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

R E P O R T

TRADE MEASURES BRANCH

TERMINATION REPORT NO.146

TERMINATION OF DUMPING INVESTIGATION

**LINEAR LOW DENSITY POLYETHYLENE
EXPORTED FROM
CANADA AND THE UNITED STATES OF AMERICA**

20 NOVEMBER 2009

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Abbreviations

ACDN	Australian Customs Dumping Notice
Aperio	Aperio Group Pty Ltd
AUD	Australian Dollars
Courtenay Polymers	Courtenay Polymers Pty Ltd
CPChem	Chevron Phillips Chemical Company
CTMS	Cost To Make & Sell
Customs and Border Protection	Australian Customs and Border Protection Service
DCAL	Dow Chemical (Limited) Australia
DCC	Dow Chemical Canada
Dow	TDCC, DCC, & DCAL collectively
EMCC	ExxonMobil Chemical Company
Entec	Entec Polymers LLC
FOB	Free On Board
Formosa	Formosa Plastics Corporation
g/cm ³	grams per cubic centimetre
GFC	Global financial crisis
HDPE	High density polyethylene
LDPE	Low density polyethylene
LLDPE	Linear low density polyethylene
MDPE	Medium density polyethylene
MPE	Metallocene Polyethylene
NIP	Non-injurious Price
NOVA	NOVA Chemicals Corporation
Qenos	Qenos Pty Ltd
SEF	Statement of essential facts
SPE	Siam Polyethylene Co Ltd
Tariff Act	<i>Customs Tariff Act 1995</i>
TCO	Tariff Concessions Order
TDCC	The Dow Chemical Company
The Act	<i>Customs Act 1901</i>
the goods	the goods the subject of the application

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the Minister	the Minister for Home Affairs
USA	United States of America
USD	US Dollars
USP	Unsuppressed Selling Price
Vanglobe	Vanglobe Pty Ltd

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1 Summary and recommendations

This report provides the results of our investigation into allegations that linear low density polyethylene (LLDPE) have been exported to Australia from Canada and the United States of America (USA) at dumped prices, and that the dumping has caused, or threatens to cause, material injury to the Australian industry producing like goods.

1.1 Recommendations

We recommend that the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) be satisfied that:

- there has been, or may be, dumping of some or all of the goods; but
- the injury, if any, to the Australian industry, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible.

If the CEO accepts this recommendation, the CEO must terminate the dumping investigation, sign the attached instrument at **Confidential Appendix A** and publish the attached notice at **Appendix B**.

1.2 Application of law to facts

Division 2 of Part XVB of the *Customs Act 1901* (the Act¹) sets out procedures for the consideration of anti-dumping matters by the CEO.

1.2.1 The role of the Trade Measures Branch

We, the Trade Measures Branch is responsible for conducting a dumping investigation as to whether the goods have been exported at dumped prices and whether that dumping has caused material injury to the Australian industry producing like goods.

Relevantly, if during the course of the dumping investigation, we find that:

- there has been no dumping by an exporter of any of the goods or there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%²;
- the total volume of goods the subject of the application, that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export and that have been or may be dumped, is negligible³; or

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

² Section 269TDA(1).

³ Section 269TDA(3).

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- there has been, or may be, dumping of some or all of those goods but the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible⁴;

we must recommend that the CEO terminate the dumping investigation so far as it relates to that exporter or country.

1.2.2 The role of the CEO of Customs and Border Protection

After receiving and having regard to the report from Trade measures Branch, you, the CEO, must terminate the dumping investigation so far as it relates to that exporter or country if satisfied that:

- dumping margins are negligible (exporter);
- negligible volumes of dumping are found (country); or
- dumping causes negligible injury (country).

If the CEO decides to terminate a dumping investigation, the CEO must give public notice of that decision⁵.

The CEO's powers have been delegated to certain officers of the Trade Measures Branch⁶.

1.2.3 Findings and conclusions

We undertook an investigation into the Australian industry's claims that LLDPE have been exported to Australia from Canada and the USA at dumped prices, and that the dumping has caused material injury to the Australian industry producing like goods.

During the investigation, we examined and verified information from the Australian industry, importers, and exporters, considered submissions from interested parties, and analysed data from the Customs and Border Protection import database.

We are satisfied that:

- LLDPE manufactured or produced by Qenos Pty Ltd (Qenos) are like goods as defined by subsection 269T(1);
- the like goods were wholly manufactured in Australia as defined by subsection 269T(2);
- a substantial process of manufacture was carried out in Australia by Qenos in accordance with subsection 269T(3); and
- there is an Australian industry consisting of persons who produce like goods in Australia as defined in subsection 269T(4) in the form of Qenos.

Our reasons for being so satisfied are set out in Section 4 of this report.

⁴ Section 269TDA(13).

⁵ Section 269TDA(15).

⁶ In this case, the relevant delegate is Geoffrey Gleeson.

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We are satisfied that LLDPE exported from Canada and the USA were at dumped prices; the dumping margins are not negligible in terms of subsection 269TDA(1); and the volume of dumped goods is not negligible in terms of subsection 269TDA(4). Our reasons for being so satisfied are set out in Section 6 of this report.

We are satisfied that the Australian industry has experienced injury in the form of lost sales volume; lost market share; price depression, except for film LLDPE; price suppression; reduced profits and profitability; and reduced sales revenue, capacity utilisation and return on investment. Our reasons for being so satisfied are set out in Section 7 of this report.

We considered that injury to the Australian industry has been caused by a factor other than the exportation of the goods as provided for under subsection 269TAE(2A) and are satisfied that the injury to the Australian industry that has been caused by dumped imports is negligible in terms of subsection 269TDA(13). Our reasons for being so satisfied are set out in Section 8 of this report.

We are not satisfied that material injury is threatened to an Australian industry because of the exportation of the goods into the Australian market. In making this finding, we have taken into account only such changes in circumstances as would make that injury foreseeable and imminent unless dumping measures were imposed, in accordance with subsection 269TAE(2B). Our reasons for not being so satisfied are set out in Section 9 of this report.

2 Background

On 7 April 2009, Qenos lodged an application under section 269TB. Additional information was received on 28 April and 12 May 2009.

The application requested that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of LLDPE exported to Australia from Canada and the USA.

Qenos claimed that the allegedly dumped exports of LLDPE from Canada and the USA have caused material injury in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- price undercutting;
- reduced profits and profitability; and
- reduced return on investment.

Public notification of initiation of the investigation was made on 28 May 2009 with a notice in *The Australian* newspaper and Australian Customs Dumping Notice (ACDN) No. 2009/12, which is available on the internet at www.customs.gov.au.

The investigation period was 1 January 2008 to 31 March 2009. We examined exports to Australia of the goods during that period to determine whether dumping had occurred. We examined the period from 1 January 2006 for injury analysis.

The initiation notice advised that the statement of essential facts (SEF) for the investigation would be placed on the public record by 15 September 2009. Due to the complexity of the issues surrounding the investigation, as well as extensions of time to various interested parties to supply information, Customs and Border Protection requested the Minister grant an extension of the deadline for the publication of the SEF.

The Minister, under section 269ZHI, extended the deadline for the publication of the SEF to 13 October 2009. ACDN No. 2009/29 was issued on 11 September 2009 notifying of the Minister's decision and interested parties were also separately notified.

The SEF was published on 13 October 2009 and is available on the internet at www.customs.gov.au.

2.1 Previous LLDPE cases

There have been a number of previous dumping investigations, reviews, accelerated reviews and continuation inquires into anti-dumping measures applicable to LLDPE, as detailed below:

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- Trade Measures Report No. 8 of 2000 – Investigation into LLDPE from the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Malaysia and Saudi Arabia. Anti-dumping measures were imposed on all exporters from Indonesia;
- Trade Measures Report No. 67 of 2003 – Investigation into LLDPE from Korea and Thailand. Anti-dumping measures were imposed on all exporters from Thailand and all exporters from Korea except Hyundai Petrochemical Corporation;
- Trade Measures Report No. 88 of 2005 – Investigation into LLDPE from Canada. The investigation was terminated due to negligible injury caused by dumping;
- Trade Measures Report No. 89 of 2005 – Review of anti-dumping measures applying to LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 95 of 2005 – Continuation inquiry into LLDPE exported from Indonesia. Anti-dumping measures were 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 anti-dumping measures applying to LLDPE exported from Indonesia, Korea and Thailand; and
- Trade Measures Report No. 137 of 2008 – Continuation inquiry into LLDPE exported from Korea and Thailand. Anti-dumping measures were continued for Thailand⁷ and allowed to expire for Korea.

Measures are currently imposed on imports of LLDPE from Indonesia, subject to a continuation inquiry that was initiated on 12 October 2009.

⁷ In August 2009, as a result of a Federal Court judgement, the Ministerial decision in respect of the continuation of the anti-dumping measures for LLDPE exported by Siam Polyethylene Co Ltd (SPE) from Thailand was set aside. As a result the anti-dumping measures applicable to LLDPE exported by SPE from Thailand have expired.

3 The Goods

3.1 The goods the subject of the application

3.1.1 Description

The imported goods the subject of the application (the goods) are linear low density polyethylene (LLDPE), in various grades, in a 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).

3.1.2 Tariff classification

Qenos identified the goods as 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 polymer content. Goods imported under this subheading from Canada or the USA are duty free. This classification was confirmed by the Customs and Border Protection Tariff Operations Section.

There are four Tariff Concessions Orders (TCOs) linked to 3901.10.00. The following table provides identifiable characteristics for the 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 min
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
9600312	Density 0.93 grams per cubic centimetre or greater and molecular weight 2,300,000 or greater

Qenos stated that out of the four TCOs listed above, only TCO 9103765 falls within the description of the goods and can compete directly with LLDPE manufactured by Qenos.

However, we do not consider that TCO 9103765 falls under the description of the goods as it is a compound (see section 3.4 below).

3.2 Metallocene polyethylene

We received numerous submissions during the investigation from interested parties regarding metallocene polyethylene (MPE). In particular, the issues raised concern (1) whether MPE falls under the description of the goods; and (2) if MPE does fall under the description of the goods, whether the Australian industry produces like goods. This section will address the first issue. The second issue will be addressed in section 8.7 below.

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Qenos claimed that MPE is a LLDPE resin and falls under the description of the goods. It stated that MPE commonly refers to LLDPE that is produced with metallocene as the catalyst, as opposed to a Ziegler-Natta catalyst.

However, other interested parties have asserted that MPE is not a LLDPE resin, highlighting, among other things, the differences in production process, molecular structure, end use, quality, and pricing.

3.2.1 Assessment in the SEF

We noted that there was consensus amongst interested parties that MPE is imported in a pelletised form and has a density of less than 0.94g/cm^3 .

There was also consensus amongst interested parties, and supported by the report by Dr John Scheirs of ExcelPlas⁸, that:

- MPE is produced by the polymerisation of ethylene with co-monomers in the presence of catalysts; and
- conventional LLDPE uses a Ziegler-Natta catalyst while MPE uses a metallocene catalyst.

We also noted that in the application, Qenos describes LLDPE as being produced by the polymerisation of ethylene gas with co-monomers (C4, C6, C8), in the presence of various catalysts at controlled pressures and temperatures.

Having regard to the facts that MPE was imported in pelletised form, has a density of less than 0.94g/cm^3 and is produced by the polymerisation of ethylene with co-monomers, we considered that MPE fell within the description of the goods, regardless of whether certain interested parties consider MPE a LLDPE resin.

3.2.2 Responses to the SEF

DCAL

Dow Chemical (Australia) Limited (DCAL) stated that it believes MPE should have been removed from the goods under consideration. It stated that: the MPE produced by Dow cannot be categorised in any manner as a LLDPE; and that the LLDPE manufactured by Qenos cannot be categorised as like goods to Dow's MPE.

Dow

The Dow Chemical Company (TDCC) & Dow Chemical Canada (DCC) (collectively Dow) objected to our finding that MPE falls within the description of the goods. It stated that we should more carefully consider the arguments and evidence submitted during the investigation period that MPE is not LLDPE. It also argued that we should address the fact that Qenos does not, and cannot, produce MPE and that Qenos actually imported MPE from the USA during the investigation period.

⁸ We engaged Dr Scheirs for independent advice on the goods. This report is available on the public record.

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3.2.3 Consideration of the responses

As discussed in the SEF, we consider that Qenos' definition of LLDPE in its application covers MPE. We note, as did in the SEF, that some interested parties do not regard MPE as a LLDPE resin. The issue is not whether MPE is a LLDPE resin, but rather whether MPE fits within the goods as described in the application. We did not receive any submissions refuting our assessment in the SEF that MPE was imported in pelletised form, has a density of less than 0.94g/cm^3 , and is produced by the polymerisation of ethylene with co-monomers.

The argument that MPE should be excluded because Qenos does not produce MPE is irrelevant in assessing whether MPE is the goods subject of the application. Therefore, we maintain our assessment that MPE falls within the description of the goods.

3.3 Medium density polyethylene

Qenos claimed that an exporter, Chevron Phillips, exports LLDPE to Australia described as medium density polyethylene (MDPE) and this product has the same characteristics as LLDPE, including a density of less than 0.94g/cm^3 .

Chevron Phillips, however, claimed that polyethylene products with densities of less than 0.94g/cm^3 are not all LLDPE products, and such a threshold applies to MDPE and low density polyethylene (LDPE), as well as LLDPE. It asserts that its imports are designated, labelled, promoted and sold as MDPE, and that MDPE does not fall under the description of the goods. Chevron Phillips also quoted from the ExcelPlas report, which stated that 'although LLDPE and MDPE both lie between the polyethylene density extremes of LDPE and HDPE, LLDPE is not MDPE'.

3.3.1 Assessment in the SEF

We noted that the difference between LDPE and LLDPE is that LLDPE is polymerised with co-monomers, whereas LDPE does not contain co-monomers and as such does not fall under the description of the goods. However, the MDPE imported by Chevron Phillips contains hexene co-monomers.

We also noted that the ExcelPlas report states that MDPE is 'extensively used in its extrusion grade for the manufacture of plastic gas and water pipes' and is 'typically used in gas pipes and fittings, sacks, shrink film, packaging film, carrier bags, screw closures'. However, we understand that the MDPE imported by Chevron Phillips is supplied into the rotational moulding market, which competes directly with the LLDPE produced by Qenos.

We considered that the discrepancies may be the result of a combination of differences between Australia and the USA in terminology used for the same product, and the same terminology used for different products. In addition, the MDPE imported by Chevron Phillips is produced by the polymerisation of ethylene with co-monomers in the presence of catalysts.

Having regard to the facts that MDPE was imported in pelletised form, has a density of less than 0.94g/cm^3 , and is produced by the polymerisation of ethylene with co-

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monomers, we considered that MDPE falls within the description of the goods, regardless of whether certain interested parties consider MDPE a LLDPE resin.

3.3.2 Responses to the SEF

NOVA

NOVA argued that we should have treated its Octene product RMs-539U/UG as falling outside the goods under consideration. It asserted that this product is defined as a medium-density polyethylene and that a report by ExcelPlas stated that LLDPE is not MDPE. It contended that as the anti-dumping application describes the goods, among other things, as LLDPE, MDPE should not be considered as the goods.

3.3.3 Consideration of the responses

Similar to our assessment of MPE above, we consider that MDPE is covered by the description of the goods as described by Qenos in its application. Simply stating that a product is not the goods because it is labelled differently is not a valid reason to exclude the product. We did not receive any submissions refuting our assessment in the SEF that MDPE was imported in pelletised form, has a density of less than 0.94g/cm^3 , and is produced by the polymerisation of ethylene with co-monomers. Therefore, we maintain our assessment that MDPE falls within the description of the goods.

3.4 Masterbatch and compounds

Qenos claimed that masterbatch and compound LLDPE fall within the definition of the goods as these predominantly consist of LLDPE.

Other interested parties have asserted that compounds and masterbatches are not LLDPE resins and do not fall within the description of the goods. In addition, Dow and DCAL argued that the polyethylene component of compounds and masterbatches is materially altered by the addition of additives and undergoes additional processes.

3.4.1 Assessment in the SEF

We noted the submission of 14 July 2009 by Qenos which stated that 'compounding of LLDPE is a process that occurs following purchase of the raw material LLDPE in its primary form ... further value-adding of LLDPE via the compounding or inclusion of additives transforms the raw material LLDPE from its original state.' As these products undergo a significant change to their essential characteristics, we considered that compounds and masterbatches do not fall within the description of the goods.

3.4.2 Responses to the SEF

We did not receive any specific submissions in response to the SEF in relation to our assessment on masterbatch and compounds.

4 Australian industry

We are satisfied that:

- LLDPE manufactured or produced by Qenos Pty Ltd (Qenos) are like goods as defined by subsection 269T(1);
- the like goods were wholly manufactured in Australia as defined by subsection 269T(2);
- a substantial process of manufacture was carried out in Australia by Qenos in accordance with subsection 269T(3); and
- there is an Australian industry consisting of persons who produce like goods in Australia as defined in subsection 269T(4) in the form of Qenos.

4.1 Legislative framework

Subsection 269T(4) provides that if there is a person or there are persons who produce like goods in Australia, then there is an Australian industry in respect of those like goods.

Subsections 269T(2) and 269T(3) specify that for goods to be taken as produced in Australia:

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

Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'.

4.2 Manufacturing/production process

Qenos stated that it is the sole manufacturer of LLDPE in Australia. No other interested party has claimed to be an Australian producer of LLDPE.

4.2.1 Assessment in the SEF

During the investigation, we undertook a verification visit to Qenos, a tour of its LLDPE manufacturing facility at Botany, New South Wales, and reviewed the associated production costs as detailed in the Australian industry visit report. During the visit, we found that Qenos produces ethylene from ethane at its Olefines plant, which is then used as the main feedstock in the production of LLDPE at its Alkatuff plant.

We therefore considered that at least one substantial process in the manufacture of LLDPE is carried out in Australia, and that LLDPE is wholly or partly manufactured in Australia.

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4.2.2 Responses to the SEF

We did not receive any specific submissions in response to the SEF in relation to our assessment on the production of LLDPE in Australia.

4.3 Like goods

4.3.1 Assessment in the SEF

For the purpose of considering whether there is an Australian industry producing like goods, we made this determination by considering the description of the goods as a whole. That said, analysis of sub-categories of the goods may be relevant to assessing whether dumping has caused material injury to the Australian industry (see section 8.7 below).

In assessing like goods, we used an administrative framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness. We usually placed greatest weight on physical likeness.

Physical likeness

Qenos claimed that its LLDPE has the same physical characteristics to the LLDPE exported to Australia from Canada and the USA. It stated that it manufactures LLDPE in pelletised form with densities ranging from 0.918 g/cm³ to 0.938 g/cm³, melt indexes of between 0.8 g/10min and 20 g/10min and any additives as required by its customers.

Other interested parties have claimed that Qenos' C6 LLDPE is not like goods to certain sub-categories of the goods. In particular, interested parties have stated that certain goods have different molecular structures, co-monomers, and other physical qualities, such as tear resistance, puncture resistance, modulus, and heat seal properties.

When considering whether Qenos produces like goods to the goods as a whole, we noted that the LLDPE produced by Qenos are in pelletised form, are polyethylene copolymers, and have densities of less than 0.94 g/cm³.

Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour.

Qenos claimed that its LLDPE has the same commercial likeness to the goods. It stated that its LLDPE competes directly with the imported LLDPE, being sold to the same or similar customers through common distribution channels. Qenos claimed that its LLDPE is substitutable with the imported LLDPE and end-users are able to easily switch between sources or modify their production process where necessary to take advantage of any cheaper sources of LLDPE.

Other interested parties have claimed that Qenos' C6 LLDPE is not substitutable with certain sub-categories of the goods and end-users cannot easily switch between different LLDPE resins.

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When considering whether Qenos produces like goods to the goods as a whole, we noted that Qenos' LLDPE and the goods 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

Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.

Qenos claimed that its LLDPE has the same functional likeness to the LLDPE exported to Australia from Canada and the USA. It states that its LLDPE is used in film, rotational moulding or injection moulding applications, which are the same end-use applications as the imported LLDPE. It also claimed that it has the ability to modify its LLDPE to suit its customers' end-use requirements.

Other interested parties have claimed that Qenos' LLDPE have different performance properties and qualities to certain sub-categories of the goods and that Qenos does not produce LLDPE that is suitable for certain applications and end-use requirements.

When considering whether Qenos produces like goods to the goods as a whole, we noted that Qenos' LLDPE and the goods can both be used to manufacture similar final products, such as film, packaging and tanks, and know of instances where certain end-users have substituted Qenos' LLDPE for imported LLDPE.

Production likeness

Different production processes may produce either identical goods or goods having different product characteristics. A comparison of production processes may not in itself determine whether goods are like, however it may highlight differences or provide support to the assessment.

Qenos claimed that its LLDPE has the same production process to the LLDPE exported to Australia from Canada and the USA. It stated that it uses the same manufacturing process and similar inputs as the goods.

Other interested parties have claimed that Qenos' LLDPE is produced using the gas-phased process whereas certain sub-categories of the goods cannot be produced using the gas-phased process and/or use a different catalyst technology.

When considering whether Qenos produces like goods to the goods as a whole, we noted that Qenos' LLDPE and the goods, whether produced using the gas-phase or another process, are both produced by the polymerisation of ethylene gas with co-monomers, in the presence of various catalysts at controlled pressures and temperatures.

Summary – like goods

Based on the information available, we were satisfied that LLDPE manufactured by the Australian industry:

- have similar physical characteristics to the goods;

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- compete in the same markets as the goods;
- have similar end uses as the goods; and
- are made using similar materials and in a similar manner as the goods.

We therefore considered that the LLDPE produced by Qenos are like goods to the goods exported from Canada and the USA.

4.3.2 Responses to the SEF

Qenos

Qenos stated that it agrees with our assessment that it manufacturers like goods to imported butene, hexene, octene, medium density LLDPE, and metallocene LLDPE.

Aperio

Aperio Group Pty Ltd (Aperio) stated that the physical likeness test applied by us has serious limitations. It argued that pelletised form and copolymers alone do not substantiate a case for like goods in respect to MPE resins, but it is the technical attributes that are significant.

Aperio also stated that our assessment on commercial likeness lacks conviction when considering the market dynamics. It claims that in supply discussions with Qenos, MPE are not raised as a competitive alternative and Qenos does not regard MPE as a direct competitive resin. It asserts that MPE supply by Qenos is handled separately and discretely different to LLDPE.

NOVA

NOVA questioned the way that we addressed claims by interested parties that certain products are not like goods to the LLDPE produced by Qenos in the context of considering causation. NOVA explained that this is because all factors considered in that section tend to support a conclusion that these products are not like goods.

4.3.3 Consideration of the responses

As stated in the SEF, the assessment of whether there is an Australian industry producing like goods was made by considering the description of the goods as a whole. We did not make an assessment as to whether Qenos produced like goods to certain sub-categories of the goods. To do so would be an incorrect application of subsection 269T(1).

While we understand Aperio's comments regarding MPE, we did not undertake an assessment, as it suggests, on whether the Australian industry produced like goods to MPE in itself.

In relation to NOVA's comment that our assessment of MPE, in the context of considering causation, supports a conclusion that Qenos does not produce like goods to MPE, we consider that these two issues have different contexts. The factors when considering like goods can be different to the factors when considering causation. One

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important difference is that when considering whether the Australian industry produces like goods to the goods, we must make this assessment on the goods as a whole.

As we did not receive any submission in response to the SEF refuting our finding that Qenos produces like goods to the goods as a whole, we maintain our assessment that there is an Australian industry producing like goods.

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5 Australian Market

5.1 Market Structure

We established that the Australian LLDPE market is supplied by Qenos, as well as imports from a number of countries including Canada and the USA. During the investigation period, Qenos also imported LLDPE and MPE from the USA.

LLDPE is used in a variety of end-use applications such as film (including flexible packaging), rotational moulding, and injection moulding. The following table illustrates the applications, physical characteristics and examples of end products of LLDPE:

Application or Market Sector	Density (g/cm³)	Melt Index (g/10min)	Examples of end products
Film	0.918 -0.925	0.8 – 2.5	Films, plastic bags, shopping bags,
Rotational Moulding	0.930 -0.938	3.0 – 10.0	Tanks
Injection Moulding	0.925	20.0	House wares

Interested parties, including Qenos, have advised that LLDPE manufactured for one application cannot be substituted for another application. For example, film LLDPE cannot be used in rotational moulding applications and vice versa. This is due to different melt indexes required for the different end use applications.

We noted that this is generally accepted by all interested parties and we also accept this premise. We therefore took this market demarcation into account when assessing injury and causation in the rest of the SEF.

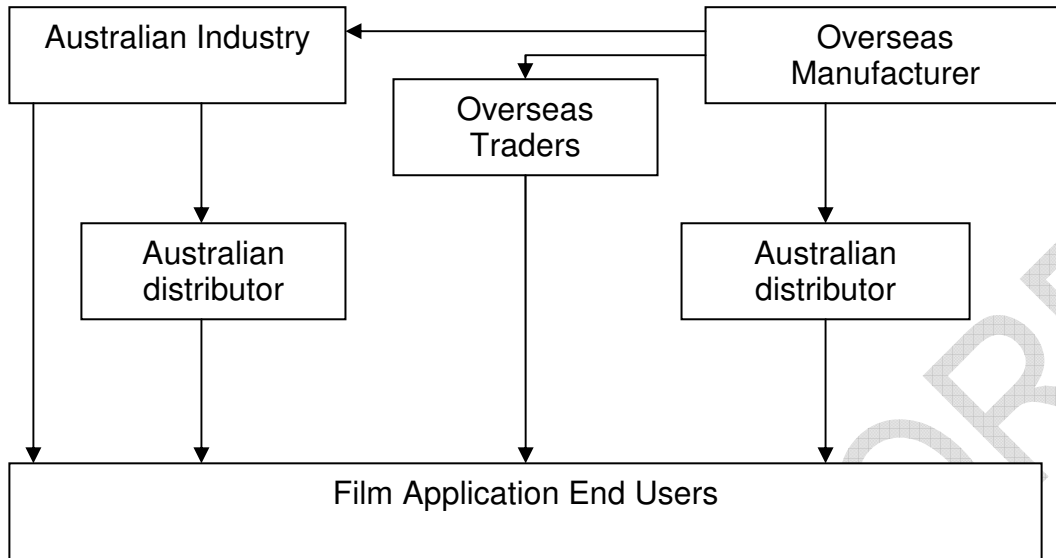
We also noted that while Qenos produces injection moulding LLDPE, we were not aware of any being imported from Canada or the USA during the investigation period.

5.2 Distribution and marketing

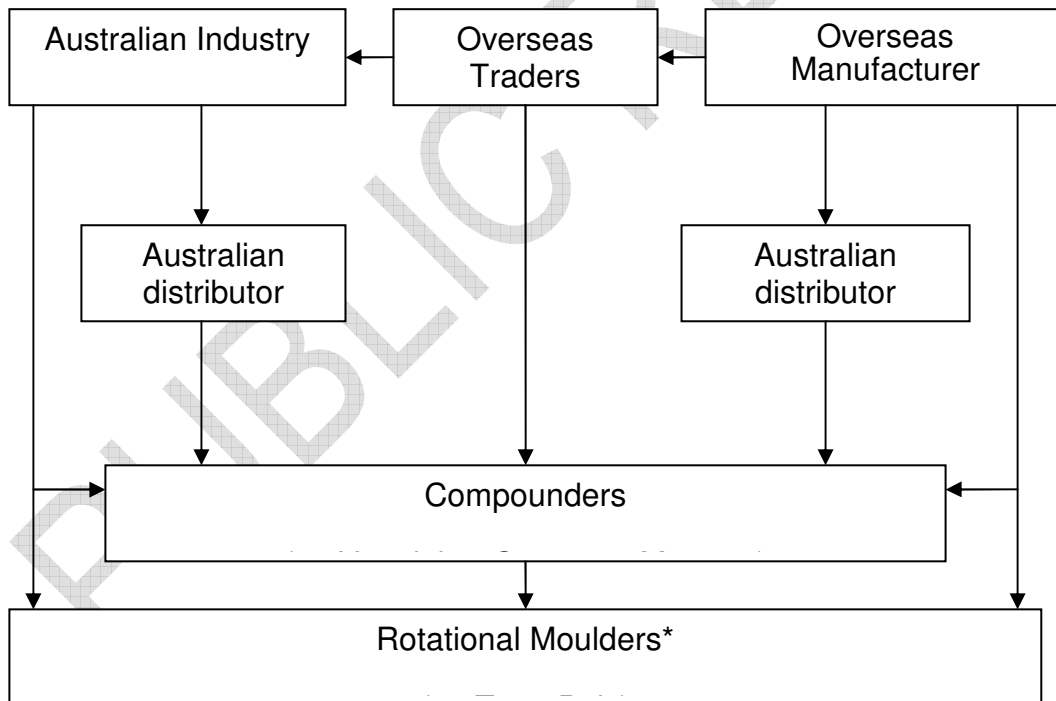
During the investigation, we determined that there are two prominent market sectors in Australia, film and rotational moulding, with differing distribution channels. Diagrams of the distribution channels for the two market sectors are outlined below:

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5.2.1 Film (including MPE)



5.2.2 Rotational



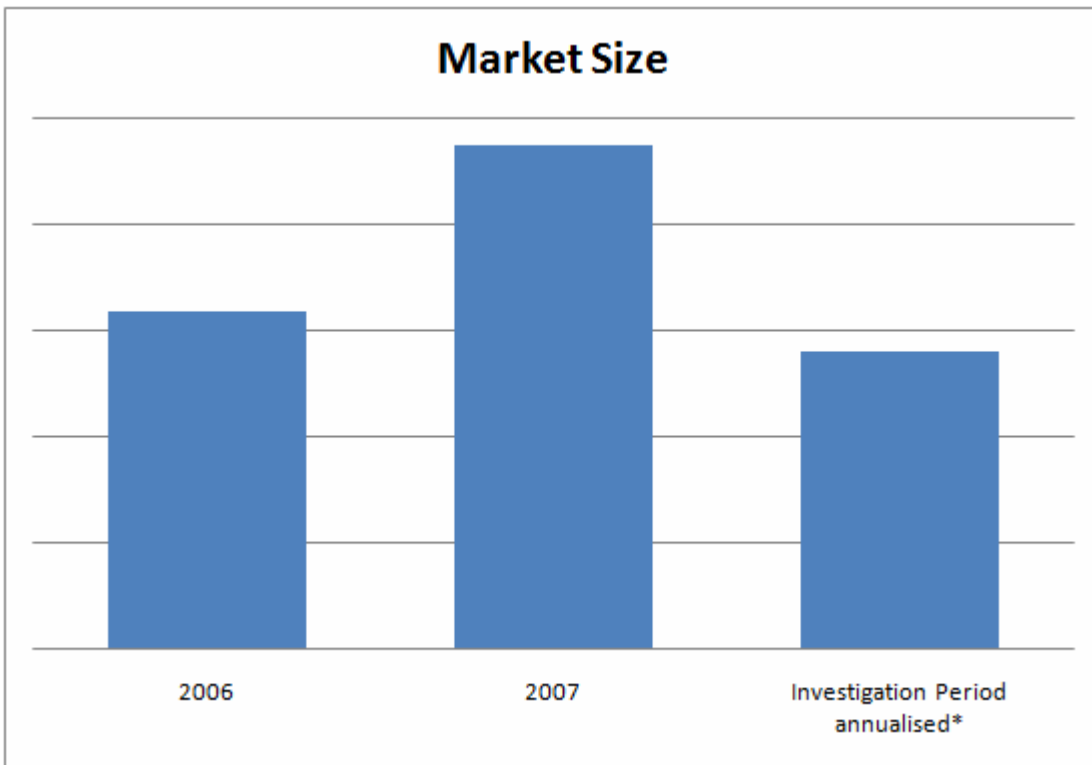
*Some companies undertake both compounding and rotational moulding.

5.3 Market size

During the investigation, we verified sales data submitted by Qenos (including sales of imported LLDPE) and also collected and verified import and sales data from three importers that collectively accounted for the majority of LLDPE imports from Canada and

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the USA. We also used data from the import database to estimate the total import volume, including LLDPE imports from other countries. The graph below shows the total size of the market over the injury analysis period.



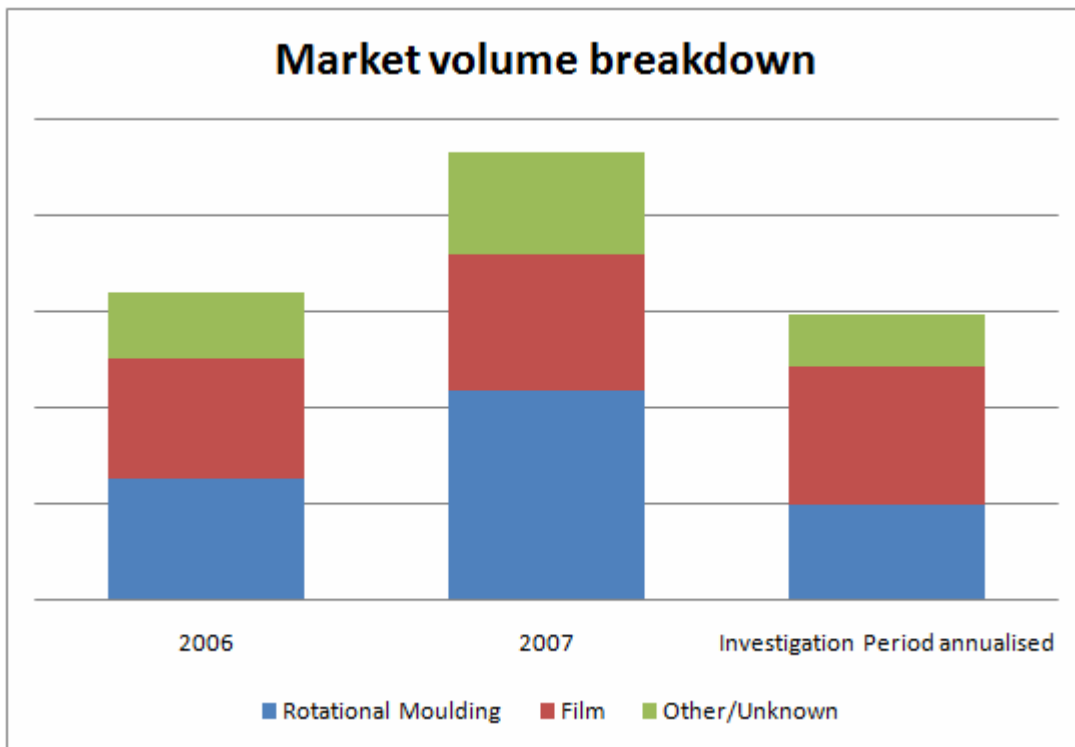
*The investigation period annualised figure is calculated by summing the 5 quarters within the investigation period, then multiplying by 4/5.

The market size analysis shows that the Australian market for LLDPE peaked in 2007 then contracted in the investigation period to below 2006 levels.

Interested parties, including Qenos, have advised that the spike in 2007 was due to the boom in the rotational moulding market on the back of high demand for water tanks, increasing the demand for rotational moulding LLDPE, which then fell significantly in September 2007.

Using information available, we attempted to separate the market into the film and rotational moulding market segments in the graph below.

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*Other/Unknown is where LLDPE have been supplied into a market segment other than film or rotational moulding, or the market segment is not known to us (e.g. imports from other countries).

The available data supports the claim by interested parties that the boom in the LLDPE market in 2007 was predominantly due to a spike in rotational moulding LLDPE.

6 Dumping investigation

We are satisfied that:

- LLDPE exported from Canada and the USA were at dumped prices;
- the dumping margins are not negligible in terms of subsection 269TDA(1); and
- the volume of dumped goods is not negligible in terms of subsection 269TDA(4).

6.1 Legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are calculated separately for each exporter determined under sections 269TAB and 269TAC respectively. As such, individual dumping margins are calculated for each exporter determined under 269TACB. The methodology in calculating the export price and normal value for each exporter may vary.

6.2 Importers

Prior to the visit to exporters, we contacted, sought information from, and undertook visits to, a number of importers of LLDPE. The public record contains reports of our visits to the following entities:

- A.G.C Plastics Pty Ltd;
- DCAL;
- Qenos; and
- Vanglobe Pty Ltd (Vanglobe).

Courtenay Polymers Pty Ltd (Courtenay Polymers) and Aperio were also cooperative and provided us with the requested importation information and source documents. However, due to the relatively small import volumes of LLDPE by Courtenay Polymers and Aperio, and the limited timeframe available to conduct the anti-dumping investigation, we did not undertake a verification visit to Courtenay Polymers or Aperio.

6.3 Canadian exporters

The application identified Dow Chemical Canada ULC (DCC) and NOVA Chemicals Corporation (NOVA) as exporters of LLDPE to Australia from Canada. We received completed exporter questionnaires from both exporters and conducted verification visits. Non-confidential versions of the exporter questionnaire responses and verification visit reports are available on the public record.

We also undertook a search of the import database and did not identify any other exporters of LLDPE from Canada.

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6.3.1 Assessment in the SEF

Dow Chemical Canada ULC

Export Price

DCC manufactured and exported LLDPE to Australia during the investigation period. The goods were imported by DCAL. Both DCC and DCAL are wholly-owned subsidiaries of TDCC.

We found that:

- DCC was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter;
- the purchases of the goods by the importer were not arms length transactions; and
- the goods were subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer.

We considered that the export price can be established under subsection 269TAB(1)(b), using the price at which the goods were sold by the importer, less prescribed deductions to calculate export prices.

Normal Value

DCC sold like goods on the domestic market during the investigation period. We found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions. We considered that the normal value can be established under subsection 269TAC(1) using sales between DCC and its customers.

The normal value incorporated adjustments made under subsection 269TAC(8) to ensure it was fairly comparable to export prices.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(aa).

We had due regard to appropriate model and period matching. The product dumping margin indicated that LLDPE exported by DCC from Canada to Australia was exported at dumped prices, with a dumping margin in the range of 5% to 10%.

NOVA Chemicals Corporation

Export Price

NOVA manufactured and exported LLDPE to Australia during the investigation period. The goods were imported by a number of Australian importers.

We found that:

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- NOVA was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer;
- the goods were not purchased by the importer from the exporter; and
- the purchases of the goods from the exporter were arms length transactions.

We considered that the export price can be established under subsection 269TAB(1)(c), having regard to all the circumstances of the exportations. In particular, we used the invoice price paid by the importers less amounts for any matters arising after exportation to calculate the export price.

Normal Value

NOVA sold like goods on the domestic market during the investigation period. We found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms length transactions. We considered that the normal value can be established under subsection 269TAC(1) using sales between NOVA and its customers.

The normal value incorporated adjustments made under subsection 269TAC(8) to ensure it was fairly comparable to export prices.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(aa).

We had due regard to appropriate model and period matching. The product dumping margin indicated that LLDPE exported by NOVA from Canada to Australia was exported at dumped prices, with a dumping margin in the range of 10% to 25%.

6.4 US exporters

The application identified Chevron Phillips Chemical Company LP (CPCChem), Formosa Plastics Corporation (Formosa), The Dow Chemical Company (TDCC), and ExxonMobil Chemical Company (EMCC) as exporters of LLDPE to Australia from the USA. We received completed exporter questionnaires from Formosa, TDCC, and EMCC, and conducted verification visits to those exporters. Non-confidential versions of the completed exporter questionnaire responses and verification visit reports are available on the public record. CPCChem did not provide a completed exporter questionnaire.

We also received an exporter questionnaire response from, and conducted a verification visit to Entec Polymers LLC (Entec). Entec's non-confidential versions of the exporter questionnaire response and verification visit report are available on the public record.

During the investigation, we considered that Formosa was not an exporter of LLDPE during the investigation period, for reasons discussed in the Formosa visit report.

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We also undertook a search of the import database and identified a number of other exporters of LLDPE from the USA. We contacted these companies, however these companies did not complete an exporter's questionnaire.

6.4.1 Assessment in the SEF

The Dow Chemical Company

Export Price

TDCC manufactured and exported LLDPE to Australia during the investigation period. The goods were imported by DCAL, a wholly-owned subsidiary of TDCC.

We found that:

- TDCC was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter;
- the purchases of the goods by the importer were not arms length transactions; and
- the goods were subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer.

We considered that the export price can be established under subsection 269TAB(1)(b), the price at which the goods were sold by the importer, less prescribed deductions to calculate export prices.

Normal Value

TDCC sold like goods on the domestic market during the investigation period. We found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions. We considered that the normal value can be established under subsection 269TAC(1) using sales between TDCC and its customers.

The normal value incorporated adjustments made under s. 269TAC(8) to ensure it was fairly comparable to export prices.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(aa).

We had due regard to appropriate model and period matching. The product dumping margin indicated that LLDPE exported by TDCC from the USA to Australia was exported at dumped prices, with a dumping margin in the range of 10% to 15%.

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ExxonMobil Chemical Company

Export Price

EMCC manufactured and exported LLDPE to Australia during the investigation period. The goods were imported by Qenos.

We found that:

- EMCC was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer;
- the goods were not purchased by the importer from the exporter; and
- the purchases of the goods from the exporter were arms length transactions.

We considered that the export price can be established under subsection 269TAB(1)(c), having regard to all the circumstances of the exportations. In particular, we used the invoice price paid by the importers less amounts for any matters arising after exportation to calculate the export price.

Normal Value

EMCC sold like goods on the domestic market during the investigation period. We found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions. We considered that the normal value can be established under subsection 269TAC(1) using sales between EMCC and its customers.

The normal value incorporated adjustments made under subsection 269TAC(8) to ensure it was fairly comparable to export prices.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(aa).

We had due regard to appropriate model and period matching. The product dumping margin indicated that LLDPE exported by EMCC from the USA to Australia was exported at dumped prices, with a dumping margin of 18%.

Entec Polymers LLC

Export Price

Entec purchased LLDPE from Formosa for export to Australia during the investigation period. The goods were imported by Vanglobe and another Australian company.

We found that:

- Entec was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter;

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- the purchases of the goods by the importers were arms length transactions.

Therefore the export price can be established under subsection 269TAB(1)(a), using the price paid for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Normal Value

Entec sold like goods on the domestic market during the investigation period. We found a sufficient volume of goods sold in the ordinary course of trade for home consumption in sales that were arms-length transactions. We considered that the normal value can be established under subsection 269TAC(1) using sales between Entec and its customers.

The normal value incorporated adjustments made under subsection 269TAC(8) to ensure it was fairly comparable to export prices.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(aa).

We had due regard to appropriate model and period matching. The product dumping margin indicated that LLDPE exported by Entec from the USA to Australia was exported at dumped prices, with a dumping margin of 10% to 15%.

Other exporters

Export Price

Sufficient information has not been furnished or is unavailable to enable the export price of LLDPE exported from the USA by other exporters to be ascertained under subsection 269TAB(1) and we are unaware of all the circumstances of the exportations. Therefore, we considered that the export price for other exporters from the USA can be established under subsection 269TAB(3), having regard to all relevant information.

We used data from the import database to calculate export prices of all other exporters that exported LLDPE to Australia during the investigation period. These represented approximately 45% of all exports from the USA during the investigation period.

Normal Value

We considered that sufficient information has not been furnished or is unavailable to enable the normal value of LLDPE exported from the USA by other exporters to be ascertained under subsections 269TAC(1) or 269TAC(2). We considered that the normal values for other exporters from the USA can be established under subsection 269TAC(6), having regard to all relevant information.

We calculated the normal values for LLDPE for other exporters from the USA by reference to the highest verified weighted average normal value over the investigation period for like goods without any favourable adjustments. We considered that it is

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appropriate to not make any favourable adjustments to this selling price because it has no basis for presuming any favourable adjustments apply to other exporters.

Dumping Margin

We calculated a dumping margin for the investigation period by comparing the weighted average export price of all other exporters for the investigation period, with the corresponding normal value in accordance with subsection 269TACB(2)(a).

The product dumping margin indicated that LLDPE exported by other exporters from the USA to Australia was exported at dumped prices, with a dumping margin of 23%.

6.5 Summary – Dumping Investigation

In summary, the dumping margins established for exports of LLDPE from Canada are as follows:

Canadian Exporters	Volume of Trade	Dumping Margin
DCC	100%	5% to 10%
Nova		10% to 25%

We noted that the dumping margins are not negligible in terms of subsection 269TDA(1).

In summary the dumping margins established for exports of LLDPE from the USA are as follows:

US Exporters	Volume of Trade	Dumping Margin Range
TDCC	≈ 55%	10% to 15%
EMCC		18%
Entec		10% to 15%
Other Exporters	≈ 45%	23%

We noted that the dumping margins are not negligible in terms of subsection 269TDA(1).

We must terminate the investigation under subsection 269TDA(3) so far as it relates to a particular country if the volume of dumped goods is negligible. The volume of dumped goods is negligible if this figure is 3% of the total Australian import volume in terms of subsection 269TDA(4).

The volume of LLDPE imported from Canada and the USA at dumped prices during the investigation period was greater than 3% of the total Australian import volume for each country. Therefore, the volume of dumped imports during the investigation period is not negligible.

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6.5.1 Responses to the SEF

Qenos

Qenos commented that the dumping margins determined for all exporters from Canada and the USA were significant.

Dow

Dow objected to our finding that purchases by its importer, DCAL, were not arms length transactions. It argued that the consequence of this finding is that dumping margins calculated for Dow are not based on the prices that Dow actually established for the export sales that correspond to the domestic sales made at the time. It claimed that this disconnect results in an arbitrary finding of dumping for Dow when a comparison of Dow's contemporaneous pricing in the two markets did not show any dumping margins.

NOVA

NOVA objected to our calculation in relation to its dumping margin. It argued that we should have reduced its normal values based on sales to converters to take account of the level of trade differentials. In its submission, NOVA referred to a letter where we stated that differences in trade levels are characterized by consistent and distinct differences in functions and prices, and that such differences are not evident from the verified data. NOVA argued that this conflicts with the conclusion in Section 7.2 of NOVA's visit report that 'generally reseller customers' weighted average selling prices were lower than converter customers (the only exceptions occurring in the few cases where there were lower sales volumes).'

NOVA also stated that our ordinary course of trade tests for its domestic sales should be recalculated using the cost of production for ethylene rather than the market based transfer price of ethylene. It claimed that we failed to understand its integrated business model and our segregation of polyethylene from the overall business resulted in misinterpretation or misrepresentation of overall costs. NOVA argued that it manages its business by optimizing its chain margin (ethylene plus polyethylene margin in total) and we should use its actual cost of ethylene, as opposed to transfer costs, as this would properly reflect its actual costs to produce LLDPE.

6.5.2 Consideration of the responses

We note Dow's objection to our finding that transactions between Dow and DCAL were not arms length transactions. Our assessment on this issue is detailed in the Dow exporter visit report and the addendum to the report available on the public record. As Dow did not submit any new evidence supporting its position, we maintain our assessment that the purchases of the goods by DCAL from Dow were not arms length transactions.

In relation to NOVA's objections regarding the level of trade differentials, we disagree that the statement in our letter conflicts with the conclusion in Section 7.2 of NOVA's visit report. In order to apply a level of trade adjustment, we consider it necessary for the data to show consistent and distinct differences in functions and prices. General observations of weighted average selling prices do not of themselves constitute sufficient evidence in

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this regard. As NOVA did not submit evidence showing consistent and distinct differences in function and price, we maintain our assessment that a level of trade adjustment is not warranted.

In relation to NOVA's statement regarding the ordinary course of trade tests and its ethylene prices, NOVA provided ethylene transfer pricing data which was verified during the exporter visit and this information was used in our ordinary course of trade test. We disagree with NOVA's suggestion that we should have used unverified ethylene production costs data and maintain that our assessment on NOVA's ordinary course of trade test.

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7 Economic Condition of the Industry

We are satisfied that the Australian industry has experienced injury in the form of:

- lost sales volume;
- lost market share;
- price depression, except for film LLDPE;
- price suppression;
- reduced profits and profitability; and
- reduced sales revenue, capacity utilisation and return on investment.

7.1 Introduction

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

The data contained in this section is based on verified data from Qenos and other importers. Verification visit reports have been placed on the public record.

Qenos claimed that the dumped imports of LLDPE from Canada and the USA have caused material injury in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- price undercutting;
- reduced profits and profitability; and
- reduced return on investment.

7.2 Commencement of injury

Qenos claimed that material injury attributable to the dumped exports of LLDPE from Canada and the USA commenced during the first quarter of 2008.

7.3 Approach to injury analysis

Qenos claimed that it is inappropriate to use 2005 for comparison purposes as a review of measures applicable to LLDPE exported from Korea and Thailand was not completed until September 2005 and this review showed that dumped exports of LLDPE were evident in the market throughout 2005 (impacting market prices).

We considered this claim to be reasonable and the period from the beginning of 2006 was examined for injury analysis purposes.

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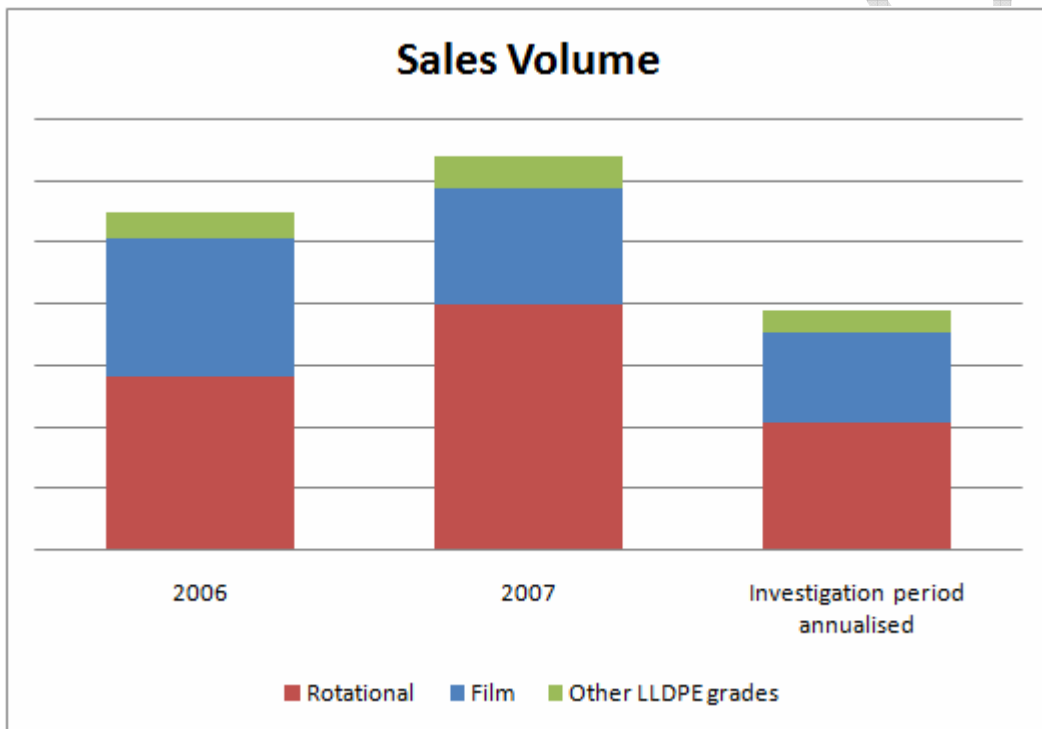
As discussed in section 5.1 above, we considered that film and rotational moulding markets are two separate markets. The analysis in this section examines whether Qenos has suffered injury for film and rotational moulding separately, then for all grades of LLDPE, noting that Qenos' film and rotational moulding LLDPE sales account for the vast majority of its overall LLDPE sales.

7.4 Volume effects

7.4.1 Assessment in the SEF

Lost sales volume

Qenos claimed that it has experienced a loss of sales volume in the investigation period. The following graph illustrates the total sales volume of LLDPE by Qenos (including sales of imported LLDPE), broken down into film, rotational moulding, and other grades of LLDPE.

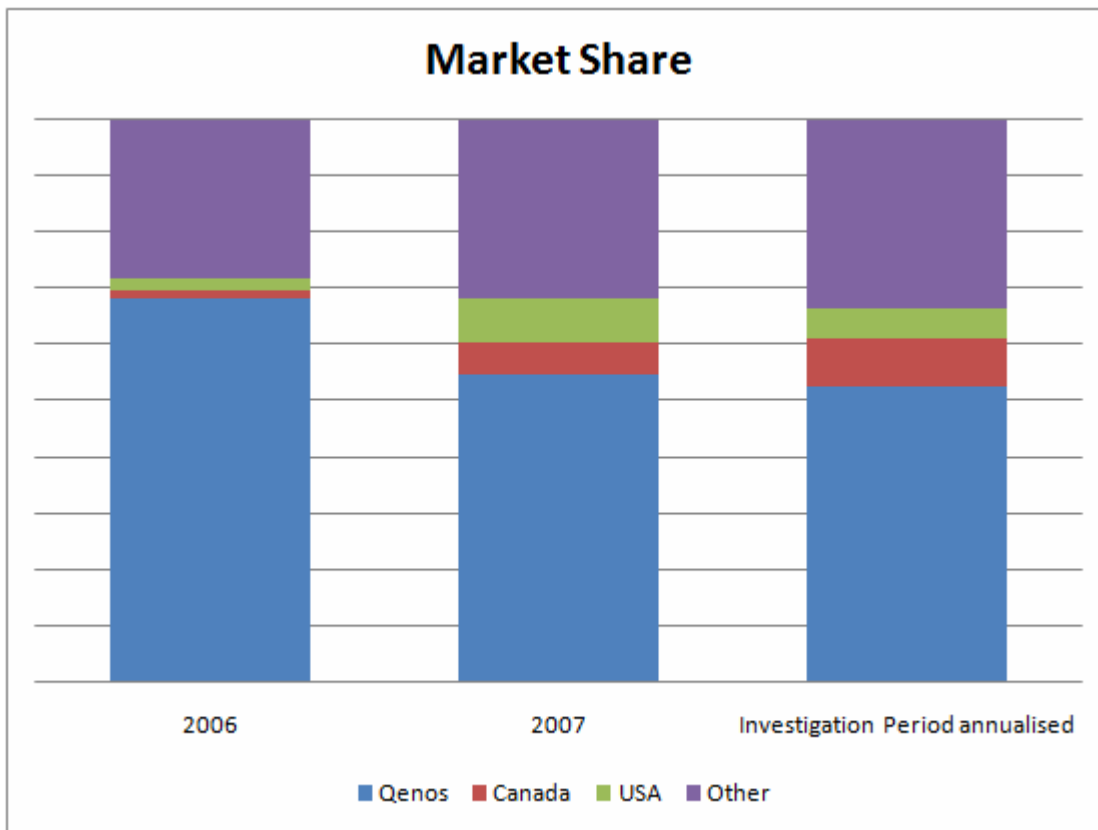


Our analysis showed that Qenos has lost sales volume in the investigation period. Qenos' sales volume increased in 2007 (as a result of an increase in demand for rotational moulding LLDPE), but then decreased in the investigation period to a level below that of 2006, for both film and rotational moulding grades of LLDPE.

Lost market share

Qenos claimed that it has experienced a loss of market share in the investigation period. The following graph illustrates the market share of LLDPE broken down into sales by Qenos (including sales of imported LLDPE) and imports from Canada, USA, and other countries (excluding imports by Qenos).

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Our analysis showed that Qenos has lost market share in the investigation period. It was found that Qenos' market share decreased in 2007 then decreased even further in the investigation period.

We were unable to conduct an analysis of market share by market segments due to the volume of LLDPE imports from other countries where the market segment was unknown.

Conclusion – Loss of sales volume and market share

Based on the information verified during the investigation, we considered that Qenos has suffered injury in the form of lost sales volume and market share in the investigation period.

7.4.2 Responses to the SEF

Aperio

Aperio stated that we have assessed lost sales volume to Qenos without an assessment of downstream demand by large resin users. It claimed that downstream volume in the flexible film market has fallen during the investigation period.

7.4.3 Consideration of the responses

We note Aperio's argument that the lost sales volume experienced by Qenos may have been caused by factors other than dumping. This assessment is discussed in section 8 below.

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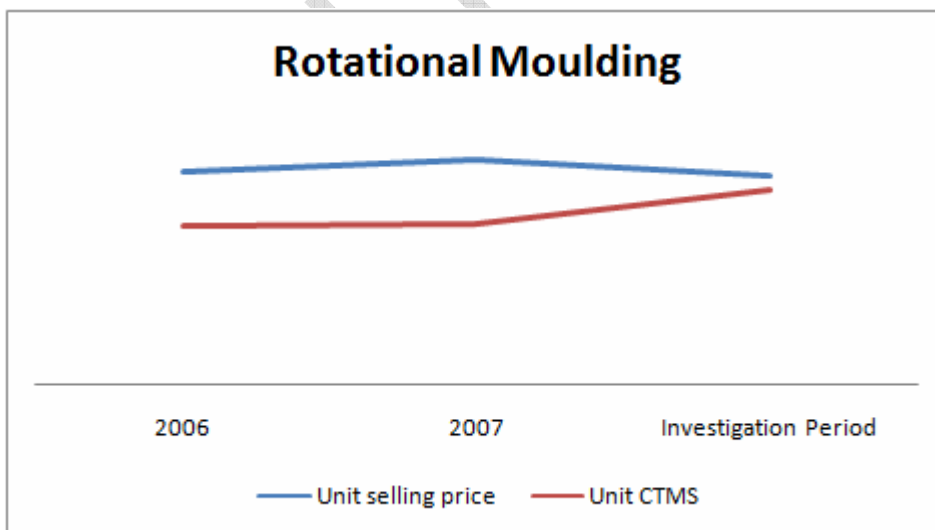
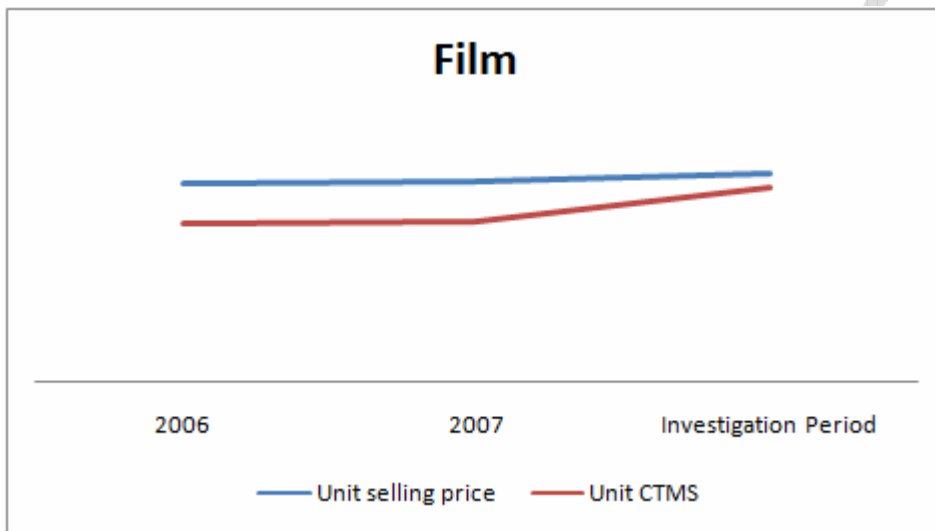
7.5 Price effects

Price effects may be in the form of:

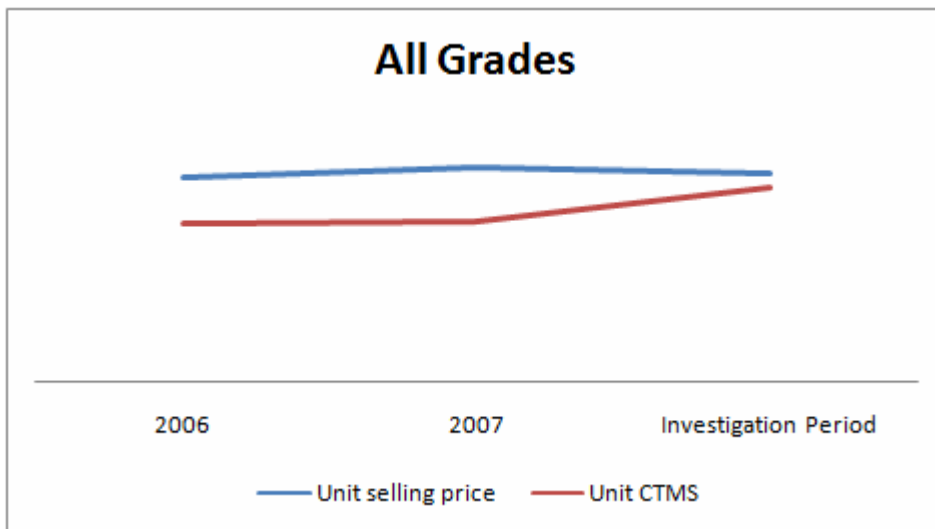
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for Qenos' product, which otherwise would have occurred, have been prevented.

7.5.1 Assessment in the SEF

Qenos claimed that it experienced price depression and suppression in the investigation period. The following graphs illustrate Qenos' unit selling price and unit cost to make and sell (CTMS) for film, rotational moulding and all grades of LLDPE.



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Our analysis showed that in the investigation period, Qenos experienced price depression for rotational moulding and for all grades of LLDPE, and price suppression for film, rotational moulding and for all grades of LLDPE.

The unit selling prices increased from 2007 to the investigation period for film and decreased for rotational moulding and for all grades of LLDPE. However, the unit selling prices in the investigation period, when compared to prices in 2006, were lower for rotational moulding LLDPE but higher for all grades of LLDPE.

The unit CTMS for film, rotational moulding and all grades of LLDPE increased between 2007 and the investigation period, however, the unit selling price either decreased or increased at a lower rate than the unit CTMS.

Conclusion – Price depression and suppression

Based on the information verified during the investigation, we considered that Qenos has suffered injury in the form of price depression (except for film LLDPE) and price suppression in the investigation period.

7.5.2 Responses to the SEF

Aperio

Aperio stated that in all supply discussions, it has confirmed with Qenos that they see no injury from the outcomes of their supply arrangements to Aperio. It asserted that no evidence of price suppression or depression has been confirmed by Qenos senior management.

Aperio also argued that in assessing injury from price effects, we must assess the formula pricing adopted by Qenos in relation to the major resin buyers that make up more than 50% of the film market. It stated that price effects will substantially change the assessment of any injury claim by Qenos caused by price depression or suppression which does not exist where price formulae are used.

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Aperio further claimed that it is not aware of any price reduction as claimed by Qenos in early 2008, other than that driven by the price formula. It stated that as Qenos' imported prices of resin supplied to Aperio are driven by similar price formulae, this meant that any change in regional markets is reflected consistently across all resin sources, and the relativity of resin prices remain consistent.

7.5.3 Consideration of the responses

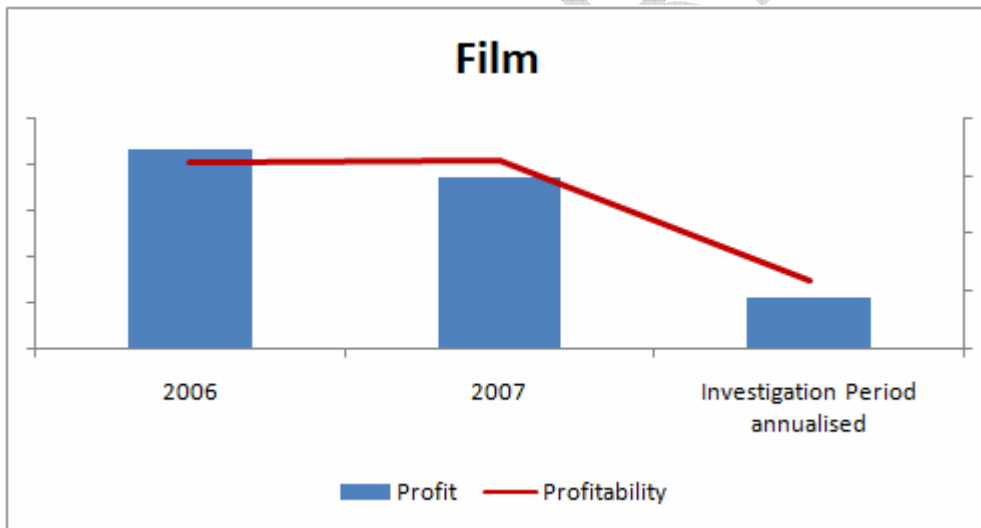
We note Aperio's comments in relation to price suppression and depression. In reaching our assessment of injury to the Australian industry, we used Qenos' sales and cost data during the investigation period. It may be the case that Qenos' prices to Aperio have not been suppressed or depressed, however, analysis of Qenos' data indicates that it has experienced injury in the form of price suppression and depression.

7.6 Profit effects

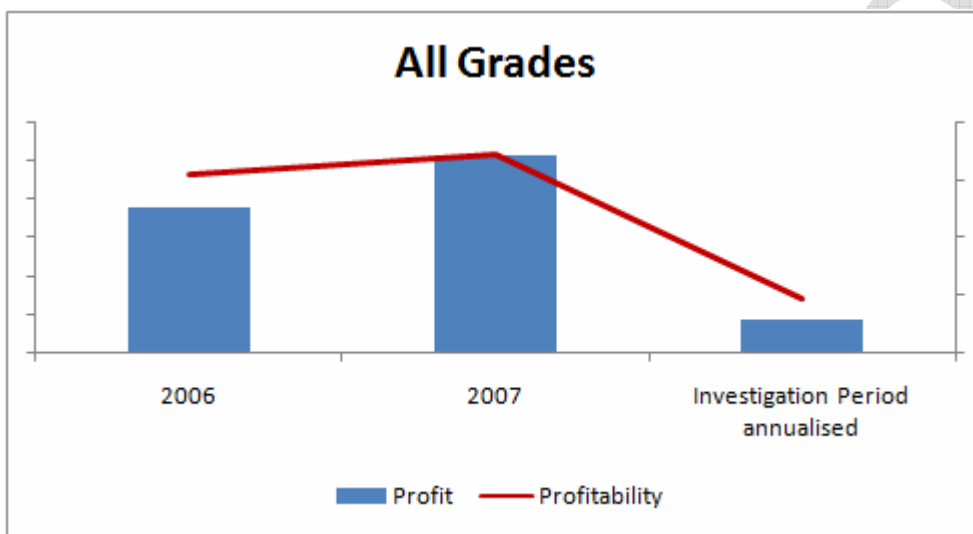
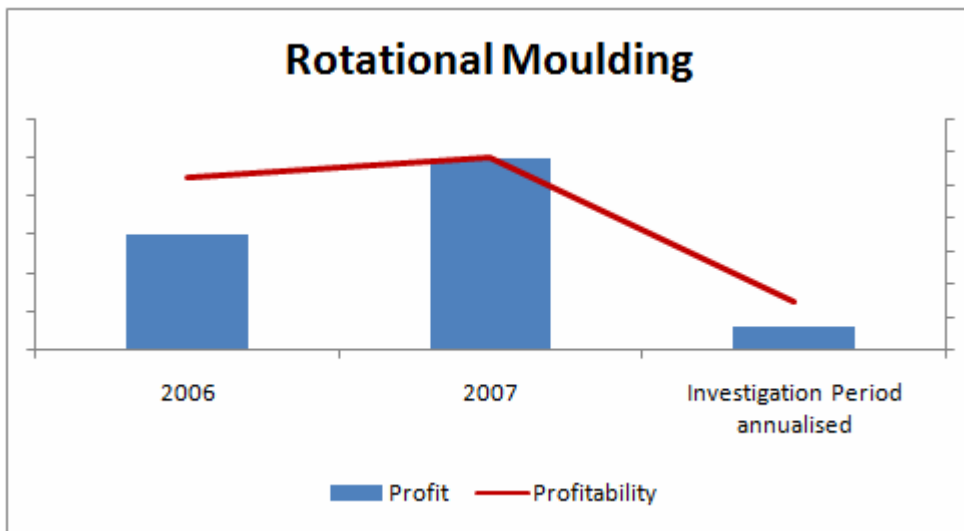
Qenos claimed that it has experienced reduced profits and profitability in the investigation period.

7.6.1 Assessment in the SEF

The following graphs illustrate Qenos' total profit and profitability for film, rotational moulding and all grades of LLDPE.



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The analysis showed that Qenos experienced reduced profit and profitability for film, rotational moulding and for all grades of LLDPE in the investigation period. Qenos' profit decreased in 2007 then decreased further during the investigation period for film. Qenos' profit for rotational moulding and all grades of LLDPE increased in 2007 then decreased in the investigation period to a level below that of 2006. Qenos' profitability for film, rotational moulding and all grades of LLDPE increased in 2007 then decreased in the investigation period to a level below that of 2006.

Conclusion – Profit and profitability

Based on the information verified during the investigation, we considered that Qenos has suffered injury in the form of reduced profit and profitability in the investigation period.

7.6.2 Responses to the SEF

We did not receive any specific submissions in response to the SEF in relation to our assessment that the Australian industry has suffered injury in the form of reduced profit and profitability in the investigation period.

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7.7 Other economic factors

7.7.1 Assessment in the SEF

Qenos also provided data on other relevant economic factors as described under subsection 269TAE(3), and have claimed that it experienced injury in the form of reduced return on investment. We considered that claim, and other relevant economic factors.

Reduced return on investment

The data provided by Qenos indicates reduced return on investment between 2006 and 2008.

Reduced sales revenue

The data provided by Qenos indicates reduced sales revenue in 2008 in relation to sales of LLDPE, when compared to 2006.

Reduced capacity utilisation

The data provided by Qenos indicates reduced capacity utilisation in 2008 when compared to 2006.

Assets

The data provided by Qenos indicates the value of assets used in the production of LLDPE has reduced in 2007 and again in 2008.

Capital investment

The data provided by Qenos indicates a decrease in capital investment in the production of LLDPE in 2008 when compared to 2006.

Research and Development (R & D)

The data provided by Qenos indicates an increase in expenditure on R & D of LLDPE in 2008 when compared to 2006.

Capacity

The data provided by Qenos indicates maintained capacity for LLDPE.

Employment

The data provided by Qenos indicates a slight decrease in the number of employees for LLDPE.

Productivity

The data provided by Qenos indicates a decrease in productivity for LLDPE in 2008 when compared to 2006.

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Stocks

The data provided by Qenos indicates an increase in stock for LLDPE during 2008 when compared to 2006.

Conclusion – Other economic factors

Based on the information provided by Qenos, it appears that Qenos has suffered injury in the form of reduced sales revenue, capacity utilisation and return on investment.

7.7.2 Responses to the SEF

We did not receive any specific submissions in response to the SEF in relation to our assessment that the Australian industry has suffered injury in the form of reduced sales revenue, capacity utilisation and return on investment.

8 Has dumping caused material injury?

We considered that injury to the Australian industry has been caused by a factor other than the exportation of the goods as provided for under subsection 269TAE(2A) and are satisfied that the injury to the Australian industry that has been caused by dumped imports is negligible in terms of subsection 269TDA(13).

8.1 Legislative framework

Section 269TG provides that the Minister may publish a dumping duty notice where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- because of that, material injury to the Australian industry producing like goods has been or is being caused, or the establishment of an Australian industry producing like goods has been materially hindered.

Subsection 269TAE(1) provides that in determining whether material injury to an Australian industry has been or is being caused by dumping, the Minister may have regard to a number of factors.

Section 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than the dumped goods and any such injury or hindrance must not be attributed to the exportation of those goods.

Subsection 269TAE(2C) provides for consideration of the cumulative effect of exports by different exporters from the same country or exports from different countries if the Minister is satisfied that it is appropriate to do so after having regard to:

- the conditions of competition between the exported goods; and
- the conditions of competition between the exported goods and the like goods that are domestically produced;

8.2 Introduction

This section examines whether dumped imports of LLDPE has caused material injury to the Australian industry.

In the application, Qenos alleged that material injury from dumped LLDPE exported from the USA and Canada commenced during the first quarter of 2008.

Qenos claimed that it began experiencing competitive pressures in the LLDPE rotational moulding and film application markets from late 2007. It asserted that it was only aware of the loss of market share to the allegedly dumped imports of LLDPE in early 2008 and reacted by reducing the prices of its LLDPE to compete with imported rotational moulding and film LLDPE.

8.3 Cumulation of injury

The conditions of competition between imported and domestically produced LLDPE appear to be similar. Qenos claimed that it has been unable to increase prices to recover increased costs as a result of price undercutting by imports of LLDPE from Canada and the USA.

The information contained in the import database indicates that some importers of LLDPE have imported from both Canada and the USA. This indicates that the products are used by the same or similar customers.

The goods are alike, have similar specifications and end-uses, and compete in the same markets. The conditions of competition are such that it is appropriate to consider the cumulative effect of the dumped imports from Canada and the USA.

8.4 Dumping

We established that exporters from Canada have exported LLDPE to Australia at dumped prices during the investigation period. The dumping margins calculated for Canadian exporters are between 5% and 25%.

We have established that exporters from the USA have exported LLDPE to Australia at dumped prices during the investigation period. The dumping margins calculated for US exporters are between 10% and 23%.

8.5 Other possible causes of injury

8.5.1 Assessment in the SEF

Several interested parties have submitted that any injury to Qenos has been caused by factors other than the dumped imports of LLDPE as detailed below.

Collapse in the rotational moulding market

Several interested parties have submitted that any injury to Qenos has been caused by the collapse of the rotational moulding market during the 3rd quarter of 2007. Various interested parties have claimed that:

- Qenos invested a considerable proportion of its capacity into the production of rotational moulding LLDPE in 2007 due to the booming rotational moulding market;
- Qenos imported rotational moulding LLDPE to meet the increased demand that it was unable to supply from its own production; and
- in late 2007, the rotational moulding market collapsed by over 50%. Consequently, Qenos accumulated significant volumes of rotational moulding inventory. All industry participants were discounting to match the lower demand.

We took this into account in this section.

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Withdrawal from the film market

Some interested parties have submitted that during the rotational moulding boom, Qenos withdrew from certain parts of the film market in order to increase its capacity of rotational moulding LLDPE. Interested parties have claimed that as a result of the collapse in the rotational moulding market, Qenos was unable to fully recapture its share of the film market.

In particular, Amcor submitted that in February 2007, 'Qenos initiated discussions with Amcor to agree a variation of the supply contract and manage a staged exit [of] its supply of LLDPE resin into Amcor Western Australia' and that it 'entered into term agreement with Dow Chemical Australia for the supply of an alternative resin [which] extended into 2008.' Amcor also submitted that it was required to 'secure alternative supply for its LLDPE resin requirements for Western Australia from July 2007 as well as establish longer term sourcing options beyond 2007' and that the 'majority of this volume [of LLDPE Amcor purchased from Qenos] ... was grade 425.'

However, Qenos refuted the claim that it has 'withdrawn' from certain parts of the film market. It submitted that the 'cessation of supply of a single grade of LLDPE (i.e LL425) was negotiated with Amcor for supply to its Kewdale facility in 2007', that 'the supply issue for one grade can be explained for all imports into W.A. Kewdale is not an accurate reflection of actual events' and that 'Amcor's conclusion that Qenos has "sold out" its capacity is incorrect.'

We took this into account in this section.

Global Financial Crisis

Several interested parties have submitted that any injury to Qenos can also be attributed to the onset of the Global Financial Crisis (GFC) during the 3rd quarter of 2008. Various interested parties have claimed that:

- global prices for all petroleum based commodities collapsed from the 3rd quarter of 2008;
- there was a significant reduction in market demand during the second half of 2008 and the 1st quarter of 2009;
- volumes of imports fell significantly during this time;
- regional market prices of LLDPE fell by more than 50% during the 4th quarter of 2008 and feedstock similarly fell;
- rapid deterioration in world markets left polyethylene producers with high cost inventories that needed huge discounting to sell;
- similarly, it was likely that Qenos had excess inventory holdings of higher cost rotational moulding grades being sold into a depressed market; and
- declining profits & revenue in 2008 is not unusual considering the economic conditions and can be directly attributed to the downturn in the economy.

However, Qenos submitted that it suffered material injury from dumped LLDPE exports from Canada and the USA from the beginning of 2008 – prior to the commencement of the GFC. Qenos also submitted that its loss of market share and price suppression

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preceded the GFC, highlighting the injurious effects of dumping well in advance of the general contraction of the economy at the end of 2008.

We took this into account in this section.

Removal of the favourable clause in the Botany ethane supply contract

Interested parties have referred to a Qenos News publication of April 2008 where the Chief Executive Officer of Qenos referred to 'the removal of the favourable clause in the Botany ethane supply contract which limited the impact of high oil prices'.

In response, Qenos provided us with details of the Botany ethane supply contract. We took this into account in the causal link analysis. However, due to the commercial sensitivity of the contract, we were not in the position to provide details or comment further on this issue.

8.5.2 Responses to the SEF

Qenos

Qenos contended that the SEF has erroneously stated that its 'withdrawal from the film market' as 'other possible causes of injury'. It argued that it is totally incorrect to assert that the agreed change to its supply to Amcor for one grade at one site in W.A constitutes its 'withdrawal from the film market'.

In relation to its raw material supply, Qenos stated that it was required to enter into a new contract which reflected increased oil prices in 2008. It argued that the weighting of Amcor's assertions, combined with the impact of a renegotiated raw material cost increase, should have been attributed minimal weightings in considering the impact of 'other possible causes' of injury to the Australian industry over the investigation period.

Qenos also commented on the GFC and the collapse in the rotational moulding market. These comments relate more to market share and are addressed in section 8.9 below.

Dow

Dow argued that Qenos' withdrawal from the film market should be given substantial weight in the causation analysis. It referred to Amcor's submission of 25 September 2009 which states that Amcor replaced the LLDPE volumes Qenos ceased to locally manufacture with imports from Dow Chemical. Dow contended that absent Qenos' decision to terminate the agreement to supply Amcor and compensate Amcor for the higher costs of purchasing imports, Dow would not have made the relevant sales of LLDPE to Amcor.

Dow also argued that the change in Qenos' feedstock contract should be given substantial weight in the causation analysis. It stated that the removal of this provision during the investigation period represents a significant change in the underlying and favourable cost structure for Qenos because ethane is one of the main raw materials in the production of LLDPE.

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DCAL

In relation to the claims that Qenos withdrew from Amcor's Kewdale operations, DCAL stated that as the principal beneficiary of that business, it was able to support Amcor with alternative supplies, but at a significantly higher price. It asserted that its replacement volumes (in significant quantities of one grade) would not have been possible without Qenos withdrawing its locally produced LLDPE from that market during the boom in the rotational moulding market.

8.5.3 Consideration of the responses

We disagree with Qenos' argument that minimal weighting be applied to the change in the Kewdale LLDPE supply contract and its raw material supply contract. We consider that the effects of these two factors were not insignificant and must be considered when analysing injury and causation.

In relation to the Kewdale LLDPE supply contract, the volume of the one grade referred to by Qenos was significant in terms of the proportion of Qenos' sales and market share. Regarding the change in Qenos' raw material supply contract, the timing of the change caused a distortion in the CTMS trends during the investigation period. We consider that these two factors require the appropriate weighting in considering causation.

8.6 Approach to causation analysis

As discussed in section 8.5 above, we noted two significant events that occurred during the injury analysis period – the boom in the rotational moulding market at the beginning of 2007 and its subsequent collapse in September 2007; and the commencement of the GFC in September 2008. In order to isolate the impacts of these two events, we have analysed verified data available by market segments and by quarters from the 3rd quarter of 2006.

Due to the commercially sensitive nature of the data to all interested parties used in this analysis, we have elected not to publish the data or graphs. We have instead attempted to provide a description of the analysis in the following sections.

In this section, references to imports of LLDPE refer to imports of LLDPE from Canada and the USA.

8.7 Other issues

Interested parties have also made submissions on various other issues regarding like goods. In particular, some interested parties have claimed that the Australian industry does not produce like goods to certain sub-categories of the goods. However, as discussed in section 4.3 above, we determined whether the Australian industry produces like goods by considering the goods as a whole. Nonetheless, the following observations are made in relation to these submissions.

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8.7.1 Assessment in the SEF

Octene (C8) LLDPE

Several interested parties have submitted that Qenos' C6 LLDPE are not like goods to the imported C8 LLDPE. This issue seems to be confined to the film market segment.

We noted that:

- C8 LLDPE is generally accepted as a superior product to C6 LLDPE;
- Qenos does not produce C8 LLDPE; and
- end users would not generally substitute applications that require C8 LLDPE with C6 LLDPE.

However, we know of an example during the injury analysis period where an end-user, which previously used C6 LLDPE, has successfully converted its operation to C8 LLDPE, but at an additional cost.

Metallocene polyethylene

During the investigation period, we received numerous submissions regarding MPE. This issue also seems to be confined to the film market segment.

Qenos claimed that the locally produced LLDPE are like goods to the imported MPE as they have:

- similar physical and performance characteristics;
- substitutability across end-use applications;
- competitive pricing; and
- similar manufacturing processes of the LLDPE polymer.

Other interested parties have refuted this claim, submitting that MPE and LLDPE are vastly different products, with different molecular structures, production processes, and possess properties that are not available to LLDPE. In particular, interested parties have referred to the ExcelPlas report which states 'Metallocene LLDPE resins are quite different to regular LLDPE resins and the two should not be confused.'

Although MPE falls within the description of the goods, we noted that:

- MPE has some different physical characteristics to 'conventional' LLDPE;
- MPE is marketed differently to 'conventional' LLDPE;
- MPE consistently achieves a higher price than 'conventional' LLDPE;
- MPE is manufactured using a different catalyst to 'conventional' LLDPE;
- Qenos does not currently manufacture MPE; and
- Qenos imports MPE to sell to its customers.

Therefore, we considered it appropriate to consider MPE separately in this section.

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Qenos claimed that as the price of MPE is reduced relative to other grades of LLDPE, the incentive to utilise MPE in particular applications is enhanced. It also claimed that substitution of MPE for locally produced LLDPE is occurring, with production economics a key driver for many customers.

We disagreed with Qenos' claims. We did not received any evidence of such substitution occurring due to production economics and noted interested parties' submissions that end-users use MPE based primarily on customer specifications, rather than price.

Qenos also claimed that dumped MPE can have a depressing or suppressing effect on MPE sales in Australia, which could indirectly depress or suppress its LLDPE sales prices because of the accepted price differential between LLDPE and MPE. However, we found no evidence that MPE was a price leader for LLDPE during the investigation period and notes that sales volumes of MPE are relatively low when compared with the overall LLDPE market.

Having regard to the fact that Qenos does not manufacture MPE, and in the absence of evidence to indicate the price of dumped MPE has indirectly influenced the price of Qenos' LLDPE, we considered that dumped imports of MPE have not caused injury to Qenos.

Blow moulding LLDPE

LyondellBasell submitted that Qenos does not produce like goods to Equistar's BMW-LLDPE (GA 818-073) as it is a specialty LLDPE product, is a blow moulding LLDPE, and has a different catalyst technology.

Qenos submitted that it manufacturers LLDPE with comparable melt flow indices to GA818-073 and its LLDPE could be used in blow moulding applications. As such, Qenos asserts that its LLDPE are like goods to imported LLDPE blow moulding resins, including GA 818-073.

We note that Qenos produces blow moulding high density polyethylene (HDPE) but does not, and did not during the injury analysis period, sell blow moulding LLDPE. In addition, in its application and submissions provided during the investigation, Qenos has not claimed injury in the blow moulding market sector. Therefore, we consider it appropriate to consider blow moulding LLDPE separately in this section.

Due to the fact that Qenos currently does not manufacture blow moulding LLDPE, we considered that the imports of dumped blow moulding LLDPE have not caused injury to Qenos.

8.7.2 Responses to the SEF

Qenos

In relation to MPE, Qenos provided us with examples where metallocene LLDPE have been substituted for its LLDPE. In addition, it disagreed with our comment that sales volume of MPE are relatively low when compared to the overall market and provided an estimate of MPE sales in Australia.

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In response to our questions regarding MPE sales volumes, Qenos provided an extract of a report to support its estimate. However, Qenos added that it considered the actual volume to be lower.

Amcor

Amcor supported our finding that the use of MPE is based primarily on customer specifications and not price. It asserted that it does not substitute any MPE for locally produced LLDPE based on production economics of manufacturing film.

Aperio

Aperio stated that there is no conclusive or factual evidence to support the statement that MPE imports from Canada and the USA have caused or have the potential to cause material injury to the Qenos. It asserted that MPE resins do not compete against C6 LLDPE in its business and are used where they can deliver a performance attribute that C6 LLDPE cannot.

DCAL

DCAL stated that since Qenos is believed to be a significant importer of MPE at prices which reflect a higher dumping margin than those reported for either DCC or TDCC, it cannot be ruled out that it was imports of MPE by Qenos which displaced its locally produced LLDPE.

NOVA

NOVA submitted that its single-site catalysed octene product should be treated in the same manner as MPE. It stated that it employs an internally developed proprietary solution process and single-site catalyst technologies in combination to manufacture its octene resins. NOVA argued that 'single-site' refers to a broader classification of catalyst of which metallocene catalysts are a part, thus there is no reason to treat MPE and its single-site catalysed octene product differently. In addition, NOVA stated that its single-site catalysed octene product:

- has different characteristics from 'conventional' LLDPE;
- is marketed differently to 'conventional' LLDPE;
- consistently achieves a higher price than 'conventional' LLDPE;
- is manufactured using a proprietary single-site catalyst that is different from 'conventional' LLDPE;
- and is not manufactured by Qenos.

NOVA further submitted that our observation relating to an end user that had converted its operations to C8 LLDPE was an attempt by us to rectify the error that has persisted since 2003 that C8 LLDPE might be substituted for C6 LLDPE if the price is right. It claims that no evidence of this has ever been produced and this most recent observation demonstrated only that an end user can invest in existing facilities to facilitate a transition to the use of C8 LLDPE. It contended that this observation does not provide any evidence of C6 and C8 being interchangeable.

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8.7.3 Consideration of the responses

We considered the new evidence provided by Qenos where its customers have changed its production process from one that uses only LLDPE, to one that uses a blend of MPE and LLDPE. The evidence seems to indicate that the main driver of this change was end user requirement, performance and quality, rather than costs minimisation. Therefore, we maintain our assessment that there is no evidence that substitution is occurring due to production economics.

In relation to the volume of MPE sales in Australia, we consider that data verified during the investigation and contained in the import database to be more accurate. Therefore, we maintain our assessment that sales volumes of MPE are relatively low when compared with the overall LLDPE market.

We disagree that NOVA's single-site catalysed octene product should be treated in the same manner as MPE. We note that the product data sheets of NOVA's octene products are labelled as Octene LLDPE Film Resins.

We unequivocally reject NOVA's allegation that our assessment that C8 LLDPE might be substituted for C6 LLDPE is an error that persisted since 2003 and that our observation relating to an end user that has converted its operations to C8 LLDPE is an attempt by us to rectify this 'error'. This assessment was made in considering the facts and evidence collected during this investigation, independently of any previous cases. We maintain our assessment that C8 LLDPE and Qenos' C6 LLDPE are substitutable and should not be considered separately in this section.

8.8 Price effects

8.8.1 Assessment in the SEF

Price undercutting

Price undercutting occurs when the imported product is sold at a price below that of the Australian manufactured product. We compared the selling prices of Qenos to the selling prices from imports of LLDPE to similar customers in Australia (on similar terms), during the investigation period, using:

- detailed sales data provided by Qenos; and
- detailed sales data provided by importers.

As one particular major importer did not supply sales data, we constructed its selling price based on data in the import database and verified expenses and margins from other importers.

Rotational Moulding

We compared Qenos' rotational moulding LLDPE selling prices to selling prices of two major importers in the rotational moulding market. For the first importer, we found no price undercutting during the investigation period except for the 2nd quarter of 2008,

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which was negligible. For the second importer we found price undercutting during the first two quarters of 2008, which was significant.

The analysis showed that there was some price undercutting by importers of rotational moulding LLDPE during the first two quarters of 2008. This led us to consider that the dumped imports of LLDPE have undercut Qenos' prices in the rotational moulding market.

Film

We compared Qenos' film LLDPE selling prices to selling prices of two major importers in the film market. For both importers, we found that price undercutting occurred throughout the investigation period except for the 1st quarter of 2009.

This analysis showed that Qenos experienced price undercutting for the majority of the investigation period, leading us to consider that the dumped imports of LLDPE have undercut Qenos' prices in the film market.

Price depression

Rotational Moulding

Qenos' selling prices for rotational moulding LLDPE were relatively stable during 2007 and into 2008. Qenos' selling price fell slightly in the 1st quarter of 2008, then increased slightly in the 2nd and 3rd quarters of 2008, peaking at a price higher than any other quarter during the injury analysis period. However, Qenos' selling price fell sharply in the 4th quarter of 2008, then again in the 1st quarter of 2009 to a price lower than any other quarter during the injury analysis period.

This analysis showed that, in spite of the boom in the rotational moulding market and its subsequent collapse, Qenos' selling price for rotational moulding LLDPE was relatively stable during 2007. During the investigation period, prices increased but then started falling from the 4th quarter of 2008, at the same time as the onset of the GFC. The degree of price reduction in the 1st quarter of 2009 was significant. While there is a possibility that dumping caused some price depression, we considered it more likely that injury to Qenos in the form of price depression of rotational moulding LLDPE had been caused by the GFC, rather than the dumped imports of LLDPE.

Film

As discussed in section 7.5 above, we found that Qenos did not suffer injury in the form of price depression in the film market. However, we observed that prices fell significantly in the 1st quarter of 2009, which appears to be related to the effects of the GFC.

Price suppression

Price suppression occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

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Some interested parties have submitted that the Australian LLDPE market price, including Qenos' selling price, is based on South East Asian LLDPE export prices as reported by independent publications, such as ICIS.

However, Qenos submitted that this price is not a domestic price and is often a dumped price and that the unsuppressed price should be based on its CTMS.

To address both these submissions above, we have conducted the price suppression analysis by comparing Qenos' weighted average selling prices to the South East Asian LLDPE prices (converted to AUD) and its CTMS.

Rotational Moulding

In relation to the South East Asian LLDPE price, Qenos' selling prices of rotational moulding LLDPE were suppressed from the 1st quarter of 2008 and continued throughout the entire investigation period. However, the price suppression was most evident in the 4th quarter of 2008 and the 1st quarter of 2009.

In relation to its CTMS, Qenos' selling prices experienced some price suppressed in the 4th quarter of 2007 and the 1st quarter of 2008, and a greater degree of price suppression in the 4th quarter of 2008 and the 1st quarter of 2009.

The analysis showed that compared to the South East Asian LLDPE price and its CTMS, Qenos' prices for rotational moulding LLDPE were sometimes suppressed during the investigation period, but more so in last two quarters of the investigation period, which coincide with the onset of the GFC. While there is a possibility that dumping caused some price suppression, we considered it more likely that injury to Qenos in the form of price suppression of rotational moulding LLDPE had been caused by the GFC, rather than the dumped imports of LLDPE.

Film

In relation to the South East Asian LLDPE price, Qenos' selling prices of film LLDPE were not suppressed during the investigation period, except for the 1st quarter of 2009 which was slightly suppressed.

In relation to its CTMS, Qenos' selling prices were suppressed in the 4th quarter of 2007, but not suppressed during the first three quarters of 2008. However, Qenos' prices were then suppressed in the 4th quarter of 2008 and the 1st quarter of 2009.

The analysis showed that price suppression for the film market was negligible during the investigation period, except for the 4th quarter of 2008 and 1st quarter of 2009 when compared to Qenos' CTMS. This was the only situation where price suppression was experienced by Qenos, which coincided with the onset of the GFC. This led us to consider that injury to Qenos in the form of price suppression of film LLDPE had been caused by the GFC, rather than the dumped imports of LLDPE.

8.8.2 Responses to the SEF

We did not receive any specific submissions in response to the SEF in relation to our causal link assessment on price undercutting, price depression and price suppression.

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8.9 Volume effects

8.9.1 Assessment in the SEF

Loss of sales volume

Rotational Moulding

Qenos' sales volume of rotational moulding LLDPE peaked in the 1st quarter of 2007. By the 4th quarter of 2007, sales volume decreased by approximately 50%, which was at the same time as the collapse of the rotational moulding market. During the investigation period, Qenos' sales fluctuated between the quarters, though was trending upwards. However, the volumes did not return to the same level as before the collapse.

Imports of rotational moulding LLDPE similarly grew in the first three quarters of 2007 then declined from the 4th quarter of 2007, and continued to decline into and throughout the investigation period.

The analysis showed that the growth of LLDPE imports, in particular from the USA, reflected the rotational moulding market boom in 2007. The analysis also showed that the main driver of the loss of sales volume experienced by Qenos in the investigation period was the collapse in the rotational moulding market. During the investigation period, Qenos' sales volume was on an upwards trend and imports were declining. This led us to consider that injury to Qenos in the form of lost sales volume of rotational moulding LLDPE had been caused by the collapse in the rotational moulding market rather than the dumped imports of LLDPE.

Film

Qenos' sales volume of film LLDPE followed a downward trend since 2006 until the 1st quarter of 2008. During the investigation period, sales volume remained relatively stable, but still below that of the 4th quarter of 2007, until the 4th quarter of 2008 where sales volume dipped, then increased again in the 1st quarter of 2009 to a level above that of the 4th quarter of 2007.

Imports of film LLDPE increased throughout 2006 and 2007 before declining in the 1st quarter of 2008. During the investigation period, imports of film LLDPE observed an upwards trend.

The analysis showed that Qenos lost significant sales volume of film LLDPE prior to the investigation period which seemed to stabilise during the investigation period. This may be due to Qenos adjusting its production schedule in response to the boom in the rotational moulding market. The fact that Qenos' sales volume remained low during the investigation period, relative to 2006 & 2007, may have been due to the imports of dumped LLDPE. On the other hand, the reduced sales volume could also be the result of an expanded supply of imported film LLDPE during the preceding years, which continued into the investigation period.

It seemed that Qenos' sales volume of film LLDPE trended upwards during the investigation period at the same time as import volumes were also increasing. This led us to consider that injury to Qenos in the form of lost sales volume of film LLDPE had

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been caused by an expanded supply of imported LLDPE into the film market during the boom in the rotational moulding market, rather than the dumped imports of LLDPE.

Loss of market share

Rotational Moulding

Qenos' share of rotational moulding LLDPE, compared to rotational moulding LLDPE imports from Canada and the USA, was stable in 2006, then declined steadily during 2007, bottoming in the 4th quarter of 2007. During the investigation period, Qenos' market share trended upwards but remained below 2006 levels.

The analysis showed that Qenos' market share of rotational moulding LLDPE declined in 2007 as the market boomed. As the rotational market contracted, Qenos regained its market share above 2007 levels, leading us to consider that the injury to Qenos in the form of lost market share of rotational moulding LLDPE had been caused by the boom in the rotational moulding market, rather than the dumped imports of LLDPE.

Film

Qenos' share of film LLDPE, compared to film LLDPE imports from Canada and the USA, fell in 2006 and fluctuated in 2007, though remained below 2006 levels. During the investigation period, Qenos' market share trended downwards.

The analysis showed that Qenos' share of film LLDPE experienced an initial fall in 2007, possibly due to Qenos' lower sales volume of film LLDPE during the boom in the rotational moulding market. Qenos' share fell again during the investigation period, possibly due to an expanded supply of imported LLDPE in response to its lower film LLDPE sales volume during the rotational moulding boom. However, Qenos' share continued to decline throughout the investigation period as import volumes from exports also increased. This led us to consider that injury to Qenos in the form of lost market share of film LLDPE may have been caused by an expanded supply of imported LLDPE into the film market during the boom in the rotational moulding market, rather than the dumped imports of LLDPE.

8.9.2 Responses to the SEF

Qenos

Qenos argued that broadly assigning injury to 'other causes' and dismissing injury from dumped exports of LLDPE from Canada and the USA which undercut Qenos' selling prices and secured market share at its expense, is an oversight at the very least. Qenos stated that it is of the view that dumping has also caused material injury coincidentally with the GFC. It noted that the collapse in demand associated with the GFC was most notable in the 4th quarter of 2008 and the 1st quarter of 2009.

Qenos stated that as it was operating at optimum production capacity in 2007 during the rotational moulding boom, it is not surprising that as a percentage of the overall market its share was reduced. However, it claimed that in 2008, when the market returned to normal demand for the first three quarters and then dipped as general demand contracted (for the whole economy), exports from Canada and the USA maintained

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volumes at levels of 2007, resulting in a decline in Qenos' market share in 2008. In addition, it stated that as there were anti-dumping measures on LLDPE exported from Thailand during 2008, it is not surprising that dumped exports of LLDPE from Canada and the USA, which undercut its prices, have increased market share. It argued that the loss of market share it experienced can be directly attributed to the price undercutting of LLDPE exports from Canada and the USA at relatively large dumping margins and, in 2008, it was only the Australian industry that experienced a decline in market share that can only be explained by price undercutting from dumped exports.

8.9.3 Consideration of the responses

We do not accept Qenos' allegation that we have broadly assigned injury to other causes. In the SEF, we did not attribute Qenos' lost sales volume or lost market share to the GFC, but rather to the boom and subsequent collapse of the rotational moulding market.

In addition, Qenos' statement that exports from Canada and the USA maintained volumes at 2007 levels is inaccurate for the rotational moulding market where import volumes decreased and Qenos' market share increased. In relation to the film market, as stated in the SEF, we considered injury to Qenos in the form of lost market share in the investigation period may have been caused by other factors as imports continued to increase and Qenos continued to lose market share.

Furthermore, we consider that as the LLDPE market is predominately contract based, and during the 2007 boom it was likely that end users sourced LLDPE from other suppliers, it is not surprising that Qenos was unable to recapture market share to pre-2007 levels, even if LLDPE were not imported at dumped prices.

8.10 Profit effects

8.10.1 Assessment in the SEF

Reduced profit

Rotational Moulding

Qenos' total profit for rotational moulding LLDPE fluctuated during 2006 and the first three quarters of 2007, then fell sharply in the 4th quarter of 2007. Profits fell again in the 1st quarter of 2008, then trended upwards to the 3rd quarter of 2008 to a level higher than the 4th quarter of 2007. In the 4th quarter of 2008, Qenos experienced a loss in profit, which decreased further in the 1st quarter of 2009.

The analysis showed that Qenos experienced a large fall in profits for rotational moulding LLDPE in the 4th quarter of 2007, at the same time as the collapse in the rotational moulding market. During the investigation period, Qenos' profit trended upwards and in the 4th quarter of 2008, Qenos experienced negative profits, at the same time as the onset of the GFC. This led us to consider that injury to Qenos in the form of reduced profit for rotational moulding LLDPE had been caused by the collapse in the rotational moulding market and the onset of the GFC, rather than the dumped imports of LLDPE.

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Film

Qenos' total profit for film LLDPE fell between the 4th quarter of 2006 and the 1st quarter of 2007. During the next two quarters of 2007, Qenos' profit remained relatively stable, but then fell significantly in the 4th quarter of 2007. Qenos' profit then increased in the 1st quarter of 2008, then again in the 2nd quarter of 2008 to a level higher than any of the quarters during 2007, then fell slightly in the 3rd quarter of 2008. In the 4th quarter of 2008, Qenos' profit fell sharply but remained slightly positive, then lost profit in the 1st quarter of 2009.

The analysis found that during the first three quarters of the investigation period, Qenos' profit was comparable to its profits during 2007 and only experienced reduced or negative profits with the onset of the GFC. This led us to consider that injury to Qenos in the form of reduced profit for film LLDPE had been caused by the onset of the GFC, rather than the dumped imports of LLDPE.

Reduced profitability

Rotational Moulding

Qenos' profitability for rotational moulding LLDPE fluctuated during 2006 and the first three quarters of 2007, then fell sharply in the 4th quarter of 2007, and again in the 1st quarter of 2008. Profitability then increased in the 2nd quarter of 2008 and then fell in the 3rd quarter of 2008 but was still higher than the 4th quarter of 2007. In the 4th quarter of 2008, Qenos experienced negative profitability which increased in the 1st quarter of 2009.

The analysis showed that Qenos' profitability in the rotational moulding market fell significantly in the 4th quarter of 2007, at the same time as the collapse in the rotational moulding market. During the 2nd and 3rd quarters of 2008, Qenos' profitability improved, but was still below the average of 2007 levels. Profitability then fell significantly again from the 4th quarter of 2008 with the onset of the GFC. While there was a possibility that dumping caused some reduced profitability, we considered that it was more likely that injury to Qenos in the form of reduced profitability of rotational moulding LLDPE had been caused by the collapse in the rotational moulding market and the GFC, rather than the dumped imports of LLDPE.

Film

Qenos' profitability for film LLDPE followed similar trends as its total film profits. It fell in the 1st quarter of 2007 from its peak in the 4th quarter of 2006. During the first three quarters of 2007, profitability remained relatively stable, but then fell significantly in the 4th quarter of 2007. Qenos' profitability then increased in the 1st quarter of 2008, then again in the 2nd quarter of 2008 to a level higher than any of the quarters during 2007 and equal to the peak in the 4th quarter of 2006. Profitability then fell slightly in the 3rd quarter of 2008, then fell significantly in the 4th quarter of 2008 but remained slightly positive, before going negative in the 1st quarter of 2009.

This analysis showed that Qenos' profitability for LLDPE during the first three quarters of the investigation period was comparable to 2007 levels or higher. Qenos then experienced significant reductions in profitability with the onset of the GFC. This led us

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to consider that injury to Qenos in the form of reduced profitability of film LLDPE had been caused by the onset of the GFC, rather than the dumped imports of LLDPE.

8.10.2 Responses to the SEF

Aperio

Aperio stated that it believes that the Qenos feedstock costs are the main factor driving lower profitability during the investigation period. It argued that imports of LLDPE have not caused the loss of profitability to Qenos.

Other submissions

We did not receive any other specific submissions in response to the SEF in relation to our causal link assessment on profit and profitability.

8.11 Summary – Causal link

8.11.1 Assessment in the SEF

The following table summarises our analysis in relation to whether imports of dumped LLDPE has caused injury to the Australian industry producing like goods.

Injury indicator	Rotational Moulding	Film
Price undercutting	Yes	Yes
Price depression	No	No injury
Price suppression	No	No
Lost sales volume	No	No
Lost market share	No	Maybe
Reduced profits	No	No
Reduced profitability	No	No

Rotational moulding

We have found that the dumped imports of rotational moulding LLDPE have caused Qenos to experience price undercutting during the investigation period.

However, we have found that the dumped imports of rotational moulding LLDPE have not caused injury to Qenos in the form of price depression, price suppression, lost sales volume, lost market share, reduced profits or reduced profitability.

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Film

We have found that Qenos' selling prices of film LLDPE have been undercut by imports of dumped film LLDPE. This price undercutting may have led to the lost market share experienced by Qenos.

However, we have found that the dumped imports have not caused injury to Qenos in the form of lost sales volume, price suppression, reduced profits or reduced profitability.

In determining whether the dumped imports of film LLDPE have caused injury to Qenos, we considered whether the price undercutting experienced by Qenos and lost market share would have occurred in the absence of the importation of the dumped LLDPE. We considered that, on balance, the evidence suggested that the price undercutting and lost market share could have occurred in the absence of dumping and injury to Qenos had been caused by other factors, namely the expanding supply of imported LLDPE into the film market during the boom in the rotational moulding market and the onset of the GFC.

8.11.2 Responses to the SEF

Qenos

Qenos stated that it disputes our assessment of injury attributed to the dumped exports from Canada and the USA. It believed that we have understated the overall impact of the dumping and the undercutting has had on Qenos' prices. It contended that dumping and price undercutting have enabled exporters in Canada and the USA to increase market share at the expense of Qenos and caused material injury throughout the investigation period.

8.11.3 Consideration of the responses

We note Qenos' disagreement with our assessment on causation. However, we do not accept Qenos' statement that we have understated the overall impact of the dumping and the effect of the undercutting on Qenos. Although we found that Qenos experienced price undercutting during the investigation period, price undercutting was not evident for all five quarters of the investigation period.

The evidence suggests that the collapse of the rotational moulding market has had a significant impact on Qenos' sales volume and market share during the first three quarters of the investigation period. In addition, the evidence suggests that the GFC has had a significant impact on Qenos' prices and profitability during last two quarters of the investigation period.

As stated in the SEF, we do not reject that dumped imports have contributed to Qenos' injury, however we consider that the injury caused by the dumped imports to be immaterial. We maintain our assessment that injury to Qenos from dumped imports to be negligible.

9 Will dumping threaten material injury to the Australian industry?

We are not satisfied that material injury is threatened to an Australian industry because of the exportation of the goods into the Australian market. In making this finding, we have taken into account only such changes in circumstances as would make that injury foreseeable and imminent unless dumping measures were imposed, in accordance with subsection 269TAE(2B).

9.1 Legislative framework

Section 269TG provides that the Minister may publish a dumping duty notice where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- because of that, material injury to the Australian industry producing like goods is threatened, or the establishment of an Australian industry producing like goods may be materially hindered.

Subsection 269TAE(2B) relevantly states that in determining whether or not material injury is threatened to an Australian industry, the Minister must take account only of such changes in circumstances as would make that injury foreseeable and imminent unless dumping measures were imposed.

9.1.1 WTO Anti-dumping Agreement

Where an Act purports to give effect to an international agreement, that agreement may be looked at in order to resolve any uncertainty or ambiguity. Subsection 269TAE(2B) gives effect to Article 3.7 of the WTO Anti-Dumping Agreement. That provision is more detailed than subsection 269TAE(2B), and gives some guidance as to what factors may be included in a threat assessment.

The WTO Anti-Dumping Agreement states in Article 3.7 that:

'A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

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- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated.'

In respect of injury being foreseen or imminent, the footnote to this article states that:

'One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.'

9.2 Assessment in the SEF

In its application for anti-dumping duties, Qenos stated that:

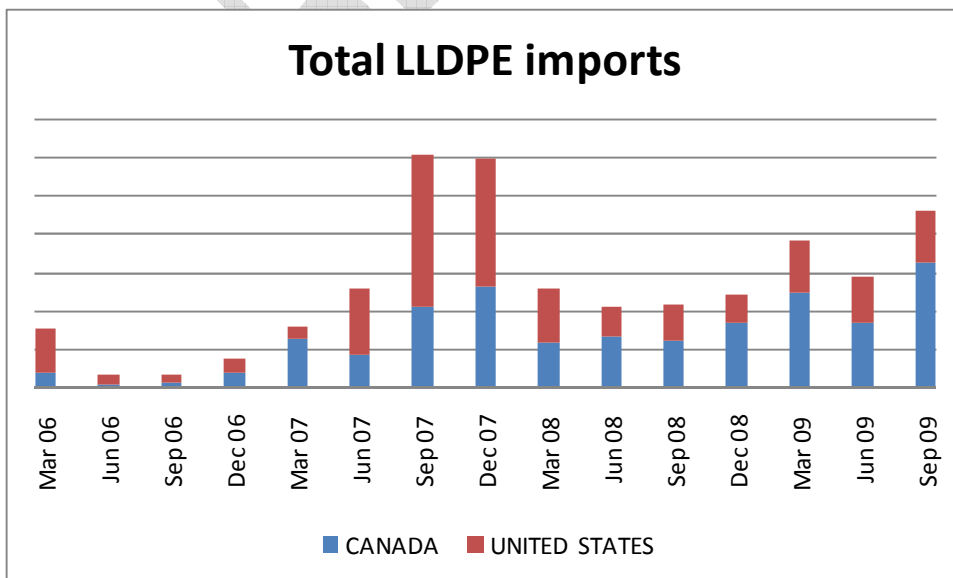
'Qenos' application for anti-dumping duties is based upon material injury that the company has experienced as a result of dumped exports of LLDPE from Canada and the USA during 2008.

Qenos considers that in the absence of anti-dumping measures on future exports of LLDPE from Canada and the USA it is likely that it will sustain further material injury which would be linked to exports at dumped prices from both source countries.'

As we were not satisfied that the Australian industry had suffered material injury, we have examined whether there is a threat of material injury to the Australian industry.

9.2.1 Volumes

We obtained data from the import database of LLDPE imports exported from Canada and the USA during the 2nd and 3rd quarters of 2009. We compared this data with the volumes of imports during the injury analysis period (excluding imports by Qenos), as shown in the graph below.



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The analysis showed that the volume of LLDPE imports from Canada and the USA fell between the 1st and the 2nd quarters of 2009, then increased in the 3rd quarter of 2009. This fluctuation in LLDPE imports during the first three quarters of 2009 seemed to be driven by exports from Canada. The average of the volume of LLDPE imports during the 2nd and 3rd quarters of 2009 was approximately the same as the volume of LLDPE imports in the 1st quarter of 2009. In addition, the volumes of LLDPE imports during the 2nd and 3rd quarters of 2009 were still below the peak in LLDPE imports during the 3rd and 4th quarters of 2007. We considered that these fluctuations to be consistent with the normal ebb and flow of business.

Therefore, we did not consider that there was evidence of an imminent and significant increase in the volume of dumped imports of LLDPE from Canada and the USA into the Australian market.

9.2.2 Prices

We also considered comparing quarterly import prices of LLDPE from the import database as declared by importers. However, declarations are made based on invoiced prices and during the investigation we found that the purchases of LLDPE by one major importer were not arms length transactions. Therefore, we did not consider data on LLDPE prices from the import database for that importer to be suitable for the purposes of analysing threat. For all other imports of LLDPE, Customs and Border found that the weighted average free-on-board (FOB) export prices to be stable in the 2nd and 3rd quarters of 2009.

In the absence of other suitable evidence, we did not consider that there is an imminent and significant increase in the volume of imports of LLDPE entering the Australian market at prices that will have a significant depressing or suppressing effect on domestic prices that would likely increase demand for further imports.

9.3 Responses to the SEF

Qenos

Qenos stated that exceptional circumstances existed in 2009 which rendered the Australian industry susceptible to the injurious effects of further dumping that would, in the normal course of business trading, be readily absorbed in the normal ebb and flow. It asserted that from 2007 to 2009, exports from Canada and the USA increased in real terms with volumes in the first three quarters of 2009 at record levels. It also claimed that export volumes in 2009 have increased by 132% from 2006 and 50% from 2008. Qenos argued that this, combined with the relatively significant dumping margins, evidence of price undercutting, and Qenos' lost market share during the investigation period, are demonstrable of additional increases in exports as 'imminent and foreseeable'.

It also considered that the likelihood of further increases in LLDPE exports from Canada and the USA are likely as:

- the North American market demand remains depressed;
- the Canadian and USA producers have significant excess production capacities as a consequence of reduced demand on home markets;

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- ongoing production will have caused inventory build-ups; and
- the immediate outlook for an increase in local demand remains weak.

On our request, Qenos provided documentation supporting these claims.

Qenos stated that the combined effects of the factors at play on the respective domestic markets of the Canadian and USA producers, combined with the increase export activity to Australia, indicates that there has been a surge in LLDPE export volumes to Australia in 2009 that is likely to continue into the foreseeable future.

Furthermore, Qenos claimed that its profit and profitability in the 2nd and 3rd quarters of 2009 are well down on returns experienced in 2006, even as domestic sales volumes recovered from the GFC.

EMCC

EMCC argued that there is no objective data to suggest that a weak outlook or underutilisation of production capacities in the North American markets pose an imminent and foreseeable threat of material injury to the Australian LLDPE industry caused by dumping. It supplied domestic sales data, which it claimed indicates a rebound in the USA market following the market contraction experienced in 2008 and early 2009 as a result of the GFC.

Dow

Dow stated that there has been no significant rate of increase of imports from Canada and the USA indicating that substantially increased importation is likely to cause future injury. It argued that if Qenos is currently operating at pre-crisis levels, its alleged decrease in market share is due to the fact that it cannot serve the entire Australian market, and by virtue of its capacity constraints, Qenos can supply only a finite amount of the market. In addition, Dow argued that during the period in 2009 when Qenos claimed that imports were increasing, Qenos once again returned to profitability, indicating the lack of correlation between imports from Canada and the USA and the condition of the Australian industry.

Dow also stated that inventories of the goods are not increasing as claimed by Qenos. It argued that in making this claim, Qenos relies upon speculation rather than facts and Dow's inventory volumes are consistent with the normal ebb and flow of business, which does not present any opportunity for an imminent surge in exports to Australia.

Dow further stated that Qenos' claim that the North American market demand remains weak is not supported by facts and is consistent with the normal ebb and flow of business.

DCAL

DCAL stated that the recent increases in import volumes of LLDPE from Canada and the USA reflected shifts in supply sources from one country to another due to a variety of circumstances including product availability and demand dynamics across various regional markets. It explained that it uses numerous supply sources for its polyethylene products, and for calendar year 2009, import volumes of the goods from Canada and the

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USA are estimated to be higher than for 2008. However, it argued, aggregate import volumes of these grades from all sources collectively declined by 16% over 2008 volumes. Therefore, DCAL advised that the increased volumes from Canada and the USA as observed by Qenos are actually 'replacement' volumes which displaced products from other sources.

9.4 Consideration of the responses

We do not agree with Qenos that dumped imports of LLDPE from Canada and the USA threaten to cause material injury to the Australian industry.

While import volumes increased after the investigation period, we note this trend is driven mainly by increased import volumes from Canada. We also note that total quarterly import volumes from Canada and the USA after the investigation period have not reached the volumes of the last two quarters in 2007. In addition, we analysed the import volumes in the first three quarters of 2009, compared with 2008, and noted that the data in the import database supported DCAL's submission that the recent increases reflect a shift in import supply sources (see **Confidential Attachment 1**). We consider that these circumstances do not support the finding that material injury caused by dumping from Canada and the USA is imminent and foreseeable.

In relation to Qenos' claims of weak North American market demand, excess production capacities, and inventory build-ups, submissions by exporters appear to contradict this to some extent. However, information provided by all parties post-SEF are unverified and should not be given much weight. We consider that these claims are simply an allegation of the possibility of a surge in LLDPE export volumes to Australia and are not based on positive evidence that threat of material injury caused by dumping is imminent and foreseeable.

Qenos claimed that its profits and profitability in the 2nd and 3rd quarters of 2009 were down, and it supplied unverified data that supports this claim. We cannot rule out the possibility that if dumped exports continued after the investigation period, they may have caused injury to the Australian industry due to suppliers attempting to capture volume and market share in a market recovering from the GFC. However, we do not have sufficient data to support this somewhat speculative proposition, and it certainly does not provide sufficient positive evidence to support a finding that dumping is continuing and material injury caused by that dumping is imminent and foreseeable.

Therefore we maintain our assessment that injury, if any, to the Australian industry that may be caused by the dumping of exports of LLDPE from Canada and the USA is negligible.

10 Non-injurious price

10.1 Legislative framework

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the WTO Anti-Dumping Agreement and subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

10.2 Introduction

The calculation of the non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. The NIP is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. The NIP is defined in section 269TACA.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

10.3 Unsuppressed selling price

We generally derive the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Our preferred approach to establishing an USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry CTMS plus profit; or
3. selling prices of undumped imports.

Having calculated the USP, we then calculate a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

10.4 Australian industry

Qenos submitted that it is inappropriate to utilise selling prices in 2007 as the basis for a NIP due to higher CTMS during the investigation period. It contends that the USP should be based upon its CTMS over the investigation period, adjusted upward by the rate of profitability achieved by Qenos on its domestic sales of LLDPE over the 12 months to September 2007.

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10.5 Other interested parties

Other interested parties have submitted that the USP should be calculated using an ICIS based pricing formula, arguing that Qenos' usual practice is to use such pricing formula in price negotiations, rather than a CTMS formula. Some interested parties have claimed that as Qenos' CTMS for 2008 was unusually high, coupled with high profit margins in 2006 & 2007 during the rotational moulding boom, Qenos' method of calculating the USP over inflates the USP.

DCAL submitted that the USP should be calculated using:

- actual material input costs incurred for the investigation period; plus
- the conversion/production and SG&A costs that typified manufacture and sales of film grade C6 LLDPE during those years of full capacity production in 2006, adjusted for inflation; plus
- a profit margin reflecting Qenos' average annual profitability over a five-year period immediately preceding the commencement of the injury analysis period.

10.6 Assessment in the SEF

10.6.1 Unsuppressed selling price

We noted Qenos' claim that injury caused by dumped imports of LLDPE commenced in the 1st quarter of 2008 and have assessed Qenos' selling prices in preceding years to establish their suitability for use in calculating a USP.

We considered that Qenos' selling prices in 2007, being the most recent period in which its prices were unaffected by dumping, are suitable for establishing a USP. We agreed with Qenos' claim that prices in this year do not reflect higher CTMS experienced in 2008.

Therefore, we calculated the USP using:

- the weighted average variable manufacturing costs for Qenos during the investigation period; plus
- the weighted average fixed costs for Qenos in the period between the 3rd quarter of 2006 and the 2nd quarter of 2007 adjusted for inflation, which represented a period of full capacity utilisation by Qenos; plus
- the weighted average profit margin of 2007, separately for film and rotational moulding market segments.

10.6.2 Non-injurious price

We calculated the NIP by deducting from the USP the importation costs, ocean freight costs, SG&A costs, and a profit margin. Due to the degree of fluctuations in the exchange rate during the investigation period, the NIP was calculated for each quarter to take into account different exchange rates. The average exchange rate for each quarter was used. To obtain a single NIP amount, the weighted average NIP for the investigation period was calculated (weighted by the volume of imports).

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10.6.3 Comparison of the NIP to the export prices

We compared the NIP with the weighted average export prices of LLDPE exported from Canada the USA during the investigation period.

The analysis found that the NIP was lower than the weighted average export prices of the majority of LLDPE exported from Canada and the USA. This analysis supports our assessment that dumped LLDPE exported to Australia from Canada and the USA has not caused material injury to Qenos.

10.7 Responses to the SEF

Qenos

Qenos disagreed with our finding that the NIP is below the weighted average export prices for Canada and the USA during the investigation period. It considered that the method we used to calculate the USP using variable costs across the investigation period, plus fixed costs from a period where it was operating at maximum capacity, was unreasonable upon which to compare export prices in 2008/09. This was because there were substantial differences apparent in raw material ethylene prices, other variable costs, and production operating capacities which impact directly on the USP. It also stated that it was unreasonable to compare a USP based upon production economics for one period with pricing in another period. It asserted that our determination of a NIP has disadvantaged Qenos. It also claimed that it is unreasonable to use the pre-third quarter 2008 variable costs in the calculation of the NIP.

In addition, Qenos stated that an examination of the NIP for the 2nd and 3rd quarters of 2009 indicates significant price undercutting by dumped exports. It claimed that export prices from Canada and the USA are up to 20% below the prevailing NIP.

In a subsequent submission, Qenos stated that its position on a proposed USP has not changed since its initial submission on the USP – CTMS over the investigation period adjusted for profitability achieved in 2007. It considered that at the very least, the full costs plus profits over the investigation period should be compared with Canadian and US export prices over the investigation period. Qenos provided a spreadsheet of its NIP and export price calculations, including those for the 2nd and 3rd quarters of 2009.

DCAL

DCAL disagreed with Qenos' statement that it is unreasonable to use the pre-third quarter 2008 variable costs in the calculation of the NIP. It argued that since the investigation period commenced on 1 January 2008 and all statistical comparisons commenced from this date, it believes that we were correct in accounting variable costs over the full investigation period.

10.8 Consideration of the responses

When calculating the NIP, we did not take into consideration whether it advantages or disadvantages a particular interested party. We only considered whether the NIP calculation is fair and reasonable. On this basis, we disagree with Qenos' claim that it is

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unreasonable to use pre-third quarter 2008 variable costs in the NIP calculations. We have used the weighted average variable manufacturing costs over the investigation period and we see no grounds to disregard the first two quarters of 2008 in our NIP calculations as to do so would be unreasonable.

In regards to the fixed costs, we consider that, for this investigation, using a period other than one of full capacity utilisation would be unreasonable. Using periods of capacity underutilisation would unfairly inflate the fixed costs per unit in an USP calculation. It would result in a higher USP during a period of weak demand and low capacity utilisation, compared to a period of strong demand and high capacity utilisation.

Nonetheless, as part of examining Qenos' claim, we compared the weighted average export prices during the investigation period with the NIP calculated as suggested by Qenos – that is using the weighted average fixed costs during the investigation period. We note that for all US exporters, we found that the NIP was still below the weighted average export price. We also note that for Canadian exporters, we found that the NIP was still below the weighted average export price for one exporter and higher for the other exporter (see **Confidential Attachment 2**).

In relation to 2nd and 3rd quarter 2009 export prices compared with the NIP, we consider that such comparisons are inappropriate. Firstly, these two quarters are outside the investigation period and it is inappropriate to undertake such analysis in this investigation. Secondly, we do not have sufficient export price information for the 2nd and 3rd quarters of 2009. Even if we consider that declared prices in the import database to be accurate, as discussed in the SEF we found purchases from one major importer to be non-arms length transactions, and short of conducting another verification visit, it would be unreasonable to rely on unverified export price data for analysis purposes.

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11 Attachments

Confidential Appendix A	Termination instrument
Appendix B	Public notice of the Termination
Confidential Attachment 1	Import data of LLDPE by DCAL
Confidential Attachment 2	NIP calculation

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Customs Act 1901 - Part XVB

Linear Low Density Polyethylene

exported from

Canada and the United States of America

Termination of an investigation into alleged dumping

Notice under s. 269TDA of the *Customs Act 1901*

On 28 May 2009, the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) initiated an investigation into the alleged dumping of linear low density polyethylene (LLDPE) exported to Australia from Canada and the United States of America (USA) (the goods). The investigation followed an application by Qenos Pty Ltd, the sole member of the Australian industry.

On 20 November 2009, in accordance with s. 269TDA(13) of the *Customs Act 1901* (the Act), the CEO decided to terminate the investigation into the alleged dumping of LLDPE exported to Australia from Canada and the USA. The CEO is satisfied that:

- there has been, or may be, dumping of some or all of the goods; but
- the injury, if any, to the Australian industry, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible.

Termination Report No. 146 (TER 146) setting out the reasons for the decision to terminate has been placed on the public record. A copy of the report is available from:

Trade Measures Office Management
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

or can be accessed on the internet at www.customs.gov.au.

The applicant may request a review of the decision to terminate the investigation by lodging an application with the Trade Measures Review Officer, in accordance with the requirements of Division 9 of the Act, within 30 days of the publication of this notice.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 5755, fax number (02) 6275 6990 or email tmops3@customs.gov.au.

Geoff Gleeson
Delegate of the Chief Executive Officer