

**AUSTRALIAN CUSTOMS SERVICE**

**TRADE MEASURES BRANCH**

**CUSTOMS ACT 1901 – PART XVB**

**REPORT No. 129**

**HIGH DENSITY POLYETHYLENE  
EXPORTED BY CHEVRON PHILLIPS  
SINGAPORE CHEMICALS (PRIVATE) LIMITED**

**FROM THE REPUBLIC OF SINGAPORE**

**REVIEW OF ANTI-DUMPING MEASURES**

**MARCH 2008**



**Australian Government**  
**Australian Customs Service**

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**High density polyethylene**  
**Exported by Chevron Phillips Singapore Chemicals (Private)**  
**Limited**  
**Republic of Singapore**  
**Finding in relation a review of anti-dumping measures**

**Public notice under s. 269ZDB(1) of the *Customs Act 1901***

The Australian Customs Service has completed its review of anti-dumping measures applying to high density polyethylene exported to Australia from the Republic of Singapore by Chevron Phillips Singapore Chemicals (Private) Limited, (referred to in this notice as "the goods") which was commenced on 23 August 2007. Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Trade Measures Report No. 129 (referred to in this notice as "the Report").

Non-confidential versions of the Report will be sent to all interested parties that participated in the review. Additional copies may be obtained by contacting Trade Measures Office Management, Canberra, on telephone number 02 6275 6547 or facsimile 02 6275 6990. Trade Measures reports are also available on the Customs internet home page at [www.customs.gov.au](http://www.customs.gov.au).

I, BOB DEBUS, Minister for Home Affairs, have considered the Report and accepted the recommendations and reasons for the recommendations, including all material findings of fact or law set out in the Report. Under s. 269ZDB(1) of the *Customs Act 1901*, I **DECLARE**, for the purposes of the *Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice that, with effect from the date of publication of this notice, the dumping duty notice is to be taken to have effect, in relation to Chevron Phillips Singapore Chemicals (Private) Limited, as if different variable factors had been fixed, relevant to the determination of duty.

To preserve confidentiality, the revised variable factors will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Liaison Officer in their respective capital city. Other enquiries regarding these changes may be directed to Operations 1, Trade Measures Branch, Australian Customs Service, or by email to [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au)

Dated this 20<sup>th</sup> day of March 2008

BOB DEBUS

Minister for Home Affairs

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## 2. ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
AEP	Ascertained export price
Amcor	Amcor Packaging Australia Limited
AS&G	Administrative, selling and general costs
Brickwood	Brickwood Holdings Pty Ltd
CPCAU	Chevron Phillips Chemicals Australia Pty Ltd
CPSC	Chevron Phillips Singapore Chemicals (Private) Limited
Customs	Australian Customs Service
FOB	Free-on-board
HDPE	High density polyethylene
IDD	Interim dumping duty
Korea	Republic of Korea
Minister	Minister for Home Affairs
NIP	Non injurious price
Qenos	Qenos Pty Ltd
Singapore	Republic of Singapore
the Act	<i>Customs Act 1901</i>
USP	Unsuppressed selling price

### **3. SUMMARY**

This report presents the results of the Australian Customs Service (Customs) review of the measures applying to high density polyethylene (HDPE) exported to Australia from the Republic of Singapore (Singapore) by Chevron Phillips Singapore Chemicals (Private) Limited (CPSC), that were imposed in December 2003.

The anti-dumping notice applying to HDPE exported to Australia from Singapore, the Republic of Korea (Korea), Malaysia and Sweden was published in December 2003.

The result of a previous review of the anti-dumping measure applicable to HDPE from Korea, Malaysia, Singapore and Sweden was notified on 24 August 2005.

Chevron Phillips Chemicals Australia Pty Ltd (CPCAU), an importer of HDPE, lodged an application requesting a review of anti-dumping measures in respect of HDPE exported from Singapore to Australia by CPSC. CPCAU considered that one or more of the variable factors (export price, normal value and non-injurious price) relevant to the taking of measures have changed. CPCAU also stated that there are other circumstances that, in the absence of the anti-dumping measures, would prevent the Minister responsible for Customs (Minister) from taking such measures.

On 23 August 2007, Customs initiated a review of the anti-dumping measures applying to HDPE exported from Singapore by CPSC. The period of review for variable factors was 1 July 2006 to 30 June 2007. Customs examined information for the period 1 December 2003 to 30 June 2007 when considering revocation of the measures.

On 24 January 2008, a statement of essential facts (SEF) was placed on the public record. Responses to the SEF were considered in formulating the recommendations to the Minister.

Customs found that the variable factors relevant to anti-dumping measures applying to exports of HDPE by CPSC have changed. Customs found that export prices, normal values and the non-injurious prices (NIP) have increased.

In determining the amount of the anti-dumping measures, the Minister must ascertain an export price, a normal value and a NIP for the goods. Customs recommends that the anti-dumping duty notice have effect in relation to CPSC as if different variable factors had been ascertained.

Customs does not consider that the findings in the review provide a basis for recommending to the Minister that the dumping duty notice be revoked as it applies to exports of HDPE by CPSC.

## **4. PROCEDURES AND BACKGROUND**

### **4.1 Procedures**

An affected party may apply for a review of anti-dumping measures. The application may be made in relation to any of the variable factors specified in the original notice imposing the measure and can encompass circumstances which would result in revocation of the measures.

Variable factors are normal value, export price or the NIP. Changed variable factors may affect the amount of IDD interim dumping duty (IDD) imposed, or require amendment of the terms of an undertaking.

An affected party includes a person directly concerned with the exportation or importation of the goods to which the measures relate; a person representing all or part of the Australian industry producing like goods; or the government of a country from which like goods have been exported to Australia.

### **4.2 Background**

#### **History of the Anti Dumping Measures**

##### Previous measures

In September 1992 measures were imposed on exports from Korea, Saudi Arabia and Singapore. The measures lapsed in 1997.

##### Current measures

On 11 October 2002, the Chief Executive Officer of Customs (CEO) initiated an investigation into the alleged dumping of HDPE exported to Australia from Korea, Malaysia, Singapore, Sweden and Thailand. The investigation followed an application made by Qenos Pty Ltd (Qenos), the sole Australian manufacturer of HDPE.

As a result of that investigation and report (Trade Measures Report No. 68), anti-dumping measures were imposed on all exporters from Korea, Malaysia, Singapore and Sweden except Daelim Corporation of Korea and Singapore Polymer Corporation Pte Ltd of Singapore. The investigation as it related to Thailand was terminated.

For two exporters, Borealis AB of Sweden and Polyethylene (Malaysia) SDN BHD of Malaysia, the measure was in the form of a price undertaking.

The measures were reviewed in 2004 and on 24 August 2005 the Minister published a notice declaring that the dumping duty notice have effect in relation to exporters generally, as if different variable factors had been fixed. The undertakings were also altered. Trade Measures Report No. 90 refers.

### **4.3 Current Review**

On 23 August 2007, Customs published a notice in *The Australian* newspaper announcing the CEO's decision to conduct a review of the anti-dumping measures that apply to exports of HDPE from Singapore by CPSC. Australian Customs Dumping Notice (ACDN) No. 2007/34 was also issued.

On 24 October 2007, Customs published ACDN 2007/42 advising that the Minister had extended the deadline for the publication of the SEF.

On 24 January 2008, the SEF was placed on the public record. The SEF set out the facts on which Customs proposed to base its recommendations to the Minister. Interested parties were invited to make submissions to Customs in response to the SEF within 20 days of its publication.

The deadline for the CEO to make the final report and recommendations to the Minister is 9 March 2008. In compiling this report and recommendations, Customs examined all submissions received.

#### **Participation in the Review**

Submissions were received from:

- Amcor Packaging Australia Limited (Amcor);
- Brickwood Holdings Pty Ltd (Brickwood);
- CPCAUI;
- CPSC; and
- Qenos.

Except for Amcor, Customs verified information from the interested parties that made submissions. Customs also verified information from an importer of HDPE from another country with exporters subject to measures.

Non-confidential versions of the submissions, visit reports and the data report in relation to CPSC were placed on the public record.

#### **Submissions to the SEF**

Customs received submissions from Qenos and CPSC in response to the SEF. The non-confidential versions were placed on the public file on 7 February 2008 and 12 February 2008, respectively.

#### **Review Period**

The period of review for variable factors is 1 July 2006 to 30 June 2007. Customs reviewed all variable factors: export price, normal value and the NIP.

Customs examined information for the period 1 December 2003 to 30 June 2007 when considering revocation of the measures.

## 4.4 Goods Subject to Anti-Dumping Measures

The goods to which the measures relate are described as HDPE, being a polymer of ethylene in primary form and having a specific gravity of 0.94 grams or more per cubic centimetre. HDPE is classified within tariff sub-heading and statistical code 3901.20.00/03 or 3901.90.00/06 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty is free for the goods exported from Singapore and 5% for the other countries subject to measures.

HDPE is a variety of polyethylene produced by the reaction of the main components ethylene monomer, alpha-olefin co-monomer, catalyst system and some form of hydrocarbon diluent.

HDPE is a cloudy, white, highly crystalline thermoplastic. It does not absorb moisture therefore it is used extensively in packaging. HDPE is chemically resistant to most household and industrial chemicals.

HDPE polymer is produced in various grades designed for application in a number of market sectors. The table below broadly illustrates the applications and market sectors.

Market	Application					
	Blow moulding	Film	Injection moulding	Pipe	Tape and monofilament	Wire and cable
Automotive	✓					
Flexible packaging		✓				
Homewares and leisure	✓		✓		✓	
Packaging and storage	✓		✓		✓	
Pipe and construction				✓		
Rigid packaging	✓		✓			
Wire and cable						✓

## **5. AUSTRALIAN MARKET**

The Australian market is supplied by Qenos and by imports from a number of countries. In calculating market size, Customs has used information provided by Australian industry, importers and from Customs commercial database.

Customs estimates that the Australian market for HDPE has increased since the last review, and during the period 1 July 2006 to 30 June 2007 was around 270,000 tonnes.

There has been a reduction in import volume from exporters subject to measures, other than from CPSC. Imports from exporters and countries not subject to measures have increased substantially.

Market share for both the Australian industry and imports from Singapore have remained relatively constant.

## **6. EXPORTER ACTIVITY SINCE MEASURES WERE IMPOSED**

### **6.1 Pattern of Imports**

Information from Customs commercial database showed that following the imposition of measures on 17 December 2003, exports subject to measures decreased. Imports from all exporters and countries not subject to measures have increased substantially. Exports of HDPE by CPSC, the exporter the subject of this review, have increased steadily following an initial decline, and now approximate the level prior to the imposition of measures. Import volumes from CPSC account for a significant proportion of total HDPE imports.

### **6.2 Export Price**

Customs examined imports of HDPE from CPSC during the review period, 1 July 2006 to 30 June 2007.

During the review period, CPSC exported HDPE to one Australian customer only, CPCAUI, a related party.

Customs visited CPCAUI and verified the purchasing arrangements. CPCAUI explained the price negotiation undertaken between CPCAUI and CPSC and the process used and factors considered by CPCAUI in setting the price of the goods to the Australian customer.

In considering export price for sales by CPSC to CPCAUI, Customs:

- examined the profitability of sales made by CPCAUI during the review period;
- considered the contractual arrangements between CPSC and its international agent for the promotion and sale of CPSC products in certain territories, including Australia;
- considered the contractual arrangements between the international agent (as above) and CPCAUI for the promotional and other sales services of CPSC products; and
- considered the ownership relationship between each of the parties.

After examining the roles of all parties Customs considers that in all sales of HDPE to Australia by CPSC during the review period, CPSC is the manufacturer and exporter of the goods.

Customs is satisfied that sales of HDPE by CPSC to CPCAUI were arms length in terms of s 269TAA of the *Customs Act 1901* (the Act) and that CPCAUI imported the goods.

Customs found that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs has established export price under s 269TAB(1)(a) of the Act using invoiced prices from CPSC to CPCAUI, less any part of the 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.

### **6.3 Normal Value**

In a review, because circumstances may change over time, the normal value is examined as if it were a new investigation.

Customs approach to establish a normal value is to work through the hierarchy of s 269 TAC of the Act as follows:

1. domestic selling price;
2. either cost to make and AS&G and profit or sales to a third country; or
3. all relevant information,

until a state of satisfaction is reached.

Customs does not automatically follow any previous methodology for a particular exporter or product/grade.

#### **Consideration**

Customs considered transactions in the period 1 July 2006 to 30 June 2007 when establishing normal value.

CPSC provided details of all domestic sales of HDPE during the review period. Customs verified consolidated sales information and individual sales to customers. Customs verified the price paid by the domestic customer and is satisfied that sales were arms length. CPSC's sales in the domestic market were to end users.

Customs examined the cost to manufacture HDPE in Singapore and the administrative, selling and general costs associated with the sale. Sufficient verified cost information was available to construct normal value.

#### **Volume of Sales**

Customs found that, on a grade basis, product sold by CPSC on its domestic market in Singapore is either identical in all respects or, although not alike in all respects, has characteristics closely resembling the grades CPSC exports to Australia and to other countries.

Customs established that there was a sufficient quantity of domestic sales of like goods sold in the ordinary course of trade for normal value purposes.

Customs then examined sales of like goods on an individual grade basis.

On the domestic market sales of one grade, referred to in this report as 'Grade A', were of low volume as defined in s 269TAC(14) of the Act, (meaning, that the volume of domestic sales of that grade were less than 5% of the export sales to Australia for the same grade). For another grade, referred to as 'Grade B', there was an absence of sales in the domestic

market. There were sufficient domestic sales of all other grades exported to Australia by CPSC.

### **Low Volume Sales of 'Grade A'**

Customs compared the selling prices and sales volumes of 'Grade A' to the selling prices and sales volumes of the other domestically sold HDPE grades being reviewed. Customs found that the selling price and profitability of 'Grade A' was in the same range of profits as that achieved by other grades.

### CPSC Submission

At the time of the Data Report and in a submission to the SEF, CPSC rejected Customs approach to the establishment of normal value for 'Grade A'. CPSC's rejection of Customs approach to establishing the normal value for 'Grade A' is based on:

- the approach does not accurately reflect the market value of the grade. The market for which 'Grade A' was developed and intended is virtually non-existent in Singapore. There is a significant distinction in the chemical composition between 'Grade A' and all other grades. Any meaningful assessment of market price for 'Grade A' needs to properly address the particular markets to which the goods are relevant.
- of the reported quantities sold, only a very small quantity was sold for an application for which 'Grade A' was developed and intended. When taken within the context of the "sufficiency of sales" test<sup>1</sup> that quantity represents only 0.072% of the total volume of 'Grade A' to Australia.
- in the previous review and subsequent verifications, Customs applied s 269TAC(2)(d) of the Act<sup>2</sup> to determine normal value for 'Grade A'. CPSC outlined Customs' grounds for that decision as: the volume of 'Grade A' sold in the domestic market was considerably below the "sufficiency" threshold (of 5%), thereby preventing a realistic assessment of normal values; and the volume and trade between Singapore and Australia and Singapore and a third country of 'Grade A' was similar and therefore suitable for the relevant comparisons. Since the circumstances for applying s 269TAC(2)(d) of the Act have not changed, the new approach constitutes both an inappropriate and inconsistent method for assessing normal values. More significantly, that approach contradicts other assessments made by Customs covering the same period.
- it is devoid of commercial realism where there is no attempt to consider genuine differences between the Singapore domestic and larger volume export sales to Australia. No allowance has been made for level of trade between sales to end users in Singapore and sales to a reseller/distributor in Australia. Similarly, there is no acknowledgement of the probability that pricing for a domestic sale of a small quantity of a grade might be significantly different from that applying to exports of a larger quantity of that grade because of the disparate volumes involved.

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<sup>1</sup> Under s 269TAC of the Act, domestic sales the volume of which is less than 5% of the volume of export sales should not be used to establish normal values unless the Minister is satisfied that the volume is still large enough to permit a proper comparison.

<sup>2</sup> Sales to a third country.

### Customs consideration

Customs recognises CPSC's claim in relation to the distinction in the chemical composition between 'Grade A' and all other grades. Customs found that while the chemical composition of 'Grade A' differed from other grades, there was no evidence in the cost structure to indicate that a higher or lower selling price and profit would likely be realised on 'Grade A'.

Customs considers that the circumstances of sales of 'Grade A' in the domestic market have changed since the last review.

Customs considered the domestic market into which 'Grade A' is sold and found.

- the domestic sales volume of 'Grade A' has increased.
- the selling price and profit realised on domestic sales of 'Grade A' was within the range of those realised on other HDPE grades. Month-to-month fluctuations in profits observed with other grades of HDPE were also observed for 'Grade A'.
- domestic sales of 'Grade A' were to established customers and on an ongoing basis.
- the difference in weighted average selling prices for 'Grade A' between the three customers during the period 1 July 2006 to 30 June 2007 was not significant even though there were claimed different end uses and there were differences in volumes sold.

Customs does not consider that the volume claim by CPSC in relation to 'Grade A' has been substantiated.

Customs does not consider the situation in the market of the country of export is such that sales of 'Grade A' are not suitable for use in determining a price under s 269TAC(1) of the Act. On this basis Customs, considers that the low volume sales of 'Grade A' is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under s 269TACB of the Act.

Customs considers that for this review, the use of a constructed normal value or sales to third countries is not required to establish a normal value for 'Grade A'.

Customs does not agree with CPSC's interpretation of the sufficiency of sales test. To arrive at the conclusion that domestic sales of 'Grade A' represented 0.072% of the export volume, CPSC excluded all sales that were not destined for end uses for which the goods were developed or intended.

CPSC's claim for a level of trade adjustment to ensure a fair comparison between domestic and export prices was considered. CPSC acknowledged that it did not provide the data required to support its claim for a level of trade adjustment. Prior to the publication of the SEF, CPSC advised it would not pursue this adjustment. No data has been provided by CPSC to support this claim.

After considering the available information, Customs considers it is reasonable to believe that the price achieved for the low volume of sales of 'Grade A' in the domestic market by CPSC would be representative of domestic selling prices and thus should be considered large enough to permit a proper comparison. Customs recommends the Minister be satisfied that the volume of sales of 'Grade A' by CPSC is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under s 269TACB of the Act. This recommendation is made under s 269TAC(14) of the Act.

### **Low Volume Sales of 'Grade B'**

In relation to 'Grade B', for which there was an absence of sales, Customs examined the grades with the closest matching chemical composition and narrowed the examination to the grade with the most similar cost of production. Customs then examined domestic and export sales volumes of the closest matching grade and found that there was a sufficient volume of domestic sales of that grade. The domestic sale price for this selected grade was used for determining a normal value for 'Grade B', after making a specification adjustment with a mark-up for profit.

### **Normal Value Basis**

Customs proposes to establish normal value under s 269TAC(1) of the Act for all grades exported to Australia.

Customs acknowledges that for 'Grade A' this approach varies from that of the last review where sales to a third country were used but, as explained above, the circumstance surrounding the domestic sales of 'Grade A' have changed since the last review.

As CPSC has rejected the use of sales prices for 'Grade A', Customs also considered the potential outcome if either:

- cost to make and AS&G and profit; or
- sales to a third country,

were utilised for 'Grade A' normal value purposes. Under either of these methods the normal value is similar.

## Adjustments

To establish normal values for HDPE that are properly comparable to export price, Customs recommends that the normal value incorporate the adjustments listed below to account for the differences between domestic price and export price in accordance with s 269TAC(8) of the Act.

<b>Type of adjustment</b>	<b>Add to, or deduct from, domestic selling prices</b>
Domestic inland transportation, handling, loading and ancillary costs	Deduct
Domestic packaging	Deduct
Domestic commission	Deduct
Domestic credit	Deduct
Export inland transportation, handling, loading and ancillary costs	Add
Export packaging	Add
Export commission	Add
Export credit	Add
Specification adjustment	Add

## 6.4 Conclusion

Customs found that the export price and normal value for HDPE had varied from those last ascertained. The movement for both export price and normal value is upward.

## **7. NON-INJURIOUS PRICES**

Section 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975* contains provisions relating to an amount of lesser duty sufficient to remove the injury.

The NIP provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. The NIP is described in s 269TACA of the Act. It is Customs practice to first establish an unsuppressed selling price (USP), which is the price the Australian industry would be able to achieve for HDPE in the absence of dumping.

### **7.1 Australian Industry Proposal**

Qenos proposed that the USP be based on its cost to make and sell plus profit. The rate of profit proposed was that achieved on a similar polyethylene product which was unaffected by dumping or any manufacturing disruption.

### **7.2 Customs Assessment**

Customs policy in establishing a USP is to observe the following hierarchy:

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

In the original investigation and the previous review, Customs established a USP based on the industry's cost to make and sell plus a rate of profit achieved on a similar product, in the same general category of goods, sold in a market unaffected by dumping. The similar product is an ethylene based product. The cost of the major raw material used in the manufacture of HDPE, ethylene, has a significant effect on the selling price of HDPE and also on the similar product.

The review established that actionable dumping did not occur in relation to exports from CPSC during the review period. The review also established an upward change in the variable factors.

Customs considers that the changes in raw materials price that brought about the upward change in the variable factors for CPSC, would also be likely to have influenced the variable factors of other exports that are subject to measures (but not included in this current review).

Customs proposes to determine a USP for HDPE based on the same methodology that was used for the original investigation and the previous review i.e. the industry's cost to make and sell plus a rate of profit achieved on a similar product in the same general category of goods, in a market unaffected by dumping.

### **7.3 Non - Injurious Price**

Anti-dumping and countervailing duties are calculated at the free on board (FOB) prices in the country of export. Therefore, a NIP is calculated in FOB terms for the country of export. The method of calculating a NIP is not defined in the legislation.

In this review, the USP is comparable to the landed duty price paid by end users in the Australian market.

To calculate the NIP, post FOB exportation costs including those costs incurred in Australia and an amount for importer's profit are deducted from the USP.

Customs found that the NIP for HDPE changed from that last ascertained. The movement for the NIP is upwards.

## **8. OUTCOME OF THE REVIEW OF VARIABLE FACTORS**

IDD is collected on each importation of goods subject to anti-dumping measures. In determining the amount of IDD payable, the Minister must ascertain an export price, a normal value and a NIP for the goods. The IDD is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained NIP.

The anti-dumping measures currently applying to CPSC represent the difference in the export prices and the normal values ascertained in the last review.

The following summarises Customs' findings in this review as compared with the values of the variable factors applicable to the current measures.

<b>Export price</b>	<b>Normal value</b>	<b>NIP</b>
Increased	Increased	Increased

Details of Customs' recommended ascertained export price, ascertained normal value and ascertained NIP are at confidential appendix 1. A comparison of current and proposed variable factors is at confidential appendix 2.

## **9. CLAIMS TO THE REVIEW**

### **9.1 Introduction**

In its application, CPCAU sought a review of variable factors as well as revocation of the anti-dumping measures.

To assess CPCAU's first claim, Customs examined variable factors over the period 1 July 2006 to 30 June 2007. Sections 6 and 7 detail the facts in relation to variable factors.

In regard to the revocation of measures, CPCAU's main arguments are:

- dumping to Australia by CPSC has not occurred since June 2005;
- there is no threat of a recurrence of dumping in the future as:
  - CPSC's Australian representation arrangements have changed;
  - CPSC export volumes to Australia are constrained by production capacity and existing supply arrangements in other markets;
  - CPSC export pricing to Australia now takes account of the normal value;
  - a potential reduction in the export price to Australia by an amount representing the full margin of IDD is unlikely to lead to a resumption of dumping of any magnitude against which measures could be imposed; and
  - CPSC is highly unlikely to continue supplying the Australian market with existing volumes of product at the 'adjusted' export price (ie less IDD) when opportunities for higher prices (and higher profitability) exist elsewhere.

Interested parties made submissions both supporting and refuting the claims made by CPCAU and other parties.

### **9.2 Examination of Claims**

Customs examination of CPCAU's claim for revocation of anti-dumping measures is within the context of s 269ZA(1)(b)(ii) of the Act: '...if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.'

To assess the facts relevant to the revocation, Customs examined the changes that have occurred in relation to CPSC's export and pricing practices since measures were first imposed in December 2003. The issue to be addressed in relation to revocation of measures is not merely whether there is present dumping to Australia, but also the likely recurrence of dumping and

injury if measures were revoked. This is the major consideration that will be addressed in Customs consideration of whether the ongoing imposition of anti-dumping measures is required to offset any injurious dumping.

### **9.3 Pattern of Dumping**

Dumping occurs when a product of one country is exported to another country at a price less than its normal value.

The dumping margin is not usually calculated for a review of variable factors. However, CPCAU claimed that actionable dumping has not occurred since June 2005 and dumping margins have been calculated to assess that claim.

In an original investigation no dumping by an exporter would result in the investigation being terminated insofar as it related to that exporter. In a review the absence of dumping of the goods to Australia by an exporter is not of itself sufficient grounds for the anti-dumping measures to be revoked. CPSC's behaviour into other markets is also examined in this regard. The examination is at Section 9.7.

CPSC provided cost and sales information relating to its domestic (Singapore) and Australian sales over the period 1 December 2003 to 30 June 2007.

#### **Methodology**

Customs calculated the weighted average export price for each grade and pack size and compared this to the monthly weighted average normal value for the equivalent grade and pack size to reach a product dumping margin for HDPE.

Customs found that the dumping margin has been decreasing over time. From the imposition of measures until June 2006 dumping margins were not negligible in terms of s 269TDA(1) of the Act. During the review period 1 July 2006 to 30 June 2007, HDPE sold to Australia was not dumped.

Prior to the publication of the SEF, CPSC rejected the basis upon which Customs had assessed the normal value for 'Grade A'. For this reason, in the SEF, Customs also calculated the dumping margin for HDPE sales to Australia by CPSC during the period 1 December 2003 to 30 June 2006 as if the normal value for 'Grade A' had been based on third country sales.

Customs found the dumping margin fluctuated markedly but did result in negligible dumping in the 2005-2006 financial year and no dumping in the 2006-2007 financial year.

#### **CPSC submission to the SEF**

CPSC's submission to the SEF restates earlier points which have previously been addressed.

### Customs consideration

For the reasons set out at Section 6.3 Customs considers that the most appropriate method for establishing normal values for 'Grade A' is using domestic sales of that grade in Singapore.

CPSC has not disputed any of the adjustments made by Customs to ensure a fair comparison between domestic and export prices. Other than a refinement in the packaging adjustment and the specification adjustment for "Grade B", the type of adjustments made in this review are the same as those made in the last review.

## **9.4 Distribution Channels**

Customs found that CPSC continued to export to Australia after measures were first imposed in December 2003.

CPSC's representation in Australia has changed since the measures were imposed. In January 2004, CPCAU became CPSC's regional representative (which includes Australia). CPCAU's role has covered that of importer and distributor as well as being responsible for promotion of CPSC product. Customs notes that some importations of CPSC product, by importers other than CPCAU, occurred during the period December 2003 to June 2006.

During the review period, 1 July 2006 to 30 June 2007, CPCAU has been the sole importer of CPSC's HDPE into Australia.

Although the company representing CPSC in Australia changed in January 2004, the distribution channels remain similar to those established by the previous representative.

## **9.5 CPSC Volume of Exports to Australia & Production Capacity**

### **CPSC Export Volume**

Following the imposition of measures, CPSC's export levels declined, but since the 2005-2006 financial year exports have increased. Export volumes in the 2006-2007 financial year were similar to those prior to measures being imposed on 17 December 2003.

Customs considered the impact of CPSC's export volumes to Australia in terms of the impact the imports had in relation to imports from other countries and market share.

Customs found that the volume of imports from CPSC was not negligible when compared to total imports from all countries over the period December 2003 to June 2006, and during the period 1 July 2006 to 30 June 2007.

Market share for both the Australian industry and imports from CPSC have remained relatively constant.

## **CPSC Production Capacity**

In relation to production capacity and actual production, Customs found that from the year measures were first imposed in 2003 through to 2006, CPSC's annual production volume has remained at similar levels. CPCAUI submits that CPSC has no plans to extend production beyond its current capacity and does not possess any additional capacity with which to significantly capitalise on its Australian market opportunities. CPCAUI submits that CPSC has self-imposed quantitative restrictions on its sales of polyethylene.

Customs found that CPSC continues to have a strong focus on export markets.

In the SEF, Customs stated that although there is currently little scope for CPSC's exports to Australia to increase, this is dependent on CPSC maintaining existing supply arrangements at the same volumes to all countries other than Australia. Customs also referred to a statement from an interested party that it continued to seek additional tonnage from CPCAUI.

### CPSC submission in response to the SEF

CPSC claims to detect an element of bias in relation to the following observations made by Customs;

“CPSC continues to have a strong focus on export markets

Although there is currently little scope for CPSC's exports to Australia to increase, this is dependent on CPSC maintaining existing supply arrangements at the same volumes to all countries other than Australia

An interested party indicated that it continued to seek additional tonnage from CPCAUI”

CPSC acknowledges its reliance on its export markets for its financial viability however it suggests that Australia does not figure any more prominently than any of the other markets. It points to the majority of the growth opportunities as occurring in North and West Asia. CPSC states that while the company is export focussed, its primary attention is on those regions offering the highest growth prospects.

CPSC claims that there is little or no tangible evidence to suggest that CPSC will not maintain its existing supply arrangements at the same volumes to all other countries than Australia. It also states that in light of production it is compelled to strictly maintain its product allocation arrangements to ensure continuity of supply to all its existing markets.

CPSC has read the statement in relation to an interested party indicating that it continued to seek additional tonnage from CPCAUI as implying the presence of a continued threat of additional imports from CPSC if measures were to be removed. CPSC claims that the statement assumes a different connotation when read in conjunction with the accompanying narration from the associated visit report and is actually an acknowledgement of the factual position concerning CPSC's inability to supply increased tonnages.

### Customs consideration

Over the period 2004 to 2006, CPSC's data on sales volumes to each of its markets shows that while sales volumes to some of CPSC's export markets have remained relatively constant there are a number of CPSC's export markets which show either upward or downward trends in sales volumes. This indicates that there are fluctuations in some of CPSC's existing markets and CPSC will respond to changes in demand. Customs considers that within existing capacity constraints, CPSC would be able to increase its exports to Australia when there are co-incidental downturns occurring in its other markets.

Customs considers that comments made by an interested party were relevant to the issue of whether CPSC's product would have a ready market in Australia if supply were available. The original statement made by the interested party in its submission in response to ACDN/34 advising of the review is reproduced here in full:

*"We have continued to seek additional tonnage from Chevron Phillips to enable us to supply all our plants within Australia, although they are unable to supply these increased quantities for at least the next two months."*

Subsequent to that submission, Customs met with the interested party. The discussion that followed on the above statement was documented in the public file version of the visit report as follows:

*"...We asked Brickwood to elaborate on the statement made in its public file submission about additional tonnages from 'Chevron Phillips'. Brickwood stated that it wanted to import XXX tonnes from Chevron Phillips. However, because of production capacity constraints in Singapore, Chevron Phillips is not able to supply the XXX tonnage in the short to medium term future..."*

Customs considers that there is scope for CPSC's exports to Australia to increase but acknowledges that the increased supply is dependent on CPSC having decreases in demand from other markets. Customs also considers that there is a ready market for CPSC product were the supply available.

## **9.6 Pricing of Exports to Australia**

CPCAU claims that the pricing arrangements in place with CPSC since 2004 have changed from those existing at the time of the imposition of measures. CPCAU also claims that the aims and operations of CPCAU are now based on those of the Chevron-Phillips group and take account of a broader range of critical market and supply factors when negotiating prices with CPSC.

CPCAU attributes the diminution and eventual elimination of a dumping margin to its marketing philosophy. Customs agrees that the changed representation arrangements in Australia could have an effect on prices of exports from CPSC to Australia and that the prices under the revised

representation arrangements are likely to be influenced by the normal value and the level of the measures.

In a review, Customs considers whether changes in export price are likely should the measures be revoked. CPCAUI suggested that for at least the last two years measures were not effective and opportunities for significant dumping existed.

Customs examined the FOB export price of each sale to Australia by CPSC over the period 1 December 2003 to 30 June 2007 and found that CPSC's exports to Australia were regularly priced above the level of the ascertained export price (AEP).

HDPE pricing is influenced by the prevailing cost of the major raw material, ethylene, which accounts for the major proportion of the cost to make. Customs examined the period June 2005 to June 2007 and found that the price of ethylene has increased and that the increase in CPSC's export price to Australia correlated with the increased ethylene cost.

### **Implication of Removal of IDD**

CPCAUI presented a scenario where the lowering of export prices by the amount of the IDD would be unlikely to result in actionable dumping. The scenario is a hypothetical situation which would be influenced by a variety of practical and commercial considerations.

To test if a reduction by the amount of the IDD, as outlined by CPCAUI, would lead to a resumption of dumping against which anti-dumping duty would become payable, Customs reduced the export prices in the review period by the amount of IDD payable. Customs found that the exercise produced an export price below that of the normal value. Examination of CPCAUI's scenario does result in actionable dumping.

Using the same premise, Customs extended the scenario by revising CPCAUI's Australian selling price by the amount of the IDD. This exercise showed that removal of the IDD would provide CPCAUI with the capacity to exert downward pressure on the Australian industry's selling price which could lead to price suppression. The removal of the IDD would also provide CPCAUI with the capacity to lower its selling price by that amount, which would undercut the Australian industry's selling price.

An interested party indicated that removal of IDD would provide pricing relief for HDPE in the Australian market. This suggests that end-users will demand reduced prices for HDPE from CPCAUI if measures were to be revoked in respect of CPSC.

### **CPSC submission in response to the SEF**

CPSC claims that Customs testing process and resulting conclusions were entirely dependent on the normal value approach adopted in relation to 'Grade A'.

CPSC considers Customs calculations questionable and that the application of CPCAUs scenario does not result in actionable dumping.

CPSC stated Customs observations in relation to price suppression and undercutting are made in a period where dumping did not occur and therefore it fails to understand how and why price suppression and undercutting could be concluded. CPSC claimed if intense price competition did materialise following the revocation of measures that they proposed, then in the absence of dumping, Customs should have concluded any alleged injury to Australian industry would be directly attributed to factors other than dumping.

CPSC claimed that comments from one interested party (from the broad spectrum of HDPE users in Australia) in relation to the impact that could be expected on prices in the event of the revocation of measures in relation to CPSC, is hardly sufficient evidence of a potential broad based demand for lower pricing. CPSC states there is an expectation consumers of HDPE supplied by CPSC (via CPCAUs) would inquire about the prospects for reduced pricing if measures were removed. However, the submission claimed that both CPCAUs and CPSC are particularly mindful of their respective obligations in relation to dumping and would advise the market at large that any pricing adjustments needed to reflect such obligations.

CPSC stated that throughout the entire review period when the AEP for CPSC was substantially lower than the normal values determined for Singapore, there was no evidence of dumping even though opportunities for such activity actually existed. Therefore, an objective assessment should have concluded that the removal of IDD would not induce either CPSC or CPCAUs into a course of behaviour, which could again attract sanctions at some time in the future.

#### Customs consideration

Customs does not consider the calculations it has undertaken to be questionable.

Customs agrees that the finding of price suppression and undercutting relies on sales data from a 12 month period (1 July 2006 to 30 June 2007) in which there was no dumping. As noted in Section 9.2, the absence of dumping does not preclude Customs from examining scenarios that give an indication of the likely recurrence of injury and dumping.

Customs considers that the statement on 'pricing relief' made by the interested party has some weight given that this party is a significant customer of CPCAUs.

Customs notes that in CPSC's submission, CPSC expects that should the measures be revoked CPCAUs customers would inquire about the prospects of reduced pricing. CPSC advises that CPCAUs has considered price adjustments likely under these circumstances.

Customs notes that although CPSC's export price remained above the AEP and increased in line with raw material prices, using CPSC's costs and sales

data from the relevant periods, Customs found dumping that was not negligible over the period 1 December 2003 to 30 June 2006. During the period 1 July 2006 to 30 June 2007, no dumping was found.

## **9.7 CPSC Pricing Behaviour into Other Export Markets**

Customs examined the latest World Trade Organisation report (WTO/G/ADP/N/158 of 11 October 2007) on anti-dumping action. This report indicated that there had been no action initiated during the six months ending 30 June 2007 by any of the reporting members against imports of HDPE from Singapore generally or CPSC specifically. Other than Australia, no member countries have measures in place in relation to HDPE exported from Singapore.

Customs examined CPSC's pricing behaviour into other export markets for an indication of CPSC's likely pricing behaviour were measures to be revoked. This analysis is subjective but does provide some insight as to CPSC's pricing behaviour in sales to export markets not affected by anti-dumping measures. Customs calculations are indicative and may not take account of all the differences in circumstances affecting sales for each country.

CPSC provided sales information relating to all of its export sales to all countries over the period 1 December 2003 to 30 June 2007. The majority of sales were in the Asian and Pacific regions. Customs verified selected sales to third countries for the period 1 July 2006 to 30 June 2007.

Customs focussed its analysis on CPSC's significant export markets. Examination of exports to those countries was limited to the same HDPE grades as those exported to Australia, except for the grade for which there were no domestic sales. The exclusion of this grade does not adversely affect the outcomes of the analysis due to the low volumes involved. As CPSC does not export off-specification grades and scrap to Australia, these were also excluded from the analysis.

Using the above criteria, Customs examined relevant exports for approximately one third of the countries to which CPSC exported HDPE. This represents a significant proportion of CPSC's total export volume over the period. At least four of the countries have a domestic industry producing HDPE.

### **Comparison of Unadjusted Export Prices**

Customs usual practice is to adjust pricing so that the comparisons are made at the same level, that is, preferably FOB. However, as CPCA had done a comparison of where pricing to Australia ranked in comparison to that to other countries, Customs undertook a comparison of the quarterly weighted average ex-factory export price of exports to Australia of HDPE by application type (blow moulding and film/pipe) with corresponding sales to the selected countries over the two-year period 1 July 2005 to 30 June 2007. Customs found that, on a quarterly basis, sales to the selected countries were usually priced lower than sales to Australia. During the review period the weighted average ex-factory export price of HDPE by application type was lower for all

the selected countries than the weighted average ex-factory export price of exports to Australia.

Customs then compared CPSC's quarterly weighted average Singapore domestic selling prices by application type to the corresponding sales to the selected countries over the two-year period 1 July 2005 to 30 June 2007. Customs found that the selling prices to the selected countries were generally lower than prices in CPSC's domestic market.

### **Comparison of Adjusted Selling Prices**

Customs compared weighted average ex-factory export prices for each selected country to the weighted average adjusted Singapore domestic selling prices over the two-year period 1 July 2005 to 30 June 2007. Customs adjusted the domestic selling price to account for known differences to ensure fair comparison between domestic and export prices. The calculations showed that for each country, the weighted average export price was lower than the equivalent domestic selling price over the period. The general trend has been for the apparent dumping margin to decrease.

CPSC does not agree with the Customs analysis of third country sales, the comparisons made nor the conclusions drawn. CPSC considers that the calculations presented in the application by CPCAUI are more relevant than those undertaken by Customs.

CPCAUI's approach was to rank the weighted average FOB export price of HDPE (grades under review) to each country including Australia. CPCAUI then deducted the value of the current IDD from the weighted average FOB export price to Australia. CPCAUI claimed that this demonstrated that the Australian export price adjusted in this manner would approximate the weighted average price to all export markets. CPCAUI claim that the 'adjusted' Australian export price is unlikely to lead to a resumption of dumping of any magnitude against which measures could be imposed.

Furthermore, CPSC argues that commercial logic would dictate that a reduction in the export price by the amount of the IDD is extremely unlikely given a premium said to exist in the Australian market.

CPCAUI's scenario is hypothetical and would be influenced by a variety of practical and commercial considerations like those discussed at Section 9.6. Customs considers that CPCAUI's approach fails to take account of the differences in cost affecting the export price to each market and does not address whether the price would be a dumped price compared to the Singapore domestic selling price.

### **CPSC submission in response to the SEF**

CPSC rejects Customs observations made in relation to film/pipe resins on the basis the volumes associated with Australian sales only represented 1.06% and 0.79% respectively of total exports to Australia. CPSC states that the prices for these small volumes were compared with prices for large volumes which were shipped to the eight countries under review. CPSC states that such disparities between the volumes shipped to Australia and

elsewhere were likely to create disparate pricing levels, thereby rendering them inappropriate for any meaningful comparisons.

For blow moulding resin CPSC comments that while there may be significant differences between exports to third countries and exports to Australia, those differences become negligible when the former are compared with Singapore domestic prices.

CPSC claimed that of the eight countries examined by Customs, at least four (or 50%) of them attract export pricing at levels which, if applied to Australian exports, would not attract anti-dumping action.

#### Customs consideration

CPSC's claims fail to take account of the differences in cost affecting the export price to each market.

For each of the eight countries examined and adjusting for differences to allow a fair comparison between the domestic and export price, Customs found dumping at both the product level and by application type (blow moulding and film/pipe) at levels that were not negligible.

Customs considers a reduction in export price to Australia that reflected the levels of the export prices to the eight countries would be likely to result in dumping) at levels that were not negligible.

The results of Customs analysis of CPSC's pricing behaviour into other countries are at confidential appendix 3.

## **9.8 Other Factors**

### **Polyethylene Capacity Expansion**

Qenos stated that the outlook is for a significant oversupply of HDPE in the region over the period 2007-2009 brought about by large capacity additions. Qenos believes this will likely disrupt supply and pricing behaviour for HDPE in the Asian region (including Australia), and that CPSC's export prices will be affected by the over capacity.

Information provided by Qenos, supported by internet research, indicates that the polyethylene resin production capacity of the Middle East is expected to continue to increase over the next five years. Access to natural gas reserves of the region (natural gas is used as ethane feedstock for polyethylene production) at low cost is the main driver behind the capacity expansion.

Information on the public record for this review indicates that estimates of planned additional HDPE capacity for the Middle East and Asia Pacific over 2008-2010 amounts to over 7 million tonnes.

Customs considers it is likely that the projected expansion of HDPE capacity in the Middle East and Asia in the near future would have an impact on export reliant producers in terms of placing downward pressure on prices for HDPE, including that from CPSC.

## CPSC submission in response to the SEF

CPSC claims that there is no clear indication as to when the additional product is likely to materialise into additional market supply, the extent of such supplies and the rate at which the anticipated increase from production is expected to satisfy existing demand. CPSC consider it is highly doubtful that volumes represented by the planned capacity increase (viz 7 million tonnes) will become available at the same time in the immediate future. CPSC provided its own estimate on volumes and timeframes and pointed to the new capacity meeting shortfalls in terms of current production.

CPSC viewed Customs' comments as a suggestion that the potential impact upon CPSC will cause it to somehow, behave irresponsibly with its exports to Australia. CPSC stated a more balanced assessment should have included the probability that any downward pressure on regional pricing will equally affect pricing for CPSC's domestic market in Singapore. Accordingly, so long as CPSC continues to observe the relationship between normal values and export pricing, then any significant downward movement in export pricing cannot be attributed to dumping.

### Customs consideration

A significant change in the demand for, or supply of, a product is one factor relevant to assessing whether dumping is likely to recur or continue. CPSC agrees that significant increases in HDPE capacity are planned in coming years. Customs agrees that the increases are unlikely to emerge at the one time and there is the potential that the increases may, at least in part, be taken up by increased demand.

Customs agrees that other factors may reduce or even eliminate the impact of a major capacity expansion on the likelihood of dumping ie price effects as a result of increased supply could impact on domestic prices in Singapore. However, Customs considers that significantly increased capacity, such as that planned for HDPE, is a factor making dumping more likely than if an increase was not planned.

### **Australian Industry Production Capacity and Local Market**

An interested party stated that Qenos is producing HDPE at full capacity and claimed that Qenos is importing HDPE to supplement local production.

Customs agrees that Qenos does not have the capacity to supply the whole Australian market and acknowledges that end users may require more than one supply source for risk management and other commercial reasons. However, where imports are at dumped prices that cause material injury to the Australian industry, measures can be imposed and/or remain in effect.

### **Exchange Rate Movements**

Since the imposition of measures in December 2003, the Australian dollar against the Singapore dollar has appreciated slightly. Customs found no evidence of exchange rate influence on the dumping outcome.

## 9.9 Summary

Customs examined CPSC's pricing behaviour of its exports of HDPE to Australia and found that since measures were imposed in December 2003, the dumping margin has shown a downward trend. No dumping was found during the review period 1 July 2006 to 30 June 2007.

Customs also examined CPSC's pricing behaviour of the goods under review into its other significant export markets. Customs found that CPSC's weighted average export prices to these markets over the period 1 July 2005 to 30 June 2007 was in each instance below the export price to Australia and generally below the Singapore domestic selling price.

To ensure a fair comparison, adjustments were made to account for differences between CPSC's domestic and export markets. Customs found that for each country examined, the weighted average export price was lower than the equivalent Singapore domestic selling price.

Customs found that CPSC has a propensity to price its exports to third countries below the domestic selling price in Singapore. The higher export prices to Australia in recent times appear isolated in this context. Australia is the only country that has anti-dumping measures on CPSC's exports of HDPE. Customs considers the higher export price to Australia may be due to CPSC adjusting its pricing in reaction to the anti-dumping measures.

Should the measures be revoked, CPSC expects that Australian customers will inquire about the prospect of reduced prices from CPSC, via CPCA. CPSC advises that CPCA has considered price adjustments likely under these circumstances.

CPSC's export volume to Australia has increased to levels similar to that prior to the imposition of measures. Similarly, CPSC's Australian market share has remained relatively constant. Customs considers planned polyethylene capacity expansions in the Middle East and Asia Pacific region may exert downward pressure on CPSC's pricing of HDPE.

Customs considers that the findings in the review do not provide a basis for recommending that the dumping duty notice be revoked as it applies to exports of HDPE by CPSC.

## **10. SUBMISSIONS RECEIVED IN RESPONSE TO THE SEF**

Submissions received in response to the SEF have been considered by Customs in the relevant parts of the report and in making its recommendations to the Minister. The following interested parties made submissions:

- CPSC; and
- Qenos.

### **10.1 CPSC submission**

Below is a summary of the issues raised by CPSC.

#### **Normal Value**

The approach to normal value determination for 'Grade A' adopted in this instance:

- Constitutes a misrepresentation of the true market value for the grade of HDPE concerned;
- Disregards the universally applied 5% "sufficiency of sales" rule and in doing so, reflects a determination which is both unrealistic and inequitable. It further removes a significant guideline currently applied by CPSC to ensure compliance with its anti-dumping obligations;
- Represents a contradictory position to that taken recently by Customs over the same issue; and
- Ignores the commercial influence of volumes on pricing.

Section 6.3 addresses the issues raised.

#### **Pattern of Dumping**

CPSC contend that on the basis of the methodology applied during 2006 and 2007 there was no actionable dumping for either of the two consecutive financial years ending June 2007.

Section 9.3 addresses the issues raised.

#### **CPSC's Production Capacity**

CPSC states that there is no tangible evidence to suggest CPSC either has or will have sufficient capacity with which to appreciable increase its export volumes to Australia.

Section 9.5 addresses the issues raised.

### **Implication of Removal of IDD**

CPSC claim that throughout the entire review period when the AEP for CPSC was substantially lower than the normal values determined for Singapore, there was no evidence of dumping even though opportunities for such activity actually existed. Therefore CPSC claim that an objective assessment should have concluded that the removal of IDD would not induce either CPSC or CPCA into a course of behaviour which could again attract sanctions at some time in the future.

Section 9.6 addresses the issues raised.

### **CPSC Pricing Behaviour Into Other Export Markets**

CPSC contends that its pricing behaviour in other markets suggests any changes anticipated to Australian export pricing are unlikely to be of a magnitude that would attract anti-dumping sanctions.

Section 9.7 addresses the issues raised.

### **Polyethylene Capacity Expansion**

CPSC contends that any attempt to associate anticipated volume increases from the Middle East with the notion of a recurrence of dumping by CPSC is totally without foundation.

Section 9.8 addresses the issues raised.

## **10.2 Qenos Submission**

Qenos was of the view "...that anti-dumping measures applicable to exports of HDPE by CPSC must not be revoked on the grounds that:

- CPSC's HDPE exports to Australia are now at similar levels to those apparent prior to the imposition of measures;
- CPSC's export prices to Australia following the imposition of measures in December 2003 until June 2006 were at dumped levels (considered not to be negligible);
- Exports by CPSC from July 2006 to June 2007 were not dumped;
- CPSC's HDPE exports to third countries in 2006/207 were generally at levels below Singapore domestic selling prices;
- Australian customers of CPSC volumes will continue to seek volumes from CPSC and, in the absence of measures, will seek price relief;
- Additional capacity in the Middle East and Asia due to commence in during 2007 to 2009 is likely to impact traditional supply in the Asia-pacific region; and
- CPSC has been found to have exported HDPE to Australia during two separate investigations, resulting in the imposition of measures in 1992 and again in 2003."

Qenos considered "...the foregoing demonstrates a very high likelihood that in the absence of anti-dumping measures, the Australian industry would be subjected to the effects of injurious dumping (for the third time since 1990)."

Qenos supported the findings of changes (increases) in variable factors.

Qenos identified that the SEF did not refer to anti-dumping measures imposed in 1992 on the then Philips Petroleum Singapore Chemicals for exports of HDPE to Australia and that this was a relevant consideration in the context of the current revocation request by CPSC. Qenos stated that measures were allowed to expire in 1997 as export prices at that time were above non-injurious prices.

#### Customs consideration

Customs considers that the change in the market since the expiration of the measures in 1997 make reference to measures imposed in 1992 which are not a consideration in this review. However, this report now includes reference to the 1992 anti-dumping measures on HDPE at Section 4.2.

## 11. RECOMMENDATIONS

### **Customs recommends the Minister be satisfied that:**

- in accordance with s 269TAC(14) of the Act, that the volume of sales for one grade of HDPE, while of low volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under s 269TACB of the Act.

### **Customs recommends that the Minister direct:**

- in accordance with s 269TAC(8) of the Act, that the price paid for like goods be adjusted for CPSC for the difference between domestic and export sales for credit terms, commission, packing, physical characteristics and inland transportation, handling, loading and ancillary costs.

### **Customs recommends that:**

- the dumping duty notice have effect in relation to CPSC as if different variable factors had been ascertained.

If you agree, to give effect to the recommendations, you should

- sign the attached schedule; and
- declare, by public notice under s 269ZDB of the Act, that with effect from a date specified in the declaration, the notice relevant to the measures applicable to HDPE exported to Australia from Singapore by CPSC is to be taken to have effect in relation to CPSC as if different variable factors had been fixed, relevant to the determination of duty.

## 12. STATEMENT OF FACTS & EVIDENCE RELIED UPON

In formulating the recommendations in this report, Customs had regard to:

- the application for review;
- submissions to the review;
- the SEF;
- submissions received within 20 days of placing the SEF on the public record.

In particular, Customs had regard to:

RECOMMENDATION	SECTION OF REPORT DETAILING FACTS RELIED UPON	EVIDENCE RELIED UPON
Goods under review	Section 4	Exporter submission; Information gathered during exporter visit.
Australian market	Section 5	Customs commercial database; Information gathered during, industry, importer and exporter visit.
Export price	Section 6	Exporter submission; Information gathered during importer and exporter visit.
Normal value	Section 6	Exporter submission and information gathered during exporter visit.
Non injurious price	Section 7	Australian industry submission and information gathered during industry visit.
Revocation of measures	Section 9	Submissions from interested parties; Information gathered during end user, industry, importer and exporter visits.

## **13. CONFIDENTIAL APPENDICES**

Confidential appendix 1	Export price, Normal value, NIP.
Confidential appendix 2	Comparison of current and proposed variable factors
Confidential appendix 3	CPSC's selling prices into third countries

Confidential appendices are not included in the report that is available to the public.