



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

CUSTOMS ACT 1901 - PART XVB

**TRADE MEASURES BRANCH**  
**REPORT No. 68**

**HIGH DENSITY POLYETHYLENE**

**EXPORTED FROM**

**THE REPUBLIC OF KOREA, MALAYSIA,  
SINGAPORE AND SWEDEN**

**DATE 23 July 2003**



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## **1 SUMMARY**

This report presents the conclusions and recommendations to the Minister for Justice and Customs (Minister) as a result of the Australian Customs Service (Customs) investigation into the alleged dumping of exports of high density polyethylene (HDPE), from the Republic of Korea (Korea), Malaysia, Singapore and Sweden.

HDPE is a variety of polyethylene used extensively in packaging

Qenos Pty Ltd (Qenos) lodged an application requesting that the Minister publish a dumping duty notice in respect of HDPE exported to Australia from Korea, Malaysia, Singapore, Sweden and Thailand. Qenos, the sole Australian manufacturer of HDPE, claimed that the goods were dumped and causing material injury. The investigation was initiated on 11 October 2002.

The Australian market for HDPE is supplied by local production and by imports from many countries. Over the past few years there have been large volumes of imports of HDPE from the countries under investigation as well as significant volumes of imports from other sources.

Customs examined information on HDPE produced in Australia and on imported HDPE and is satisfied that HDPE produced in Australia and HDPE imported from the nominated countries are like goods.

The parts of the investigation relating to one exporter from Korea, one exporter from Singapore and exports from the country of Thailand were terminated on 14 July 2003. The terminations occurred because the goods were not dumped or there were negligible dumping margins or the goods were not causing injury to the Australian industry.

Customs had regard to the volume of dumped imports and their effect on prices in the Australian market and their consequent impact on the Australian industry. Customs is satisfied that exports from Korea, Malaysia, Singapore and Sweden have been at dumped prices. This has enabled these goods to be sold at prices that undercut the Australian industry's prices. As a result, Qenos was unable to maintain its margin over costs, which led to reduced profits and profitability.

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

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

In this context Customs recommends that the Minister impose anti-dumping duties in respect of HDPE exported to Australia from Korea (except for Daelim Corporation), Malaysia, Singapore (except for Singapore Polymer Pte Ltd) and Sweden.

## **2 INTRODUCTION**

### **2.1 Purpose of investigation**

Part XVB of the *Customs Act 1901* (the Act), and the *Customs Tariff Anti-Dumping Act 1975*, deal with the taking of anti-dumping measures in respect of goods whose importation into Australia involves a dumping or countervailable subsidisation of those goods that injures or threatens to injure Australian industry.

Anti-dumping and countervailing measures are imposed where the dumping or subsidisation has caused, or threatens to cause, material injury to an Australian industry producing like goods. Anti-dumping measures may take the form of dumping duties or price undertakings.

### **2.2 Procedures**

An Australian industry may lodge an application for the Minister to impose anti-dumping measures on goods, exported to Australia at dumped prices, that are causing material injury to the Australian industry.

Where the Australian industry provides reasonable evidence to support its claims, Customs undertakes an investigation in accordance with the Act.

Interested parties are invited to participate in the investigation through a public notice in a national newspaper, or by direct contact from Customs. Submissions from importers, exporters and other interested parties are due within 40 days from the commencement of the investigation.

At any time from day 60 of the investigation, Customs may make a preliminary affirmative determination (PAD) that there has been, or will be, dumping and consequent material injury to the Australian industry. Customs may impose provisional measures (in the form of securities) on imports of the goods if there is sufficient verifiable information available. These measures have the effect of providing the Australian industry with a temporary remedy from the effects of dumping, pending the Minister's decision.

Customs must issue a statement of essential facts (SEF) on or before 110 days after the initiation of the investigation, or by such later date as the Minister allows. The SEF outlines the facts on which Customs proposes to base its report to the Minister. Interested parties then have 20 days to lodge submissions in response to the SEF.

After consideration of the submissions received, Customs reports its conclusions and makes recommendations to the Minister. The report must recommend whether dumping duty notices should be published, and the level of duty payable.

The report also recommends whether measures should be imposed on any like goods not covered by the application and imported between the start of the investigation and ending 20 days after the SEF was placed on the public record.

The recommendations to the Minister are based on the application, submissions to which regard was had when formulating the SEF, the SEF itself and any submission made in response to the SEF that was received

within 20 days of the SEF being placed on the public record by Customs and any other relevant matter.

Customs is not obliged to consider submissions in response to the SEF which are received more than 20 days after the SEF was placed on the public record.

Customs must clearly state the material findings of fact on which any recommendation in this report is based and provide particulars of the evidence relied on to support those findings.

In compiling the report and recommendations, Customs examines submissions and undertakes on-site verifications in Australia and overseas where necessary. Interested parties participate in the investigation process by lodging submissions at various stages.

On the basis of this report the Minister will make a decision on whether anti-dumping measures should be imposed. If anti-dumping measures are imposed, Customs is responsible for the administrative arrangements.

Interested parties may request a review of the Minister's decision by lodging an application for review with the Trade Measures Review Officer, in the approved form and manner, within 30 days of the publication of the decision.

### **2.3 Background to the investigation**

Qenos lodged an application requesting that the Minister publish a dumping duty notice in respect of HDPE exported to Australia from Korea, Malaysia, Singapore, Sweden and Thailand. The investigation was initiated on 11 October 2002.

The period of investigation for the purposes of determining the dumping margin was 1 October 2001 to 30 September 2002. The period for examining injury was 1 July 1999 to 30 September 2002.

There has been a previous dumping investigation and a continuation inquiry in relation to HDPE. The countries investigated were Hong Kong, Italy, Japan, Korea, Saudi Arabia, Singapore, Sweden, Thailand, the United States of America and the United Soviet Socialist Republic. Anti-dumping measures were applied to exports of HDPE from Korea, Saudi Arabia and Singapore. ADA Report no. 79 of August 1992 refers. No anti-dumping measures are currently in place against HDPE exported to Australia from any country.

#### **Public notification**

The initiation of the investigation was notified by Australian Customs Dumping Notice (ACDN) No. 2002/47 and by advertisement in the *Australian* on 11 October 2002. The notice called for submissions to be lodged by 20 November 2002, advised that the SEF would be placed on the public record by 29 January 2003 and that a final report would be made to the Minister by 15 March 2003.

The non-confidential application and relevant questionnaires were sent to known exporters and Australian importers of the goods.

Due to the large number of importers and exporters and the complexity of the information required, the Minister agreed to an extension of the SEF deadline

to 8 June 2003. The date for Customs to report to the Minister extended to 23 July 2003. ACDN No. 2003/05 of 24 January 2003 notified the change in the SEF reporting date.

The SEF was issued on 6 June 2003 and interested parties were invited to make submissions in response to the SEF within 20 days of its publication.

Customs made a PAD on 11 June 2003 that sufficient grounds had been established for the publication of a dumping duty notice. In order to prevent material injury occurring to the Australian industry while the investigation continued, Customs imposed provisional measures in the form of securities, which took effect from that date. The PAD and imposition of securities was notified through the *Australian* of 11 June 2003 and ACDN No. 2003/28.

The parts of the investigation relating to one exporter from Korea, one exporter from Singapore and exports from the country of Thailand were terminated on 14 July 2003. The terminations occurred because the goods were not dumped or there were negligible dumping margins or the goods were not causing injury to the Australian industry. The terminations were notified through the *Australian* of 14 July 2003 and ACDN No. 2003/30.

In making this report and recommendations, Customs examined all submissions and information received. The evidence relied on by Customs in reaching its conclusions and the recommendations in this report are listed at Appendix 1.

The public record contains the non-confidential version of Customs' reports and non-confidential submissions by interested parties. Customs' reports address normal value, export price and material injury. Any party wishing to examine the public record should contact Trade Measures Office Management staff on (02) 6275 6547. All Customs dumping notices are available on the internet at [www.customs.gov.au](http://www.customs.gov.au).

### **3 SUBMISSIONS IN RESPONSE TO SEF**

Customs placed the SEF on the public record on 6 June 2003. Interested parties were invited to make submissions in response to the SEF by 26 June 2003. Submissions were received from:

Qenos;  
Australian Cables Pty Ltd (Olex);  
Chevron Phillips Singapore Chemicals (Private) Ltd;  
Polyethylene Malaysia, Sulo MGB Australia Ltd and Swift & Co Ltd as a joint submission; and  
Samsung General Chemicals Co. Ltd.

Issues raised in these submissions covered:

suitability of Australian produced goods in end-use applications;  
the identity of the Australian industry;  
import volumes;  
export price and normal value;  
material injury assessment;  
causal link and other injury factors;  
the future threat from exports from Thailand;

unsuppressed selling price and non-injurious price;  
dumping assessments; and  
anti-competitive effect on down-stream users.

Olex provided a further document containing supplemental information to its submission in response to the SEF after the due date of 26 June 2003:

All of the issues listed above have been considered by Customs and, where appropriate, have been covered in the relevant section of the report. The submissions are at confidential attachment 1, together with a detailed analysis of the issues raised in each submission.

## **4 THE GOODS UNDER CONSIDERATION AND LIKE GOODS**

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

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

“Like goods” in relation to goods under consideration refers to goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

### **4.1 Tariff classification**

HDPE is classified within heading 3901 to Schedule 3 to the *Customs Tariff Act 1995*. HDPE can be classified to subheadings 3901.10.00 or 3901.90.00 depending on polymer content. The rate of duty for Korea, Malaysia, Singapore and Sweden is five per cent.

A considerable quantity of HDPE was incorrectly entered under various tariff subheadings. The rate of duty of five per cent applied to each of the tariff classifications used for the importation of the goods from the countries under investigation. Customs has included all goods identified as HDPE in its consideration of the goods under consideration and like goods.

### **4.2 Product information**

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

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

HDPE polymer is produced in several grades used in applications in a number of market sectors. The table below broadly illustrates the applications and market sectors.

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

### 4.3 Issues

The following issues were identified by interested parties:

the essential characteristics of both the imported and locally produced goods include similar physical and performance characteristics, substitutability in end-use applications, competitive pricing; and similar manufacturing processes of the HDPE polymer;

some imported HDPE grades were for applications where Australian grades were not available or considered suitable; and

Qenos HDPE resin has proven not to possess the necessary technical properties for particular applications thereby resulting in many failures.

Copies of submissions received in response to the SEF are at confidential attachment 1 together with a detailed analysis of the issues raised in each submission.

### 4.4 Conclusion

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

Customs considers that HDPE manufactured by Qenos is like goods to imported HDPE in terms of s. 269T(1) of the Act. Although not identical in all respects to the goods under consideration, the Australian produced goods have characteristics closely resembling those of the goods under consideration.

## 5 AUSTRALIAN INDUSTRY AND MARKET

### 5.1 Australian industry

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

more than 50 per cent of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry expressing support for or opposition to the application; and

not less than 25 per cent of the total production or manufacture of like goods in Australia.

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

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

The Qenos joint venture comprises several business units, which reflects the history of the plastics and rubber industries in Australia and the mechanism for the joint venture.

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

The application was signed by the General Manager Commercial of Qenos Pty Ltd, using the Australian business numbers for Qenos Resins Pty Ltd and Qenos Plastics Pty Ltd. Customs considers that Qenos Pty Ltd has the authority to make the application on behalf of the manufacturing entities of the Qenos group, given that its function is to be the service arm of those companies.

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

## **5.2 Australian market**

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

### **5.2.1 Market structure**

Importers of HDPE are of two types

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

Qenos also sells HDPE to end-users and distributors.

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

### **5.2.2 Market size**

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

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

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

## **6 THE DUMPING INVESTIGATION**

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

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

A matrix showing the quantity imported during the investigation period from the countries under investigation from each exporter by each importer is at confidential attachment 3.

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

As previously stated the parts of the investigation relating to one exporter from Korea, one exporter from Singapore and exports from the country of Thailand were terminated on 14 July 2003. Accordingly, results of the dumping investigation in relation to these exporters are not included in this report.

### **6.1 Korea**

Customs identified 12 suppliers of HDPE exported from Korea to Australia during the investigation period. Three companies included relevant manufacturing information in response to Customs' request for information. The investigation has been terminated in relation to one of the suppliers that responded.

#### **6.1.1 Samsung General Chemicals Co. Ltd (SGC)**

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

#### **Export Price**

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

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

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

Customs has established the export price for sales by SGC directly to importers under s. 269TAB(1)(a) of the Act.

Customs recommends that the Minister determine export price for sales involving parties other than the importer and exporter under s. 269TAB(3) of the Act.

### **Normal value**

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

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

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

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

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

Normal value for exports by SGC for one grade for two quarters can be established using domestic sales of the same grade for the comparable period in which export sales occurred. For the remaining quarters and grades normal value can be established using domestic sales of the nearest equivalent grade.

Customs has established normal value under s. 269TAC(1) of the Act.

In order to establish normal value properly comparable to export price Customs recommends that the normal value incorporate adjustments to account for differences between domestic and export sales for credit terms, inland transportation, chemical pollution levy, bad debt, technical services, inventory costs, duty drawback, FOB charges, commission, packing costs and specifications. The adjustments are recommended in terms of s. 269TAC(8) of the Act.

Details of export price and normal value are at confidential attachment 4.

### **6.1.2 S K Corporation (SK)/ SK Global (SKG)**

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

## **Export Price**

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

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

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

Customs has established the export price for SK under s. 269TAB(1)(a) of the Act.

Customs recommends that the Minister determine export price for SKG under s. 269TAB(1)(c) of the Act.

## **Normal value**

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

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

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

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

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

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

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

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

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

Details of export price and normal value are at confidential attachment 5.

### **6.1.3 Remaining exporters**

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

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

#### **Export Price**

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

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

#### **Normal value**

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

Customs recommends that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act.

Customs recommends that the Minister determine normal value under s. 269TAC(6) of the Act.

Details of export price and normal value are at confidential attachment 6.

## **6.2 Malaysia**

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

### **6.2.1 Polyethylene Malaysia (PE Malaysia)**

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

#### **Export Price**

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

There was no evidence of a relationship other than for commercial trade between PE Malaysia and their customers in Australia or between PE

Malaysia and the agent. Customs is satisfied that sales by PE Malaysia of the exported goods are arms length transactions and that the Australian customers imported the goods.

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

Customs has established export price for the sales by PE Malaysia directly to importers under s. 269TAB(1)(a) of the Act.

Customs has not been able to verify the details of the sale to Australia by the other exporter of PE Malaysia product. For this exporter, Customs recommends that the Minister determine export price under s. 269TAB(3) of the Act.

### **Normal value**

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

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

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

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

Customs recommends that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act.

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

Customs recommends that the Minister determine normal value under s. 269TAC(6) of the Act.

Details of export price and normal value are at confidential attachment 7.

### **6.2.2 Titan Polyethylene (Malaysia) SDN BHD (TPE)**

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

### **Export price**

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

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

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

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

Customs has established export price for goods exported by TPE under s. 269TAB(1)(a) of the Act.

Customs has not been able to verify the details of the sale to Australia of the remaining shipment. For the exporter of this shipment, Customs recommends that the Minister determine export price under s. 269TAB(3) of the Act.

### **Normal value**

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

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

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

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

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

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

Customs has established normal value for TPE under s. 269TAC(1) of the Act.

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

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

Customs recommends that the Minister be satisfied that sufficient information was not available to determine normal value for the other exporter under ss. 269TAC(1) or (2) of the Act.

Customs recommends that the Minister determine normal value for the exporter of the remaining shipment under s. 269TAC(6) of the Act.

Details of export price and normal value are at confidential attachments 8 and 9.

### **6.2.3 Remaining exporter**

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

#### **Export Price**

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

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

#### **Normal value**

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

Customs recommends that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act.

Customs recommends that the Minister determine normal value under s. 269TAC(6) of the Act.

Details of export price and normal value are at confidential attachment 9.

## **6.3 Singapore**

Customs identified two suppliers of HDPE exported from Singapore to Australia during the investigation period. Both suppliers responded to Customs' request for information and included relevant manufacturer information. The investigation has been terminated in relation to one of the suppliers that responded.

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

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

### **Export price**

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

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

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

For sales where the Australian customer imported the goods into Australia, Customs has established export price under s. 269TAB(1)(a) of the Act.

For the importations by CPSC, Customs recommends that the Minister determine export price under s. 269TAB(1)(c) of the Act.

### **Normal value**

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

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

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

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

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

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

Customs has established normal value under s. 269TAC(1) of the Act.

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

Details of export price and normal value are at confidential attachment 10.

## **6.4 Sweden**

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

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

### **Export Price**

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

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

Customs recommends that the Minister determine the export price under s. 269TAB(3) of the Act.

### **Normal Value**

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

Customs recommends that the Minister be satisfied that sufficient information was not available to determine normal value under ss. 269TAC(1) or (2) of the Act.

Customs recommends that the Minister determine normal value under s. 269TAC(6) of the Act.

Details of export price and normal value are at confidential attachment 11.

## **6.5 Dumping margins**

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

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

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

The following table summarises the method used in assessing export price and normal value. The comparison of the weighted average export price and the weighted average normal value resulted in dumping margins that were not negligible.

The weighted average dumping margins calculated are at confidential attachment 12.

Country	Company	Export price	Normal value
Korea	SGC	269TAB(1)(a) and (3)	269TAC(1)
	SK	269TAB(1)(a)	269TAC(1)
	SKG	269TAB(1)(c)	269TAC(1)
	Other, excluding Daelim Corporation	269TAB(3)	269TAC(6)
Malaysia	PE Malaysia	269TAB(1)(a) and (3)	269TAC(6)
	TPE	269TAB(1)(a) and (3)	269TAC(1))
	Other	269TAB(3)	269TAC(6)
Singapore	CPSC	269TAB(1)(a) and (1)(c)	269TAC(1)
Sweden		269TAB(3)	269TAC(6)

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

A summary of the dumped volume of goods is at confidential attachment 13.

## **7 ECONOMIC CONDITION OF THE INDUSTRY**

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

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

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

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

### **7.1 Customs Assessment**

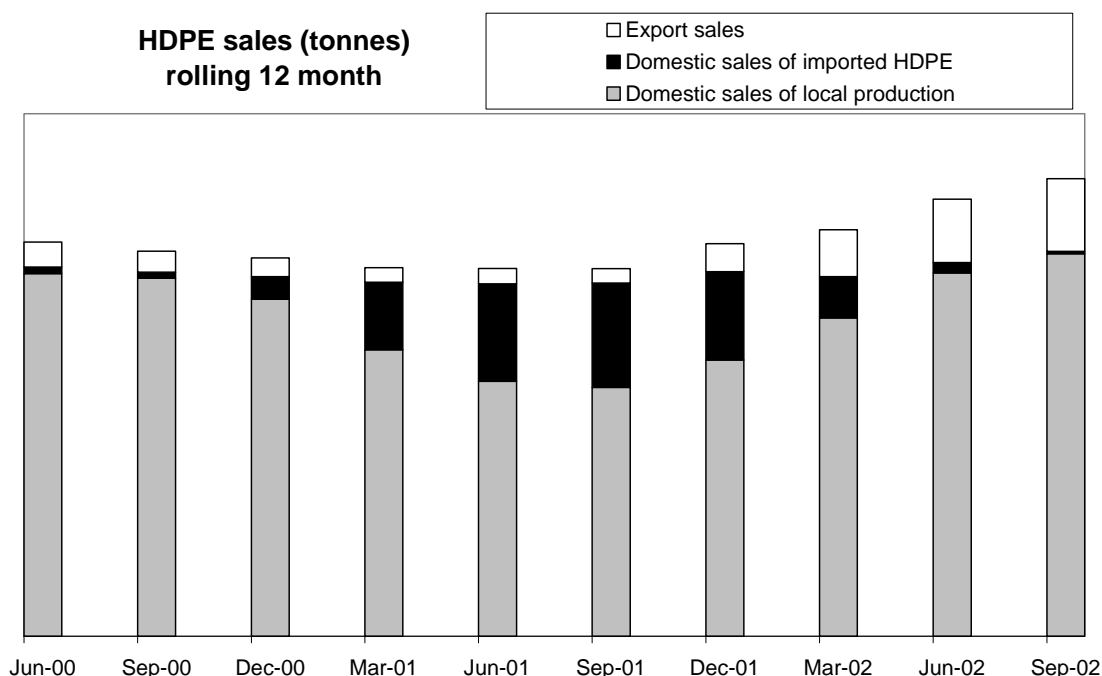
The following sections summarise Customs' analysis of the industry's injury claims and other relevant injury factors.

Qenos stated that ethylene and HDPE production was severely affected by industrial action in late 2000 and early 2001. Customs examined production data for the relevant Qenos facilities and found that production of ethylene and HDPE had been affected and returned to normal levels during the September quarter 2001. As a result of this examination Customs has excluded the four quarters from December 2000 to September 2001 from the injury analysis.

## 7.1.1 Volume effects

### Sales volume

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



The effect of the industrial action is illustrated in the domestic sale of imported HDPE by Qenos required to make up for the shortfall in local production.

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

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

### Market share

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

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

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

## 7.1.2 Price effects

### Price undercutting

Price undercutting occurs when the selling price of imported goods is lower than that of the Australian industry to the same customer or to customers at the same level of trade that the Australian industry has traditionally serviced. For undercutting to be considered material, it must be sustained in terms of occurrence and significant in terms of volume and price, i.e. above levels that could be usually expected in the normal ebb and flow of business.

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

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

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

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

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

Customs considered using a higher-level comparison where customer-to-customer sales were not common. Customs considers the sales of Singapore origin HDPE that can be compared provide a reasonable sample that gives a representative and more accurate comparison of sales.

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

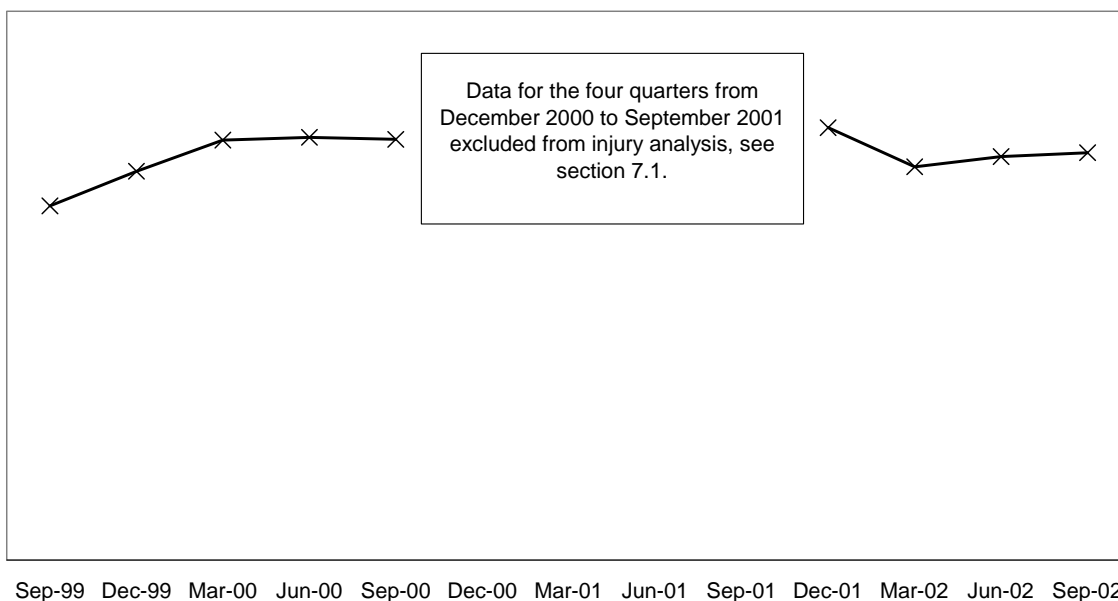
A spreadsheet summarising the undercutting analysis is at confidential attachment 14.

### **Price depression**

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

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

### HDPE domestic selling price (\$ per tonne)



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

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

#### **Price suppression**

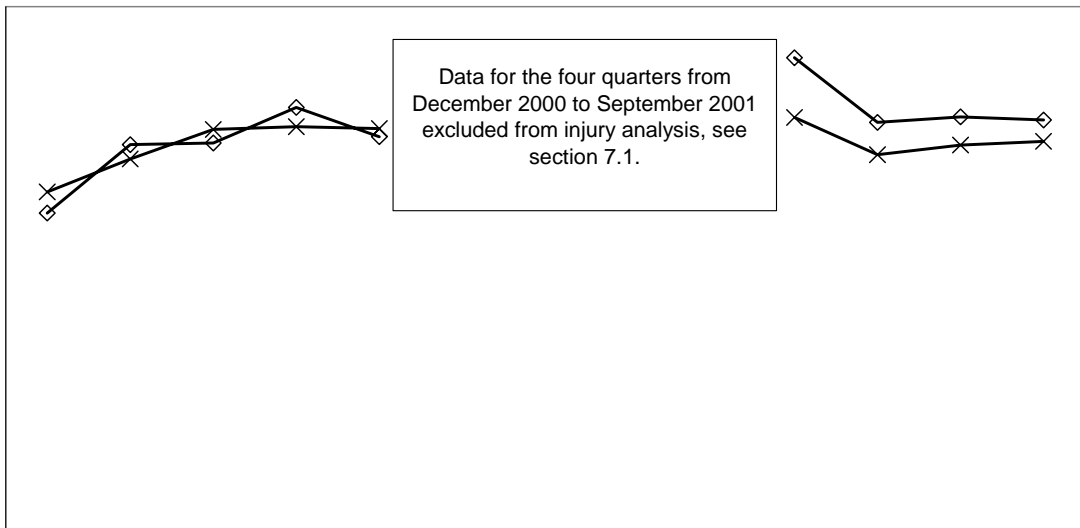
Price suppression occurs when the margin between a company's costs and prices deteriorates.

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

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

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

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



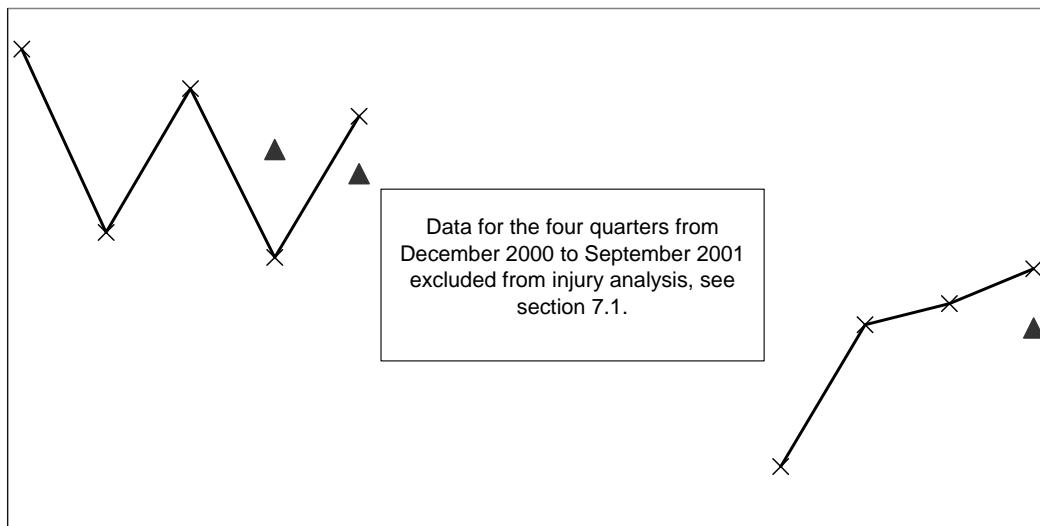
Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

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

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

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

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

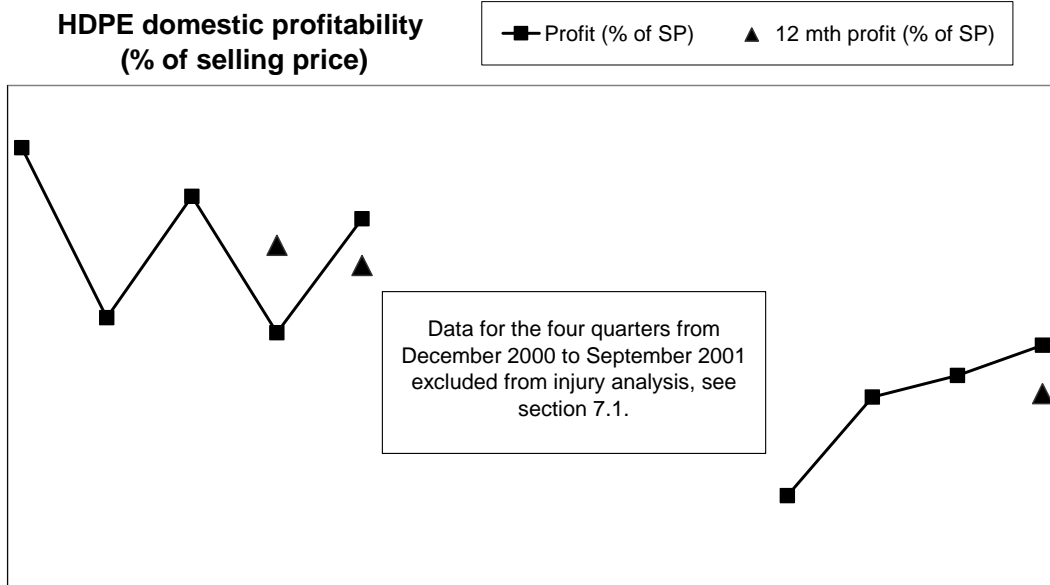


Sep-99 Dec-99 Mar-00 Jun-00 Sep-00 Dec-00 Mar-01 Jun-01 Sep-01 Dec-01 Mar-02 Jun-02 Sep-02

Customs considers that Qenos has suffered price suppression.

**Profit and profitability**

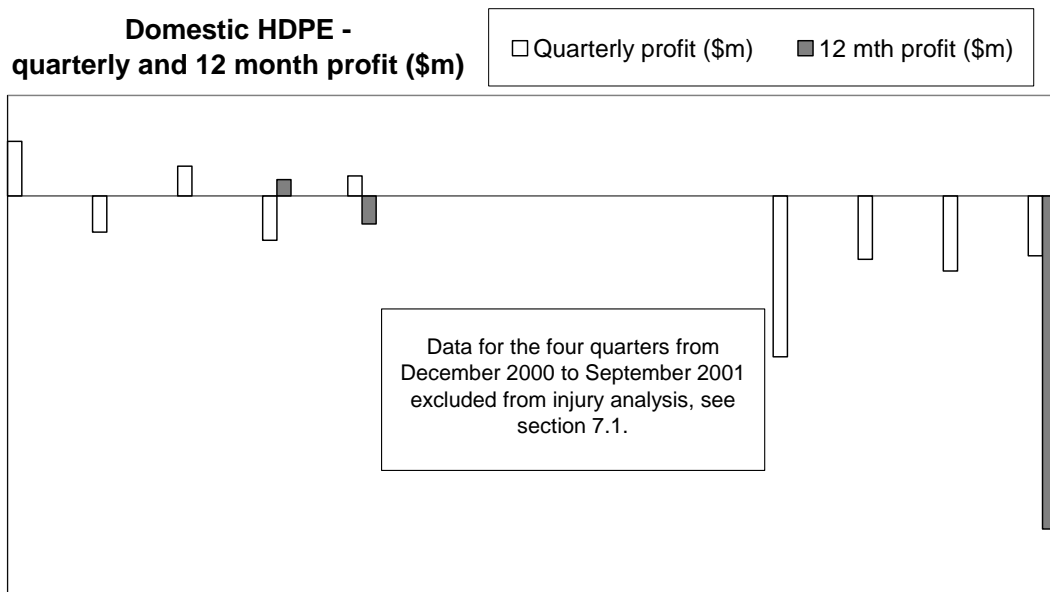
Profitability, being profit per tonne as a percentage of the selling price, shows similar trends to the profit margin, as illustrated in the following graph.



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

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

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



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

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

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

### 7.1.3 Other injury claims

#### **Degree of utilization of capacity**

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

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

#### **Other factors**

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

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

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

## **8 HAS DUMPING CAUSED MATERIAL INJURY?**

In the previous sections, Customs concluded most importations of HDPE from Korea, Malaysia, Singapore and Sweden were dumped and that the industry suffered injury in the form of price undercutting, price suppression and reduced profits and profitability.

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

### **8.1 Claims of interested parties**

The following issues were identified by interested parties:

#### **The Australian industry**

the industry had encountered difficulty in regaining market share lost to imports during the period of industrial action and reduced production capacity;

imports of Korean HDPE have remained relatively stable;

Thailand has doubled its market share since early 2000;

the market share held by imports from countries in the No Country Declared category of Australian Bureau of Statistics data have increased from 12 per cent in the third quarter of 2001 to 21 per cent in the second quarter of 2002;

the company's market share is down by eight percentage points on levels prior to the industrial action;

sales volumes in 2002 are significantly down over 1999 and 2000;

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

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

the industry has suffered falling price realisations since July 2001 with further reductions to take effect from 1 August 2002;

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

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

### **Other interested parties**

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

there was volatility in the prices for ethylene;

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

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

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

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

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

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

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

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

the effect of the industrial disputation at Qenos during the December 2000 to September 2001 quarters had economic effects which carried over into the remaining injury period, affecting Qenos' profits and profitability.

The submissions are at confidential attachment 1, together with a detailed analysis of the issues raised in each submission.

## **8.2 Customs assessment**

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

were present throughout the investigation period;

were sold in the same geographic region; and

could be substituted with each other (at the same level and downwards).

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

### **8.2.1 Price effects**

Customs has found that during the investigation period significant volumes of dumped goods from Korea, Malaysia, Singapore and Sweden have been sold

into the Australian market at prices that have undercut the Australian industry's prices. At the same time, the industry has suffered injury in terms of price, profit and profitability.

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

### **8.2.2 Volume effects**

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

No injury was found in the form of volume effects.

### **8.3 Other possible causes of injury**

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

During the investigation, Customs collected data on the selling prices of undumped HDPE from Korea, Singapore and Thailand. Customs found that sales of these goods in the Australian market have not significantly undercut the Australian industry's prices.

Qenos has identified industrial action that occurred in the December quarter 2000 and the March quarter 2001 as a factor other than dumping that caused injury to the Australian industry. Customs examined Qenos data and found that production was affected from the December quarter 2000 to the September quarter 2001. This period has been quarantined from Customs' analysis of the condition of the industry.

The claims of other interested parties are summarised at section 8.1 above. The claims generally relate to conditions in the "world market", the relative efficiency of Qenos as a producer, the ability of Qenos to supply the Australian market and disadvantage to end-users of anti-dumping measures. Several claims are related to the goods under consideration and like goods that is discussed at section 4.

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

To address the injury caused by dumping, anti-dumping measures are applied to imports of the goods. The level of the measure is determined having regard to the FOB export price and the lower of the normal value in the country of export or the non-injurious FOB export price. The purpose of the

measure is to remove the injury caused by dumping, and it is in that environment that the Australian industry's efficiency will be tested.

## **8.4 Conclusion**

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

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

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

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

## **9 WILL DUMPING AND MATERIAL INJURY CONTINUE?**

The analysis in the previous sections has shown that dumping of HDPE from Korea, Malaysia, Singapore and Sweden has caused material injury to the Australian industry.

In the case where the Minister is satisfied that material injury has been caused to an industry, anti-dumping measures may be imposed on future exports of the goods if the Minister is also satisfied that future exports of the goods may be dumped.

As required by s. 269TEA(2) of the Act, Customs examined import data for like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation and ending 20 days after the SEF was placed on the public record

Customs considered whether there had been or was likely to be any change in circumstance that would remove the injury to the Australian industry currently being experienced and threatened as a result of the dumped goods.

The examination showed no diminution in volumes of imports from the countries under investigation. In regard to the levels of export prices, Customs could not draw any conclusions due to the volatility of pricing for this commodity.

Customs is satisfied that the situation verified in the investigation period is unlikely to change to such an extent that dumping from the countries under investigation would cease to cause material to the Australian industry in the future.

## 10 ANTI-DUMPING MEASURES

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

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

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

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

This lesser duty provision is contained in Article 9.1 of the World Trade Organization Anti-Dumping Agreement (WTO Agreement) which states that:

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

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

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

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

Anti-dumping and countervailing duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export. The method of calculating a NIP is not defined in the legislation, however Customs will generally derive a NIP from the Australian industry's unsuppressed selling price (USP).

### **Unsuppressed Selling Price**

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

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

- determine a price for locally produced goods when the Australian market was not affected by dumping and adjust that price to the current date;

use the Australian industry's verified cost to make and sell plus an estimated profit (if any) which the industry could achieve in a market not affected by dumping. In estimating this profit, Customs looks to the market for guidance; or

use the lowest price for undumped imports.

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

Submissions in response to the SEF claimed that the USP should be based on the prices of undumped imports from Thailand.

Customs does not consider it appropriate to use the lowest price for undumped imports as selling prices in the Australian market have been affected by the dumping.

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

### **Non-injurious Price**

The USP is equivalent to the delivered price in Australia. To calculate the NIP, post FOB exportation costs such as overseas freight, costs incurred in Australia and an amount for importer's profit are deducted from the USP. Customs will determine these costs for each country against which measures will be imposed.

Details of the NIP are at confidential attachment 15.

### **Level of Dumping Duty**

Under the WTO Agreement, anti-dumping measures may take the form of specific dumping duties on imports of the goods or of price undertakings by the exporter(s) of the goods.

### **Interim Dumping Duty**

An interim dumping duty amount is collected on each importation of goods subject to dumping duties. In determining the amount of interim dumping duty payable on any goods, the Minister must ascertain an export price, a normal value and a non-injurious price (NIP) for the goods.

The interim dumping duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained NIP. The interim dumping duty will also include the amount, if any, by which the export price is less than the ascertained export price. Interim dumping duties are imposed for five years, unless revoked earlier.

An importer may apply for repayment of any interim duty paid in excess of the actual duty liability where there is sufficient evidence provided in support.

An affected party may seek a review of the level of the interim dumping duty amount. Requests for a review may be made either at least twelve months or more after the interim duty has been imposed or twelve months after the Minister last reviewed that rate.

### **Price Undertaking**

The Minister may defer the decision to publish a dumping duty notice and accept an undertaking from the exporter that it will not export like goods to Australia at a price below the ascertained normal value or the NIP - whichever is the lower. The price undertaking usually comes into effect on the date of publication of its acceptance by the Minister and applies for five years, unless revoked earlier.

A price undertaking is subject to the same review provisions as apply to interim dumping duty amounts.

In considering the imposition of dumping measures, Article 15 of the WTO Agreement requires that special regard be given to developing country members and that “*constructive remedies*” should be explored before the imposition of dumping duties. The only alternative remedy to dumping duties in the WTO Agreement and the Australian legislation is a price undertaking. Korea, Malaysia and Singapore are declared developing countries under Part 2 of Schedule 1 of the *Customs Tariff Act 1995*.

Borealis AB, Borouge Pte Ltd, PE Malaysia and SGC indicated an intention to offer a price undertaking. Customs provided the parties with the standard form of undertaking required by Customs. At the time of finalising the report, no company had provided Customs with a price undertaking in the required format.

### **Ascertained export price**

Customs recommends that the Minister ascertain the export price by using the weighted average of export prices over the period of investigation.

Details of the ascertained export price are at confidential attachment 15.

### **Ascertained normal value**

Customs recommends that the Minister ascertain the normal values by applying the weighted average dumping margin over the period of investigation to the recommended ascertained export price.

Details of the ascertained normal values are at confidential attachment 15.

### **Scope of the measures**

Customs recommends that the Minister take action against future imports of HDPE by specific exporters from Korea, Malaysia, and Singapore and that a rate for other exporters also be established for each of these countries. No action will be taken against specific exporters that were found to be not dumping or with negligible dumping margins.

Customs recommends that the Minister take action against future imports of HDPE from Sweden on a countrywide basis.

## **11 SUMMARY OF RECOMMENDATIONS**

On 11 June 2003 Customs made a PAD that there appeared to be sufficient grounds for the publication of a dumping duty notice. Provisional measures (in the form of securities) were imposed on all imports of HDPE from Korea

(except for Daelim Corporation), Malaysia, Singapore (except Singapore Polymer Corp (Pte) Ltd) and Sweden from that date.

Section 269TG(1) of the Act provides that the Minister may take action against dumped goods that have already been exported to Australia. This action is normally limited to goods exported after a PAD has been published and securities imposed.

Section 269TG(2) of the Act provides that the Minister may take action against like goods that may be exported to Australia in the future at dumped prices. This applies where such goods have already been exported to Australia at dumped prices and have been causing or are causing or are threatening material injury to an Australian industry producing like goods. This action may be imposed on like goods exported to Australia after the date of publication of an appropriate notice.

Customs is satisfied that exports to Australia of HDPE from Korea (except for Daelim Corporation), Malaysia, Singapore (except Singapore Polymer Corp (Pte) Ltd) and Sweden have been sold at dumped prices and that these have caused, and are causing, material injury to the Australian industry. Customs is also satisfied that future exports to Australia of HDPE from Korea (except for Daelim Corporation), Malaysia, Singapore (except Singapore Polymer Corp (Pte) Ltd) and Sweden may be at dumped prices.

Customs recommends that the Minister be satisfied, in accordance with s. 269TAB(3) of the Act, that sufficient information has not been furnished, or is not available, to enable the export price for HDPE exported to Australia by the following exporters to be ascertained under preceding subsections of s. 269TAB of the Act:

- SGC (certain exports only), and all other exporters from Korea other than Daelim Corporation, SK and SKG;
- TPE (certain exports only) and all exporters from Malaysia, other than PE Malaysia; and
- all exporters from Sweden.

Customs recommends that the Minister be satisfied, in accordance with s. 269TAC(6) of the Act, that sufficient information has not been furnished, or is not available, to enable the normal value for HDPE exported to Australia by the following exporters to be ascertained under preceding subsections of s. 269TAC of the Act:

- all exporters from Korea, other than Daelim Corporation, SGC, SK and SKG;
- all exporters from Malaysia, other than TPE; and
- all exporters from Sweden.

Customs recommends that the Minister determine, in accordance with s. 269TAB(1)(c) of the Act, that the export price of HDPE is the price having regard to all the circumstances of the exportation of HDPE:

- exported from Singapore by CPSC, and imported into Australia by CPSC;
- and
- exported from Korea by SKG.

Customs recommends that the Minister determine, in accordance with s. 269TAB(3) of the Act, that the export price is the amount having regard to all relevant information for HDPE exported by:

SGC (certain exports only), and all other exporters from Korea other than Daelim Corporation, SK and SKG;

TPE (certain exports only) and all exporters from Malaysia, other than PE Malaysia; and

all exporters from Sweden.

Customs recommends that the Minister determine, in accordance with s. 269TAC(6) of the Act, that the normal value of HDPE for the following exporters is the amount having regard to all relevant information:

all exporters from Korea, other than Daelim Corporation, SGC, SK and SKG;

all exporters from Malaysia, other than TPE; and

all exporters from Sweden.

Customs recommends that, in assessing normal value the Minister direct, in accordance with s. 269TAC(8) of the Act, that the price paid for like goods be adjusted for the nominated exporters as follows:

Exporter	CPSC	SGC	SK	SKG	TPE
Adjustment					
Bad debt provision		x			
Commissions	x	x			
Chemical pollution levy		x	x	x	
Credit terms	x	x	x	x	x
Duty drawback		x	x	x	
FOB charges	x	x	x	x	x
Inland transport	x	x	x	x	x
Inventory carrying costs		x			
Packaging	x	x	x	x	x
Specification differences	x	x			
Technical support		x			

Customs recommends that the Minister ascertain the export price by using the weighted average of export prices over the period of investigation.

Customs recommends that the Minister ascertain the normal values by applying the weighted average dumping margin over the period of investigation to the recommended ascertained export price.

Customs recommends that the Minister ascertain non-injurious prices as set out in confidential attachment 15.

Section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* requires that the Minister direct that the element of interim dumping duty in respect of particular goods be ascertained:

- “(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or*
- (b) by reference to a measure of the quantity of those particular goods; or*
- (c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods.”*

Customs recommends that the Minister ascertain the element of interim dumping duty in accordance with paragraph (b) above.

Customs recommends that the Minister determine, in accordance with s. 269TACB(1) of the Act, that by comparison of export prices for the following exporters with the corresponding normal values, that dumping has occurred during the period of investigation from 1 October 2001 to 30 September 2002:

- from Korea by SGC, SK, SKG and the remaining exporters;
- from Malaysia by PE Malaysia, TPE and remaining exporters;
- from Singapore by CPSC; and
- from Sweden.

Customs recommends that the Minister declare by public notice:

- under s. 269TG(1) of the Act that s. 8 of the Customs Tariff (Anti Dumping) Act 1975 applies to HDPE already exported to Australia from Korea (except for Daelim Corporation), Malaysia, Singapore (except Singapore Polymer Corp (Pte) Ltd) and Sweden and ascertain the export prices, normal values and non-injurious prices; and
- under s. 269TG(2) of the Act that s. 8 of the Customs Tariff (Anti Dumping) Act 1975 applies to HDPE exported to Australia from Korea (except for Daelim Corporation), Malaysia, Singapore (except Singapore Polymer Corp (Pte) Ltd) and Sweden after the date of the publication of the notice.

To give effect to these recommendations, Customs recommends that the Minister sign the notice and legal instruments attached.

## APPENDIX 1 - STATEMENT OF FACTS & EVIDENCE RELIED UPON

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

Section	Title	Evidence relied upon
4	The goods under consideration and like goods	Information provided by interested parties
5	Australian industry and market	Information provided by: interested parties; and Customs commercial database.
6	The dumping investigation	Information provided by: interested parties; and Customs commercial database.
6.5	Dumping margins	Findings in section 6 of this report
7	Economic condition of the industry	Information provided by: interested parties; and Customs commercial database.
8	Has dumping caused material injury?	Information provided by: interested parties; and Customs commercial database.
9	Will dumping and material injury continue?	Findings in sections 6, 7 and 8 of the report; Information provided by: interested parties; and Customs commercial database.
10	Anti-dumping measures	Information provided by: interested parties; and Customs commercial database.