



TRADE MEASURES BRANCH

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 68

**HIGH DENSITY POLYETHYLENE
EXPORTED FROM
THE REPUBLIC OF KOREA, MALAYSIA, SINGAPORE,
SWEDEN AND THAILAND**

DATE 6 June 2003

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1 INTRODUCTION

Qenos Pty Ltd (Qenos) lodged an application requesting that the Minister for Justice and Customs (Minister) publish a dumping duty notice in respect of high density polyethylene (HDPE) exported to Australia from the Republic of Korea (Korea), Malaysia, Singapore, Sweden and Thailand. The investigation was initiated on 11 October 2002 as advised in Australian Customs Dumping Notice (ACDN) 2002/47.

Customs is required to place on the public record within 110 days of initiation, a statement of the essential facts (SEF) on which it proposes to base its recommendations. ACDN 2002/47 advised that the SEF would be placed on the public record by 29 January 2003.

Because of the large number of importers and exporters and the complexity of the information required, the Minister extended the deadline for the SEF to 8 June 2003. The extension was advised in ACDN 2003/05. Customs must report and recommend to the Minister by 23 July 2003 whether to impose anti-dumping duties.

This SEF sets out the essential facts on which Customs will base its recommendations to the Minister. Interested parties have 20 days to respond to issues raised in this SEF.

Submissions made in response to this SEF are required by 26 June 2003. Submissions should be limited to the issues of fact as outlined in this SEF. Because of the statutory time limit to make a report to the Minister, it will generally not be possible for Customs to consider new issues or facts raised at this stage.

Submission should be sent to:

Director Operations 1
Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Customs is not obliged to have regard to any submission made in response to this statement received after 26 June 2003 if to do so would prevent the timely preparation of the report to the Minister.

Interested parties intending to respond to this SEF must include a non-confidential version of their submission for placement on the public record.

The public record contains the non-confidential version of Customs' reports and non-confidential submissions by interested parties. Customs' reports address normal value, export price and material injury. This SEF should be read in conjunction with the documents on the public record.

Any party wishing to examine the public record should contact the Trade Measures Office Management staff on (02) 6275 6057. All Customs dumping notices are available on the internet at www.customs.gov.au.

2 PREVIOUS INVESTIGATIONS

There has been a previous dumping investigation and a continuation inquiry in relation to HDPE.

In 1991 Hoechst Australia Ltd (Hoechst) lodged an anti-dumping application against HDPE exported to Australia from Hong Kong, Italy, Japan, Korea, Saudi Arabia, Singapore, Sweden, Thailand, the United States of America and the United Soviet Socialist Republic. Hoechst and Kemcor Australia Pty Ltd (Kemcor) made up the Australian industry for HDPE at that time. As a result of the investigation and review by the Anti-Dumping Authority (ADA), anti-dumping measures were applied to exports of HDPE from Korea, Saudi Arabia and Singapore. ADA Report no. 79 of August 1992 refers.

In February 1997 Kemcor, who had acquired the polyethylene and polypropylene operations of Hoechst, lodged an application with the ADA for continuation of the measures. The anti-dumping measures were not continued. ADA Report no. 172 of June 1997 refers. No anti-dumping measures are currently in place against HDPE exported to Australia from any country.

3 THE GOODS UNDER CONSIDERATION AND LIKE GOODS

The goods under consideration refer to goods to which the application applies. That is, the goods that have been imported into Australia (or are likely to be imported).

The application described the goods under consideration as HDPE. HDPE is a polyethylene having a specific gravity of 0.94 grams or more per cubic centimetre.

Like goods in relation to goods under consideration refers to 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.

3.1 Tariff classification

HDPE is classified under subheading 3901.20.00, statistical code 03 (polyethylene having a specific gravity of 0.94 or more), in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty for Korea, Malaysia, Singapore, Sweden and Thailand is five per cent.

A considerable quantity of HDPE had been incorrectly classified to other subheadings within heading 3901. The rate of duty of five per cent applies to each of the tariff classifications used for the goods from the countries under investigation. Customs has included the goods identified as HDPE in its consideration.

3.2 Product information

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 has excellent chemical resistance to most household and industrial chemicals. It has good electrical qualities making it suitable for wire and cable uses.

HDPE polymer is produced in several grades used in applications 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						✓

3.3 Submissions by interested parties

The applicant

Qenos claims that the essential characteristics of the imported goods and those manufactured by Qenos include:

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

Other Interested Parties

A number of exporters/manufacturers, importers and end-users provided submissions in relation to the goods. A summary of their claims is as follows:

- some imported HDPE grades were for applications where Australian grades were not available or considered suitable; and
- Qenos HDPE resin has proven not to possess the necessary technical properties for particular applications thereby resulting in many failures.

Copies of the submissions received are at confidential appendix 1.

3.4 Conclusion

Customs notes the claims put forward in relation to availability, user preference and suitability for purpose.

Customs considers that HDPE manufactured by Qenos is like goods to imported HDPE in terms of s. 269T(1) of the *Customs Act 1901* (the Act). 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.

4 AUSTRALIAN INDUSTRY

Section 269TB(6) of the Act requires that producers or manufacturers of like goods in Australia who support an application for measures account for:

- more than 50 per cent of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry expressing support for or opposition to the application; and
- not less than 25 per cent of the total production or manufacture of like goods in Australia.

Qenos was formed in 1999 as a joint venture between Orica (50 per cent) and ExxonMobil Chemical (50 per cent), and is comprised of the following associated companies and business units:

- Qenos Pty Ltd
- Qenos Holdings Pty Ltd
- Qenos Olefins Pty Ltd
- Qenos Plastics Pty Ltd
- Qenos Elastomers Pty Ltd
- Qenos Resins Pty Ltd
- Olefines Pty Ltd

Qenos operates two manufacturing sites. These are at Botany in NSW and at Altona in Victoria. HDPE is produced at Altona by Qenos Resins and Qenos Plastics and at Botany by Qenos Plastics. Olefins Pty Ltd at Altona and Qenos Plastics at Botany produce ethylene, the primary feedstock for HDPE. Qenos Pty Ltd sells HDPE.

Customs is satisfied that Qenos is the only Australian manufacturer of HDPE, and thus meets the requirements of s. 269TB(6) of the Act.

5 AUSTRALIAN MARKET

The Australian market for HDPE is supplied by Qenos and by imports from a number of countries. Singapore was the largest volume exporter to Australia. Each of the other countries under investigation exported significant quantities to Australia, as did some other countries.

5.1 Market structure

Importers of HDPE are of two types

distributors, who sell the HDPE to end-users in the form it was imported;
and

end-users, who use the HDPE in the manufacture of various products and do not sell the goods in the form in which it was imported.

Qenos also sells HDPE to end-users and distributors.

Selling prices and sales for both imports and the Australian product are generally negotiated on a monthly basis.

5.2 Market size

In calculating the Australian market, Customs used sales and import information obtained from the Australian manufacturer, importers, exporters and Customs' commercial database.

The Australian market for HDPE is currently around 200,000 tonnes per annum. The size of the market for HDPE in Australia has shown little variation, however there has been a slight upward trend since June 2001.

Customs' calculation of the Australian market is at confidential appendix 2.

6 THE DUMPING INVESTIGATION

Dumping occurs when the export price of a product is less than the normal value of the like goods in the domestic market of the country of export.

The period of the investigation for determining if dumping occurred was 1 October 2001 to 30 September 2002.

A matrix showing the quantity imported during the investigation period from each country and exporter by each importer is at confidential appendix 3.

There is a significant price variation in any HDPE grade over time. To enable a reasonable comparison of domestic and export sales, the data has been examined on a quarterly basis when establishing the normal value method.

6.1 Korea

Customs identified 12 suppliers of HDPE exported from Korea to Australia during the investigation period. Three companies included relevant manufacturing information in response to Customs' request for information.

6.1.1 Daelim Industrial Co. Ltd. (DIC)/ Daelim Corporation (DAECO)

In November 2002, Customs visited companies in Australia who had imported DIC product. DIC and their trading arm, DAECO, were visited in February 2003.

Export Price

After examining the role of all parties Customs considers that, in all sales of HDPE to Australia during the investigation period, DIC is the manufacturer of the goods and DAECO is the exporter of the goods.

There was no evidence of a relationship other than for commercial trade between DAECO and their customers in Australia. Customs is satisfied that sales by DAECO to Australian customers are arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importers and were purchased by the importers from the exporter.

Customs proposes to establish export price under s. 269TAB(1)(a) of the Act. Export price will be established at free on board (FOB) point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for DAECO, Customs considered information in the DIC/DAECO submission and gathered at the verification visit in Korea.

The goods exported to Australia are identical to those sold by DAECO on the domestic market in Korea with the exception of three grades. The three grades not sold on the domestic market, but exported to Australia, have characteristics closely resembling the goods exported to Australia.

DAECO provided details of all domestic sales of HDPE for the investigation period. Customs verified consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Korea and the administrative, selling and general (AS&G) costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by DAECO can be established using domestic sales of the same or nearest equivalent grade for the comparable period in which export sales occurred.

Customs proposes to establish normal value for DAECO under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for duty drawback, credit terms, inland transportation, FOB costs, inventory carrying costs and specification adjustment. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Normal value calculations are at confidential appendix 4.

6.1.2 Samsung General Chemicals Co. Ltd (SGC)

In November and December 2002, Customs visited companies in Australia who had purchased SGC product. Customs visited SGC in Korea in February 2003.

Export Price

After examining the role of all parties, Customs considers that SGC is the manufacturer and exporter of the HDPE sold to Australia during the investigation period. Some sales were arranged through an agent for one of the importers.

There was no evidence of a relationship other than for commercial trade between SGC and their customers in Australia or between SGC and the agent. Customs is satisfied that sales by SGC to Australian customers are arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importers. In some instances the importer purchased the goods from the exporter and at other times the purchase was not between the importer and the exporter.

Customs proposes to establish the export price for sales by SGC directly to importers under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Customs proposes to recommend the Minister determine export price for sales involving parties other than the importer and exporter under s. 269TAB(1)(c) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for SGC, Customs considered information in SGC's submission and gathered at the verification visit in Korea.

The goods SGC exported to Australia are not identical to the product sold on the domestic market but the product sold on the domestic market in Korea does have characteristics closely resembling the goods exported to Australia.

SGC provided details of all domestic sales of HDPE for the investigation period. Customs verified consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Korea and AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by SGC for two quarters can be established using domestic sales of the same grade for the comparable period in which export sales occurred.

For the remaining two quarters Customs has calculated the cost to make and sell the goods on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export. Amounts have been included for AS&G costs associated with their sale and a profit on that sale.

Customs proposes to establish normal value under s. 269TAC(1) of the Act where there are suitable domestic sales of identical or similar grades of HDPE.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(2)(c) of the Act where there are not suitable domestic sales of identical or similar grades of HDPE.

In order to establish normal value properly comparable to export price Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for credit terms, inland transportation, chemical pollution levy, bad debt, technical services, inventory costs, duty drawback, FOB charges, commission and packing costs. This will establish normal value at FOB point. The adjustments will be recommended in terms of ss. 269TAC(8) or (9) of the Act as appropriate.

Normal value calculations are at confidential appendix 5.

6.1.3 S K Corporation (SK)/ SK Global (SKG)

In November and December 2002, Customs visited companies in Australia who had purchased SK product. SK and SKG were visited in Korea in February 2003.

Export Price

After examining the role of all parties, Customs considers that SK is the manufacturer of the HDPE sold to Australia during the investigation period. SK and SKG exported the HDPE to Australia.

There was no evidence of a relationship other than for commercial trade between SK or SKG and their customers in Australia. Customs is satisfied that sales by SK and SKG to Australian customers were arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importers. In some instances the importer purchased the goods from the exporter and at other times the purchase was not between the importer and the exporter.

Customs proposes to establish the export price for SK under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Customs proposes to recommend the Minister determine export price for SKG under s. 269TAB(1)(c) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for SK, Customs considered information in SK's submission and gathered at the verification visit in Korea.

The goods that SK and SKG exported to Australia are identical to those sold by SK on the domestic market in Korea.

SK provided details of all domestic sales of HDPE for the investigation period. Customs verified consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Korea and the AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by SK can be established using domestic sales of the same grade for the comparable period in which export sales occurred.

As mentioned above, the goods that SKG exported to Australia are identical to those sold by SK on the domestic market in Korea. As SK domestic sales are arms length and in the ordinary course of trade, normal value for exports by SKG can be established using SK domestic sales.

Customs proposes to establish normal value for exports by SK and SKG under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value be adjusted to account for differences between domestic and export sales for inland transportation, FOB charges, credit terms, duty drawback, chemical pollution levy and packing. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Normal value calculations are at confidential appendix 5.

6.1.4 Remaining exporters

Customs notified all the companies that had supplied Korean origin HDPE to Australia that the investigation was initiated and sought information from each. Limited information was supplied by some companies.

In November and December 2002, Customs visited companies in Australia who had purchased Korean origin product from the remaining companies.

Export Price

Customs does not have sufficient information to satisfactorily establish the roles and responsibilities of all parties involved in the manufacture and sale of HDPE to Australia. Indications are that the supplier of the goods is the exporter.

Export price information was extracted from importer records and Customs' commercial database. Customs will recommend the Minister determine export price under s. 269TAB(3) of the Act.

Export price calculations are at confidential appendix 4.

Normal value

Customs does not have information to establish if the remaining exporters sell HDPE on the domestic market. Because of this, domestic sales by other sellers in the Korean domestic market could not be used to establish a normal value for the remaining exporters. Normal value could not be assessed under s. 269TAC(1) of the Act.

Customs proposes to recommend that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act. The next alternative was s. 269TAC(6) of the Act.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(6) of the Act, using domestic sales information obtained from another seller on the Korean domestic market. This information will be modified to account for differences between domestic and export sales for duty drawback.

Normal value calculations are at confidential appendix 5.

6.2 Malaysia

Customs identified three suppliers of HDPE exported from Malaysia to Australia during the investigation period. Two companies responded to Customs' request for information and included relevant manufacturer information.

6.2.1 Polyethylene Malaysia (PE Malaysia)

In November 2002, Customs visited companies in Australia who had purchased PE Malaysia product. PE Malaysia was visited in March 2003.

Export Price

After examining the role of all parties, Customs considers that, with the exception of two shipments, PE Malaysia is the manufacturer and exporter of the HDPE sold to Australia during the investigation period. Some sales were arranged through an agent for one of the importers.

There was no evidence of a relationship other than for commercial trade between PE Malaysia and their customers in Australia or between PE Malaysia and the agent. Customs is satisfied that sales by PE Malaysia of the exported goods are arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importers. In some instances the importer purchased the goods from the exporter and at other times the purchase was not between the importer and the exporter.

Customs proposes to establish export price for the sales by PE Malaysia directly to importers under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Customs has not been able to verify the details of the sale to Australia by the other exporter of PE Malaysia product. For this exporter, Customs will recommend the Minister determine export price under s. 269TAB(3) of the Act. Export price will be established at FOB point

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for PE Malaysia, Customs considered information in PE Malaysia's submission, gathered at the verification visit in Malaysia and information from other sellers in Malaysia.

The goods PE Malaysia sell on the domestic market in Malaysia are identical to, or have characteristics closely resembling, those exported to Australia.

PE Malaysia provided limited details of domestic sales of HDPE for the investigation period. Customs verified the price paid by the customers for domestic sales and is satisfied that the sales are arms length transactions. As insufficient domestic sales details were available, Customs was not able to determine whether the domestic sales were in the ordinary course of trade.

Normal value could not be assessed under s. 269TAC(1) of the Act, using sales by the exporter. Similarly, normal value could not be assessed under s. 269TAC(1) of the Act using the other sellers provision.

Customs proposes to recommend that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act. The next alternative was s. 269TAC(6) of the Act.

Customs examined the cost to manufacture the goods in Malaysia and AS&G costs associated with their sale. Sufficient verified cost information was available to construct a normal value including profit.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(6) of the Act, using the constructed normal value. This information will be modified to account for differences between domestic and export sales for differences between domestic and export sales for packing costs, inland transport, technical services, domestic sales offices, FOB charges, commission and credit terms. This will provide a normal value at FOB point.

Normal value calculations are at confidential appendix 5.

6.2.2 Titan Polyethylene (Malaysia) SDN BHD (TPE)

In November 2002, Customs visited companies in Australia who had purchased TPE product. Customs visited TPE in Malaysia in January 2003.

Export price

After examining the role of all parties, Customs considers that, with the exception one shipment, TPE is the manufacturer and exporter of the HDPE

sold to Australia during the investigation period. TPE did not arrange exportation of the remaining shipment.

There was no evidence of a relationship other than for commercial trade between TPE and their customers in Australia. Customs is satisfied that sales by TPE to Australian customers were arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that in relation to the goods exported by TPE, the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs proposes to establish export price for goods exported by TPE under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Customs has not been able to verify the details of the sale to Australia of the remaining shipment. For this exporter of this shipment, Customs will recommend the Minister determine export price under s. 269TAB(3) of the Act. Export price will be established at FOB point

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for TPE, Customs considered information in TPE's submission and gathered at the verification visit in Malaysia.

The goods TPE exported to Australia are identical to those sold on the domestic market in Malaysia.

TPE provided details of domestic sales of HDPE for all grades exported to Australia during the investigation period. Customs verified consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Malaysia and the AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by TPE can be established using domestic sales of the same grade for the comparable period in which export sales occurred.

Customs proposes to establish normal value for TPE under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for inland transportation, FOB charges, packing costs and credit terms. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Customs was not able establish whether the exporter of the remaining shipment of TPE goods sells HDPE on the domestic market. Because of this, domestic sales by other sellers in the Malaysian domestic market could not be used to establish a normal value for the remaining exporters. Normal value could not be assessed under s. 269TAC(1) of the Act.

Customs proposes to recommend that the Minister be satisfied that sufficient information was not available to determine normal value for the other exporter under ss. 269TAC(1) or (2) of the Act. The next alternative was s. 269TAC(6) of the Act.

Customs proposes to recommend the Minister determine normal value for the exporter of the remaining shipment under s. 269TAC(6) of the Act, using domestic sales information obtained from another seller on the Malaysian domestic market. This information will be modified to account for differences between domestic and export sales for inland transportation and FOB charges. This will establish normal value at FOB point.

Normal value calculations are at confidential appendix 5.

6.2.3 Remaining exporter

Customs notified the remaining company that had supplied Malaysian origin HDPE to Australia that the investigation was initiated. No information was supplied by the remaining exporter.

Export Price

Customs does not have sufficient information to satisfactorily establish the roles and responsibilities of all parties involved in the manufacture and sales of the HDPE to Australia. Indications are that the supplier of the goods is the exporter.

Export price information was extracted from Customs' commercial database. Customs proposes to recommend the Minister determine export price under s. 269TAB(3) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

Customs does not have information to establish if the remaining exporters sell HDPE on the domestic market. Because of this, domestic sales by other sellers in the Malaysian domestic market could not be used to establish a normal value for the remaining exporters. Normal value could not be assessed under s. 269TAC(1) of the Act.

Customs proposes to recommend that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act. The next alternative was s. 269TAC(6) of the Act.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(6) of the Act, using domestic sales information obtained from another seller on the Malaysian domestic market.

Normal value calculations are at confidential appendix 5.

6.3 Singapore

Customs identified two suppliers of HDPE exported from Singapore to Australia during the investigation period. Both suppliers responded to Customs' request for information and included relevant manufacturer information.

6.3.1 Chevron Phillips Singapore Chemicals (Private) Ltd (CPSC)

In November 2002, Customs visited companies in Australia who had purchased CPSC product. Customs visited CPSC in Singapore in January 2003.

Export price

After examining the role of all parties Customs considers that, in all sales to Australia, CPSC is the manufacturer and exporter of the goods exported to Australia.

There was no evidence of a relationship other than for commercial trade between CPSC and their customers in Australia. Customs is satisfied that sales by CPSC to Australian customers are arms length transactions. The goods were imported by Australian customers or by CPSC.

There are reasonable grounds to believe that in some instances the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter or another party. In other instances, the exporter was also the importer.

For sales where the Australian customer imported the goods into Australia, Customs proposes to establish export price under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

For the importations by CPSC, Customs proposes to recommend the Minister determine export price under s. 269TAB(1)(c) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for CPSC, Customs considered the information in CPSC's submission and gathered at the verification visit in Singapore.

The goods CPSC exported to Australia are identical to those sold on the domestic market in Singapore.

CPSC provided details of domestic sales of HDPE during the investigation period. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Singapore and the AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by CPSC can be established using domestic sales of the same grade for the comparable period in which export sales occurred.

Customs proposes to establish normal value under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for inland transportation, FOB charges, packing, commissions, credit terms and specification adjustment. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Normal value calculations are at confidential appendix 5.

6.3.2 Singapore Polymer Corp (Pte) Ltd (SPC)

In November 2002, Customs visited the company in Australia that had purchased SPC product. Customs visited SPC in Singapore in January 2003.

Export price

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

There was no evidence of a relationship other than for commercial trade between SPC and their customer in Australia. Customs is satisfied that sales by SPC to Australian customers were arms length transactions and that the Australian customer imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs proposes to establish export price under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

SPC did not sell HDPE on the domestic market in Singapore.

In determining normal value for SPC, Customs considered information in SPC's submission, gathered at the verification visit in Singapore and gathered from other exporters.

There are other sellers of like goods in Singapore. Customs considers that there are sales of a similar type of HDPE that were sold in the ordinary course of trade by another seller in the Singapore domestic market. Customs proposes to establish normal value under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for inland transportation, FOB charges, packing, bank charges, credit terms and specification adjustment. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Normal value calculations are at confidential appendix 5.

6.4 Sweden

Customs identified three suppliers of the HDPE exported from Sweden to Australia during the investigation period. The suppliers of Swedish origin HDPE did not provide any information to Customs.

In November 2002, Customs visited companies in Australia who had purchased HDPE of Swedish origin.

Export Price

Customs does not have sufficient information to satisfactorily establish the roles and responsibilities of all parties involved in the manufacture and sale of the HDPE to Australia. Indications are that the supplier of the goods is the exporter.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs proposes to recommend the Minister determine the export price under s. 269TAB(3) of the Act.

Export price calculations are at confidential appendix 4.

Normal Value

Customs does not have sufficient information to determine normal value under ss. 269TAC(1) or (2) of the Act.

Customs considered the relevant information that was available. Normal value for exports from Sweden can be established using European domestic prices as the basis with modification for different types of product.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(6) of the Act.

Normal value calculations are at confidential appendix 5.

6.5 Thailand

Customs identified three suppliers of the HDPE exported from Thailand to Australia during the investigation period. Two companies responded to Customs request for information and included relevant manufacturer information.

6.5.1 Bangkok Polyethylene (BPE)

In November 2002, Customs visited companies in Australia who had purchased BPE product. Customs visited BPE in Thailand in March 2003.

Export price

After examining the role of all parties, Customs considers that BPE is the manufacturer and exporter of the goods sold to Australia during the investigation period.

There was no evidence of a relationship other than for commercial trade between BPE and their customers in Australia. Customs is satisfied that sales by BPE to Australian customers are arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs proposes to establish export price under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for BPE, Customs considered information in BPE's submission and gathered at the verification visit in Thailand.

The goods BPE exported to Australia are identical to those sold on the domestic market in Thailand.

BPE provided details of domestic sales of HDPE for the investigation period. Customs verified the consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Thailand and the AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by BPE can be established using domestic sales of the same grade for the comparable period in which export sales occurred.

Customs proposes to establish normal value under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for packing costs, inland transportation, FOB charges, credit terms and duty drawback. This will establish normal value at FOB point. The adjustments will be recommended in terms of s. 269TAC(8) of the Act.

Normal value calculations are at confidential appendix 5.

6.5.2 CCC Chemical Commerce Co Ltd (CCCC)

In November and December 2002, Customs visited companies in Australia who had purchased product from CCCC. Customs visited CCCC in Thailand in January 2003.

Export price

CCCC are a marketing arm for several manufacturing companies including Thai Polyethylene Co. Ltd (TPE), the manufacturer of the HDPE.

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

There was no evidence of a relationship other than for commercial trade between CCCC and their customers in Australia. Customs is satisfied that sales by CCCC to Australian customers are arms length transactions and that the Australian customers imported the goods.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter.

Customs proposes to establish export price under s. 269TAB(1)(a) of the Act. Export price will be established at FOB point.

Export price calculations are at confidential appendix 4.

Normal value

In determining normal value for CCCC, Customs considered the information in CCCC's submission and gathered at the verification visit in Thailand.

The goods CCCC exported to Australia are identical to those sold on the domestic market in Thailand.

CCCC provided details of domestic sales of HDPE for the investigation period. Customs verified the consolidated sales information and individual sales to customers. Customs verified the price paid by domestic customers and is satisfied that sales are arms length transactions.

Customs examined the cost to manufacture the goods in Thailand and the AS&G costs associated with their sale. Sufficient verified cost information was available to establish a constructed normal value.

Customs established that there was a sufficient quantity of domestic sales of like goods in the ordinary course of trade for normal value purposes. No market factor was identified to render domestic sales to be unsuitable.

Normal value for exports by CCCC of all but one grade of HDPE can be established using domestic sales of identical or similar grades for the comparable period in which export sales occurred. For the remaining grade, there are no suitable sales in a comparable period to which the export sales occurred, therefore normal value should be established based on the cost to make and sell the relevant grade, plus AS&G costs and profit for sales of similar goods.

Customs proposes to establish normal value under s. 269TAC(1) of the Act where there are suitable domestic sales of identical or similar grades of HDPE.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(2)(c) of the Act where there are not suitable domestic sales of identical or similar grades of HDPE.

In order to establish normal value properly comparable to export price, Customs proposes to recommend that the normal value incorporate adjustments to account for differences between domestic and export sales for packing costs, inland transportation, FOB charges, bank guarantee fees, credit terms, duty drawback and commissions. This will establish normal value at FOB point. The adjustments will be recommended in terms of ss. 269TAC(8) or (9) as appropriate.

Normal value calculations are at confidential appendix 4.

6.5.3 Remaining exporter

Customs notified the remaining company that had supplied Thai origin HDPE to Australia that an investigation had been initiated. No response was received to Customs' request for information.

Export Price

Customs does not have sufficient information to satisfactorily establish the roles and responsibilities of all parties involved in the manufacture and sale of the HDPE to Australia. Indications are that the supplier of the goods is the exporter.

Export price information was extracted from Customs' commercial database. Customs proposes to recommend the Minister determine export price under s. 269TAB(3) of the Act.

Export price calculations are at confidential appendix 4.

Normal value

Customs does not have information to establish if the remaining exporters sell HDPE on the domestic market. Because of this, domestic sales by other sellers in the Thai domestic market could not be used to establish a normal value for the remaining exporters. Normal value could not be assessed under s. 269TAC(1) of the Act.

Customs proposes to recommend that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act. The next alternative was s. 269TAC(6) of the Act.

Customs proposes to recommend the Minister determine normal value under s. 269TAC(6) of the Act, using domestic sales information obtained from another seller on the Thai domestic market. This information will be modified to account for differences between domestic and export sales for duty drawback.

Normal value calculations are at confidential appendix 5.

6.6 Dumping margins

A dumping margin is the amount by which the export price is less than the normal value. It is expressed as a percentage of the export price. The margin may be established on the basis of a comparison of either:

weighted averages of comparable normal values and export prices; or
 normal values and export prices on a transaction by transaction basis; or
 individual export prices and normal values over part or parts of the investigation period, and weighted average export prices and normal values over another part, or parts of the investigation period; or
 a weighted average of normal values and individual export price transactions (if the export price differs significantly between purchasers, regions, or time periods).

Each part of the investigation period referred to above must not be less than two months and together must comprise the whole of the investigation period.

The method used to assess dumping margins for this SEF is set out in the table below. The comparison of the weighted average export price and the weighted average normal value resulted in a dumping margin noted in the following table. The margin column is marked as “Negligible” if no dumping occurred or if the dumping margin is below two per cent and marked as “Dumped” if the dumping margin is two per cent or greater.

Dumping margin calculations are at confidential appendix 6.

Country	Company	Export price	Normal value	Margin calculation	Margin
Korea	DAECO	269TAB(1)(a)	269TAC(1)	269TACB(2)(a) 269TACB(2)(aa)	Negligible
	SGC	269TAB(1)(a) 269TAB(1)(c)	269TAC(1) 269TAC(2)(c)	269TACB(2)(a)	Dumped
	SK	269TAB(1)(a)	269TAC(1)	269TACB(2)(a)	Dumped
	SKG	269TAB(1)(c)	269TAC(1)	269TACB(2)(a)	Dumped
	Other	269TAB(3)	269TAC(6)	269TACB(2)(a)	Dumped
Malaysia	PE Malaysia	269TAB(1)(a) 269TAB(3)	269TAC(6)	269TACB(2)(a)	Dumped
	TPE	269TAB(1)(a) 269TAB(3)	269TAC(1) 269TAC(6)	269TACB(2)(a)	Dumped
	Other	269TAB(3)	269TAC(6)	269TACB(2)(a)	Dumped
Singapore	CPSC	269TAB(1)(a) 269TAB(1)(c)	269TAC(1)	269TACB(2)(aa)	Dumped
	SPC	269TAB(1)(a)	269TAC(1)	269TACB(2)(a)	Negligible
Sweden		269TAB(3)	269TAC(6)	269TACB(2)(a)	Dumped
Thailand	BPE	269TAB(1)(a)	269TAC(1)	269TACB(2)(a)	Negligible
	CCCC	269TAB(1)(a)	269TAC(1) 269TAC(2)(c)	269TACB(2)(a) 269TACB(2)(aa)	Negligible
	Other	269TAB(3)	269TAC(6)	269TACB(2)(a)	Dumped

The volume of dumped goods exported to Australia from each of the countries under investigation, when expressed as a percentage of the total Australian import volume, is not negligible, i.e. not less than three per cent.

A summary of the dumped volume of goods is at confidential appendix 7.

Negligible dumping margins

Dumping margins for one of the exporters from Korea (DAECO), two of the exporters from Thailand (BPE and CCCC) and one of the exporters from Singapore (SPC), when calculated on the basis of weighted averages of comparable normal values and export prices, are negligible.

Customs proposes to terminate the investigation in relation to DAECO, BPE, CCCC and SPC in accordance with s. 269TDA(1) of the Act.

Negligible injury

In the preceding paragraphs Customs has indicated that the dumping investigation will be terminated for two of the exporters from Thailand. This leaves one exporter from Thailand with a weighted average dumping margin above two per cent.

Customs examined the volume of exports by the remaining exporter and found them to be miniscule. Customs is satisfied that injury has not been caused to the Australian industry by these exports and hence injury from dumped goods from Thailand is negligible.

Customs proposes to terminate the investigation in relation to Thailand in accordance with s. 269TDA(13) of the Act.

7 ECONOMIC CONDITION OF THE INDUSTRY

This section reports Customs' consideration of the economic condition of the industry and its assessment as to whether the industry has suffered injury.

Australian industry claimed material injury from the dumped imports commenced during the third quarter of 2001. Injury has been experienced in the forms of:

- lost market share;
- price undercutting;
- price depression;
- reduced profit and profitability;
- reduced employment;
- reduced research and development (R&D) expenditure; and
- increased inventory levels.

Customs examined data for the period 1 July 1999 to 30 September 2002 in order to assess this claim.

7.1 Customs Assessment

The following sections summarise Customs' analysis of the industry's injury claims and other relevant injury factors.

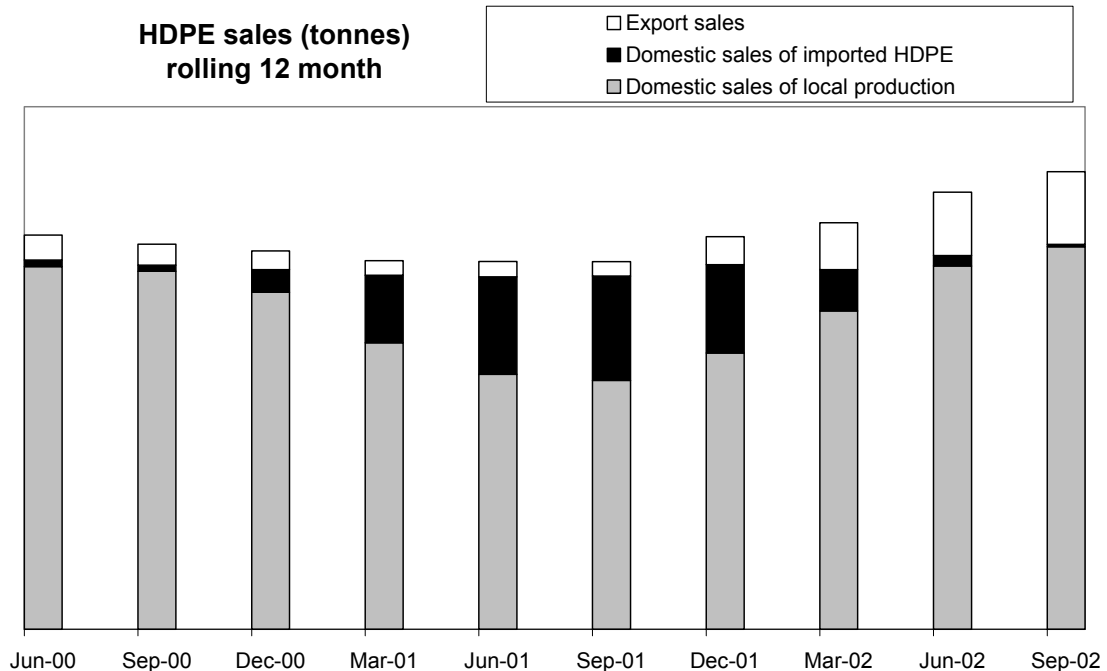
Qenos stated that ethylene and HDPE production was severely affected by industrial action in late 2000 and early 2001. Customs examined the data presented by Qenos and has excluded the four quarters from December 2000 to September 2001 from the injury analysis.

Normal production levels do not appear to have been resumed until the fourth quarter of 2001.

7.1.1 Volume effects

Sales volume

The Australian industry's sales volumes are shown in the following graph. The data has been presented on a 12-month rolling basis to even out quarterly fluctuations.



The effect of the industrial action can be seen in the domestic sale of imported HDPE by Qenos to make up for the shortfall in local production.

Domestic sales of local production in the 12 months to September 2002 are slightly higher than those achieved before the industrial action in the 12 months to September 2000.

Customs concludes that Qenos has not suffered a loss of sales volume.

Market share

Qenos market share has fluctuated over the 13 quarters examined. Qenos share in the four quarters to September 2002 is at similar levels to the five quarters to September 2000, prior to the industrial action.

Customs concludes that Qenos has not suffered a loss of market share.

Customs' calculation of the Australian market is confidential appendix 2.

7.1.2 Price effects

Price undercutting

Price undercutting occurs when the selling price of imported goods is lower than that of the Australian industry to the same customer or to customers at the same level of trade that the Australian industry has traditionally serviced. For undercutting to be considered material, it must be sustained in terms of

occurrence and significant in terms of volume and price, i.e. above levels that could be usually expected in the normal ebb and flow of business.

Data shows that sales of imported goods are made directly to importer/end-users or through importer/distributors to end-users.

In order to make a fair comparison between Qenos and imported HDPE sales, into-store prices to end-users have been used. Comparison has been made where sales have been made to the same customer in the same quarter of the same type of HDPE.

Where such a comparison cannot be made on a customer-to-customer basis for HDPE from a particular exporter, the weighted average selling price to end-users by type and quarter and have been compared.

Exports from Korea are to distributors and end-users in the Australian market. A comparison on a customer-to-customer basis can only be made for a relatively small proportion of imported product. Undercutting was analysed by comparing the weighted average price to end-users. Significant undercutting of the Australian industry's prices was found for HDPE exported by certain Korean exporters. The degree of undercutting is significant in terms of volume and price.

Exports from Malaysia are to distributors and end-users in the Australian market. A comparison on a customer-to-customer basis can be made for practically all imported product. The selling price of HDPE exported from Malaysia is consistently below the selling price of Qenos product. The degree of undercutting is significant in terms of volume and price.

Exports from Singapore are predominantly to distributors in Australia, who then sell the goods to end-users. A comparison on a customer-to-customer basis can be made for around one-third of imported product. The selling price of a significant amount of HDPE exported from Singapore is consistently below the selling price of Qenos product. The degree of undercutting is significant in terms of volume and price.

Exports from Sweden are to distributors and end-users. A comparison on a customer-to-customer basis can be made for practically all imported product. The full circumstances of the sales in Australia could not be ascertained due to the non-participation of the Swedish exporters and the limited data supplied by an Australian import agent. Some undercutting of the Australian industry's price was found. The degree of undercutting able to be identified is significant in terms of volume and price.

Exports from Thailand are to distributors and end-users in the Australian market. A comparison on a customer-to-customer basis can only be made for a relatively small proportion of imported product. Undercutting was analysed by comparing the weighted average price to end-users. No significant undercutting of the Australian industry's prices was found for HDPE exported from Thailand.

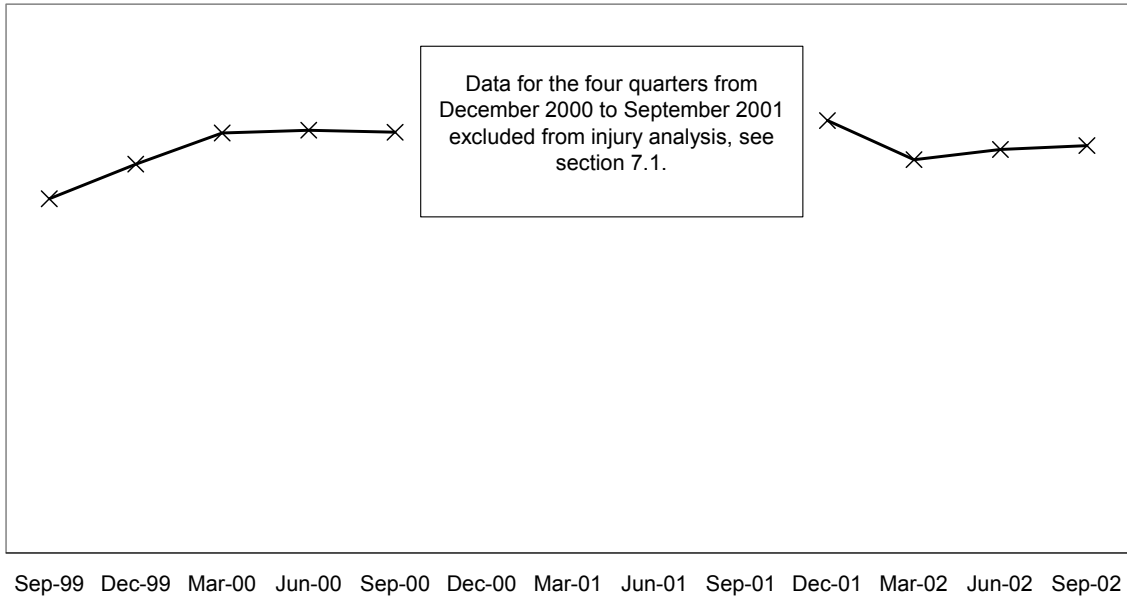
A spreadsheet summarising the undercutting analysis is at confidential appendix 8.

Price depression

Price depression occurs when a company, for some reason, lowers its prices.

Net selling prices after all rebates for domestically produced and sold HDPE are shown in the following graph for the quarters September 1999 to September 2000 and December 2001 to September 2002.

HDPE domestic selling price (\$ per tonne)



Selling prices in the 12 months to September 2002 are around the same level as those achieved prior to industrial action.

Customs concludes that while Qenos may have experienced price depression on particular grades, there has not been overall price depression for HDPE.

Price suppression

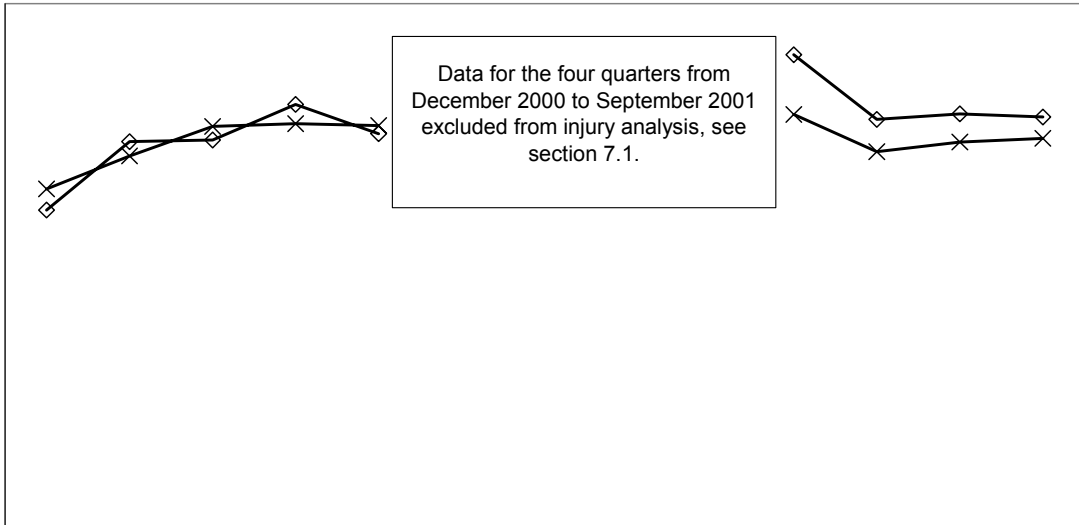
Price suppression occurs when the margin between a company's costs and prices deteriorates.

Customs examined Qenos quarterly weighted average selling prices and compared these to corresponding costs to make and sell in each period. Changes in selling prices were largely correlated with the changes in the cost of ethylene, the main input into HDPE production.

The following graph shows that the profit margin is lower in the 12 months to September 2002 than the earlier period.

HDPE domestic selling price and cost to make and sell (\$/tonne)

—◇— Cost to make and sell (\$/t) —×— Selling price (\$/t)



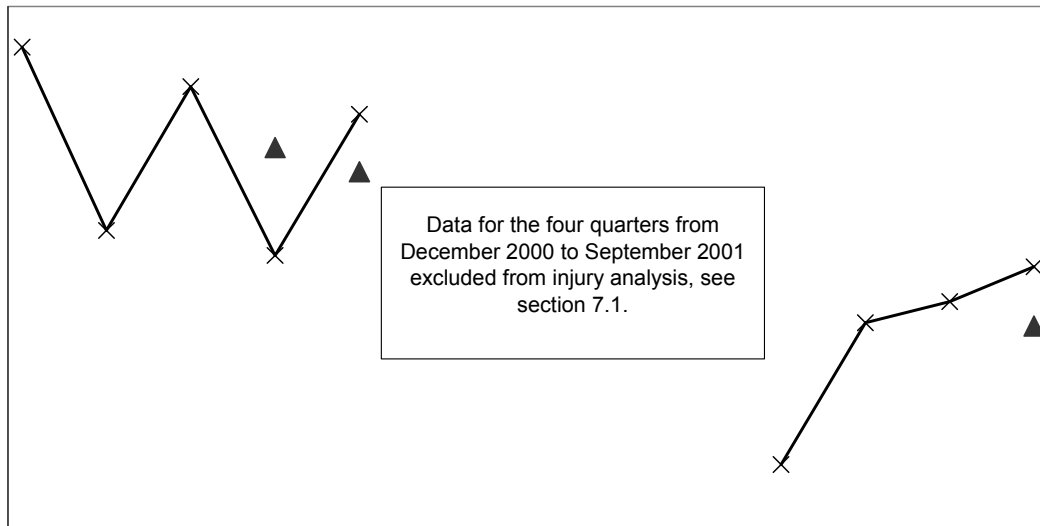
Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

Profit per tonne in the 12 months to September 2002 is significantly lower than that achieved in the 12 months to September 2000.

When viewed on a quarterly basis, profit per tonne has improved over the four quarters to September 2002 but not to the levels achieved in earlier quarters.

HDPE margin between domestic selling price and cost to make & sell (\$/tonne)

—×— Margin (\$/tonne)
▲ 12 mth Margin (\$/tonne)

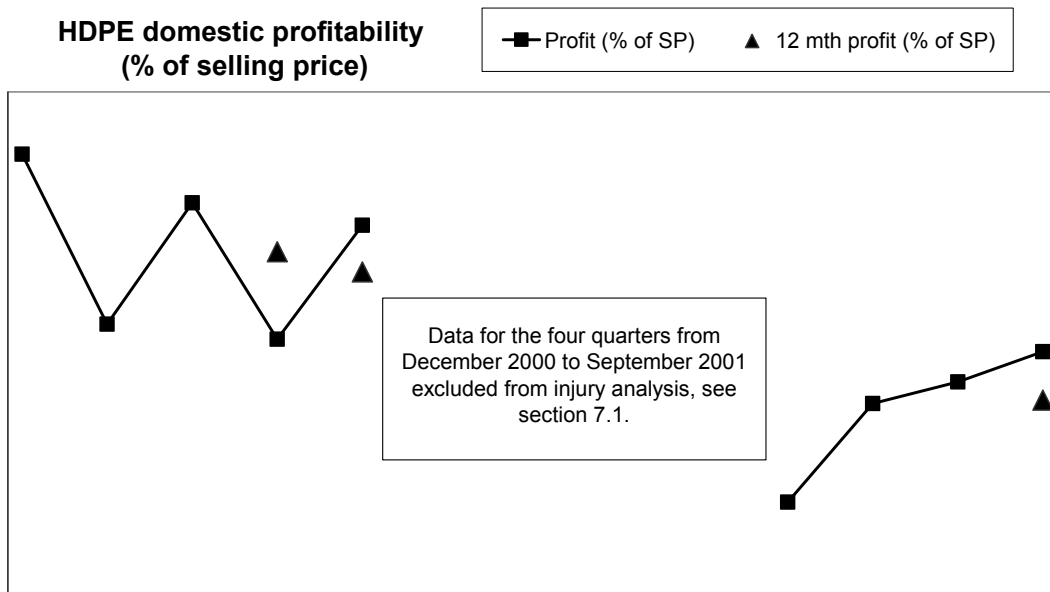


Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

Customs considers that Qenos has suffered price suppression.

Profit and profitability

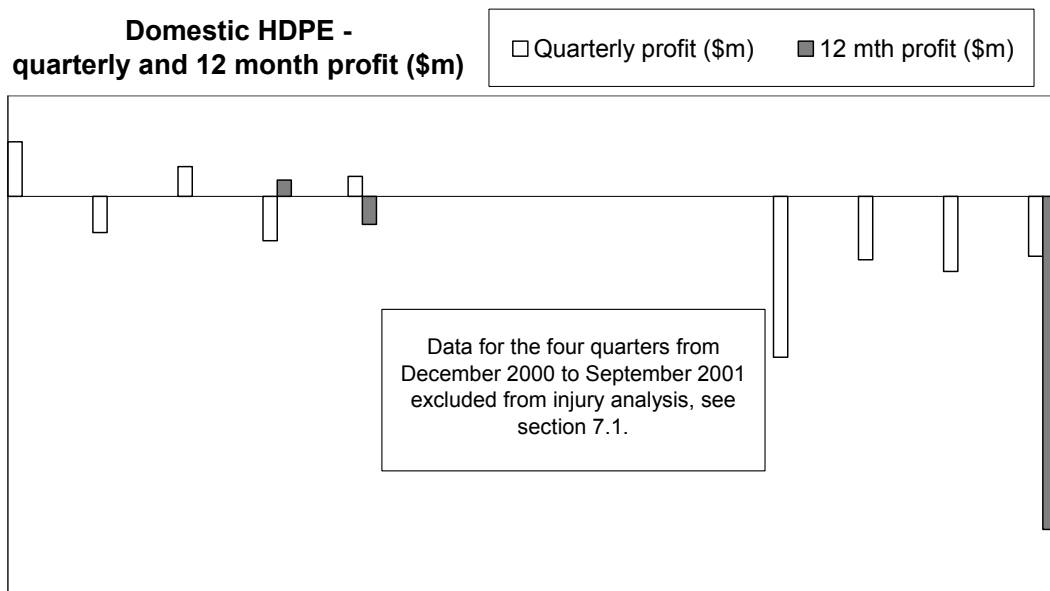
Profitability, being profit per tonne as a percentage of the selling price, shows similar trends to the profit margin, as illustrated in the following graph.



Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

Profitability in the 12 months to September 2002 is significantly lower than that achieved in the 12 months to September 2000. When viewed on a quarterly basis, profitability has improved over the four quarters to September 2002 but not to the levels achieved in earlier quarters.

The following graph shows the overall quarterly profit and the rolling 12 month profit.



Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

Overall profit in the 12 months to September 2002 is significantly lower than that in the 12 months to September 2000

Customs considers that Qenos has suffered a loss of profitability and profits.

7.1.3 Other injury claims

Degree of utilization of capacity

Data on plant capacity was supplied for Qenos Altona HDPE operation and Qenos Alkatuff facility at Botany. Plant capacity is variable as Botany Alkatuff is a 'swing plant' that can alternate between LLDPE and HDPE. Qenos commenced manufacturing HDPE at Botany in the September quarter 2000.

Utilisation of capacity has been calculated for Qenos Altona HDPE production and Botany Alkatuff facility. Utilisation at both Altona and Botany has improved.

Other factors

Employment data provided by Qenos indicates that employment at its Altona and Botany plants has fallen.

Qenos claimed injury in relation to reduced R&D expenditure and increased inventory levels. The data provided to support these claims is inconclusive.

No claims were made in relation to other items such as investment in the industry.

8 HAS DUMPING CAUSED MATERIAL INJURY?

In the previous sections, Customs concluded most importations of HDPE from Korea, Malaysia, Singapore and Sweden has been dumped and that the industry has suffered injury in the form of price undercutting, price suppression and reduced profits and profitability. Importations of HDPE from Thailand were either not dumped, had negligible margins or caused negligible injury.

Customs must now determine whether material injury has been caused by the dumping from Korea, Malaysia, Singapore and Sweden.

8.1 Claims of interested parties

Australian industry's claims

Qenos claims that it has encountered difficulty in regaining market share lost to imports during the period of industrial action and reduced production capacity. In that regard, the company made the following claims of causal link between the alleged dumping and material injury:

- imports of Korean HDPE have remained relatively stable;
- Thailand has doubled its market share since early 2000;
- the market share held by imports from countries in the No Country Declared category of Australian Bureau of Statistics data have increased from 12 per cent in the third quarter of 2001 to 21 per cent in the second quarter of 2002;
- the company's market share is down by eight percentage points on levels prior to the industrial action; and
- sales volumes in 2002 are significantly down over 1999 and 2000.

In respect of prices, profits and profitability, Qenos states that:

market visit reports highlight instances of competitive quotes for imported HDPE;

the reports identify instances of price undercutting and price depression, in particular from Malaysia, Thailand and Singapore; and

it has suffered falling price realisations since July 2001 with further reductions to take effect from 1 August 2002.

In respect of its cost to make and sell HDPE, Qenos states:

while the company's margin has gradually improved in the 12 months to June 2002, the lost market share has not enabled it to capitalise on these gains; and

this reduction in market share has had an injurious impact on the profitability of the HDPE business.

Claims of other interested parties

Many interested parties made representations to Customs and non-confidential submissions were placed on the public record. Customs also received confidential submissions from a number of parties, which were not supported by a non-confidential summary. Customs had regard to the claims made in such submissions only where supporting data was provided or where other parties have made the same, or similar, claims in a non-confidential submission.

Claims in relation to the goods under consideration and like goods have been addressed at section 3. Other issues raised were:

there was a close correlation between the prices of ethylene and HDPE;

there was volatility in the prices for ethylene;

Qenos competes in an international market and is therefore subject to the ebb and flow of that market;

Qenos is a small manufacturer of HDPE by world standards and is a less efficient producer than manufacturers overseas who concentrate on the efficient production of large volumes of a limited range of HDPE;

the price for HDPE only becomes a consideration to customers after all technical parameters have been fully satisfied;

Qenos has had a number of major disruptions to production impacting on its ability to supply HDPE to the market;

end-users want a cost effective alternative to Qenos HDPE;

end-users have expressed concern about the possible introduction of dumping duties on HDPE that have no local equivalent or is not supplied by Qenos;

imposition of dumping duty will only serve to detract from the competitiveness of Australian end-users against imports of downstream products; and

the injury experienced by Qenos was as a result of the cyclical nature of global ethylene and polyethylene prices and other factors.

Copies of confidential submissions received by Customs are at confidential appendix 1.

8.2 Customs assessment

The price of HDPE is largely influenced by the cost of ethylene, the major raw material used in the manufacture of HDPE.

From its investigations Customs noted that dumped exports and the like goods produced by Qenos:

- were present throughout the investigation period;
- were sold in the same geographic region; and
- could be substituted with each other (at the same level and downwards).

Customs concludes that it would be appropriate to cumulate the effects of the dumped exports for material injury assessment.

8.2.1 Price effects

Customs has found that during the investigation period significant volumes of dumped goods from Korea, Malaysia, Singapore and Sweden have been sold into the Australian market at prices that have undercut the Australian industry's prices. At the same time, the industry has suffered injury in terms of price, profit and profitability.

One exporter of the goods from Korea and one exporter from Singapore have not exported the goods to Australia at a weighted average dumped price. Sales of these goods in the Australian market were found not to have undercut the Australian industry's prices.

Exports from Thailand were found either to be not dumped or to have dumping margins that are negligible. Sales of Thai HDPE have not significantly undercut the Australian industry's prices.

It is reasonable to conclude that the dumping from Korea, Malaysia, Singapore and Sweden has contributed to the injury suffered by the Australian industry.

8.2.2 Volume effects

The industrial action appears to have affected production and associated costs in the four quarters to September 2001. During this time, Qenos imported significant volumes of HDPE to make up for the shortfall in production. Data for December quarter 2001 to the September quarter 2001 have been quarantined from Customs' analysis of the condition of the industry.

No injury was found in the form of volume effects.

8.3 Other possible causes of injury

Customs has found that importations of HDPE from Korea, Malaysia, Singapore and Sweden have been dumped and that the industry has suffered material injury. Customs has considered whether factors other than dumping have caused the injury suffered by the Australian industry.

Qenos has identified industrial action that occurred in the December quarter 2000 and the March quarter 2001 as a factor other than dumping that caused

injury to the Australian industry. Data for December quarter 2001 to the September quarter 2001 have been quarantined from Customs' analysis of the condition of the industry.

The claims of other interested parties are summarised at section 8.1 above. The claims generally relate to conditions in the "world market", the relative efficiency of Qenos as a producer, the ability of Qenos to supply the Australian market and disadvantage to end-users of anti-dumping measures. Several claims are related to the goods under consideration and like goods, which is discussed at section 3.

While Qenos cannot supply the entire Australian market, the question of efficiency and therefore the price that the industry needs for its product is dependent on the conditions prevailing in the Australian market. It would appear that the price injury suffered by the Australian industry has been exacerbated by the presence of dumped product in the market.

To address the injury caused by dumping, anti-dumping measures are applied to imports of the goods. The level of the measure is determined having regard to the FOB export price and the lower of the normal value in the country of export or the non-injurious FOB export price. The concept of the measure is to remove the injury caused by dumping, and it is in that environment that the Australian industry's efficiency will be tested.

8.4 Conclusion

Customs has had regard to the volume of dumped imports and their effect on prices in the Australian market and their consequent impact on the Australian industry.

Customs is satisfied that exports from Korea, Malaysia, Singapore and Sweden have been at dumped prices. This has enabled these goods to be sold at prices that undercut the Australian industry's prices, forcing Qenos to reduce its prices to retain volume. As a result, Qenos was unable to maintain its margin over costs, which has led to reduced profits and profitability.

Having regard to the volume of dumped imports, their effect on prices in the Australian market and their consequent impact on the Australian industry, Customs concludes that the dumping of HDPE from Korea, Malaysia, Singapore and Sweden has caused material injury to the Australian industry.

Customs has also considered whether the injury to the Australian industry was caused by other factors. Customs is satisfied, while there may be other contributory factors, the dumped HDPE exported from Korea, Malaysia, Singapore and Sweden has caused material injury to the Australian industry.

9 NON-INJURIOUS PRICE

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

A non-injurious price (NIP) is calculated to determine the level of dumping duty that needs to be applied to dumped imports to remove the injury suffered by the Australian industry. The NIP is defined in s. 269TACA of the Act, as follows:

"The non-injurious price of goods exported to Australia is the minimum price necessary:

(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(l)(b) or (2)(b);"

This lesser duty provision is contained in the World Trade Organization Anti-Dumping Agreement which states that:

"it is desirable that the (anti-dumping) duty be less than the margin (of dumping), if such lesser duty would be adequate to remove the injury to the domestic industry."

Australian legislation reflects the principle of this provision in s. 8(5A) of the *Customs Tariff (Anti Dumping) Act 1975*, which refers to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury to the local industry. This provides:

"The Minister must if the non-injurious price of the goods is less than the normal value of the goods have regard to the desirability of fixing a lesser amount of duty such that the sum of:

(a) the export price of the goods of that kind so ascertained or last so ascertained; and
(b) that lesser duty
does not exceed that non-injurious price"

Anti-dumping and countervailing duties are based on 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, however Customs will generally derive a NIP from the Australian industry's unsuppressed selling price (USP).

Unsuppressed Selling Price

A USP is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to calculate the USP, including to:

determine a price for locally produced goods when the Australian market was not affected by dumping and adjust that price to the current date;
use the Australian industry's cost to make and sell plus an estimated profit (if any) which the industry could achieve in a market not affected by dumping. In estimating this profit, Customs looks to the market for guidance; or
use the lowest price for undumped imports.

Customs is reluctant to use Qenos selling prices at any point in time to determine a USP. As the HDPE market is cyclical, prices achieved at a point in time in the past may not be representative of market prices today.

Customs proposes to determine a USP based on the industry's cost to make and sell plus a rate of profit achieved on a similar product sold in a market unaffected by dumping.

Non-injurious Price

The USP is equivalent to the landed duty paid into store cost of imports for end-users. To calculate the NIP, post FOB exportation costs such as overseas freight, costs incurred in Australia and an amount for importer's profit are deducted from the USP. Customs will determine these costs for each country against which measures will be imposed. An example of this calculation is shown below:

Unsuppressed selling price	100
Less post exportation costs	
Ocean freight & overseas insurance	10
Duty	5
Port & broker charges	1
Cartage to store	2
AS&G expenses	8
Profit	10
Total	36
Non-injurious price	64

10 PRELIMINARY AFFIRMATIVE DETERMINATION

Having established that the goods exported from Korea (except for DAECO), Malaysia, Singapore (except for SPC) and Sweden were at dumped prices and that those exports have caused material injury, Customs considered whether it is necessary to make a preliminary affirmative determination (PAD). A PAD allows Customs to put securities in place under s. 42 of the Act, in order to prevent material injury to the Australian industry occurring while the investigation continues.

Customs is satisfied that imports of HDPE from Korea, Malaysia, Singapore and Sweden have caused material injury to the Australian industry. It is likely that importations of HDPE from Korea, Malaysia, Singapore and Sweden will occur in the future and Customs notes that the majority of the goods exported from Korea, Malaysia, Singapore and Sweden have been at dumped prices. Therefore Customs is of the view that it is necessary to make a PAD under s. 269TD of the Act and impose securities under s. 42 of the Act, so as to ensure that the industry does not suffer further injury pending completion of the investigation. Securities will not be imposed for DAECO or SPC.

The PAD, including the level of securities, will be publicly notified as soon as possible but will not be retrospective. This SEF forms the report that sets out the reasons for the determination, including the material findings of fact on which the determination is based.