping margins and is satisfied that the SEF's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 8.1. The SEF's preliminary findings detailed in Sections 8.5 to 8.6 reflect Customs and Border Protection's final findings.

# PUBLIC RECORD

## 9 ECONOMIC CONDITION OF THE INDUSTRY

### 9.1 Final findings

Customs and Border Protection has considered the submissions made in response to the SEF regarding injury to the Australian industry (as shown by the economic condition) and has found that no new information or evidence was provided that warrants revising the preliminary findings contained in SEF 183.

Custom and Border Protection has established that the Australian industry (represented by the applicants) 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).

The following section of this report should be read in conjunction with Section 9 of SEF 183.

### 9.2 Injury analysis period and approach

#### 9.2.1 Injury period

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

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

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

Figure 6: Financial year of applicants

## PUBLIC RECORD

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

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

### 9.3 Injury analysis approach

#### 9.3.1 Products – own sales versus third party sales

For the consideration of the application, the economic condition of the applicants was assessed excluding the applicants toll manufactured products. This approach was adopted as the sales volume for other Australian manufacturers, which were used to calculate the total Australian industry's sales volume, included Nufarm's and Accensi's sales of "toll" manufactured product. Therefore, to avoid double counting sales volumes of the toll manufactured products, the applicants consolidated sales and cost data did not include toll manufactured products. For the purpose of assessing reasonable grounds of injury caused by dumping, the exclusion of toll manufactured products from the analysis was acceptable, however, it was noted that the application claimed that injury *"is particularly evidenced in formulated glyphosate production that is toll manufactured..."*<sup>98</sup>.

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

#### 9.3.2 Data amalgamation

As detailed in the Australian industry visit reports<sup>99</sup>, Nufarm and Accensi toll manufacture different types of formulated glyphosate products. Accensi toll manufactures formulated glyphosate using glyphosate technical sourced by Accensi or their toll customers. Nufarm also toll manufacture different types of formulated glyphosate products, however consider the specific types to be commercial-in-confidence.

Customs and Border Protection found that the cost structures and prices for different formulated glyphosate products varied significantly. The CTMS third party formulated glyphosate products in respect of the applicants can significantly from the CTMS of

---

<sup>98</sup> Application, page 29.

<sup>99</sup> *Accensi Pty Ltd Australian Industry Visit* report, dated March 2012 and *Nufarm Limited Australian Industry Visit* report, dated March 2012.

## PUBLIC RECORD

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

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

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

The following sub-sections further examine the treatment of different formulated glyphosate products for each applicant in analysing and assessing injury. This information has been included in this report as it underpinned the injury analysis and assessments which formed the basis for the final findings in this report.

### Nufarm

To provide a comprehensive analysis of Nufarm's performance in respect of total formulated glyphosate production and sales, Customs and Border Protection analysed:

- “*Nufarm's own*” formulated glyphosate products – these are Nufarm's registered products and where Nufarm sources glyphosate technical; and
- “*Nufarm's third party*” formulated glyphosate products (which it toll manufactured on behalf of third parties).

Nufarm's sales of imported formulated glyphosate 690 g/L were not included in the injury analysis (excluding market share analysis, where these import volumes were included).

### Accensi

To provide a comprehensive analysis of Accensi's performance in respect of total formulated glyphosate production and sales, Customs and Border Protection analysed:

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

## PUBLIC RECORD

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

### Australian industry

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

### Aggregating different product concentrations

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

Customs and Border Protection established that the injury experienced by the Australian industry predominately related to 450 g/L formulated glyphosate products.

### Factors impacting on injury analysis - Nufarm

Customs and Border Protection identified that the following factors affect Nufarm's financial data, which may impact analysis of injury factors:

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

The first two factors which impact on Nufarm's financial data prior to the investigation period, were taken into account in considering trends over time.

## 9.4 Injury analysis

This report does not include Customs and Border Protection's comprehensive injury analysis and assessment that was contained in SEF 183, as tabulated below.

SEF - Section	Heading - injury effect / factor	Page (commences)
9.5	Volume effects	49
9.6	Revenue effects	51
9.7	Price depression and price suppression	51
9.8	Profit and profitability effects	53
9.9	Other economic factors	54
9.10	Conclusion - economic condition of the industry	57

**Figure 7: SEF 183 – Economic condition the industry**

This report should be read in conjunction with Section 9 of SEF 183.

# PUBLIC RECORD

## 9.5 Submissions following the publication of SEF 183

Following the publication of the SEF, Customs and Border Protection received a submission from the applicants and Chinese exporters and their representatives in respect of the injury experienced by the Australian industry. No other submissions were received in respect of this issue.

### Applicants' claims

In their submission in response to SEF 183, the applicants supported Customs and Border Protection's preliminary findings in respect of the economic condition of the Australian industry and the injury experienced by the applicants.

### Other submissions from interested parties

In a submission lodged by moulislegal representing Zhejiang Xinan's / Wynca IE, it claimed that the injury assessment presented by Customs and Border Protection does *"not create the impression that material injury had been suffered by the Australian industry at all"*<sup>100</sup>.

### Customs and Border Protection's assessment

Customs and Border Protection has found that the claims made by other interested parties in response to the SEF 183 in respect of injury to the Australian industry have not been substantiated.

## 9.6 Conclusion

Customs and Border Protection considered the submissions made in response to the SEF regarding injury to the Australian industry (as shown by the economic condition) and is satisfied that the SEF's preliminary findings do not need to be revised. Custom and Border Protection's final findings are at Section 9.1.

---

<sup>100</sup> Zhejiang Xinan's / Wynca IE's post SEF submission, page 5.

# PUBLIC RECORD

## 10 HAS DUMPING CAUSED MATERIAL INJURY

### 10.1 Final findings

Customs and Border Protection has considered the submissions made in response to the SEF regarding whether dumping has caused material injury to the Australian industry and has found that no new information or evidence was provided that warrants revising the preliminary findings contained in SEF 183.

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

Causation factors (including price undercutting), including those not related to dumping which were submitted by interested parties are not detailed in this report (and were not included in SEF 183<sup>101</sup>), as no new information which would warrant overturning the SEF's preliminary findings has been provided.

The following section of this report should be read in conjunction with Section 10 of SEF 183.

### 10.2 Submissions following the publication of SEF 183

Following the publication of the SEF, Customs and Border Protection received a submission from the applicants and Chinese exporters and their representatives in respect of whether dumping has caused material injury to the Australian industry producing like goods. No other submissions were received in respect of this issue.

#### Applicants' claims

In their submission in response to the SEF 183, the applicants claim that:

*"Customs must make a finding and recommendation to the Minister that the Australian industry has suffered material injury from dumped Chinese imports of formulated glyphosate during the POI"<sup>102</sup>.*

Furthermore, that *"anti-dumping measures are necessary to remove the effect of injurious dumping on the Australian industry manufacturing like goods"<sup>103</sup>.*

---

<sup>101</sup> Causation factors were not included in the SEF, as in the absence of new information being provided, which would warrant overturning the SEF's preliminary findings, the SEF highlighted that the investigation would be terminated.

<sup>102</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 1.

<sup>103</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 12.

## PUBLIC RECORD

To support their position, the applicants also refer to the information provided to Customs and Border Protection to substantiate claims of price undercutting by formulated glyphosate imported from China.

### Other submissions from interested parties

As discussed at Section 8 in this report, submissions were made by Chinese exporters and their representatives in response to the SEF regarding the preliminary findings of no dumping by exporters. These interested parties claimed that as a result of these findings that the investigation be terminated (as prescribed by the legislative provisions at s.269TDA of the Act).

Customs and Border Protection also notes that Zhejiang Xinan / Wynca IE's submission in response to SEF 183 addressed causation factors in respect of the injury experienced by the applicants.

These parties claim that:

*"the Australian industry has not experienced material injury, and that its financial position is a result of company management and business decisions under normal competitive conditions"*<sup>104</sup>.

### Customs and Border Protection's assessment

Customs and Border Protection found that no new information has been provided which warrants overturning the SEF's preliminary findings regarding whether dumping has caused material injury to the Australian industry producing like goods. Due to the findings in respect of the dumping investigation (i.e. no dumping by the selected cooperating Chinese exporters and negligible volumes found for all other selected non-cooperating Chinese exporters, resulting in the termination of the investigation), the submissions and claims regarding causation factors have not been comprehensively assessed. Customs and Border Protection notes, that the claims made by other interested parties regarding causation factors were not substantiated.

## 10.3 Conclusion

Customs and Border Protection is satisfied that the SEF's preliminary findings regarding whether dumping has caused material injury do not need to be revised. Customs and Border Protection's final findings are at Section 10.1.

---

<sup>104</sup> Zhejiang Xinan's / Wynca IE's post SEF submission, page 6.

# PUBLIC RECORD

## 11 NON INJURIOUS PRICE

### 11.1 Final findings

Customs and Border Protection has considered the submissions made in response to the SEF and found that no new information or evidence has been provided which warrants revising the preliminary findings as contained in SEF 183<sup>105</sup>, which would result in the requirement to calculate Non-injurious Prices (NIPs) and USPs.

Given the termination of the investigation, Customs and Border Protection has not assessed the proposed basis for USPs for the Australian industry.

Customs and Border Protection established that in the event that USPs were required to be calculated, that several complexities were apparent, including that:

- Industry selling prices at a time unaffected by dumping (presuming dumping was established) may not be suitable for the purpose of establishing USPs.
  - Interested parties (including the applicants) submitted that formulated glyphosate prices in 2008 were significantly higher compared to 2011. This reflects the peak prices for glyphosate technical. Market prices are not expected to return to the levels experienced in 2008. Prices achieved in 2009-10 were still well above market prices which could be achieved in the current market.
- Considering the issue above, it is likely USPs would be determined using constructed industry prices based on industry's CTMS plus profit. However:
  - Nufarm and Accensi have significantly different costing structures and pricing.
  - The applicants source glyphosate technical from different suppliers, subject to varying contractual arrangements.
  - The proportion of formulated glyphosate sales and production volumes of the applicants in the domestic market varies significantly. Nufarm represents the significant majority of the combined applicants' sales volume and market share.
  - The level of profit for both applicants varies (reflecting significantly different cost structures and prices), which impacts on the ability to determine an appropriate level of profit indicative of both companies.

---

<sup>105</sup> SEF 183 stated that NIPs have not been calculated because provided that no new information is submitted to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry, Customs and Border Protection proposed to terminate the investigation (SEF Section 11.1 refers).

# PUBLIC RECORD

The following section of this report should be read in conjunction with Section 11 of SEF 183.

## 11.2 Background

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

Under the Dumping Duty Act, the Minister must have regard to the desirability of ensuring that the amount of dumping duty and countervailing duty is not greater than is necessary to prevent injury, or a recurrence of injury.

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

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

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

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

## 11.3 Submissions following the publication of SEF 183

Following the publication of the SEF, Customs and Border Protection received a submission from the applicants in respect of the NIP. No other submissions were received in respect of this issue.

### Applicants' claims

In their submission in response to the SEF, the applicants note that they consider:

*"in the absence of market selling prices from a period unaffected by dumping, the industry's CTM&S<sup>106</sup> would seem a reasonable basis upon which to calculate USPs"<sup>107</sup>.*

---

<sup>106</sup> Cost to make and sell.

<sup>107</sup> Applicants' submission in response to the SEF, dated 13 July 2012 (and received by Customs and Border Protection 16 July 2012), page 10.

## PUBLIC RECORD

The applicants nominate the average level of profit achieved by Nufarm and Accensi in 2008-09 as an appropriate amount to be applied to the CTMS to derive USPs.

### Customs and Border Protection's assessment

The SEF 183 noted that the applicants had not made a submission in respect of the most appropriate approach for calculating USPs.

However, given that no new information was provided which warrants revising the SEF's preliminary findings (resulting in the termination of the investigation), Customs and Border Protection has not assessed the applicants' claims made in response to the SEF regarding the most appropriate basis to calculate USPs for the Australian industry.

### **11.4 Conclusion**

Customs and Border Protection noted the submissions made in response to the SEF regarding NIPs (and USPs) and is satisfied that the SEF's preliminary findings do not need to be revised, as the investigation has been terminated (on the grounds that no other new information was provided which would warrant revising the SEF's preliminary findings<sup>108</sup>). Custom and Border Protection's final findings are at Section 11.1.

---

<sup>108</sup> Which would result in the requirement to calculate NIPs and USPs.

# PUBLIC RECORD

## APPENDICES

Appendix No.	Title / description
Confidential Appendix 1	Final calculation of dumping margins - selected cooperating exporters
Confidential Appendix 2	Final calculation of negligible import volumes – for selected non-cooperating exporters