



TRADE MEASURES BRANCH

CUSTOMS ACT 1901 - PART XVB

GLYPHOSATE EXPORTED

FROM

THE PEOPLE'S REPUBLIC OF CHINA

STATEMENT OF ESSENTIAL FACTS NO. 2001/45

7 December 2001

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ABBREVIATIONS & ACRONYMS

ACDN	Australian Customs Dumping Notice
CCPIT	China Council for the Promotion of International Trade Sub-Council Of Chemical Industry
China	the People's Republic of China
Customs	Australian Customs Service
EU	European Union
FIE	foreign investment enterprise
FOB	free-on-board
GUC	goods under consideration
Hebei Golhil	Hebei Golhil Chemical Co Ltd
IPA	iso-propylamine
JV	joint venture
Minister	Minister responsible for Customs
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
Monsanto	Monsanto Australia Ltd
Nufarm	Nufarm Limited
Pacific Agriscience	Pacific Agriscience Pte Ltd
Qidong	Qidong Weien Yinong Chemicals Co Ltd
RMB	Renminbi (national currency of China)
SEF	statement of essential facts
Sinochem	Sinochem Hebei Import & Export Corp
SOE	state owned enterprise
SPDC	State Planning and Development Commission
the Act	The <i>Customs Act 1901</i>
the goods	the goods the subject of the application
VAT	value added tax
WTO	World Trade Organization
ZJC	Zhenjiang Jiangnan Chemical Factory
ZXC	Zhejiang Xinan Chemical Industrial Group Co Ltd

1 INTRODUCTION

This statement of essential facts (SEF) relates to an anti-dumping investigation into glyphosate exported to Australia from the People's Republic of China (China). The Australian Customs Service (Customs) initiated the investigation following an application by Monsanto Australia Ltd (Monsanto), an Australian producer of glyphosate.

The investigation was notified in the *Australian Financial Review* on 12 June 2001 and in Australian Customs Dumping Notice (ACDN) No. 2001/34.

Customs examined exports of glyphosate to Australia during the period 1 January 2000 to 31 March 2001 (the investigation period) to determine whether dumping had occurred. Customs examined details of the Australian market from 1 January 1997 (the injury period) for injury analysis.

Customs is normally required to place on the public record within 110 days of initiation, an SEF on which it proposes to base its recommendations to the Minister. Interested parties are given 20 days to respond to issues raised in the statement.

In normal circumstances Customs must, within 155 days of the initiation of an investigation, report to the Minister responsible for Customs (Minister) and recommend whether to impose anti-dumping duties.

In this case, because of the complexities resulting from China's status as an economy in transition, the Minister granted Customs an extension until 7 December 2001 to place the SEF on the public record. Responses to the SEF are due by 28 December 2001 and Customs' report to the Minister is due by 21 January 2002.

2 PURPOSE OF THIS STATEMENT

This statement sets out the essential facts on which Customs will base its recommendation to the Minister. Interested parties may comment on the matters being considered by Customs in formulating the report and recommendation.

Responses to this statement should be made before 28 December 2001. Submissions should be limited to the issues of fact as outlined in this document. Because of the statutory time limit to report to the Minister, it will generally not be possible for Customs to consider new issues or facts raised at this stage.

Submissions should be sent to:

Director Operations 3
Trade Measures Branch
Australian Customs Service
Customs House

1 5 Constitution Avenue
2 CANBERRA ACT 2601

3 Customs is not obliged to have regard to any submissions in response to this
4 statement that are received after 28 December 2001 if to do so would prevent
5 timely preparation of the report to the Minister.

6 Interested parties responding to this SEF must include a non-confidential
7 version of their submission for the public record.

8 As well as non-confidential submissions by interested parties, and the SEF,
9 the public record contains non-confidential versions of Customs' reports.
10 These reports deal with issues such as normal value; export price; and
11 material injury. This SEF should be read in conjunction with those
12 documents.

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

16 All Customs dumping notices are available on the Internet at
17 <http://www.customs.gov.au/notices/index.htm>.

18 **3 THE GOODS UNDER CONSIDERATION**

19 **3.1 AS DESCRIBED IN THE APPLICATION**

20 The applicant stated that glyphosate is a systemic, post-emergent, non-
21 selective herbicide. It further stated that the goods covered by this application
22 include:

- 23 ■ glyphosate acid (generally 95% glyphosate content);
- 24 ■ glyphosate cake and salt (generally 84% and 62% glyphosate content
25 respectively); and
- 26 ■ formulated glyphosate (generally 36% glyphosate content).

27 **3.2 TARIFF CLASSIFICATION**

28 Glyphosate acid, cake and salt are inorganic compounds, being glycine
29 derivatives containing phosphono groups. They are classified within Item
30 2931.00.10, statistical code 01, in Schedule 3 to the *Customs Tariff Act 1995*.
31 Formulated glyphosate is a herbicide. It is classified within Item 3808.30.00,
32 statistical code 50, in Schedule 3 to the *Customs Tariff Act 1995*. The duty
33 rate applicable to the goods exported to Australia from China is 5%.

34 **3.3 PRODUCT INFORMATION**

35 The applicant stated that glyphosate acid, often known as glyphosate
36 technical, is the active ingredient when used as a herbicide in its formulated
37 state. Glyphosate acid, glyphosate wet cake and glyphosate salt are
38 intermediate products in the production of formulated glyphosate. The
39 applicant stated that it manufactures and imports glyphosate acid; it then
40 manufactures glyphosate salt either for sale to formulators or for itself to

1 formulate. It claimed that there is no end use for glyphosate other than in its
2 formulated form. The applicant further stated that the formulation process is a
3 simple one involving dilution and blending.

4 Monsanto claimed the application covered all of the above forms of
5 glyphosate. Monsanto stated that glyphosate acid is a dedicated herbicidal
6 product that has no other known use.

7 **3.4 PRODUCTION PROCESS**

8 Monsanto produces glyphosate acid as wet cake at 84% active constituent,
9 which when dried becomes glyphosate technical at 95% active constituent.
10 The glyphosate acid is used to produce glyphosate salt by diluting the
11 glyphosate acid with water and neutralising the acid with an organic base.
12 The process involves reacting glyphosate acid with iso-propylamine (IPA) to
13 form the IPA salt. The process is described as an acid base reaction. The
14 glyphosate salt thus produced is an aqueous solution having a glyphosate iso-
15 propylamine salt concentration of 62% wet weight (w/w) that is equivalent to
16 45.09% glyphosate acid.

17 Formulated glyphosate is obtained by diluting glyphosate salt with water and
18 blending it with a surfactant. The addition of a surfactant is to improve
19 adhesion to the plant surface. Glyphosate can be formulated to various
20 strengths of active ingredient. In Australia the most common strengths
21 formulated are 360 and 450 grams/litre (g/l) active ingredient.

22 **3.5 GOODS EXPORTED TO AUSTRALIA**

23 The goods exported to Australia from China during the investigation period
24 were glyphosate acid (95%) and 450 g/l formulated glyphosate.

25 **4 LIKE GOODS**

26 **4.1 DEFINITION**

27 The identification of 'like goods' is fundamental to an anti-dumping
28 investigation. Australian legislation, at section 269T(1) of the *Customs Act*
29 *1901* (the Act) states:

30 *"like goods", in relation to goods under consideration, means*
31 *goods that are identical in all respects to the goods under*
32 *consideration or that, although not alike in all respects to the*
33 *goods under consideration, have characteristics closely*
34 *resembling those of the goods under consideration.*

35 Where there is Australian production of like goods the Australian industry is
36 made up of the producers of those goods.

37 In considering whether certain goods are like goods to the goods under
38 consideration (GUC), Customs recognises that no one factor is in itself
39 sufficient reason for a conclusion. Customs has regard to:

- 40 ■ physical characteristics;

- 1 ▪ end use; and
- 2 ▪ substitutability.

3 Given the legislative definition of like goods, it is pertinent firstly to examine
4 whether locally manufactured glyphosate is identical in all respects to the
5 GUC.

6 Customs noted that the three types of glyphosate (acid, salt and formulate)
7 have markedly different concentrations of active ingredient. Further,
8 glyphosate acid is a solid, whereas the other forms of glyphosate are liquids
9 and require different methods of storage. Although the end-use of all three
10 products is the same (a non-selective herbicide), Customs concluded that
11 glyphosate acid, glyphosate salt and formulated glyphosate are not identical
12 goods.

13 Having determined that the three forms of glyphosate are not identical,
14 Customs is required to assess whether any or all of the forms of glyphosate
15 produced by the Australian industry are like goods to glyphosate imported to
16 Australia from China over the investigation period. Each of the three forms of
17 glyphosate is discussed in the following paragraphs.

18 **4.1.1 Glyphosate acid**

19 Monsanto produces glyphosate acid in two nominal strengths: 95% technical
20 and 84% wet cake.

21 The concentration of active ingredient in glyphosate technical may vary
22 slightly from batch to batch as the drying process may remove slightly more or
23 less water depending on conditions. This form of glyphosate is sold with a
24 minimum concentration of 95%. Customs considered the difference to be
25 'slight' as discussed above. No other differences were apparent between
26 imported glyphosate technical and the locally produced product. Therefore
27 Customs considered Chinese glyphosate technical and Australian produced
28 glyphosate technical to be identical.

29 The other form of glyphosate acid produced in Australia is wet cake. Wet
30 cake was not imported into Australia over the investigation period. Customs
31 noted that the difference between glyphosate technical and wet cake is the
32 moisture content. However, as the moisture content is the only difference
33 between the local and imported product, Customs came to the view that this
34 difference is not significant. Customs concluded that the wet cake produced
35 by Australian industry is identical to the glyphosate technical exported from
36 China.

37 **4.1.2 Glyphosate salt (glyphosate iso-propylamine salt)**

38 Monsanto produces a glyphosate salt solution of 62% concentration. This
39 product is derived by diluting glyphosate acid or wet cake with water and
40 neutralising the acid with an organic base, iso-propylamine. This process is
41 referred to as 'amination'.

42 Glyphosate salt solution was not exported to Australia from China over the
43 investigation period. The question of identical goods did not arise. However,
44 Customs had to consider if the salt produced by the Australian industry has
45 characteristics closely resembling glyphosate exported from China.

1 Glyphosate salt is the intermediate stage of production from glyphosate acid
2 to formulated glyphosate.

3 In its submission, Monsanto claimed that locally produced glyphosate is
4 identical to the imported product, with identical chemical and physical
5 properties. It further claimed the only difference between locally produced
6 glyphosate and the goods is the concentration of active ingredient. Customs
7 concluded that locally manufactured glyphosate salt has characteristics
8 closely resembling glyphosate acid and formulated glyphosate exported from
9 China.

10 **4.1.3 Formulated glyphosate**

11 Formulated glyphosate is available in different concentrations (grams per litre)
12 of active constituent. Customs noted that there were some exports to
13 Australia of formulated glyphosate at 450 g/l. The local industry produces
14 formulated glyphosate in a variety of strengths, including 450 g/l. Customs
15 concluded the formulated glyphosate produced by Australian industry has
16 characteristics closely resembling glyphosate acid and formulated glyphosate
17 exported from China.

18 **4.2 INDUSTRY'S CLAIMS**

19 Customs confirmed that Monsanto produces glyphosate acid, glyphosate salt
20 and formulated glyphosate. Regardless of the form of glyphosate produced,
21 Monsanto claimed the only end use of glyphosate is that of a non-selective
22 herbicide.

23 Monsanto claimed that the locally produced glyphosate acid and glyphosate
24 salt are identical to the goods exported from China. It further claimed that all
25 glyphosate products are identical '...as far as their main physical
26 characteristics and end-use functions are concerned...'. Monsanto claimed
27 that the chemical composition of the imported and locally produced product is
28 the same.

29 **4.3 FORMULATORS' AND IMPORTERS' CLAIMS**

30 Apart from noting the physical difference between solid glyphosate acid and
31 liquid formulated glyphosate and the varying strengths of the different forms of
32 glyphosate, formulators and importers did not challenge Monsanto's claims
33 concerning like goods.

34 **4.4 CUSTOMS' ANALYSIS**

35 No party disputed the description of like goods contained in the application.
36 Having regard to the legislative definition of like goods, Customs concluded
37 the Australian industry produces like goods, in terms of s. 269T of the Act, to
38 the glyphosate exported from China.

5 AUSTRALIAN INDUSTRY

5.1 AUSTRALIAN INDUSTRY - MONSANTO

Monsanto is the only integrated Australian producer of glyphosate acid, glyphosate salt and formulated glyphosate. It is also the largest producer of formulated product in Australia. In its application, Monsanto identified several other producers of formulated glyphosate whose product is manufactured from imported or locally produced glyphosate acid or salt.

At Appendix 2 to the application, Monsanto submitted it was 100% of the Australian industry producing glyphosate acid or salt. It further submitted that it was 50% of the Australian industry producing formulated glyphosate. Of the remaining 50% production, Monsanto claimed half to have been produced by Nufarm Ltd (Nufarm), and the remainder by other formulators.

After analysing the applicant's submission and visiting other glyphosate manufacturers in Australia, Customs was satisfied that Monsanto is part of the Australian industry producing like goods. Customs considered that a substantial process is involved in producing glyphosate acid.

5.2 OTHER INDUSTRY MEMBERS

Nufarm supported Monsanto's application for a dumping duty notice. Monsanto did not know, at the time it lodged the application, whether other formulators supported the application or not.

Customs noted that Monsanto converts glyphosate acid to glyphosate salt and formulated glyphosate. A question that Customs considered in defining Australian industry is whether the conversion process from glyphosate acid to formulated product is a substantial process.

Customs contacted all Australian companies known to convert Chinese glyphosate acid to formulated product. The following formulators agreed to a verification visit by Customs:

- Nufarm Limited;
- A & C Chemicals Pty Ltd;
- Binary Chemicals Pty Ltd;
- Quadron Manufacturing Pty Ltd; and
- Western Stock Distributors.

For each of the above companies, Customs examined the process and cost of converting acid to formulated glyphosate. Customs was advised by some of the above companies that the process of conversion was not technically challenging.

However, Customs was satisfied that the process of conversion involves specialised equipment. Glyphosate acid undergoes a change of state from solid to liquid in the process of conversion to the formulated product. Care is also required to control an exothermic reaction that occurs during the salt stage of conversion. Customs was satisfied that the above companies perform a substantial process of manufacture for formulated glyphosate.

1 Consequently, Customs considered these companies to be part of the
2 Australian industry producing like goods.

3 Customs concluded in the Monsanto industry visit report, that the process of
4 converting salt to formulated product was not substantial. The process only
5 involves the dilution of the salt and the blending of a surfactant. No highly
6 specialised equipment or skills were required. Customs therefore concluded
7 that formulators who purchase salt only (rather than acid) are not part of the
8 Australian industry producing like goods as the formulation of glyphosate salt
9 is not a substantial process.

10 **6 AUSTRALIAN MARKET**

11 **6.1 MARKET STRUCTURE**

12 As noted previously, glyphosate is only useful as a herbicide in its formulated
13 state. Formulated glyphosate the subject of the application, varies in
14 concentration between 360 g/l and 510 g/l. Glyphosate at these strengths is
15 generally sold to farmers to control weeds prior to planting. A lesser strength
16 glyphosate, generally a solution containing approximately 7-10% active
17 constituent, is sold in retail packs for household use, mostly through hardware
18 outlets. These products are sold into a different market. The applicant
19 supplied insufficient information for Customs to assess injury in that market.
20 For these reasons, Customs excluded glyphosate sold for household use from
21 its considerations.

22 According to the application, the demand for glyphosate peaks in the second
23 quarter of the year, commencing with wheat planting in Western Australia in
24 April, and progressing through to the eastern states during May and June.

25 Although demand is mainly seasonal, reduced demand at peak times may be
26 caused by factors such as drought or insect infestation, which may cause
27 farmers to cancel or scale-back planting for a season.

28 Formulated glyphosate is sold in containers ranging from 20 litre drums to
29 1000 litre tanks. The product is also sold in bulk to rural distributors who sell
30 the goods in smaller containers. The most common containers sold in
31 Australia are 20 litre drums.

32 Monsanto sells formulated glyphosate to rural distributors. It also sells
33 glyphosate acid to other companies that aminate and formulate the product.
34 Monsanto also sells a small amount of salt to a formulator for further
35 processing.

36 Importers of glyphosate acid either convert the product to formulated
37 glyphosate, or arrange to have it formulated by means of a toll arrangement
38 with third parties within Australia.

39 Typically, toll arrangements involve importers purchasing Chinese glyphosate
40 technical and arranging delivery to toll manufacturers. Toll manufacturers
41 aminate and formulate the acid, pack the goods into containers and label
42 them, then palletise and shrink-wrap the goods. Importers generally supply
43 containers and labels and arrange delivery of the goods from formulators'

1 premises. The toll manufacturers charge importers/owners a set amount per
2 kilogram or litre for their involvement.

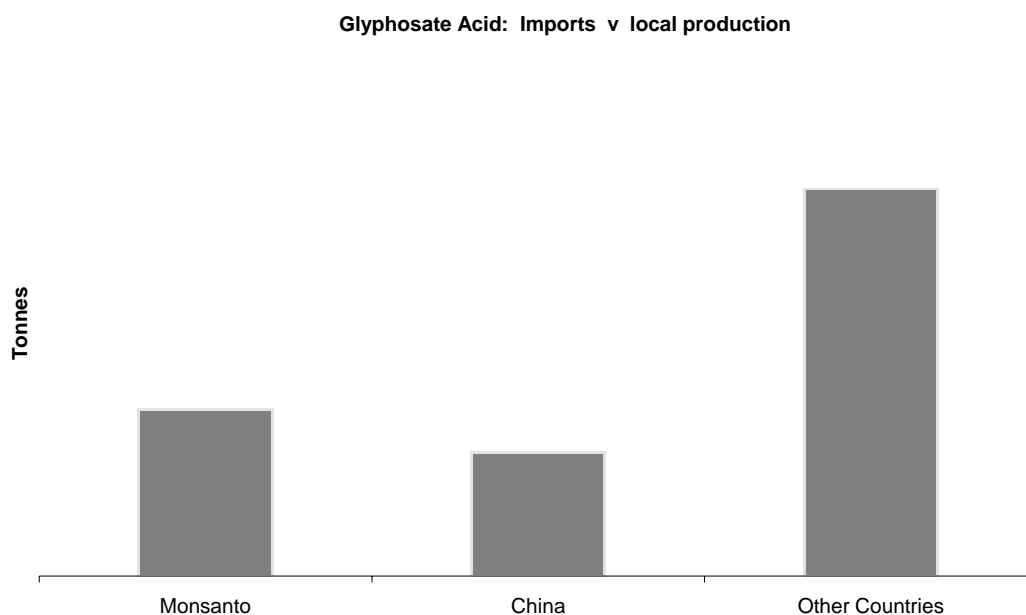
3 One importer purchases formulated glyphosate from China. The importer
4 concerned cited the quality and price of the imported product relative to the
5 locally manufactured formulated glyphosate as the reason for so doing.

6 Formulated glyphosate the subject of the application is sold to rural
7 distributors throughout Australia and then sold to end-users. In certain
8 instances, co-operative buying groups bulk purchase glyphosate for sale to
9 members. By acting as a group, the buying group exerts price leverage on
10 suppliers.

11 **6.2 MARKET SIZE**

12 **6.2.1 Acid imports relative to local production**

13 The investigation period covered 2000 and the first quarter of 2001. In its
14 application, Monsanto claimed that it was unable to provide quarterly data
15 concerning the production and sale of its glyphosate in the format requested
16 at appendix 4 to its application. For the purpose of estimating market size,
17 Customs estimated, on a pro rata basis, sales and production quantities of
18 acid for Monsanto using its 2000 data. The relativity of imports, from China
19 and other countries, and Monsanto's production for the investigation period is
20 shown in the following chart:



21 The bulk of imports from 'Other Countries' is from the USA.

22 **6.2.2 Volume of formulated glyphosate sold in Australia**

23 For the most part, glyphosate is sold in Australia in its formulated state.

24 At appendix 4 of the application, Monsanto provided sales data for formulated
25 glyphosate for the years 1996 to 2000. For the years 1999 and 2000,
26 production volume of formulated glyphosate was similar to sales volume.
27

1 Estimating sales volume for importers was difficult. Some importers
 2 purchased Chinese glyphosate acid for formulation in Australia under a toll
 3 arrangement with formulators. Some formulators purchased Chinese
 4 glyphosate to formulate and sell in Australia. Some formulated glyphosate
 5 was bought directly from Chinese manufacturers. Other formulators sold into
 6 the domestic garden segment and were not able to separate these sales from
 7 sales of other strengths of glyphosate. From the data available, Customs
 8 estimated the volume of all strengths of formulated glyphosate sold during
 9 2000 as approximately 30,000,000 litres.

10 **7 THE DUMPING INVESTIGATION**

11 **7.1 BACKGROUND**

12 Dumping occurs when a product of one country is exported to another country
 13 at a price less than its normal value. Export price and normal value of goods
 14 are determined under s. 269TAB and s. 269TAC of the Act respectively.

15 Customs contacted 21 manufacturers and exporters of Chinese glyphosate.
 16 Replies were received from 7, and of these 5 were visited for the purpose of
 17 verifying information provided.

Manufacturers & Exporters	Questionnaire	Reply	Visit	Co-operation
CF International Trading Co	Y			
Chemtech Company Limited	Y			
Choseright Limited	Y			
Cinkor Corporation	Y			
Fujian Sannong Chemical Import & Export Co Ltd	Y			
Hebei Golhil Chemical Co Ltd (Hebei Golhil)	Y	Y	Y	Full
Hubei Provincial Medicines & Health Products Imp & Exp Corp	Y			
Jiangsu Provincial Foreign Trade Corp	Y			
Kenso Corp M Sdn Bhd	Y			
Nanjing Foreign Trade Corp	Y			
Nantong Jiangshan Agrochemical Chemicals Limited Liability Co	Y	Y		
Pacific Agriscience Pte Ltd (Pacific Agriscience)	Y	Y	Y	Full
Qidong Weien Yinong Chemicals Co Ltd (Qidong)	Y	Y	Y	Full
Sinochem Hebei Imp & Exp Corp (Sinochem)	Y	Y	Y	Full
Sinochem Int Eng & Trading Corp	Y			
Sumitomo Corporation (Shanghai) Limited	Y			
Suzhou Jiahui Chemical Co. Ltd.	Y			
Wangs Limited	Y			

Manufacturers & Exporters	Questionnaire	Reply	Visit	Co-operation
Zhejiang Chemicals Imp & Exp Corp	Y			
Zhejiang Xinan Chemical Industrial Group Co Ltd (ZXC)	Y	Y	Y	Full
Zhenjiang Jiangnan Chemical Factory (ZJC)	Y			

1 Customs contacted 28 importers and formulators in Australia. Replies were
2 received from 17. All 17 were visited for the purpose of verifying information
3 provided.

4

Importers & Formulators	Questionnaire	Reply	Visit	Co-operation
4 Farmers Pty Ltd (The WPA Trust)	Y	Y	Y	Full
A & C Chemicals Pty Ltd	Y	Y	Y	Partial
Alliance Chemicals Pty Ltd	Y	Y	Y	Full
Artfern Pty Ltd	Y			
Autopak-Vetlab Group Pty Ltd	Y			
Binary Chemicals Pty Ltd	Y	Y	Y	Partial
Brunnings Garden Products Pty Ltd	Y			
Cimbria Resources Pty Limited	Y			
CITIC	Y			
Concept Chemical Corp Pty Ltd	Y			
Davison Industries (WA) Pty Ltd	Y			
Echem (Aust) Pty Ltd	Y	Y	Y	Full
Farmoz Chemicals Pty Ltd	Y	Y	Y	Full
Grow Choice Pty Limited	Y	Y	Y	Full
Gulmohar Pty Ltd	Y	Y	Y	Full
Imtrade (R & F Unit Trust) & Chemag	Y	Y	Y	Full
Mastra Corporation	Y			
Mineral & Chemical Traders Pty Ltd	Y			
Nufarm Limited	Y	Y	Y	Full
Quadron Manufacturing Pty Ltd	Y	Y	Y	Full
Redox Chemicals Pty Ltd	Y	Y	Y	Full
Sanonda (Aust) Pty Ltd	Y	Y	Y	Full
SIPCAM Pacific Aust Pty Ltd	Y			
Sumitomo Australia Ltd	Y	Y	Y	Partial
Unisun Chemicals Pty Ltd	Y	Y	Y	Partial
United Farmers Co-operative Company Ltd	Y	Y	Y	Full
Western Stock Distributors (Rebop Holdings Pty Ltd)	Y	Y	Y	Full
Zeneca/Novartis (Syngenta)	Y			

1 **7.2 EXPORT PRICE**

2 **7.2.1 Hebei Golhil Chemical Co Ltd (Hebei Golhil)**

3 Customs visited Hebei Golhil and verified information provided in response to
4 the exporter questionnaire. Customs concluded from verified information, that
5 Hebei Golhil's export sales to Australia were arms length transactions.
6 Customs further concluded that the goods were exported to Australia other
7 than by the importer and were purchased by the importer from the exporter.
8 Customs concluded that export prices for Hebei Golhil should be determined
9 in accordance with the provisions of s. 269TAB(1)(a) of the Act, based on the
10 invoiced price ex Hebei Golhil.

11 **7.2.2 Qidong Weien Yinong Chemicals Co Ltd (Qidong)**

12 Customs visited Qidong and verified information provided in response to the
13 exporter questionnaire. Customs concluded from verified information, that
14 Qidong's export sales to Australia were arms length transactions. Customs
15 further concluded that the goods were exported to Australia other than by the
16 importer but were not purchased by the importer from the exporter. Customs
17 concluded that export prices for Qidong should be determined in accordance
18 with the provisions of s. 269TAB(1)(c) of the Act, based on the invoiced price
19 ex Qidong.

20 **7.2.3 Zhejiang Xinan Chemical Industrial Group Co Ltd (ZXC)**

21 Customs visited ZXC and verified information provided in response to the
22 exporter questionnaire. Customs concluded from verified information, that
23 ZXC's export sales to Australia were arms length transactions. Customs
24 further concluded that the goods were exported to Australia other than by the
25 importer and were purchased by the importer from the exporter. Customs
26 concluded that export prices for ZXC should be determined in accordance
27 with the provisions of s. 269TAB(1)(a) of the Act, based on the invoiced price
28 ex ZXC.

29 **7.2.4 Other exporters**

30 Zhejiang Jiangnan Chemical Factory (ZJC) exported the goods to Australia
31 during the investigation period. ZJC declined to accept a verification visit from
32 Customs. The goods exported to Australia by ZJC were sold to Pacific Agri-
33 Science Pte Ltd (Pacific Agriscience), a trader in Singapore. Pacific
34 Agriscience provided a submission to Customs and information relating to its
35 purchases and sales of the goods produced by ZJC. Customs visited Pacific
36 Agriscience and verified the information provided. From that information
37 Customs concluded that exports of the goods by ZJC were exported other
38 than by the importer but were not purchased by the importer from the
39 exporter. Customs concluded that export prices for ZJC should be
40 determined in accordance with the provisions of s. 269TAB(1)(c) of the Act,
41 based on the price paid by Pacific Agriscience.

42 Sinochem Hebei Import & Export Corp (Sinochem) exported the goods to
43 Australia during the period. Sinochem made a submission to Customs
44 containing information relating to export price. Customs visited Sinochem and
45 the importers of the goods from Sinochem. Customs concluded the goods
46 were exported to Australia otherwise than by the importer and were

1 purchased by the importer from the exporter. Customs further concluded the
2 export sales by Sinochem were arms length transactions. Customs
3 concluded that export prices for Sinochem should be determined in
4 accordance with the provisions of s. 269TAB(1)(a) of the Act.

5 For other exporters Customs concluded export prices should be determined
6 as the weighted average of the export prices determined for those exporters
7 visited, in accordance with the provisions of s. 269TAB(3) of the Act, taking
8 account of the provisions of s. 269TG(3B) of the Act.

9 **7.3 NORMAL VALUE**

10 **7.3.1 China – an economy in transition**

11 In the past China was considered a centrally planned economy, where the
12 government had a monopoly, or a substantial monopoly, of China's trade and
13 determined, or substantially influenced, the domestic price of goods in that
14 country.

15 Australia now regards China's economy as being in transition from a planned
16 economy to a market economy. Australian anti-dumping legislation
17 specifically provides for determination of normal values of goods exported
18 from a country whose economy is in transition. The relevant provisions are at
19 ss. 269TAC(5D) to 269TAC(5J) of the Act.

20 **7.3.2 The legislative framework**

21 Subsection 269TAC(5D) of the Act provides that where in the past the
22 government of the country of export had a monopoly, or a substantial
23 monopoly, of the trade of that country and determined, or substantially
24 influenced, the domestic price of goods in that country, and that circumstance
25 no longer applies, and a price control situation within the meaning of
26 s. 269TAC(5E) of the Act applies, the normal value of the goods is such
27 amount as is determined by the Minister having regard to all relevant
28 information.

29 Subsection 269TAC(5E) of the Act defines a price control situation in relation
30 to the domestic price of like goods as:

31 *where the exporter of the goods sells like goods in the country*
32 *of export and the domestic selling price of those like goods is*
33 *controlled, or substantially controlled, by a government (at*
34 *whatever level) of that country; or*

35 *where the exporter does not sell like goods in the country of*
36 *export but there are other sellers of like goods in that country*
37 *and the domestic selling price of like goods sold by some or all*
38 *of those other sellers is so controlled or substantially so*
39 *controlled.*

40 It is clear from the provisions of s. 269TAC(5E) of the Act that in the absence
41 of domestic sales of like goods by the exporter or other sellers in the country
42 of export, a price control situation cannot exist within the meaning of
43 s. 269TAC(5E) of the Act and s. 269TAC(5D) of the Act does not apply.

1 When s. 269TAC(5D) of the Act does not apply, s. 269TAC(5G) of the Act
2 requires Customs to examine the source of raw materials used in the
3 production of the exported good and the costs of those raw materials. Where
4 a raw material used in producing the exported goods was, in whole or in part,
5 supplied directly to the producer by an enterprise that is wholly owned by the
6 national government or a provincial government of that country and the cost
7 actually incurred by that producer in procuring that raw material so supplied
8 exceeds 10% of the costs actually incurred by the producer in producing the
9 exported goods, the normal value of the goods must be constructed in
10 accordance with the method set out in paragraphs (f) to (h) of s. 269TAC(5G)
11 of the Act.

12 If the above situation does not exist, normal values are determined according
13 to s. 269TAC of the Act as for any market economy country.

14 **7.3.3 Monsanto's claims about price control and the Chinese market**

15 In its application Monsanto claimed that a price control situation exists in
16 respect of China's domestic market for like goods, that key inputs to the
17 production and marketing of like goods are subject to government influence
18 and distribution of agricultural chemicals is performed by state owned
19 enterprises (SOEs) and state designated distributors. Because of these
20 claims, Monsanto sought to have normal values determined using a surrogate
21 country and provided information in respect of domestic selling prices in India
22 for formulated product, adjusted to remove amination and packing costs.

23 Monsanto also claimed the Chinese Government influences the banking
24 system, and therefore loan arrangements, and production quantities.

25 **7.3.4 Customs approach**

26 Customs asked exporters and manufacturers to provide supplementary
27 submissions containing information relating to China's domestic glyphosate
28 market, specifically addressing price control and government sourced inputs.
29 Customs received 6 submissions from exporters and manufacturers.

30 Customs also sought information from the Chinese Government and various
31 Chambers of Commerce and industry representative organisations. Customs
32 met with officers from the Ministry of Foreign Trade and Economic
33 Cooperation (MOFTEC) and members of the China Council for the Promotion
34 of International Trade Sub-Council of Chemical Industry (CCPIT).

35 **7.3.5 Discussions with MOFTEC**

36 During discussions with MOFTEC Customs was advised that China's
37 economy had undergone important steps toward a market economy in recent
38 years, leading up to negotiations in respect of China's accession to the World
39 Trade Organization (WTO).

40 MOFTEC further advised that the only products still subject to price control by
41 the government are coal, electricity, telecommunications and transport
42 equipment.

43 MOFTEC also provided information that gave Customs an understanding of
44 China's value added tax (VAT) and its application, as well as its refund for
45 export scheme and its application.

1 MOFTEC advised that China's Commercial Bank Law requires banks to
2 operate on a commercial basis. Loan applications are considered on the
3 merits of the applicant company, with no government direction of the outcome.
4 Customs was advised that the law applies to all companies, including SOEs
5 and foreign investment enterprises (FIEs).

6 **7.3.6 Discussions with CCPIT**

7 Customs met with CCPIT and discussed price control and asked specific
8 questions relating to matters claimed by Monsanto.

9 Price control

10 CCPIT advised there was no government control of glyphosate prices and
11 prices are decided by supply and demand.

12 Specific issues raised by Monsanto are addressed below.

13 There is a state plan, and agricultural chemicals are classified as a category 2
14 priority.

15 Customs was advised that within the heading of pesticides there were three
16 categories of product, viz. insecticides, herbicides and fungicides. Of these
17 three, herbicides should have the highest priority.

18 CCPIT said there was a difference between a previous time when the state
19 planned production and controlled prices and what happened now. There is
20 no state plan now.

21 It advised that the relevant government departments had been disbanded and
22 there were now no government controls over production or price. The State
23 Planning and Development Commission (SPDC) only provided industry with
24 information concerning the quality of the chemicals produced. Because the
25 herbicides produced in China were of a quality lower than international
26 standards, they should be the first priority to be developed to meet
27 international standards.

28 Glyphosate is distributed only through government controlled companies.

29 CCPIT advised that the distribution of agricultural chemicals had been totally
30 freed up. The last category to be freed up was fertilisers and that was in
31 1977. Distributors are a mix of SOEs, collectives and private enterprises.

32 Claims relating to joint venture (JV) approvals, foreign investment rules and
33 specific allegations of production restrictions.

34 CCPIT advised that investment up to Renminbi (RMB) 50m was approved by
35 the provincial government, over RMB 200m by the State Council and
36 RMB 50m to RMB 200m by SPDC.

37 These approvals only related to investment and did not restrict production
38 quantities. For approval of investment the parties must submit a business
39 plan. Such a business plan may include projected production, but did not
40 restrict production. The purpose of the plan was to demonstrate that the
41 proposed investment was sound.

42 Claims relating to government control/influence over inputs.

1 CCPIT advised that raw materials were purchased in a free market. Power
2 could be obtained from a power station at market price. It also advised that
3 the price for industrial power was subject to market forces and that only the
4 price for power purchased for domestic use was influenced or controlled by
5 government. It was suggested that industrial power in some degree
6 subsidised domestic power.

7 Claims relating to restrictions on purchasing Chinese inputs.

8 CCPIT said JVs can import inputs or purchase them locally, depending on
9 price.

10 Claims relating to profit repatriation.

11 CCPIT said there was no restriction on repatriation of profits. The law
12 provides for after-tax profits to be paid to the partners in JVs. Past law
13 provided that 30% of products had to be exported but that was no longer law.

14 **7.3.7 Customs' conclusions re price control**

15 From its discussions with MOFTEC and CCPIT and its on-site verifications,
16 Customs concluded that no price control situation exists in respect of China's
17 domestic market for agricultural chemicals.

18 Concurrently with this investigation, Customs was investigating other
19 allegations of dumping from China that involved price control claims. The
20 non-product specific evidence provided to those investigations supported
21 findings of no price control.

22 **7.3.8 Domestic sales of like goods**

23 Customs visited three manufacturers of glyphosate in China. Each of these
24 manufacturers produced, as a result of its production process, a product
25 known as "mother liquid". The mother liquid contained some active
26 constituent. All three manufacturers used the mother liquid in production of a
27 formulated product, containing 10% constituent, sold on the domestic market.

28 The mother liquid had different physical characteristics from the exported
29 product. It was sold into a market and for an end use that differed from the
30 export market. Various interested parties expressed the view that it would not
31 be appropriate to use domestic sales of mother liquid to ascertain normal
32 values for export sales of acid or formulated product in accordance with
33 s. 269TAC of the Act. Customs did not consider the 10% formulate sold on
34 the domestic market as like goods to the 450 g/l formulate or the 95%
35 glyphosate technical exported to Australia.

36 Monsanto provided some invoices that it claimed related to domestic sales of
37 41% formulated glyphosate in China. These invoices actually related to sales
38 of 10% glyphosate. Another interested party supplied what it claimed to be
39 evidence, in the form of an invoice, of domestic sales of 41% glyphosate in
40 China. The document was actually a quote and the figures in the quote made
41 the document unreliable.

42 Late in the verification process Customs was provided with copies of two
43 receipts for retail sales of 450 g/l product on the domestic market. Customs
44 was advised that the sales were into a different market from the goods under
45 consideration. This view was supported by the fact that sales were generally

1 in retail packs (e.g. 200 ml bottles). In the limited time left Customs was
2 unable to verify the suitability, sufficiency or relevance of the sales for the
3 purpose of determining normal values.

4 Customs concluded there were no sales of like goods on the domestic market
5 in China that would be relevant for determining normal values.

6 **7.3.9 Source of significant inputs**

7 Each of the Customs teams in China examined the raw materials that
8 individually accounted for more than 10% of production costs incurred in
9 manufacturing the exported product. Customs found that no such raw
10 materials were supplied by an enterprise that was wholly owned by any level
11 of government. In those circumstances Customs concluded that
12 s. 269TAC(5G) of the Act did not apply.

13 **7.3.10 Summary**

14 Having explored the provisions for determining normal values in respect of
15 economies in transition, and found them not applicable, Customs reverted to
16 the usual hierarchy for establishing normal value. In the absence of domestic
17 sales of like goods Customs was unable to determine normal values pursuant
18 to s. 269TAC(1) of the Act. Customs proceeded to consider subsequent
19 provisions.

20 **7.3.11 Hebei Golhil**

21 Customs obtained and verified information in respect of Golhil's costs of
22 production for the exported goods. Customs considered the information
23 reasonably reflected those costs. Customs did not regard Golhil's accounts
24 as suitable for establishing selling, general and administrative expenses, or
25 profit, in respect of the exported goods on the assumption that, instead of
26 being exported, the goods were sold in the ordinary course of trade for home
27 consumption in China. For that reason, Customs obtained verified data in
28 relation to selling, general and administrative expenses, and profit, in respect
29 of another seller of the same general category of goods. Customs considered
30 Golhil's costs of production, together with another seller's selling, general and
31 administrative expenses as a suitable basis for establishing normal values in
32 accordance with the provisions of s. 269TAC(2)(c) of the Act.

33 **7.3.12 Qidong**

34 Customs obtained and verified information in respect of Qidong's costs of
35 production for the exported goods. Customs considered the information
36 reasonably reflected those costs. Customs did not regard Qidong's accounts
37 as suitable for establishing selling, general and administrative expenses, or
38 profit, in respect of the exported goods on the assumption that, instead of
39 being exported, the goods were sold in the ordinary course of trade for home
40 consumption in China. For that reason, Customs obtained verified data in
41 relation to selling, general and administrative expenses, and profit, in respect
42 of another seller of the same general category of goods. Customs considered
43 Qidong's costs of production, together with another seller's selling, general
44 and administrative expenses as a suitable basis for establishing normal
45 values in accordance with the provisions of s. 269TAC(2)(c) of the Act.

1 **7.3.13 ZXC**

2 Customs obtained and verified information in respect of ZXC's costs of
3 production for the exported goods. Customs considered the information
4 reasonably reflected those costs. For selling, general and administrative
5 expenses and profit, Customs verified information in respect of ZXC's sales of
6 10% formulated glyphosate, being the same general category of goods.
7 Customs considered that it had sufficient verified information to determine
8 normal values in accordance with the provisions of s. 269TAC(2)(c) of the Act.

9 **7.3.14 Other exporters**

10 For other exporters Customs considered that normal values should be
11 determined using the weighted average of the normal values of those
12 manufacturers that were visited, in accordance with the provisions of
13 s. 269TAC(6) of the Act, taking into account the provisions of s. 269TG(3B) of
14 the Act.

15 **7.4 DUMPING MARGINS**

16 To determine dumping margins as detailed below, Customs calculated
17 weighted average export prices and normal values for the investigation period.

18 **7.4.1 Hebei Golhil**

19 Comparison of export prices and normal values, if determined as suggested
20 above, result in a negative dumping margin of 2.75%; ie the goods were not
21 dumped.

22 **7.4.2 Qidong**

23 Comparison of export prices and normal values, if determined as suggested
24 above, result in a dumping margin of 5.81%; ie the goods were dumped.

25 **7.4.3 ZXC**

26 Comparison of export prices and normal values, if determined as suggested
27 above, result in a negative dumping margin of 11.1%; ie the goods were not
28 dumped.

29 **7.4.4 Other exporters**

30 For ZJC, comparison of export prices and normal values, if determined as
31 suggested above, result in a negative dumping margin of 2%; ie the goods
32 were not dumped.

33 For Sinochem, comparison of export prices and normal values, if determined
34 as suggested above, result in a negative dumping margin of 11%; ie the
35 goods were not dumped.

36 For other exporters, comparison of export prices and normal values, if
37 determined as suggested above, result in a negative dumping margin of
38 7.96%; ie the goods were not dumped.

39 **7.4.5 Recent findings by the European Union (EU)**

40 Interested parties will notice that Customs findings differ from those of the EU
41 in its recent investigation of alleged dumping of glyphosate exported from
42 China. Customs notes that the significant difference in the two findings is that

1 Customs used information verified in China to establish normal values and the
2 EU used an analogue (surrogate) country. This difference arose as a result of
3 differences between relevant EU and Australian legislation.

4 **8 THE ECONOMIC CONDITION OF THE INDUSTRY**

5 **8.1 INTRODUCTION**

6 In its application, Monsanto claimed injury commenced from 1989 when
7 imports first achieved market penetration and market share. In 1996,
8 Monsanto lodged an application for a dumping duty notice against exports of
9 glyphosate from China. This application resulted in a negative final finding.
10 The current application provided detailed data from 1996 to 2000 in support of
11 its claim. No other member of the Australian industry provided injury data
12 other than for 2000 and the first quarter of 2001. As Monsanto comprises
13 approximately half of the Australian glyphosate industry, Customs examined
14 its data for the period 1997 to 2000 in order to assess injury to the Australian
15 industry as a whole.

16 **8.2 APPLICANT'S CLAIMS**

17 In its application, Monsanto claimed it had experienced the following forms of
18 injury due to allegedly dumped Chinese glyphosate:

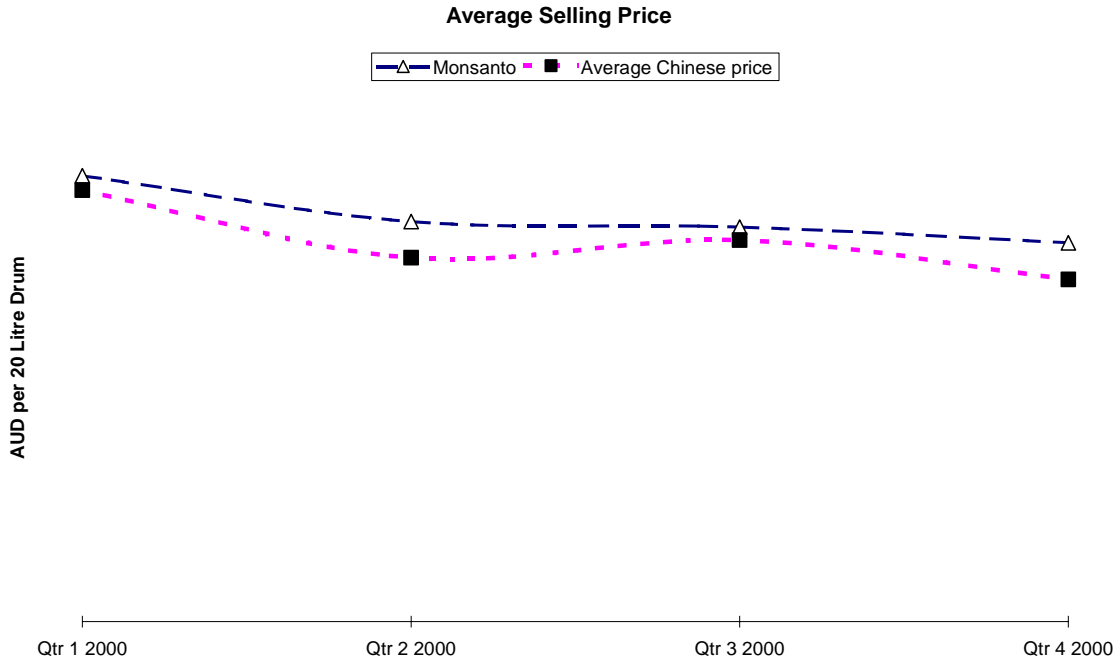
- 19 ▪ Price undercutting;
- 20 ▪ Price depression;
- 21 ▪ Price suppression;
- 22 ▪ Lost sales;
- 23 ▪ Loss of market share;
- 24 ▪ Reduced sales revenue; and
- 25 ▪ Reduced profitability on sales.

26 These claims are discussed in the following paragraphs.

27 **8.3 PRICE EFFECTS**

28 **8.3.1 Price undercutting**

29 In its submissions to Customs, Monsanto provided details of its selling prices
30 of glyphosate products from 1996 to 2000. As noted previously, the
31 formulated product is the only form of glyphosate purchased by end-users.
32 After visiting Monsanto, importers and formulators of glyphosate, Customs
33 found that the most popular size of formulated glyphosate sold in Australia is
34 in 20 litre drums. Customs gathered average selling prices of 20 litre drums
35 sold by various importers for each quarter of 2000. Customs compared these
36 prices to the selling prices of 20 litre drums of formulated glyphosate sold by
37 Monsanto for each quarter of the same year (see chart below).



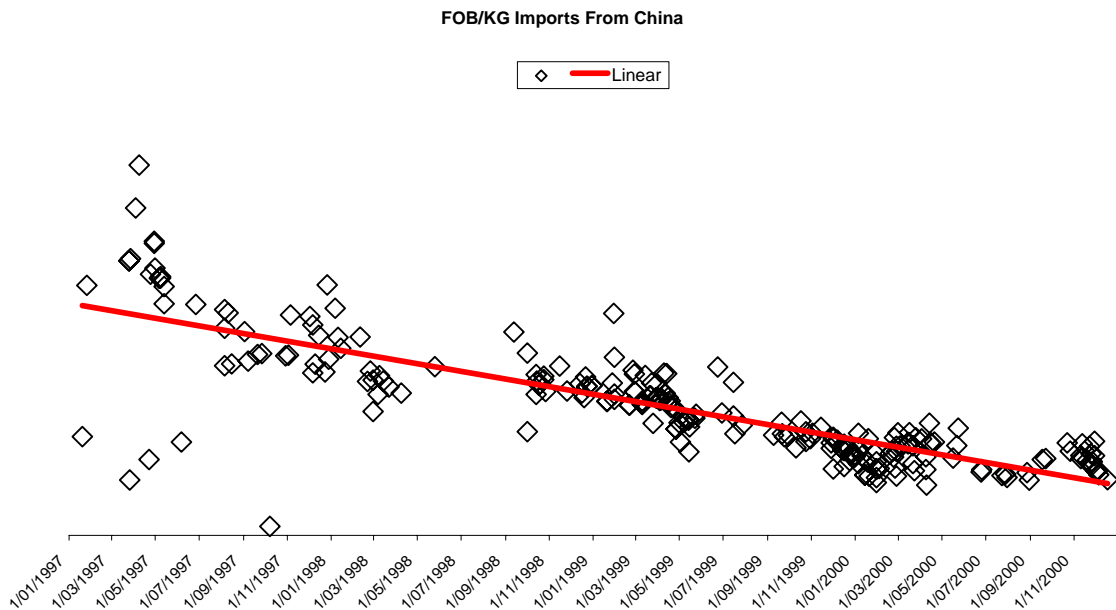
1

2 It is apparent from the above chart that the selling price of imported
 3 formulated glyphosate was less than that of Monsanto's. Customs concluded
 4 that Monsanto suffered injury in the form of price undercutting.

5 **8.3.2 Price depression**

6 The above chart shows that during 2000, Monsanto lowered the price of 20
 7 litre drums of 450 g/l formulated glyphosate sold in Australia.

8 Customs noted the nexus between the price of glyphosate acid and the price
 9 of formulated glyphosate. In order to determine why Monsanto lowered its
 10 price, Customs examined the average free-on-board (FOB) price of Chinese
 11 glyphosate acid from 1997 to 2000. The trend of the FOB price of Chinese



1 glyphosate acid in that period is shown in the following chart:

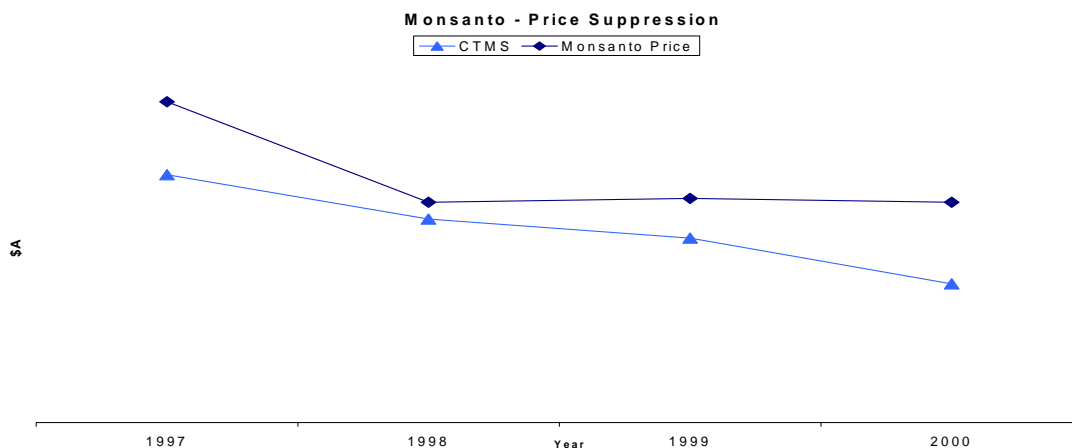
2 (Note: 'Y' (vertical) axis has been truncated)

3 As can be seen from the above, the FOB price of Chinese glyphosate acid
4 decreased since 1997.

5 Customs concluded that Monsanto suffered injury by price depression.

6 **8.3.3 Price suppression**

7 Price suppression occurs when the margin between an industry's costs and its
8 selling price of goods is reduced. The following chart is based on data
9 provided by Monsanto in appendix 4 to the application. It shows the unit cost
10 to make and sell one litre of formulated glyphosate relative to the selling price:

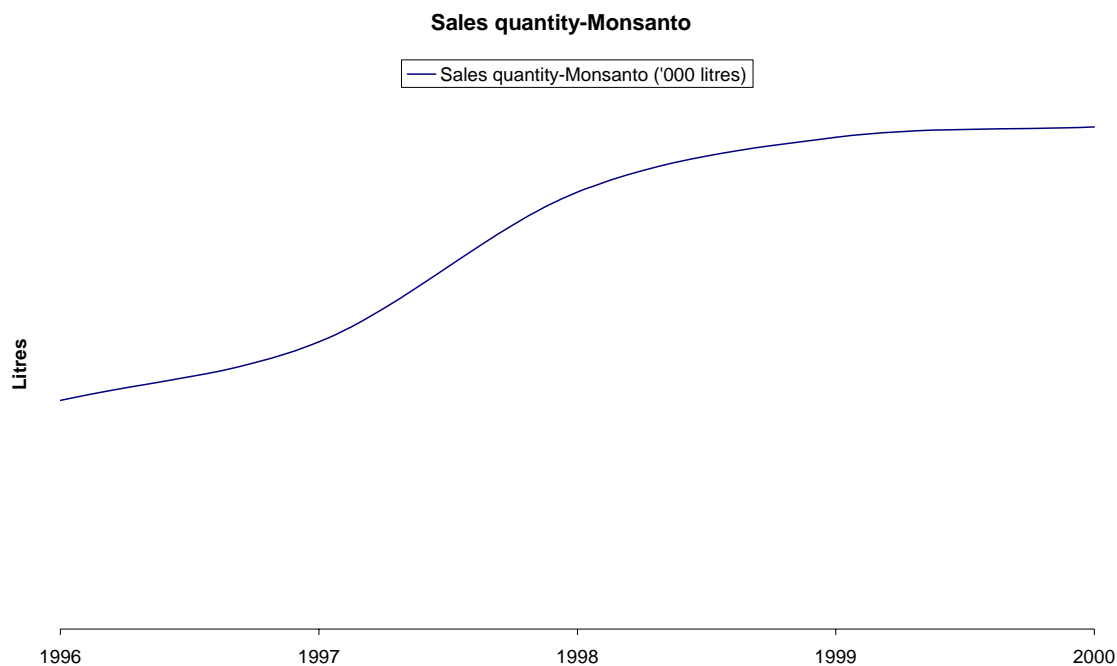


11 As can be seen from the above chart, Monsanto's selling price declined in the
12 period 1997 to 2000. However, its costs to make and sell also decreased, at
13 a greater rate, in the same period. Customs concluded that Monsanto did not
14 suffer injury in the form of price suppression.

15 **8.4 VOLUME EFFECTS**

16 **8.4.1 Sales volume**

17 The following chart, based on Monsanto's appendix 4 data, indicates the trend
18 in Monsanto's sales volume of formulated glyphosate over the period 1996 to
19 2000.



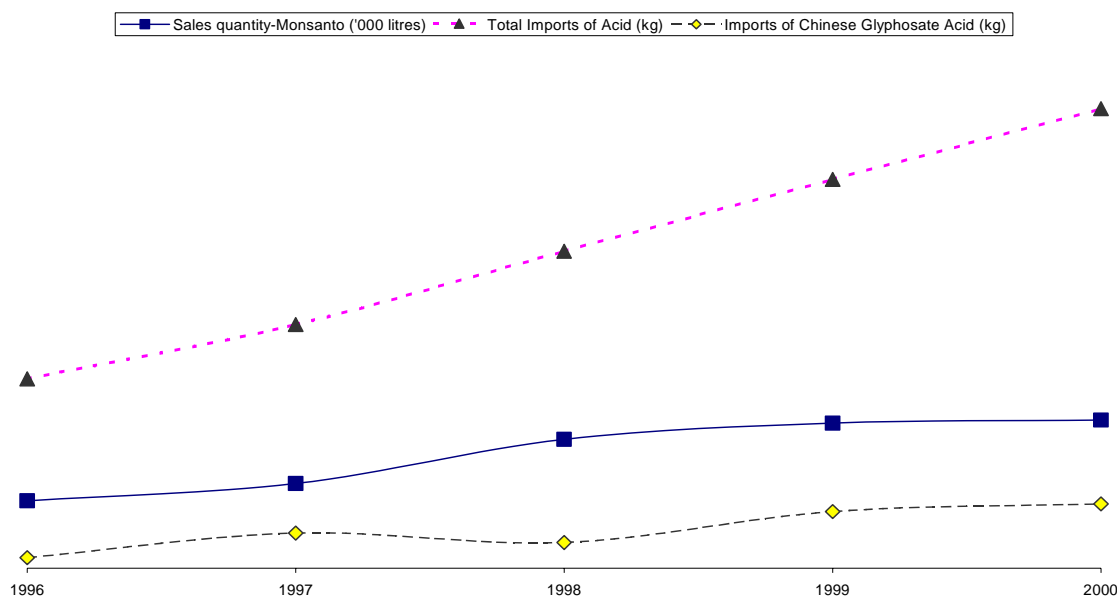
1 Monsanto pointed to individual accounts that it lost during the injury period.
 2 However, Customs concluded that overall, Monsanto did not suffer injury in
 3 the form of lost sales as any accounts lost were compensated by new
 4 accounts or increased volume of sales to existing accounts. Some accounts
 5 claimed as lost were subsequently regained.

6 **8.4.2 Market share**

7 In its application, Monsanto provided data related to its formulated glyphosate
 8 sales for the period 1996 to 2000. Precise data concerning sales of
 9 glyphosate by importers and formulators for the same period was not
 10 available. However, imported glyphosate acid has only one end use, as
 11 formulated glyphosate. A relationship can therefore be drawn between
 12 imported glyphosate acid and formulated glyphosate sales by Monsanto to
 13 assess market share.

14 To consider claims of loss of market share Customs extracted, from its
 15 commercial database, all imports of glyphosate acid for 1996 to 2000 and
 16 imports of Chinese glyphosate in the same period. The relativity between
 17 imported glyphosate acid and Monsanto's formulated glyphosate sales is
 18 shown in the following chart:

Market Share - Glyphosate



1 For the purpose of comparing glyphosate acid imports to formulated
2 glyphosate sales, Customs assumed that all imported glyphosate acid shown
3 in the above chart was formulated.

4 In its application, Monsanto claimed that it was forced to reduce its selling
5 price of formulated glyphosate to maintain market share. The above chart
6 indicates that, relative to all imports, Monsanto lost market share. However,
7 Customs concluded that Monsanto did not suffer injury in the form of reduced
8 market share as a result of the export to Australia of Chinese glyphosate.

9 8.5 PROFIT EFFECTS

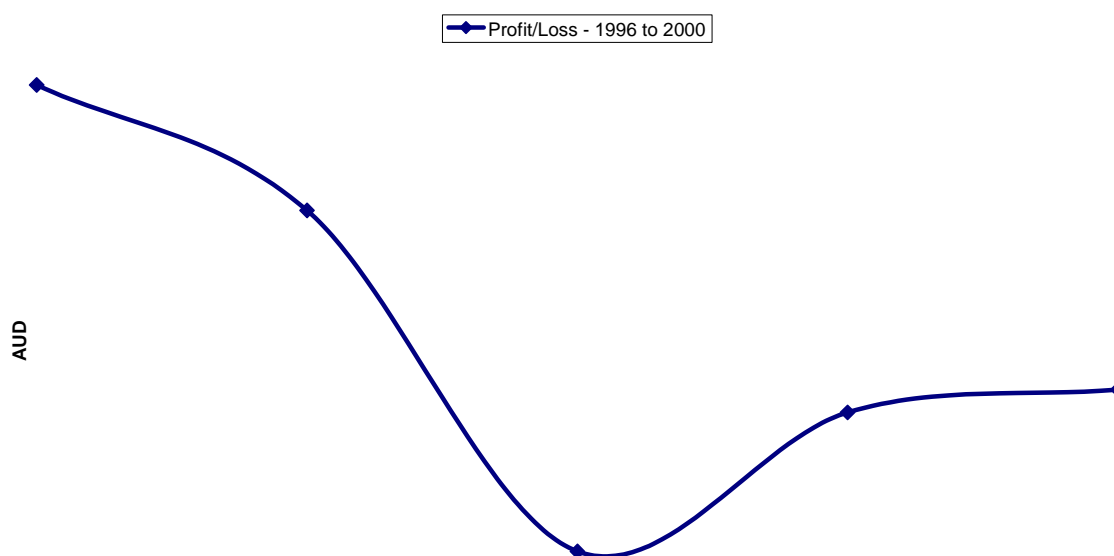
10 8.5.1 Reduced sales revenue

11 Monsanto's appendix 4 data showed that sales revenue increased over the
12 injury period. Customs concluded that Monsanto did not suffer this form of
13 injury.

14 8.5.2 Reduced profitability on sales

15 At appendix 4 to its submission, Monsanto provided data relating to the profit
16 or loss on sales of formulated glyphosate for the period 1996 to 2000. The
17 following chart shows the trend of Monsanto's profitability for glyphosate
18 sales:

Glyphosate Sales - Profit/Loss



1 Customs concluded that Monsanto suffered injury in the form of reduced
2 profitability over the injury period.

3 **8.6 OTHER INJURY FACTORS**

4 Apart from the above indicators of injury, Article 3.4 of the World Trade
5 Organization (WTO) Anti-Dumping Agreement lists certain relevant economic
6 factors and indices that must be considered in an examination of material
7 injury. These other injury indicators are discussed below.

8 **8.6.1 Return on investment**

9 Monsanto did not make any specific claim concerning this injury factor, but
10 Customs accepted that reduced profits would result in reduced return on
11 investment.

12 **8.6.2 Reduced output**

13 Monsanto's appendix 4 data showed that its production of glyphosate
14 increased over the claimed injury period. Customs concluded that Monsanto
15 did not suffer injury in the form of reduced output.

16 **8.6.3 Cash flow**

17 Monsanto did not claim in its application to be suffering this form of injury.
18 Monsanto subsequently claimed that it was, in fact, suffering from cash flow
19 related injury and pointed to increases in accounts payable and borrowings in
20 the period 1997 to 2000. Monsanto claimed that it was suffering injury in
21 respect of reduced cash flow from operations directly affected by dumped
22 imports. Customs examined Monsanto's audited accounts for the period 1997
23 to 2000 and found that the combined liabilities of accounts payable and
24 borrowings had more than doubled over the period. For this reason, Customs
25 concluded that Monsanto suffered injury in the form of reduced cash flow.

1 **8.6.4 Employment in the industry**

2 Monsanto stated that the number of people employed in making glyphosate
3 fell over the claimed injury period, but this was as a result of streamlining the
4 production process. Customs found no evidence that allegedly dumped
5 glyphosate caused Monsanto to reduce the number of employees needed to
6 manufacture glyphosate.

7 **8.6.5 Ability to raise capital**

8 As noted above, Monsanto increased its borrowings over the injury period.
9 Customs concluded that the company did not suffer from this form of injury.

10 **8.6.6 Utilisation of capacity**

11 Monsanto claimed its production facility was running at maximum capacity,
12 except for maintenance down-time. Monsanto further claimed that it needed
13 to import glyphosate from its American parent to supplement production.
14 Customs concluded that Monsanto did not suffer injury due to capacity under-
15 utilisation.

16 **8.6.7 Level of inventory**

17 There was no consistent pattern to Monsanto's finished goods inventory, by
18 year, over the injury period. Customs was unable to draw any conclusion in
19 respect of this injury factor.

20 **9 HAS DUMPING OCCURRED?**

21 Customs found one shipment of the goods was exported to Australia at a
22 dumped price during the investigation period. That shipment represented less
23 than 0.5% of the total volume imported during the investigation period. In
24 terms of s. 269TDA of the Act the volume of goods exported to Australia at
25 dumped prices represents a negligible volume. Despite this, Customs will not
26 take any action to terminate the investigation until the issues discussed at
27 Chapter 12 below have been resolved.

28 **10 HAS DUMPING CAUSED MATERIAL INJURY?**

29 The shipment found to be dumped was exported to Australia towards the end
30 of the first quarter of 2001. Monsanto did not provide sufficient information for
31 Customs to assess any injury it may have suffered since December 2000.
32 Although Customs found that Monsanto suffered some forms of injury during
33 the investigation period, that injury was suffered prior to 2001. Customs
34 formed the view that such injury was not caused by dumping.

35 **11 NON-INJURIOUS PRICE**

36 Non-injurious price is normally an FOB price calculated from an unsuppressed
37 selling price in Australia, that is, the price Australian industry could expect to
38 achieve for like goods in the absence of dumped exports, less post

1 exportation expenses. Customs found that the volume of dumped goods was
2 negligible and dumping had not caused material injury. The unsuppressed
3 selling price in these circumstances would be the price at which Australian
4 industry is selling like goods.

5 **12 ISSUES CONSIDERED BY CUSTOMS**

6 Monsanto and exporters and/or manufacturers raised a number of matters
7 that they wished Customs to consider in the context of this investigation. The
8 matters raised concerned price control and normal value calculation as well as
9 issues of a more general nature. Customs considered all issues placed
10 before it by any interested party. Subject to confidentiality requirements, a
11 summary of these issues and Customs examination of them is at appendix 1
12 to this SEF.

13 This SEF was prepared on the basis of information gathered and verified by
14 Customs in the course of its investigation. As the SEF was being finalised,
15 Monsanto presented copies of documents to Customs that purport to be
16 evidence of domestic sales of like goods in China. Customs has a statutory
17 obligation to make public its SEF by 7 December 2001. A full consideration in
18 the SEF of the matters raised by Monsanto at such a late stage was not
19 possible if Customs was to meet this obligation. Customs will examine the
20 matters raised by Monsanto and address them in its report to the Minister.

Appendix 1 to SEF 2001/45
Summary of issues raised by interested parties

No.	File/folio	Issues raised by Australian industry	Manufacturer/Exporter responses	Customs' conclusions
1	C01/04410 76	Para. 6: 'The impact of price undercutting from Chinese exports has demonstrated a clear predatory intent for more than a decade'.		Monsanto lodged an application in 1996, which resulted in a negative finding. Clearly any price effects prior to that time were not caused by dumping.
2	C01/04410 86	Para. 1. 'The availability of extended credit and payment terms suggests the export price may not be in the ordinary course of trade'.		Customs found export prices to be in the ordinary course of trade.
3	C01/04410 89	Para. 2. 'Glyphosate acid produced using the glycine route is more expensive and sold at a higher price than that produced using the IDA route'.		For confidentiality reasons, Customs cannot make its findings public.

Appendix 1 to SEF 2001/45
Summary of issues raised by interested parties

No.	File/folio	Issues raised by Australian industry	Manufacturer/Exporter responses	Customs' conclusions
4	C01/04410 89	<p>Para. 2: 'Exports of glyphosate acid also qualify for an export refund of 11% of the total value of goods exported being a refund of the 13% VAT'.</p>		<p>China's export tax refund policy started in 1985. It is subject to strict regulations, applies to VAT and consumption tax only and does not apply to prohibited exports.</p> <p>For companies to obtain a refund of the VAT on exports they must:</p> <ul style="list-style-type: none"> have adequate records; obtain a certificate of export; provide proof of receipt of the foreign exchange; and apply monthly. <p>In regard to the specific application of the scheme; it applies to three types of business:</p> <ul style="list-style-type: none"> general trading; process trading; and barter trading. <p>Different rules apply to different types of enterprises:</p> <ul style="list-style-type: none"> trading companies; joint venture companies; and SOEs. <p>There are two VAT rates that apply to different products. They are 17% and 13%. Chemicals, including glyphosate are subject to 17% VAT. There are four tax refund rates that apply to different products. They are 17%, 15%, 13% and 5%. They have been in place since 1985. The 17% applies only to machinery, electronic instruments, transport equipments and clothing. The 15% is applicable to a range of goods, including chemicals. The 13% applies to other goods except agricultural outputs. The 5% applies to agricultural outputs.</p> <p>The producer would get the refund if it exported either directly or through an agent. If a producer sold to a trader, then the trader exported the goods, the trader would get the refund.</p>

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5	C01/04410 89	Para. 2. 'The balance of domestic sales (15-20%), are sold as formulated product @41% by large national distributors and is packed into 250ml bottles'. Para. 3. 'The current domestic selling price offered in China varies between regions even for the same plant and vary plant to plant'.		At the time of the release of the SEF, Customs was examining the issue.
6	C01/04410 89	Para. 3: 'The major portion of herbicide production is for export so there is limited pricing information available'.		Agree.
7	C01/04410 89	Para. 1: 'Domestic sales are predominantly of product derived from the trade waste stream and is often sold in non-approved packaging such as HDPE containers etc. which has a major impact on the level of market prices making them not suitable for normal value purposes'.		Agree.
8	C01/04410 90	Para. 1. ...'foreign investors are not allowed to establish joint ventures only by providing funds rather than new technologies or new products', Para. 1. ...'investments in projects generating pollution, or investments into the chemical repackaging and chemical formulation are strictly restricted',		Customs did not establish normal values using domestic selling prices.
9	C01/04410 91	Para. 1. ...'joint venture projects require the foreign investor to cease imports'.		Customs considers the issue is not relevant.
10	C01/04410 91	Para. 1. ...'joint ventures are only allowed to produce and repackage the primary chemicals produced by the company itself or by other domestic companies',		Customs considers the issue is not relevant.
11	C01/04410 91			Customs found evidence that this is not the case and were given an example of a foreign car manufacturer that produces and imports motor vehicles.
12	C01/04410 91			Customs considers the issue is not relevant.

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13	C01/04410 91	Para. 1. 'Investments in products which have reached saturation in the domestic market or which China has mature production technologies are restricted', Para. 2. 'Distribution of agricultural chemicals is performed by State owned entities and State designated distributors of agricultural chemicals' ...		This situation did not apply in the Chinese glyphosate market. Distributors are a mix of SOEs, collectives and private enterprises.
14	C01/04410 91		'To say that all distribution of agricultural chemicals is performed by State owned entities is incorrect and misleading. Article 17 of the regulation, a translation which is enclosed, makes it plain that any one of a number of organisations, including agrochemical producers, has the right to sell agrochemicals'. (Article 17 attached)	
15	C01/04410 91	Para. 2: ... 'import and export quotas are administered by the government and foreign investment enterprises can only import chemicals for their own production usage'.		Customs considers the issue is not relevant.
16	C01/04410 91	Para. 3. 'Provincial and regional foreign trade companies conducting import/export activities belong to the central, provincial and regional Agricultural Means of Production Corporation'.		Customs considers the issue is not relevant.
17	C01/04410 91	Para. 3. 'Restrictions are also imposed on land utilisation which is subject to government control'.	'The Ministry of State Land Resources has policies directed toward ensuring a balance in land usage, especially in relation to farming land which is low in proportion to urbanised land'	Customs considers the issue is not relevant.

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18	C01/04410 91	<p>Para. 3: 'Market control by way of supply restriction is also reinforced by import quotas administered by MOFTEC, the State Commission of Economic and Trade Relations, the Ministry of Chemical and Petroleum Industry and the Ministry of Agriculture'.</p>	<p>There are ...no such quotas. Even if there were, this could have no relevance to the issue of price control or substantial price control of glyphosate under the legislative test'.</p> <p>There is a regulation for Administration of Agricultural Chemicals that regulates the agricultural chemical industry. 'The regulation has nothing to do with the price of glyphosate, but rather "to assure the quality of agrochemicals as well as protect the production of agriculture, forestry, the environment and the safety of humans and animals"</p>	<p>Customs considers the issue is not relevant.</p>

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19	C01/04410 91	Para. 4: ... 'the Ministry of Chemical and Petroleum and the Ministry of Agriculture which hold annual production planning meetings to balance supply and demand'.	<p>There is no such Ministry (Ministry of Chemical and Petroleum). It was disbanded in 1998'... 'The organisations which have assumed responsibility for specific chemical industry affairs are the China Council for the Promotion of International Trade Sub Council of Chemical Industry (CCPIT), and the China Chamber of Industry and Commerce Chemical Industry Chamber of Commerce. ...'The Ministry of Agriculture is involved in formulating policies for agricultural affairs in China. It is not involved in policies regulating the price or volume of production of glyphosate'.</p> <p>On behalf of their clients Freehills advised that the executive vice chairman of CCPIT had "never heard of the "Price Coordination Committee". He further stated that "There is no "International Cooperation Bureau". Once there was an "International Cooperation Department. This was in the former "Ministry of Chemical Industry" which was disbanded in 1998'.</p>	Customs considers the issue is not relevant.
20	C01/04410 91	Para. 5: 'SOEs are assisted by way of bank debt being converted to equity and held by the State owned bank'.		Customs found this to be contrary to Chinese law.
21	C01/04410 91	Para. 7: '...there may be an absence of domestic sales of glyphosate acid and salt that would otherwise be suitable or domestic sales may not be in sufficient volume (ie "not in the ordinary course of trade" or "not arms length sales") to form the basis for determining the normal value'.		Customs did not establish normal values using domestic selling prices.

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No.	File/folio	Issues raised by Australian industry	Manufacturer/Exporter responses	Customs' conclusions
22	C01/04410 92	Para. 1. 'Foreign investors are not allowed to establish sole investment enterprises engaged in the production of agricultural chemicals'. Para. 3. 'Production facilities are subject to regulation by way of production permits in order to operate'.		Customs considers the issue is not relevant.
23	C01/04410 92	Point 1.1 Para. 2: NV should be determined having regard to a surrogate.	'For that matter, so do chemical producers in any country. In China, the registration is required due to the potentially dangerous nature of some chemicals'.	Customs considers the issue is not relevant.
24	C01/04410 92	Point 1.1 Para. 3: 'Having regard to the Ministerial Directives issued for "economies in transition", ...it is a mandatory requirement that there should be no restrictions on selling in the domestic market by local producers and importers' ... 'free market economy can not be established for the Chinese domestic glyphosate industry'.		Customs concluded, in accordance with Australian legislation, it was not appropriate to determine normal values having regard to a surrogate.
25	C01/04410 92	Point 1.1: 'It is not appropriate to determine a NV based on the Chinese domestic selling prices as the market is subject to government control or influence'.		Evidence gathered by Customs did not support this.
26	C01/08650 23	Para. 1: 'The (bankruptcy) law does not prevent directors from allowing a company to continue to trade while insolvent and there are no penalties for doing so'.		Customs found the Chinese glyphosate market was not subject to price controls.
27	C01/08650 23	Para. 3: 'Investment to increase production capacity requires state approval'.		Customs was advised that China's current bankruptcy law conforms to international practice.
28	C01/08650 23			Customs found this was not so.

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No.	File/folio	Issues raised by Australian industry	Manufacturer/Exporter responses	Customs' conclusions
29	C01/08650 23	Para. 4: The state is able to veto decisions made by the directors of the joint venture, in regard to labour supply		Customs found this was not so.
30	C01/08650 24	Para. 1: 'The joint venture company which effectively equates to a shareholder agreement in a free market economy is overseen and approved by MOFTEC who insists on the minority SOE maintaining much greater influence than should be the case. In this way the state maintains control over the joint venture'.		Customs found this was not so.
31	C01/08650 24	Para. 2: 'Each member of the board has one vote but it requires 2/3 majority or unanimity of directors to make all major and numerous minor decisions'.		Customs considers the issue is not relevant.
32	C01/08650 24	Para. 3: 'It would be totally naïve to believe that senior management in a joint venture in China does not include persons with loyalties and responsibilities to the state'.		Customs found no involvement of the Communist Party in the day-to-day running of enterprises.
33	C01/08650 24	Para. 4: 'While the chairman has only one vote he remains the legal representative of the joint venture. In many instances the joint venture company, which needs the approval of MOFTEC, stipulates that the SOE joint venture partner appoints the chairman'.		Customs found the matters contained in the Joint Venture agreements were negotiated between the parties to the agreement.
34	C01/08650 24	Para. 5: 'The business licence granted to the joint venture also restricts the scope of the joint venture as well as putting restrictions of the volume of product, thereby restricting the company to freely compete'.		Customs found this was not the case.

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35	C01/08650 24	Para. 5: ... 'but the capital of a company can not in practice be reduced which effectively locks in the foreign joint venture partner's capital contribution'.		Customs found this was not the case.
36	C01/08650 24	Para. 6: ... 'the majority of joint venture domestic sales are to SOEs or companies controlled by SOEs'.		Customs found this was not the case in respect of the companies visited.
37	C01/08650 24	Para. 7: 'The restriction on the tax deductibility of bad debts renders published accounts inconsistent with international accepted accounting standards is one more example of state control over the company's operations'.		Customs found no evidence that the availability or otherwise of tax deductions for costs and expenses encouraged the companies visited to deviate from accounting standards.
38	C01/08650 24	Para. 7: 'With triangular debt rampant in the domestic market, it is highly conceivable that a provision that substantially exceeds 0.5% is still totally inadequate'.		Customs did not find this to be so for the companies visited; found the provisions for doubtful debts were reasonable.
39	C01/08650 25	Para. 1: 'Some minor quantities of 41% formulated product are sold' ..., 'but in terms of total production it is an insignificant quantity'.		At the time of the release of the SEF, Customs was examining the issue.
40	C01/08650 25	Para. 2: 'Distribution is through Agricultural Means of Production Companies which are owned by provincial and county state government authorities'.		Customs found this was not the case.
41	C01/08650 25	Para. 2: 'Repatriation restrictions on profits apply where MOFTEC controls capital subscription refunds' ...		Customs found this was not the case.
42	C01/08650 25	Para. 2: 'The minimum investment required for the production of the active raw material as distinct from formulation must exceed xx million and this acts as an effective barrier to entry' ...		Customs found no evidence to support this.

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43	C01/08650 25	Para. 5: 'Accounts are prepared on a cash flow basis rather than accrual and full absorption costing'.		For the companies visited, Customs found this was not the case.
44	C01/08650 25	Para. 5: 'It is not uncommon for Chinese producers not to make a provision for the depreciation of plant and equipment'.		Customs was satisfied that adequate provisions were being made.
45	C01/08650 25	Para. 5: 'Operating losses are not crystallised in the accounts'		For the companies visited, Customs found this was not the case.
46	C01/08650 25	Para. 5: 'Significant distortions also arise in relation to interest costs, debt servicing costs and non recourse loans with no terms for government bank loan repayments'...		For the companies visited, Customs found this was not the case.
47	C01/08650 25	Para. 5: 'The most significant utility is electricity which can only be sourced from external SOEs'.		Customs found industrial power was supplied at market prices or cost.
48	C01/08650 25	Para. 6: 'The structure and operation of joint venture companies in China is effectively controlled by MOFTEC by virtue of the structure adopted rather than by way of distribution of shareholdings'.		For the companies visited, Customs found this was not the case.

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49	<p>File/folio C01/08650 113</p> <p>Para. 1. Dot points asserted as evidence of price control:</p> <p>Glyphosate industry consists predominantly of SOEs;</p> <p>'foreign investment is limited or restricted evidenced by the lack of joint ventures' ...;</p> <p>'where there are restrictions on selling on the domestic market in that local governments will only purchase from the local glyphosate producer in almost all circumstances';</p> <p>'Where inputs such as electricity, labour, raw material inputs, technical know-how' are supplied by the state or other SOEs';</p> <p>'Where other major production inputs are almost exclusively supplied by SOEs which are the main loss making enterprises and there (sic) supply does not reflect free market conditions';</p> <p>'Where there are restrictions on selling outside a designated region' ...;</p> <p>'Where market price is set by the inter action between SOEs; and</p> <p>'Where the industry is yet to be reformed from its structure as it existed when China was regarded as a non-market economy'.</p>		<p>For the companies visited, Customs found this was not the case.</p> <p>This was not the case and Customs does not consider it relevant.</p> <p>Customs found no evidence to support the allegation.</p> <p>For the companies visited, Customs found this was not the case.</p> <p>For the companies visited, Customs found this was not the case.</p> <p>Customs found no evidence to support this.</p> <p>Customs found this was not the case.</p> <p>Customs found the Chinese glyphosate market had been substantially reformed since China was regarded as having a centrally planned economy.</p>

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50	C01/08650 115	Point 7: 'Land use rights are often injected into a company's accounts as capital contribution and are stated at a valuation determined by the state' ...		The evidence presented to Customs by the companies visited did not support this.
51	C01/08650 116	Point 6: Para. 1. 'Phosphorous extraction from ore is very power intensive and uses a significant amount of electricity supplied by SOEs at subsidised cost'.		Customs considers the electricity cost for extracting phosphorous ore is too far removed from the glyphosate manufacturing process for it to be relevant.
52	C01/08650 116	Point 7: 'Chinese accounting standards provide for a general doubtful debts provision at 0.5% of year-end accounts receivable balance which greatly understates the level of debts' ...		Customs found this was not so and found the provisions for doubtful debts made by the companies visited were reasonable.