



Australian Government

**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

STATEMENT OF ESSENTIAL FACTS NO. 165

**ALLEGED DUMPING OF LINEAR LOW DENSITY
POLYETHYLENE EXPORTED FROM CANADA, THE
REPUBLIC OF KOREA AND THE UNITED STATES OF
AMERICA**

6 December 2010

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2 ABBREVIATIONS AND SHORTENED FORMS

Amcor	Amcor Flexibles Asia Pacific
Aperio	The Aperio Group (Australia) Pty Ltd
ARMA	Association of Rotational Moulders Australasia
APC	Australian Packaging Covenant
CEO	Chief Executive Officer
Customs and Border Protection	Australian Customs and Border Protection Service
Chevron Phillips	Chevron Phillips Chemical Company LP
Dow Australia	Dow Chemical Australia Limited
Dow Canada	Dow Chemical Canada ULC
Dow USA	The Dow Chemical Company
FOB	free on board
HDPE	high density polyethylene
Korea	Republic of Korea
LDPE	low density polyethylene
LLDPE	linear low density polyethylene
NEPM	National Environment Protection Measure
NPC	National Packaging Covenant
Minister	Minister for Home Affairs
mLLDPE	metallocene LLDPE
Qenos	Qenos Pty Ltd
TCO	tariff concessions order
USA	United States of America

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3 SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by Qenos Pty Ltd (Qenos) in relation to the allegation that dumping of linear low density polyethylene¹ (LLDPE) exported to Australia from Canada, the Republic of Korea (Korea) and the United States of America (USA) caused material injury to the Australian industry that produces like goods.

This statement of essential facts sets out the facts on which the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation in relation to the application.

3.1 Preliminary findings

Customs and Border Protection has made the following preliminary findings:

- there has been dumping by Dow Chemical Canada ULC (Dow Canada), but the dumping margin was negligible;
- there has been dumping by The Dow Chemical Company (Dow USA) and by other Canadian, Korean and other USA exporters; and
- dumping has not caused material injury to the Australian industry producing like goods.

Provided that no new information is put to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry, Customs and Border Protection proposes to terminate the anti-dumping investigation in relation to LLDPE exported to Australia from Canada, Korea and the USA.

3.2 Application of law to facts

3.2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

3.2.2 Application

On 30 June 2010, Qenos lodged an application requesting that the Minister for Home Affairs (Minister) publish dumping duty notices in respect of LLDPE exported to Australia from Canada, Korea the USA. The CEO was satisfied that the

¹ Refer to the full description of the goods in section 5 of this report.

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application was made in the prescribed manner by a person entitled to make the application.

3.2.3 Initiation of investigation

After examining the application, the delegate was satisfied that:

- there is, or is likely to be established, an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

The delegate decided not to reject the application and notice of the initiation of this investigation was published on 30 July 2010.

3.2.4 Statement of essential facts

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

In formulating the statement of essential facts, the CEO 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 relevant.

For this investigation, the Minister granted a 19 day extension to the date by which the statement of essential facts must be placed on the public record. This statement of essential facts is now due on or before 6 December 2010.

3.3 Preliminary findings and conclusions

Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation:

3.3.1 The goods and like goods (chapter 5 of this report)

Locally produced LLDPE are like goods to the goods the subject of the application.

3.3.2 Australian industry (Chapter 6 of this report)

There is an Australian industry producing like goods, comprising one Australian producer, Qenos.

3.3.3 Market (Chapter 7 of this report)

The size of Australian market for LLDPE was approximately 165,000 tonnes in 2009-10. There are two main market segments; LLDPE for use in film applications and LLDPE for use in rotomoulding applications. LLDPE is typically sold into the market by producers or distributors who source LLDPE from the Australian industry or from exporters.

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3.3.4 Dumping (Chapter 8 of this report)

Customs and Border Protection has determined the following dumping margins for LLDPE exported to Australia.

Dow Canada	1.5%
Other Canadian exporters	16.3%
Korean exporters	46.0%
Dow USA	10.9%
Other USA exporters	11.4%

3.3.5 Has dumping caused material injury (Chapter 9 of this report)

The Australian industry suffered injury in the form of:

- reduced revenue;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment; and
- reduced capacity utilisation.

Exports of film grades of LLDPE from Canada, Korea and the USA at dumped prices did not cause material injury to the Australian industry in the film LLDPE market. Exports of rotomoulding grades of LLDPE from Canada, Korea and the USA at dumped prices caused material injury to the Australian industry in the rotomoulding market. However, dumped imports from Canada, Korea and the USA did not cause material injury to the Australian industry producing LLDPE.

3.4 Final report

The CEO's final report and recommendation must be provided to the Minister by 20 January 2011, unless the investigation is terminated.

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4 BACKGROUND

4.1 Introduction

On 30 June 2010, Qenos lodged an application requesting that the Minister publish dumping duty notices in respect of LLDPE exported to Australia from Canada, Korea and the USA. On 14 and 15 June 2010, Qenos provided further information in support of its application. As a result, Customs and Border Protection restarted the 20 day period for considering the application.

The investigation was initiated on 30 July 2010. Public notification of initiation of the investigation was made in *The Australian* on 30 July 2010. Australian Customs Dumping Notice No. 2010/27 provides further details of this investigation and is available at www.customs.gov.au.

4.2 Previous LLDPE cases

Several dumping investigations, reviews and continuations concerning LLDPE have been undertaken by Customs and Border Protection. These are summarised below:

- Trade Measures Report No. 8 of 2000 – investigation into LLDPE from Indonesia, Korea, Malaysia and Saudi Arabia – anti-dumping measures imposed on all exporters from Indonesia;
- Trade Measures Report No. 67 of 2003 – investigation into LLDPE from Korea and Thailand – anti-dumping measures imposed on all exporters from Thailand and all exporters from Korea except Hyundai Petrochemical Corporation;
- Trade Measures Report No. 88 of April 2005 – investigation into LLDPE from Canada – terminated due to negligible injury caused by dumping;
- Trade Measures Report No. 89 of 2005 – review of variable factors for LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 95 of 2005 – continuation inquiry into LLDPE exported from Indonesia - anti-dumping measures continued;
- Trade Measures Report No. 97 of 2005 – accelerated review of anti-dumping measures in relation to a new exporter from Korea;
- Trade Measures Report No. 134 of 2007 – review of variable factors for LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 137 of 2008 - continuation inquiry into LLDPE exported from Korea and Thailand - anti-dumping measures continued for Thailand and allowed to expire for Korea;
- Trade Measures Report No. 146 of 2009 – investigation into LLDPE exported from Canada and the USA – terminated due to negligible injury caused by dumping; and
- Trade Measures Report No. 152 of 2010 – continuation inquiry into LLDPE exported from Indonesia - anti-dumping measures were allowed to expire.

Anti-dumping measures currently apply to LLDPE exported from Thailand to Australia.

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4.3 Responding to this statement of essential facts

This statement of essential facts sets out the essential facts on which Customs and Border Protection proposes to rely. It represents an important stage in the investigation as it informs interested parties of the facts established and allows them to make submissions in response to the statement of essential facts. It is important to note that the statement of essential facts may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to this statement of essential facts. Responses to this statement of essential facts should be received by Customs and Border Protection no later than **29 December 2010**. Customs and Border Protection is not obliged to have regard to any submission made in response to the statement of essential facts received after 29 December 2010.

Submissions should preferably be emailed to tmops1@customs.gov.au. Alternatively they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 1
Trade Measures Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Customs web site (follow the links to: Anti-Dumping > Reference Material > Guidance for Submissions).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection visit reports and other publicly available documents. It is available by request in Canberra (phone 02 6275 6547) or online at <http://adpr.customs.gov.au/Customs/>. This statement of essential facts should be read in conjunction with documents on the public record.

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5 THE GOODS AND LIKE GOODS

5.1 Preliminary finding

Based on the information in the application and obtained from visits to the applicants, importers and exporters, Customs and Border Protection considers that locally produced LLDPE are like goods to the goods the subject of the application.

5.2 The goods

The goods the subject of the application are described as follows in the application.

The imported goods the subject of this application are linear-low density polyethylene (LLDPE), in various grades, in pelletised form, with a density of less than 0.94 grams per cubic centimetre (g/cm³). The LLDPE usually incorporates one of three co-monomers: butene (C₄), hexene (C₆), or octene (C₈).

Tariff classification

The goods the subject of its application are classified to subheading 3901.10.00, statistical code 01, or subheading 3901.90.00, statistical code 06, of Schedule 3 to the *Customs Tariff Act 1995* depending on the co-monomer content.

No Customs duty is payable on the goods imported from Canada or the USA because of the existence of free trade agreements with those countries. The rate of duty for LLDPE imported from Korea is 5%.

Four tariff concessions orders (TCOs) currently apply under 3901.10.00. The following table describes the characteristics of products covered by the TCOs.

TCO	Characteristics
0827077	Density less than 905 kg/m ³ and melt flow index not less than 0.8 g/10 minutes
9103765	Compound form containing thermal stabilisers, organics peroxide, and density of 920 kg/m ³ .
9307024	Density less than 915 kg/m ³ and melt flow index not less than 5 g/10 minutes
9600312	Density 0.93 g/cm ³ or greater and molecular weight 2,300,000 or greater

5.3 Like goods – claims by interested parties

Interested parties have various views on the like goods issue.

In its application Qenos stated that Customs and Border Protection's finding in Report No. 146 reaffirms earlier findings that LLDPE produced by Qenos are like goods to imported LLDPE. They:

- have similar characteristics;
- compete in the same markets;
- have similar end uses; and

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- are made using similar materials and in a similar manner.

Genos stated it continues to manufacture LLDPE on the same production facility and by the same manufacturing process as was observed by Customs and Border Protection in Investigation No. 146. It has not altered its production process since the previous inquiry and continues to sell its locally produced LLDPE for the same end use applications.

Dow Chemical Australia Limited (Dow Australia) submitted that locally produced LLDPE was not a like good to metallocene LLDPE (mLLDPE). It claimed that a blend of LLDPE and mLLDPE provided superior technical properties.

Dow USA and Dow Canada claimed that its ELITE mLLDPE grades are not LLDPE. Compared to LLDPE these grades:

- have a different molecular structure;
- have different characteristics and end uses;
- are marketed and sold differently; and
- are produced by different processes.

Chevron Phillips Chemical Company LP (Chevron Phillips) submitted that not all products with a density less than 0.94 g/cm^3 were LLDPE. It claimed it sold medium density polyethylene with densities between 0.936 g/cm^3 and 0.939 g/cm^3 and that these products were not LLDPE.

5.4 Like goods – Customs and Border Protection assessment

Customs and Border Protection considers there is an Australian industry producing like goods.

Physical likeness - LLDPE produced by the Australian industry is in pelletised form, is a polyethylene copolymer and has densities of less than 0.94 g/cm^3 .

Commercial likeness – imported LLDPE and LLDPE produced by the Australian industry are sold into the same market segments, have similar customer bases, are affected by similar market forces, are packaged in similar ways and compete directly with each other.

Functional likeness - imported LLDPE and LLDPE produced by the Australian industry can be used to manufacture similar final products, such as film and tanks.

Production likeness - imported LLDPE and LLDPE produced by the Australian industry, whether produced using the gas phase, solution or other process, are produced by the polymerisation of ethylene with co-monomers in the presence of various catalysts at controlled pressures and temperatures.

However, Customs and Border Protection considers many of the issues raised by interested parties are relevant when considering causation.

In respect of Chevron Phillip's claim in respect of medium density polyethylene, Customs and Border Protection considers this terminology is used by some

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producers to identify higher density grades of LLDPE typically used in rotomoulding applications.

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6 AUSTRALIAN INDUSTRY

6.1 Preliminary finding

Based on the information available, Customs and Border Protection considers that:

- there is one Australian producer of LLDPE, Qenos.
- a substantial process of manufacture was carried out in Australia by the Australian producer; and
- there is an Australian industry producing like goods.

6.2 Background

Qenos manufactures and sells polyethylenes. It is the sole manufacturer of polyethylene in Australia, including LLDPE, high density polyethylene (HDPE) and low density polyethylene (LDPE). LLDPE differs structurally from LDPE because of the absence of long chain branching. Qenos produces LDPE, LLDPE, HDPE and ethylene at Botany and HDPE and ethylene at Altona.

6.3 LLDPE production process

To produce ethylene, hydrocarbons are heated to between 750 and 950 degrees centigrade followed by immediate quench to stop the reactions. This process cracks large hydrocarbons into smaller ones. Ethylene is separated from the resulting complex mixture.

LLDPE is produced by the copolymerisation of ethylene with other monomers in the presence of catalysts. LLDPE is normally produced using Ziegler-Natta catalysts while mLLDPE is produced using metallocene catalysts. LLDPE and mLLDPE typically incorporate butene, hexene or octene as copolymers. The polymerisation process can be done in either solution phase or gas phase reactors.

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7 AUSTRALIAN MARKET

7.1 Preliminary finding

The size of Australian market for LLDPE was approximately 165,000 tonnes in 2009-10. There are two main market segments; LLDPE for use in film applications and LLDPE for use in rotomoulding applications. LLDPE is typically sold into the market by producers or distributors who source LLDPE from the Australian industry or from exporters.

7.2 Market structure

LLDPE is used in a variety of end-use applications such as film, rotomoulding, injection moulding and compounding. Typically the melt flow index distinguishes the grades. Film grades typically have a melt index up to about two, rotomoulding grades are typically three plus and injection moulding grades are typically five plus. The melt flow index is the mass of polymer, in grams, that flows through a capillary of a specific diameter and length in ten minutes by using a prescribed pressure at a prescribed temperature.

Interested parties advised that LLDPE manufactured for one application cannot be substituted for another application. Technical data sheets are available from manufacturers' websites and these identify the specified use for each grade.

Film grades are typically used in the packaging industry, including stretch films, rotomoulding grades are mainly used to make water tanks, injection moulding grades are used to make house wares and compounding grades are used to make masterbatch. Masterbatch contains additives such as colouring and ultraviolet stabilisers that are mixed with a resin to give the final product its required characteristics.

In Australia, the majority of LLDPE is used in film or rotomoulding applications.

7.3 Market supply

Customs and Border Protection established that the Australian LLDPE market is supplied by the Australian industry, as well as imports from a number of countries. During the investigation period major source countries included Canada, Korea, Thailand and the USA. During the investigation period, the Australian industry also imported LLDPE from the USA and a number of other countries.

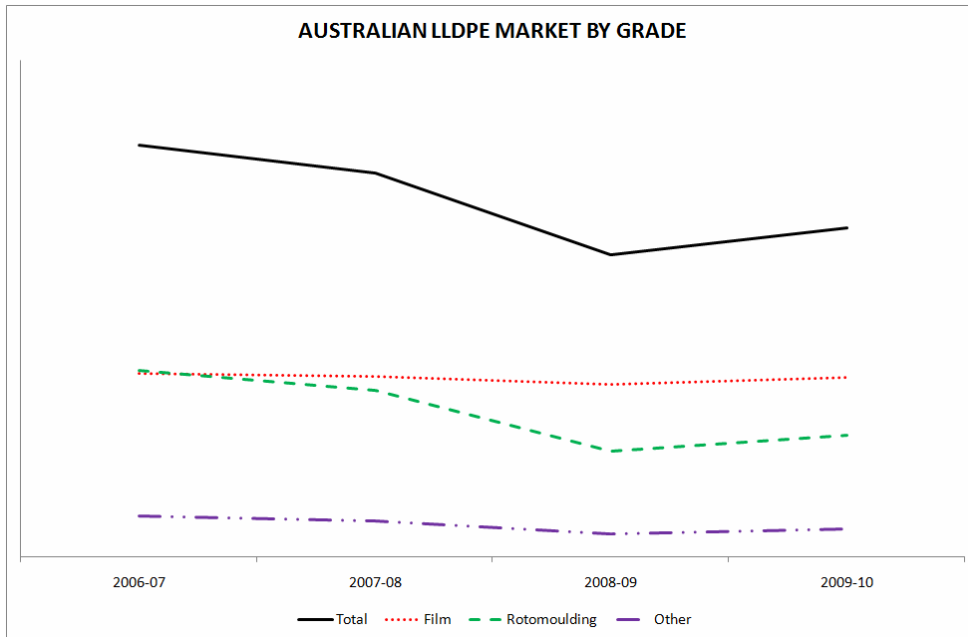
The market is supplied by producers directly to end users or through distributors.

7.4 Market size

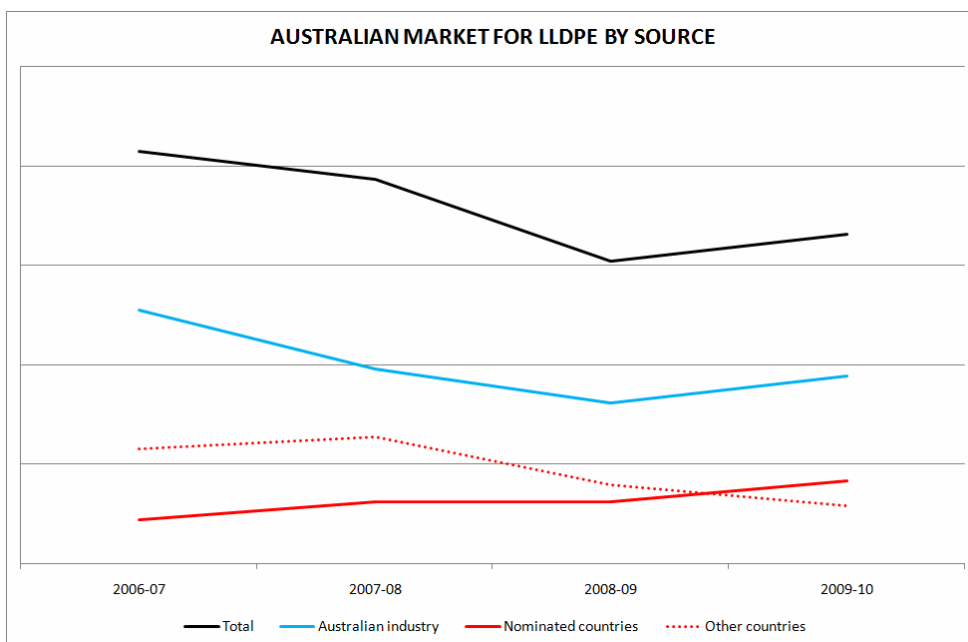
Customs and Border Protection estimated the size of the Australian market using data verified during the visit to the Australian industry, data provided by interested parties and data from Customs and Border Protection's import database. The Australian industry's figure includes imports. Movements in the size of the Australian

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market for film, rotomoulding and all grades from 2006-07 to 2009-10 is illustrated in the following chart.



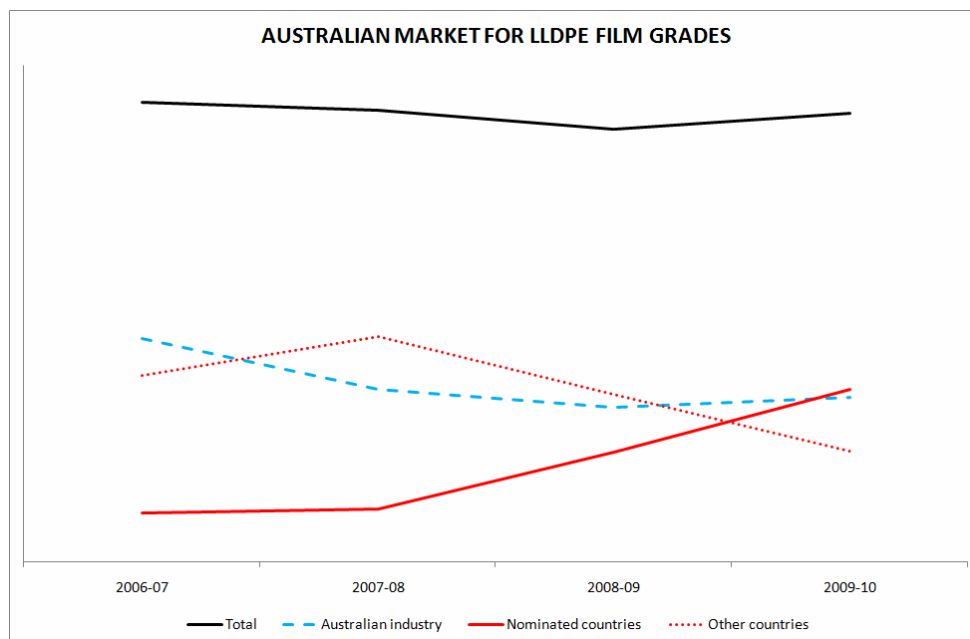
Australian market for LLDPE by source from 2006-07 to 2009-10 is illustrated in the following chart.



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7.4.1 Film market

Movements in the size of the Australian market for film grades from 2006-07 to 2009-10 is illustrated in the following chart.



The film market has been relatively stable in recent years. It was less affected by the global economic crisis because much of the product is used in food and consumer packaging. One interested party estimated that 70% of sales are to the food industry.

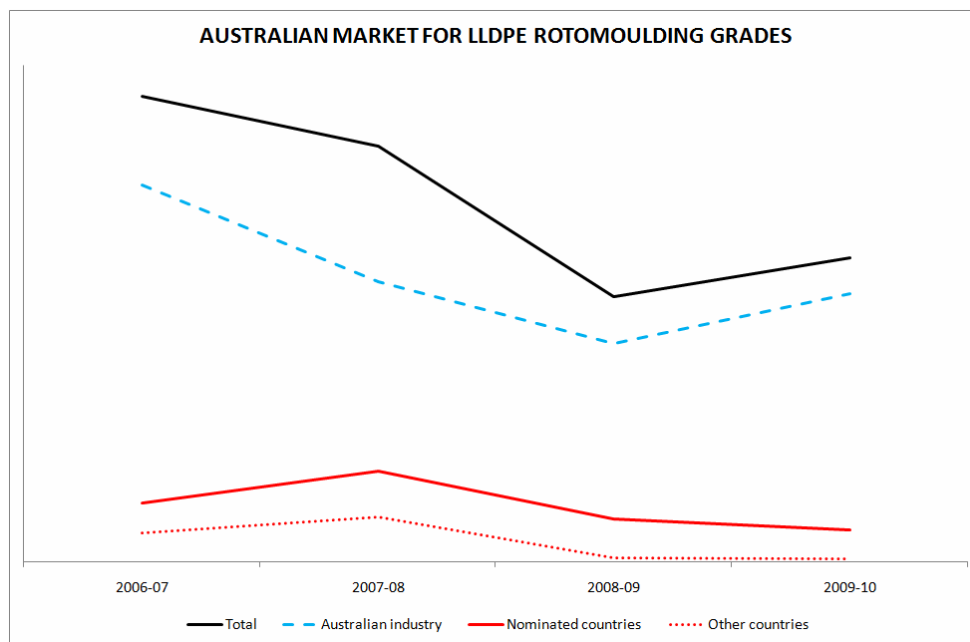
There has been a rise in imports from nominated countries and a fall in imports from other countries. Customs and Border Protection attributes this to one importer switching supply from Asia to North America. Import data was extracted from Customs and Border Protection's import data base. The rise in 2009-10 was also partly due to a blow out in inventory levels in March 2010 by Dow Australia.

Interested parties advised that the selection of resins for packaging material requires access to a wide range of resins. Each customer will require finished film to have specified mechanical properties that may only be achieved using blends or laminates. Laminates are a number of films laminated together to meet customer requirements to provide strength, sealant and barrier properties. Further, environmental issues are becoming increasingly important in selecting resins for packaging material.

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7.4.2 Rotomoulding market

Movements in the size of the Australian market for rotomoulding grades from 2006-07 to 2009-10 is illustrated in the following chart.



Interested parties advised that it is not necessary to have a large range of resins to meet the requirements of rotomoulding application.

During the previous investigation, Customs and Border Protection found that there was a spike in the rotomoulding market in 2007 due to the boom on the back of high demand for water tanks. This demand was driven by the drought and government incentives to install water tanks. The market collapsed after the removal of government incentives. One interested party claimed that the market has continued to fall due to higher rainfall.

The Association of Rotational Moulders Australasia (ARMA) provided data to support Customs and Border Protection's assessment of the market and claimed that the market remained depressed. It advised that about 70% of water tanks are made from LLDPE and that about 80% of the volume of rotomoulding grades are used to manufacture water tanks. ARMA further advised that supply exceeded demand by 30,000 to 50,000 tonnes per annum in 2010 and that there has been a decline in the number of companies that manufacture poly water tanks of more than 20% since 2007.

Rotomoulding grades are typically sold to compounders that powder the resin, add masterbatch and on-sell the product to manufacturers. Customs and Border Protection understands that most purchasers of rotomoulding grades now obtain their requirements from the Australian industry. It identified two major compounders that imported rotomoulding grades during the investigation period and other companies that have previously imported these grades. Imports of rotomoulding grades were minimal in the June quarter 2010 and in the first four months of 2010-11.

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8 DUMPING INVESTIGATION

8.1 Preliminary findings

Customs and Border Protection has determined the following dumping margins for LLDPE exported to Australia.

Dow Canada	1.5%
Other Canadian exporters	16.3%
Korean exporters	46.0%
Dow USA	10.9%
Other USA exporters	11.4%

8.2 Canada – Dow Canada

8.2.1 Export prices

Dow Canada was the exporter of the goods and exported LLDPE to Dow Australia. Dow Australia is considered to be the importer. Sales between Dow Canada and Dow Australia were arms lengths transactions. Ex-factory export prices for Dow Canada were calculated using the price paid or payable by the importers less ocean freight, marine insurance, inland freight, and port charges where applicable.

An issue with the export sales data provided by Dow Canada has been identified, but has yet to be resolved.

8.2.2 Normal values

Dow Canada sold like goods on the domestic market during the investigation period in what were found to be arms length transactions. There was a sufficient volume of sales in the domestic market that were arms length and sold at prices that were in the ordinary course of trade. Dow Canada's domestic sales were used for establishing normal values. Adjustments were made to ensure domestic sales were fairly comparable to export sales to Australia:

- downward adjustment for level of trade; and
- upward adjustment for export packaging costs.

8.2.3 Dumping margin

Subsequent to the visit, Dow claimed that it is more correct to match export prices to Australia with domestic sales in the previous quarter due to time on the water and time in inventory. Customs and Border Protection has rejected this claim because it has not been adequately verified.

The weighted average dumping margin for LLDPE exported from Canada by Dow Canada was 1.5%.

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8.3 Other Canadian exporters

8.3.1 Export prices

LLDPE was exported by other Canadian exporters, but none cooperated with the investigation. Export prices were determined using the quarterly weighted average declared free on board (FOB) customs values obtained from Customs and Border Protection's import database.

8.3.2 Normal values

Customs and Border Protection has information on normal values in Canada from Dow Canada. However, it does not know the grades of LLDPE exported by other Canadian exporters and does not consider it appropriate to base normal values using domestic sales by Dow Canada.

Normal values have been based on those estimated by the Australian industry in its application. The Australian industry obtained domestic pricing information for North America from an industry publication that specialises in the reporting of market pricing for polyethylene, including LLDPE. Prices were converted to Australian dollars using average quarterly exchange rates.

8.3.3 Dumping margin

The weighted average dumping margin for LLDPE exported from Canada by other Canadian exporters was 16.3%.

8.4 Korean exporters

8.4.1 Export prices

LLDPE was exported from Korea, but no exporter cooperated with the investigation. Export prices were determined using the quarterly weighted average declared FOB customs values obtained from Customs and Border Protection's import database.

8.4.2 Normal values

Customs and Border Protection has no contemporary information on normal values in Korea. Normal values have been based on those estimated by the Australian industry in its application. The Australian industry obtained annual production cost data for LLDPE manufactured in Korea from an industry publication. It considered its constructed selling price took account of Korea's naphtha based feedstock pricing, is representative of prevailing selling prices in Korea in 2009, and represents a rotomoulding grade price equivalent, including UV stabiliser. Prices were converted to Australian dollars using average quarterly exchange rates.

8.4.3 Dumping margin

The weighted average dumping margin for LLDPE exported from Korea was 46.0%.

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8.5 USA – Dow USA

8.5.1 Export prices

Dow USA was the exporter of the goods and exported LLDPE to Dow Australia. Dow Australia is considered to be the importer. Sales between Dow USA and Dow Australia were arms lengths transactions. Ex-factory export prices for Dow USA were calculated using the price paid or payable by the importers less ocean freight, marine insurance, inland freight, and port charges where applicable.

8.5.2 Normal values

Dow USA sold like goods on the domestic market during the investigation period in what were found to be arms length transactions. There was a sufficient volume of sales in the domestic market that were arms length and sold at prices that were in the ordinary course of trade. Dow USA's domestic sales were used for establishing normal values. Adjustments were made to ensure domestic sales were fairly comparable to export sales to Australia:

- downward adjustment for level of trade; and
- upward adjustment for export packaging costs.

8.5.3 Dumping margin

Subsequent to the visit, Dow claimed that it is more correct match export prices to Australia with domestic sales in the previous quarter due to time on the water and time in inventory. Customs and Border Protection has rejected this claim because it has not been adequately verified.

The weighted average dumping margin for LLDPE exported from the USA by Dow USA 10.9%.

8.6 Other USA exporters

8.6.1 Export prices

LLDPE was exported by other USA exporters, but none cooperated with the investigation. Export prices were determined using the quarterly weighted average declared FOB customs values obtained from Customs and Border Protection's import database.

8.6.2 Normal values

Customs and Border Protection has information on normal values in USA from Dow USA. However, it does not know the grades of LLDPE exported by other USA exporters and does not consider it appropriate to base normal values using domestic sales by Dow USA.

Normal values have been based on those estimated by the Australian industry in its application. The Australian industry obtained domestic pricing information for North America from an industry publication that specialises in the reporting of market

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pricing for polyethylene, including LLDPE. Prices were converted to Australian dollars using average quarterly exchange rates.

8.6.3 Dumping margin

The weighted average dumping margin for LLDPE exported from the USA by other USA exporters was 11.4%.

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9 HAS DUMPING CAUSED MATERIAL INJURY

9.1 Preliminary finding

The Australian industry suffered injury in the form of:

- reduced revenue;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment; and
- reduced capacity utilisation.

Exports of film grades of LLDPE from Canada, Korea and the USA at dumped prices did not cause material injury to the Australian industry in the film LLDPE market. Exports of rotomoulding grades of LLDPE from Canada, Korea and the USA at dumped prices caused material injury to the Australian industry in the rotomoulding market. However, dumped imports from Canada, Korea and the USA did not cause material injury to the Australian industry producing LLDPE.

9.2 Introduction

The economic performance of the Australian industry was examined from 2006-07 to 2009-10. Customs and Border Protection found that the majority of LLDPE was sold into two market segments; LLDPE for use in film applications and LLDPE for use in rotomoulding applications. Customs and Border Protection was able to examine and analyse the Australian industry's sales volumes and revenue in these two market segments, but could not separately examine costs, profits and profitability.

9.3 The applicant's injury claims

The Australian industry claimed that the allegedly dumped exports of LLDPE from Canada, Korea and the USA caused injury in the form of:

- loss of sales volumes;
- lost market share in 2010;
- price depression;
- price suppression;
- reduced profits and profitability;
- reduced return on investment; and
- reductions in the secondary injury indicators of capital employed, domestic revenues, and employment levels.

The applicant claimed that injury attributable to the allegedly dumped exports of LLDPE from Canada, Korea and the USA commenced during 2008.

The Australian industry claimed that it had lost sales volume in both the film and rotomoulding segments of the Australian LLDPE market. It provided details of

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reduced sales volumes to three customers in the film segment and claimed that all three have accessed LLDPE sourced from Canada and the USA. The Australian industry claimed that overall it had lost sales in the rotomoulding market to dumped imports from Canada, Korea and the USA.

The Australian industry claimed that imports from Canada, Korea and the USA had increased significantly, while its sales volume had increased by a smaller amount, indicating the Australian industry had lost market share.

The Australian industry claimed that reduced prices, erosion of its operating margin and loss of sales volume has caused reduced profits and profitability and reductions in returns on investment in 2009-10.

9.4 Price effects

9.4.1 The Australian industry

The Australian industry submitted that it suffered material injury attributable to dumped imports in the form of price depression and price suppression. It provided examples where some of its key rotomoulding customers identified import prices as a key competitive source for local pricing. It claimed this and falling LLDPE prices relative to North American and South East Asian prices indicated that the Australian industry suffered injury in the form of price depression.

The Australian industry claimed that its margin over costs fell in 2009-10 and that it had suffered injury in the form of price suppression. It claimed that prices fell in response to customer demands that imports offer a cheaper alternative to local supply. The Australian industry again referred to falling LLDPE prices relative to North American and South East Asian prices.

In its application, Qenos stated that:

Market intelligence reports on competitive pricing offers for dumped imports is limited due to customer concerns that the information will be used to support price-undercutting assertions in an anti-dumping investigation.

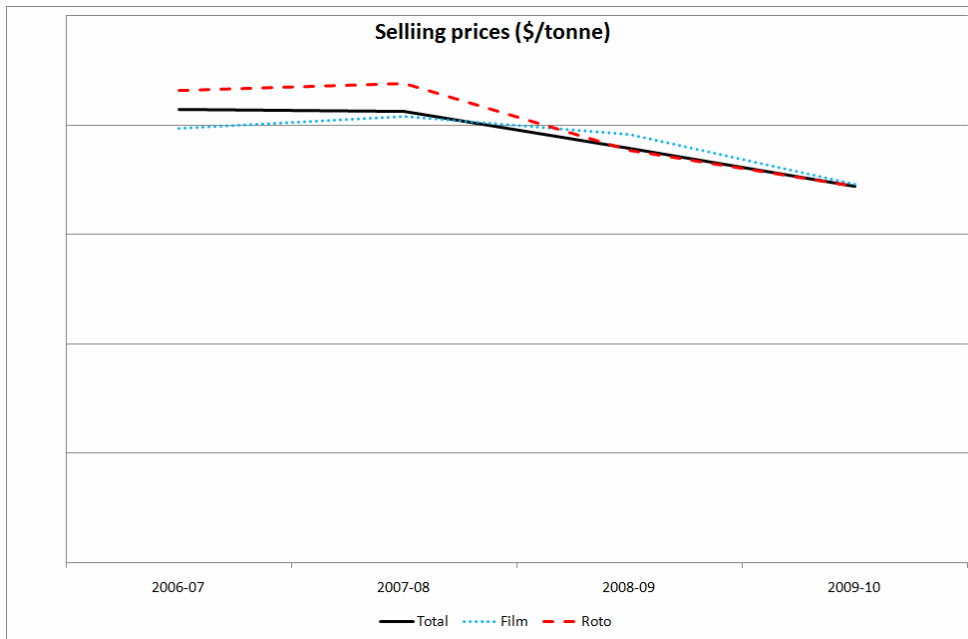
In submissions made during the investigation, the Australian industry continued to claim that it was being pressured by its customers to offer market prices that were competitive with import prices. However, in respect of its film grades of LLDPE, it maintained that there was limited supporting evidence available to support this claim.

9.4.2 Material injury assessment

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

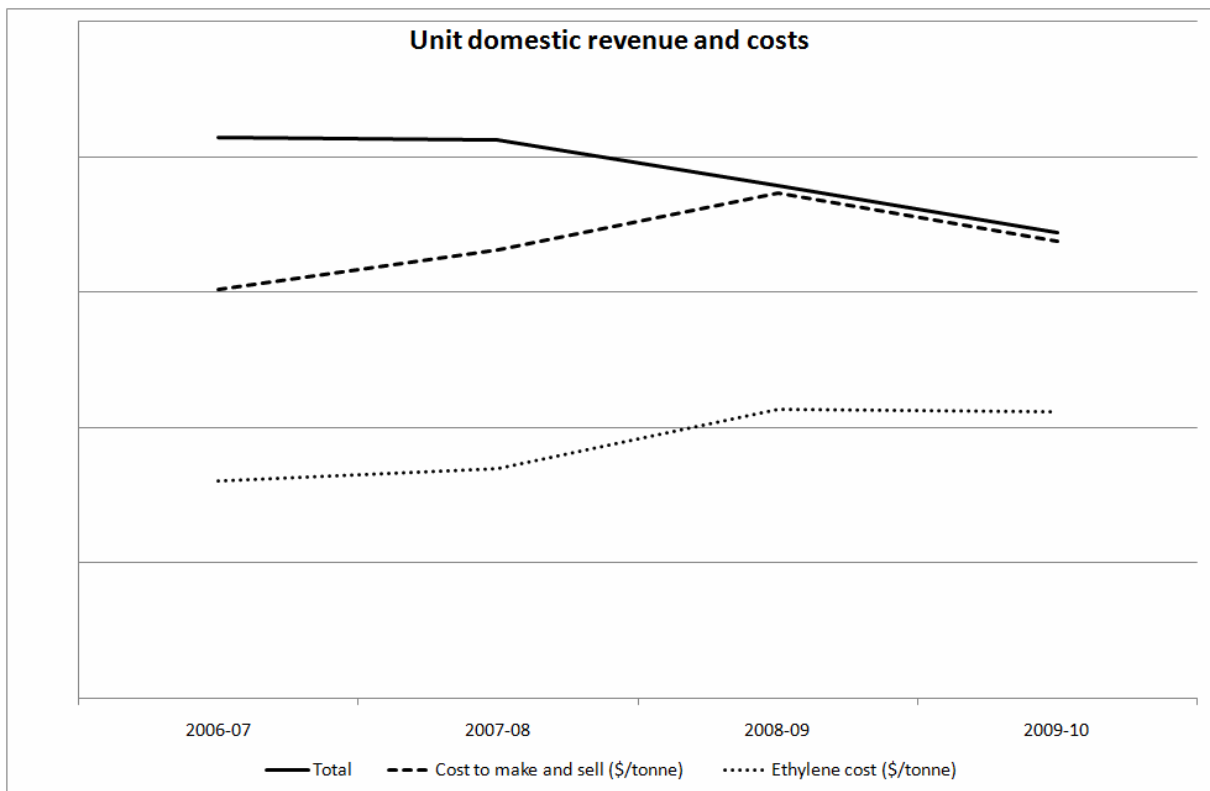
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Movements in the industry's selling prices are illustrated in the following chart.

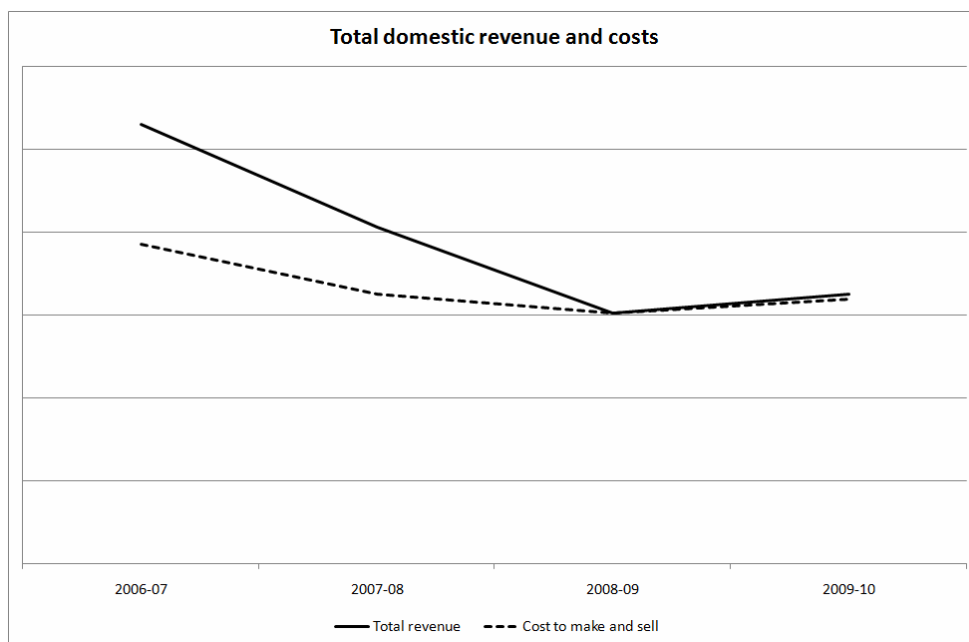


Selling prices fell throughout the period examined. Average prices for film and rotomoulding grades were similar throughout the period examined. However, prices for rotomoulding grades, which were higher than film grades in 2006-07 and 2007-08, fell more sharply from 2007-08.

Movements in total and unit revenues and costs are illustrated in the following charts.



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Total and unit revenue were higher than total and unit costs throughout the period examined, with the exception of 2008-09 when total revenue was marginally below total costs. The losses in this period can be explained by a number of factors identified in Trade Measures Report No. 146, being the collapse of the rotational moulding market and the impact of the global financial crisis. However, the margins between total and unit revenue and total and unit costs fell from 2006-07 to 2008-09. The margins rose marginally in 2009-10.

The Australian industry has experienced depressed and suppressed prices during 2009-10.

When examining whether imports have caused an industry's prices to be depressed and/or suppressed, Customs and Border Protection will typically undertake a price undercutting analysis to ascertain and compare relative prices of the goods in the Australian market from the various sources (including the nominated countries and imports from countries not under investigation). This undercutting analysis is useful for determining whether the Australian industry has been driven to reducing its selling prices (depression) or hindered from increasing its prices (suppression) as a consequence of price pressure in the market by imports.

Given the differences in which prices are set for both film and rotomoulding grades of LLDPE in the Australian market, it is considered appropriate to separately address the issue of causal link within each market segment.

Film segment – causal link

It was established that prices for film grade LLDPE sold into the Australian market were generally formula based. Most major customers of the Australian industry and Dow Australia in the film market were on formula based monthly pricing. One of the key components of the formulas is a benchmark South East Asian reference price for butene (C₄) LLDPE published weekly by ICIS.

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ICIS provides chemical price benchmarks for the global petrochemical, fertilizer and oil industries with independent and objective pricing and market intelligence. The ICIS pricing is an internationally and industry recognised pricing guide. A review of the ICIS website shows that the methodology used to establish price quotations are based on information gathered from a wide cross-section of the market, comprising consumers, producers, traders and distributors. Confirmed deals, verified by both buyer and seller, are sought to provide the foundation of price assessments in the weekly reports.

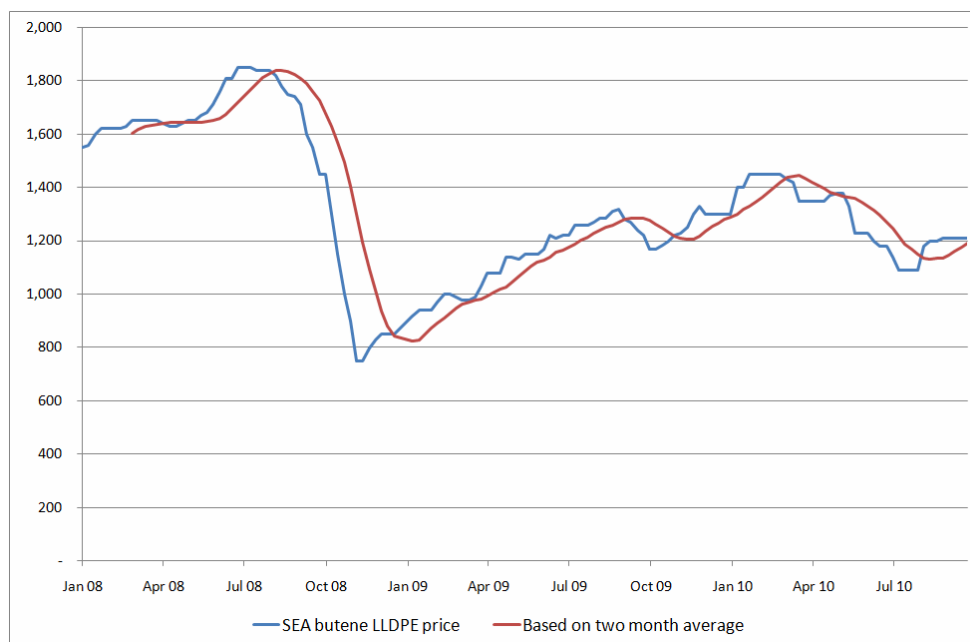
ICIS pricing normally covers products on a regional basis with South East Asia prices being relevant for the Australian market. On its website, ICIS state that for the South East Asia region, the most common quotations are comprised from Singapore, Philippines, Indonesia, Malaysia, Thailand and Vietnam. This is consistent with views submitted that the Australian LLDPE market is not significant enough to impact on ICIS price quotations.

Suppliers add to the benchmark price a notional margin for importation costs to bring the price up to an equivalent into-store price. Finally, the formula will generally include an additional premium to reflect the type of resin being sold and the additional performance properties of the resin. This built up price is then converted to Australian dollars.

It is understood that Australian market prices for film grade LLDPE have been formula driven for at least eight years.

The methodology for establishing a monthly price was relatively consistent amongst suppliers with the price reflecting an import parity price against South East Asian prices. However, different formulas can generate different prices. Dow Australia claimed that the Australian industry uses the average ICIS price for LLDPE over one or two months as a basis for current prices. It argued that such a formula meant that the Australian industry's prices would not always reflect market prices. The chart below shows the difference between ICIS' weekly pricing and a price based on an average of the past two months. The price based on the two month average alternates between being less and more expensive than the ICIS market price.

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In comparing prices of film grade LLDPE, it should be noted that the price undercutting analysis is limited to a comparison of Dow Australia's imports and the Australian industry's production of film grade LLDPE, as Dow Australia was the only importer that on-sold LLDPE into the Australian market that cooperated with the investigation. However, the analysis is considered both representative and relevant given that Dow Australia's imports represent a little under 50% of total imports during the investigation period.

Dow Australia imported four brands of film grades of LLDPE; one experimental brand, two premium brands that sell at higher prices than its other brands and its DOWLEX brand. Customs and Border Protection considers that Dow Australia's DOWLEX brand of resins are most comparable with the Australian industry's own production of film grades and were used for price comparison purposes.

The information showed that Dow Australia's weighted average price for all film grades were higher than, or comparable with, the Australian industry's prices for its own production of film grades throughout the investigation period. Dow Australia's prices for its DOWLEX grades were higher than the Australian industry's prices in the September and March quarters, but lower in the December and June quarters. The weighted average price for Dow Australia's DOWLEX grades was higher than the Australian industry's prices of its own production of film grades during the investigation period.

A number of parties submitted that movements in film grade selling prices were directly linked to the movement in ICIS prices and not import prices into Australia. Therefore if the Australian industry's price were depressed or suppressed, it was primarily a result of movements in the ICIS pricing which drive the Australian industry's formula based prices.

Customs and Border Protection charted the average quarterly ICIS price against the Australian industry's quarterly weighted average selling prices for its own production of film grades and Dow Australia's quarterly weighted average selling prices for its

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DOWLEX film grades. This chart cannot be published as it would reveal confidential information, but both sets of prices are above and reflect consistent movements in the ICIS prices.

Other factors - Competitive pressures

Customs and Border Protection visited three end users of the film grade LLDPE being Amcor, Aperio and Integrated Packaging. All three stated that the Australian flexible packaging manufacturing industry is under intense pressure from imports of finished goods with most of the key countries in the South East Asia region possessing a significant polyethylene industry. They claimed that many of its customers are multinational organisations such as Nestle, Mars, Cadbury and Coca Cola that are acutely aware of regional prices of packaging materials and their associated raw materials.

The end-users claimed that it was therefore important that in order to remain competitive against these imports, that they had access to raw materials at globally competitive prices, otherwise their customers will import their packaging requirements. The Aperio Group (Australia) Pty Ltd (Aperio) provided an example where it had lost a packaging contract of a long-term customer to imported finished goods which significantly undercut its established prices.

Customs and Border Protection noted that contracts between the Australian industry and two of its major customers require the Australian industry's prices to be competitive.

Rotomoulding segment – causal link

Prices in the rotomoulding segment of the market are based upon negotiated and contemporaneous prices in the marketplace. The Australian industry provided correspondence with its major rotomoulding customers and claimed price increases were delayed then abandoned due to the impact of import prices. Customs and Border Protection notes that selling prices for film and rotomoulding grades were similar over the period examined. However, prices for rotomoulding grades were higher than prices for film grades in 2006-07 and 2007-08, were lower in 2008-09 and about the same in 2009-10.

The evidence provided by the Australian industry appears to support the claim that dumped imports of rotomoulding LLDPE grades had been used to extract competitive price offers. Therefore it is reasonable to expect that the Australian industry's prices have been depressed and suppressed as a result. To assess whether the injury caused by the dumped imports was material, a comparison of prices has been undertaken.

Courtenay Polymers imported LLDPE during the investigation period. However, it processes the LLDPE it imports and sells it in a different form. Customs and Border Protection compared Courtenay Polymers landed duty paid into store price with prices from the Australian industry for 12 selected importations. In the September and December quarter of 2009 the price of imports marginally undercut the Australian industry's prices. In the March quarter 2010 the price of imports was a little higher than the Australian industry's price. In the June quarter 2010 the price of

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imports was significantly higher than the Australian industry's prices. Customs and Border Protection notes that the volume of imports in this quarter was minimal and it understands that Courtenay Polymers was sourcing most of its requirements from the Australian industry.

Other factors – Deterioration of the water tank market

Previous LLDPE dumping investigations undertaken by Customs and Border Protection had noted the impact that the downturn in the water tank market had had on the Australian industry's performance. In this investigation it was claimed that the water tank market has continued to contract during our investigation period and beyond and that this would be having a corresponding influence on the rotomoulding LLDPE industry.

To better understand whether the water tank market has further deteriorated and if so, whether the rotomoulding market was equally impacted, Customs and Border Protection contacted the Australian Rotomoulding Association (ARMA) and requested statistics. ARMA provided data to support Customs and Border Protection's assessment of the market and claimed that the market remained depressed. It advised that about 70% of water tanks are made from LLDPE and that about 80% of the volume of rotomoulding grades are used to manufacture water tanks. ARMA further advised that supply exceeded demand by 30,000 to 50,000 tonnes per annum in 2010 and that there has been a decline in the number of companies that manufacture poly water tanks of more than 20% since 2007.

9.4.3 Conclusion – Price effects

A comparison of the Australian industry's film grade prices with Dow Australia's prices did not identify any conclusive price undercutting that could be seen as causing the Australian industry's prices to be depressed or suppressed. In fact, Dow Australia's prices were on average higher over the investigation than the Australian industry's prices.

The evidence seems to indicate that the Australian industry's film grade prices are strongly influenced by changes in the published ICIS pricing which is a key component of the Australian industry's formula based pricing. The Australian industry has for many years agreed to long-term contracts with its key film customers which are based on a formula taking into account movements in the South East Asian prices for LLDPE.

There is no evidence which would indicate that import prices from Canada, Korea and the USA have an impact on the published ICIS prices for this region.

Customs and Border Protection is satisfied that prices for film grades of LLDPE are set with reference to published ICIS South East Asian prices. It concludes that prices for dumped imports from Canada, Korea and the USA have not caused price injury to the Australian industry in the film segment.

In the case of rotomoulding grades of LLDPE, the claim that the water tank market has continued to deteriorate into the investigation period appears to be supported by statistics provided by the ARMA. That information showed that there is a substantial

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oversupply of rotomoulding LLDPE in the Australian market. It is reasonable to expect that this imbalance between supply and demand may have ultimately impacted on the Australian industry's prices.

Customs and Border Protection preliminarily finds that the rotomoulding segment of the market remains depressed. The further worsening of the Australian water tank market and the corresponding fall in demand for rotomoulding grades of LLDPE may have contributed the injury in the form of price depression and suppression suffered by the Australian industry. Customs and Border Protection is still bound by a 1991 ministerial direction that states

..an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped products in its market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.

Customs and Border Protection therefore concludes that the price offers of dumped imports from Canada, Korea and the USA into the Australian market have impacted on the Australian industry's prices and caused price injury to the Australian industry in the rotomoulding segment.

However, before it can recommend that the Minister impose dumping duties it must be satisfied that dumped imports from Canada, Korea and the USA have caused material injury to the Australian industry producing like goods (that is, all grades of LLDPE). If it is so satisfied, it could recommend that the Minister impose dumping duties on rotomoulding grades.

9.5 Volume effects

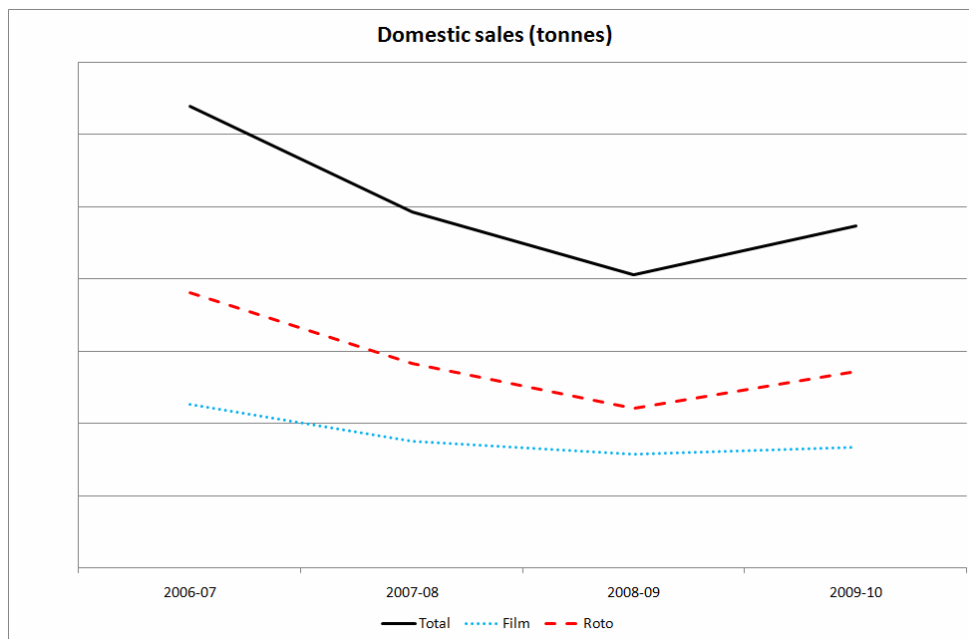
9.5.1 The Australian industry

In its application and subsequent submissions, the Australian industry claimed that it had lost sales volumes and market share. However, the Australian industry's latest submission seems to contradict those earlier claims:

Qenos has demonstrated to Customs and Border Protection that its domestic sales volumes across the 2009-10 investigation period have returned to historic levels – supporting Qenos' position that the key injury indicators of price suppression and lost profits and profitability in 2009-10 reflect the material damage from dumped imports from Canada, Korea and the USA.

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Movements in the Australian industry's domestic sales volumes are illustrated in the following chart.



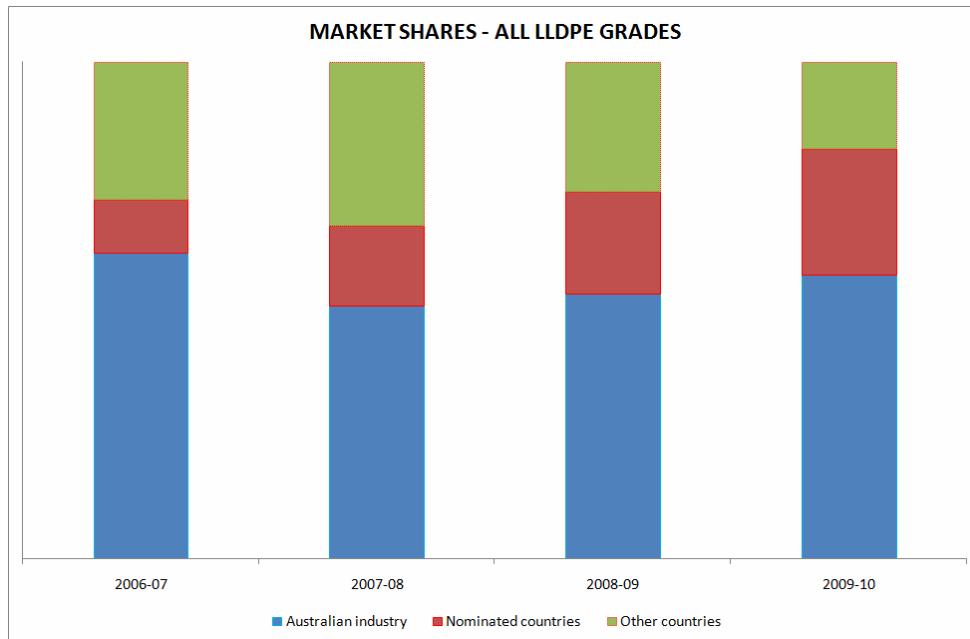
Domestic sales volumes fell from 2006-07 to 2008-09, then rose in 2009-10, with the low volume in 2008-09 being attributed to the downturn in the rotational moulding market and the impact of the global financial crisis².

Movements in the sales volumes of film grades was less marked than movements in the volume of rotomoulding grades.

² Trade Measures Report No. 146

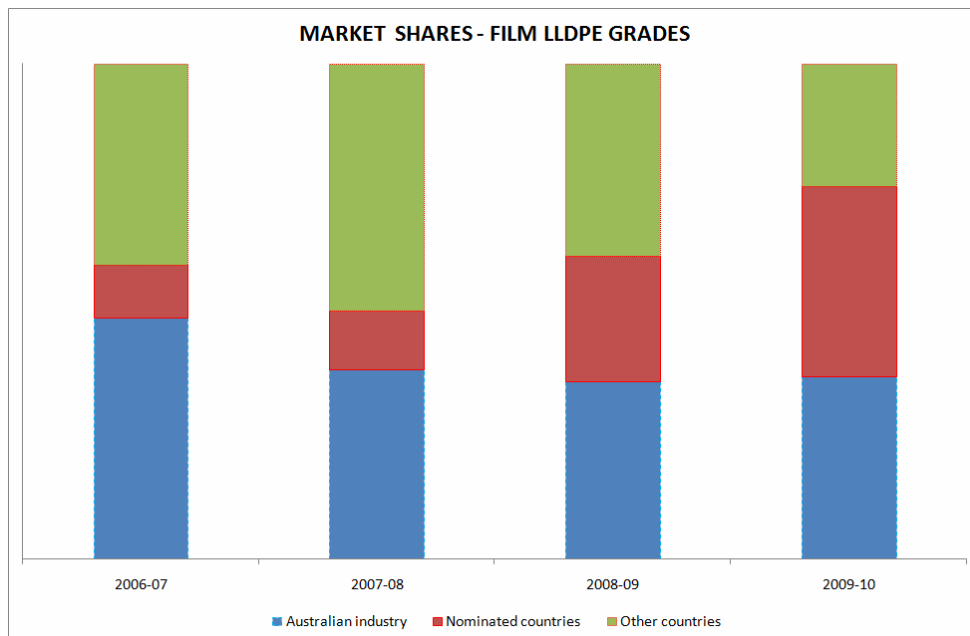
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Market shares for all LLDPE grades are illustrated in the following chart.



The Australian industry's market share fell in 2007-08, rose slightly in 2008-09 and rose further in 2009-10. The market share of imports from the nominated countries rose each year during the period examined, while the market share of imports from other countries roes in 2007-09 then fell in 2008-09 and 2009-10.

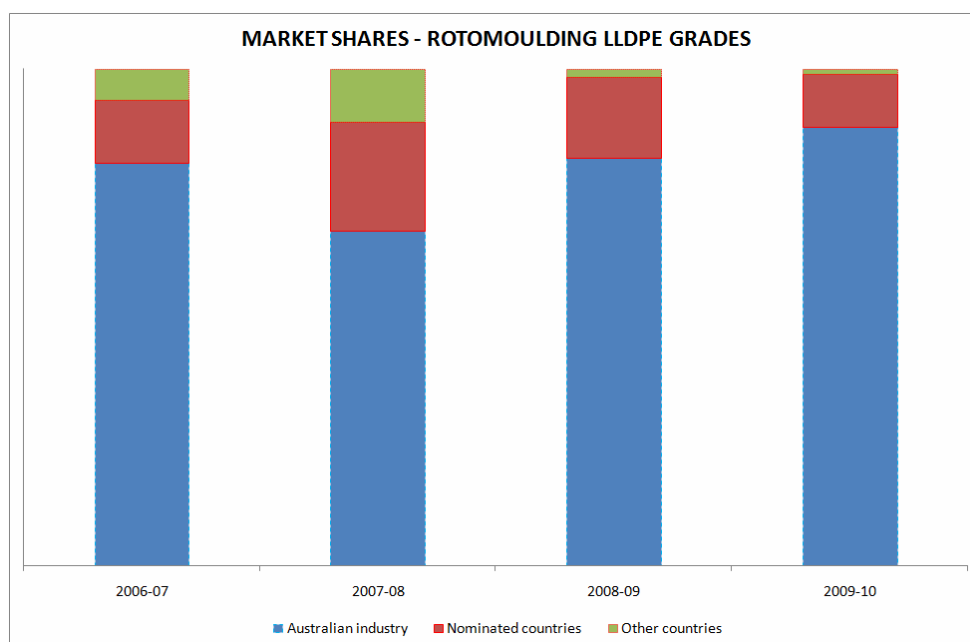
Market shares for film LLDPE grades are illustrated in the following chart.



The Australian industry's market share fell in 2007-08, but has remained at about the same level since, falling marginally in 2009-10 and rising marginally in 2009-10. The market share of imports from the nominated countries rose each year during the period examined, while the market share of imports from other countries roes in 2007-09 then fell in 2008-09 and 2009-10.

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Market shares for rotomoulding LLDPE grades are illustrated in the following chart.



The Australian industry's market share fell in 2007-08, but has risen every year since. The market shares of imports from the nominated countries and from other countries rose in 2007-08, but have fallen each year since.

The Australian industry has not experienced lost / reduced sales volumes or reduced market share during 2009-10.

Film market – causal link

The film market has been relatively stable in recent years. It was less affected by the global economic crisis because much of the product is used in food and consumer packaging. One interested party estimated that 70% of sales are to the food industry.

Customs and Border Protection estimated the size of the Australian market using sales by the Australian industry and import data obtained from its import data base. The size of the market fell by 2% in 2006-07, fell by 4% in 2008-09 and rose by 4% in 2009-10. Customs and Border Protection attributes the rise in 2009-10 to a blow out in Dow Australia's inventory levels in March 2010. In the absence of this blow out Customs and Border Protection estimates that the size of the market would have fallen slightly in 2009-10.

Customs and Border Protection did not find that the Australian industry lost market share. The Australian industry's market share fell by over 10 percentage points in 2006-07, but Customs and Border Protection's previous investigation found that this could not be attributed to dumping. The Australian industry's market share has since remained relatively stable, falling slightly in 2008-09 and rising slightly in 2009-10. The Australian industry's market share would have risen further in the absence of Dow Australia's inventory blow out in March 2010.

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The market share of imports from the nominated countries rose each year over the period examined; in 2009-10 the market share rose by almost 15 percentage points. Customs and Border Protection attributes this to one importer switching supply from Asia to North America.

The market share of imports from the other countries rose in 2007-08 then fell in the next two years; in 2009-10 the market share fell by almost 15 percentage points.

Notwithstanding that the Australian industry does not appear to have suffered injury in the form of lost sales or reduced market share, a number of issues have been raised during the investigation which parties claimed would have impacted on the industry's sales.

Other factor -Environmental concerns

A number of parties raised the issue of the National Packaging Covenant (NPC) and the impact that this has had on the volume of film grade LLDPE being used in Australia. According to its website, the NPC was negotiated in 1999 and expired this year. At the end of the NPC, there were 782 signatories and 723 of these were compliant. The new Australian Packaging Covenant (APC) commenced on the 1 July 2010.

The Covenant is a voluntary initiative by government (both state and federal) and industry (raw material suppliers, manufacturers and retailers) to reduce the environmental effects of packaging on the environment. It is designed to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes and facilitate the re-use and recycling of used packaging materials.

The APC will focus on improved packaging design, away from home recycling, litter reduction and increased engagement across the supply chain through product stewardship.

As part of their Covenant obligations, signatories are required to submit two types of documents that demonstrate their aims and achievements against Covenant goals and targets. These documents, action plans and annual reports are then sent for assessment against Covenant requirements.

To ensure that Covenant signatories were not disadvantaged in the marketplace and to encourage participation in the Covenant, the Covenant framework includes a regulatory instrument, the National Environment Protection Measure (NEPM) for used packaging materials. What this means is that if brand owners don't participate in the Covenant they will have to comply with the requirements of the state legislation giving effect to the NEPM.

Key measures for Amcor Flexibles Asia Pacific's (Amcor) packaging business in Australia centre around resource intensity per unit of packaging output with the objective of improving the efficiency between packaging units produced per unit of inputs. Business units have key measures and report on areas such as energy usage, water usage, percentage recyclable material and recyclability of packaging produced.

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Amcor gave the example of bread bags. They are used on high speed production lines and need to retain their form to be filled. They also need to be puncture resistant because of seeds in the bread. Initially they were made from LDPE, then their thickness was reduced using a blend containing LLDPE. Their thickness was further reduced using high performance LLDPE and mLLDPE.

Other factor - Performance requirements

Interested parties advised that advances in resin technology had led to increased demand for higher performing packaging materials. Films for packaging material may be blends of resins or laminates, which are a number of films laminated together to meet customer requirements, including strength, sealant and barrier properties.

Users of packaging materials require certain mechanical requirements. The finished product must be able to withstand the packaging process, handling through the various stages of the distribution chain, storage under a wide range of conditions and handling by the customer. Issues such as the age of the packaging lines, operating speeds and temperatures and customer specification influence the selection of suitable resins. Interested parties claimed that a wider range of resins than is available from the Australian industry is required to meet end user requirements.

The Australian industry claimed that its resins can be used in most applications by selecting the appropriate blend and gauge for the film. However, other interested parties stated that while it may be technically feasible to substitute the Australian industry's resins, it would be commercially impracticable because of issues such as slower run rates, increased raw material usage, inferior mechanical properties and obligations under the APC.

Amcor stated that it has not moved substantial volumes from the Australian industry, apart from reduced requirements resulting from the sale of its Kewdale business in 2008 to new owners, and that the Australian industry remains a supplier for its Australian operations. However, Amcor gave an example of where its customer had an issue with film made using the Australian industry's resins. The only solution was to re-engineer the film and the problem was resolved using thinner film based on mLLDPE high performance resins. Amcor provided a letter from its customer confirming that the problem was resolved and that it helped meet the customer's obligations under the APC.

Aperio claimed that it is the largest flexible film company in Australia. It stated that while it was a customer of the Australian industry, imported resins were used to make ice bags because the Australian industry's resins did not provide the required mechanical properties.

Integrated Packaging produces stretch film of various thicknesses and widths. It stated that when the film is used in machine wrapping, 250% to 300% stretch is required and that such films produced using the Australian industry's resins fail. It stated that for hand applications where 20% to 30% stretch is required, films produced using Australian industry's resins are suitable. Integrated Packaging also stated that the Australian industry's resins produce a hazier film compared to

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imported resins, which is important when using bar code readers on pallets stacked in a warehouse.

Rotomoulding market – causal link

Customs and Border Protection estimated the size of the Australian market using sales by the Australian industry and import data obtained from its import data base. The size of the market fell by 11% in 2006-07, fell 36% in 2008-09 and rose by 14% in 2009-10.

Customs and Border Protection did not find that the Australian industry lost market share. The Australian industry's market share fell by about 15 percentage points in 2006-07, but Customs and Border Protection's previous investigation found that this could not be attributed to dumping. The Australian industry's market share has since risen by about 15 percentage points in 2008-09 and by about a further 5 percentage points in 2009-10.

The market share of imports from the nominated countries rose by almost 10 percentage points in 2007-08, but fell by about 5 percentage points in 2008-09 and a further 5 percentage points in 2008-09.

The market share of imports from the other countries rose in 2007-08 then fell in the next two years; in 2009-10 the market share was negligible.

The Australian industry identified an importer that it claimed was importing medium density polyethylene and incorrectly classifying the goods. Customs and Border Protection examined all imports by this company under tariff heading 3901. Goods described as medium density polyethylene were assumed to be the goods. However, most imports were clearly described as LDPE or HDPE.

Customs and Border Protection concludes that dumped imports from Canada, Korea and the USA have not caused volume injury to the Australian industry in the rotomoulding segment of the market. However, it recognises that it has gained market share at the expense of price.

9.5.2 Conclusion – volume effects

The Australian industry has submitted that its sales volumes have returned to historic levels. This is supported by data gathered during the investigation and Customs and Border Protection's estimate of the market.

Therefore, Customs and Border Protection preliminarily finds that dumped imports did not cause material injury to the Australian industry in the form of lost sales or reduced market share.

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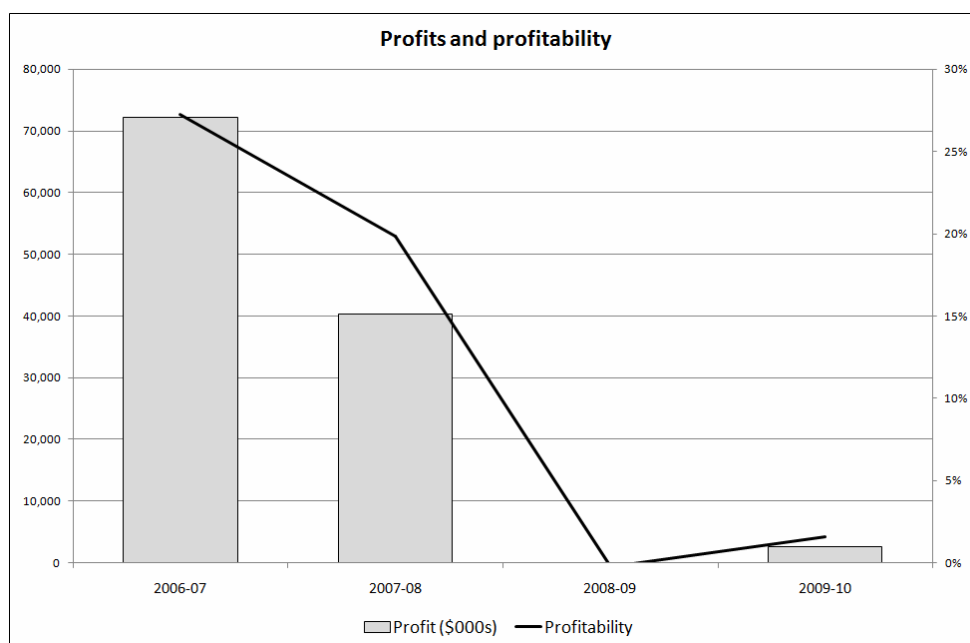
9.6 Profit and profitability effects

9.6.1 The Australian industry

The Australian industry claims that as a result of the price depression and suppression caused by dumped imports, it has experienced reduced profits and profitability during the investigation period.

9.6.2 Assessment

Movements in profits and profitability are illustrated in the following chart.



Profits and profitability fell from 2006-07 to 2008-09, then rose slightly in 2009-10.

Total profits are a function of and reflected in the margin on sales (evident in the price suppression charts) and the volume of sales. Therefore, it is typical to find profit related injury where injury has already been established in at least one of those two elements.

The Australian industry experienced injury in the film market in the form of price depression and suppression, however this was attributed to the reliance on ICIS pricing in setting prices for film grade LLDPE. It was also found that dumped imports from Canada, Korea and the USA and the deterioration of the rotomoulding market led to the Australian industry's prices being depressed and suppressed in the rotomoulding market.

The Australian industry did not experience injury in the form of lost sales volume or reduced market share.

Customs and Border Protection notes that rotomoulding grades account for about 60% of the Australian industry's LLDPE sales. Therefore, Customs and Border Protection preliminarily finds that the Australian industry has experienced reduced profits and profitability during the investigation period which can be attributed in part

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to its formula based pricing for film grades, the deterioration in the rotomoulding market and dumped imports of rotomoulding grades.

9.7 Other injury factors

The Australian industry completed Appendix A7 for calendar years from 2006 to 2009 and the six months to June 2010.

Assets

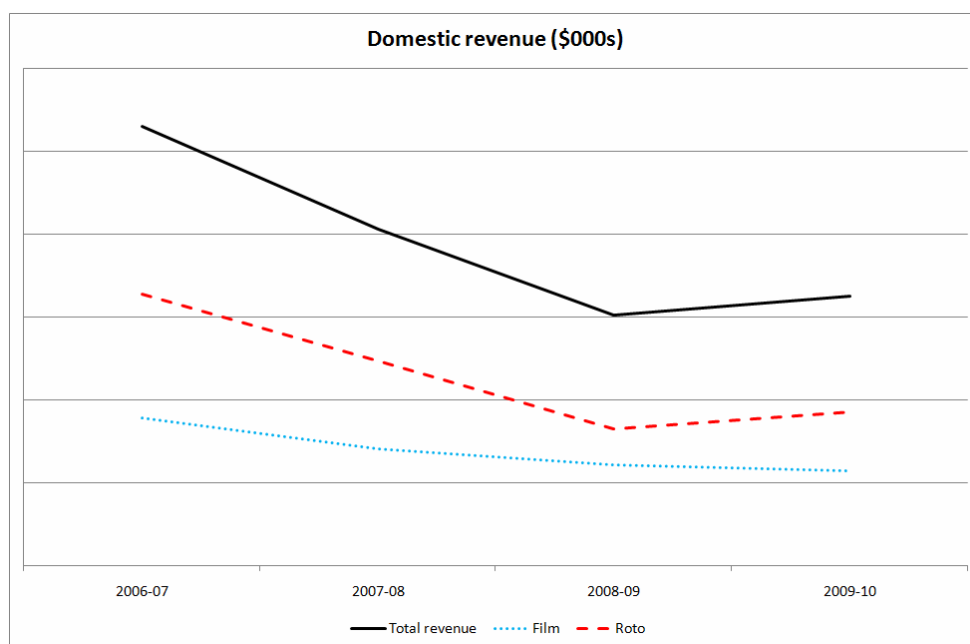
The written down value of the Alkatuff plant fell each year.

Capital investment

The Australian industry measured capital employed as the sum of property, plant and equipment, inventories and working capital for the Alkatuff plant. Capital investment fell each year.

Revenue

Movements in revenue are illustrated in the following chart.



Revenue from film grades fell throughout the period examined. Revenue from rotomoulding grades fell from 2006-07 to 2008-09, then rose in 2009-10. Overall revenue fell from 2006-07 to 2008-09, then rose in 2009-10. Revenue in 2009-10 was significantly below revenue in 2006-07.

Given that a company's revenue is a function of price and volume, the earlier price and volume injury assessments are considered relevant. Therefore, it is reasonable to consider that dumped imports of rotomoulding grade LLDPE have caused injury in the form of reduced revenues.

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Research and development

Research and development expenditure fluctuated over the period examined.

Return on investment

The Australian industry calculated return on investment by dividing profit from LLDPE divided by capital investment. Return on investment rose in 2007, but in 2008 fell below the level achieved in 2006 and fell further in 2009. It has remained at that level in 2010.

There is insufficient evidence to demonstrate a link between the dumped imports and the Australian industry's return on investment during the investigation period.

Capacity

The Australian industry's capacity remained stable over the period examined. Capacity utilisation fell in 2007 and 2008, rose in 2009 and fell in 2010. Capacity utilisation in 2010 was less than in 2006 and 2007.

Employment

The Australian industry measured employment numbers using production employees. Employment fell marginally in 2007 and 2008, but fell more significantly in 2009 and 2010. Customs and Border Protection attributes this to the Australian industry's business improvement plan which was implemented to address reducing profitability which the Australian industry considers was due in part to the injury suffered from dumped LLDPE.

Productivity

The Australian industry measured productivity using production figures.

Stocks

Stock levels at the end of each year rose in 2007 and 2008, fell in 2009 and rose in 2010.

Cash flow measures

The accounts receivable balance rose marginally in 2007, fell in 2008, rose in 2009 and remained relatively stable in 2010. Receivables turnover rose in 2007 and 2008 then fell in 2009. Inventory turnover fell in 2007 and 2008, rose in 2009 and fell in 2010.

Wages

Wages rose each year to 2009 and fell in 2010.

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9.7.1 Conclusion – Other injury factors

Customs and Border Protection preliminarily finds that dumped imports have caused injury to the Australian industry in the form of reduced revenues.

9.8 Conclusion – Is the injury attributable to dumping material?

As explained earlier, prior to recommending that the Minister impose dumping duties on the goods under investigation, it must be satisfied that dumped imports from Canada, Korea and the USA have caused material injury to the Australian industry producing like goods (that is, all grades of LLDPE).

The major injury factors indicate that the economic performance of the Australian industry deteriorated in 2007-08 and 2008-09, but recovered slightly in 2009-10. The recovery in 2009-10 was relatively small compared to the falls in the previous two years. Production, revenue, volume, profits and profitability all followed this trend. However, unit prices fell every year over the period examined. Unit costs rose in 2007-08 and 2008-09 and fell in 2009-10. The fall in costs in 2009-10 occurred despite the cost of ethylene remaining stable and the Australian industry attributes this to efficiencies generated by its business improvement plan.

Despite the efficiency gains, Customs and Border Protection considers that over the period examined the Australian industry suffered injury in the form of:

- reduced revenue;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment; and
- reduced capacity utilisation.

Exports of film grades of LLDPE from Canada, Korea and the USA at dumped prices did not cause material injury to the Australian industry in the film LLDPE market.

Whilst the continued deterioration in the water tank market is likely to have impacted on the Australian industry's performance, Customs and Border Protection considers that exports of rotomoulding grades of LLDPE from Canada, Korea and the USA at dumped prices also caused injury to the Australian industry in the rotomoulding market.

However, after taking into account the overall impact that dumped imports from Canada, Korea and the USA had on the Australian industry producing like goods, Customs and Border Protection preliminarily concludes that the injury attributable to dumping was negligible.

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10 NON INJURIOUS PRICE

10.1 Preliminary finding

Non-injurious prices have not been calculated because on the basis of information currently before it, the delegate is likely to terminate the investigation. If required, unsuppressed selling prices would be constructed for film grade LLDPE using the published ICIS price converted to Australian dollars plus an amount for into store costs and a premium to reflect the hexene grades produced by the Australian industry. Unsuppressed selling prices would be constructed for rotomoulding grade LLDPE using the industry's cost to make and sell during the investigation period plus a reasonable amount for profit.

10.2 Introduction

Duties may be applied where it is established that dumped or subsidised imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty must be applied if it is determined that it is sufficient to remove the injury.

The non-injurious price provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

10.3 Unsuppressed selling price

The non-injurious price is generally derived by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price. Customs and Border Protection's preferred approach to establishing an unsuppressed selling price observes the following hierarchy:

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

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export 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.

PUBLIC RECORD

10.4 Customs and Border Protection's assessment

The Australian industry claims that the unsuppressed selling price should be constructed using the cost to make and sell LLDPE in 2009-10, plus a margin reflecting the profit achieved in 2006.

Dow Australia stated it believed that the Australian industry voluntarily uses reported ICIS South East Asian polyethylene prices in their supply proposals to major customers. It claimed that the price formulae proposed by the Australian industry would therefore represent an unsuppressed selling price.

Customs and Border Protection notes that previously the unsuppressed selling price has been calculated using the Australian industry's cost to make and sell plus a margin for profit. However, it considers that different methodologies should be used to estimate a notional price that the industry could be expected to achieve in a market unaffected by dumping.

For film grade LLDPE, the published South East Asian prices by ICIS were the industry recognised pricing guide for film grades of LLDPE. Customs and Border Protection noted the changes in the Australian industry's prices which were in line with changes in ICIS published prices. Therefore, Customs and Border Protection considers that it is appropriate to construct an unsuppressed selling price using the industry's current formula. This would involve using the published ICIS price converted to Australian dollars plus an amount for into store costs and a premium to reflect the hexene grades produced by the Australian industry.

The views of interested parties are sought on the appropriate amount to be included for the premium taking into account the hexane grades sold by the Australian industry.

In respect of rotomoulding grade LLDPE, it is considered appropriate to construct an unsuppressed selling price using the industry's cost to make and sell during the investigation period plus a reasonable amount for profit. Customs and Border Protection noted that the Australian industry considered profit achieved in 2006 was suitable for this purpose but Customs and Border Protection has concerns about this period.

The Australian rotomoulding market has experienced significant highs and lows since this period. The ARMA itself highlighted the contraction in demand for rotomoulding grades and this would need to be factored into any amount for profit.

Once again, the views of interested parties are sought on the appropriate amount for profit to be used in establishing an unsuppressed selling price.