



**Australian Government**  
**Australian Customs and  
Border Protection Service**

# Public Record

**R E P O R T**

**CUSTOMS ACT 1901 - PART XVB**

**TRADE MEASURES BRANCH**

**REPORT NO.163**

**CONSIDERATION OF AN APPLICATION  
FOR  
A DUMPING DUTY NOTICE  
AND  
A COUNTERVAILING DUTY NOTICE**

**Biodiesel**

**EXPORTED FROM**

**THE UNITED STATES OF AMERICA**

**June 2010**

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## ABBREVIATIONS

ABS	Australian Bureau of Statistics
The Act	<i>Customs Act 1901</i>
CEO	Chief Executive Officer
CIF	Cost insurance and freight
CTMS	Cost To Make & Sell
Customs and Border Protection	Australian Customs and Border Protection Service
EC	European Commission
FOB	Free On Board
ML	Megalitres
NIP	Non-injurious price
Tariff Act	<i>Customs Tariff Act 1995</i>
the goods	the goods the subject of the application
the Minister	the Minister for Home Affairs
USA	United States of America
USP	Unsuppressed Selling Price

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## 1 SUMMARY AND RECOMMENDATIONS

This consideration is in response to an application by Biodiesel Producers Ltd for a dumping duty notice and a countervailing duty notice in respect of biodiesel exported to Australia from the United States of America (USA).

This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer of Customs and Border Protection (CEO) as to whether or not to reject the application.

### 1.1 Recommendation

Customs and Border Protection recommends that the CEO decide not to reject the application.

### 1.2 Application of law to facts

#### 1.2.1 Authority to make decisions

Division 2 of Part XVB of the *Customs Act 1901*<sup>1</sup> 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 goods covered by an application for the purpose of making a report to the Minister for Home Affairs (the Minister).

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

#### 1.2.2 Application

On 31 May 2010, Biodiesel Producers Ltd lodged an application for the publication of a dumping duty notice and a countervailing duty notice in respect of biodiesel exported to Australia from the USA.

Within 20 days of Customs and Border Protection receiving the application, the CEO shall examine the application and decide whether or not to reject it.

The CEO must make a decision on this application by 20 June 2010.

#### 1.2.3 Consideration of application

The CEO shall reject the application if not satisfied, after having regard to the matters contained in the application and to any other information that the CEO considers relevant, that:

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

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<sup>1</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.

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- in respect of the application for a countervailing duty notice, there appear to be reasonable grounds for the publication of a countervailing duty notice in respect of the goods the subject of the application.

## 1.2.4 Findings and conclusions

### Compliance with subsection 269TB(4) (Section 3 of this report)

Customs and Border Protection considers that the application complies with subsection 269TB(4).

### Australian industry (Section 5 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appears to be an Australian industry in respect of like goods.

### Reasonable grounds - Dumping (Section 6 of this report)

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

- biodiesel has been exported to Australia from the USA at dumped prices;
- the dumping margin, when expressed as a weighted average of the export price is not less than 2%, and is therefore not a negligible margin;
- the total volume of the goods that appear to have been dumped from the USA over a reasonable examination period is greater than 3 percent of the total Australian import volume, and is therefore not a negligible volume.

### Reasonable grounds - Countervailing (Section 7 of this report)

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

- a countervailable subsidy has been received in respect of biodiesel exported to Australia from the USA;
- the level of countervailable subsidy when expressed as a percentage of the export price is not less than 1 percent and is therefore not a negligible level of subsidisation; and
- the total volume of the goods in respect of which a countervailable subsidy has been received that were exported to Australia from the USA over a reasonable examination period is greater than 3 percent of the total Australian import volume and is therefore not negligible volume.

### Reasonable grounds - Injury (Section 8 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of:

- lost sales volume;
- loss of market share;
- price undercutting;
- reduced profits and profitability;
- reduced return on investment;
- reduced capacity utilisation;

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- lower employee numbers; and
- reduced hours worked.

### Reasonable grounds - Causation (Section 9 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claim that there is a causal link between dumping and material injury and subsidisation and material injury.

### Reasonable grounds – Publication of a dumping duty notice

In view of the above findings, there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

### Reasonable grounds – Publication of a countervailing duty notice

In view of the above findings, there appear to be reasonable grounds for the publication of a countervailing duty notice in respect of the goods the subject of the application.

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## 2 INTRODUCTION

### 2.1 Application

On 31 May 2010, Biodiesel Producers Ltd lodged an application<sup>2</sup> for the publication of a dumping duty notice and a countervailing duty notice in respect of biodiesel exported to Australia from the USA. Biodiesel Producers Ltd claims to be one of four Australian manufacturers of biodiesel.

The decision whether to reject the application must be made within 20 days after the lodgement date<sup>3</sup>. Therefore, the decision must be made by 20 June 2010.

The application must be rejected unless the CEO is satisfied that:

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

For there to appear to be reasonable grounds for the publication of a dumping duty notice, there must appear to be reasonable grounds to support the claim that biodiesel has been exported to Australia from the USA at dumped prices and because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened.

For there to appear to be reasonable grounds for the publication of a countervailing duty notice in respect of the goods, there must appear to be reasonable grounds to support the claim that a countervailable subsidy has been received in respect of biodiesel that has been exported to Australia from the USA and because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened.

### 2.2 Information on the applicant

Biodiesel Producers Ltd is a public unlisted company. It has one major shareholder, ANZIB Specialist Asset Management as trustee for Energy Infrastructure Trust, which owns 67.7 percent of Biodiesel Producers Ltd's shares. The remaining shares are held by a number of individuals and institutions, some of whom are customers of Biodiesel Producers Ltd. Biodiesel Producers Ltd has no parent company or subsidiaries.

Biodiesel Producers Ltd commissioned its biodiesel manufacturing facility at Barnawartha in Victoria in December 2007 and commenced sales in February 2008. The facility's capacity is 60 megalitres (ML) per annum. The facility employs 23 people.

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<sup>2</sup> Section 269TB

<sup>3</sup> Section 269TC(2)

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## 2.3 Biodiesel industry in Australia

Biodiesel Producers Ltd states that, at present, there are three other Australian manufacturers of biodiesel. They are:

- Australian Renewable Fuels Ltd.
- Biodiesel Industries Australia Pty Ltd; and
- Smorgon Fuels Pty Ltd (trading as Biomax);

## 2.4 Previous biodiesel investigations

There have been no previous Australian anti-dumping or countervailing investigations involving biodiesel.

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## 3 COMPLIANCE WITH SUBSECTION 269TB(4)

### 3.1 Finding

Customs and Border Protection is satisfied that the application complies with s. 269TB(4).

### 3.2 Introduction

To comply with s. 269TB(4), the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry<sup>4</sup>.

### 3.3 The Application

Biodiesel Producers Ltd lodged its application in writing and in the approved form. The form is signed in the required manner. Biodiesel Producers Ltd has provided all information required by the form.

The public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information<sup>5</sup>.

### 3.4 Supported by Australian industry

Biodiesel Producers Ltd stated in its application that the Australian industry producing biodiesel presently consists of it and three other manufacturers. Customs and Border Protection contacted the three manufacturers not party to the application and asked them to provide their biodiesel production volumes for the 12 month period to 31 March 2010.

Based on the information received and the information contained in the application Biodiesel Producers Ltd accounts for<sup>6</sup>:

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

Information on production quantities and support for the application is at **confidential appendix 1**.

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<sup>4</sup> Section 269TB(4)

<sup>5</sup> Section 269ZJ

<sup>6</sup> Section 269TB(6)

## 4 THE GOODS THE SUBJECT OF THE APPLICATION

### 4.1 Description

The application describes the goods as:

Fuel manufactured by chemically altering non-fossil origin feedstocks (including recycled materials from these sources) through a process of transesterification and/or esterification to form mono-alkyl esters (commonly known as 'biodiesel') whether in pure form (B100) or in a blend with a biodiesel percentage in excess of 20% (B20).

The goods as described above are referred to in this report as biodiesel.

The 'B' factor referred to in the description is an internationally recognised system for indicating the amount of biodiesel in a blend or mixture. The number after the B denotes the percentage of biodiesel in the blend eg. B5 is a mixture of 5 percent biodiesel and 95 percent other product.

### 4.2 Tariff classification

The application states that the goods the subject of the application fall within the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*:

2710.11.80 Statistical code 11

2710.19.80 Statistical code 21

3824.90.20 Statistical code 20

3824.90.30 Statistical code 46

Trade Services Branch of Customs and Border Protection advised that, in addition to the above classifications, the goods the subject of the application, depending on their composition, could also be correctly classified under the following two classifications:

2710.91.80 Statistical code 82

2710.99.80 Statistical code 91

All the relevant classifications set out above currently attract a general Customs duty rate of A\$0.38143 per litre.

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## 5 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

### 5.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appears to be an Australian industry in respect of like goods.

### 5.2 Introduction

If there is a person or persons who produce like goods in Australia, then there is an Australian industry in respect of those like goods<sup>7</sup>.

### 5.3 Manufactured in Australia

For goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia<sup>8</sup>. Partly manufactured in Australia means that at least one substantial process in the manufacture of the goods must be carried out in Australia<sup>9</sup>.

#### 5.3.1 Imported materials

Biodiesel Producers Ltd imports the following two minor materials used to manufacture biodiesel:

- potassium hydroxide flake - used at a rate of 1% to finished product;
- antioxidant - used at a rate of 0.1% to finished product.

All other materials are sourced in Australia.

#### 5.3.2 Manufacturing process

Biodiesel Producers Ltd states that during its manufacturing process, animal fats and vegetable oils are chemically altered by acid and trans esterification into fatty acid methyl esters using methanol and a potassium hydroxide catalyst. The crude biodiesel produced from this process is refined by distillation to produce the finished product. Glycerine and potassium sulphate are by-products of the production process.

#### 5.3.3 Assessment

Having regard to the application, it appears at least one substantial process in the manufacture of the goods is carried out in Australia and that, therefore, biodiesel is wholly or partly manufactured in Australia.

### 5.4 Like goods

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>10</sup>.

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<sup>7</sup> Subsection 269T(4)

<sup>8</sup> Subsection 269T(2)

<sup>9</sup> Subsection 269T(3)

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## 5.4.1 Locally produced biodiesel

The application states that Biodiesel Producers Ltd manufactures biodiesel that meets the requirements of the Australian Fuel Standard (Biodiesel) Determination 2003.

## 5.4.2 Physical likeness

Biodiesel Producers Ltd states that its pure biodiesel (B100) is identical in all practical and performance measures to imported pure biodiesel.

## 5.4.3 Commercial likeness

The application states blended biodiesel fuels, whether made from imported or domestically produced pure or blended biodiesel, is sold into and consumed by the same fuel markets, being retail road users, commercial road users (road transport) and off road users (mining, agriculture and marine). Customs and Border Protection notes that the applicant's comments on commercial likeness appear to relate typically to blends with low biodiesel content ready for retail sale rather than the pure biodiesel and high biodiesel content blends the subject of the application.

## 5.4.4 Functional likeness

The application states that both the imported and Australian produced biodiesel are functionally alike in that they both are used almost exclusively to blend with mineral diesel in various ratios which rarely exceed a blend of 20% biodiesel to 80% mineral diesel.

## 5.4.5 Production likeness

The application states that the chemical production process used to produce biodiesel in the USA is the same as that used by Australian manufacturers.

## 5.4.6 Assessment

Customs and Border Protection has based its assessment of like goods on the operations of the applicant, Biodiesel Producers Ltd.

It appears that unblended biodiesel (B100) manufactured by Biodiesel Producers Ltd is a like good to B100 exported to Australia from the USA. They have similar physical characteristics, commercial likeness, the same function and are manufactured through the same or similar processes.

In Customs and Border Protection's view, Biodiesel Producers Ltd's B100 product also has characteristics closely resembling imported biodiesel blends from the USA containing in excess of 20% biodiesel. Both are products that will typically be further blended to produce a biodiesel blend containing 20% or less biodiesel for use as fuel. On the same basis, any blends above B20 manufactured by the Australian industry would appear to be like goods to imported blends above B20.

Biodiesel Producers Ltd's production and sale of biodiesel blends with a biodiesel content of 20% or less would not be like goods to imported B100 or blends with a biodiesel content of 20% or more. A blend of 20% or less of biodiesel is a product suitable for use in most diesel engines. B100 and blends above B20 would normally be further blended and are typically not suitable for use as a fuel. The markets for unblended biodiesel and blends above B20 appear to be distinct from the market for biodiesel blends of B20 or below which are destined for retailers or end users.

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<sup>10</sup> Subsection 269T(1)

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Having regard to the application, it appears that biodiesel produced by Biodiesel Producers Ltd is a like good to the goods the subject of the application and, therefore, there is an Australian industry in respect of like goods.

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## 6 REASONABLE GROUNDS – DUMPING

### 6.1 Finding

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

- biodiesel is being exported to Australia from the USA at dumped prices;
- the dumping margin, when expressed as a weighted average of the export price is not less than 2%, and is therefore not a negligible margin; and
- the total volume of the goods that have been dumped from the USA over a reasonable examination period is greater than 3% of the total Australian import volume, and is therefore not a negligible volume.

### 6.2 Introduction

For there to appear to be reasonable grounds for the publication of a dumping duty notice<sup>11</sup>, there must be reasonable evidence to support the claim that the export price of the subject goods is less than the normal value of the goods<sup>12</sup>.

A dumping duty notice will not be published if an exporter's dumping margin is negligible or the total volume of dumped goods is negligible. A dumping margin is negligible if, when, expressed as a percentage of the export price, the dumping margin is less than 2%<sup>13</sup>.

In cases involving imports from one country, the total volume of the goods that have been dumped is taken to be a negligible volume if it is less than 3% of the total Australian import volume.<sup>14</sup>.

### 6.3 Export price

To estimate export prices of biodiesel imported from the USA, Biodiesel Producers Ltd relied on import statistics reported by the Australian Bureau of Statistics (ABS) for shipments exceeding 1ML. The information covers four shipments from the USA in the months of January, April and May 2009 and February 2010. Biodiesel Producers Ltd included in its application the relevant ABS reports.

#### 6.3.1 Assessment of export price

Customs and Border Protection compared the information in the ABS reports with information from Customs and Border Protection's import database and found them to be consistent. The export price information provided in the application appears to be reasonably based.

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<sup>11</sup> Subsection 269TC(1)(c)

<sup>12</sup> Subsection 269TG(2)(b)

<sup>13</sup> Subsection 269TDA(1)

<sup>14</sup> Subsection 269TDA(4)

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## 6.4 Normal value

Biodiesel Producers Ltd based its estimates of normal value on biodiesel prices reported in a series of Clean Cities Alternative Fuel Price Reports published by the US Department of Energy. Biodiesel Producers Ltd provided reports for the following months, some of which correspond closely to the months in which the ABS reported imports of biodiesel from the USA:

- January 2009;
- April 2009;
- July 2009;
- October 2009;
- January 2010.

The reports provide a US national average 'at-the-pump' sales price per US gallon for B99/B100 biodiesel in US dollars. The price is described as including Federal and state motor fuel taxes. The national average is derived from price information collected from across the USA and weighted according to the number of price observations in each of seven defined areas of the USA, excluding the states of Hawaii and Alaska. The reports also provide information on the prices and number of price observations in each of the seven defined areas.

Biodiesel Producers Ltd has converted the US dollar per gallon sales prices to Australian dollar (A\$) per litre prices using the correct US gallon to litre conversion factor and exchange rates that are reasonable based on a comparison with the rates used by Customs and Border Protection.

### 6.4.1 Adjustments

Biodiesel Producers Ltd deducted amounts for the following from the 'at-the-pump' sales prices to estimate prices it claims are comparable with its estimate of export prices of biodiesel from the USA:

- Federal excise tax – at a rate of US\$0.24 per US gallon.
- storage and blending costs prior to delivery – a cost of A\$0.015 per litre based on Biodiesel Producers Ltd's own experience with movement and storage costs.
- costs of transporting the product to the retailer – A\$0.08 per litre based on Biodiesel Producers Ltd's average delivery costs to Melbourne, Sydney and Brisbane.
- retail margin – A\$0.02 per litre. Biodiesel Producers Ltd claimed that as mineral diesel has a significant price advantage over B99/B100 biodiesel, it estimates that the retail margins on the product in the USA would be very low. Biodiesel Producers Ltd provided information from the Australian Institute of Petroleum showing retail margins for diesel in Australia in the last two years have averaged A\$0.10 per litre, which Biodiesel Producers Ltd estimates would include A\$0.08 in freight costs.

Biodiesel Producers Ltd also deducted amounts for the following from the A\$ per litre free-on-board (FOB) export prices to Australia:

- wharfage for export in the USA – A\$0.002 per litre based on a Australian Competition and Consumer Commission report on setting the pricing of petrol and diesel in Australia.

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- costs of transporting to port – A\$0.08 per litre based on Biodiesel Producers Ltd's average transport costs moving fuel on the East coast of Australia.

Using the adjustments described above, Biodiesel Producers Ltd has compared export prices and normal values at the ex works price point.

### 6.4.2 Assessment of normal value

The domestic price information provided in the application appears to be a reasonable basis on which to estimate normal values. The prices are from a reliable source and are contemporaneous with exports of biodiesel to Australia.

Biodiesel Producers Ltd has adjusted the 'at the pump' quoted prices to an equivalent level of trade to exports to Australia by deducting a retail margin based on the estimated difference between wholesale and retail prices in Australia. This appears reasonable although it is possible that this margin could be larger in the USA. Other adjustments to the domestic selling prices to make them comparable with export prices seem reasonable and supported.

The reported USA prices of biodiesel in the Clean Cities Alternative Fuel Price Reports are stated to include both federal and state fuel taxes. In estimating normal values, Biodiesel Producers Ltd did not deduct an amount for state fuel taxes. Customs and Border Protection's analysis assumes any state fuel taxes would not be payable on exports and deducts an amount for these taxes from the USA selling prices. The level of state taxes is based on Customs and Border Protection's understanding of from where in the USA biodiesel was exported to Australia and its understanding of the state excise taxes in those states.

The analysis of normal values also used average biodiesel selling prices in the appropriate region of the USA according to where Customs and Border Protection estimates the exporters to Australia are located.

## 6.5 Dumping margin

Biodiesel Producers Ltd estimated dumping margins as a percentage of the FOB export price for four import shipments of biodiesel as follows:

Month	%
January 2009	88%
April 2009	61%
May 2009	46%
February 2010	38%

### 6.5.1 Assessment of dumping margin

Customs and Border Protection modified Biodiesel Producers Ltd's dumping margin calculations by using the reported biodiesel selling prices in the appropriate region of the USA based on its best estimate of where the exporters to Australia are located. Customs and Border Protection also deducted what we understand to be the state fuel excise taxes in the relevant states. The estimates of the dumping margins are as follows:

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Month	%
January 2009	38%
April 2009	18%
May 2009	10%
February 2010	26%

The calculations are at **confidential appendix 2**. As noted above, the appropriate level of adjustment to retail prices to make them comparable with export prices may be higher than estimated by Biodiesel Producers Ltd. However, the average dumping margin estimated is such that the retail to wholesale adjustment could be significantly larger and there would still be actionable levels of dumping.

The estimated dumping margins are greater than 2% and therefore not negligible.

### 6.6 Volume of imports

Information from Customs and Border Protection's import database shows that there have been exports to Australia of biodiesel from the USA in excess of 3 per cent of the total import volume over a reasonable examination period.

Therefore, Customs and Border Protection considers that there appear to be reasonable grounds to support the claim that the total volume of the goods that have been dumped is not negligible.

This analysis is at **confidential appendix 3**.

## 7 REASONABLE GROUNDS – SUBSIDIES

### 7.1 Finding

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

- a countervailable subsidy has been received in respect of biodiesel exported to Australia from the USA;
- the level of countervailable subsidy when expressed as a percentage of the export price is not less than 1 percent and is therefore not a negligible level of subsidisation; and
- the total volume of the goods in respect of which a countervailable subsidy has been received that were exported to Australia from the USA over a reasonable examination period is greater than 3 percent of the total Australian import volume and is therefore not negligible.

### 7.2 Legislation

Subsection 269T(1) defines a 'subsidy', in relation to goods that are exported to Australia, as:

- (a) *a financial contribution:*
- (i) *by a government of the country of export or country of origin of those goods; or*
  - (ii) *by a public body of that country or of which that government is a member; or*
  - (iii) *by a private body entrusted or directed by that government or public body to carry out a governmental function;*

*that is made in connection with the production, manufacture or export of those goods and that involves:*

- (iv) *a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or*
  - (v) *a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or*
  - (vi) *the acceptance of liabilities, whether actual or potential, of that enterprise by that government or body; or*
  - (vii) *the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or*
  - (viii) *the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or*
  - (ix) *the purchase by that government or body of goods provided by that enterprise; or*
- (b) *any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;*

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*if that financial contribution or income or price support confers a benefit in relation to those goods.*

Further, subsection 269TAAC(1) provides that a 'subsidy' is a 'countervailable subsidy' if:

- (a) *it is specific; and*
- (b) *it is not an excluded subsidy.*

### 7.3 The applicant's claims

Biodiesel Producers Ltd claims that countervailable subsidies have been received in respect of biodiesel exported to Australia through a Federal government excise tax/income tax credit scheme. The scheme, which provides for three categories of credit, is the only countervailable subsidy scheme referred to by Biodiesel Producers Ltd in its application.

#### Excise tax/income tax credit

Biodiesel Producers Ltd claims that Title 26, Section 40A of the Internal Revenue Code provides for a biodiesel fuels tax credit to blenders, retailers and end-users of biodiesel. It provided a copy of Section 40A of Title 26. The US Department of Treasury, Internal Revenue Service is said by the applicant to be the US Government Agency responsible for the administration of the scheme.

Biodiesel Producers Ltd explained that the biodiesel fuel credits scheme has the following three components:

- (i) the biodiesel mixture credit;
- (ii) the biodiesel credit;
- (iii) the small agri-biodiesel producer credit.

The application states that the legislation underpinning the biodiesel fuel credits scheme expired on 31 December 2009 but legislation to extend the scheme has been passed by the US House of Representatives and the Senate and has been referred to the Conference Committee prior to Presidential approval. Biodiesel Producers Ltd provided a copy of the relevant Bill and an extract from a website reporting on its status.

The application also refers to investigations conducted by the European Commission (EC) that resulted in anti-dumping and countervailing measures being taken on imports of biodiesel from the USA.

- (i) The biodiesel mixture credit

According to Biodiesel Producers Ltd, a person can claim the biodiesel mixture credit for each gallon of biodiesel used in the production of a mixture of biodiesel and diesel fuel which is sold for use as fuel or used as fuel by the person producing the mixture. Biodiesel Producers Ltd submitted that the credit under this component of the scheme takes the form of an excise tax credit or, if the company's excise tax liability is less than the total excise tax credit, the company can claim the residual credit as a refundable income tax credit. The amount of the credit is said to be US\$0.50 per US gallon of unmixed biodiesel or US\$1 per US gallon of agri-biodiesel. Agri-biodiesel is defined as biodiesel derived solely from virgin oils.

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## (ii) The biodiesel credit

The biodiesel credit can be claimed for each gallon of unblended biodiesel which is used in a trade or business or sold at retail and placed in the fuel tank of the customer's vehicle. This is a non-refundable tax credit of US\$0.50 per US gallon of unmixed biodiesel or US\$1 per US gallon of agri-biodiesel used or sold in the manner described.

## (iii) The small agri-biodiesel producer credit

The small agri-biodiesel producer credit is said to be available to a producer of agri-biodiesel whose production capacity is not more than 60 million gallons per year. The producer can claim a US\$0.10 non-refundable general business income tax credit for each gallon of agri-biodiesel produced up to a limit of 15 million gallons per year. For the producer to claim the credit, the agri-biodiesel must be used as fuel, sold for use as fuel or used to create a mixture of biodiesel and diesel fuel that is used as a fuel or sold for use as a fuel.

## 7.4 Consultations with the Government of the USA

On 7 June 2010, Customs and Border Protection wrote to the Government of the USA through its Embassy in Canberra, notifying it about the receipt of a properly documented application for anti-dumping and countervailing measures. Customs and Border Protection provided the Government of the USA with a copy of the non-confidential version of the application and invited it to engage in consultations in accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures.

Customs and Border Protection did not receive a response from the Government of the USA.

## 7.5 Customs and Border Protection's assessment

### 7.5.1 Does the nominated scheme involve the payment of subsidies?

Based on the available information, it appears that each of the three components of the biodiesel fuel credit scheme is a subsidy as defined in Australia's anti-dumping and countervailing legislation in that each is, in relation to goods that are exported to Australia, a:

- financial contribution by a government of the USA that is made in connection with the production, manufacture or export of biodiesel;  
and that involves;
- a direct transfer of funds from the government to the enterprise by whom the biodiesel is produced, manufactured or exported; and/or
- a direct transfer of funds from the government to that enterprise upon particular circumstances occurring; and/or
- the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to the government by that enterprise.

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### 7.5.2 Are they countervailable subsidies?

A subsidy is a countervailable subsidy if:

- (a) it is specific; and
- (b) it is not an excluded subsidy.

A subsidy is specific if, inter alia, access to the subsidy is explicitly limited to particular enterprises. The exception is where access to the subsidy:

- (a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- (b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and
- (c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

The available evidence indicates that each of the three components of the biodiesel fuel credit scheme is limited to entities involved in the biodiesel industry and are not available to other industries outside of their sector. Each of the three components of the biodiesel fuel credit scheme appears to be specific.

A subsidy is an excluded subsidy if the Minister is satisfied that:

- (a) it is specific but described in paragraph (a), (b) or (c) of Article 8.2 of the Agreement of Subsidies and Countervailing Measures; or
- (b) it is a domestic support measure that meets the criteria or conditions set out in Annex 2 to the Agreement on Agriculture.

The components of the biodiesel fuel credits scheme do not appear to be described in Article 8.2 of the Agreement of Subsidies and Countervailing Measures. The components of the scheme do also not appear to meet the criteria or conditions set out in Annex 2 to the Agreement on Agriculture. Therefore it appears that subsidies under the biodiesel fuel credit scheme are not excluded subsidies.

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## 7.5.3 Have subsidies been received in respect of biodiesel exported to Australia?

It appears that subsidies available under the biodiesel fuel credits scheme, particularly through the biodiesel mixture credit element of the scheme, were widely received by the biodiesel industry in the USA up until the expiry of the scheme on 31 December 2009<sup>15</sup>. It would be reasonable to expect that biodiesel exports to Australia in 2009 and early 2010 would have benefited from receipt of the subsidies.

## 7.5.4 May subsidies be received in respect of like goods that may be exported to Australia in the future?

Biodiesel Producers Ltd claimed that a Bill had been introduced into the US Congress to extend the biodiesel fuel credits scheme to 31 December 2010 and to reinstate the scheme retrospectively to 31 December 2009. Customs and Border Protection understands that the legislation has passed the US House of Representatives and will now be voted on in the Senate<sup>16</sup>. On this basis, the subsidies may be received in respect of like goods that may be exported to Australia in the future.

## 7.5.5 Amount of the subsidy

Reliable information indicates that the US\$0.50 per US gallon credit on biodiesel under the biodiesel credit mixture and biodiesel credit components of the biodiesel fuel credits scheme was increased to US\$1.00 per US gallon effective from 1 January 2008<sup>17</sup>.

Converting at exchange rates applying to the biodiesel shipments to Australia in 2010, the amount of the subsidy under the biodiesel credit mixture and biodiesel credit components of the scheme would each be approximately A\$0.30 per litre or 40 percent of the estimated export price. This analysis is at **confidential appendix 4**.

It appears that the amount of the subsidy is not negligible.

## 7.5.6 Volume of imports

Information from Customs and Border Protection's import database shows that there have been exports to Australia of biodiesel from the USA in excess of 3 per cent of the total import volume over a reasonable examination period.

Therefore, Customs and Border Protection considers that there appear to be reasonable grounds to support the claim that the total volume of the goods that have been subsidised is not negligible.

This analysis is at **confidential appendix 3**.

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<sup>15</sup> See European Commission Council Regulation (EC) No 598/2009

<sup>16</sup> See Biodiesel Digest article of 29 May 2010.

<sup>17</sup> European Commission Regulation (EC) No 194/2009

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## 7.6 Conclusion

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that:

- a countervailable subsidy has been received in respect of biodiesel exported to Australia from the USA;
- the level of countervailable subsidy when expressed as a percentage of the export price is not less than 1 percent and is therefore not a negligible level of subsidisation; and
- the total volume of the goods in respect of which a countervailable subsidy has been received that were exported to Australia from the USA over a reasonable examination period is greater than 3 percent of the total Australian import volume and is therefore not negligible volume.

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## 8 REASONABLE GROUNDS – HAS THE AUSTRALIAN INDUSTRY SUFFERED INJURY?

### 8.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of:

- lost sales volume;
- loss of market share;
- price undercutting;
- reduced profits and profitability;
- reduced return on investment;
- reduced capacity utilisation;
- lower employee numbers and;
- reduced hours worked.

### 8.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice and/or a countervailing duty notice<sup>18</sup>, there must appear to be reasonable grounds to support the claim that there is injury to the Australian industry producing like goods<sup>19</sup>.

### 8.3 Approach to injury analysis

The application states that Biodiesel Producers Ltd's accounting period is 1 July to 30 June. In addition, the data provided in the application are broken down into 13, four week periods. Therefore, for the purpose of assessing injury, where necessary for a meaningful comparison, the data have been adjusted to account for the differing length 'quarters' used by the applicant. Data for 'quarters' comprising longer periods have been reduced on a pro-rata basis to equate to other 'quarters'. Unit prices and costs have not been adjusted.

The data relate only to Biodiesel Producers Ltd's sales of unblended biodiesel and blends above B20.

The applicant advises that it is one of four companies currently producing biodiesel in Australia. Based on the available information, Biodiesel Producers Ltd represents, by volume, between 60 per cent and 70 per cent of the Australian industry. Customs and Border Protection has examined the injury claims of Biodiesel Producers Ltd to determine if the Australian industry as a whole appears to have suffered injury.

### 8.4 Background to the Australian market

The application states that the Australian market for biodiesel can be categorised as a tight, low margin market where access to that market is dominated by a small number of major oil companies. Demand for biodiesel is described by the applicant as coming via three routes:

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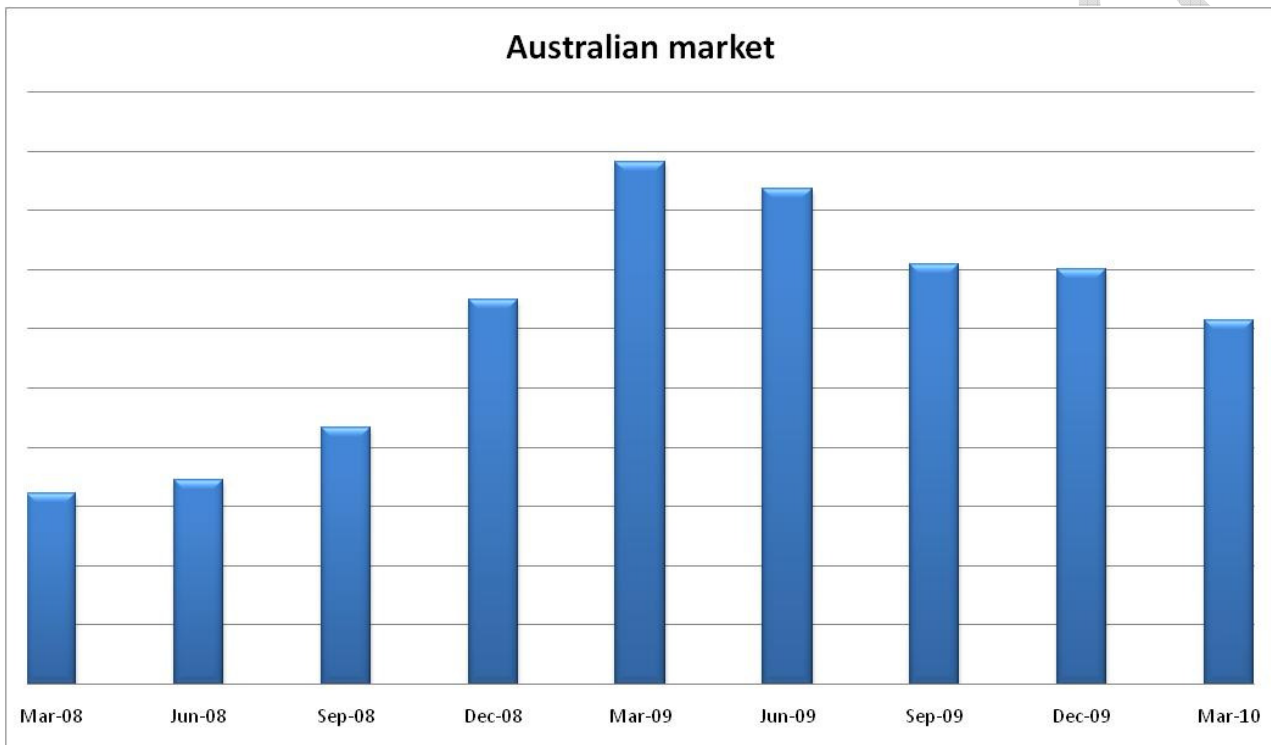
<sup>18</sup> Subsection 269TC(1)(c)

<sup>19</sup> Subsections 269TG(2)(b) and 269TJ(2)(b)

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1. Via the major oil companies that sell their product via their network of wholesale and retail networks;
2. Via independent fuel retailers that purchase their product from either the major oil companies or imported product. These retailers in turn sell their product to bulk and retail customers;
3. Direct sales to end-users (e.g. major trucking companies, mine sites etc).

The applicant describes the Australian market for biodiesel as not mature, being less than 10 years old. At the outset, the applicant estimates that the industry's production of biodiesel was less than 10 ML per annum, whereas today, production is estimated to be in excess of 80 ML.



Preliminary analysis indicates that the Australian market for biodiesel has grown since the applicant commenced production of biodiesel. It can also be observed that the market for biodiesel has declined from a high point in the March 2009 quarter.

### 8.5 The applicant's injury claims

The application discusses injury suffered by Biodiesel Producers Ltd in the form of:

- lost sales volume;
- lost market share;
- price undercutting;
- reduced profits and profitability.

Information included in the application also indicates that Biodiesel Producers Ltd may have suffered injury in the form of:

- reduced return on investment.

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- lower employee numbers; and
- reduced hours worked.

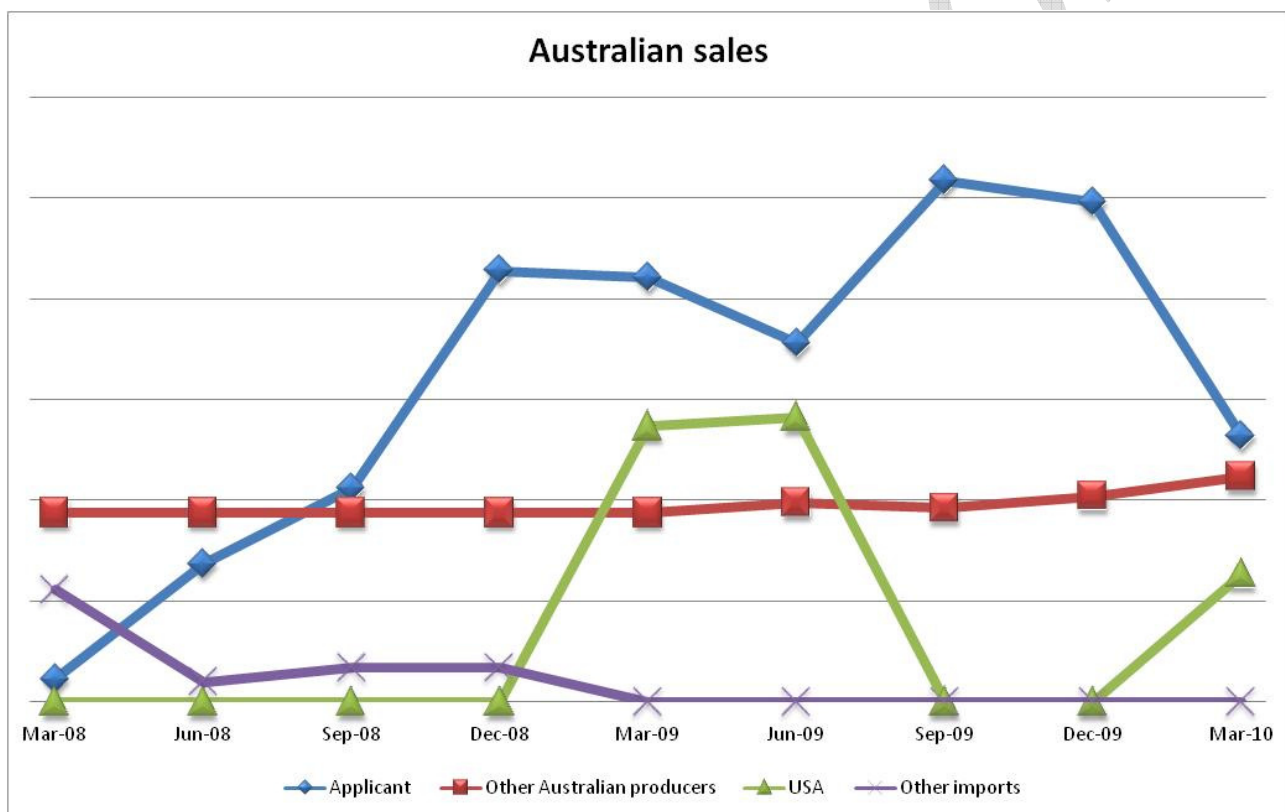
## 8.6 Commencement of injury

The application states that injury commenced on 7 February 2010 when Biodiesel Producers Ltd claims a major customer commenced running down stocks of domestically produced biodiesel in preparation for the arrival of a shipment of biodiesel from the USA.

## 8.7 Volume effects

### 8.7.1 Lost sales volume

The following graph illustrates the sales volume of biodiesel in litres by the Australian industry and imports based on the data contained in the application and data gathered from Customs and Border Protection's import database.



The graph shows that Biodiesel Producers Ltd's sales volume increased from the March 2008 quarter. However there were reductions in sales volume in the March 2009, June 2009, December 2009 and March 2010 quarters. The imports of biodiesel from sources other than the USA from the March 2008 – March 2009 quarters do not appear to have had a deleterious affect on the applicant's sales volume.

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of lost sales volume.

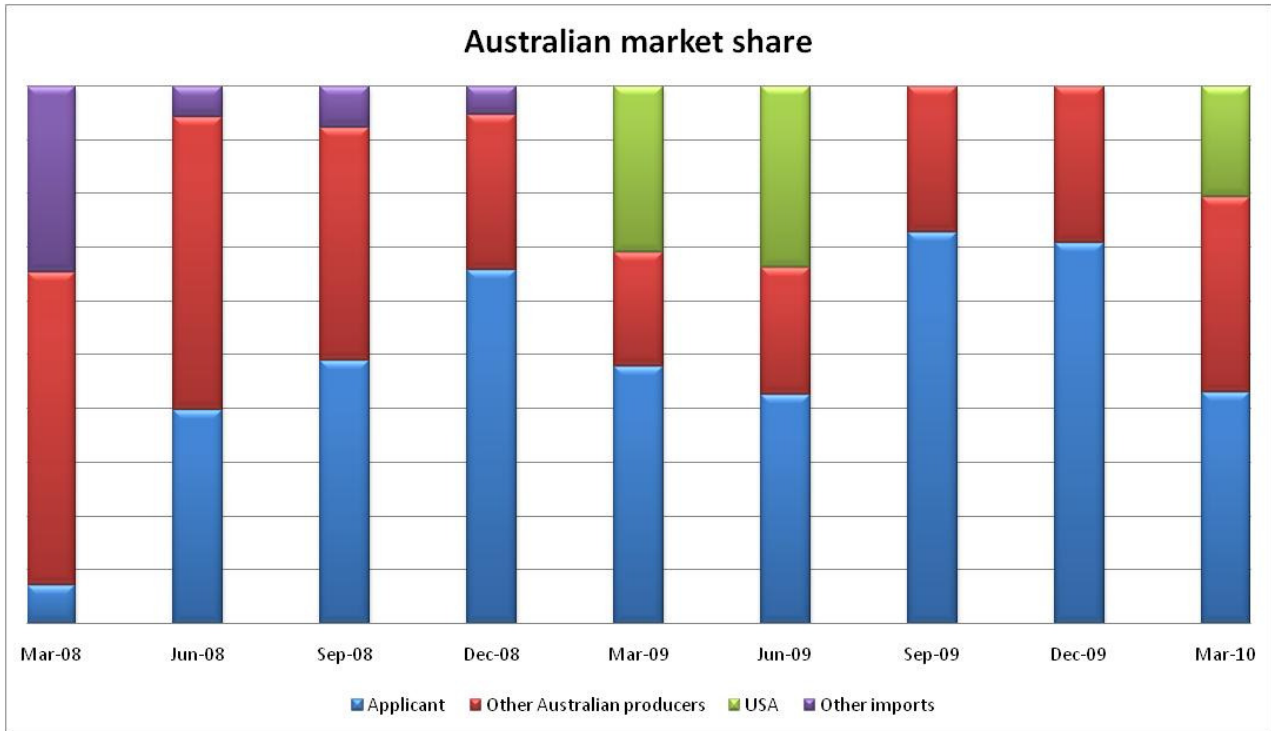
### 8.7.2 Lost market share

The following graph illustrates the market share of biodiesel in litres broken down into:

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- sales by the Australian industry;
- imports of biodiesel from the USA; and
- imports of biodiesel from other countries.

The graph is based on the data contained in the application and Customs and Border Protection's import database.



The graph shows that Biodiesel Producers Ltd increased market share until the December 2008 quarter. In the March 2009 and June 2009 quarters the Australian industry lost market share to imports of the goods from the USA. This market share was regained in the September 2009 quarter but lost again in March 2010 quarter when imports of the goods occurred. Further significant volumes of imports from the USA have occurred to date in the June 2010 quarter.

Based on this analysis, there appear to be reasonable grounds to support the claim that Biodiesel Producers Ltd and the Australian industry as a whole suffered injury in the form of lost market share.

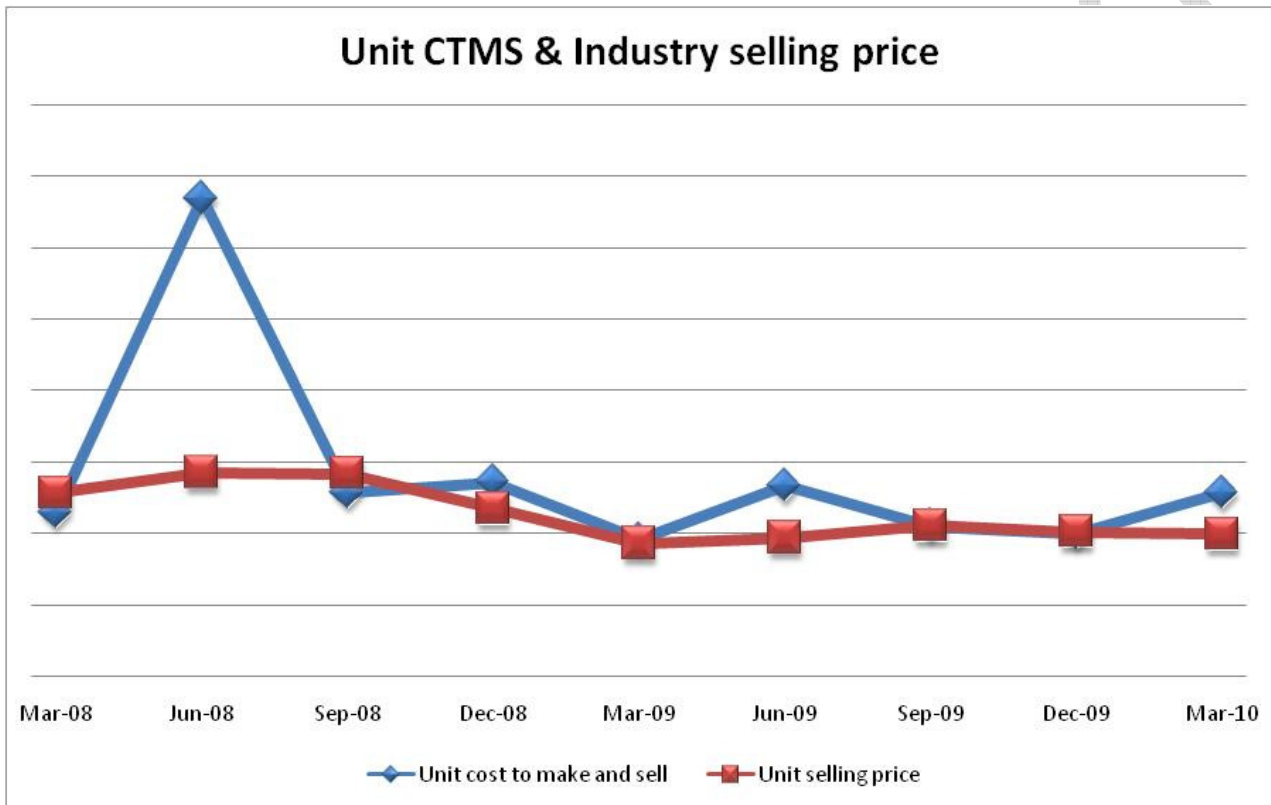
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## 8.8 Price effects

Price effects may be in the form of:

- price depression, which occurs when a company, for some reason, lowers its prices;
- price suppression, which occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented;
- price undercutting, which occurs when imported product is sold at a price below that of the Australian manufactured product.

The following graph illustrates Biodiesel Producers Ltd's unit cost to make and sell and unit selling price of biodiesel.



### 8.8.1 Price depression

Biodiesel Producers Ltd did not claim to have suffered price depression. Biodiesel Producers Ltd's average biodiesel prices appear to have been reasonably stable since the March 2009 quarter, prior to which they experienced a decline.

### 8.8.2 Price suppression

The graph suggests that Biodiesel Producers Ltd's experienced price suppression in the June 2009 and March 2010 quarters when increased unit costs were not matched by increases in prices. There was also a cost spike in the June 2008 quarter but unit prices did not rise to match the increase, indicating price suppression.

Based on this analysis it appears that Biodiesel Producers Ltd has suffered injury in the form of price suppression.

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## 8.8.3 Price undercutting

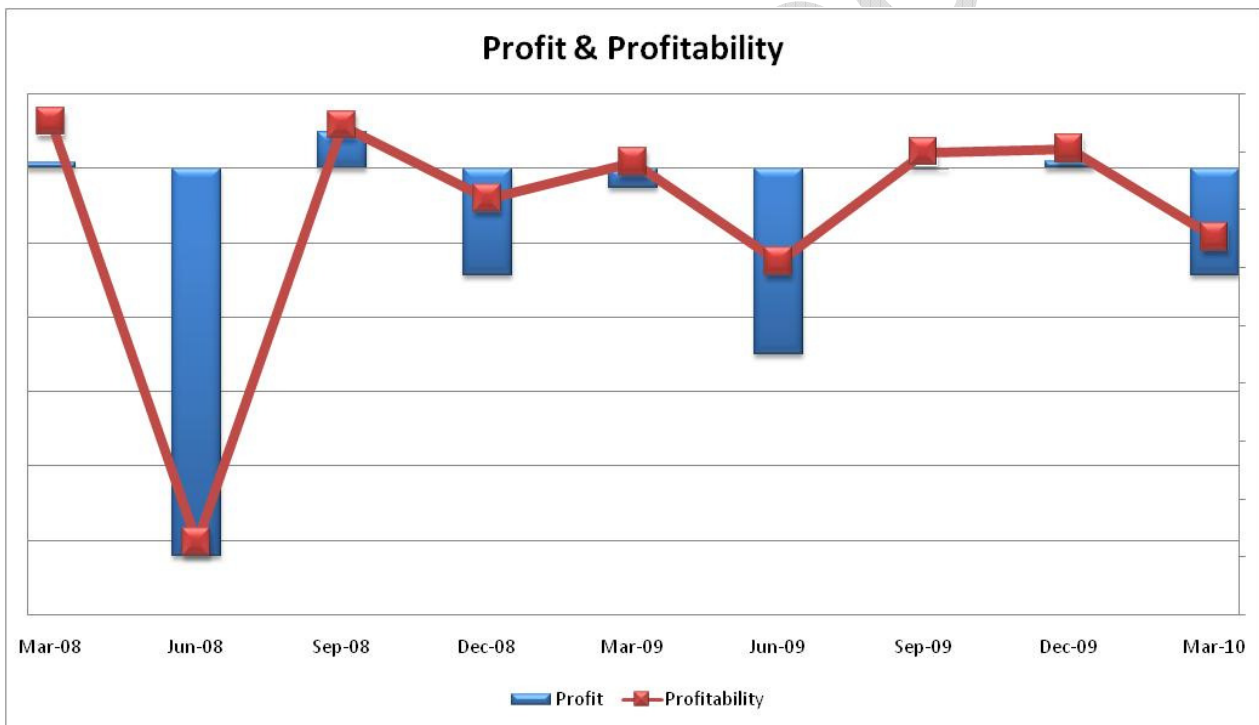
Biodiesel Producers Ltd claims that the price for the goods is approximately 20 per cent lower when compared to the domestically produced biodiesel. Biodiesel Producers Ltd did not provide support for its estimate of a landed cost for biodiesel imported from the USA. Therefore Customs and Border Protection compared Biodiesel Producers Ltd's selling prices with the declared CIF price of imports of biodiesel from the USA taken from the import database.

Allowing for some minor additional costs that might be incurred in moving the goods from the CIF point to the price delivered in Australia, it appears that the price of biodiesel from the USA undercut Biodiesel Producers Ltd's selling prices.

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price undercutting.

## 8.9 Profit effects

The following graph illustrates Biodiesel Producers Ltd's total profit and profitability based on the data contained in the application.



The above graph indicates that the applicant is experiencing varying levels of profit and profitability. Typically these periods are characterised by quarters of small profits and quarters of large losses. Biodiesel Producers Ltd claims that it reached a 'break-even' point in the September 2009 and December 2009 quarters but suffered a loss and lower profitability in the March 2010 quarter due to the availability of dumped and subsidised biodiesel.

Based on this analysis, there appear to be reasonable grounds to support the claim that Biodiesel Producers Ltd suffered injury in the form of lower profits and profitability.

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## 8.10 Other economic factors

The applicant completed Appendix A7 identifying other economic factors and summarised indexed movements in section A8 of the application.

Customs and Border Protection examined the data provided by the applicant and note that:

### Return on investment

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
-141	-141	124	196	83	-171	58	100	-125

The applicant experienced negative returns on investment in the March and June 2008, June 2009 and March 2010 quarters.

### Capacity utilisation

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
35	35	46	78	86	71	100	114	54

Capacity utilisation has increased in each quarter except June 2009 and March 2010 quarters.

### Employees

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
86	86	91	91	91	100	100	109	95

The number of persons employed has increased since the March 2008 quarter with the only decrease occurring in the March 2010 quarter.

### Hours worked

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
103	103	98	104	104	100	96	98	91

The applicant has experienced a decline in the number of hours worked since the March 2009 quarter.

Other economic factors addressed in Appendix A7 do not appear to support or detract from the injury claims.

## 8.11 Conclusion on injury

Based on the information available, it appears that Biodiesel Producer Ltd appears to have suffered injury in the form of:

- lost sales volume;
- loss of market share;
- price undercutting;
- reduced profits and profitability;

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- reduced return on investment;
- reduced capacity utilisation;
- lower employee numbers and;
- reduced hours worked.

Taking into account the magnitude of the injury to Biodiesel Producers Ltd and that it represents between 60 to 70 per cent of the Australian manufacturing industry, it is reasonable to conclude that the Australian industry as a whole has suffered injury.

Customs and Border Protection has examined the accuracy and adequacy of the evidence in the application, in conjunction with information from its import database. Customs and Border Protection is satisfied that there are reasonable grounds to conclude that the Australian industry has suffered injury.

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## 9 REASONABLE GROUNDS – IS THERE A LINK BETWEEN DUMPING AND SUBSIDISATION AND MATERIAL INJURY?

### 9.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- the dumping has caused material injury to the Australian industry producing like goods; and
- the subsidisation has caused material injury to the Australian industry producing like goods.

### 9.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice<sup>20</sup> and/or a countervailing duty notice, there must appear to be reasonable grounds to support the claim that because of dumping and/or subsidisation, material injury has been caused to the Australian industry producing like goods<sup>21</sup>.

In making a determination in relation to causal link, Customs and Border Protection must consider whether any injury to the Australian industry is being caused by a factor other than the exportation of the goods and any such injury must not be attributed to the exportation of the goods<sup>22</sup>.

### 9.3 The applicant's claims

Biodiesel Producers Ltd's quarterly production and sales volume dropped sharply in March 2010 quarter compared to the previous two quarters. Biodiesel Producers Ltd claims that this was the result of one of its major customers switching to dumped and subsidised biodiesel imports from the USA. Biodiesel Producers Ltd claims that the landed cost of the allegedly dumped and subsidised biodiesel imported from the USA was significantly lower than its own prices.

Biodiesel Producers Ltd claims that there have also been other indirect sales and production effects caused by the negative impact of the imports from the USA. It says the imports have affected the ability of Biodiesel Producers Ltd's other customers to compete in the market, reducing their sales and hence their requirement for domestically produced product.

Biodiesel Producers Ltd claims that it has lost market share to biodiesel imported from the USA and other domestic producers will soon see their customers either sourcing the significantly lower priced imports or being unable to compete in the marketplace.

Biodiesel Producers Ltd states that the ability to raise prices to compensate for higher raw material costs is limited as the price of biodiesel is linked to the price of mineral diesel. However, Biodiesel Producers Ltd claims that the reduced sales and production volumes

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<sup>20</sup> Subsection 269TC(1)(c)

<sup>21</sup> Subsection 269TG(2)(b)

<sup>22</sup> Subsection 269TAE(2A)

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has had a significant and material effect on its ability to spread its fixed costs. After breaking even in the September and December quarters of 2009, this resulted in Biodiesel Producers Ltd incurring significant losses in the March 2010 quarter. Biodiesel Producers Ltd has not attributed losses in other quarters to the effects of the allegedly dumped and subsidised imports.

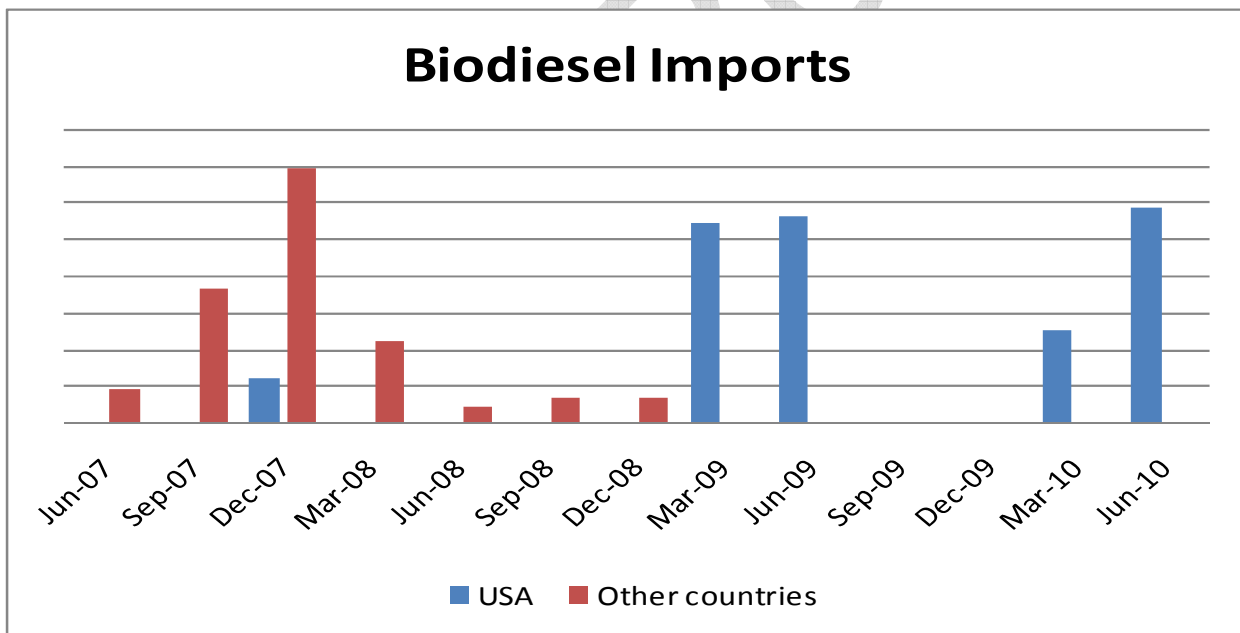
### 9.4 Assessment

#### 9.4.1 Imports

Imports of biodiesel from the USA have been intermittent in recent years. Imports appear to have first occurred in late 2007, after which no further imports were recorded until the first half of 2009. No imports were recorded in the second half of 2009 but further imports occurred from early in 2010. Based on available information, imports from the USA to date in 2010 are estimated to represent approximately 15 percent of the annual Australian market for biodiesel.

Imports of biodiesel from countries other than the USA have been negligible since the beginning of 2008. Prior to that time, significant quantities are recorded as having been imported from Malaysia, Indonesia and Singapore.

The following graph illustrates imports of biodiesel since the beginning of 2007.



Biodiesel Producers Ltd claims that in addition to the imports discussed above, a further 17ML of biodiesel from the USA is destined for Australia in the near future. Biodiesel Producers Ltd has provided no evidence that this is the case and no weight has been placed on this claim.

#### 9.4.2 Volume injury

Biodiesel Producers Ltd suffered a significant fall in sales and production volumes in the March 2010 quarter. Biodiesel Producers Ltd has provided evidence to support the claim that the decline in sales and production was due to one of its major customers purchasing allegedly dumped and subsidised biodiesel imported from the USA.

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On the available evidence, the loss in sales volume experienced by Biodiesel Producers Ltd represents a significant loss of sales and market share to the Australian industry producing like goods.

### 9.4.3 Price injury

There is reasonable evidence to support Biodiesel Producers Ltd's claim that its prices were undercut by the price of imports of biodiesel from the USA.

Biodiesel Producers Ltd appears to have experienced price depression prior to the March 2009 quarter but does not claim that this was caused by the allegedly dumped and subsidised imports. Prices have been fairly stable since that time.

Biodiesel Producers Ltd has suffered price suppression in March 2010 quarter. However, Biodiesel Producers Ltd states that the ability to raise prices is limited as the reference price is always related to the supply of mineral diesel.

Based on the available evidence, it does not appear that Biodiesel Producers Ltd has experienced price depression or price suppression caused by the alleged dumped and subsidised imports.

### 9.4.4 Profit injury

The higher unit costs and lower sales volumes experienced in March 2010 quarter resulted in Biodiesel Producers Ltd incurring significant losses in that quarter. As discussed above, there is reasonable evidence to support the claim that the loss of volume was caused by the allegedly dumped and subsidised imports. Therefore, it is reasonable to conclude that the losses incurred in March 2010 quarter were caused by the imports from the USA.

### 9.4.5 Materiality of injury

The volume and profit injury experienced by Biodiesel Producers Ltd in March 2010 quarter is very significant in terms of the performance of the company. Considering Biodiesel Producers Ltd appears to represent between 60 and 70 percent of the Australian industry by volume, it is reasonable to conclude that the alleged dumping and subsidisation have caused material injury to the Australian industry producing like goods.

### 9.4.6 Factors other than dumping and subsidisation

The following factors that could potentially have caused injury to the Australian biodiesel industry:

- the relationship between the prices of biodiesel and mineral diesel; and
- the impact of the Global Financial Crisis.

These issues can be explored further if an investigation is commenced. However on the available information, these factors do not detract from the finding that the alleged dumping and subsidisation appears to have caused injury to the Australian biodiesel industry.

### 9.4.7 Comparison of export price and non injurious price

The non-injurious price (NIP) is the minimum price necessary to prevent injury to the Australian industry producing like goods<sup>23</sup>.

If the export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the export prices are lower than the NIP, this

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<sup>23</sup> Subsection 269TACA(a)

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would support a finding that dumped imports have caused material injury to the applicant producing like goods.

Customs and Border Protection compared an estimate of the NIP to estimated export prices for shipments in 2010. As Biodiesel Producers Ltd has not claimed injury in the form of price depression, Customs and Border Protection used its average selling prices in 2010 as the starting point for estimating the NIP. Customs and Border Protection deducted from Biodiesel Producers Ltd's selling prices amounts for ocean freight and insurance to estimate the NIP (at the FOB price level). Customs and Border Protection estimates that other expenses associated with importing biodiesel would be minimal.

The analysis shows that export prices of biodiesel from the USA in 2010 are significantly below the estimated NIP.

The analysis is at **confidential appendix 5**.

### 9.5 Conclusion

Imports of biodiesel from the USA have increased in 2010. The prices of the imports appear to have significantly undercut the prices of the major Australian producer. Losses in production and sales volumes resulting from a major customer switching to the imported biodiesel appears to have caused significant volume, market share and profit injury to the major producer, Biodiesel Producers Ltd. The injury does not appear to be attributable to factors other than the alleged dumping and subsidisation.

Taking into account the magnitude of the injury to Biodiesel Producers Ltd and that it represents between 60 to 70 percent of the Australian manufacturing industry, there is reasonable evidence to support the claim that alleged dumping and subsidisation of imports of biodiesel from the USA have caused material injury to the Australian industry producing like goods.

## 10 Supplementary items

### 10.1 Threat of material injury

While the application claims that the allegedly dumped and subsidised imports have caused injury, Biodiesel Producers Ltd states that there is also a greater threat of future injury if the dumped and subsidised product continues to be imported.

Biodiesel Producers Ltd claims that there is no realistic limit to the subsidised production capacity of biodiesel in the USA and is concerned about the trend of increased shipment volumes and frequencies as these, it claims, will very quickly cause imported biodiesel to equal or exceed the total combined output of the domestic biodiesel industry.

As the allegedly dumped and subsidised imports appear to have caused material injury to the Australian industry producing like goods, it has not been necessary for us to assess whether there is a threat of material injury.

### 10.2 Close processed agricultural goods

The applicant does not consider biodiesel is a close processed agricultural goods.

## 11 INVESTIGATION

For the purposes of the investigation:

- the investigation periods to determine whether dumping and/or subsidisation has occurred will be from 1 April 2009 to 31 March 2010; and
- Customs and Border Protection will examine the Australian market and the economic condition of the industry from 1 July 2007 for the purposes of injury analysis.

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## 12 CONFIDENTIAL APPENDICES

<b>Confidential Appendix 1</b>	Assessment of support for application
<b>Confidential Appendix 2</b>	Dumping margin analysis
<b>Confidential Appendix 3</b>	Import volume analysis
<b>Confidential Appendix 4</b>	Amount of countervailable subsidy
<b>Confidential Appendix 5</b>	NIP estimates and comparison with export prices

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