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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION OF AN APPLICATION
FOR A DUMPING DUTY NOTICE**

TRADE MEASURES BRANCH

REPORT NO. 146

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

28 MAY 2009

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Abbreviations

\$	Australian dollars
The Act	<i>Customs Act 1901</i>
CTMS	Cost To Make & Sell
Customs and Border Protection	Australian Customs and Border Protection Service
FOB	Free On Board
LLDPE	Linear low density polyethylene
NIP	Non-injurious Price
Qenos	Qenos Pty Ltd
Tariff Act	<i>Customs Tariff Act 1995</i>
the goods	the goods the subject of the application
the Minister	the Minister for Home Affairs
USA	United States of America
USP	Unsuppressed Selling Price

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1 Introduction

1.1 Application

On 7 April 2009, Qenos Pty Ltd (Qenos) lodged an application under section 269TB of the *Customs Act 1901* (the Act)¹. 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 linear low density polyethylene (LLDPE) exported to Australia from Canada and the United States of America (USA).

1.2 Company information

The Qenos group of affiliated companies is wholly owned by the China National BlueStar (Group) Corporation (Bluestar). Bluestar is a joint venture between China National Chemical Corporation and the Blackstone Group (refer to Non-Confidential Attachment A-2.1 of the application).

The application includes a chart of companies associated or affiliated with Qenos in Confidential Attachment A-2.6 and a Qenos organisational chart in Confidential Attachment A-2.2.

1.3 Previous LLDPE cases

There have been a number of previous dumping investigations, reviews and continuations into LLDPE, as detailed below:

- 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 April 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 variable factors for LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 95 of 2005 – Continuation inquiry into LLDPE exported from Indonesia. Anti-dumping measures were continued;

¹ references to any section or subsection shall be references to sections or subsections of the *Customs Act 1901* unless otherwise specified

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- Trade Measures Report No. 97 of 2005 – Accelerated review of anti-dumping measures in relation to a new exporter from Korea;
- Trade Measures Report No. 134 of 2007 – Review of variable factors for LLDPE exported from Indonesia, Korea and Thailand; and
- Trade Measures Report No. 137 of 2008 - Continuation inquiry into LLDPE exported from Korea and Thailand. Anti-dumping measures were continued for Thailand and allowed to expire for Korea.

Measures are currently imposed on imports of LLDPE from Indonesia and Thailand.

1.4 Consideration of the application

Pursuant to s269TC(2) & (2A), the decision whether to reject the application must be made within 20 days after the lodgement date, or from the date that further information is received from the applicant. The application was lodged on 7 April 2009. As 27 April 2009 was a public holiday, the decision on whether or not to reject the application was required by 28 April 2009. Additional information was lodged by the applicant on 28 April 2009 and then again on 12 May 2009. Pursuant to s269TC(2A), the application was treated as received on the day that the further information was provided, therefore a decision whether to reject the application must now be made by 1 June 2009.

Subsection 269TC(1) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- that the application complies with subsection 269TB(4);
- that there is, or is likely to be established, an Australian industry in respect of like goods; and
- that there appears to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application or for the publication of such a notice upon the importation into Australia of such goods.

The above matters are examined in the following sections of this report.

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2 Does the application comply with subsection 269TB(4)?

Subsection 269TB(4) requires that the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

2.1 Approved form

The applicant has lodged an application, in writing, for the publication of a dumping duty notice and it is in the approved form. The form has been signed in the required manner.

The applicant has provided all information required by the form; two paper copies of the confidential and public record versions of the application were submitted, as well as copies of both versions and attachments and appendices in electronic form.

The non-confidential public record version of the application is considered to contain sufficient detail to allow a reasonable understanding of the substance of the information in accordance with the requirements of section 269ZJ.

2.2 Supported by Australian industry

The applicant has submitted that it is the only manufacturer of LLDPE in Australia and therefore meets the requirements of s269TB(6) as it accounts for:

- more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the applicant that has expressed either support for, or opposition to, the application; and
- not less than 25% of the total production or manufacture of like goods in Australia.

The application includes Australian production data in Confidential Appendix A-1. As the applicant is the sole manufacturer of LLDPE in Australia², the Appendix A-1 data represents the production volume of LLDPE by the Australian industry for LLDPE manufactured in 2008.

The application meets the requirements of s268TB(6) and is considered to be supported by a sufficient part of the Australian industry.

2.3 Conclusion – Compliance with subsection 269TB(4)

Based on the information submitted by the applicant, the application is considered to comply with subsection 269TB(4).

² As confirmed in previous investigations, continuations, and reviews in relation to LLDPE undertaken by Customs and Border Protection.

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3 Is there an Australian industry in respect of like goods?

3.1 The goods the subject of the application

3.1.1 Description

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

3.1.2 Tariff classification

The applicant identifies 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. There is no duty on goods imported under this subheading from the USA or Canada. This classification was confirmed by the Customs 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

The applicant stated that the goods the subject of the TCOs have physical properties that have been tailored for specific applications, the combination of properties (density, melt flow index, molecular weight) for these goods means that they are not substitutable by, or able to substitute Qenos products. The applicant further understands that the volumes of imported LLDPE the subject of the TCOs are small and have high unit values, reflecting specialty polymer grades that are not available from the local manufacturer.

The Australian Customs and Border Protection Service (Customs and Border Protection) considers that currently, only the form of LLDPE covered by TCO 9600312 does not fall within the definition of the goods, as it is in a powdered, not pelletised form. The goods covered by the other three TCOs fall within the definition of the goods.

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3.2 Locally produced like goods

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'.

3.2.1 Applicant's claims

It is claimed in the application that the essential characteristics of the imported goods and those manufactured by the applicant include:

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

As discussed in the application, Customs and Border Protection's finding in the Statement of Essential Facts (SEF) No.88 of the investigation into LLDPE from Canada in 2005, confirmed that "LLDPE manufactured by the applicant is like goods to imported LLDPE in terms of s.269T(1). Although not identical in all respects to the goods under consideration, the Australian produced goods have characteristics closely resembling those of the goods under consideration."

The applicant considers that there has not been any change in its local production since SEF No.88 to alter this viewpoint.

3.2.2 Imported materials

The application states that some imported raw materials are used in production of LLDPE, including catalysts, additives and co-monomers. The applicant stated that these products amount to less than 25 percent of the total cost to make LLDPE products.

The application indicates that the applicant has imported limited volumes of certain LLDPE, including roto-moulding grades. The applicant continues to import metallocene LLDPE (for blending with hexene (C₆) LLDPE) to enable it to offer a full range of LLDPE to the market.

3.2.3 Customs and Border Protection's assessment

It is Customs and Border Protection's understanding from the previous case involving LLDPE from Canada that the LLDPE manufactured by the applicant has similar physical and performance characteristics, is made in a similar manufacturing process and has comparative pricing to the imported product.

It is also Customs and Border Protection's understanding, from previous cases involving LLDPE and the current application, that the LLDPE manufactured by the applicant incorporates hexene (C₆). It has identical characteristics to the imported hexene (C₆). It

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has characteristics closely resembling the imported LLDPE incorporating butene (C₄) and octene (C₈).

In relation to equivalents:

- the domestically produced hexene (C₆) competes directly with the imported hexene (C₆);
- the domestically produced butene fighter (C₆) competes with the imported butene (C₄); and
- the domestically produced hexene (C₆) blended by the applicant with imported metallocene LLDPE competes with the imported octene (C₈).

The LLDPE (all co-monomers) is made into grades suitable for film, injection moulding or rotational moulding applications by varying the product characteristics, such as density, melt flow index, co-monomer content and additives. The use of butene (C₄), hexene (C₆) and octene (C₈) is not restricted to certain applications, but some co-monomers are preferred for particular products due to a combination of their performance characteristics and cost.

During a previous investigation into LLDPE exported from Korea and Thailand in 2003 (Trade Measures Report No. 67) the issue of like goods was the subject of extensive representations by interested parties. Customs and Border Protection recognised that end-users would not normally buy higher priced octene (C₈) instead of butene (C₄) or hexene (C₆) grades but that substitution might occur if the price of octene (C₈) was low enough. A discussion of price competition through price undercutting is detailed in section 6.2 of this report.

Customs and Border Protection notes the discussion in section 4.3.1 of this report, in relation to the acceptance of USA domestic prices as reasonable basis for Canadian domestic prices. Given this, it would also appear reasonable that if the LLDPE manufactured by the applicant is like goods to the imported Canadian LLDPE, it could also be considered like goods to the LLDPE imported from the USA.

3.2.4 Conclusion

Based on the information contained in the application, it is reasonable to consider that the applicant manufactures and sells goods in the Australian market that are like goods to the goods the subject of the application.

3.3 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

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3.3.1 Manufacturing/production process

As detailed in the application LLDPE is produced by the polymerisation of ethylene gas with the co-monomers butene (C₄), hexene (C₆), or octene (C₈), in the presence of various catalysts at controlled pressures and temperatures. LLDPE is produced using low-pressure in either a gas phase reactor or a solution process. Certain other chemicals are used in the polymerisation process. The raw LLDPE is mixed with additives to produce the various grades, compounded, extruded and chopped into pellets for sale.

The applicant's LLDPE manufacturing process at Botany utilises the gas phase fluidised bed process.

3.3.2 Conclusion

After reviewing the production process of the applicant as described in the application, the level of conversion costs as detailed in the confidential appendices, and after considering relevant information from previous investigations, reviews and continuations, Customs and Border Protection is satisfied that the applicant undertakes at least one substantial process of manufacture in Australia.

Customs and Border Protection therefore considers that the goods made and sold by the applicant can be regarded as being wholly or partly manufactured in Australia.

3.4 Conclusion – Australian industry

Based on the information in the application, Customs and Border Protection consider that there is an Australian industry producing like goods to the goods the subject of the application.

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4 Reasonable grounds – is there dumping?

Pursuant to s269TC(1)(c), establishing reasonable grounds for the publication of a dumping duty notice, this section will consider if there appears to be reasonable grounds for considering that the goods from Canada and the USA are exported at dumped prices.

4.1 General

4.1.1 Exporter/Importer

The applicant identified two producers/exporters of LLDPE from Canada:

- Dow Chemical Canada Inc; and
- NOVA Chemicals.

The applicant identified four producers/exporters of LLDPE from the USA:

- Chevron Phillips;
- Formosa Plastics;
- Dow Chemical Company; and
- Exxon Mobil Chemical.

The applicant identified four importers of the goods:

- Chevron Phillips Chemicals Australia Pty Ltd;
- Dow Chemical (Australia) Limited;
- Vanglobe Pty Ltd; and
- Micro Pellets Australia Pty Ltd.

4.1.2 Analysis period

Imports and normal value information provided in the application in the calendar year 2008 was used to determine if there are reasonable grounds to establish dumping.

4.1.3 Import volumes

Subsection 269TDA(4) requires that 'the total volume of the goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if, when expressed as a percentage of the total Australian import volume, it is less than 3 percent.'

Information from the Customs and Border Protection import database confirms that there have been exports to Australia of LLDPE from both Canada and the USA with volumes

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from each country in excess of 3 per cent of the total import volume since 1 January 2006.

4.1.4 Conclusion

Based on the available evidence, the volume of LLDPE exported from Canada in 2008 was greater than 3 per cent of the total import volume and the volume of LLDPE exported from the USA in 2008 was also greater than 3 per cent of the total import volume.

4.2 Export price

As the Australian Bureau of Statistics (ABS) data for LLDPE is subject to “No Country Declared” restrictions, the applicant obtained export data from a company involved in the purchase and on-sale of country import and export data from international government agencies. The information includes all exports of LLDPE grades to Australia (from Canada and the USA by month).

The applicant ‘adjusted’ the information to remove (from the export quantities from which the weighted average export prices have been determined) high value shipments (greater than US\$2,500 per metric tonne) as it is considered that these goods are not likely to be considered substitutable goods and low volume shipments (less than 16 tonne quantities), as these would be specific importations with unit values generally higher than US\$2,500/MT.

As disclosed in the application, export prices of LLDPE from Canada and the USA during 2008 were in the following ranges:

Period	Canada US\$/MT FOB	USA US\$/MT FOB
Jan-March 2008	1458-1651	1559-1796
Apr-June 2008	1575-1723	1601-1768
Jul-Sept 2008	1775-2030	1717-1932
Oct-Dec 2008	1626-1657	1925-1941

4.2.1 Conclusion

Following a comparison of the information contained in the application and the data contained in the Customs and Border Protection import database, the applicant’s assessment of export prices is considered reasonable.

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4.3 Normal value

4.3.1 Selling price in the exporter's domestic market

The applicant has obtained domestic pricing information for North America sourced from an industry publication that specialises in the reporting of market pricing for polyethylene.

The applicant has provided monthly selling prices for LLDPE sold in the USA as the basis for its normal value calculations for Canada and the USA. The applicant stated that Canada and the USA are member countries to the North America Free Trade Agreement ("NAFTA") and are also host to major LLDPE manufacturing facilities where LLDPE is supplied readily into respective markets under NAFTA. The applicant considers that therefore, it is reasonable (as was the basis for initiation of an LLDPE investigation in respect of Canadian exports to Australia in 2004) that published domestic prices for LLDPE sold in the USA, also be used as the basis for normal values for Canadian exports of LLDPE.

In the previous application involving Canada the applicant also provided correspondence from pricing information agencies that indicated that separate pricing information was not published for Canada, that pricing was considered the same across North America apart from freight, and that much of the Canadian market was priced from US domestic price. On this basis Customs and Border Protection accepted US prices as a basis for normal values from Canada.

For the purpose of this application, this approach is considered to still be reasonable.

The applicant claimed that a significant proportion of LLDPE exported from Canada and the USA is Ultra-violet ("UV") rotational moulding grade LLDPE and based its normal value calculations on this premise. This claim was supported by Confidential Attachment A-9.2 to the application, which provides details of competitive material offerings, including whether the material was "UV" or "non-UV".

The applicant stated that the imports of rotational moulding LLDPE are both butene (C₄) and hexene (C₆) based. The applicant has used the lower priced butene (C₄) based LLDPE as the starting point for its normal value calculation³. The domestic prices available were for film grade, which has a lower cost base than the rotational moulding grade. The applicant has therefore adjusted for the price differential apparent between film and rotational moulding grades and then further adjusted to include the cost of the UV stabilizer, which is not included in the domestic butene (C₄) LLDPE.

The adjustment is the difference between the applicant's purchase price for imported rotational grade LLDPE (including UV stabilizer) and USA butene (C₄) export prices throughout 2007 from the industry publication contained in Confidential Attachment B-3.1.1 of the application. The calculation of the adjustment is contained in Confidential Attachment B-3.1.2 of the application.

³ This is considered a more conservative estimate by the applicant as it does not include the cost differences between butene (C₄) and hexene (C₆) which would only serve to increase the normal value

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4.3.2 Selling price in the exporter's domestic market using another method

The applicant did not provide an estimate of normal value using another method.

4.3.3 Adjustments

The adjustment for the differential between the base-priced butene (C₄) LLDPE for export and the rotational grade LLDPE incorporating UV stabilizer is approximately US\$152 per metric tonne, as provided in the application.

The applicant stated that quoted domestic selling prices in the USA were delivered free into store to the customer and that an adjustment may be required for domestic freight from the production facility to customer. Similarly, export prices (for Canada and the USA) are at Free On Board (FOB) levels, hence an adjustment for domestic inland freight may be required for some export sales (not all, as some USA manufacturers are located on US Gulf).

The applicant claimed that the identified differences are not likely to materially alter the calculated dumping margins.

Given that both the estimated export price and the estimated normal value both include a cost for freight, it would appear reasonable to consider that the difference is not likely to be material.

4.3.4 Conclusion

The information contained in the application (including the level of adjustments) appears reasonable for the purpose of determining normal values.

4.4 Dumping margin

The applicant has calculated monthly dumping margins and then weighted average dumping margins for LLDPE exported from Canada and the USA during 2008 as follows:

- Canada – 19.49 per cent of weighted-average export price; and
- USA – 16.74 per cent of weighted average export price.

4.4.1 Conclusion

Following an examination of the dumping margin calculations provided in the application, factoring in possible differences in exported grades, the dumping margins provided by the applicant are considered reasonable (refer to **Confidential Appendix 2**).

4.5 Conclusion - Dumping

Based on an analysis of the information contained in the application, the applicant's claim that the goods have been exported to Australia from Canada and the USA at dumped

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prices is considered reasonable. Customs and Border Protection is also satisfied as a result of our preliminary analysis that the dumping margins are not negligible.

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5 Reasonable grounds – is the Australian industry suffering injury?

Pursuant to s269TC(1)(c), establishing reasonable grounds for the publication of a dumping duty notice, this section will consider if there appears to be reasonable grounds for considering that there has been injury to the Australian industry producing like goods.

5.1 Background to the Australian market

5.1.1 Market demand

As detailed in the application LLDPE is used in a variety of end-use applications including extrusion (e.g film), blow-moulding, injection moulding and rotational moulding applications. Imported and locally-produced LLDPE are used interchangeably across these applications. The following table illustrates the applications and market sectors for LLDPE:

Application	Market
Extrusion	Films, plastic bags, shopping bags, pipes and coatings
Blow Moulding	Containers
Injection Moulding	Telephones, toys, house wares and crates
Rotational Moulding	Tanks and drums

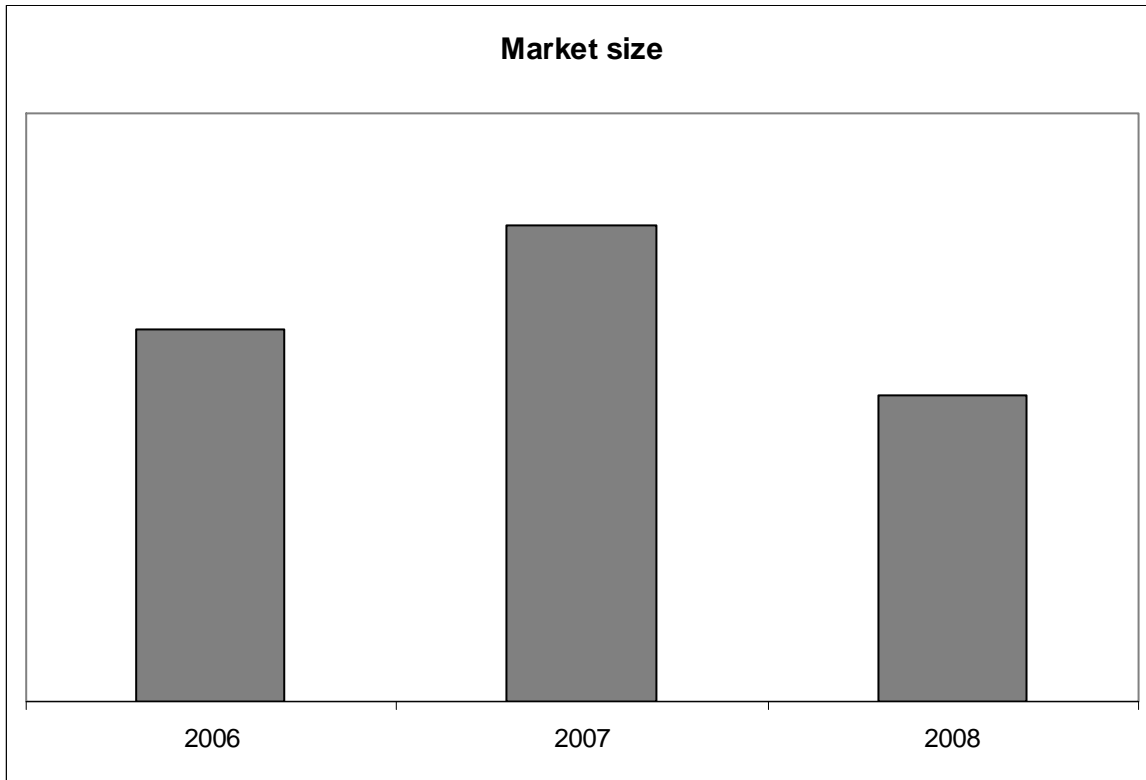
As discussed previously, the use of butene (C₄), hexene (C₆) and octene (C₈) is not restricted to certain applications, but some co-monomers are preferred for particular products due to a combination of their performance characteristics and cost.

5.1.2 Market size

The application includes an estimation of the Australian market size for LLDPE and the market shares in Confidential Appendix A-2. The Australian market data is provided on a calendar year basis, based on volume, in tonnes, and value, in Australian dollars (\$), of sales by the applicant, and an estimation of volume and sales of the imported product. The application includes details of importers and sources of supply.

The following graph is based on the Australian market volumes provided in Confidential Appendix A-2 of the application.

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A preliminary analysis showed that the Australian market of LLDPE peaked in 2007 then contracted in 2008 to below 2006 levels. The application stated that this peak was due to the “on-set of the drought in Australia resulting in a spike in demand for rotational moulding LLDPE required for the manufacture of water tanks.” Previous investigations have determined that the market size is historically approximately 160,000 tonnes (with 2007 being of an unusually high volume). Following comparison to data in the Customs and Border Protection import database, the import volumes provided by the applicant were considered reasonable for determining the Australian market.

The analysis is in **Confidential Appendix 1**.

5.1.3 Market supply

The Australian market for LLDPE is supplied through local production by the applicant and imports from a number of sources. In recent times, key source countries have included Canada, Thailand and the USA.

The applicant advised that it sells LLDPE direct to end-use customers in the plastics industry and importers of LLDPE can generally be identified as either distributors or end-users and that it competes directly with importers of LLDPE where price is often the only distinguishing factor.

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5.2 Australian industry information

5.2.1 Australian industry's sales

The application included a summary of sales data for the applicant in Confidential Appendices A-3 for both domestic and export sales by grade for the periods 2006, 2007, and 2008.

The applicant also provided detailed information relating to all sales of LLDPE during 2008 in Confidential Appendix A-4. The sales data in the Confidential Appendix A-4 reconciled with summary sales data contained in Confidential Appendix A-3 and A-6.1.

The application also includes commercial documentation for selected domestic sales in each quarter of 2008 at Confidential Attachment A-5.9.

5.2.2 General accounting/administration information

The application includes general accounting and administration information, in particular:

- a current chart of accounts;
- audited financial accounts for the financial years ending 31 December 2006, 31 December 2007 and 31 December 2008 (Confidential Attachment A-6.3.1); and
- the applicant's internal management reports for the months of June, September and December of 2008 (Confidential Attachment A-6.3.2).

5.2.3 Cost information

The applicant provided cost to make and sell (CTMS) information in a separate attachment. The CTMS data has been provided up to and including the December quarter of 2008 in a format suitable for Customs and Border Protection's purposes.

5.3 The applicant's injury claims

The applicant 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 undercutting⁴;

⁴ Price undercutting is discussed in Section 6 of the report.

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- reduced profits and profitability; and
- reduced return on investment.

5.4 Commencement of injury

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

5.5 Approach to injury analysis

The applicant stated 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).

The applicant's view has been considered and for the purpose of this report, the period from the beginning of 2006 has been examined for injury analysis purposes.

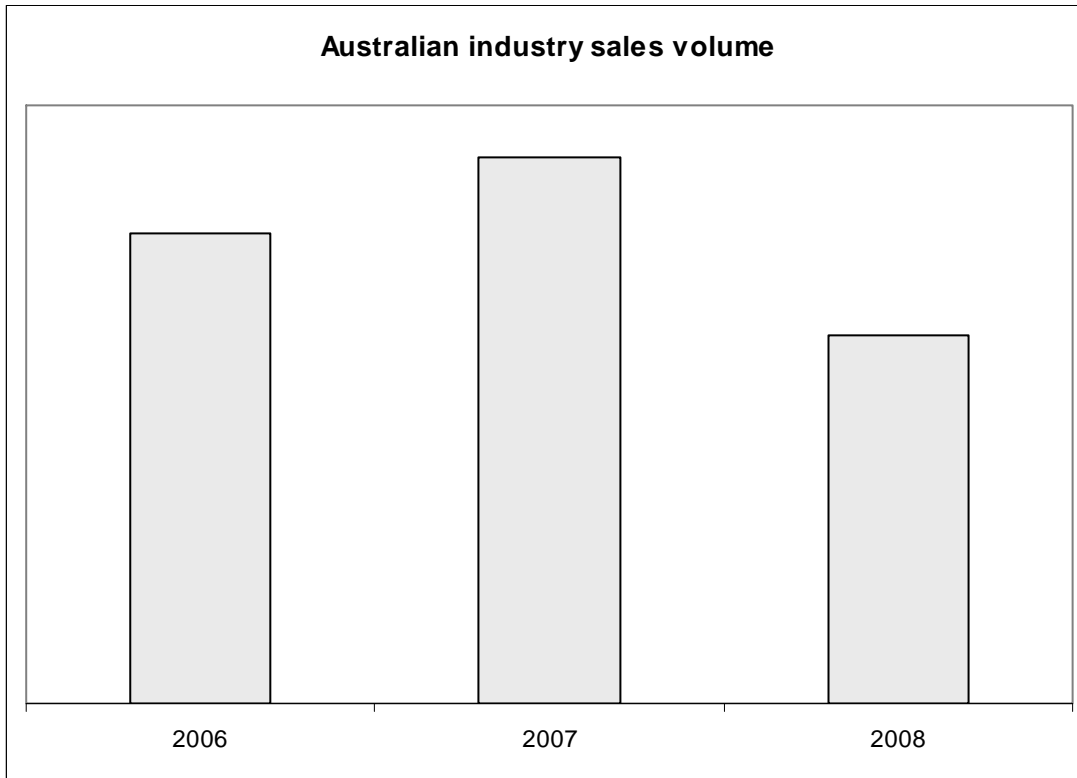
5.6 Volume effects

The following analysis is based on the Australian market data provided in Confidential Appendix A-2 of the application.

5.6.1 Lost sales volume

The applicant claimed that it has experienced a loss of sales volume in 2008. The following graph illustrates the total sales volume of LLDPE by the applicant.

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Customs and Border Protection's preliminary analysis showed that the applicant has lost sales volume in 2008. It was found that the applicant's sales volume increased in 2007 (as a result of an increase in demand for rotational moulding LLDPE), but then decreased in 2008 to a level below that of 2006.

The analysis is in **Confidential Appendix 1**.

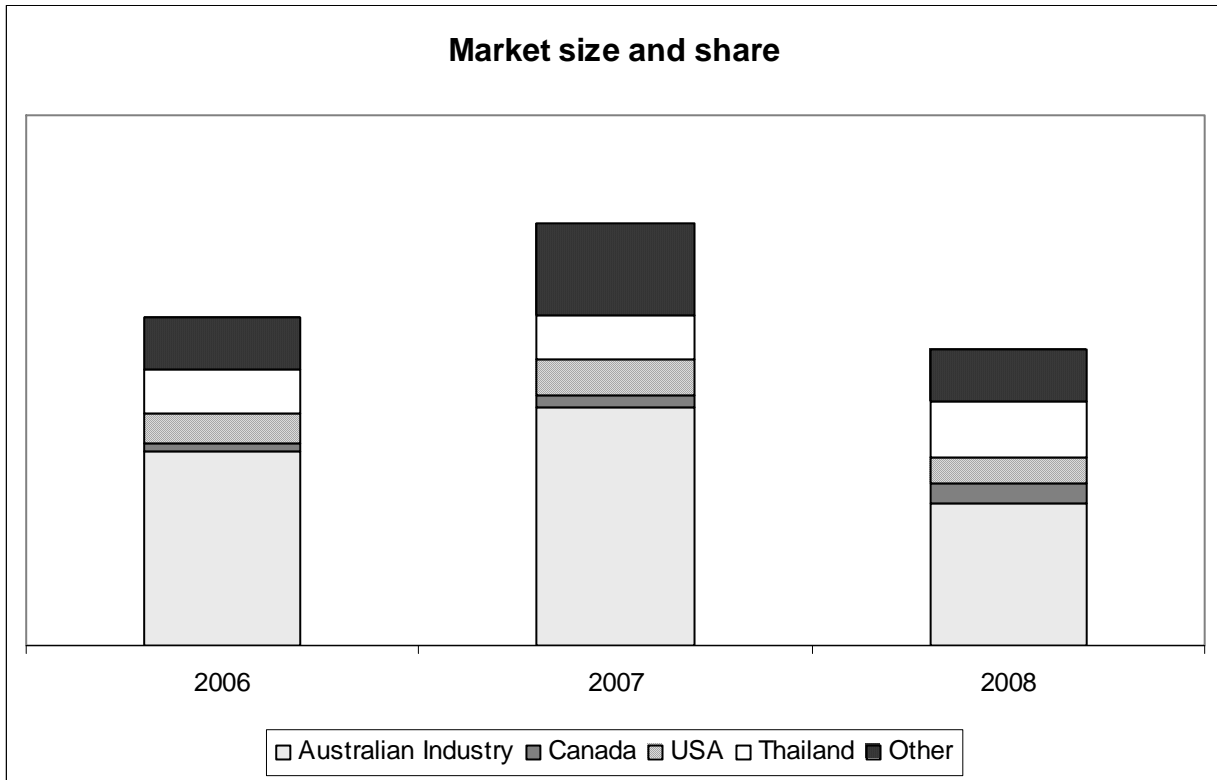
Conclusion – Loss of sales volume

Based on the information provided in the application, it appears that the applicant has suffered injury in the form of lost sales volume.

5.6.2 Lost market share

The applicant claimed that it has experienced a loss of market share in 2008. The following graph illustrates the market share of LLDPE broken down into sales by the applicant (including sales of imported LLDPE) and imports from Canada, USA, Thailand and other countries (excluding imports by the applicant) obtained from the Customs and Border Protection import database.

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The preliminary analysis showed that the applicant maintained market share between 2006 and 2007 however, lost market share between 2007 and 2008.

The analysis is in **Confidential Appendix 1**.

Conclusion – Market share

Based on the information provided in the application and in the Customs and Border Protection import database, it appears that the applicant has suffered injury in the form of lost market share.

5.7 Price effects

Price effects may be in the form of:

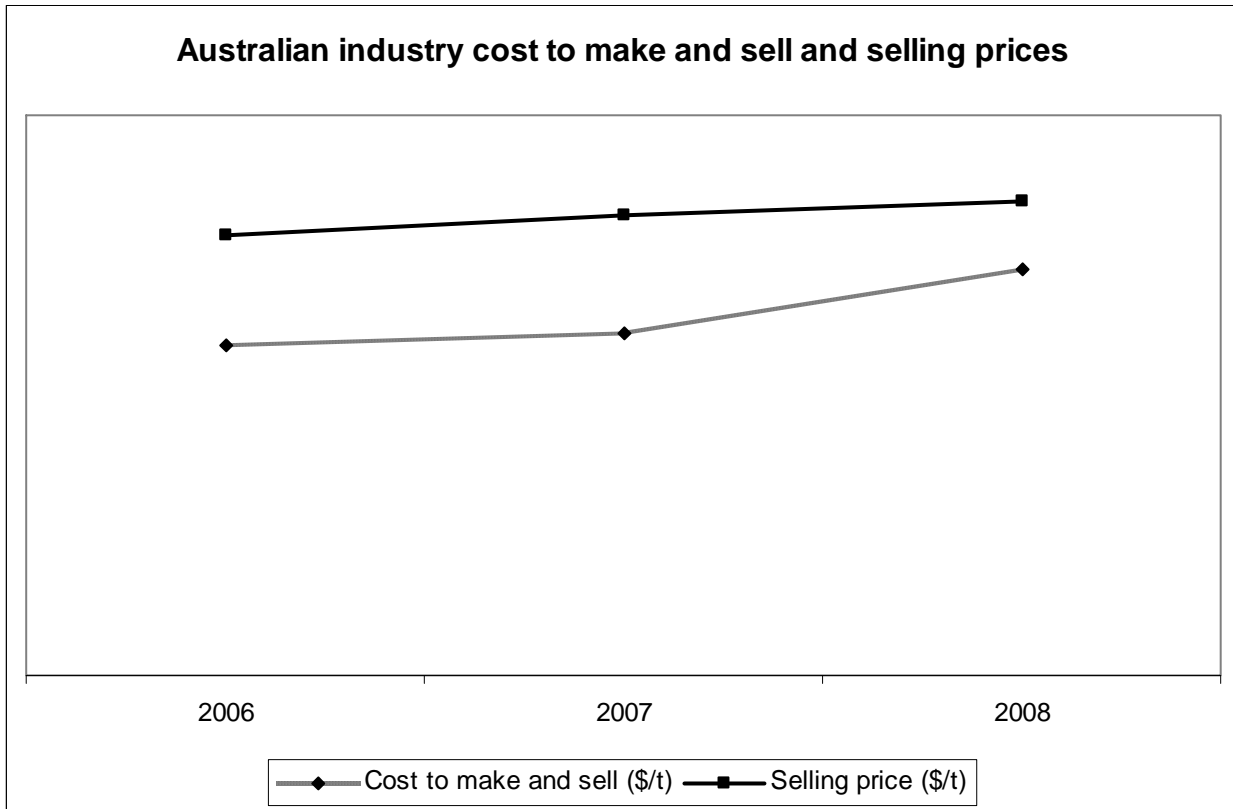
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented.

5.7.1 Price suppression

The application claimed that the applicant has experienced price suppression in 2008.

The following graph illustrates the applicant's unit selling price and unit CTMS provided at Confidential Appendix A-6 of the application.

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The preliminary analysis showed that the applicant has experienced price suppression in 2008. Although the unit selling price and unit CTMS of LLDPE have both increased in 2007 and 2008, the unit selling price increased at a lower rate than the unit CTMS in 2008.

The analysis is in **Confidential Appendix 1**.

Conclusion – Price suppression

Based on the information provided in the application, it appears that the applicant has suffered injury in the form of price suppression.

5.7.2 Price depression

The application claimed that the applicant has experienced price depression in 2008.

The preliminary analysis did not show that the applicant experienced price depression. As discussed and indicated by the graph above, the applicant's selling prices has increased in 2007 and 2008.

Conclusion – Price depression

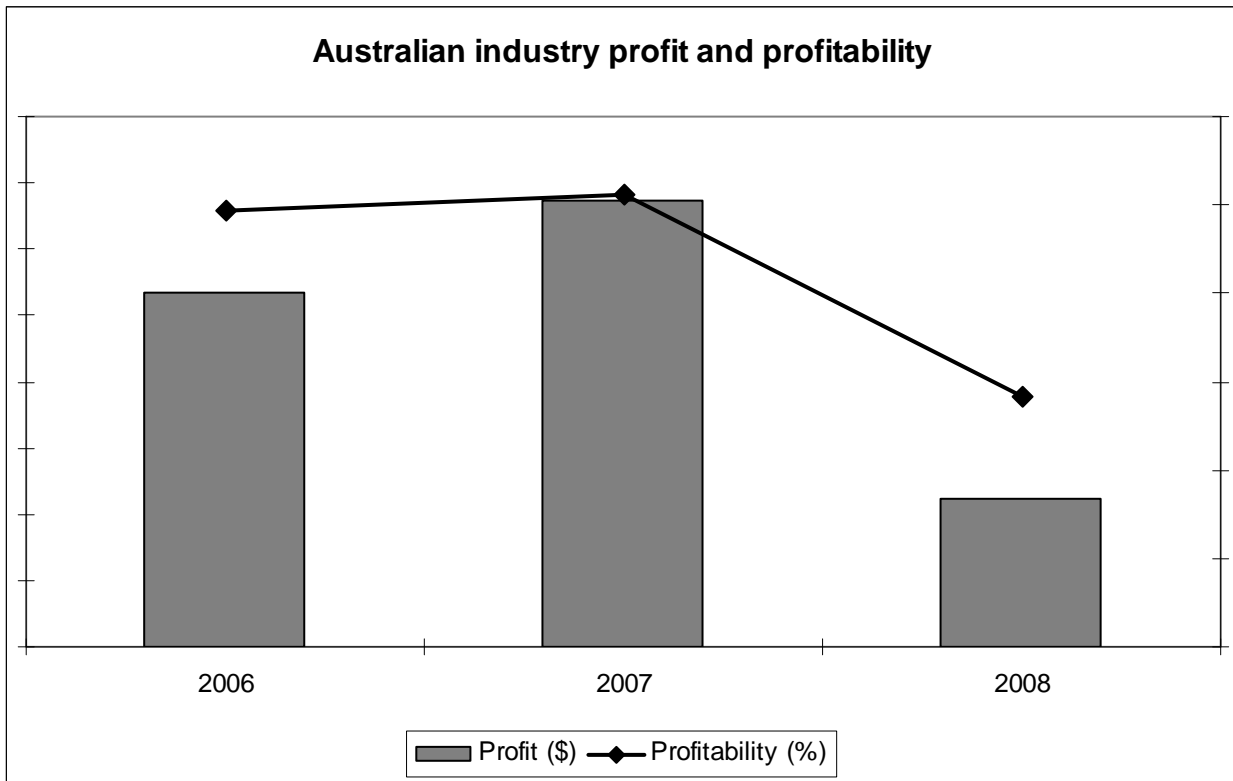
Based on the information provided in the application, it appears that the applicant has not suffered injury in the form of price depression.

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5.8 Profit effects

The applicant claimed that it has experienced reduced profits and profitability in 2008.

The following graph illustrating the total profit and profitability is based on the applicant's CTMS data provided at Confidential Appendix A-6 of the application.



The preliminary analysis showed that the applicant experienced reduced profit and profitability in 2008. The applicant's profit and profitability increased in 2007 then decreased in 2008 to a level below that of 2006.

The analysis is in **Confidential Appendix 1**.

Conclusion – Profit and Profitability

Based on the information provided in the application, it appears that the applicant has suffered injury in the form of reduced profit and profitability.

5.9 Other economic factors

The application includes data on other economic factors in Confidential Appendix A-7 and indexed tables of domestic revenue, capacity utilisation, and return on investment variations.

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5.9.1 Reduced sales revenue

The data in Confidential Appendix A-7 indicates that the applicant has lost revenue in 2008 in relation to sales of LLDPE, when compared to 2006.

5.9.2 Reduced capacity utilisation

The data in Confidential Appendix A-7 indicates that the applicant has experienced reduced capacity utilisation in 2008 when compared to 2006.

5.9.3 Reduced return on investment

The data in Confidential Appendix A-7 indicates that the applicant has experienced a downturn in return on investment since in 2008 from 2006.

5.9.4 Assets

The data in Confidential Appendix A-7 indicates value of assets used in the production of LLDPE has reduced in 2007 and again in 2008.

5.9.5 Capital investment

The data in Confidential Appendix A-7 indicates a decrease in capital investment in the production of LLDPE in 2008 when compared to 2006.

5.9.6 Research and Development (R & D)

The data in Confidential Appendix A-7 indicates an increase in expenditure on R & D of LLDPE in 2008 when compared to 2006.

5.9.7 Capacity

The data in Confidential Appendix A-7 indicates maintained capacity for LLDPE.

5.9.8 Employment

The data in Confidential Appendix A-7 indicates a slight decrease in employment for LLDPE.

5.9.9 Productivity

The data in Confidential Appendix A-7 indicates a decrease in productivity for LLDPE in 2008 when compared to 2006.

5.9.10 Stocks

The data in Confidential Appendix A-7 indicates an increase in stock for LLDPE during 2008 when compared to 2006.

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5.9.11 Cash flow measures

The applicant did not include, and did not provide reasons for not including, any data on cash flow measures in Confidential Appendix A-7.

5.9.12 Wages

The applicant did not include, and did not provide reasons for not including, any data on wages in Confidential Appendix A-7.

Conclusion – Other economic factors

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

5.10 Conclusion – economic condition of the industry

Based on an analysis of the information contained in the application, the applicant has experienced injury in the form of:

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

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6 Reasonable grounds – is there a link between dumping and injury?

Pursuant to s269TC(1)(c), establishing reasonable grounds for the publication of a dumping duty notice, this section will consider if there appears to be reasonable grounds for considering that there is a link between dumping and the injury to the Australian industry producing like goods.

6.1 The Applicant's claims

6.1.1 Injury caused by dumping

The applicant stated that in 2007, the Australian LLDPE market grew by approximately 30 per cent as the demand for rotational moulding LLDPE used in the manufacture of water tanks peaked. In 2008, the market contracted to be at levels approximately 25 per cent below the 2006 market volume. Combined import volumes from Canada and the USA, whilst contracting in 2008, held higher market shares than prior to the market expansion of 2007.

While noting increased market share held by Thailand, the applicants claimed that the imports from Canada and the USA have impacted on Qenos' market share in 2008, which declined by almost 6 per cent from 2006 to 2008, due to undercutting by the alleged dumped imports from Canada and the USA. During this time the imports from Thailand were subject to anti-dumping measures, which were adjusted in July 2008 to reflect contemporary market prices.

The applicant claimed that:

- exports of LLDPE from Canada and the USA have been at dumped prices, with dumping margins in the range of 16 to 19 per cent during 2008;
- the applicant has experienced an erosion of its margin (i.e. price suppression) in 2008, as its CTMS increased, but selling prices falling short of full cost recovery;
- during 2008, the applicant wound back production as it did not expect to fully recover its costs against the imported LLDPE at dumped prices (particularly in the latter half of 2008); and
- the applicant's profit and profitability were eroded throughout 2008.

Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product.

The applicant's claim that the import offers for Canadian and USA LLDPE throughout 2008 were consistently at levels below the applicant's prevailing prices. Support for this claim was included in Confidential Attachment A-9.2 of the application, being a summary table of import competition from exports of USA and Canadian origin, and particular import offers of Canadian and USA material against the applicant's selling prices. The applicant stated that the extent of price undercutting required the applicant to reduce its selling price in an attempt to maintain market share during 2008.

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6.2 Assessment

6.2.1 Influence on market price

The combined market share of imported LLDPE from Canada and the USA was higher in 2008 when compared with 2006. Based on the information in the application, the unit price of imports from both the nominated countries undercut the sale price of the applicant.

Given the apparent price sensitivity of the LLDPE market, as established in previous investigations and as a result of price undercutting, it appears that the applicants have lost market share and have not been able to increase prices at the same rate as increasing costs, thereby suffering price suppression and decreased profits and profitability. However, Customs and Border Protection did not find that the selling prices fell short of full cost recovery as claimed by the applicant above in section 6.1.1.

The existence of imports from Thailand was a consideration in Customs and Border Protection's assessment, given that it has also increased market share in 2008 from the level in 2006 and possibly influenced the market price of LLDPE.

The percentage share of imports held by the major sources based on data from the Customs and Border Protection import database is detailed in the **Confidential Appendix 3**. The analysis noted that the import share of LLDPE from Canada increased in 2007 and then again in 2008. It was noted that the share of imports held by the USA increased in 2007, and then decreased to just below the 2006 level in 2008. The percentage share of imports held by the other major source, Thailand, did not increase with the expanding market in 2007 but returned to above the 2006 level in 2008 as the market contracted. While the share of imports held by the USA did decrease, the combined share of Canada and USA was higher than the combined share in 2006.

An analysis of the weighted average Cost, Insurance and Freight (CIF) price plus duty (where applicable) was undertaken to provide an understanding of the relative price levels of the imports from Canada, Thailand and USA on entry into the Australian market. The analysis was based on data from the Customs and Border Protection's import database and is contained in **Confidential Appendix 4**.

The Thailand price was at times below as well as above prices of the imports from Canada and the USA during 2008. There did not appear to be a clear price leader from this analysis.

A relevant consideration however is the imported grades from the three sources. Based on the information available, the product imported from Canada and the USA is likely to have a higher cost base, due to the inclusion of the UV stabiliser. Should this be factored in, and the price adjusted to be more comparable, whilst not conclusive, it is possible that the price of imports from Thailand into the Australian market would be higher than that of Canada & the USA.

There is therefore the possibility that the alleged dumped products are influencing the market price, by undercutting both the applicant's price and the price of products from other sources.

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6.2.2 Comparison of export price and non injurious price

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice under subsection 269TC(1)(c).

Customs and Border Protection generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

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

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

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

The applicant has not provided USP or NIP estimates as this is not required by the application form. However it is considered appropriate to compare the alleged dumped export prices to NIP estimates. If the export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the export prices are lower than the NIP, this would support a finding that dumped imports have caused material injury to the applicant producing like goods.

In the case of LLDPE, and in the context of the alleged claim that injury commenced in 2008, USPs have been established based on the applicant's CTMS in 2008 and its percentage profit margin in a year unaffected by dumping, being either 2006 or 2007. For this analysis, the 2006 percentage profit margin was used, as it was noted that the profit margin for 2006 and 2007 were not substantially different.

The analysis found that the export price (whether using the applicant's export price or that calculated from the Customs and Border Protection import database) was lower than the NIP when based on both 2006 and 2007 selling prices. This finding supports the view that the applicant has reasonably demonstrated that the Canadian and US LLDPE exported to Australia at dumped prices appears to have caused material injury to the Australian industry producing like goods.

The analysis is in **Confidential Appendix 5**.

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6.2.3 Factors other than dumping affecting economic performance

The information provided by the applicant would indicate that declining volume in 2008 is in part caused by factors other than dumping. The peak in demand in 2007 resulted in a significant increase in sales volumes for the applicant. The loss in volume from 2007 to 2008, to the level of sales in 2006, would be attributable to the contracting market, as demand for rotational moulding LLDPE used in the manufacture of water tanks declined. The applicant acknowledged that sales volumes did decrease as a result of the contraction of the market, but also noted that its sales volume decrease was to a level below that of 2006.

It is Customs and Border Protection view that it is the volume loss below that level of sales in 2006 that could be attributable to the alleged dumping.

6.2.4 Cumulation of injury

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 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;

the Minister is satisfied that it is appropriate to do so.

The conditions of competition between imported and domestically produced LLDPE appear to be similar. Qenos claims 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 Customs and Border Protection 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 allegedly dumped imports.

6.2.5 Conclusion

It is reasonable to conclude that the injury suffered by the applicants in the form of reduced prices, profits and profitability (which is not immaterial) may, for the purpose of assessing the application, be considered to be the result of price undercutting and price pressure by allegedly dumped imports.

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6.3 Conclusion - Causal link

Customs and Border Protection considers that the applicant has provided reasonable grounds for alleging that LLDPE exported from Canada and the USA at dumped prices has caused material injury to the Australian industry producing like goods.

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7 Supplementary items

7.1 Subsidy

The application is not an application for countervailing duties.

7.2 Threat of material injury

The applicant stated the application 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. The applicant 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.”

It is considered the second statement to be a claim in relation to ‘continuation of material injury’ rather than the ‘threat of material injury’.

The application does not provide sufficient relevant information to support a claim of threat of material injury; however, as discussed in the previous section, the application does provide sufficient evidence to establish reasonable grounds for the purposes of determining material injury suffered by the applicant.

7.3 Close processed agricultural goods

The applicant does not consider LLDPE to be a close processed agricultural good.

7.4 Exports from a non-market economy

The applicant stated that Canada and the USA are not considered to be non-market economies under Australia’s anti-dumping and countervailing provisions.

7.5 Exports from an ‘economy in transition’

The applicant stated that Canada and the USA are not considered to be economies in transition under Australia’s anti-dumping and countervailing provisions.

7.6 Aggregation of volumes of dumped goods

The application is made in respect of LLDPE exported from Canada and the USA. Exports from each of these countries of themselves amount to more than 3% of total imports.

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8 CONCLUSION

On examination of the application and other information considered relevant, it is considered that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

Accordingly, the delegate of the CEO has not rejected the application for the publication of a dumping duty notice under subsection 269TB(1).

For the purposes of the investigation:

- the investigation period to determine whether dumping has occurred is from 1 January 2008 to 31 March 2009; and
- examination of the Australian market and the economic condition of the industry will be undertaken from 1 January 2006 for the purposes of injury analysis.

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9 CONFIDENTIAL APPENDIX

Confidential Appendix 1	Economic condition of the industry
Confidential Appendix 2	Analysis of dumping margins
Confidential Appendix 3	Import volumes analysis
Confidential Appendix 4	Import prices analysis
Confidential Appendix 5	NIP estimates and comparison with export prices

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