



Australian Government

**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

INVESTIGATION NO. 165

TERMINATION OF AN INVESTIGATION

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

20 January 2011

PUBLIC RECORD

1 CONTENTS

1	CONTENTS	2
2	ABBREVIATIONS AND SHORTENED FORMS	3
3	SUMMARY OF FINDINGS	4
3.1	Findings.....	4
3.2	Application of law to facts.....	4
3.3	Findings and conclusions.....	5
4	BACKGROUND	7
4.1	Introduction.....	7
4.2	Previous LLDPE cases	7
5	THE GOODS AND LIKE GOODS	9
5.1	Finding.....	9
5.2	The goods	9
5.3	Like goods – claims by interested parties	9
5.4	Like goods – Customs and Border Protection assessment	10
6	AUSTRALIAN INDUSTRY	12
6.1	Finding.....	12
6.2	Background	12
6.3	LLDPE production process	12
7	AUSTRALIAN MARKET	13
7.1	Finding.....	13
7.2	Market structure	13
7.3	Market supply.....	13
7.4	Market size	13
8	DUMPING INVESTIGATION	18
8.1	Findings.....	18
8.2	Background	18
8.3	Responses to the statement of essential facts	18
8.4	Canada – Dow Canada.....	19
8.5	Canada - other exporters	20
8.6	Korea.....	20
8.7	USA – Dow USA	21
8.8	USA - other exporters	21
9	HAS DUMPING CAUSED MATERIAL INJURY	23
9.1	Finding.....	23
9.2	Introduction.....	23
9.3	The applicant’s injury claims	23
9.4	Price effects	24
9.5	Volume effects	35
9.6	Profit and profitability effects	40
9.7	Other injury factors.....	40
9.8	Other possible causes of injury	42
9.9	Conclusion – is the injury attributable to dumping material?	45
10	TERMINATION	50

PUBLIC RECORD

2 ABBREVIATIONS AND SHORTENED FORMS

Amcor	Amcor Flexibles Asia Pacific
Aperio	The Aperio Group (Australia) Pty Ltd
ARMA	Association of Rotational Moulders Australasia
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
Minister	Minister for Home Affairs
mLLDPE	metallocene LLDPE
Qenos	Qenos Pty Ltd
TCO	tariff concessions order
USA	United States of America

PUBLIC RECORD

3 SUMMARY OF FINDINGS

This investigation is in response to an application by Qenos Pty Ltd (Qenos) in relation to the allegation that dumping of linear low density polyethylene (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.

3.1 Findings

The Australian Customs and Border Protection Service (Customs and Border Protection) has made the following findings:

- there has been dumping by Dow Chemical Canada ULC (Dow Canada), 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.

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 Chief Executive Officer (CEO) in conducting investigations in relation to the goods covered by an application.

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

PUBLIC RECORD

3.2.4 Statement of essential facts

The CEO placed a statement of essential facts on the public record on 6 December 2010. In formulating the statement of essential facts, the CEO had regard to the application concerned, submissions concerning publication of the notice that were received by Customs and Border Protection within 40 days after the date of initiation of the investigation and other matters considered relevant.

3.3 Findings and conclusions

Customs and Border Protection has made the following findings and conclusions.

3.3.1 The goods and like goods (chapter 6 of this report)

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

3.3.2 Australian industry (Chapter 7 of this report)

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

3.3.3 Market (Chapter 8 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.

3.3.4 Dumping (Chapter 9 of this report)

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

Dow Canada	9.0%
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 10 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

PUBLIC RECORD

- 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, overall dumped imports from Canada, Korea and the USA did not cause material injury to the Australian industry producing LLDPE.

3.3.6 Termination

The CEO is satisfied that exports of LLDPE from Canada, Korea and the USA were exported to Australia at dumped prices which were not negligible. The CEO is also satisfied that the injury that has been caused by that dumping is negligible.

In accordance with s. 269TDA(13) the investigation has been terminated.

PUBLIC RECORD

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.

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. The investigation period was July 2009 to June 2010.

The CEO placed a statement of essential facts on the public record on 6 December 2010. In formulating the statement of essential facts, the CEO had regard to the application, submissions concerning publication of the notice and other matters considered relevant.

In formulating this termination report, the CEO had regard to the application, submissions the CEO had regard to in formulating the statement of essential facts, the statement of essential facts, submissions received in response to the statement of essential facts and other matters considered relevant.

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;

PUBLIC RECORD

- 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.

PUBLIC RECORD

5 THE GOODS AND LIKE GOODS

5.1 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 the 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;

PUBLIC RECORD

- have similar end uses; and
- are made using similar materials and in a similar manner.

Qenos 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 LLDPE¹ (mLLDPE). It claimed that a blend of LLDPE and mLLDPE provided superior technical properties.

Dow USA and Dow Canada claimed that 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/cm³ were LLDPE. It claimed it sold medium density polyethylene with densities between 0.936 g/cm³ and 0.939 g/cm³ 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/cm³.

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 for the packaging industry and water tanks.

Production likeness - imported LLDPE and LLDPE produced by the Australian industry, whether produced using the gas phase, solution or other process, are

¹ LLDPE is normally produced using Ziegler-Natta catalysts, while mLLDPE is produced using metallocene catalysts. mLLDPE has a narrower molecular weight distribution which is claimed to give much improved physical properties.

PUBLIC RECORD

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 Dow's claims that its ATTANE and ELITE branded products and mLLDPE should be excluded from the goods under consideration, Customs and Border Protection remains of the view that these products fall within the description of the goods and are like goods to LLDPE produced by the Australian industry.

In respect of Chevron Phillip's claim about medium density polyethylene, Customs and Border Protection considers this terminology is used by some producers to identify higher density grades of LLDPE typically used in rotomoulding applications.

PUBLIC RECORD

6 AUSTRALIAN INDUSTRY

6.1 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 cooling 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.

PUBLIC RECORD

7 AUSTRALIAN MARKET

7.1 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 flow 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.

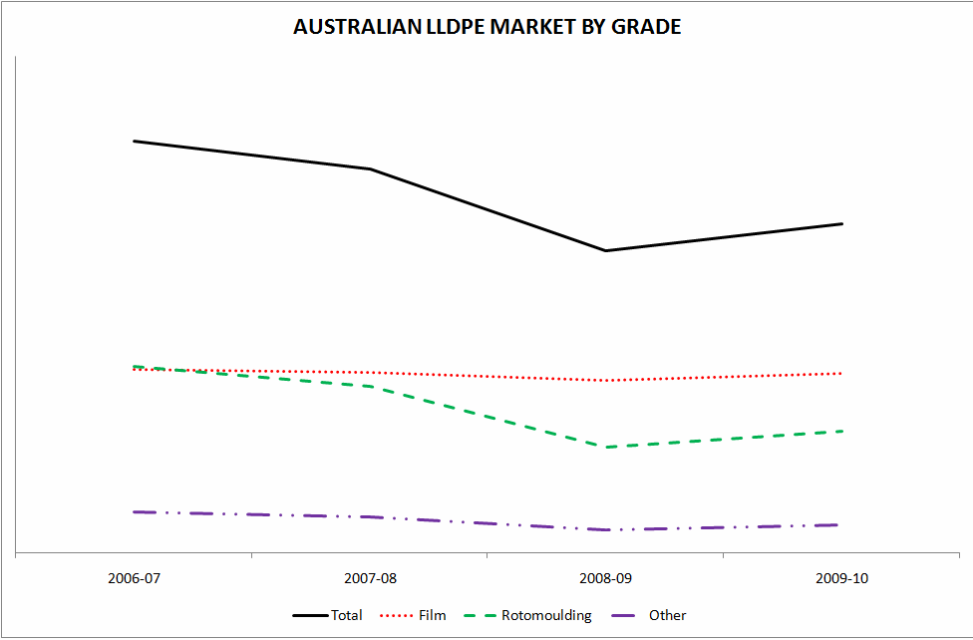
The market is supplied by producers directly to end users or through distributors.

7.4 Market size

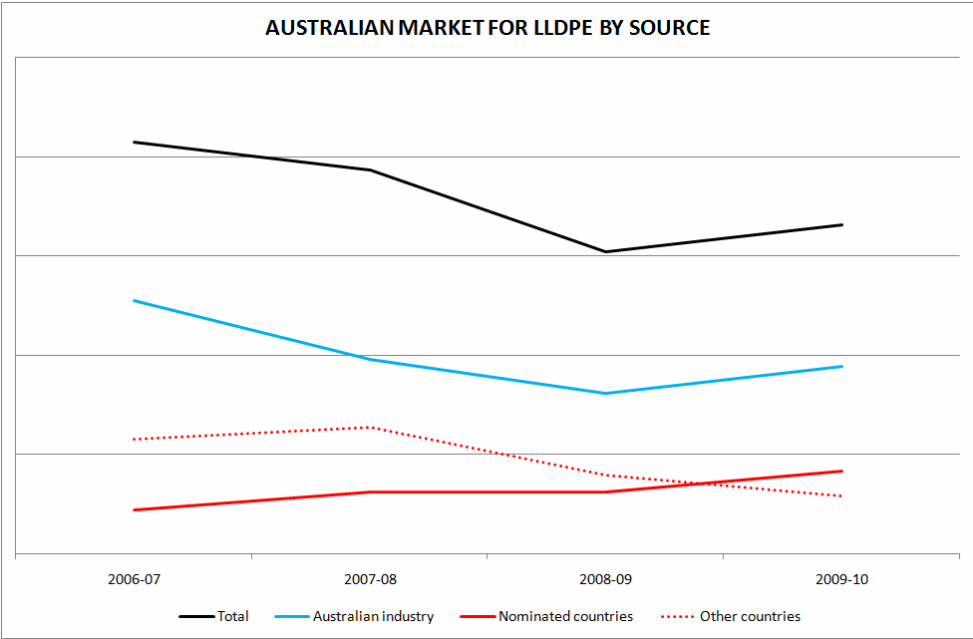
Customs and Border Protection estimated the size of the Australian market using sales data verified during the visit to the Australian industry, data provided by interested parties and data from Customs and Border Protection's import database. The Australian industry's figure includes imports. Movements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

PUBLIC RECORD

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



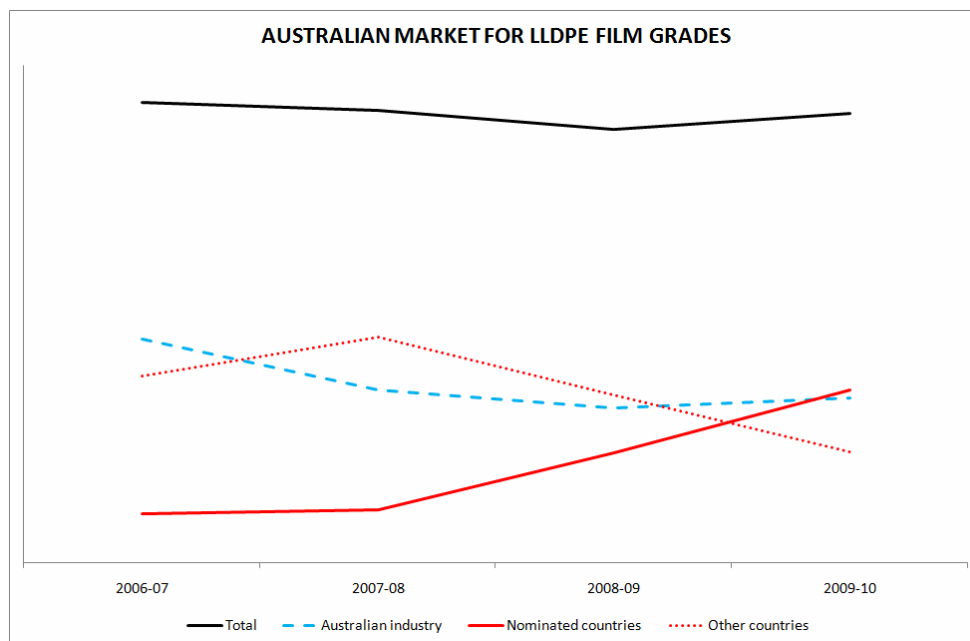
Australian market for LLDPE by source from 2006-07 to 2009-10 is illustrated in the following chart.



PUBLIC RECORD

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 financial 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.

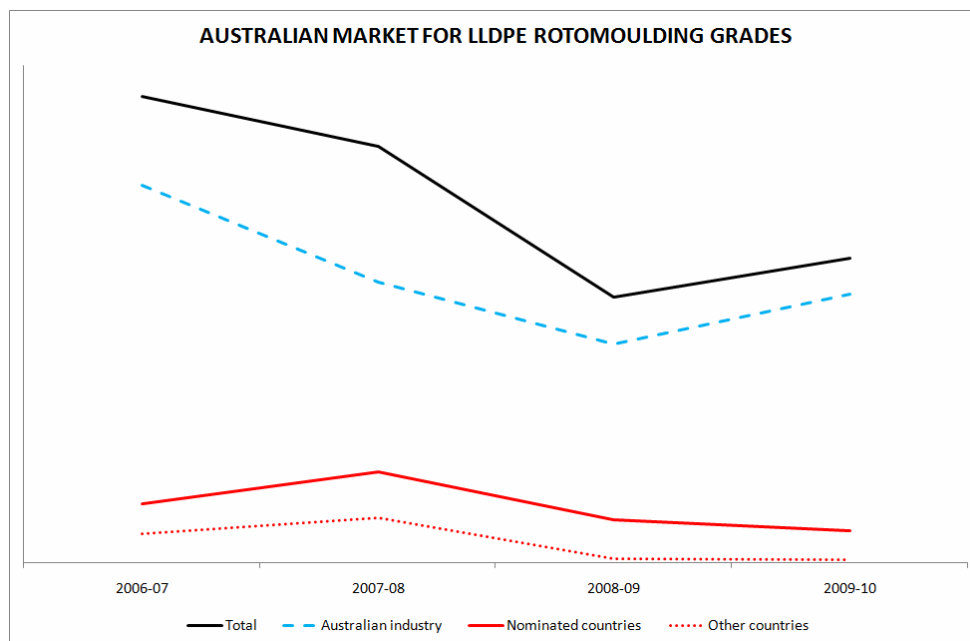
There has been a rise in imports from nominated countries and a fall in imports from other countries. Customs and Border Protection attributes this to one importer switching supply from Asia to North America. Import data was extracted from Customs and Border Protection's import data base. The rise in 2009-10 was also partly due to an increase 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.

PUBLIC RECORD

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.

In response to the statement of essential facts the Australian industry claimed that demand for rotomoulding grades in 2009-10 is at historic levels. Customs and Border Protection considers that even if this claim is correct, the market could still be depressed because of supply exceeding demand.

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

PUBLIC RECORD

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.

PUBLIC RECORD

8 DUMPING INVESTIGATION

8.1 Findings

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

Dow Canada	9.0%
Other Canadian exporters	16.3%
Korean exporters	46.0%
Dow USA	10.9%
Other USA exporters	11.4%

8.2 Background

The investigation period was July 2009 to June 2010. Customs and Border Protection wrote to all identified exporters from the nominated countries and asked them to complete exporter questionnaires. Completed exporter questionnaire responses were only received from Dow Canada and Dow USA. Dow Canada and Dow USA agreed to a verification visit and cooperated with the investigation.

8.3 Responses to the statement of essential facts

The Australian industry noted that the Dow Canada and Dow USA exporter visit report was not placed on the public record until four working days prior to publication of the statement of essential facts. It stated that the failure to publish this report earlier disadvantaged the Australian industry as it was unable to properly examine and comment on the visit team's recommendations. Qenos considers that this delay reflects a denial of due process.

Customs and Border Protection aims generally to place all visit reports during an investigation on the public record two weeks before the publication of the statement of essential facts. However it is inevitable that at times, delays occur which make it difficult to meet this timeframe.

In this case the exporter visit took place later than normal due to the unavailability of key accounting staff. Following the visit there were two main issues that further delayed the finalisation of the visit report which ultimately delayed the placing of the non-confidential version on the public record. These were the identification of discrepancies in the dumping calculations and the exporter's request to consider adjustment claims not raised during the verification visit.

At the time of publication of the statement of essential facts, Customs and Border Protection had still not resolved the discrepancies in the dumping calculations. The statement of essential facts brought the issue to the attention of interested parties and advised that it was yet to be resolved. Therefore the preliminary finding of a 1.5% weighted average dumping margin for Dow Canada was a tentative finding pending further examination.

PUBLIC RECORD

Once the issue had been resolved and a revised dumping margin confirmed, Customs and Border Protection promptly advised the Australian industry. Given that Qenos was granted an extension to submit its response to the statement of essential facts² and no issues were raised with the visit report findings or recommendations, Customs and Border Protection does not consider that the Australian industry has been disadvantaged or denied due process.

In response to this claim, Dow Canada and Dow USA stated that Qenos does not explain how publication of the Dow exporter visit report impaired its ability to provide timely comments on the statement of essential facts, which was published at a later date.

8.4 Canada – Dow Canada

8.4.1 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.

Prior to publication of the statement of essential facts, Customs and Border Protection identified anomalies with the export sales data provided by Dow Canada. Customs and Border Protection reviewed the data provided by Dow Canada and found transactions with no quantities and transactions where the invoice value had been duplicated. This data resulted in a higher export price and this issue was raised with Dow Canada. Customs and Border Protection excluded this data and calculated revised export prices.

8.4.2 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.

Subsequent to the visit, Dow Canada claimed that it is more correct to match export prices to Australia with domestic sales in the previous quarter. Customs and Border Protection does not rule out the validity of this claim, but would require verified domestic sales data for the relevant period to compare with export prices during the investigation period. It has therefore rejected this claim.

² Via email on 13 December 2010

PUBLIC RECORD

8.4.3 Dumping margin

The weighted average dumping margin for LLDPE exported from Canada by Dow Canada was 9.0%.

8.5 Canada - other exporters

8.5.1 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.

8.5.2 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 on 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.

8.5.3 Dumping margin

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

8.6 Korea

8.6.1 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.

8.6.2 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.

PUBLIC RECORD

8.6.3 Dumping margin

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

8.7 USA – Dow USA

8.7.1 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.

Customs and Border Protection did not identify any anomalies with the export sales data provided by Dow USA.

8.7.2 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.

Subsequent to the visit, Dow USA claimed that it is more correct to match export prices to Australia with domestic sales in the previous quarter. Customs and Border Protection does not rule out the validity of this claim, but would require verified domestic sales data for the relevant period to compare with export prices during the investigation period. It has therefore rejected this claim.

8.7.3 Dumping margin

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

8.8 USA - other exporters

8.8.1 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.

PUBLIC RECORD

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

8.8.3 Dumping margin

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

PUBLIC RECORD

9 HAS DUMPING CAUSED MATERIAL INJURY

9.1 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, overall 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

PUBLIC RECORD

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.

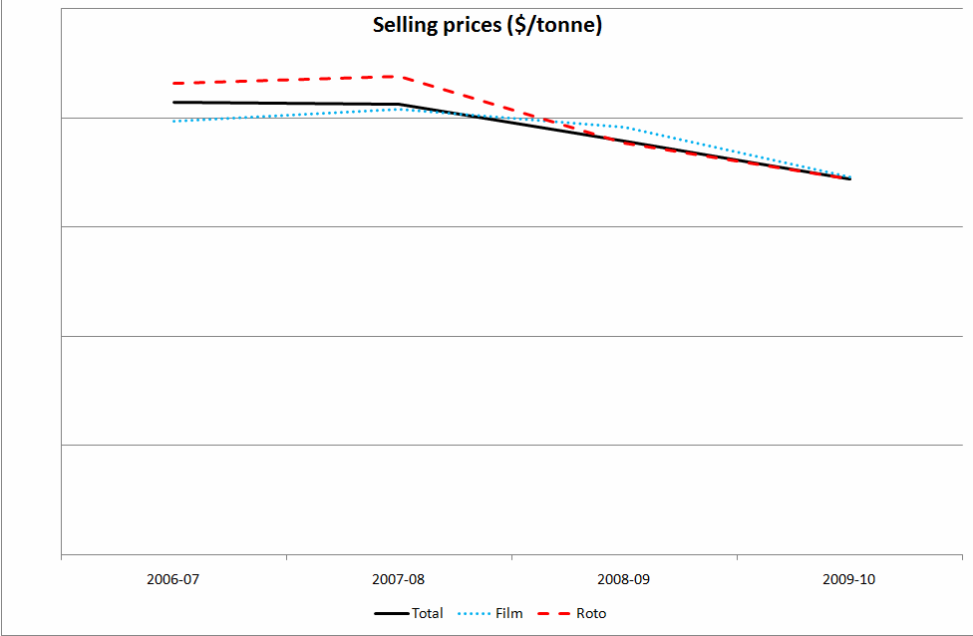
In submissions made during the investigation, the Australian industry continued to claim that it was being pressured by its customers to offer market prices that were competitive with import prices. However, in respect of its film grades of LLDPE, it maintained that there was limited evidence available 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 industry's product, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

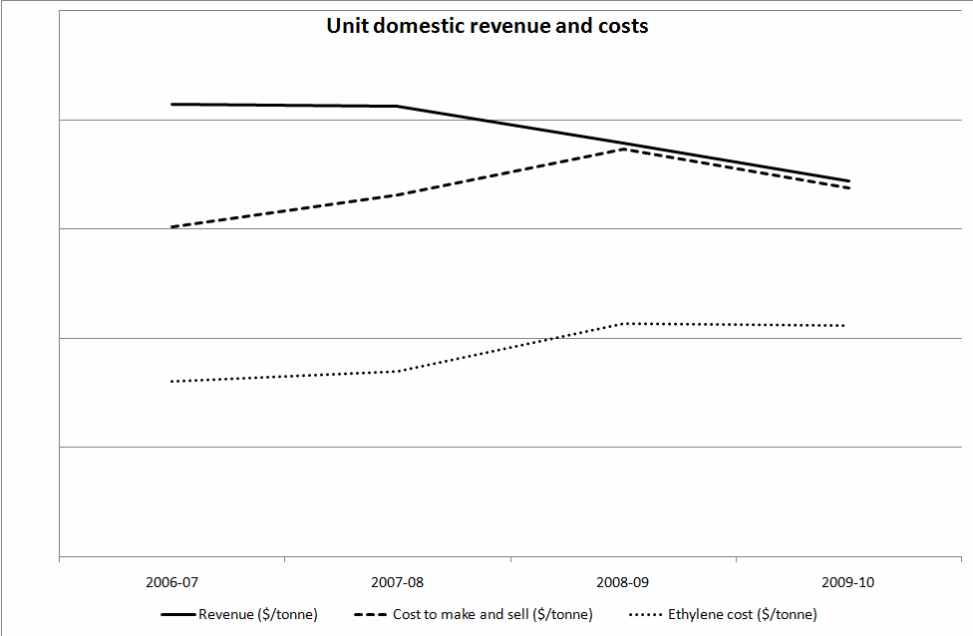
PUBLIC RECORD

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

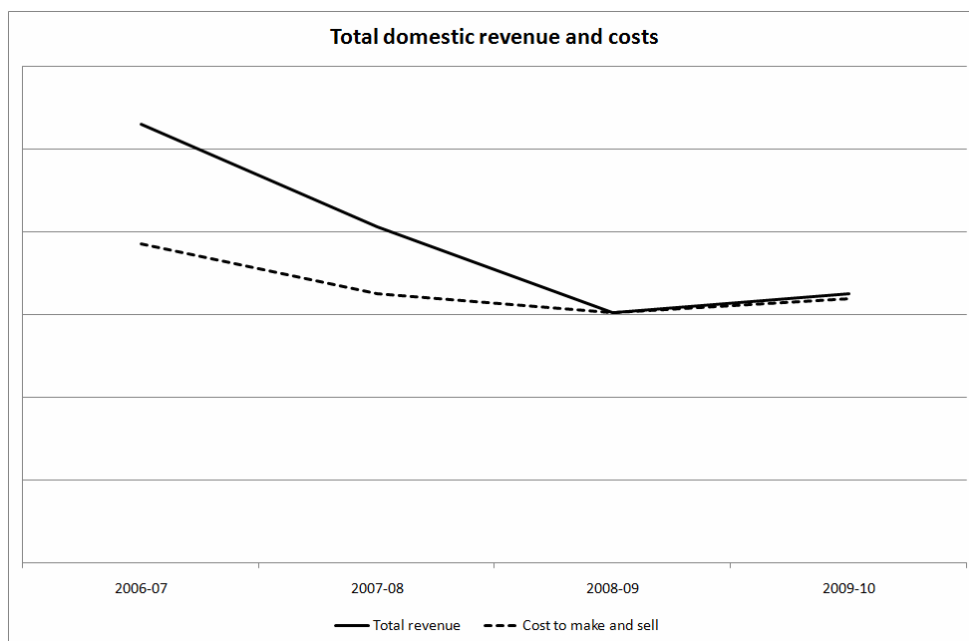


Selling prices fell throughout the period examined. Prices for rotomoulding grades were higher than film grades in 2006-07 and 2007-08, but then fell. Prices for film and rotomoulding grades were similar during the investigation period.

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



PUBLIC RECORD



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 rotomoulding 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 reduce its selling prices (price depression) or hindered from increasing its prices (price suppression) as a consequence of price pressure in the market by imports.

Given the differences in the ways 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.

Causal link (price effects) - film market

Price setting

Customs and Border Protection established that prices for film grade LLDPE sold into the Australian market were generally formula based and have been for at least ten years. 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

PUBLIC RECORD

formulas is a benchmark South East Asian reference price for butene LLDPE published weekly by ICIS.

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 Asian prices being relevant for the Australian market. On its website, ICIS state that for the South East Asian 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 may also 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.

In response to the statement of essential facts the Qenos stated that:

- its prices are set in response to competitive forces;
- if prices aren't competitive with the South East Asian regional export price for LLDPE, its customers will source LLDPE from import sources rather than from the Australian industry;
- the South East Asian regional prices are impacted by excess supply of product in the region meaning that the prices are dumped prices;
- North American and Korean LLDPE exports were sold into the South East Asian region at dumped prices;
- the requirement for Qenos to match these South East Asian dumped prices means that the Australian industry is competing against injurious prices.

In support of these claims, the Australian industry provided documents that it considered highlighted that supply and prices of North American and Korean product impacted quoted South East Asian prices. However, given that this new information was only submitted on 7 January 2011, Customs and Border Protection considered that there was insufficient time to properly investigate and verify the above claims.

Nevertheless, Customs and Border Protection has examined the documents provided along with the claims being made, and makes the following observations.

The documents show that South East Asian regional prices for butene LLDPE were influenced by supply of product from various origins including Iran, Thailand, Philippines, Vietnam, Korea, North America, Malaysia, Japan, Saudi Arabia, Indonesia and Taiwan. There is also commentary in the documents indicating that

PUBLIC RECORD

South East Asian prices were being impacted by price trends in the key China market. The predominant source of LLDPE was of Asian and Middle Eastern origin.

A closer examination of the quoted prices showed that the price of butene LLDPE of Korean origin was higher than all alternative sources in the periods examined with the documents indicating no interest in Korean offers. For the single price quoted for LLDPE of North American origin, it was generally higher than prices from competing product of Asian and Middle Eastern origin.

Given the frequency of price quotes for Asian and Middle Eastern LLDPE in the documents and the fact that they appear to be cheaper than other alternative sources, there is little evidence that butene LLDPE of Korean and North American origin influenced and impacted South East Asian regional export prices.

The Australian industry's claim that these South East Asian regional export prices are dumped prices is also rejected. Dumped goods are defined as any goods exported to Australia that are determined to have been dumped (that is, where the export price of the goods is less than the corresponding normal value). Notwithstanding that dumping is an examination of goods exported to Australia, the following observations are made in response to the Australian industry's claim that South East Asian regional export prices are dumped.

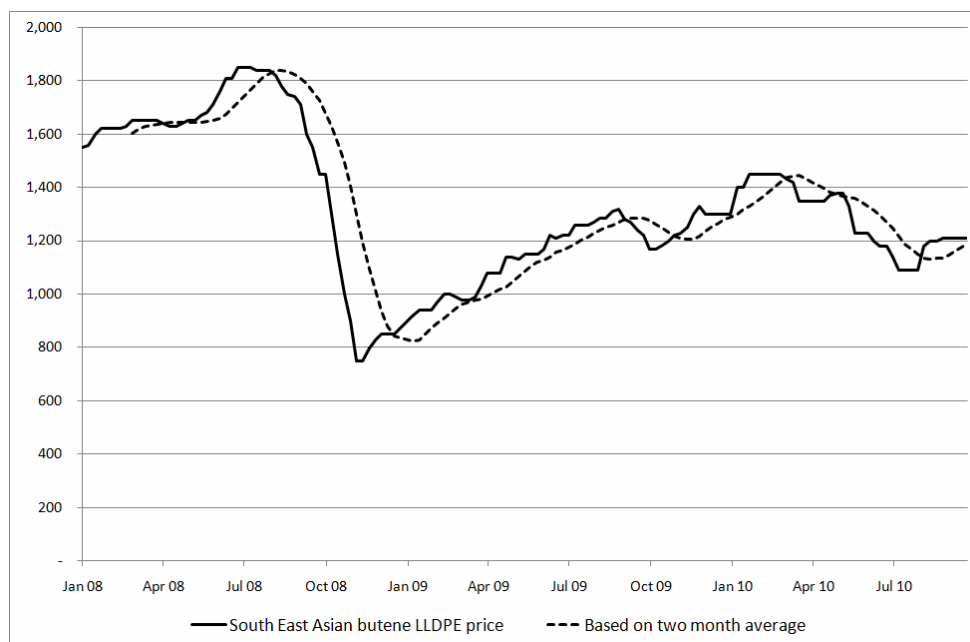
- The South East Asian regional export prices are for butene LLDPE. As there were no exports of butene LLDPE to Australia during the investigation period, Customs and Border Protection has no information on domestic sales of butene LLDPE in Canada, Korea or the USA to ascertain a relevant normal value and whether the goods are dumped.
- The documents provided also reveal that North American product was being offered by Indonesian traders at a price reflecting cost and freight Indonesia delivery terms. This would suggest that the product was originally purchased and imported into Indonesia from North America. An assessment of dumping would require understanding the original export price to Indonesia from North America and not necessarily the export price of the goods after they had entered the commerce of Indonesia.

In summary, ICIS publishes an internationally and industry recognised pricing guide that has formed the basis of Australian market prices for film grade LLDPE for at least ten years. There is little evidence to demonstrate that prices for LLDPE from Canada, Korea and the USA have influenced or impacted South East Asian regional export prices as is claimed. Further, these regional prices represent market prices for polyethylene, which fluctuate with market forces and the price of oil, and no evidence has been presented or found which would support a finding that South East Asian regional export prices are dumped prices.

The methodology for establishing a monthly price was relatively consistent amongst Australian suppliers of LLDPE with the price reflecting an import parity price against South East Asian regional prices. However, different formulas can generate different prices. Dow Australia claimed that the Australian industry used 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

PUBLIC RECORD

market prices. The chart below shows the difference between ICIS weekly prices and prices 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.



The Australian industry also responded to the methods proposed by Customs and Border Protection to the calculation of the unsuppressed selling price for film grade LLDPE. It stated that the proposal to utilise the ICIS published regional export prices was inconsistent with Customs and Border Protection's existing policy and is not listed as one of the three preferred methodologies for unsuppressed selling price determination.

The statement of essential facts outlined an approach for calculating a unsuppressed selling price for film grade LLDPE by constructing a selling price based on the ICIS South East Asian regional price plus import costs plus a suitable premium. Whilst not clear from the Australian industry's submission, it would appear that Qenos considers this approach to be inconsistent with policy as it does not rely on industry's verified cost to make and sell. However the current Dumping and Subsidy Manual (2009) states that Customs and Border Protection will generally construct an unsuppressed selling price using an industry's verified cost to make and sell.

In these circumstances Customs and Border Protection does not consider that a constructed unsuppressed selling price utilising industry's costs would be appropriate. The majority of Qenos' film grade customers are on formula based pricing with the largest customers on either one or two year contracts, suggesting that Qenos could not expect to receive a price reflecting their costs plus a fixed profit margin.

The Australian industry also disagreed with proposed separate unsuppressed selling prices for film and rotomoulding grades and in particular the shift away from the methodology used in previous dumping investigations.

PUBLIC RECORD

Price trends

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 prices were depressed or suppressed, it was primarily a result of movements in the ICIS prices 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 DOWLEX film grades. This chart cannot be published as it would reveal confidential information, but both the Australian industry's and Dow's prices are above, and are consistent with, movements in the ICIS prices.

Price negotiations

Film customers advised that Qenos has agreed to supply LLDPE at regional competitive prices with one of the customers advising that this has been a key component of their contracts with Qenos for at least the past ten years.

On 20 December 2010, Qenos provided details of contract negotiations for polyethylene supply agreements with three of its largest film customers. These documents primarily consisted of internal memos on meetings and discussions with customers as part of on-going contract negotiations. The documents outline views and comments that have been attributed to these customers that Qenos considers supports its claim that market prices for alternative supply of LLDPE were used to extract a better price from the Australian industry.

Customs and Border Protection sought Qenos' approval to discuss the content of the documents with these three customers. On 11 January 2011, Qenos advised that it agreed to Customs and Border Protection contacting the relevant film customers to discuss the matters relating to competitive offers raised in the communications.

On 12 January 2011, Qenos informed Customs and Border Protection that it was concerned that third party discussion of sensitive commercial negotiations is being undertaken with customers and requested that Customs and Border Protection be extremely sensitive to this and confine discussions to the absolute minimum. Qenos suggested that Customs and Border Protection should seek the views of the film customers to the following question.

Did you expect Qenos to be competitively priced with your alternate polyethylene supply alternatives and was this the key objective of your most recent contract negotiations?

An examination of the information provided by Qenos did not reveal any conclusive evidence that demonstrated a link between dumping and injury. There were particular comments attributed to the film customers that Customs and Border Protection would have preferred to put directly to the customers. However, given

PUBLIC RECORD

Qenos' concerns about possibly revealing commercially sensitive information, Customs and Border Protection was only able to pose the question submitted by Qenos and other matters that have been raised since the visit reports were finalised.

Responses from these customers included the following points.

- All three stated that they would not have negotiations based solely on price. Issues such as supply, quality and performance characteristics of the resins were primary factors to be considered as part of any negotiations.
- All three stated that they did not raise competitive import prices with Qenos during these negotiations.
- All three customers have imported other finished products which enabled them to estimate the prices paid for resins by their competitors in the South East Asian region. These prices were linked to ICIS South East Asian prices, not import prices into Australia. These customers had to compete with other film manufacturers in the region and the negotiations revolved around being competitive with South East Asian regional prices.
- One of the customers stated that it was aware of landing costs into Australia and negotiated a reduced component in the formula based on its own experience.
- Two of the customers stated that negotiations focused on recent free trade agreements and the abolishing of the duty rate to be reflected in the pricing formula. Imported packaging products would also be duty free and to remain competitive against regional competitors, the new formula should ensure prices were competitive with South East Asian regional prices.

The statements of the three film customers are consistent with the views of Qenos in that they expect the Australian industry's prices to be competitive with equivalent prices in the South East Asian region. Were Qenos' prices not competitive with their regional competitors, they each claimed that they would be uncompetitive against imports of finished film products, thereby jeopardising existing contracts and ultimately impacting on the volumes they purchase from Qenos.

Price undercutting

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 is most comparable with the Australian industry's own production of film grades and were used for price comparison purposes.

PUBLIC RECORD

Customs and Border Protection also recognises that a price undercutting analysis can be influenced by the mix of grades. Qenos produces a number of grades and similarly there are numerous DOWLEX grades. Prices vary between grades – Customs and Border Protection observed that the price per tonne to particular customers between Qenos' locally produced grades and between the DOWLEX grades varied significantly in any one quarter.

Most of Dow Australia's imports were octene grades of LLDPE, but it did import one hexene grade. Dow Australia's prices for its octene 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. However, except for the September quarter 2009, prices for Dow Australia's hexene DOWLEX grade were below the Australian industry prices.

In response to the statement of essential facts the Australian industry noted that the price undercutting analysis in the Dow Australia visit report established that for two of three film grade customers supplied by both Dow and Qenos, Dow's weighted average LLDPE price was below Qenos' weighted average LLDPE price.

Customs and Border Protection separated Dow Australia's octene and hexene grades. For two of the customers, prices for DOWLEX octene grades were above Qenos' prices. However, prices for DOWLEX hexene grade were below Qenos' prices.

In its response to the statement of essential facts, the Qenos stated that octene grades sell at a premium to hexene grades. It claimed that the absence of a premium confirmed it has experienced price suppression and price undercutting attributable to Dow's octene LLDPE grades. Qenos went on to claim that the premium at which octene based film grade LLDPE is sold in North America should also be evident in Australia.

Dow Australia stated that there are no rigid and specifically predictable premiums between the different co-monomer types because of their different supply and demand dynamics at the time of sale. However, it noted that during the current and previous investigations, the Australian industry claimed that there is a close likeness between its hexene LLDPE and imported octene LLDPE.

Film customers confirmed that an octene LLDPE would be priced at a premium to a hexene LLDPE when examining two comparable grades.

Customs and Border Protection compared domestic prices between Dow's hexene DOWLEX grade and a comparable octene DOWLEX brand. It observed that the octene brand was sold at a premium in Australia, Canada and the USA. The premium in Australia during the investigation period was significant and greater than that in North America.

Customs and Border Protection considers that this price undercutting analysis is inconclusive as:

PUBLIC RECORD

- both Qenos and Dow Australia use formula based pricing;
- prices vary considerably between the various resins produced by Qenos and also within the DOWLEX range sold by Dow Australia; and
- differences between observed prices are much lower than the prices variations observed within Qenos' range of resins and within the DOWLEX range of resins.

Causal link (price effects) - rotomoulding market

Price setting

Prices in the rotomoulding segment of the market are based upon negotiated and contemporaneous prices in the marketplace. Qenos provided correspondence with its major rotomoulding customers and claimed price increases were delayed then abandoned due to the impact of import prices. Selling prices for rotomoulding grades were higher than film grades in 2006-07 and 2007-08, but then fell. Prices for film and rotomoulding grades were similar during the investigation period.

The evidence provided by Qenos supports the claim that dumped imports of rotomoulding LLDPE grades have 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.

Price undercutting

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 higher than the Australian industry's price. In the June quarter 2010 the price of 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.

In response to the statement of essential facts the Qenos stated that this trend could be expected as it reduced its prices against dumped imports to maintain volumes.

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 the investigation period and beyond and that this would be having a corresponding influence on the rotomoulding LLDPE industry.

PUBLIC RECORD

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 ARMA and requested statistics. ARMA provided data that supported 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.

In response to the statement of essential facts the Australian industry stated that apart from capacity utilisation, injury indicators are all price related factors and claimed that the analysis should be confined to price effects. It stated that the contraction of the rotomoulding market is a volume related injury factor. The rotomoulding market has deteriorated to such an extent that supply exceeds demand and presumably many market participants have excess stocks. Customs and Border Protection considers prices would be affected in such circumstances.

9.4.3 Conclusion – price effects

Customs and Border Protection is satisfied that prices for film grades of LLDPE are set with reference to published ICIS South East Asian prices. 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.

In considering all relevant information and taking into account the limited time available to investigate additional information submitted following publication of the statement of essential facts, Customs and Border Protection is of the view that the Australian industry has been unable to demonstrate that dumped imports caused its film grade LLDPE prices to be depressed or suppressed during the investigation period.

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.

Customs and Border Protection 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 is supported by statistics provided by ARMA. That information showed that there is a substantial oversupply of rotomoulding LLDPE in the Australian market. It is reasonable to expect that this

PUBLIC RECORD

imbalance between supply and demand may have ultimately impacted on the Australian industry's prices.

Customs and Border Protection 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 to the injury in the form of price depression and suppression suffered by the Australian industry. Customs and Border Protection is 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.

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. It expanded on these claims in its submission dated 15 September 2010. This submission:

- highlighted its reduced sales volume in the rotomoulding market;
- stated that it had lost sales volumes to three customers in the film market;
- stated that all three of these customers had sourced LLDPE from Canada and the USA; and
- it had lost market share when compared with the period before the global financial crisis.

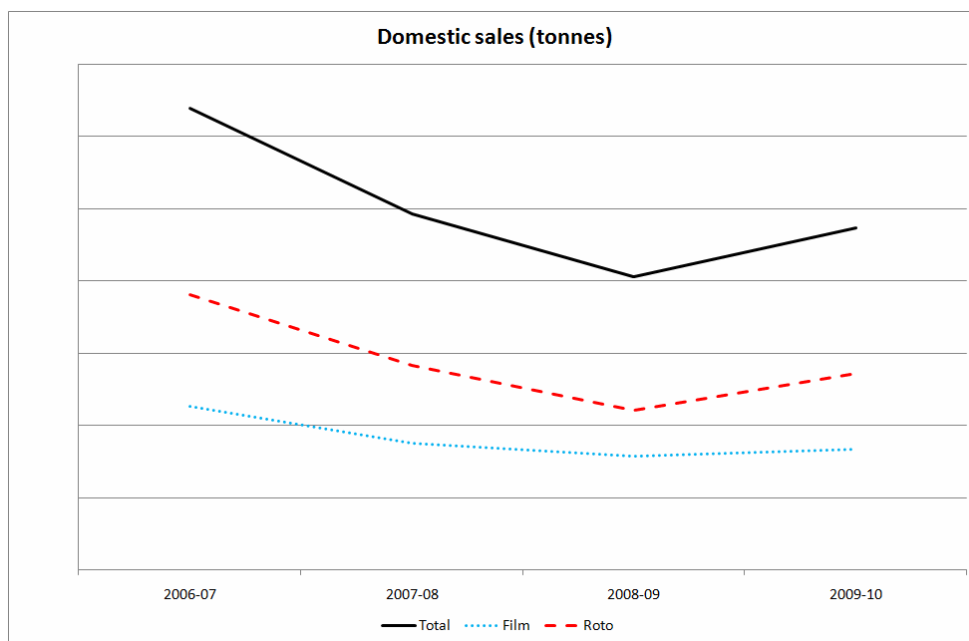
9.5.2 Material injury assessment

The Australian industry's submission of 25 November 2010 contradicts its 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.

Movements in the Australian industry's domestic sales volumes are illustrated in the following chart. Customs and Border Protection notes that rotomoulding grades account for about 60% of the Australian industry's LLDPE sales.

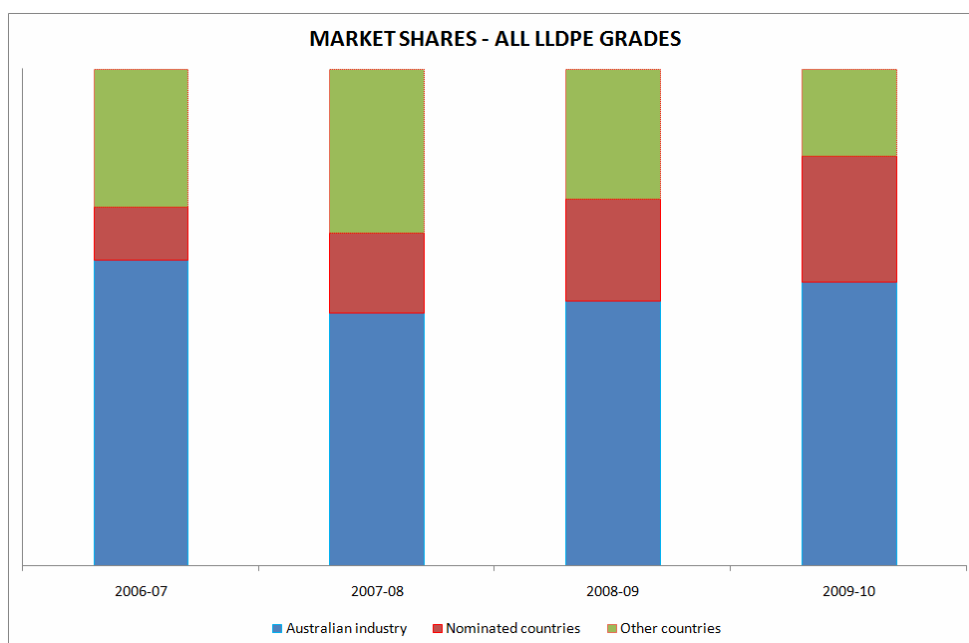
PUBLIC RECORD



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 rotomoulding market and the impact of the global financial crisis (refer to Trade Measures Report No. 146).

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

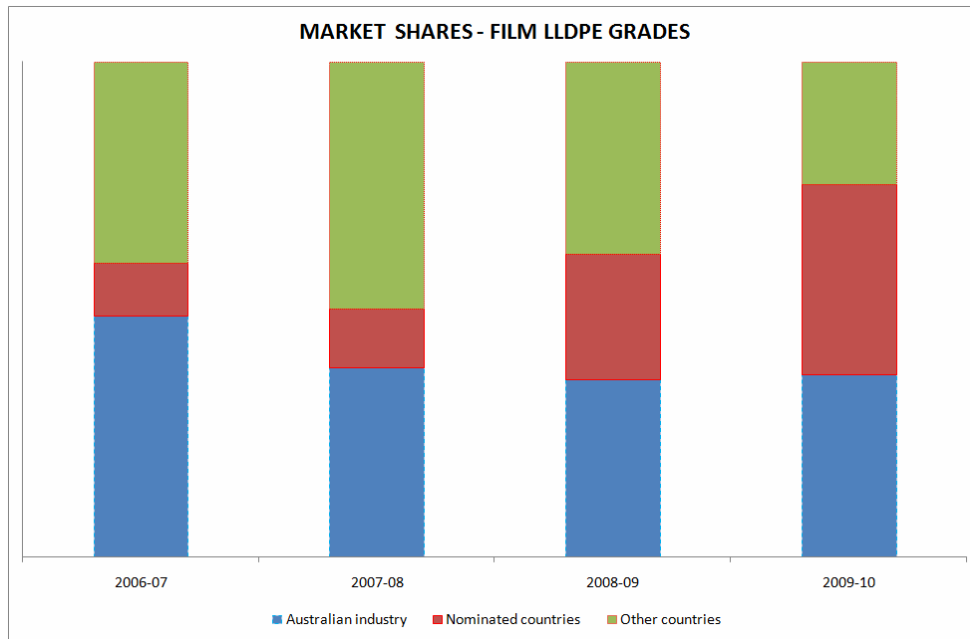
Market shares for all LLDPE grades are illustrated in the following chart.



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 rose in 2007-09 then fell in 2008-09 and 2009-10.

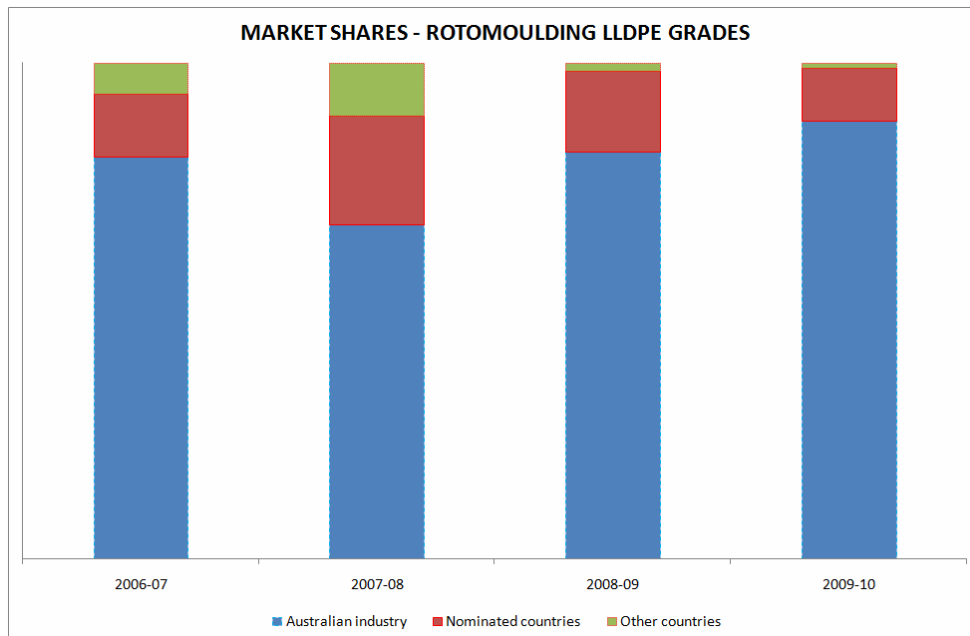
PUBLIC RECORD

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 rose in 2007-09 then fell in 2008-09 and 2009-10.

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.

PUBLIC RECORD

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

Causal link (volume effects) - film market

The film market has been relatively stable in recent years. It was less affected by the global financial 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.

In response to the statement of essential facts the Qenos commented on the blow out in inventories by Dow Australia. It stated that Dow Australia sourced imports on the expectation that it would sell increased volumes, but was caught with high inventory levels as Qenos responded to increased imports. Qenos claimed the blow out in inventories was not an inadvertent error. Customs and Border Protection discussed this issue with Dow Australia during and subsequent to the visit. Dow Australia confirmed that it intended to sell all LLDPE it imported, but advised that in this period a number of orders were duplicated.

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.

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.

In response to the statement of essential facts the Qenos claimed it is not relevant to state that increased exports from Canada and the USA have merely substituted exports from other countries. These imports replaced imports from Thailand which are subject to anti-dumping measures. Customs and Border Protection notes that virtually all exports from Thailand to Australia during the investigation period were from one supplier. This exporter has been an exempt exporter since July 2008 following consideration of certain matters by the Federal Court.

PUBLIC RECORD

Causal link (volume effects) - rotomoulding market

Customs and Border Protection estimated the size of the Australian rotomoulding market using sales by the Australian industry and import data obtained from its import data base, excluding imports by the Australian industry³. The size of the market fell by 11% in 2006-07, fell 36% in 2008-09 and rose by 14% in 2009-10.

In response to the statement of essential facts, Qenos expressed concern at the statement that the rotomoulding market had been in decline since 2006-07, particularly considering the 2007 boom on the back of high demand for water tanks. Customs and Border Protection has reviewed its calculations and confirmed that the data relied on is accurate.

During the visit to the Australian industry, Qenos 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. All shipments described as medium density polyethylene were treated as LLDPE and considered to be the goods. However, most imports were clearly described as LDPE or HDPE.

In response to the statement of essential facts, Qenos claimed that Customs and Border Protection had underestimated the volume of imports of rotomoulding grades from Chevron Phillips and that goods described as LDPE were in fact LLDPE. Chevron Phillips did not cooperate with the investigation and to pursue this matter now would prevent the timely preparation of the report. Therefore, Customs and Border Protection has no reason to conclude that these imports were LLDPE.

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 2009-10.

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.

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 the Australian industry has gained market share at the expense of price.

³ Customs and Border Protection used the Australian industry's sales of imports.

PUBLIC RECORD

9.5.3 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 finds that dumped imports did not cause material injury to the Australian industry in the form of lost sales or reduced market share.

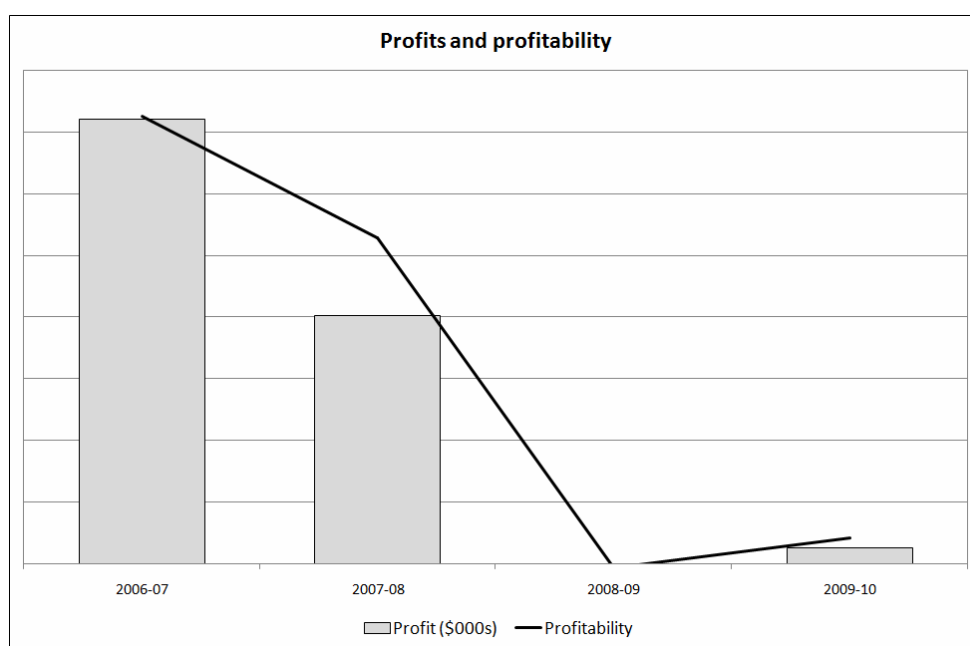
9.6 Profit and profitability effects

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 Material injury 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.

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.

PUBLIC RECORD

Assets

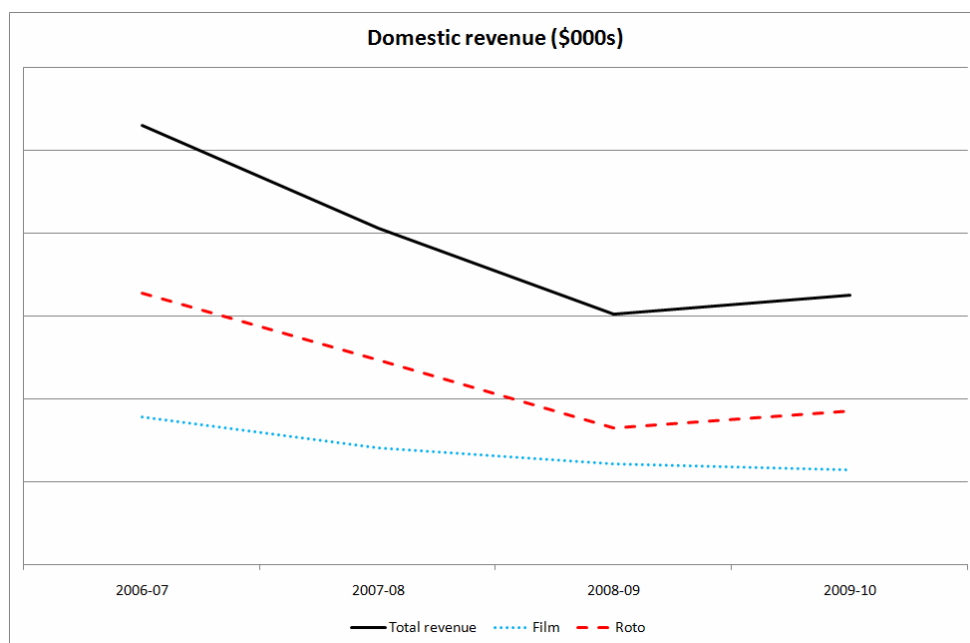
The written down value of the Australian industry's LLDPE plant fell each year.

Capital investment

The Australian industry measured capital employed as the sum of property, plant and equipment, inventories and working capital for its LLDPE 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.

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

PUBLIC RECORD

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.

9.7.1 Conclusion – other injury factors

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

9.8 Other possible causes of injury

A number of issues were raised during the investigation which interested parties claimed would explain in part the injury claimed to have been experienced by Qenos. Interested parties considered that these factors would have impacted on the Australian industry's prices and volumes.

PUBLIC RECORD

Environmental concerns

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

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.

In response to the statement of essential facts the Australian industry stated that apart from capacity utilisation, injury indicators are all price related factors and claimed that the analysis should be confined to price effects. It stated that the Australian Packaging Covenant is a volume related injury factor. Based on discussions with film manufacturers, Customs and Border Protection considers that the Australian Packaging Covenant affects purchasing decisions.

PUBLIC RECORD

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 Australian Packaging Covenant.

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 Australian Packaging Covenant.

The Aperio Group (Australia) Pty Ltd (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 imported resins, which is important when using bar code readers on pallets stacked in a warehouse.

In response to the statement of essential facts Qenos stated that apart from capacity utilisation, injury indicators are all price related factors and claimed that the analysis should be confined to price effects. It stated that performance requirements is a volume related injury factor. Based on discussions with film manufacturers, Customs and Border Protection considers that performance requirements affect purchasing

PUBLIC RECORD

decisions, and that at times performance requirements are one of the main considerations when making purchasing decisions.

Film manufacturers stated that even if imported resins were more expensive, end user performance requirements would preclude the use of Genos resins in certain applications.

Competitive pressures

Customs and Border Protection visited three end users of 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 Asian 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. 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.

9.9 Conclusion – is the injury attributable to dumping material?

Prior to recommending that the Minister impose dumping duties on the goods under investigation, Customs and Border Protection 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.

PUBLIC RECORD

Customs and Border Protection is satisfied that the exports of film grade LLDPE from Canada, Korea and the USA at dumped prices did not cause material injury to the Australian industry in the film LLDPE market. Injury to Qenos' film grade LLDPE was found to have been caused by factors other than dumping.

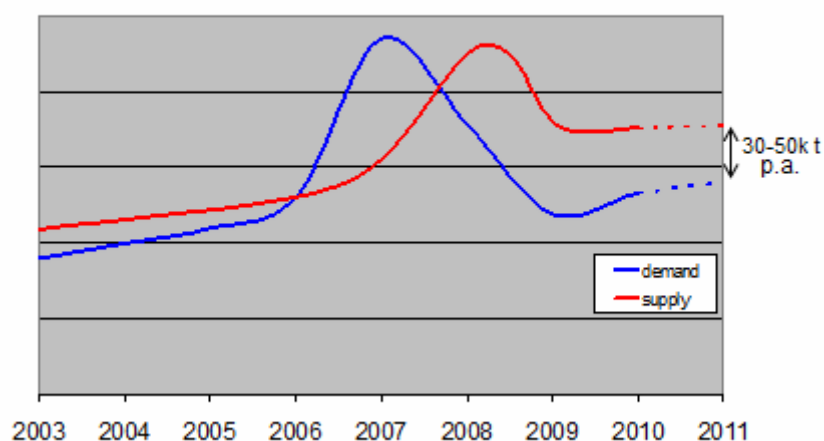
In the rotomoulding LLDPE market, it was found that whilst the continued deterioration in the water tank market contributed to the Australian industry's weaker performance, exports of rotomoulding grades of LLDPE from Canada, Korea and the USA at dumped prices also caused injury to the Australian industry in the rotomoulding market.

In assessing whether the injury attributable to dumping was material, Customs and Border Protection has firstly examined the effect that the deterioration in the water tank market has had on the Australian industry's prices and profits.

In Report No. 146⁴, Customs and Border Protection found that the global financial crisis and the downturn in the water tank market had contributed to the injury experienced by the Australia industry in the rotomoulding market. Over the period of investigation (1 January 2008 to 31 March 2009), dumped exports were found to have caused only negligible injury.

Information provided to this investigation by ARMA clearly highlights the boom and bust market conditions experienced in the rotomoulding market over recent years. It shows the impact that the boom in the water tank market had on the rotomoulding market with demand significantly outstripping supply. This demand was driven by the ongoing drought conditions and government incentives to households installing water tanks. During this period, profits achieved by Qenos on its sales of rotomoulding grade LLDPE were substantial.

Supply vs Demand



⁴ November 2009 – Dumping investigation into LLDPE exported from Canada and the USA

PUBLIC RECORD

The subsequent year saw the impact of the global financial crisis and the commencement of the downturn in the water tank market. The collapse in the water tank market has been largely attributed to the removal of government incentives. From 2008 the rotomoulding market experienced a significant oversupply, which ultimately led to depressed prices. In 2008-09 these factors had a significant impact on the Australian industry's performance with profitability falling to marginal levels.

As outlined earlier in this report, ARMA advised that 80% of rotomoulding LLDPE is used in the production of water tanks. ARMA estimates that the decline in the number of companies manufacturing poly water tanks is greater than 20% since 2007. It also estimated that supply continued to exceed demand in the rotomoulding market by 30,000 to 50,000 tonnes per annum in 2010. Interested parties commented that demand for water tanks continued to remain flat in 2010 due to the improving weather conditions which saw increased rainfalls along Australia's east coast.

From the information provided by ARMA, it appears that the estimated oversupply in 2010 reduced when compared to 2008 and 2009. This is consistent with the movement in the Australian industry's profitability which saw a marginal improvement in the 2009-10 investigation period.

Therefore Customs and Border Protection finds that the factors that were previously found to have caused material injury to the Australian industry's sales of rotomoulding grades of LLDPE, being the global financial crisis and the downturn in the water tank market, continued to heavily impact on Qenos' performance. Customs and Border Protection considers that had imports of rotomoulding grade LLDPE not been offered in the market at dumped prices, Qenos' prices would not have returned to levels prior to the boom in the water tank market. Customs and Border Protection believes that the Australian industry would in such circumstances, have seen only slight price increases, with the continuing oversupply keeping prices suppressed.

Therefore Customs and Border Protection is satisfied that factors other than dumping were the predominant causes of the injury to the Australian industry in the rotomoulding market and that the injury attributable to dumping was not material.

Despite this primary finding that dumping did not cause material injury to the Australian industry in the rotomoulding market, Customs and Border Protection undertook secondary analysis as a means of further validating its primary finding. In this case Customs and Border Protection undertook two further assessments using unsuppressed selling prices and non-injurious prices.

Comparison of non-injurious price vs export prices

The unsuppressed selling price is primarily used to calculate a non-injurious price which provides the mechanism for consideration of the lesser duty provision where the imposition of dumping duties is being recommended. However a comparison of non-injurious prices and export prices can also provide a useful insight into the degree of injury caused by the dumped export prices.

The statement of essential facts outlined the proposed methods to be used in calculating unsuppressed selling prices. Customs and Border Protection sought the

PUBLIC RECORD

views of interested parties on the proposed unsuppressed selling price methodology and the appropriate profit to be included.

It is common for unsuppressed selling prices to be calculated for various grades, models or types of goods. This is typically done when prices vary considerably between the grades or models. In this case, Customs and Border Protection has chosen to determine a separate unsuppressed selling price for rotomoulding grade LLDPE as injury caused by dumping was only found in that particular segment.

Given that other factors were found to have caused injury to the Australian industry in the film segment, Customs and Border Protection has not calculated an unsuppressed selling price for film grade LLDPE.

In considering an appropriate amount of profit in constructing the unsuppressed selling price, Customs and Border Protection notes the fluctuating market conditions in the rotomoulding segment over the past few years. The Australian industry submitted that profits achieved in 2007 were suitable. That period is rejected as profits in that year were likely substantially inflated by the extraordinary conditions at the time, which do not appear evident during the investigation period of 2009-10.

Profits achieved by the Australian industry prior to 2007 are also considered inappropriate as there is little information or understanding of the market conditions in the rotomoulding market during these earlier years to properly assess whether they are an appropriate benchmark for the current investigation period.

In the absence of any suitable verified profit achieved by the Australian industry in a market unaffected by dumping, Customs and Border Protection has referred to data published by the Australian Bureau of Statistics relating to the chemical manufacturing industry. The average profit achieved by the chemical industry was approximately 9.2% over the three financial years from 2004-05 to 2006-07⁵.

To calculate a non-injurious price, necessary deductions for importation expenses, ocean freight and marine insurance were made to the unsuppressed selling price based on verified information obtained from a cooperating importer. A comparison of the non-injurious price with weighted average export prices of rotomoulding grades of LLDPE showed that the non-injurious price was less than export prices determined for Korean exports and equal to export prices determined from North America exports.

This supports a finding that dumped export prices for rotomoulding grades were non-injurious.

Comparison of unsuppressed selling prices vs Qenos' actual selling prices

Using the Australian industry's sales to the five largest rotomoulding customers during the investigation period, Customs and Border Protection has estimated the revenue that would have been generated if Qenos had achieved sales at the unsuppressed selling price. This estimate of potential revenue was compared with

⁵ ABS Catalogue 8221.0 – Manufacturing Industry, Australia, 2006-07 (Table 1.1)

PUBLIC RECORD

Qenos' actual revenue over the same period to calculate the amount of lost potential revenue that could be attributed to dumping. This will provide an estimate of the amount of suppression of Australian industry's rotomoulding grade selling prices that can be attributed to dumping.

When expressed as a percentage of Qenos' total revenue for like goods over the investigation period (including sales of both film and rotomoulding grades), the amount of lost potential revenue was calculated at 3%. Customs and Border Protection considers that this level of lost potential revenue is not material and further supports the primary finding that injury to the Australian industry producing like goods caused by dumped exports from Canada, Korea and the USA is negligible.

PUBLIC RECORD

10 TERMINATION

The CEO is satisfied that exports of LLDPE from Canada, Korea and the USA were exported to Australia at dumped prices which were not negligible. The CEO is also satisfied that the injury that has been caused by that dumping is negligible.

In accordance with s. 269TDA(13) the investigation has been terminated.