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

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R E P O R T

**TRADE MEASURES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO.146**

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

**13 OCTOBER 2009**

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## Abbreviations

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

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## 1 Introduction

On 7 April 2009, Qenos Pty Ltd (Qenos) lodged an application under section 269TB of the *Customs Act 1901* (the Act)<sup>1</sup>. Additional information was received on 28 April and 12 May 2009.

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

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

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

Public notification of initiation of the investigation was made on 28 May 2009 with a notice in *The Australian* newspaper and Australian Customs Dumping Notice (ACDN) No. 2009/12 (which is available on the internet at [www.customs.gov.au](http://www.customs.gov.au) by following the anti-dumping links).

The investigation period is 1 January 2008 to 31 March 2009. The Australian Customs and Border Protection Service (Customs and Border Protection) examined exports to Australia of the goods during that period to determine whether dumping had occurred. Customs and Border Protection examined the period from 1 January 2006 for injury analysis.

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

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

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

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## 1.1 Responding to the SEF

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its recommendation to the Minister. This statement is an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to note that the statement may not represent the final views of Customs and Border Protection.

Interested parties are given 20 days to respond to the statement. Customs and Border Protection will consider these responses in making its report to the Minister. The report will recommend whether or not a dumping duty notice should be published and the extent of any interim duties that are, or should be, payable. Customs and Border Protection must report to the Minister by 27 November 2009.

Responses to this SEF should be made no later than **Monday 2 November 2009**.

Submissions should be sent to:

Director Operations 3  
Trade Measures Branch  
Australian Customs Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can also be sent to fax number +61 2 6275 6990 or email [tmops3@customs.gov.au](mailto:tmops3@customs.gov.au).

Customs and Border Protection is not obliged to have regard to any submissions made in response to the SEF received after 2 November 2009 if to do so would, in the opinion of the Chief Executive Officer of Customs and Border Protection, prevent the timely preparation of the report to the Minister.

Interested parties intending to respond to the statement must include a non-confidential version of their submission for placement on the public record<sup>2</sup>. Submissions provided in confidence must be clearly marked "In-Confidence".

As well as non-confidential submissions by interested parties and this SEF, the public record also contains non-confidential versions of Customs and Border Protection visit reports and other publicly available documents, such as the Consideration report, notices, and other information. These documents should be read in conjunction with the SEF.

Any party wishing to examine the public record before lodging a submission in response to this statement should contact Trade Measures Office Management staff on (02) 6275 6547.

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<sup>2</sup> In preparing a non-confidential version, interested parties should have regard to the requirements set out in ACDN 2006/54.

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Documents placed on the public record are also available on the electronic public record at <http://adpr.customs.gov.au/Customs/>

All ACDNs are available on the internet at the Customs and Border Protection home page [www.customs.gov.au](http://www.customs.gov.au) (follow prompts for “Anti-dumping”).

## 1.2 Previous LLDPE cases

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

- Trade Measures Report No. 8 of 2000 – Investigation into LLDPE from the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Malaysia and Saudi Arabia. Anti-dumping measures were imposed on all exporters from Indonesia;
- Trade Measures Report No. 67 of 2003 – Investigation into LLDPE from Korea and Thailand. Anti-dumping measures were imposed on all exporters from Thailand and all exporters from Korea except Hyundai Petrochemical Corporation;
- Trade Measures Report No. 88 of 2005 – Investigation into LLDPE from Canada. The investigation was terminated due to negligible injury caused by dumping;
- Trade Measures Report No. 89 of 2005 – Review of anti-dumping measures applying to LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 95 of 2005 – Continuation inquiry into LLDPE exported from Indonesia. Anti-dumping measures were continued;
- Trade Measures Report No. 97 of 2005 – Accelerated review of anti-dumping measures in relation to a new exporter from Korea;
- Trade Measures Report No. 134 of 2007 – Review of anti-dumping measures applying to LLDPE exported from Indonesia, Korea and Thailand; and
- Trade Measures Report No. 137 of 2008 – Continuation inquiry into LLDPE exported from Korea and Thailand. Anti-dumping measures were continued for Thailand<sup>3</sup> and allowed to expire for Korea.

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

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<sup>3</sup> In August 2009, as a result of a Federal Court judgement, the Ministerial decision in respect of the continuation of the anti-dumping measures for LLDPE exported by Siam Polyethylene Co Ltd (SPE) from Thailand was set aside. As a result the anti-dumping measures applicable to LLDPE exported by SPE from Thailand have expired.

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## 2 The Goods

### 2.1 The goods the subject of the application

#### 2.1.1 Description

The imported goods the subject of the application (the goods) are linear low density polyethylene (LLDPE), in various grades, in a pelletised form, with a density of less than 0.94 grams per cubic centimetre ( $\text{g/cm}^3$ ). The LLDPE usually incorporates one of three co-monomers: butene (C4), hexene (C6), or octene (C8).

#### 2.1.2 Tariff classification

Qenos identified the goods as classified to subheading 3901.10.00, statistical code 01, or subheading 3901.90.00, statistical code 06, of Schedule 3 to the *Customs Tariff Act 1995* depending on the polymer content. Goods imported under this subheading from Canada or USA are duty free. This classification was confirmed by the Customs and Border Protection Tariff Operations Section.

There are four Tariff Concessions Orders (TCOs) linked to 3901.10.00. The following table provides identifiable characteristics for the products covered by the TCOs:

TCO	Characteristics
0827077	Density less than 905 kg/m <sup>3</sup> and melt flow index not less than 0.8 g/10 min
9103765	Compound form containing thermal stabilisers, organics peroxide, and density of 920 kg/m <sup>3</sup> .
9307024	Density less than 915 kg/m <sup>3</sup> and melt flow index not less than 5
9600312	Density 0.93 grams per cubic centimetre or greater and molecular weight 2,300,000 or greater

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

However, Customs and Border Protection does not consider that TCO 9103765 falls under the description of the goods as it is a compound (see section 2.4 below).

### 2.2 Metallocene polyethylene

Customs and Border Protection has received numerous submissions from interested parties regarding metallocene polyethylene (MPE). In particular, the issues raised concern (1) whether MPE falls under the description of the goods; and (2) if MPE does fall under the description of the goods, whether the Australian industry produces like

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goods. This section will address the first issue. The second issue will be addressed in section 7.6.2 below.

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

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

Customs and Border Protection notes that there is consensus amongst interested parties that MPE is imported in a pelletised form and has a density of less than  $0.94\text{g/cm}^3$ .

There is also consensus amongst interested parties, and supported by the report by Dr John Scheirs of ExcelPlas<sup>4</sup>, that:

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

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

Having regard to the facts that MPE was imported in pelletised form, has a density of less than  $0.94\text{g/cm}^3$  and is produced by the polymerisation of ethylene with co-monomers, Customs and Border Protection considers that MPE falls within the description of the goods, regardless of whether certain interested parties consider MPE a LLDPE resin.

## 2.3 Medium density polyethylene

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

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

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<sup>4</sup> Customs and Border Protection engaged Dr Scheirs for independent advice on the goods. This report is available on the public record.

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

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

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

Having regard to the facts that MDPE was imported in pelletised form, has a density of less than  $0.94\text{g/cm}^3$ , and is produced by the polymerisation of ethylene with co-monomers, Customs and Border Protection considers that MDPE falls within the description of the goods, regardless of whether certain interested parties consider MPE a LLDPE resin.

## 2.4 Masterbatch and compounds

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

Other interested parties have asserted that compounds and masterbatches are not LLDPE resins and do not fall within the description of the goods. In addition, The Dow Chemical Company (TDCC), Dow Chemical Canada (DCC) and Dow Chemical (Limited) Australia (DCAL) (collectively Dow) argued that the polyethylene component of compounds and masterbatches is materially altered by the addition of additives and undergoes additional processes.

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

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## 3 Australian industry

### 3.1 Introduction

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

### 3.2 Manufacturing/production process

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

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

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

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

Customs and Border Protection therefore considers that at least one substantial process in the manufacture of LLDPE is carried out in Australia, and that LLDPE is wholly or partly manufactured in Australia.

### 3.3 Like goods

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

For the purpose of considering whether there is an Australian industry producing like goods, Customs and Border Protection makes this determination by considering the description of the goods as a whole. That said, analysis of sub-categories of the goods may be relevant to assessing whether dumping has caused material injury to the Australian industry (see section 7.6 below).

In assessing like goods, Customs and Border Protection uses an administrative framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness. Customs and Border Protection usually places greatest weight on physical likeness.

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## 3.3.1 Physical likeness

Qenos claims that its LLDPE has the same physical characteristics to the LLDPE exported to Australia from Canada and the USA. It states that it manufactures LLDPE in pelletised form with densities ranging from 0.918 g/cm<sup>3</sup> to 0.938 g/cm<sup>3</sup>, melt indexes of between 0.8 g/10min and 20 g/10min and include any additives as required by its customers.

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

Customs and Border Protection, when considering whether Qenos produces like goods to the goods as a whole, notes that the LLDPE produced by Qenos are in pelletised form, are polyethylene copolymers, and have densities of less than 0.94 g/cm<sup>3</sup>.

## 3.3.2 Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour.

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

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

Customs and Border Protection, when considering whether Qenos produces like goods to the goods as a whole, notes that Qenos' LLDPE and the goods are sold into the same market segments, have similar customer bases, are affected by similar market forces, are packaged in similar ways, and compete directly with each other.

## 3.3.3 Functional likeness

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

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

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

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

### 3.3.4 Production likeness

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

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

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

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

### 3.3.5 Conclusion – like goods

Based on the information available, Customs and Border Protection is satisfied that LLDPE manufactured by the Australian industry:

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

Customs and Border Protection therefore considers that the LLDPE produced by Qenos are like goods to the goods exported from Canada and the USA.

## 3.4 Conclusion – Australian industry

Based on the information available, Customs and Border Protection considers that:

- the LLDPE manufactured or produced by Qenos are like goods as defined by subsection 269T(1);

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

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## 4 Australian Market

### 4.1 Market Structure

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

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

<b>Application or Market Sector</b>	<b>Density (g/cm<sup>3</sup>)</b>	<b>Melt Index (g/10min)</b>	<b>Examples of end products</b>
Film	0.918 -0.925	0.8 – 2.5	Films, plastic bags, shopping bags,
Rotational Moulding	0.930 -0.938	3.0 – 10.0	Tanks
Injection Moulding	0.925	20.0	House wares

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

Customs and Border Protection notes that this is generally accepted by all interested parties and also accepts this premise. Customs and Border Protection will therefore take this market demarcation into account when assessing injury and causation in the rest of the SEF.

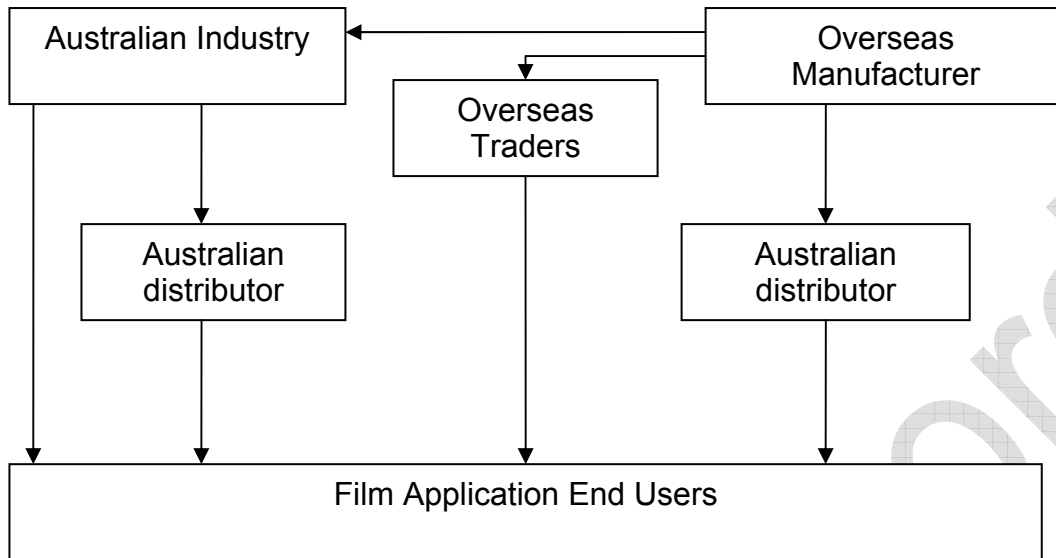
Customs and Border Protection also notes that while Qenos produces injection moulding LLDPE, it was not aware of any being imported from Canada or the USA during the investigation period.

### 4.2 Distribution and marketing

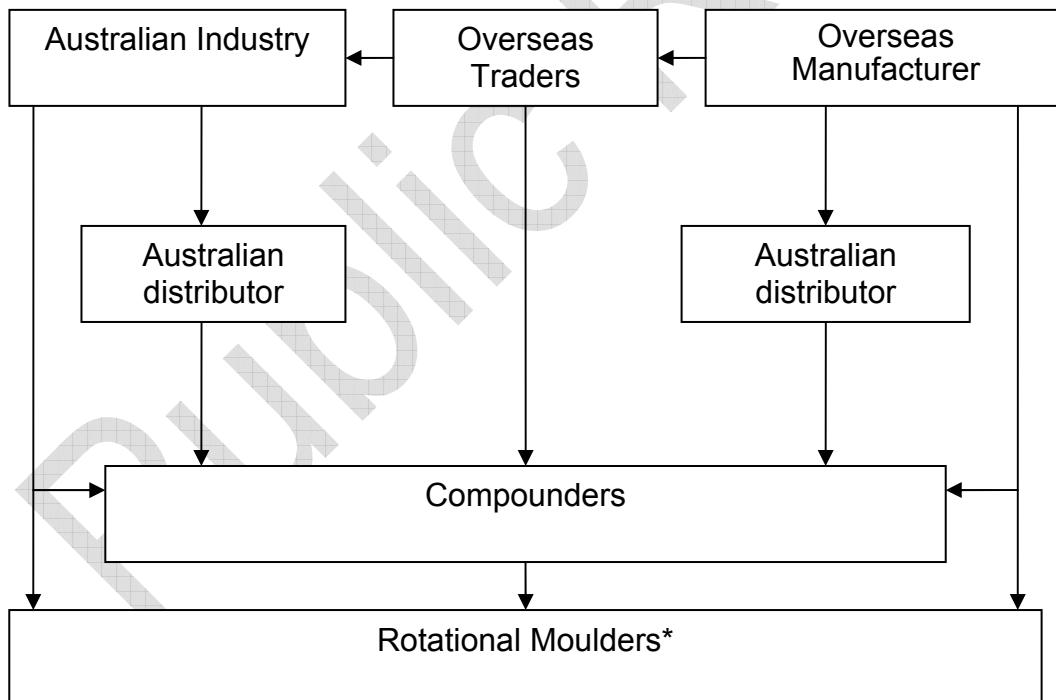
Customs and Border Protection determined that there are two prominent market sectors in Australia, film and rotational moulding, with differing distribution channels. Diagrams of the distribution channels for the two market sectors are outlined below:

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## 4.2.1 Film (including MPE)



## 4.2.2 Rotational



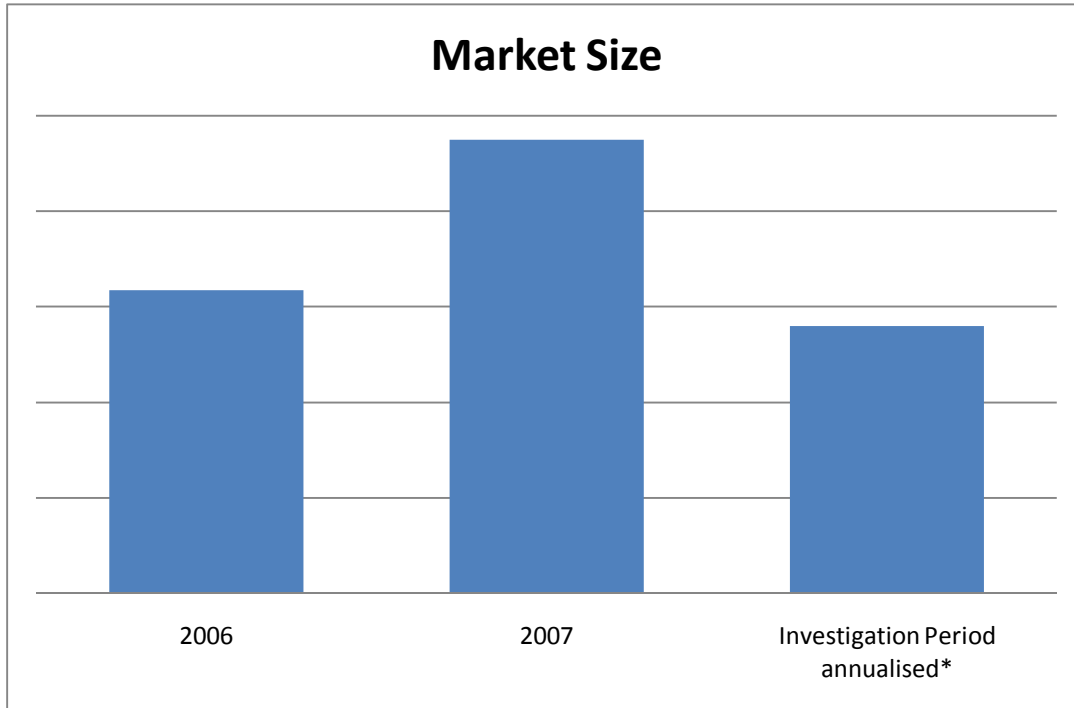
\*Some companies undertake both compounding and rotational moulding.

## 4.3 Market size

During the investigation, Customs and Border Protection verified sales data submitted by Qenos (including sales of imported LLDPE) and also collected and verified import and

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sales data from three importers that collectively accounted for the majority of LLDPE imports from Canada and the USA. Customs and Border Protection also used data from its import database to estimate the total import volume, including LLDPE imports from other countries. The graph below shows the total size of the market over the injury analysis period.



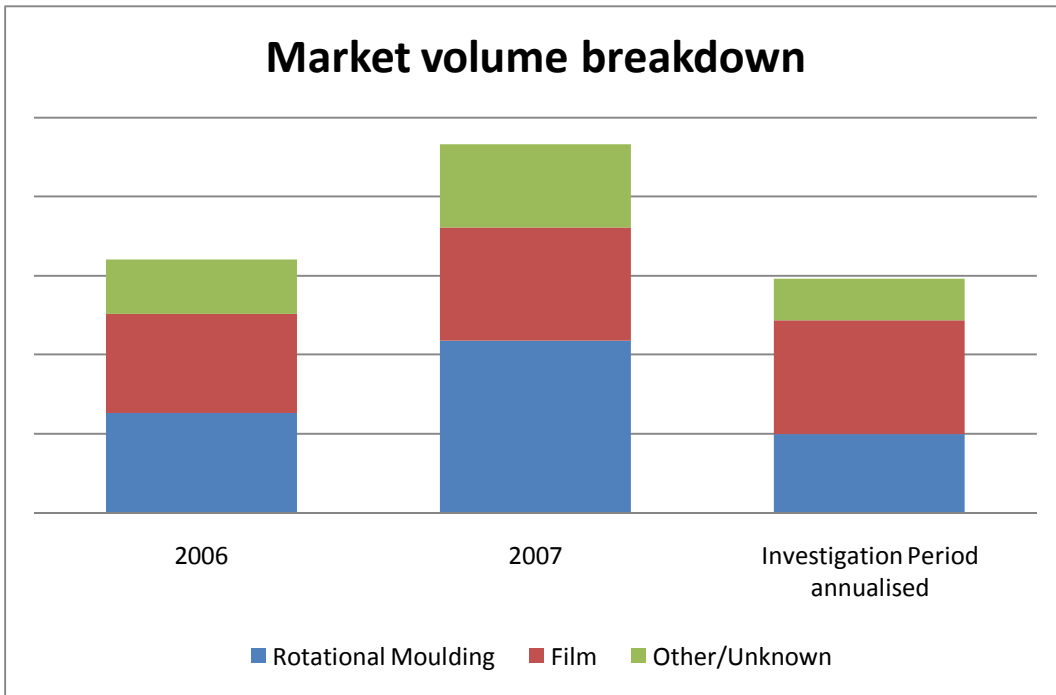
\*The investigation period annualised figure is calculated by summing the 5 quarters within the investigation period, then multiplying by 4/5.

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

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

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

# Public Record



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

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

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## 5 Dumping investigation

### 5.1 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This section explains the results of investigations by Customs and Border Protection into whether LLDPE was exported from Canada and the USA at dumped prices during the investigation period.

### 5.2 Importers

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

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

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

### 5.3 Canadian exporters

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

Customs and Border Protection also undertook a search of its import database and did not identify any other exporters of LLDPE from Canada.

# Public Record

## 5.3.1 Dow Chemical Canada ULC

### Export Price

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

Customs and Border Protection found that:

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

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

### Normal Value

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

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

### Dumping Margin

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

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

## 5.3.2 NOVA Chemicals Corporation

### Export Price

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

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Customs and Border Protection found that:

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

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

## Normal Value

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

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

## Dumping Margin

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

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

## **5.4 US exporters**

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

Customs and Border Protection also received an exporter questionnaire response from, and conducted a verification visit to Entec Polymers LLC (Entec). Entec's non-

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confidential versions of the exporter questionnaire response and verification visit report are available on the public record.

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

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

## 5.4.1 The Dow Chemical Company

### Export Price

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

Customs and Border Protection found that:

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

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

### Normal Value

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

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

### Dumping Margin

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

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

## 5.4.2 ExxonMobil Chemical Company

### Export Price

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

Customs and Border Protection found that:

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

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

### Normal Value

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

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

### Dumping Margin

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

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

# Public Record

## 5.4.3 Entec Polymers LLC

### Export Price

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

Customs and Border Protection found that:

- Entec was an exporter of LLDPE to Australia during the investigation period;
- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter;
- the purchases of the goods by the importers were an arms length transactions.

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

### Normal Value

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

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

### Dumping Margin

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

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

## 5.4.4 Other exporters

### Export Price

Sufficient information has not been furnished or is unavailable to enable the export price of LLDPE exported from the USA by other exporters to be ascertained under subsection 269TAB(1) and Customs and Border Protection is unaware of all the circumstances of the exportations. Therefore, Customs considers that the export price for other exporters from

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the USA can be established under subsection 269TAB(3), having regard to all relevant information.

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

## Normal Value

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

Customs and Border Protection calculated the normal values for LLDPE for other exporters from the USA by reference to the highest verified weighted average normal value over the investigation period for like goods without any favourable adjustments. Customs and Border Protection considers it is appropriate to not make any favourable adjustments to this selling price because it has no basis for presuming any favourable adjustments apply to other exporters.

## Dumping Margin

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

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

## **5.5 Summary – Dumping Investigation**

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

<b>Canadian Exporters</b>	<b>Volume of Trade</b>	<b>Dumping Margin</b>
DCC	100%	5% to 10%
Nova		10% to 25%

Customs and Border Protection notes that the dumping margins are not negligible in terms of subsection 269TDA(1)

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

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

Customs and Border Protection notes that the dumping margins are not negligible in terms of subsection 269TDA(1)

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

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

## 6 Economic Condition of the Industry

### 6.1 Introduction

This section reports on the economic condition of the Australian industry and provides Customs and Border Protection's assessment as to whether Qenos has suffered injury.

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

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

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

### 6.2 Commencement of injury

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

### 6.3 Approach to injury analysis

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

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

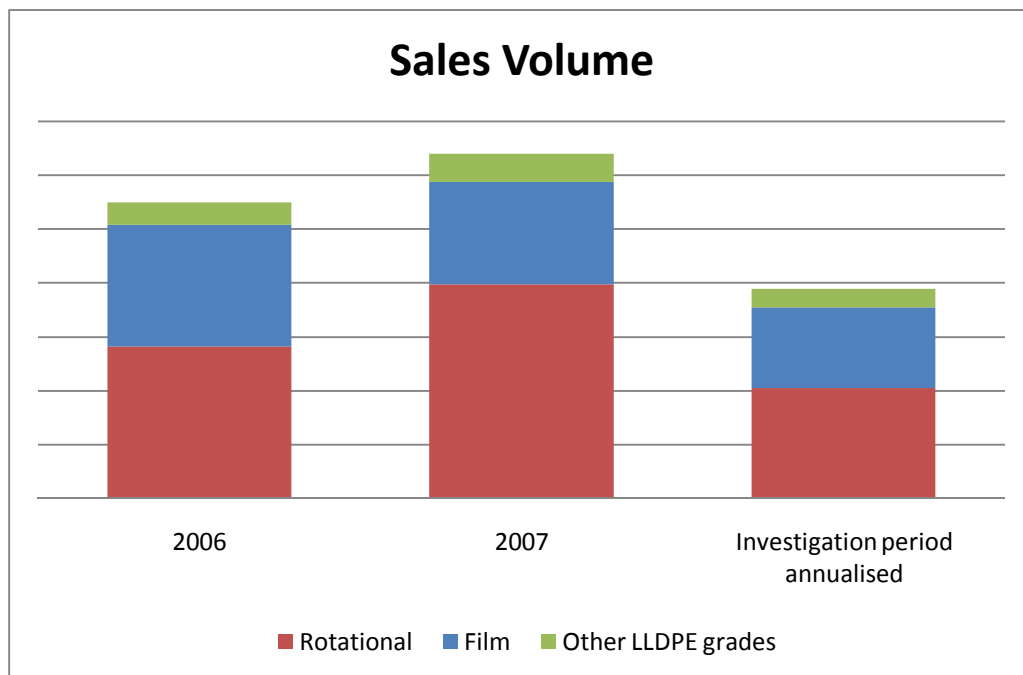
As discussed in section 4.1 above, Customs and Border Protection considers that film and rotational moulding markets are two separate markets. The analysis in this section examines whether Qenos has suffered injury for film and rotational moulding separately, then for all grades of LLDPE, noting that Qenos' film and rotational moulding LLDPE sales account for the vast majority of its overall LLDPE sales.

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## 6.4 Volume effects

### 6.4.1 Lost sales volume

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

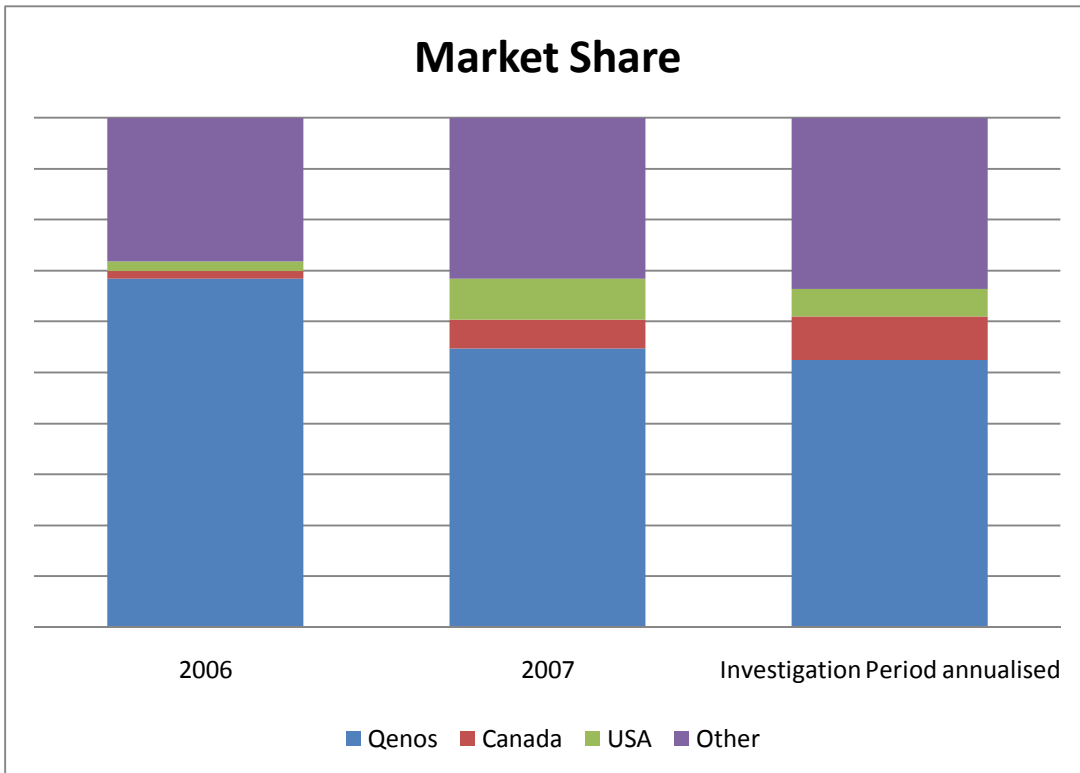


Customs and Border Protection's analysis showed that Qenos has lost sales volume in the investigation period. Qenos' sales volume increased in 2007 (as a result of an increase in demand for rotational moulding LLDPE), but then decreased in the investigation period to a level below that of 2006, for both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

### 6.4.2 Lost market share

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

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Customs and Border Protection's analysis showed that Qenos has lost market share in the investigation period. It was found that Qenos' market share decreased in 2007 then decreased even further in the investigation period.

Customs and Border Protection was unable to conduct an analysis of market share by market segments due to the volume of LLDPE imports from other countries where the market segment was unknown.

## Conclusion – Loss of sales volume and market share

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

## **6.5 Price effects**

Price effects may be in the form of:

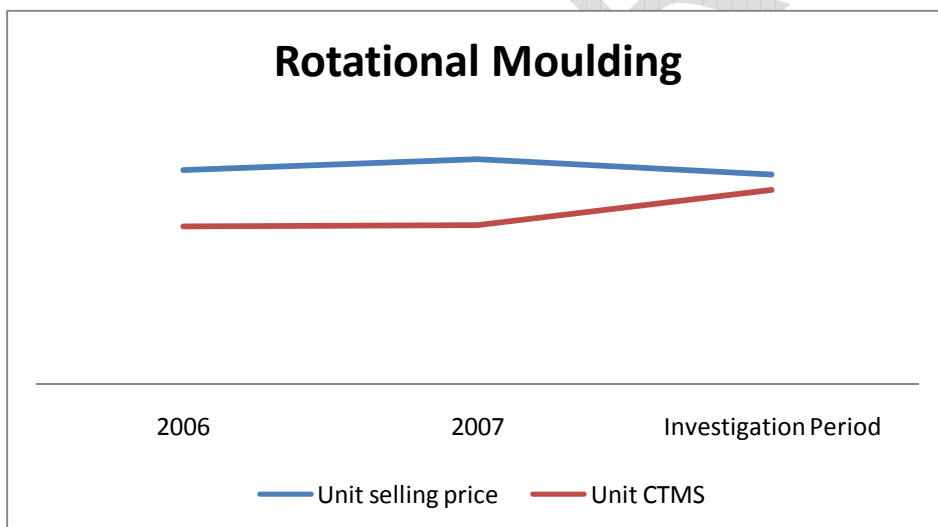
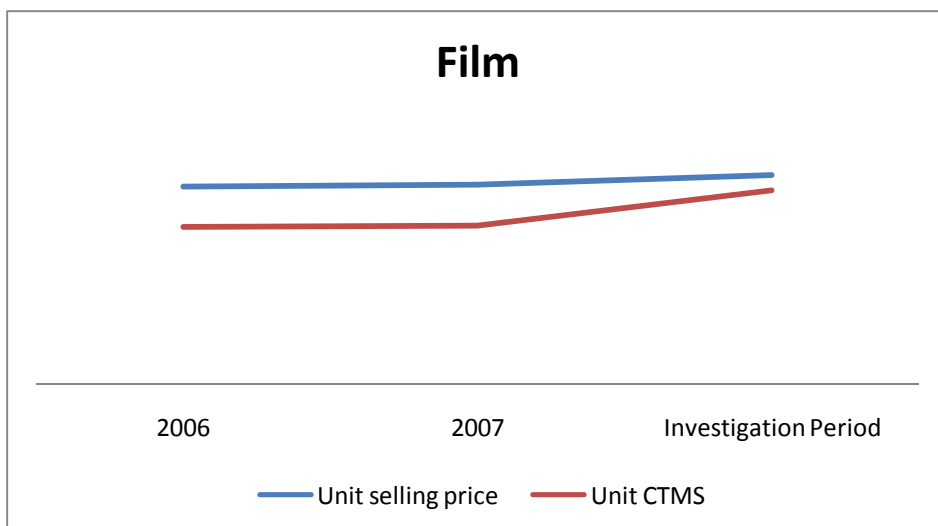
- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for Qenos' product, which otherwise would have occurred, have been prevented.

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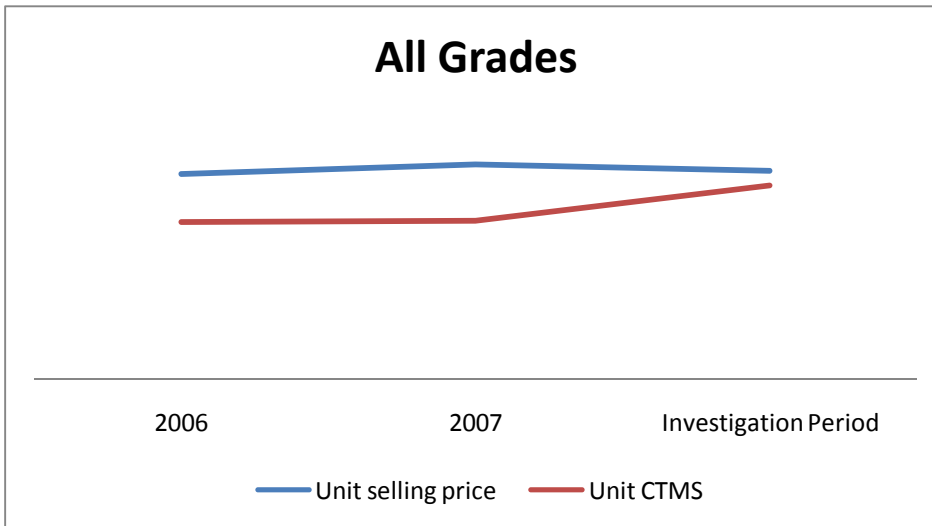
## 6.5.1 Price depression and suppression

Qenos claims that it experienced price depression and suppression in the investigation period.

The following graphs illustrate Qenos' unit selling price and unit cost to make and sell (CTMS) for film, rotational moulding and all grades of LLDPE.



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Customs and Border Protection's analysis showed that in the investigation period, Qenos experienced price depression for rotational moulding and for all grades of LLDPE, and price suppression for film, rotational moulding and for all grades of LLDPE.

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

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

### Conclusion – Price depression and suppression

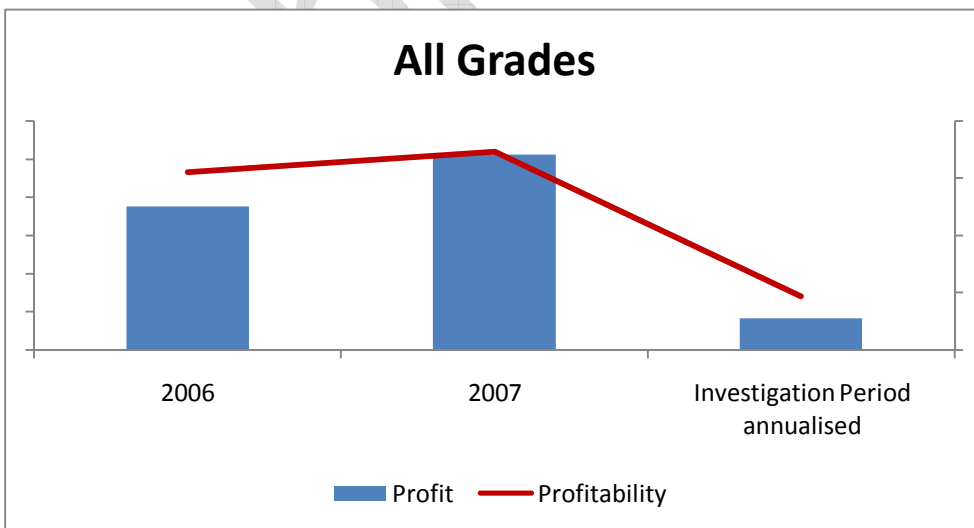
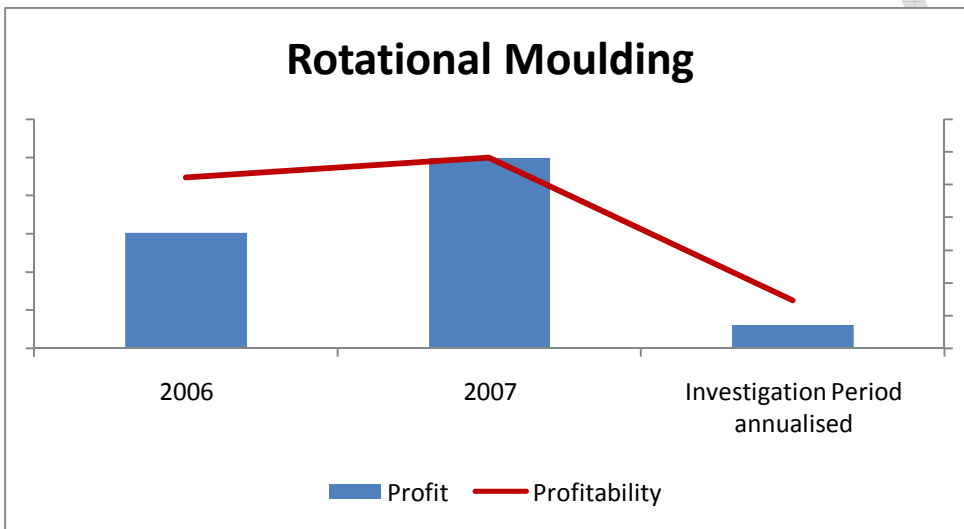
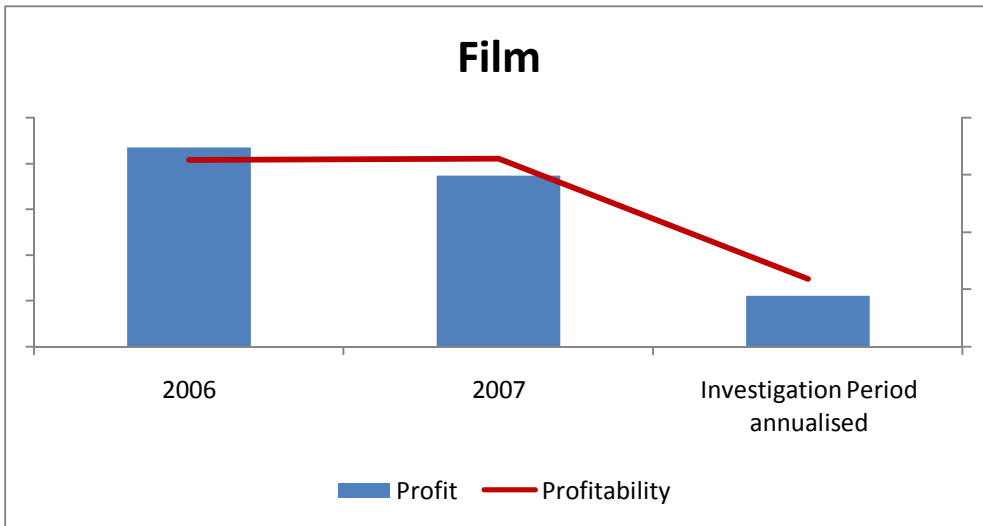
Based on the information verified during the investigation, Customs and Border Protection considers that Qenos has suffered injury in the form of price depression (except for film LLDPE) and price suppression in the investigation period.

## 6.6 Profit effects

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

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

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The analysis showed that Qenos experienced reduced profit and profitability for film, rotational moulding and for all grades of LLDPE in the investigation period. Qenos' profit

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

### Conclusion – Profit and profitability

Based on the information verified during the investigation, Customs and Border Protection considers that Qenos has suffered injury in the form of reduced profit and profitability in the investigation period.

## 6.7 Other economic factors

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

### 6.7.1 Reduced return on investment

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

### 6.7.2 Reduced sales revenue

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

### 6.7.3 Reduced capacity utilisation

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

### 6.7.4 Assets

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

### 6.7.5 Capital investment

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

### 6.7.6 Research and Development (R & D)

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

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## 6.7.7 Capacity

The data provided by Qenos indicates maintained capacity for LLDPE.

## 6.7.8 Employment

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

## 6.7.9 Productivity

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

## 6.7.10 Stocks

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

### Conclusion – Other economic factors

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

## 6.8 Conclusion – economic condition of the industry

Based on an analysis of the information contained in the application, and verified during the investigation, Qenos has experienced injury in the form of:

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

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## 7 Has dumping caused material injury?

### 7.1 Introduction

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

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

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

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

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

### 7.2 Cumulation of injury

Subsection 269TAE(2C) provides for consideration of the cumulative effect of exports by different exporters from the same country or exports from different countries if after having regard to:

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

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

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

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

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

## 7.3 Dumping

Customs and Border Protection has established that exporters from Canada have exported LLDPE to Australia at dumped prices during the investigation period. The dumping margin calculated for Canadian exporters is between 5% and 25%.

Customs and Border Protection has established that exporters from the USA have exported LLDPE to Australia at dumped prices during the investigation period. The dumping margin calculated for US exporters is between 10% and 23%.

## 7.4 Other possible causes of injury

Section 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than the dumped imports.

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

### 7.4.1 Collapse in the rotational moulding market

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

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

Customs and Border Protection will take this into account in this section.

### 7.4.2 Withdrawal from the film market

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

In particular, Amcor submitted that in February 2007, 'Qenos initiated discussions with Amcor to agree a variation of the supply contract and manage a staged exit [of] its supply of LLDPE resin into Amcor Western Australia' and that it 'entered into term agreement

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with Dow Chemical Australia for the supply of an alternative resin [which] extended into 2008.’ Amcor also submitted that it was required to ‘secure alternative supply for its LLDPE resin requirements for Western Australia from July 2007 as well as establish longer term sourcing options beyond 2007’ and that the ‘majority of this volume [of LLDPE Amcor purchased from Qenos] ... was grade 425.’

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

Customs and Border Protection will take this into account in this section.

### 7.4.3 Global Financial Crisis

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

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

However, Qenos submitted that it suffered material injury from dumped LLDPE exports from Canada and the USA from the beginning of 2008 – prior to the commencement of the GFC. Qenos also submitted that its loss of market share and price suppression preceded the GFC, highlighting the injurious effects of dumping well in advance of the general contraction of the economy at the end of 2008.

Customs and Border Protection will take this into account in this section.

### 7.4.4 Removal of the favourable clause in the Botany ethane supply contract

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

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In response, Qenos provided Customs and Border Protection with details of the Botany ethane supply contract. Customs and Border Protection will take this into account in the causal link analysis. However, due to the commercial sensitivity of the contract, Customs and Border Protection is not in the position to provide details or comment further on this issue.

## 7.5 Approach to causation analysis

As discussed in section 7.4 above, Customs and Border Protection notes two significant events that occurred during the injury analysis period – the boom in the rotational moulding market at the beginning of 2007 and its subsequent collapse in September 2007; and the commencement of the GFC in September 2008. In order to isolate the impacts of these two events, Customs and Border Protection has analysed verified data available by market segments and by quarters from the 3<sup>rd</sup> quarter of 2006.

Due to the commercially sensitive nature of the data to all interested parties used in this analysis, Customs and Border Protection has elected not to publish the data or graphs. Customs and Border Protection will instead attempt to provide a description of the analysis in the following sections.

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

## 7.6 Other issues

Interested parties have also made submissions on various other issues regarding like goods. In particular, some interested parties have claimed that the Australian industry does not produce like goods to certain sub-categories of the goods. However, as discussed in section 3.3 above, Customs and Border Protection determines whether the Australian industry produces like goods by considering the goods as a whole. Nonetheless, the following observations are made in relation to these submissions.

### 7.6.1 Octene (C8) LLDPE

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

Customs and Border Protection notes that:

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

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

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## 7.6.2 Metallocene polyethylene

Customs and Border Protection received numerous submissions regarding MPE. This issue also seems to be confined to the film market segment.

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

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

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

Although MPE falls within the description of the goods, Customs and Border Protection notes that:

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

Therefore, Customs and Border Protection considers it appropriate to consider MPE separately in this section.

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

Customs and Border Protection disagrees with Qenos' claims. Customs and Border Protection has not received any evidence of such substitution occurring due to production economics and notes interested parties' submissions that end-users use MPE based primarily on customer specifications, rather than price.

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

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

## 7.6.3 Blow moulding LLDPE

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

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

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

Due to the fact that Qenos currently does not manufacture blow moulding LLDPE, Customs and Border Protection considers that the imports of dumped blow moulding LLDPE have not caused injury to Qenos.

## 7.7 Price effects

### 7.7.1 Price undercutting

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

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

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

### Rotational Moulding

Customs and Border Protection compared Qenos' rotational moulding LLDPE selling prices to selling prices of two major importers in the rotational moulding market. For the first importer, Customs and Border Protection found no price undercutting during the investigation period except for the 2<sup>nd</sup> quarter of 2008, which was negligible. For the

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second importer Customs and Border Protection found price undercutting during the first two quarters of 2008, which was significant.

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

### Film

Customs and Border Protection compared Qenos' film LLDPE selling prices to selling prices of two major importers in the film market. For both importers, Customs and Border Protection found that price undercutting occurred throughout the investigation period except for the 1<sup>st</sup> quarter of 2009.

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

### **7.7.2 Price depression**

#### Rotational Moulding

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

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

### Film

As discussed in section 6.5 above, Customs and Border Protection found that Qenos did not suffer injury in the form of price depression in the film market. However, Customs and Border Protection observed that prices fell significantly in the 1<sup>st</sup> quarter of 2009, which appears to be related to the effects of the GFC.

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## 7.7.3 Price suppression

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

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

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

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

### Rotational Moulding

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

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

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

### Film

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

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

The analysis showed that price suppression for the film market was negligible during the investigation period, except for the 4<sup>th</sup> quarter of 2008 and 1<sup>st</sup> quarter of 2009 when compared to Qenos' CTMS. This was the only situation where price suppression was experienced by Qenos, which coincided with the onset of the GFC. This leads Customs

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and Border Protection to consider that injury to Qenos in the form of price suppression of film LLDPE has been caused by the GFC, rather than the dumped imports of LLDPE.

## 7.8 Volume effects

### 7.8.1 Loss of sales volume

#### Rotational Moulding

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

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

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

#### Film

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

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

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

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It seems that Qenos' sales volume of film LLDPE trended upwards during the investigation period at the same time as import volumes were also increasing. This leads Customs and Border Protection to consider that injury to Qenos in the form of lost sales volume of film LLDPE has been caused by an expanded supply of imported LLDPE into the film market during the boom in the rotational moulding market, rather than the dumped imports of LLDPE.

## 7.8.2 Loss of market share

### Rotational Moulding

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

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

### Film

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

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

## 7.9 Profit effects

### 7.9.1 Reduced profit

#### Rotational Moulding

Qenos' total profit for rotational moulding LLDPE fluctuated during 2006 and the first three quarters of 2007, then fell sharply in the 4<sup>th</sup> quarter of 2007. Profits fell again in the 1<sup>st</sup> quarter of 2008, then trended upwards to the 3<sup>rd</sup> quarter of 2008 to a level higher than the

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4<sup>th</sup> quarter of 2007. In the 4<sup>th</sup> quarter of 2008, Qenos experienced a loss in profit, which decreased further in the 1<sup>st</sup> quarter of 2009.

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

### Film

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

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

### **7.9.2 Reduced profitability**

#### Rotational Moulding

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

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

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## Film

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

This analysis showed that Qenos' profitability for LLDPE during the first three quarters of the investigation period was comparable to 2007 levels or higher. Qenos then experienced significant reductions in profitability with the onset of the GFC. This leads Customs and Border Protection to consider that injury to Qenos in the form of reduced profitability of film LLDPE has been caused by the onset of the GFC, rather than the dumped imports of LLDPE.

### **7.10 Summary – Causal link**

The following table summarises Customs and Border Protection's analysis in relation to whether imports of dumped LLDPE has caused injury to the Australian industry producing like goods.

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

#### Rotational moulding

Customs and Border Protection has found that the dumped imports of rotational moulding LLDPE have caused Qenos to experience price undercutting during the investigation period.

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

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## Film

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

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

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

## Conclusion

Customs and Border Protection acknowledges that dumped imports of LLDPE exported to Australia from Canada and the USA during the investigation period may have contributed to Qenos' injury. However, as to the materiality of injury caused by the dumped imports of LLDPE exported to Australia from Canada and the USA, Customs and Border Protection considers that the injury appears to be negligible.

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## 8 Will dumping threaten material injury to the Australian industry?

### 8.1 Introduction

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

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

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

Where Customs and Border Protection is not satisfied that the Australian industry has suffered material injury, it will examine whether there is a threat of material injury to the Australian industry.'

### 8.2 Factors to consider in assessing threat

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

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

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated.'

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

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

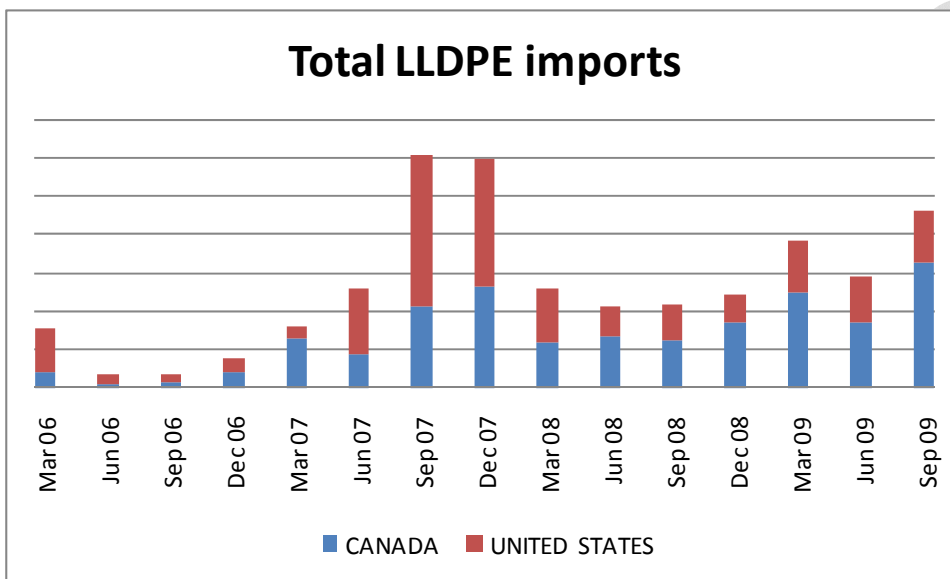
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Subsection 269TAE(2B) relevantly states that in determining whether or not material injury is threatened to an Australian industry, the Minister must take account only of such changes in circumstances as would make that injury foreseeable and imminent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

## 8.3 Customs and Border Protection's consideration

### 8.3.1 Volumes

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



The analysis shows that the volume of LLDPE imports from Canada and the USA fell between the 1<sup>st</sup> and the 2<sup>nd</sup> quarters of 2009, then increased in the 3<sup>rd</sup> quarter of 2009. This fluctuation in LLDPE imports during the first three quarters of 2009 seems to be driven by exports from Canada. The average of the volume of LLDPE imports during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009 is approximately the same as the volume of LLDPE imports in the 1<sup>st</sup> quarter of 2009. In addition, the volumes of LLDPE imports during the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009 were still below the peak in LLDPE imports during the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2007. Customs and Border Protection considers these fluctuations to be consistent with the normal ebb and flow of business.

Therefore, Customs and Border Protection does not consider that there is evidence of an imminent and significant increase in the volume of dumped imports of LLDPE from Canada and the USA into the Australian market.

### 8.3.2 Prices

Customs and Border Protection also considered comparing quarterly import prices of LLDPE in its import database as declared by importers. However, declarations are made

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based on invoiced prices and during the investigation Customs and Border Protection found that the purchases of LLDPE by one major importer were not arms length transactions. Therefore, Customs and Border Protection does not consider data on LLDPE prices in its import database for that importer to be suitable for the purposes of analysing threat. For all other imports of LLDPE, Customs and Border found that the weighted average free-on-board (FOB) export prices to be stable in the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2009.

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

### 8.4 Conclusion – Threat of material injury

Customs and Border Protection has considered changes in circumstances that would make material injury foreseeable and imminent unless dumping measures were imposed. Customs and Border Protection's view is that, on the available evidence, it cannot be satisfied that material injury to Qenos is threatened because of the dumping of LLDPE from Canada and the USA.

On the available evidence, Customs and Border Protection considers that the injury, if any, to the Australian industry that may be caused by the dumping of exports of LLDPE from Canada and the USA is negligible.

## 9 Non-injurious price

### 9.1 Introduction

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

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

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

### 9.2 Unsuppressed selling price

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

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

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

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

### 9.3 Australian industry

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

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## 9.4 Other interested parties

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

DCAL submitted that the USP should be calculated using:

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

## 9.5 Customs and Border Protection's assessment

### 9.5.1 Unsuppressed selling price

Customs and Border Protection notes Qenos' claim that injury caused by dumped imports of LLDPE commenced in the 1<sup>st</sup> quarter of 2008 and has assessed Qenos' selling prices in preceding years to establish their suitability for use in calculating a USP.

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

Therefore, Customs and Border Protection calculated the USP using:

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

### 9.5.2 Non-injurious price

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

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average NIP for the investigation period was calculated (weighted by the volume of imports).

### 9.6 Comparison of the NIP to the export prices

Customs and Border Protection compared the NIP with the weighted average export prices of LLDPE exported from Canada and the USA during the investigation period.

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

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### 10 CUSTOMS AND BORDER PROTECTION'S ASSESSMENT

Customs and Border Protection considers that the dumped imports of LLDPE exported to Australia from Canada and the USA do not appear to have caused or threatened material injury to the Australian industry producing like goods.

Customs and Border Protection notes that subsection 269TDA(13) requires an investigation to be terminated if Customs and Border Protection is satisfied that injury, if any, to the Australian industry, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by dumped imports is negligible.

Provided that no new information is put to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to Qenos, Customs and Border Protection proposes to terminate the anti-dumping investigation in relation to LLDPE exported to Australia from Canada and the USA.

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