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

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

STATEMENT OF ESSENTIAL FACTS NO.163

**INVESTIGATIONS INTO THE ALLEGED DUMPING AND
SUBSIDISATION OF**

BIODIESEL

EXPORTED TO AUSTRALIA

FROM

THE UNITED STATES OF AMERICA

8 NOVEMBER 2010

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Australian industry	the Australian industry producing biodiesel
ARF	Australian Renewable Fuels Limited
BIA	Biodiesel Industries Australia Pty Ltd
BPL	Biodiesel Producers Limited
Caltex	Caltex Australia Limited
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
CFGS	Cleaner Fuels Grants Scheme
CFPP	Cold Filter Plugging Point
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
The delegate	Delegate of the CEO
FOB	free on board
Freedom Fuels	Freedom Fuels Terminalling Pty Ltd
Fuel Quality Act	<i>Fuel Quality Standards Act 2000</i>
HO	Heating oil
Minister	The Minister for Home Affairs
MQBP	Missouri Qualified Biodiesel Producer
ML	megalitres
MOPS	Mean of Platts Singapore
National Biodiesel	National Biodiesel Limited
NIP	non-injurious price
NSW	New South Wales
NYMEX	New York Mercantile Exchange
PAD	preliminary affirmative determination
SEF	Statement of essential facts
SME	Soy Methyl Ester
Smorgon Fuels	Smorgon Fuels Pty Ltd
Tariff Act	<i>Customs Tariff Act 1995</i>
TGP	Terminal Gate Price

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the goods	the goods the subject of the application
TME	Tallow Methyl Ester
Trafigura	Trafigura Pte Ltd
USA	United States of America
USP	unsuppressed selling price

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1. SUMMARY AND RECOMMENDATIONS

These investigations are in response to an application by Biodiesel Producers Ltd (BPL) for the publication of a dumping duty notice and a countervailing duty notice in relation to biodiesel exported to Australia from the United States of America (USA).

This statement of essential facts (SEF) sets out the facts on which the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendations to the Minister for Home Affairs (the Minister) in relation to the application.

1.1. Proposed recommendation

The delegate of the CEO proposes to recommend to the Minister that a dumping duty notice and a countervailing duty notice be published in respect of biodiesel exported to Australia from the USA.

1.2. Application of law to facts

1.2.1. Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*¹ (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 the application for the purpose of making a report to the Minister. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (the delegate).

1.2.2. Application

On 31 May 2010, BPL lodged an application requesting that the Minister publish a dumping duty notice and a countervailing duty notice in respect of biodiesel exported to Australia from the USA.

The delegate was satisfied that the application was made in the prescribed manner by a person entitled to make the application².

1.2.3. Initiation of investigation

After examining the application, the delegate was satisfied that:

- the application was made in the manner required by the legislation;

¹ 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.

² Section 269TB

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- there is an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application³.

The delegate decided not to reject the application and notice of the initiation of the investigations was published on 22 June 2010⁴.

1.2.4. Statement of essential facts

The delegate must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows⁵, place on the public record a statement of the facts on which the delegate proposes to base his recommendations in relation to the application⁶.

In formulating the SEF, the delegate must have regard to the application concerned, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant⁷.

For these investigations, the Minister granted a 28 day extension to the date by which the SEF must be placed on the public record. This SEF is now due on or before 8 November 2010.

1.3. Preliminary findings

The following preliminary findings have been made based on all available information:

1.3.1. Australian industry (Chapter 4 of this report)

- there is an Australian industry producing like goods;

1.3.2. Dumping (Chapter 6 of this report)

- export prices were calculated having regard to all relevant information⁸ using invoiced prices between suppliers and Australian importers;
- normal value was calculated having regard to all relevant information⁹ using information provided by the applicant, BPL;

³ Subsection 269TC(1)

⁴ Subsection 269TC(4)

⁵ Section 269ZHI

⁶ Subsection 269TDAA(1)

⁷ Subsection 269TDAA(2)

⁸ Subsection 269TAB(3)

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- the goods exported from the USA to Australia during the investigation period were dumped by a margin of 40 percent; and
- the volume of dumped goods, and the dumping margin, are not negligible.

1.3.3. Subsidisation (Chapter 7 of this report)

- the goods exported to Australia in the investigation period benefited from countervailable subsidies – namely a Federal excise tax/income tax credit program and the Missouri Qualified Biodiesel Producer Incentive Program; and
- the volume of subsidised goods, and the subsidy margin, are not negligible.

1.3.4. Injury (Chapter 8 of this report)

- during the investigation period the applicant and largest Australian producer of biodiesel, BPL, experienced injury in the form of:
 - lost sales volume;
 - reduced profits and profitability;
 - reduced return on investment;
 - reduced revenue;
 - reduced capacity utilisation; and
 - reduced hours worked.
- information available from the other Australian industry members indicates that their performance has not been sufficiently positive to offset the injury experienced by BPL.
- the Australian industry as a whole has experienced a loss of sales volumes, a loss of market share and continues to operate well below capacity. The Australian industry producing like goods has suffered injury.

1.3.5. Causation (Chapter 9 of this report)

- the magnitude of the dumping and subsidy margins afforded the imported goods a significant price advantage that was reflected in prices that significantly undercut the Australian industry. This caused lost sales volume, most notably the loss of sales to Freedom Fuels, lost market share, reduced profits and profitability, reduced return on investment, reduced capacity utilisation and reduced work hours;
- the price of imports of biodiesel from the USA undercut the average selling prices of Australian industry members by between 9 and 25 percent;
- the dumping and subsidisation caused material injury to the Australian industry.

⁹ Subsection 269TAC(6)

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1.3.6. Will dumping and material injury continue (Chapter 10 of this report)

- exports of biodiesel from the USA in the future may be at dumped prices and may benefit from countervailable subsidies; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the delegate proposes to recommend to the Minister that a dumping duty notice and a countervailing duty notice be published in respect of biodiesel exported to Australia from the USA.

1.4. Final report

The delegate's final report and recommendation must be provided to the Minister by **22 December 2010**.

2. BACKGROUND

2.1. Initiation

On 31 May 2010, BPL lodged an application requesting that the Minister publish a dumping duty notice and a countervailing duty notice in respect of biodiesel exported to Australia from the USA.

BPL claimed that the allegedly dumped and subsidised exports of biodiesel from the USA had caused material injury to the Australian industry in the form of:

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

Public notification of initiation of the investigation was made on 22 June 2010 with a notice in *The Australian* newspaper and Australian Customs Dumping Notice (ACDN) No. 2009/27, which is available on the internet at www.customs.gov.au by following the anti-dumping link.

The investigation period is 1 April 2009 to 31 March 2010. Biodiesel exports to Australia during that period were examined to determine whether dumping and/or subsidisation had occurred.

At the commencement of the investigations, Customs and Border Protection advised that it would examine information from 1 July 2007 to assess injury to the Australian industry producing like goods. The analysis below does not extend back to 1 July 2007 as BPL commenced sales in early 2008 and only more recent information was received from other Australian industry members.

The initiation notice advised that the SEF for the investigations would be placed on the public record by 10 October 2010. Due to extensions of time allowed for various interested parties to supply information, the Minister was requested to grant an extension of the deadline for the publication of the SEF.

The Minister extended the deadline for the publication of the SEF to 8 November 2010¹⁰. ACDN No. 2010/36 was issued on 7 October 2010 notifying of the Minister's decision and interested parties were also separately notified.

¹⁰ Pursuant to section 269ZHI

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2.2. Preliminary affirmative determination

On 18 October 2010, the delegate publicly notified that a preliminary affirmative determination (PAD) had been made that there appeared to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods exported to Australia from the USA.

The delegate also gave public notice that the officer of Customs and Border Protection taking securities is satisfied that it is necessary to require and take dumping securities to prevent material injury to the Australian industry occurring while the investigation continues¹¹.

Customs and Border Protection required and has taken dumping securities in respect of any interim dumping duty that may become payable in respect of the goods from the USA entered for home consumption on or after 18 October 2010¹².

Customs and Border Protection did not require countervailing securities.

A report concerning the PAD is on the public record (PAD 163).

2.3. Responding to the SEF

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its recommendation to the Minister. This statement is an important stage in the investigations. It informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to note that the statement may not represent the delegate's final views.

Interested parties are given 20 days to respond to the statement. These responses will be considered in making the report to the Minister. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published and the extent of any interim duties that are, or should be, payable. A report must be made to the Minister by 22 December 2010.

Responses to this SEF should be made no later than **Monday 29 November 2010**.

¹¹ Pursuant to subsection 269TD(5)

¹² Pursuant to section 42

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Submissions should be sent to:

Director Operations 3
Trade Measures Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Submissions can also be sent to fax number +61 2 6275 6990 or email tmops3@customs.gov.au.

Customs and Border Protection is not obliged to have regard to any submissions made in response to the SEF received after 29 November 2010 if to do so would, in the opinion of the delegate, prevent the timely preparation of the report to the Minister.

Interested parties intending to respond to the statement must include a non-confidential version of their submission for placement on the public record¹³. Submissions provided in confidence must be clearly marked "In-Confidence".

As well as non-confidential submissions by interested parties and this SEF, the public record contains non-confidential versions of visit reports and other publicly available documents, such as Consideration Report 163, PAD 163, notices, and other information. The SEF should be read in conjunction with these documents.

Any party wishing to examine the public record before lodging a submission in response to this statement should contact Trade Measures Office Management staff on (02) 6275 6547.

Documents placed on the public record are also available on the electronic public record at <http://adpr.customs.gov.au/Customs/>.

All ACDNs are available on the internet at the Customs and Border Protection home page www.customs.gov.au (follow prompts for "Anti-dumping").

Please note that confidential appendices referred to in this statement are not available to interested parties.

2.4. Previous biodiesel cases

There have been no previous cases in Australia concerning biodiesel.

¹³ In preparing a non-confidential version, interested parties should have regard to the requirements set out in ACDN 2006/54.

3. THE GOODS AND LIKE GOODS

3.1. Preliminary finding

The Australian industry produces biodiesel that has characteristics closely resembling those of biodiesel manufactured in the USA and exported to Australia, and therefore biodiesel manufactured by the Australian industry are like goods¹⁴.

3.2. The goods

The goods the subject of the application (the goods) are:

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 '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.

3.2.1. Product information

Biodiesel

Biodiesel, along with ethanol, is one of the two main types of biofuels (fuels made from renewable materials such as waste plant and animal matter). Biodiesel is seen as a renewable, more environmentally friendly substitute for petroleum diesel.

In Australia, biodiesel is almost always used as fuel in a blend with petroleum diesel where the biodiesel accounts for 20 percent or less of the blend (B20 or below).

Fuel quality

The quality of any fuel supplied in Australia is regulated under the *Fuel Quality Standards Act 2000* (the Fuel Quality Act). The Fuel Quality Act allows the relevant Minister to make determinations about the quality of fuel. Two determinations are particularly relevant to biodiesel:

1. The *Fuel Standard (Biodiesel) Determination 2003* - sets out the requirements for biodiesel supplied in Australia.

¹⁴ In terms of section 269T

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2. The *Fuel Standard (Automotive Diesel) Determination 2001* – sets out the requirements for automotive diesel supplied in Australia. It allows automotive diesel to contain up to 5 percent biodiesel.

The Fuel Quality Act also provides for the relevant Minister to grant to a person an approval that varies a fuel standard in a specified way. It appears approvals are commonly granted to allow the supply of biodiesel blends with a biodiesel content of up to 20 percent (B20).

Cold Filter Plugging Point

The Cold Filter Plugging Point (CFPP) is the temperature below which the fuel will start to form a gel and not pass through a fuel filter. The CFPP of biodiesel varies according to the feedstock used to produce it. For example, certain vegetable oil feedstocks will produce a biodiesel with a low CFPP and a tallow based biodiesel will have a higher CFPP.

The CFPP of biodiesel is not referred to in the *Fuel Standard (Biodiesel) Determination 2003*.

Interested parties expressed varying views about the significance of the CFPP to biodiesel purchasers and the capacity of the Australian industry to produce biodiesel with suitable CFPP specifications. These are discussed below in the like goods and causation sections.

3.2.2. Imports

The biodiesel exported to Australia in the investigation period was described as either soy methyl ester (SME) or tallow methyl ester (TME). These labels relate to the feedstock used in the biodiesel production – soybean for SME and tallow (animal fat) for TME. There was no indication on the documents examined by Customs and Border Protection that the imported biodiesel was blended with any other product.

3.3. Tariff classification

The goods the subject of the application can 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
- 2710.91.80 Statistical code 82
- 2710.99.80 Statistical code 91

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

3.4. Like goods

The Act defines like goods 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'¹⁵.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness. The greatest weight is usually placed on physical likeness.

The Australian industry manufactures biodiesel from a range of feedstocks including tallow, used cooking oils and virgin vegetable oils. Often a combination of feedstocks is used. The Australian manufacturers do not ascribe a label to their biodiesel such as TME or SME, as is the case with imported biodiesel.

3.4.1. Claims by interested parties

National Biodiesel Limited

National Biodiesel Limited (National Biodiesel), an importer of SME biodiesel, claimed that the Australian market distinguished between imported SME and biodiesel produced in Australia (which it described as TME) on the grounds that:

- SME has a lower CFPP than Australian biodiesel which places less restrictions on its use in colder climates;
- customers have experienced problems using Australian biodiesel but have successfully used SME;
- Original Equipment Manufacturers of heavy equipment have specifically incorporated the use of SME into their warranties but not the use of Australian biodiesel;
- SME meets the requirements of the *Coal Mine Health and Safety Act 2002 (NSW)* for use of machinery operating on biodiesel in underground mines while Australian biodiesel does not;
- SME meets the tests required to meet the *Fuel Standard (Automotive Diesel) Determination 2001* while Australian biodiesel requires a waiver from the Determination to be sold as meeting the diesel standard;

¹⁵ Subsection 269T(1)

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- the blending of SME with petroleum diesel is a simple operation whereas the blending of Australian biodiesel requires significant capital expenditure on storage, handling and blending infrastructure.

National Biodiesel was asked to provide evidence to support its claims concerning the distinction between SME and Australian biodiesel. No evidence was provided.

Freedom Fuels Terminalling Pty Ltd

In its submission, Freedom Fuels Terminalling Pty Ltd (Freedom Fuels) claimed that the evidence suggests there is a distinction between some imported biodiesel and Australian produced biodiesel on the basis of the CFPP. Freedom Fuels claimed that locally produced biodiesel does not have a CFPP that meets the requirements of its customers across all locations.

Freedom Fuels also stated during a visit to its premises by Customs and Border Protection that all biodiesel manufacturers have a “winterisation” process whereby feedstocks are adjusted to produce biodiesel with the required CFPP. Freedom Fuels stated that it had not experienced any problems with the product supplied by the Australian industry in terms of its CFPP.

Caltex Australia Limited

Caltex Australia Limited (Caltex) is a significant purchaser of biodiesel produced by the Australian industry. In its submission, Caltex stated that in colder months it requests that Australian producers adjust their production feedstocks to produce biodiesel with a lower CFPP. Caltex claimed that it has always been able to source its seasonal CFPP requirements from Australian biodiesel producers.

Caltex also commented that developments in storage facilities, such as heated tanks, have reduced the potential for biodiesel to freeze at low temperatures.

3.4.2. Customs and Border Protection’s assessment

Physical likeness

The applicant, BPL, contended that both imported and locally produced biodiesel is physically alike because both meet the *Fuel Standard (Biodiesel) Determination 2003*. No party contended that imported or locally produced biodiesel did not meet the *Fuel Standard (Biodiesel) Determination 2003*.

National Biodiesel submitted that the biodiesel it imported was not a like good to Australian biodiesel on a number of grounds but did not provide any evidence to support its claims.

National Biodiesel and Freedom Fuels raised the issue of the CFPP of imported and locally produced biodiesel. Interested parties generally agreed that the CFPP is an important specification for biodiesel and needs to be managed to avoid problems, both with unblended biodiesel or with blends incorporating biodiesel.

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Customs and Border Protection found that imported and locally produced biodiesel had a range of CFPPs. No evidence was submitted that Australian customers purchasing biodiesel routinely prefer imported or locally produced biodiesel because of its CFPP. Caltex, a large purchaser of biodiesel in Australia, submitted that there were no grounds to distinguish between imported and locally produced biodiesel on the basis of their CFPP. Customs and Border Protection's preliminary view is that CFPP is not a factor that would contribute to a conclusion that Australian biodiesel is not a like good to biodiesel imported from the USA.

Australian manufactured biodiesel has similar physical characteristics to the biodiesel imported from the USA.

Commercial likeness

It was found that Australian biodiesel competes directly with the imported biodiesel in the Australian market and consumers have switched between imported and locally produced biodiesel. National Biodiesel claimed that SME does not compete against Australian produced biodiesel but provided no evidence that this was the case.

Functional likeness

Both the imported and Australian produced biodiesel have comparable or identical end-uses – that is, for use in blends with petroleum diesel for use as a fuel in diesel engines.

Production likeness

Due to the lack of cooperation from manufacturers in the USA, Customs and Border Protection does not have information on the processes used to produce the imported biodiesel. Without better information, Customs and Border Protection assumes that the Australian industry biodiesel is manufactured in a similar manner to the imported goods.

Preliminary finding – like goods

Based on the information available, Customs and Border Protection has made a preliminary finding that biodiesel manufactured by the Australian industry:

- has similar physical characteristics to the goods;
- competes in the same markets as the goods;
- has similar end uses as the goods; and
- is made in a similar manner as the goods.

Customs and Border Protection has therefore made a preliminary finding that biodiesel produced by the Australian industry is a like good to the biodiesel imported from the USA.

4. AUSTRALIAN INDUSTRY

4.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that there is an Australian industry producing like goods.

4.2. Manufacturing/production process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia¹⁶.

There are four Australian manufacturers of biodiesel, BPL, Australian Renewable Fuels Limited (ARF), Biodiesel Industries Australia Pty Ltd (BIA) and Smorgon Fuels Pty Ltd (Smorgon Fuels). No other party claimed to be an Australian producer of biodiesel.

Customs and Border Protection visited the manufacturing facilities of BPL and Smorgon Fuels and is satisfied that at least one substantial process in the manufacture of biodiesel is carried out in Australia, and that therefore biodiesel is wholly or partly manufactured in Australia. Details of the manufacturing process are contained in the visit reports available on the public file.

4.3. Preliminary conclusion – Australian industry

Based on the information available:

- the biodiesel manufactured by the Australian industry are like goods;
- the like goods were wholly or partly manufactured in Australia because a substantial process of manufacture is carried out in Australia; and
- there is an Australian industry consisting of BPL, ARF, BIA and Smorgon Fuels.

¹⁶ Subsections 269T(2) and 269T(3)

5. AUSTRALIAN MARKET

5.1. Market Structure

5.1.1. Australian manufacturing

The biodiesel manufacturing industry in Australia has emerged in the last 10 years with increasing interest in and government support for renewable fuels and fuels with lower emissions. In particular, the manufacturing capacity for biodiesel in Australia increased rapidly from 2005.

The development of the industry has been hampered since 2007 by rapidly increasing feedstock prices and a resulting decrease in operating margins. This contributed to a number of plants being placed on stand-by or being closed completely.

Currently, there are four operating manufacturers in Australia with an estimated production capacity of 185 to 190 megalitres (ML) per annum. The Australian manufacturing industry has operated at significantly below its installed capacity in recent years.

A further three biodiesel production facilities in Australia, two at Narangba in Queensland and one in Darwin, Northern Territory, with a combined capacity of approximately 330 ML are either in stand-by mode or closed completely.

A current importer of biodiesel from the USA, National Biodiesel, is planning to build a large capacity biodiesel production facility at Port Kembla in New South Wales (NSW), which is expected to be operational in 2011.

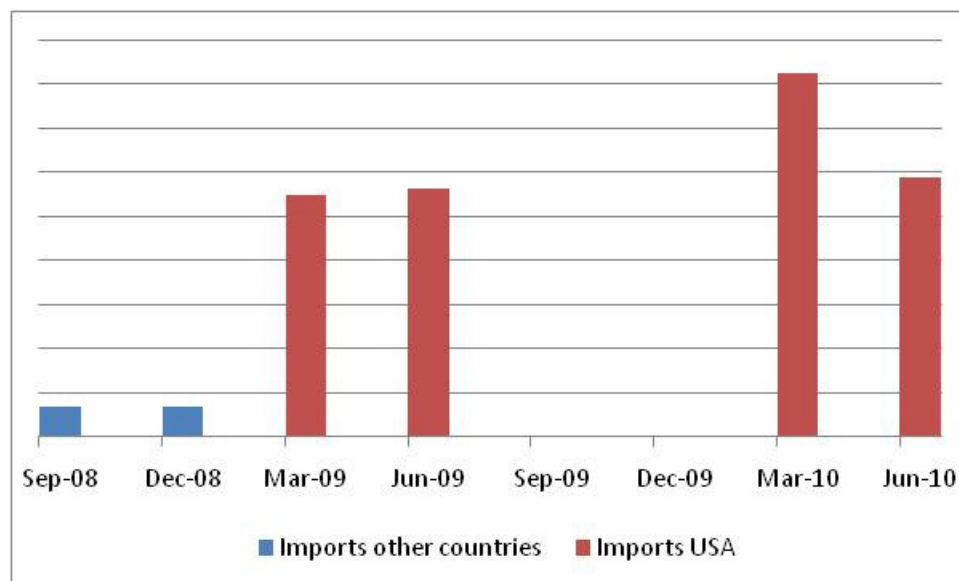
Customers for biodiesel include:

- the major fuel companies;
- independent fuel wholesalers and retailers;
- transport companies; and
- mining companies.

5.1.2. Imports

Prior to 2009, some biodiesel was imported from a number of Asian sources. Since the beginning of 2009, all imported biodiesel has been sourced from the USA. The following chart shows quarterly volumes of biodiesel imports from September quarter 2008 to June quarter 2010.

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5.1.3. Pricing of biodiesel

Biodiesel is normally sold in Australia at a discount to either the 'terminal gate price' (TGP) for petroleum diesel published by the major oil companies or the published 'Mean of Platts Singapore' (MOPS) price.

5.1.4. Government involvement with biodiesel

The Federal Government has supported the production and use of biofuels through a number of initiatives such as capital, research and development, and production grants. The Cleaner Fuels Grants Scheme (CFGs) provides for eligible persons including importers to claim a grant equivalent to the \$0.3814 per litre excise duty or excise equivalent import duty payable on biodiesel. This means that effectively biodiesel has been exempt from excise or import duty.

The Federal Government is to implement an energy-content based excise and import duty system for taxing fuels. Alternative fuels, including biodiesel, will receive a 50 percent discount on the standard rates of taxation. The changes will be phased in between July 2011 and July 2015 to allow the industry time to adjust. Biodiesel excise and import duty will increase at a rate of \$0.038 per litre each year from July 2011 until it reaches its full rate of \$0.191 per litre from July 2015.

Since 1 January 2010, a mandate has applied in NSW requiring the volume of biodiesel sold by major fuel retailers and wholesalers to not represent less than 2 percent of total diesel fuel sales in a specified period. The mandate will increase to 5 percent from 1 January 2012.

Other States have varying policy approaches to the biodiesel industry. Victoria, for example, did not introduce a mandate in favour of infrastructure support but will reportedly consider a mandate if usage targets are not met. Queensland, South Australia and the Northern Territory are understood to be considering a biodiesel mandate.

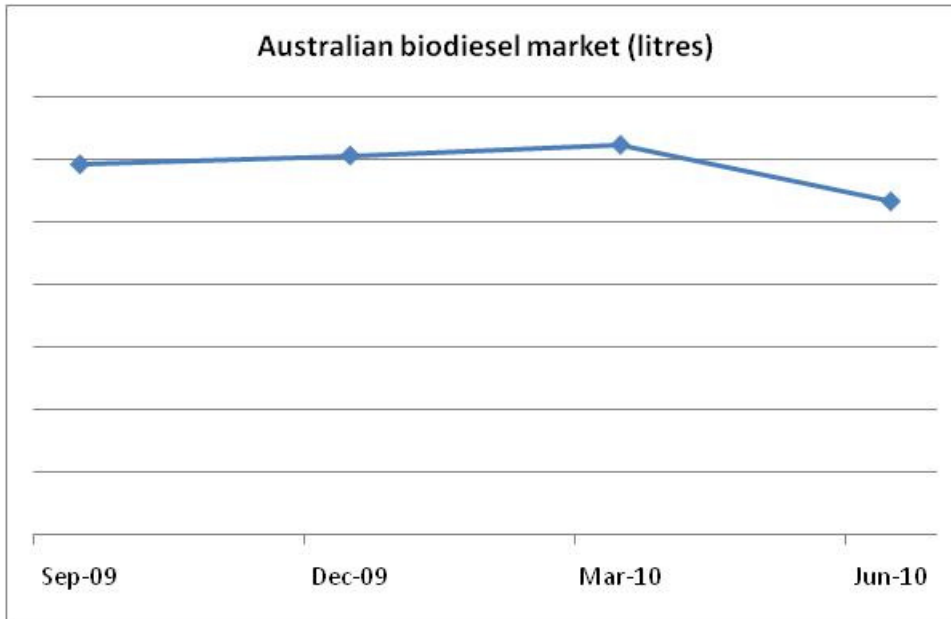
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5.2. Distribution

Biodiesel is sold by the Australian manufacturers either as pure biodiesel or blended with petroleum diesel.

5.3. Market size

Customs and Border Protection has combined Australian industry sales data with import data to estimate the size of the Australian market for biodiesel. The following chart shows quarterly Australian market size in 2009-10.



Note: the quarterly volumes are based on declared import volumes rather than when the imports were sold in the Australian market.

Summary data for the Australian market is at **confidential appendix 1**.

6. DUMPING INVESTIGATION

6.1. Preliminary finding

Customs and Border Protection has made preliminary findings that:

- the export price for the goods can be established having regard to all relevant information¹⁷, using invoiced prices between suppliers and Australian importers;
- the normal value of goods exported to Australia can be established having regard to all relevant information¹⁸, using information provided by the applicant, BPL;
- the goods exported to Australia during the investigation period were dumped, with a dumping margin of 40%; and
- the volume of dumped goods is not negligible.

6.2. Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This chapter explains the preliminary results of investigations into whether biodiesel was exported from the USA at dumped prices during the investigation period (1 April 2009 to 31 March 2010).

6.3. Importers

Following the initiation of the investigation, Customs and Border Protection searched its database and identified four importers that appeared to have imported biodiesel exported to Australia from the USA in the investigation period.

Questionnaires were sent to the four importers informing them of the investigations and inviting submissions. Two of the four importers had each imported one small shipment of biodiesel that Customs and Border Protection understands were trial shipments.

The two significant importers of biodiesel from the USA during the investigation period were:

- Freedom Fuels; and
- National Biodiesel.

¹⁷ Subsection 269TAB(3)

¹⁸ Subsection 269TAC(6)

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Customs and Border Protection undertook verification visits to both significant importers and placed reports of the visits on the public record.

6.4. Exporters

Customs and Border Protection identified from its import database six companies that appeared to have supplied biodiesel to Australia from the USA in the investigation period. Exporter questionnaires were sent to the six suppliers identified. Customs and Border Protection also attempted to contact and provide questionnaires to three additional companies nominated by the major importers as the USA-based manufacturers of the biodiesel exported to Australia.

No completed exporter questionnaires have been received.

A Singapore based fuel trader, Trafigura Pte Ltd (Trafigura), that supplied biodiesel to one of the major Australian importers, provided a brief submission with export price and normal value information. Trafigura's submission is discussed under the export price and normal values sections below. Trafigura provided some further information on its shipments of biodiesel to Australia in response to questions from Customs and Border Protection.

6.4.1. Export Price

For the purpose of determining preliminary dumping margins, export prices have been calculated for biodiesel imported by the two major importers, National Biodiesel and Freedom Fuels.

Customs and Border Protection visited the two major importers and verified information on the prices paid and expenses incurred in relation to the importation of biodiesel exported to Australia from the USA during the investigation period. Both importers purchased from intermediaries and not from the manufacturers of the biodiesel in the USA.

National Biodiesel

For importations by National Biodiesel, Customs and Border Protection has preliminarily determined that:

- the goods were exported to Australia otherwise than by the importer, National Biodiesel;
- were purchased by the importer from an intermediary or the exporter; and
- the purchase of the goods by the importer were arms length transactions.

Without verified information about the transaction between the USA manufacturer and the intermediary, sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained under the subsections preceding section 269TAB(3) of the Act.

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Customs and Border Protection has preliminarily calculated export prices for imports by National Biodiesel under subsection 269TAB(3) of the Act using the invoiced price from the intermediary that supplied the biodiesel to National Biodiesel.

Freedom Fuels

For biodiesel imports by Freedom Fuels, Customs and Border Protection has determined that:

- the goods were exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from an intermediary or the exporter; and
- the purchase of the goods by the importer were arms length transactions.

Without verified information about the transactions between the USA manufacturer and the intermediary and verified information about costs arising after exportation, sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained under the subsections preceding section 269TAB(3) of the Act.

Customs and Border Protection has preliminarily calculated export prices for imports by Freedom Fuels under subsection 269TAB(3) of the Act using the invoiced price paid by Freedom Fuels to the supplying intermediary, less amounts for expenses incurred after exportation based on information provided by Trafigura and Freedom Fuels.

Export price calculations are at **confidential appendix 2**.

6.4.2. Normal Value

As noted above, no completed exporter questionnaire responses were received from entities associated with the manufacture and/or exportation of biodiesel to Australia from the USA.

Customs and Border Protection is satisfied that sufficient information has not been furnished or is not available to enable the normal value of biodiesel to be established using the domestic selling prices, the cost to make and sell biodiesel, or by reference to export prices to countries other than Australia. Accordingly, the normal value of the goods is such amount as is determined by the Minister having regard to all relevant information¹⁹.

Information in BPL's application

In its application, BPL 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.

¹⁹ Subsection 269TAC(6)

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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.

BPL deducted amounts for the following from the 'at-the-pump' sales prices to estimate prices it claimed are comparable with 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 BPL's own experience with movement and storage costs.
- costs of transporting the product to the retailer – A\$0.08 per litre based on BPL's average delivery costs to Melbourne, Sydney and Brisbane.
- retail margin – A\$0.02 per litre. BPL 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. BPL 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 BPL estimates would include A\$0.08 in freight costs.

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

Information submitted by Trafigura

In its submission, Trafigura claimed that biodiesel in the USA is typically sold at a discount or premium (depending on the type of biodiesel) to the daily settlement of the New York Mercantile Exchange (NYMEX) Heating Oil (HO) contract price.

Trafigura claimed that it had purchased biodiesel in the USA at around the time it contracted to sell biodiesel to Freedom Fuels in Australia. Trafigura provided the average purchase price but no supporting documents or details of the purchase, and no indication of whether the goods were intended for domestic consumption in the USA.

As an alternative normal value, Trafigura provided a biodiesel market assessment by what it claimed to be a reputable energy broker. The submission did not contain information to assist in assessing the reliability of the source or the terms and conditions of the prices quoted.

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Information submitted by Freedom Fuels

Freedom Fuels submitted normal value information based on the same secondary source information as submitted by Trafigura. As with Trafigura's submission, the information provided by Freedom Fuels did not contain information to assist in assessing the reliability of the source or the terms and conditions of the prices quoted.

Customs and Border Protection's assessment of normal value

The information provided by Trafigura and Freedom Fuels is not sufficiently explained or supported to be regarded as better available information than the normal value estimates provided by the applicant.

Customs and Border Protection has taken into account that overseas based entities associated with biodiesel exports to Australia in the investigation period have provided either minimal or no cooperation with the investigations and have withheld relevant information.

The secondary pricing information provided by Trafigura and Freedom Fuels is from an unknown source. The level of trade and terms and conditions associated with the pricing is unknown. The alternative purchase price information provided by Trafigura is unverified and not supported by evidence. Because of Trafigura's role as an international fuel trader, it is also not clear if the biodiesel purchased was destined for consumption in the USA and therefore whether it meets this legislative requirement for establishing a normal value.

USA biodiesel pricing provided by the applicant, BPL, in its application is the best available information on which to establish normal values. The prices are from a reliable source and are reasonably contemporaneous with exports of biodiesel to Australia in the investigation period.

BPL 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. While Freedom Fuels states that the retail margins proposed by BPL may have no relevance to the retail margins that can be achieved in the USA, it provided no information on alternative margins.

Freedom Fuels also submitted that BPL had not made an adjustment for the volume of biodiesel exported compared to the 'at-the-pump' domestic selling prices. However, it provided no information on the quantum of such an adjustment or evidence to support it being made. In Customs and Border Protection's view, the retail margin proposed by BPL would include an amount to recognise the difference in volume between wholesale and retail sales.

Other adjustments to the domestic selling prices proposed by BPL to make them comparable with export prices are reasonable and supported.

Without reliable information on the place of manufacture of biodiesel exported to Australia, Customs and Border Protection has used the average USA price reported in the January 2010 Clean Cities Alternative Fuel Price Report for B99/100 biodiesel as the basis for the normal value (US\$3.59 per US gallon).

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The reported USA prices of biodiesel in the Clean Cities Alternative Fuel Price Reports are stated to include both federal and state fuel taxes. BPL 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 has deducted what it understands to be the average state excise tax for diesel in the USA from the reported selling prices²⁰.

Due to the lack of co-operation from manufacturers/suppliers of biodiesel exported to Australia in the investigation period, Customs and Border Protection has calculated one normal value for all exports to Australia in the investigation period.

Normal value calculations are at **confidential appendix 3**.

6.4.3. Volume of dumped goods

The volume of dumped goods is not negligible²¹.

6.4.4. Dumping Margin

The dumping margin for biodiesel exported to Australia in the investigation period was calculated 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 period²². The dumping margin is 40%. The dumping margin calculations are at **confidential appendix 4**.

²⁰ Sourced from the American Petroleum Institute website.

²¹ As defined in subsection 269TDA(3)

²² s. 269TACB.

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7. SUBSIDY INVESTIGATION

7.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that countervailable subsidies have been received in respect of biodiesel exported to Australia from the USA in the investigation period.

The countervailable subsidies found are:

- a Federal excise tax/income tax credit program equivalent to 47 percent of the weighted average export price; and
- the Missouri Qualified Biodiesel Producer Incentive Program equivalent to 9 percent of the weighted average export price.

7.2. Introduction

BPL claimed that countervailable subsidies have been received in respect of biodiesel exported to Australia through a USA federal government excise tax/income tax credit scheme. The scheme, which provides for three categories of credit, was the only countervailable subsidy scheme referred to by BPL in its application.

At the commencement of the investigations, Customs and Border Protection sent a government questionnaire to the Government of the USA seeking information on the alleged subsidies. The Government of the USA provided a response (the government response) by the due date.

The Government of the USA response stated that the Trade Secrets Act (18 U.S.C 1905) prevented it from providing a list of entities that have manufactured and exported, blended and exported, or exported biodiesel to Australia in the investigation period.

The response also stated that, due to a prohibition in providing individual taxpayer information under Internal Revenue Code Title 26 U.S.C. 6103, the Government of the USA was unable to provide information on companies that had applied for, accrued or received benefits under the program and the amount of benefits granted.

Customs and Border Protection also sent a supplementary questionnaire to the Government of the USA seeking information on any State government subsidy programs applying to biodiesel manufacturers or blenders in the following four States:

- Arkansas;
- Indiana;
- Missouri; and
- Texas.

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Based on available information, it was considered that biodiesel exported to Australia in the investigation period may have been produced in one or more of these States. The questionnaire specifically sought information on the Missouri Qualified Biodiesel Producer Incentive Fund, a program identified in the Commission for the European Communities investigation into the dumping and subsidisation of biodiesel from the USA.

The response to the supplementary questionnaire by the Government of the USA (the Supplementary Government Response) addressed only the Missouri Qualified Biodiesel Producer Incentive Program. The Supplementary Government Response stated that without specific questions regarding any other state program, the United States was unable to speculate as to what other assistance programs the Australian government might consider to be actionable subsidies under Australian law, particularly with respect to specificity and benefit.

The exporter questionnaires sent to known suppliers and possible USA manufacturers of biodiesel exported to Australia in the investigation period included questions relating to subsidies. No completed exporter questionnaires were received.

7.3. Federal government program

7.3.1. Excise tax/income tax credit

BPL claimed that Title 26, Section 40A of the USA Internal Revenue Code provides for a biodiesel fuels tax credit to blenders, retailers and end-users of biodiesel.

The government response, provided by the Office of the United States Trade Representative, provided details on the scheme. The response noted, however, that the scheme expired on 31 December 2009. The response confirmed that, up until 31 December 2009, the scheme existed for the purposes of promoting energy self-sufficiency and reducing greenhouse gas emissions.

The government response explained that the program was an income tax credit, excise tax credit, or refundable direct payment for producers of biodiesel mixtures sold for use or used as fuel, and for retailers and commercial users of unmixed (neat) biodiesel.

The scheme consisted of three components:

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

- (i) The biodiesel mixture credit

For producers of biodiesel mixtures sold for use or used as fuel, the excise tax credit was US\$1.00 for each gallon of unmixed (neat) biodiesel used in the fuel mixture. Thus, the excise tax credit for the blended fuel depended on the proportion of biodiesel it contains. The government response provided an illustration where a producer has regular diesel (for which the producer has excise tax liability) and biodiesel. If the producer makes ten gallons of a B20 blend of biodiesel (a blend of 20% biodiesel and 80% petroleum diesel – a 1:4 ratio of neat biodiesel to diesel), the producer would receive a US\$2.00 excise tax

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credit (US\$1.00 for each gallon of biodiesel used in the ten gallon blend) and (assuming the producer is the person who is liable for the excise tax) would incur a US\$2.44 excise tax liability (a US\$0.244 excise tax liability for each of the ten gallons). Thus the producer's excise tax would be lowered from US\$2.44 to US\$0.44.

The response also explained that the mixture producer may also claim a refundable income tax credit or direct payment for the incentives only for the amount that the excise tax credit exceeds total excise tax liability. The credit is thus non-cumulative: it remains the same whether the incentive is claimed as an excise tax credit, an income tax credit, a direct payment to the taxpayer, or any combination of the foregoing.

(ii) The biodiesel credit

The Government of the USA advised that the program is also available to retailers and commercial users of unmixed (neat) biodiesel and retailers selling neat biodiesel as fuel for transportation. This is the only credit allowed with respect to neat biodiesel used directly as a fuel (i.e. not in a mixture). The retailer or commercial user can claim US\$1.00 per gallon for unmixed (neat) biodiesel as a non-refundable general business income tax credit. The credit on the same gallon of neat biodiesel is not available to both the retailer and the commercial user.

The retailer can only claim a credit under this program if the biodiesel remains unmixed with diesel fuel. (The non-refundable general business income tax credit is also available for biodiesel mixtures, but this credit is reduced by any excise tax credit or non-refundable payment received with respect to the mixture.)

(iii) The small agri-biodiesel producer credit

A small producer (one with an annual production capacity of not more than 60 million gallons of biodiesel) may claim an additional US\$0.10-per-gallon non-refundable general business income tax credit on the first 15 million gallons of biodiesel produced.

7.3.2. Customs and Border Protection's assessment

In the absence of cooperation from exporters/manufacturers of biodiesel exported to Australia from the USA, and the inability of the Government of the USA to provide detailed information, Customs and Border Protection has inferred that the exports to Australia benefited from the excise tax/income credit scheme.

Relevant to this assessment is that overseas based entities associated with biodiesel exports to Australia in the investigation period have provided either minimal or no cooperation with the investigations and have withheld relevant information.

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Was a subsidy received?

Based on the available information each of the three components of the biodiesel fuel credit scheme is considered to be a subsidy as defined in Australia's anti-dumping and countervailing legislation in that each is 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.

The foregoing of excise or income tax and/or the direct payment to claimants under this program confers a benefit in relation to the goods.

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 2009²³. In the absence of better information, it would be reasonable to infer that biodiesel exports to Australia in 2009 and early 2010 (the period of exports in the investigation period) would have benefited from receipt of the subsidies.

Is it a countervailable subsidy?

A subsidy is a countervailable subsidy if:

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

A subsidy is specific if, among other things, access to the subsidy is explicitly limited to particular enterprises. The subsidy is not specific where:

- (a) eligibility 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

²³ See European Commission Council Regulation (EC) No 598/2009

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- (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 is not available to other industries outside of their sector. Each of the three components of the biodiesel fuel credit scheme is 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 World Trade Organization Agreement on 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 are not described in Article 8.2 of the World Trade Organization Agreement on Subsidies and Countervailing Measures. The components of the scheme also do not meet the criteria or conditions set out in Annex 2 to the Agreement on Agriculture. Therefore, based on the information available, the subsidies under the biodiesel fuel credit scheme are not excluded subsidies.

The subsidies are considered to be countervailable.

May subsidies be received in the future?

The biodiesel excise tax/income credit scheme expired on 31 December 2009. A Bill was introduced into the US Congress in early 2010 to extend the scheme to 31 December 2010 and to reinstate the scheme retrospectively to 31 December 2009. The legislation was not passed by the US Congress and the legislation in its initial form was abandoned.

In July 2010, the Chairman of the USA Committee of Ways and Means released a 'discussion draft' of a Bill that includes amendments to the Internal Revenue Code to extend the biodiesel excise tax/income credit scheme to 31 December 2012. Customs and Border Protection considers that this subsidy may be enacted in the future.

Calculation of amount of subsidy attributable to the benefit

Where a financial contribution is not a direct financial payment or involves the making or guarantee of a loan, the total amount of the subsidy attributable to the benefit is an amount determined by the Minister²⁴.

The government response states that the biodiesel excise tax/income credit for the biodiesel credit mixture and biodiesel credit components of the scheme was US\$1.00 per US gallon. The small agri-biodiesel producer credit was US\$0.10 per US gallon. Without better information, Customs and Border Protection has calculated the amount of subsidy

²⁴ Subsection 269TACC(6).

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attributable to the benefit for a producer manufacturing 30 million gallons per annum. The subsidy amount under the biodiesel fuel credit scheme is US\$1.05 per US gallon, which is equivalent to 47% of the export price.

7.4. State government program

7.4.1. Missouri Qualified Biodiesel Producer Incentive Program

The Supplementary Government Response states that the legislation establishing the Missouri Qualified Biodiesel Producer Incentive Fund is found in Section 142.031 of the Revised Statutes of Missouri.

A Missouri Qualified Biodiesel Producer (MQBP) is eligible for a monthly grant from the Missouri Qualified Biodiesel Producer Incentive Fund. A MQBP is eligible to receive the grant for a total of 60 months.

A MQBP is defined as a facility that produces biodiesel, is registered with the United States Environmental Protection Agency and:

- is at least 51 percent owned by agricultural producers who are residents of Missouri and who are actively engaged in agricultural production for commercial purposes; or
- at least 81 percent of the feedstock used by the facility originates in the state of Missouri;

and which meets all of the following:

- has registered with the department of agriculture by 1 September 2007;
- has begun construction of the facility before 1 November 2007; and
- has begun production of biodiesel before 1 March 2009.

The amount of each monthly grant is determined by first calculating the number of gallons of qualified biodiesel produced during the preceding month of the fiscal year. The number of gallons produced is then multiplied by \$0.30 per gallon for the first 15 million gallons of qualified biodiesel produced in the fiscal year, plus \$0.10 per gallon for the next 15 million gallons of qualified biodiesel in the fiscal year. A MQBP's qualified biodiesel production in excess of 30 million gallons in a fiscal year does not factor into the computation of the grant.

Qualified biodiesel is defined as biodiesel produced by a MQBP.

Legislation establishing the program first passed in 2002. The legislation establishing the program expired on 31 December 2009. Any MQBPs that became eligible prior to 31 December 2009 are eligible to receive monthly grants for up to 60 months thereafter.

Each fiscal year the Missouri Department of Agriculture makes available to MQBPs all funds appropriated to the "Missouri Qualified Biodiesel Producer Incentive Fund" by the general assembly and signed into law by the governor, less any governor's reserve and/or withholding.

If available funds are insufficient to pay all MQBPs the maximum monthly grant allowed by law, available funds are apportioned so that each MQBP receives a share of funds

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proportionate to the eligible biodiesel production of all MQBPs for that month. The Missouri Department of Agriculture generally pays all grants for a particular month within thirty days of receipt and approval of the grant.

Grants were received by 9 producers in 2008, 10 producers in 2009 and 10 producers in the investigation period. One producer's grant application was rejected in 2008 due to substandard biodiesel fuel quality.

No changes are anticipated in the program. The last possible month that a facility could become eligible was December 2009. Therefore, the last possible month that a facility can theoretically participate in the program is November 2014 (i.e. 60 months of participation beginning December 2009).

7.4.2. Customs and Border Protection's assessment

In the absence of cooperation from exporters/manufacturers of biodiesel exported to Australia from the USA, Customs and Border Protection has inferred that the exports to Australia benefited from grants under the Missouri Qualified Biodiesel Producer Incentive Program.

Relevant to this assessment is that overseas based entities associated with biodiesel exports to Australia in the investigation period have provided either minimal or no cooperation with the investigations and have withheld relevant information.

Was a subsidy received?

Based on the available information, it appears that the Missouri Qualified Biodiesel Producer Incentive Program is a subsidy as defined in Australia's anti-dumping and countervailing legislation in that, in relation to goods that are exported to Australia, grants made under the program are 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.

The payment of funds to biodiesel producers under this program is a direct financial payment and therefore a benefit is taken to be conferred because of that payment²⁵.

In the absence of information from producers and/or exporters of biodiesel from the USA, Customs and Border Protection considers it reasonable to infer that biodiesel exports to Australia from the USA would have benefited from receipt of the subsidies under the Missouri Qualified Biodiesel Producer Incentive Program.

²⁵ Subsection 269TACC(2)

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Is it a countervailable subsidy?

The available evidence indicates that the program is limited to entities involved in the biodiesel industry and is not available to other industries outside of their sector. The Missouri Qualified Biodiesel Producer Incentive Program is therefore specific.

The Missouri Qualified Biodiesel Producer Incentive Program is not described in Article 8.2 of the World Trade Organization Agreement of Subsidies and Countervailing Measures. The program also does not meet the criteria or conditions set out in Annex 2 to the Agreement on Agriculture. Therefore, based on the information available, subsidies paid under the Missouri Qualified Biodiesel Producer Incentive Program are not excluded subsidies.

The subsidy is a countervailable subsidy.

May subsidies be received in the future?

Legislation establishing the Missouri Qualified Biodiesel Producer Incentive Program expired on 31 December 2009. However, MQBPs receiving any grants awarded prior to 31 December 2009 continue to be eligible for the remainder of their original 60 month entitlement period under the same terms and conditions. Accordingly, Customs and Border Protection considers that a countervailable subsidy may be received under this program.

Calculation of amount of subsidy attributable to the benefit

If a benefit is conferred by way of a direct financial payment the total amount of subsidy attributable to the benefit is an amount equal to the payment²⁶.

Each MQBP is eligible for a total grant in any fiscal year equal to \$0.30 per gallon for the first 15 million gallons of qualified biodiesel produced in the fiscal year, plus \$0.10 per gallon for the next fifteen 15 million gallons of qualified biodiesel in the fiscal year. In the absence of better information, the benefit conferred to the goods exported to Australia has been calculated based on annual production of 30 million gallons.

Without better information, Customs and Border Protection considers that the benefit conferred to the goods is equal to this amount per US gallon. This amount is assessed as being 9 percent of the weighted average export price of exports to Australia in the investigation period.

7.5. Volume of subsidised goods

The volume of subsidised goods is not negligible²⁷.

²⁶ Subsection 269TACC(6)

²⁷ As defined in subsection 269TDA(7)

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7.6. Preliminary finding - countervailing

Customs and Border Protection has preliminarily assessed that the biodiesel excise tax/income credit scheme and the Missouri Qualified Biodiesel Producer Incentive Program are countervailable subsidies, the total amount of which is not negligible.

The subsidy calculations are at **confidential appendix 5**.

Customs and Border Protection makes the preliminary finding that the legal requirements have been met for the Minister to publish a countervailing duty notice covering the biodiesel excise tax/income credit scheme and the Missouri Qualified Biodiesel Producer Incentive Program. The delegate proposes to recommend that interim countervailing duties relating to the Missouri Qualified Biodiesel Producer Incentive Program apply to all exports of biodiesel to Australia from the USA.

However, the delegate will take into account in making his recommendations to the Minister that the biodiesel excise tax/income credit scheme has not been available since 31 December 2009 and that the reintroduction of the program is uncertain. Interested parties may wish to comment on whether it is appropriate to countervail the biodiesel excise tax/income credit scheme.

8. ECONOMIC CONDITION OF THE INDUSTRY

8.1. Preliminary findings

During the investigation period the applicant and largest producer of biodiesel, BPL, experienced injury in the form of:

- lost sales volume;
- reduced profits and profitability;
- reduced return on investment;
- reduced revenue;
- reduced capacity utilisation; and
- reduced hours worked.

Information available from the other Australian industry members indicates that their performance has not been sufficiently positive to offset the injury experienced by BPL.

The Australian industry as a whole has experienced a loss of sales volumes, a loss of market share and continues to operate well below capacity. The Australian industry producing like goods has suffered injury.

8.2. Introduction

This section reports on the economic condition of the Australian industry and provides an assessment as to whether the industry has suffered injury.

At the commencement of the investigations, Customs and Border Protection advised that it would examine information from 1 July 2007 to assess injury to the Australian industry producing like goods. The analysis below does not extend back to 1 July 2007 as BPL commenced sales in early 2008 and only more recent information was received from other Australian industry members.

As noted above, the Australian biodiesel industry consists of the following four manufacturers:

- the applicant, BPL;
- ARF;
- BIA; and
- Smorgon Fuels.

The analysis of injury to the Australian industry is based on the following information provided by the Australian industry members:

- BPL – complete information received, verification visit conducted;
- ARF – sales and cost information received, verification visit conducted;
- Smorgon Fuels – information received on sales, customer base, Australian market, verification visit conducted, no verification of production costs;
- BIA – summary sales information received, no verification visit.

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A summary of data on which this assessment is based is at **confidential appendix 6**.

8.3. Commencement of injury

In its application, BPL claimed that material injury attributable to the dumped and subsidised exports of biodiesel from the USA commenced in February 2010 when its major customer, Freedom Fuels, decided to import the majority of its biodiesel requirements.

8.4. BPL

BPL manufactures biodiesel at its plant at Barnawartha in Victoria, close to the border with NSW. The plant was completed in late 2007 and sales of biodiesel commenced early in 2008. Its principal feedstocks are tallow and used cooking oil. The plant has a capacity of 60 ML per annum. The majority of BPL's production is sold as unblended biodiesel. A small proportion is sold as B2, B5 and B20 blends. BPL employs approximately 23 people.

In 2009-10, BPL's sales volumes represented 59 percent of the total Australian industry's biodiesel sales volumes.

Customs and Border Protection visited BPL's plant and verified information provided in its application for anti-dumping and countervailing measures. A visit report was placed on the public record.

In its application, BPL's injury claims centre around its major customer, Freedom Fuels, commencing in February 2010 to source the majority of its biodiesel requirements from the USA.

8.4.1. Volume trends

The following graph illustrates BPL's biodiesel sales volumes in litres.



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Note: Biodiesel blend volumes have been converted to a B100 equivalent.

BPL's sales volumes since it commenced production have generally trended upwards with the exception of the first half of calendar years 2009 and 2010.

As discussed further in the causation section of this statement, the decline in sales volumes in the first half of 2009 was the result of a decision by BPL to reduce its average feedstock prices by reducing or eliminating the purchase of higher priced feedstocks. This reduced the quantity of biodiesel BPL could produce and led to a reduction in product offered to the market. This decision was taken in an environment of feedstock prices that had risen rapidly and severely reduced the margin on biodiesel sales.

There are reasonable grounds to support the claim that BPL has suffered injury in the form of lost sales volume.

8.4.2. Prices and costs

BPL did not claim that its prices had been impacted by the dumped and subsidised biodiesel imports from the USA. Biodiesel prices are closely linked with petroleum diesel prices and there is virtually no scope for biodiesel suppliers to increase prices irrespective of cost increases. BPL also advised that it was not in a position to lower its prices because of its poor profitability position even at existing prices and because the level of alleged undercutting by the imported product made this unfeasible.

8.4.3. Profits and profitability

Following initial quarters impacted by the start up of operations, BPL experienced improving profit and profitability results, with the exception of the June quarter 2009 and March and June quarters of 2010 when it experienced a significant deterioration in both profits and profitability.

There appear to be reasonable grounds to support the claim that BPL has suffered injury in the form of lower profits and profitability.

8.4.4. Other economic factors

Customs and Border Protection examined BPL's data to March 2010 relating to other economic factors that may indicate injury.

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

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

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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. It deteriorated significantly in the March quarter 2010.

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.

Assets

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
89	89	180	180	176	100	101	98	95

The value of assets rose from the March 2008 quarter to the December 2008 quarter. Since then, it has decreased to the March 2010 quarter.

Capital investment

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
91	91	181	180	180	100	99	97	95

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The level of capital investment rose from the March 2008 quarter until the September 2008 quarter. Since then, the level has fallen.

Revenue

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
34	34	82	134	109	100	142	158	74

Biodiesel Producers Ltd's revenue rose from the March 2008 quarter until the December 2008 quarter. Revenue decreased until the June 2009 quarter however increased until the December 2009 quarter with a significant decrease recorded in the March 2010 quarter.

Capacity – budgeted

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
19	19	61	95	99	100	91	128	126

Capacity rose from in each quarter from March 2008 until March 2010 with the exception of the September 2009 quarter which registered a small decrease.

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Productivity

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
34	34	105	95	141	100	124	127	100

Biodiesel Producers Ltd has experienced varying levels of productivity since the March 2008 quarter.

Stocks

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
136	136	546	211	381	100	342	552	524

Stocks levels have increased significantly from the March 2008 to September 2008 quarters but were followed by decreases in stock until the June 2009 quarter. In the following quarters significant increases in stock are observed.

Cash flow measures – Accounts receivable

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
30	30	82	85	77	100	159	118	49

Biodiesel Producers Ltd has experienced an increase in cash flow – accounts receivable from the March 2008 until the September 2009 quarter. The following two quarters registered a decline in this indicator.

Wages

Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10
99	99	99	100	104	100	99	88	81

Biodiesel Producers Ltd experienced an increase in wages costs from the March 2008 to the March 2009 quarter. Since then the company has registered a decrease in wage costs.

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The information indicates that BPL has suffered injury through:

- reduced return on investment;
- reduced revenue;
- reduced capacity utilisation; and
- reduced hours worked.

8.5. Smorgon Fuels

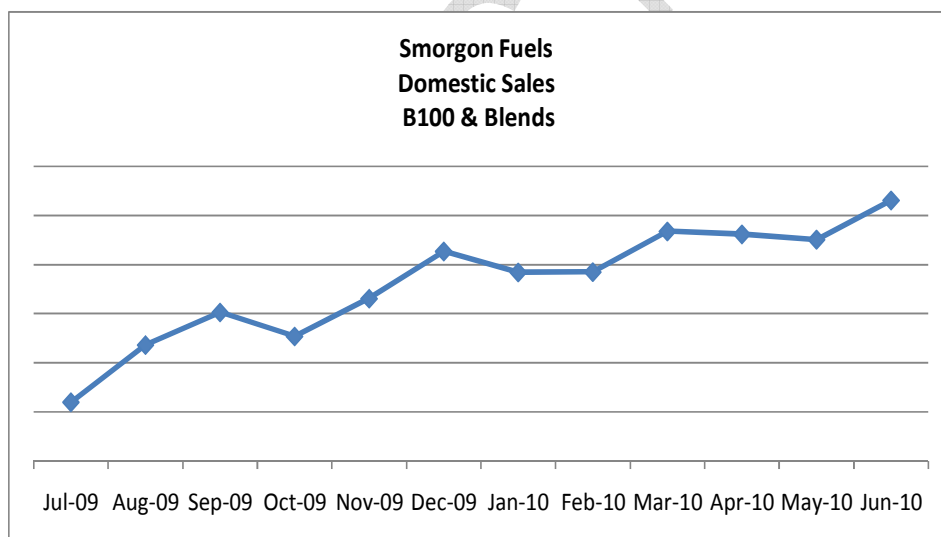
Smorgon Fuel's plant is located in Melbourne, Victoria. It trades under the brand name BioMax and sells primarily B100 and B20 biodiesel.

Smorgon Fuels has invested in alternative feedstock projects in a bid to replace traditional feedstocks that have become expensive.

Customs and Border Protection visited Smorgon Fuels and verified information on its sales of biodiesel and biodiesel blends for the financial year ending 30 June 2010. Smorgon Fuels provided information on its financial performance for the 2009-10 financial year but declined to allow Customs and Border Protection to verify its cost information. A visit report was placed on the public file.

8.5.1. Volume trends

Smorgon Fuel's monthly sales volumes for 2009/10 are shown in the following graph.



Note: Biodiesel blend volumes have been converted to a B100 equivalent.

Smorgon Fuel's biodiesel sales have trended upwards in 2009-10.

Smorgon Fuels claimed that a significant customer had reduced its purchases in the latter half of 2010. Smorgon Fuels suspects that the customer has commenced purchasing lower priced biodiesel imported from the USA. At Smorgon Fuel's request,

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Customs and Border Protection has not pursued this with the customer and therefore has not placed any weight on this claim.

8.5.2. Prices and costs

Smorgon Fuels has not reduced its prices in response to competition from biodiesel imported from the USA. Its ability to increase prices is largely dictated by petroleum diesel prices.

8.5.3. Profits and profitability

Although unverified, Smorgon Fuels' profit and loss information indicates a difficult trading environment over the 12 months to June 2010 and this is consistent with verified information available to Customs and Border Protection from other sources²⁸.

It appears that Smorgon Fuels, while increasing its sales and production volumes, has experienced a challenging trading and profitability environment in 2009-10. Its performance does not appear to be sufficiently positive to offset injury suffered by the applicant BPL.

8.6. ARF

ARF has two biodiesel plants, one at Picton in Western Australia and one at Largs Bay in South Australia. The plants are virtually identical in design and structure. Each has a biodiesel production capacity of 45ML per annum. ARF sells unblended biodiesel (B100).

ARF's plants were completed in late 2007. The plants' start up coincided with increased feedstock prices and from the middle of 2008 to mid 2009 the plants were placed in a care and maintenance mode with minimal production. Production has slowly built up since mid 2009 but ARF is still operating at well below its capacity.

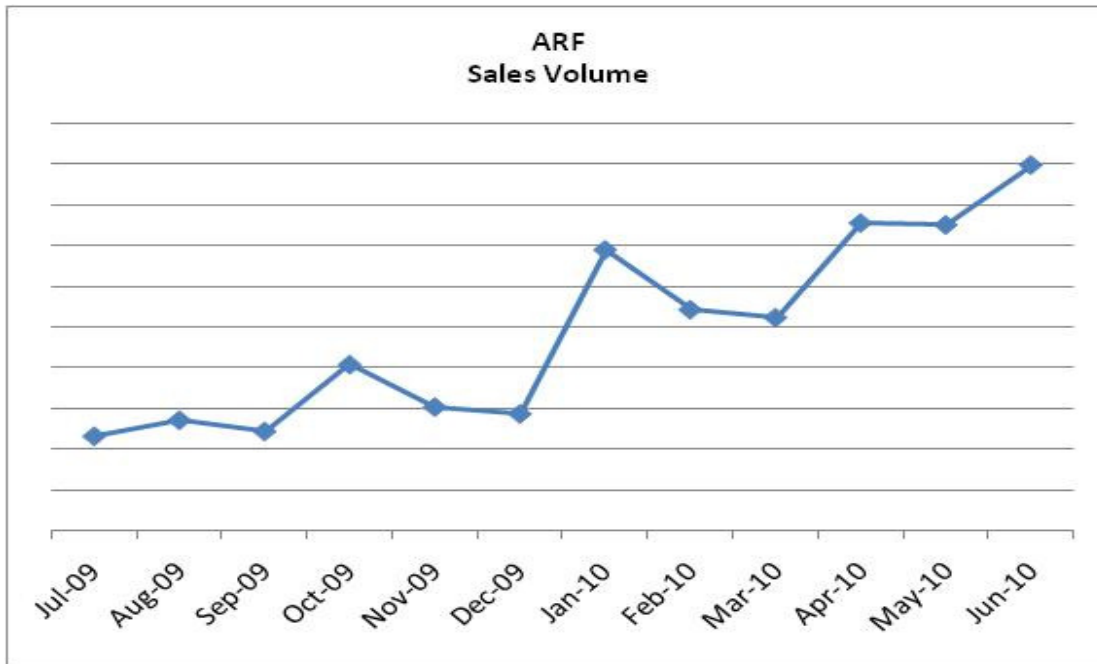
ARF provided its detailed biodiesel sales information for the period 1 April 2009 to 30 June 2010 and its audited financial statements for 2008-09 and 2009-10. Customs and Border Protection visited ARF's head office in Melbourne and verified the sales and cost information provided. A visit report is available on the public file.

8.6.1. Volume trends

ARF's monthly sales volumes for 2009-10 are shown in the following graph.

²⁸ Verified profit data from BPL and ARF.

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ARF's sales volumes trended upwards in 2009-10 from a very low base.

8.6.2. Prices and costs

ARF has not reduced its prices in response to competition from biodiesel imported from the USA. Its ability to increase prices is largely dictated by petroleum diesel prices.

8.6.3. Profits and profitability

ARF made losses of \$6.8 million and \$3.4 million in 2008-09 and 2009-10 respectively.

Customs and Border Protection has not attributed these losses to dumped and subsidised biodiesel imported from the USA. No information was provided to link these losses to the dumped and subsidised imports. Nevertheless, ARF's performance does not appear to be sufficiently positive to offset injury suffered by the applicant BPL.

8.7. BIA

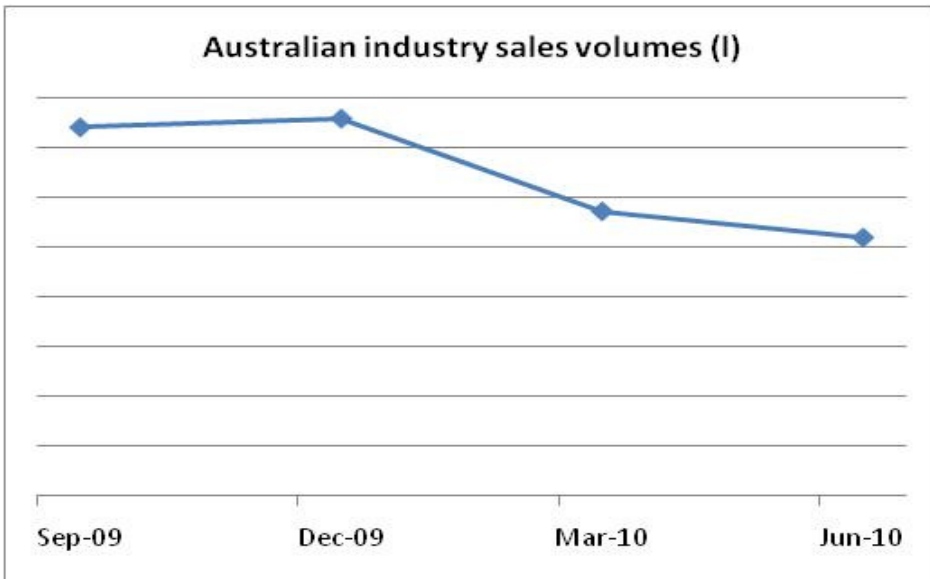
BIA operates a plant at Rutherford in NSW that is estimated to have a capacity of 20ML per annum. BIA provided its biodiesel sales volumes for 2007-08, 2008-09 and 2009-10. Customs and Border Protection verified these volumes through excise returns provided by BIA and incorporated this information in the industry sales volume and market share analyses below.

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8.8. The Australian industry as a whole

8.8.1. Volume trends

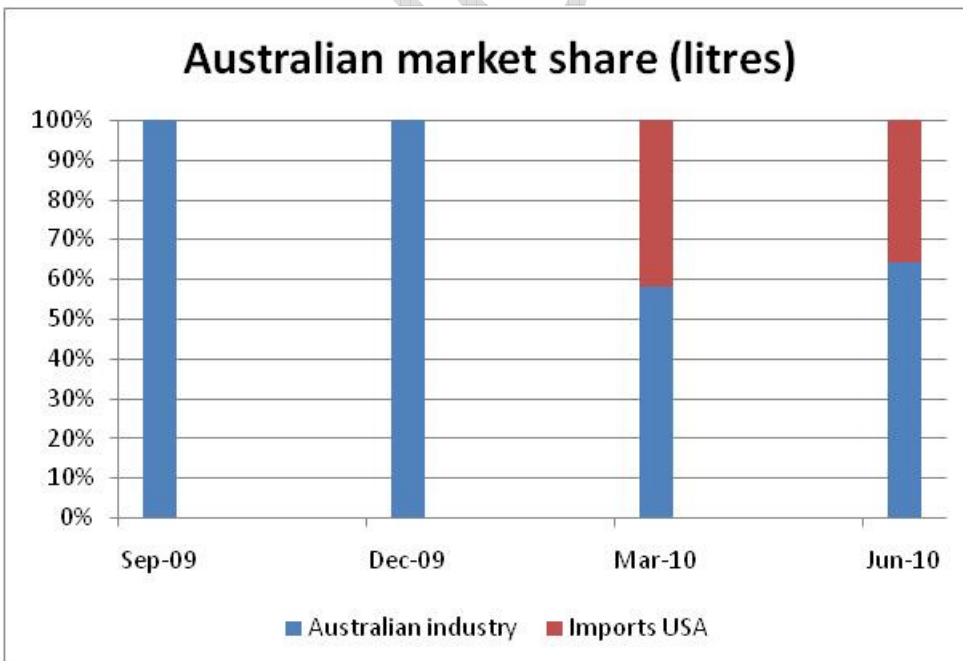
Sales volumes



The Australian industry's sales volumes declined in the March and June quarters 2010.

Market share

The following chart depicts Customs and Border Protection's assessment of market share changes in 2009-10.



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The chart shows that the Australian industry's market share fell from 100 percent in the September and December quarters 2009 to approximately 60 percent in the March and June quarters of 2010. In the absence of imports from other sources, imports from the USA gained approximately 40 percent of the market in these quarters.

8.8.2. Prices and costs

The Australian industry members have not claimed price related injury caused by dumping and subsidised biodiesel exported to Australia from the USA.

8.8.3. Profits and profitability

Without verified cost information from Smorgon Fuels and BIA, Customs and Border Protection is unable to assess changes in the overall profitability of the Australian industry. However, the available information indicates that the profits and profitability performance of the other Australian industry members has not been such that it would offset injury suffered by BPL caused by the dumped and subsidised imports.

8.8.4. Capacity utilisation

Customs and Border Protection estimates that the Australian biodiesel industry operated at approximately 28 percent of its capacity in 2009-10.

8.9. Preliminary finding on material injury to Australian industry

During the investigation period the applicant and largest producer of biodiesel, BPL, experienced injury in the form of:

- lost sales volume;
- reduced profits and profitability;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced hours worked.

Information available from the other Australian industry members indicates that their performance has not been sufficiently positive to offset the injury experienced by BPL.

The Australian industry as a whole has experienced a loss of sales volumes, a loss of market share and continues to operate well below capacity. The Australian industry producing like goods has suffered injury.

9. HAS DUMPING CAUSED MATERIAL INJURY?

9.1. Preliminary findings

Customs and Border Protection has made a preliminary finding that there is a causal link between material injury experienced by the Australian industry and the dumping and subsidisation of biodiesel exported to Australia from the USA.

9.2. Introduction

This section examines whether dumped and subsidised imports of biodiesel have caused material injury to the Australian industry.

9.3. Dumping

Exports of biodiesel from the USA in the investigation period were dumped with a dumping margin of 40 percent of the weighted average export price.

9.4. Subsidisation

Exports of biodiesel to Australia from the USA in the investigation period benefited from countervailable subsidies. The total amount received in respect of exports under the two schemes is taken to be 56 percent of the weighted average export price.

9.5. Volume effects

9.5.1. Loss of sales volume

The magnitude of the dumping and subsidy margins afforded the imported goods a significant price advantage that was reflected in prices that significantly undercut the Australian industry. This caused lost sales volume, particularly the loss of the Freedom Fuels sales. Customs and Border Protection considers that the information available supports the claim that the Australian industry has lost sales volume as a direct result of Freedom Fuels deciding to purchase the majority of its biodiesel requirements from the USA.

9.5.2. Loss of market share

The Australian industry has lost market share to the dumped and subsidised imports from the USA.

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9.6. Price effects

9.7. Price depression and suppression

The Australian industry has not claimed to have suffered price depression or suppression caused by dumped and subsidised imports from the USA

9.8. Undercutting analysis

Customs and Border Protection compared the into-store cost to importers of biodiesel exported from the USA in the investigation period with the weighted average delivered selling prices of BPL and Smorgon Fuels. The into-store cost of the imports undercut BPL and Smorgon Fuels selling prices by between 9 and 25 percent.

The undercutting analysis is at **confidential appendix 7**.

9.9. Profit effects

9.9.1. Reduced profit and profitability

The loss of most of the volumes sold to Freedom Fuels had a severe impact on BPL's profits and profitability. In the March and June quarters 2010, BPL's fixed costs were spread over a much smaller sales volume, thereby increasing unit costs significantly. BPL's profit and profitability position declined markedly in 2010 due to the loss of sales volume to Freedom Fuels and the increased unit costs resulting from lower overall sales volumes.

The other Australian industry members have also faced a difficult trading environment in recent years. ARF, for example, has recorded significant losses in recent years. Customs and Border Protection did not find, from the available evidence, that the poor profit performance of the other members was caused by the dumped and subsidised imports, but rather by the general trading environment. It was found, however, that the performance of the other Australian industry members, namely ARF, Smorgon Fuels and BIA, was not sufficiently positive that it would lead Customs and Border Protection to disregard the injury suffered by BPL which is considered material to the industry as a whole and was caused by the dumping and subsidisation.

9.10. Other possible causes of injury

Customs and Border Protection is required to consider whether injury to an industry is being caused or threatened by a factor other than the dumped imports²⁹.

Freedom Fuels submitted that several factors other than price had been relevant to its decision to import the majority of its biodiesel requirements from the USA rather than purchase biodiesel manufactured in Australia. It submitted that it was concerned about

²⁹ Subsection 269TAE(2A)

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the ongoing viability of the Australian biodiesel industry, and BPL in particular, and wanted to ensure security of supply for its customers. It also claimed that the Australian industry supplies biodiesel with a CFPP that does not meet the requirements of Freedom Fuels' customers across all locations in Australia.

Customs and Border Protection is not persuaded by the available evidence that the Australian biodiesel industry has been unable to supply biodiesel that, in most if not all cases, meets the requirements of customers in Australia. Interested parties agreed that Australian produced biodiesel was of a quality that met customer requirements in Australia. Also, Freedom Fuels stated that besides security of supply and quality, price was a key factor in selecting a biodiesel supplier.

Several interested parties referred to difficulties experienced by the Australian manufacturers, suggesting that the industry's injury was due to underlying problems with rising feedstock prices, poor management decisions and diminishing government support. Parties pointed to the history of biodiesel production facilities closing or being mothballed in recent years as evidence that biodiesel production in Australia is unfeasible.

Customs and Border Protection agrees that the Australian biodiesel industry has faced a difficult trading environment in recent times, particularly in 2009. Biodiesel pricing is closely tied to the price of petroleum diesel. Petroleum diesel prices are transparent in the market and daily prices are published on the internet sites of the major oil companies.

In 2009, rapidly rising feedstock prices and suppressed mineral diesel prices caused by the Global Financial Crisis created a squeeze on biodiesel sales margins. This factor has also caused injury to the Australian industry. Customs and Border Protection has not attributed price suppression and declining profits and profitability caused by this factor to dumped and subsidised imports from the USA. The material injury to BPL caused by the loss of the Freedom Fuels sales in 2010 is considered to be additional to other injury suffered by the industry and was caused directly by the dumping and subsidisation of the USA imports.

9.11. Summary – Causal link

Customs and Border Protection considers that the evidence set out in this section provides sufficient grounds to conclude that the dumping and subsidisation of biodiesel from the USA caused injury to BPL, the largest Australian producer in the investigation period, in 2010. While no evidence was found that the other Australian manufacturers had suffered injury caused by the dumping and subsidisation, the available information indicates that their performance was not such that it would offset injury experienced by BPL.

Customs and Border Protection makes a preliminary finding that dumped and subsidised imports of biodiesel exported to Australia from the USA have caused material injury to the Australian industry producing like goods.

10. WILL DUMPING, SUBSIDISATION AND MATERIAL INJURY CONTINUE?

10.1. Preliminary findings

Customs and Border Protection makes a preliminary finding that exports of biodiesel from the USA in the future may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10.2. Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping and/or subsidisation, anti-dumping and/or countervailing measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping/subsidisation and material injury may continue.

10.3. Customs and Border Protection's assessment

10.3.1. May dumping continue?

Customs and Border Protection found that exports of biodiesel to Australia from the USA during the investigation period were dumped by a margin of 40 percent.

No information has been presented which would indicate that dumping may not occur in the future. Customs and Border Protection considers that the export price of biodiesel that may be exported to Australia in the future may be less than the normal value of the goods.

10.3.2. May subsidisation continue?

Customs and Border Protection found that exports of biodiesel to Australia from the USA during the investigation period were subsidised by a margin of 56 percent.

In respect of the Federal subsidy program, it appears that it is proposed that the subsidy be reinstated. Producers in the USA will be eligible to claim a subsidy under the Missouri Qualified Biodiesel Producer Incentive Program until 2014.

Customs and Border Protection considers that a countervailable subsidy may be received in respect of biodiesel that may be exported to Australia in the future.

10.3.3. May material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a preliminary finding that biodiesel exported at dumped and subsidised prices has caused material injury to the Australian industry producing like goods.

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Customs and Border Protection considers that a continuation of price competition from dumped and subsidised imports from the USA is likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in lost sales volume and market share, and consequently lost profits and profitability.

Based on the available evidence, Customs and Border Protection makes a preliminary finding that exports of biodiesel from the USA in the future may be at dumped prices and may be subsidised and that continued dumping and subsidisation may cause further material injury to the Australian industry.

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11. NON-INJURIOUS PRICE

11.1. Preliminary findings

Customs and Border Protection makes a preliminary finding that the non-injurious price (NIP) can be established by reference to the selling prices of Australian industry members in the investigation period.

11.2. Introduction

Dumping and/or countervailing duties may be applied where it is established that dumped and/or subsidised imports have caused or threaten to cause injury to the Australian industry producing like goods. In exercising his powers to impose dumping and countervailing duties, the Minister must have regard to the desirability of ensuring the amount of countervailing duty, when aggregated with the amount of dumping duty, is not greater than is necessary to prevent the injury or a recurrence of the injury. This lesser duty provision is contained in the World Trade Organization Anti-Dumping Agreement and the Tariff Act³⁰.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation³¹.

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.

11.3. Unsuppressed selling price

Customs and Border Protection generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping and/or subsidisation. This price is referred to as the unsuppressed selling price (USP).

Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

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

³⁰ Subsection 8(5A) of the Tariff Act

³¹ The NIP is defined in section 269TACA

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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.

11.4. Customs and Border Protection's assessment

11.4.1. USP

The three Australian industry members visited by Customs and Border Protection, BPL, ARF and Smorgon Fuels, advised that their biodiesel prices had not been affected by the dumped and subsidised imports from the USA. The manufacturers advised that they were not in a position to reduce prices to compete with the low-priced imports.

Therefore, the most appropriate basis for the USP is to use the weighted average of BPL and Smorgon Fuels' selling prices in the investigation period. The majority of prices are delivered to customers and are therefore at a point where they would compete with imports delivered to customers. ARF's small volume of sales in the investigation period has not been included as the majority of these were not delivered to customers.

11.4.1. NIP

The level of trade of the USP in terms of imports is the delivered into-store cost to the importers that would otherwise purchase biodiesel from the Australian manufacturers. The NIP has been calculated by deducting from the USP, amounts for:

- importer into-store costs;
- overseas freight and marine insurance;
- port and clearance charges in Australia.

The NIP calculation is at **confidential appendix 8**.

11.5. Comparison of the NIP to the export prices

The NIP was compared with the weighted average export price of biodiesel exported from the USA during the investigation period.

The analysis found that the NIP was higher than the weighted average export price. This analysis supports Customs and Border Protection's assessment that dumped and subsidised biodiesel exported to Australia from the USA has caused material injury to the Australian industry.

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12. APPENDICES

Confidential appendix 1	Australian market
Confidential appendix 2	Export price calculation
Confidential appendix 3	Normal value calculation
Confidential appendix 4	Dumping margin calculation
Confidential appendix 5	Subsidy calculations
Confidential appendix 6	Summary of injury data
Confidential appendix 7	Price undercutting analysis
Confidential appendix 8	NIP calculation

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