



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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

APPLICATION FOR A DUMPING DUTY NOTICE

**LINEAR LOW DENSITY POLYETHYLENE EXPORTED
FROM CANADA, THE REPUBLIC OF KOREA, AND THE
UNITED STATES OF AMERICA**

CONSIDERATION REPORT NO. 165

23 JULY 2010

CONTENTS

CONTENTS	2
1 SUMMARY AND RECOMMENDATIONS	4
1.1 RECOMMENDATION.....	4
1.2 APPLICATION OF LAW TO FACTS.....	4
2 INTRODUCTION	7
2.1 COMPANY INFORMATION.....	7
2.2 PREVIOUS LLDPE CASES	7
3 COMPLIANCE WITH SUBSECTION 269TB(4)	9
3.1 FINDING.....	9
3.2 APPROVED FORM.....	9
3.3 SUPPORTED BY AUSTRALIAN INDUSTRY	9
3.4 CONCLUSION – COMPLIANCE WITH SUBSECTION 269TB(4).....	10
4 THE GOODS THE SUBJECT OF THE APPLICATION	11
4.1 THE GOODS THE SUBJECT OF THE APPLICATION	11
5 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?	13
5.1 FINDING.....	13
5.2 MANUFACTURED IN AUSTRALIA.....	13
5.3 LOCALLY PRODUCED LIKE GOODS	13
5.4 CONCLUSION – AUSTRALIAN INDUSTRY	15
6 REASONABLE GROUNDS – DUMPING	16
6.1 FINDING.....	16
6.2 GENERAL	16
6.3 EXPORT PRICE	17
6.4 NORMAL VALUE	18
6.5 DUMPING MARGIN	19
6.6 CONCLUSION - DUMPING.....	20
7 REASONABLE GROUNDS - HAS THE AUSTRALIAN INDUSTRY SUFFERED INJURY?	21
7.1 FINDING.....	21
7.2 BACKGROUND TO THE AUSTRALIAN MARKET.....	21
7.3 AUSTRALIAN INDUSTRY INFORMATION.....	22
7.4 THE APPLICANT’S INJURY CLAIMS	23
7.5 COMMENCEMENT OF INJURY	23
7.6 APPROACH TO INJURY ANALYSIS	23
7.7 VOLUME EFFECTS.....	24
7.8 PRICE EFFECTS	25
7.9 PROFIT EFFECTS.....	26
7.10 OTHER ECONOMIC FACTORS	27
7.11 CONCLUSION – OTHER FACTORS.....	28
7.12 CONCLUSION – ECONOMIC CONDITION OF THE INDUSTRY	28
8 REASONABLE GROUNDS – IS THERE A LINK BETWEEN DUMPING AND SUBSIDISATION AND MATERIAL INJURY?	29
8.1 FINDING.....	29
8.2 THE APPLICANT’S CLAIMS	29
8.3 ASSESSMENT	30
8.4 CONCLUSION - CAUSAL LINK	33
9 INVESTIGATION	34

10 CONFIDENTIAL APPENDIX.....35

1 SUMMARY AND RECOMMENDATIONS

This consideration is in response to an application by Qenos Pty Ltd (Qenos). This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer of Customs and Border Protection (CEO) as to whether or not to reject the application.

1.1 Recommendation

Customs and Border Protection recommends that the CEO decide not to reject the application.

1.2 Application of law to facts

1.2.1 Authority to make decisions

Division 2 of Part XVB of the *Customs Act 1901*¹ sets out among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to goods covered by an application for the purpose of making a report to the Minister for Home Affairs (the Minister).

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2 Application

On 30 June 2010, Qenos lodged an application under section 269TB. 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, the Republic of Korea (Korea) and the United States of America (USA).

1.2.3 Consideration of application

The decision whether to reject the application must be made within 20 days after the lodgement date, or from the date that further information is received from the applicant². This application was lodged on 30 June 2010 and received additional information on 14 and 15 July 2010.

The matters which must be considered³ in deciding whether to reject an application are:

- that the application complies with subsection 269TB(4);
- that there is, or is likely to be established, an Australian industry in respect of like goods; and

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

² Pursuant to s269TC(2) & (2A)

³ Subsection 269TC(1)

- that there appears to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application or for the publication of such a notice upon the importation into Australia of such goods.

The above matters are examined in this report.

1.2.4 Findings and conclusions

Compliance with subsection 269TB(4) (Section 3 of this report)

Customs and Border Protection is satisfied that the application complies with s. 269TB(4).

Australian industry (Section 5 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appears to be an Australian industry in respect of like goods.

Reasonable grounds - Dumping (Section 6 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- LLDPE is being exported to Australia from Canada, Korea and the USA at dumped prices;
- the dumping margins, when expressed as a weighted average of the export prices are not less than 2%, and are therefore not negligible margins; and
- the total volume of the goods that have been dumped from Canada, Korea and the USA over a reasonable examination period is greater than 3% of the total Australian import volume, and is therefore not a negligible volume.

Reasonable grounds - Injury (Section 7 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury in the forms of:

- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced sales revenue, capacity utilisation and return on investment.

Reasonable grounds - Causation (Section 8 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that the dumping has caused material injury to the Australian industry producing like goods

Reasonable grounds – Publication of a dumping duty notice

PUBLIC RECORD

In view of the above findings there appear to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

2 INTRODUCTION

2.1 Company information

The Qenos Group of affiliated companies is owned by the China National BlueStar (Group) Corporation (BlueStar). BlueStar is a joint venture owned 80% by China National Chemical Corporation (ChemChina) and 20% by the Blackstone Group.

The confidential application includes a chart of companies affiliated with Qenos (confidential Attachment A-2.6) and Qenos' organisational chart (confidential Attachment A-2.2).

2.2 Previous LLDPE cases

Several dumping investigations, reviews and continuations concerning LLDPE have been undertaken by Customs and Border Protection. These are summarised below:

- Trade Measures Report No. 8 of 2000 – Investigation into LLDPE from the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Malaysia and Saudi Arabia. Anti-dumping measures were imposed on all exporters from Indonesia;
- Trade Measures Report No. 67 of 2003 – Investigation into LLDPE from Korea and Thailand. Anti-dumping measures were imposed on all exporters from Thailand and all exporters from Korea except Hyundai Petrochemical Corporation;
- Trade Measures Report No. 88 of April 2005 – Investigation into LLDPE from Canada. The investigation was terminated due to negligible injury caused by dumping;
- Trade Measures Report No. 89 of 2005 – Review of variable factors for LLDPE exported from Indonesia, Korea and Thailand;
- Trade Measures Report No. 95 of 2005 – Continuation inquiry into LLDPE exported from Indonesia. Anti-dumping measures were continued;
- Trade Measures Report No. 97 of 2005 – Accelerated review of anti-dumping measures in relation to a new exporter from Korea;
- Trade Measures Report No. 134 of 2007 – Review of variable factors for LLDPE exported from Indonesia, Korea and Thailand; and
- Trade Measures Report No. 137 of 2008 - Continuation inquiry into LLDPE exported from Korea and Thailand. Anti-dumping measures were continued for Thailand and allowed to expire for Korea;
- Trade Measures Report No. 146 of 2009 - Investigation into LLDPE exported from Canada and the USA. This investigation was terminated on the basis that injury to the Australian industry caused by dumping was negligible; and
- Trade Measures Report No. 152 of 2010 - Continuation inquiry into LLDPE exported from Indonesia. Anti-dumping measures were allowed to expire on 19 and 26 July 2010.

Anti-dumping duties are currently imposed on LLDPE exported from Thailand to Australia.

3 COMPLIANCE WITH SUBSECTION 269TB(4)**3.1 Finding**

Customs and Border Protection is satisfied that the application complies with s.269TB(4).

3.2 Approved form

The application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry⁴.

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

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

The non-confidential public record version of the application is considered to contain sufficient detail to allow a reasonable understanding of the substance of the confidential information⁵.

3.3 Supported by Australian industry

Qenos is the only manufacturer of LLDPE in Australia⁶ and therefore accounts for:

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

The application includes production data at Confidential Appendix A-1. This data represents the production volume of LLDPE by the Australian industry for LLDPE manufactured between April 2009 and March 2010.

The application is considered to be supported by a sufficient part of the Australian industry.⁷

⁴ subsection 269TB(4)

⁵ in accordance with the requirements of section 269ZJ

⁶ confirmed by Customs and Border Protection in previous LLDPE inquiries

⁷ meeting the requirements of s268TB(6)

3.4 Conclusion – Compliance with subsection 269TB(4)

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

4 THE GOODS THE SUBJECT OF THE APPLICATION

4.1 The goods the subject of the application

4.1.1 Description

The imported goods the subject of the application are:

Linear-low density polyethylene (LLDPE), in various grades, in pelletised form, with a density of less than 0.94 grams per cubic centimetre (g/cm^3). The LLDPE usually incorporates one of three co-monomers: butene (C_4), hexene (C_6), or octene (C_8).

4.1.2 Description clarification

Trade Measures report 146 concerned imported goods with an identical description to goods the subject of this application. In report 146, Customs and Border Protection found that:

- Metallocene polyethylene (MPE) in pelletised form, with a density of less than 0.94 g/cm^3 was captured by the description of the goods.
- Medium density polyethylene (MDPE) in pelletised form, with a density of less than 0.94 g/cm^3 was captured by the description of the goods.
- Master-batch and compound LLDPE were not captured by the description of the goods.

Our interpretation of the abovementioned goods for the present application is consistent with those findings.

4.1.3 Tariff classification

Qenos advised the goods the subject of its application are 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 co-monomer content. No Customs duty is payable on the goods imported from Canada or the USA⁸. LLDPE imports from Korea incur a 5% rate of Customs duty.

Four tariff concessions orders (TCOs) currently apply under 3901.10.00. The following table describes the characteristics of products covered by the TCOs:

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

⁸ due to free trade agreements

Qenos stated that the goods the subject of the TCOs:

Have physical properties that have been tailored for specific applications. The combination of properties (density, melt flow index, molecular weight) for these goods means that they are not substitutable for LLDPE manufactured by Qenos.

Customs and Border Protection considers that the goods covered by the abovementioned TCOs, are not captured by the description of the goods subject of this application.

5 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

5.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appears to be an Australian industry producing like goods to the goods the subject of the application.

5.2 Manufactured in Australia

For goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.⁹

5.2.1 Manufacturing process

According to the application:

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

Qenos advised that its LLDPE manufacturing process at Botany utilises the gas phase fluidised bed process and it included a process diagram of the low pressure polymerisation process used by Qenos to manufacture LLDPE at Non-Confidential Attachment A-3.6 of the application.

5.2.2 Conclusion

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

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

5.3 Locally produced like goods

Like goods, in relation to goods under consideration, are:

⁹ Subsections 269T(2) and 269T(3)

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.¹⁰

5.3.1 Applicant's claims

The application refers to Customs and Border Protection's finding in Report No.146 reaffirming earlier findings that LLDPE produced by Qenos are like goods to the goods exported from Canada and the USA.

The application stated that in making this finding, Customs and Border Protection was satisfied that LLDPE manufactured by Qenos:

- Have similar characteristics to the (imported 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 to the goods.

The application also refers to Report No.67 which Qenos says confirms that Customs and Border Protection was previously satisfied that LLDPE produced by Qenos are like goods to the goods exported from Korea.

Qenos included, at Non-Confidential Attachment A-3.3 of its application, details of the LLDPE grades it manufactures including grade name, melt index flow, density, additives and applications.

The application states that:

Qenos continues to manufacture LLDPE on the same production facility and by the same manufacturing process as was observed by Customs and Border Protection in Investigation No. 146. Qenos has not altered its production process since the previous inquiry. Qenos also continues to sell its locally produced LLDPE into the same market end-use applications as previously verified by Customs and Border Protection, there-being no discernable changes in end-use or market applications.

5.3.2 Imported materials

The application states that:

Some imported raw materials are used in production, including catalysts, additives and co-monomers. These products amount to less than 25% of the total cost to make LLDPE products.

The application also indicates that Qenos imported limited volumes of metallocene LLDPE grades from ExxonMobil (USA) to enable it to offer a full range of LLDPE to the market. Details of Qenos' import volumes were included at Confidential Appendix A5 of the application.

¹⁰ Subsection 269T(1)

5.3.3 Customs and Border Protection's assessment

Based on the information contained in the application and previous inquiries, LLDPE manufactured by Qenos has similar physical and performance characteristics, is made via a similar production process and has comparable pricing to the imported product.

Qenos manufactures hexene (C₆) grade LLDPE, while imported LLDPE may be one of three co-monomer grades, i.e. butene (C₄), hexene (C₆) or octene (C₈). Locally produced LLDPE has characteristics closely resembling the imported LLDPE.

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

In previous LLDPE inquiries Customs and Border Protection has found that while customers would not normally buy higher priced octene (C₈) in place of butene (C₄) or hexene (C₆) grades, substitution might occur if the price of octene (C₈) was low enough.

5.3.4 Conclusion

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

5.4 Conclusion – Australian industry

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

6 REASONABLE GROUNDS – DUMPING

6.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- LLDPE is being exported to Australia from Canada, Korea and the USA at dumped prices;
- the dumping margins, when expressed as a weighted average of the export prices are not less than 2%, and are therefore not negligible margins; and
- the total volume of the goods that have been dumped from Canada, Korea and the USA over a reasonable examination period is greater than 3% of the total Australian import volume, and is therefore not a negligible volume.

6.2 General

6.2.1 Exporter and Importer Identities

Qenos identified the following exporters of the goods:

Canada

- Dow Chemical Canada Inc;
- NOVA Chemicals;

Korea

- Daelim Industrial Co., Ltd;
- SK Holdings;
- Hanwha Chemical;
- Honam Petrochemicals Corporation;

USA

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

Qenos identified the following companies as importers of the goods:

- Chevron Phillips Chemicals Australia Pty Ltd;
- Dow Chemical (Australia) Limited; and
- Courtney Polymers Pty Ltd.

6.2.2 Analysis period

Qenos used export price and normal value information from 2008, 2009, and 2010 to establish its estimates of dumping margins.

6.2.3 Import volumes

The total volume of the goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if, when expressed as a percentage of the total Australian import volume, it is less than 3 percent.¹¹

The application calculates the following proportions of total Australian LLDPE import volume during 2009:

Exports from Canada	29.2%
Exports from Korea	16.9%
Exports from the USA	19.0%

6.2.4 Conclusion

A comparison of the import volumes included in the application and those derived from the Customs and Border Protection import database shows substantial differences in volumes. However, Customs and Border Protection's information confirms that there have been exports to Australia of LLDPE from Canada, Korea and the USA in volumes from each country that exceeded 3% of the total import volume over the examination period (1 January 2006 to 30 June 2010). Details are at Confidential Appendix 1.

6.3 Export price

Qenos advised that LLDPE import data published by the Australian Bureau of Statistics (ABS) is subject to certain restriction orders including "no country declared", "no state details", "no duty details" and a restriction which prohibits the publication of import details.

Qenos sourced export data from a company involved in the purchase and sale of import and export data prepared by international government agencies. Qenos states that this information reflects volume and pricing across the LLDPE range of product imported to Australia. Qenos said it 'adjusted' this information to remove high value product not considered to reflect export prices of the goods from Canada or the USA, and that it used this information to establish Canadian and USA export prices.

Qenos stated that it relied upon export prices contained in the published ABS data for export prices of LLDPE exported from Korea to Australia and classified to subheading 3901.10.00, statistical code 01.

¹¹ Subsection 269TDA(4)

The application included quarterly export price estimates, as below for the period July 2009 to March 2010:

Period	Canada US\$/MT FOB	Korea A\$/MT	USA US\$/MT FOB
Jul-Sep 2009	1154-1199	1513-1598	1365-1419
Oct-Dec 2009	1161-1204	1332-1514	1370-1457
Jan-Mar 2010	1291-1318	1546-1649	1399-1515

6.3.1 Conclusion

A comparison of the information contained in the application and export prices derived from Customs and Border Protection's import database shows the applicant's estimation of export prices to be reasonable. Customs and Border Protection's export price calculations are at Confidential Appendix 2.

6.4 Normal value

6.4.1 Selling price in the exporter's domestic market

Canada and the USA

Qenos states that Canada and the USA are member countries to the North America Free Trade Agreement (NAFTA) and that both host major LLDPE manufacturing facilities, from which LLDPE is supplied readily into respective markets under NAFTA. Qenos obtained domestic pricing information for North America from an industry publication that specialises in the reporting of market pricing for polyethylene, including LLDPE.

Qenos has used monthly selling prices, published in the industry publication, for LLDPE sold in the USA, as the basis for prima facie normal values for both Canada and the USA. Qenos states that it adjusted the published monthly hexene grade LLDPE film price to allow for the premium which roto moulding grade LLDPE has over film-grade LLDPE (including an amount for UV-stabilizer).

Korea

Qenos states that it obtained annual production cost economics data for LLDPE manufactured in Korea from an industry publication¹².

The application notes that the production cost data reflects the cash costs associated with producing LLDPE in Korea – but that the cash cost does not include amounts for depreciation or general selling and administration expenses.

Qenos used the industry publication's *Leader Netback* price published for LLDPE manufactured in Korea in the second¹³ and third¹⁴ quarters of 2008. It adjusted this

¹² For the petroleum and chemicals markets

¹³ To calculate normal values prevailing in the period April to June 2009

¹⁴ To calculate normal values prevailing in the period July 2009 to April 2010

(butene film grade) price¹⁵ upwards to account for the assessed grade mix exported to Australia¹⁶.

Qenos considers this constructed selling price takes account of Korea's naphtha-based feedstock pricing, is representative of prevailing selling prices in Korea in 2009, and represents a rotational moulding grade price equivalent, including UV stabiliser.

6.4.2 Adjustments

The application states that the following adjustments to domestic selling prices may be required¹⁷:

Canada – adjustments for inland freight and differences in credit terms

Korea – adjustments for inland freight and differences in credit terms

USA – adjustments for inland freight and differences in credit terms

Qenos did not estimate the quantum of these adjustments in its application.

6.4.3 Conclusion

The Korean normal value estimates supplied by Qenos are somewhat dated, being from the second and third quarters of 2008. Customs and Border Protection does not have more contemporary Korean normal value information in its possession. We note that Qenos' cost to make and sell LLDPE was fairly stable between 2008 and first quarter 2010. We therefore have not sought to adjust Qenos' estimates of Korean normal values.

The information contained in the application appears sufficient for the purpose of determining *prima facie* normal values.

6.5 Dumping margin

Qenos stated that it calculated *prima facie* dumping margins for the period July 2009 to March 2010:

1. for exports of LLDPE from Canada and the USA by comparing prevailing domestic selling prices sourced from an industry publication (adjusted for UV stabiliser costs) with the average export price for LLDPE exported to Australia during that same month; and
2. for exports of LLDPE from Korea by contrasting the December 2008 cash cost of production for the leader facility, adjusted for the inclusion of depreciation and selling & general administration expenses;

¹⁵ Inclusive of depreciation, exclusive of freight

¹⁶ Qenos assumes only rotational moulding grade, including UV stabiliser, was exported to Australia

¹⁷ for known differences between the export price and the normal value

and its methods returned the following *prima facie* dumping margins:

Canada 19.5%
Korea 55.6%
USA 7.4%

6.5.1 Conclusion

Following an examination of the dumping margin calculations provided in the application, allowing for possible differences in exported and domestically sold LLDPE grades, it appears likely that dumping has occurred and the margins are not negligible. Confidential Appendix 3 refers.

6.6 Conclusion - Dumping

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

7 REASONABLE GROUNDS - HAS THE AUSTRALIAN INDUSTRY SUFFERED INJURY?

7.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the forms of:

- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced sales revenue, capacity utilisation and return on investment.

7.2 Background to the Australian market

7.2.1 Market demand

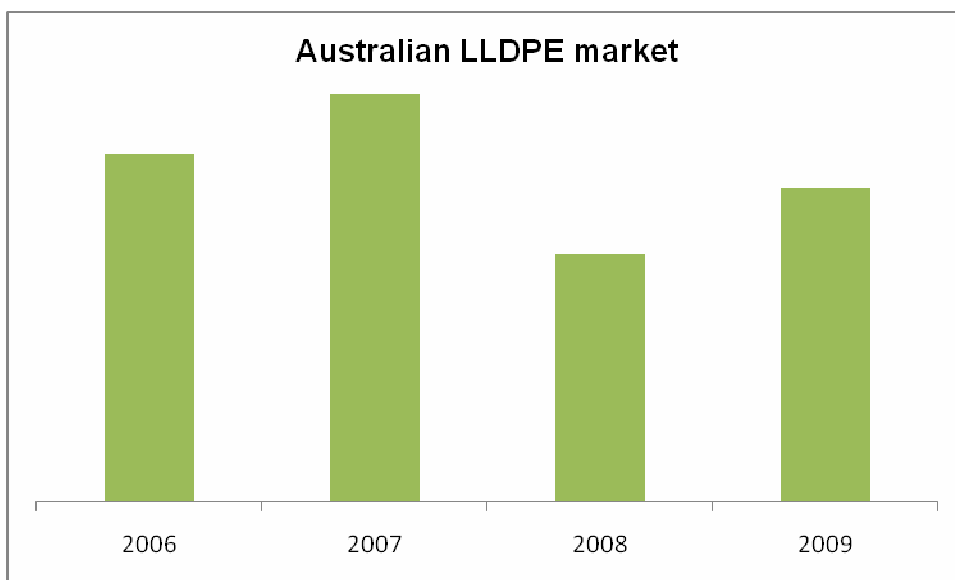
LLDPE is used in a variety of end-use applications including extrusion, blow-moulding, injection moulding and rotational moulding applications.

The application states that imported and locally-produced LLDPE are used interchangeably across these applications. The table below describes the applications and market sectors:

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

7.2.2 Market size

The application includes Qenos' LLDPE sales volumes and an estimation of imported volumes at Confidential Appendix A-2. The chart below is based on the sum of volume data provided therein.



The chart shows that the Australian market for LLDPE peaked in 2007, contracted in 2008, and increased in 2009 to a level below that of 2006. Analysis is at [Confidential Appendix 4](#).

7.2.3 Market supply

The Australian market for LLDPE is supplied through local production by the applicant and imports from several countries. The application says importers of LLDPE can generally be identified as either distributors or end-users.

The application notes the description of importers in Report 67 as:

- distributors, who sell the LLDPE to end-users in the form it was imported;
- compounders, who modify the product and sell to end-users; or
- end-users, who use the LLDPE in the manufacture of various products and do not sell the goods in the form in which it is imported.

Qenos stated that it sells its LLDPE production direct to end-use customers in the plastics industry and to distributors who on-sell to small customers with minor requirements. It said its larger customers are in the packaging, film and plastic moulding segments of industry.

7.3 Australian industry information

7.3.1 Australian industry's sales

The application includes a summary of Qenos' domestic and export LLDPE sales for calendar years 2006-2009 and for first quarter 2010.

The application includes Qenos' detailed sales data for LLDPE sold between second quarter 2009 and first quarter 2010 inclusive.

Qenos also supplied copies of source documents (invoices etc.) for a sample of domestic sales made between the second quarter 2009 and first quarter 2010.

The sales data included at the various confidential appendices of the application (A-3, A-4 and A-6) reconciled with minor variances as set out at Confidential Attachment 1 to this report.

7.3.2 General accounting/administration information

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

- Qenos' chart of accounts;
- audited financial accounts for the financial years ending 31 December 2008, and 31 December 2009 (Confidential Attachment A-6.3.1); and
- internal management reports for the months of December 2009 and March 2010. (Confidential Attachment A-6.3.2).

7.3.3 Cost information

The applicant provided cost to make and sell (CTMS) information. The CTMS data included information from the period January 1999 to March 2010.

7.4 The applicant's injury claims

Qenos claims that the allegedly dumped exports of LLDPE from Canada, Korea and the USA have caused it material injury in the forms of:

- lost sales volumes;
- 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.

7.5 Commencement of injury

Qenos stated that:

Material injury from the dumped exports from Canada, Korea and the USA commenced during 2008. Increasing exports to Australia from Canada and the USA commenced in 2007, however, the material injury from dumping commenced to negatively impact the Australian industry's profit and profitability in 2008.

7.6 Approach to injury analysis

In its application Qenos refers to 2006 for the purpose of comparing export volumes and injury indicators, e.g.

... the level achieved in 2009 continues to be well below the benchmark year of 2006. Production utilisation rates in 2009 continue to be well below the levels achieved in 2006.

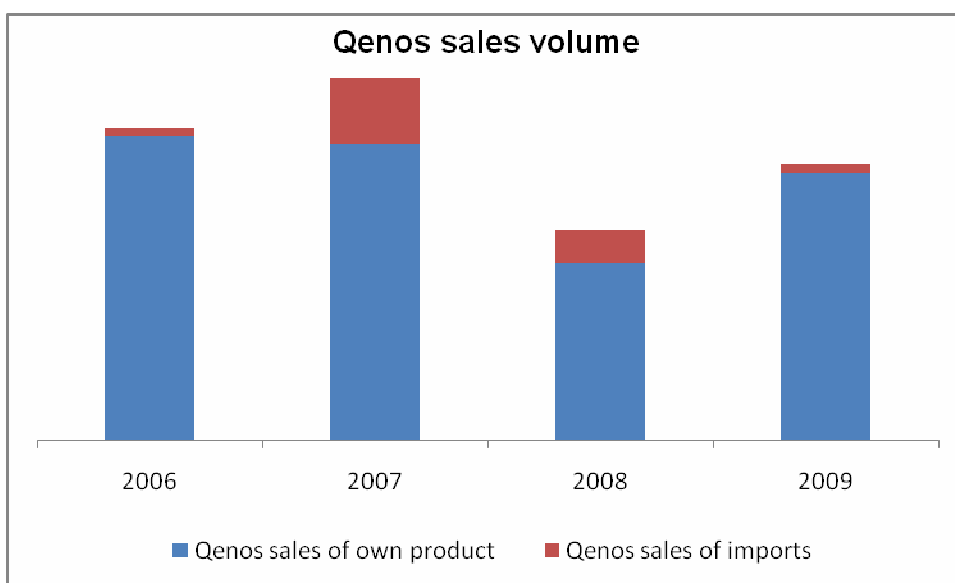
For the purpose of this report, the period beginning 1 January 2006 is examined for injury analysis purposes. Customs and Border Protection does not necessarily accept 2006 as being a ‘base year’ for the purpose of injury analysis, however comparisons are made between calendar years in this report.

7.7 Volume effects

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

7.7.1 Lost sales volume

The applicant claimed that it has experienced lost sales volume. The following chart illustrates Qenos’ sales volume of own-produced and imported LLDPE.

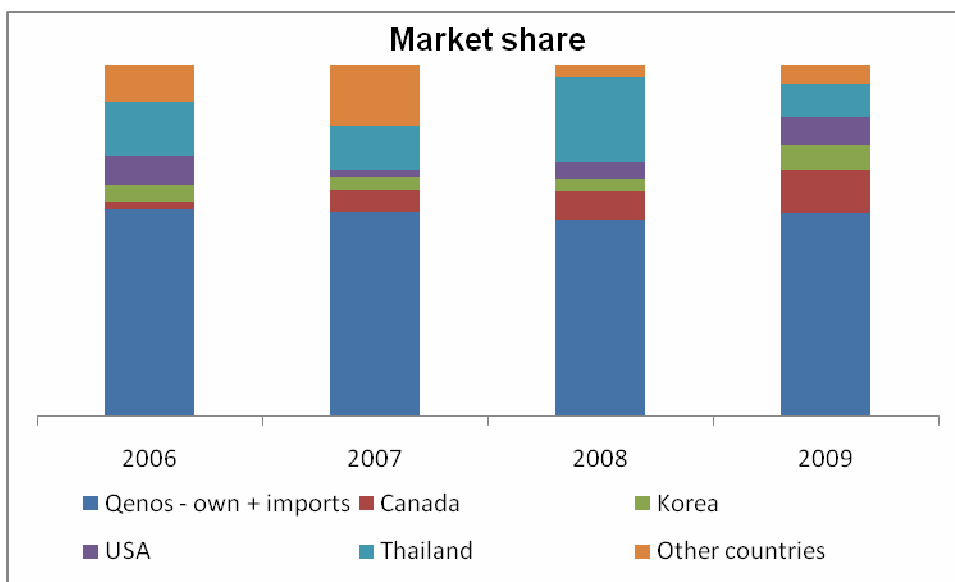


The chart shows that Qenos’ sales volume reduced in 2007 and 2008 and increased in 2009 but to a level below that of 2006. Based on information provided in the application, while Qenos’ sales volume was lower in 2008 and 2009 than earlier years, its sales volume moved in concert with market trends. Analysis is at Confidential Appendix 4.

7.7.2 Lost market share

Qenos claimed it lost market share. The following chart illustrates the market share of LLDPE sales volume by the applicant (including Qenos sales of LLDPE that it imported¹⁸) and imports from Canada, Korea, the USA, Thailand and other countries (excluding imports by Qenos).

¹⁸ Qenos stated that it imports limited volumes of metallocene LLDPE from ExxonMobil (USA) to enable it to offer a full range of LLDPE to the market



It appears Qenos' share of the market declined slightly in 2007 and 2008 and increased in 2009 to a level below that of 2006. Based on this information it appears that any loss of market share would be insubstantial. Analysis is at [Confidential Appendix 4](#).

7.8 Price effects

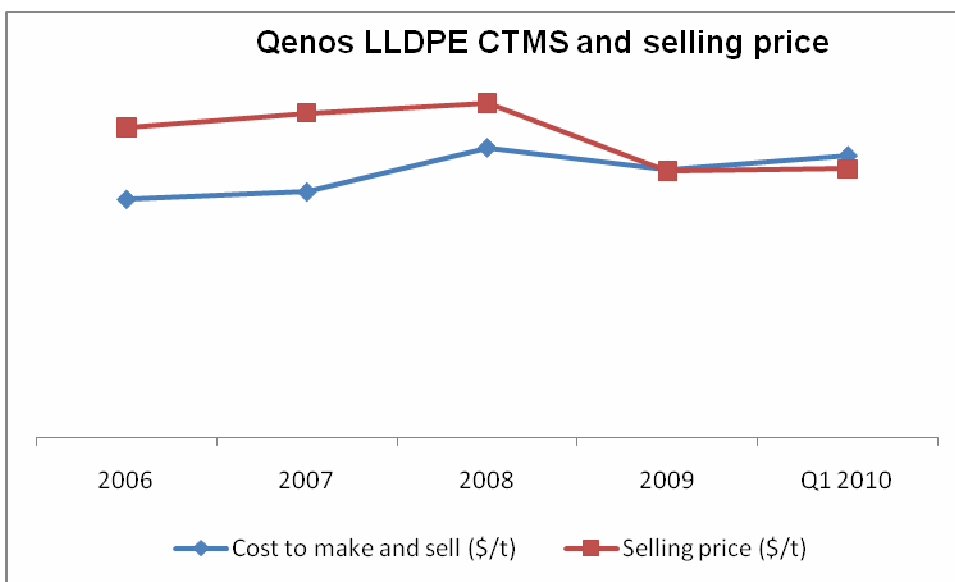
Price effects may take the form of:

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

The following analysis is based on Qenos cost and sales data as provided in the application.

7.8.1 Price suppression

Qenos claimed that it experienced price suppression. The following chart illustrates Qenos' per tonne selling price and per tonne CTMS, using data provided in the application. 'Q1 2010' reflects values for the first quarter of 2010.



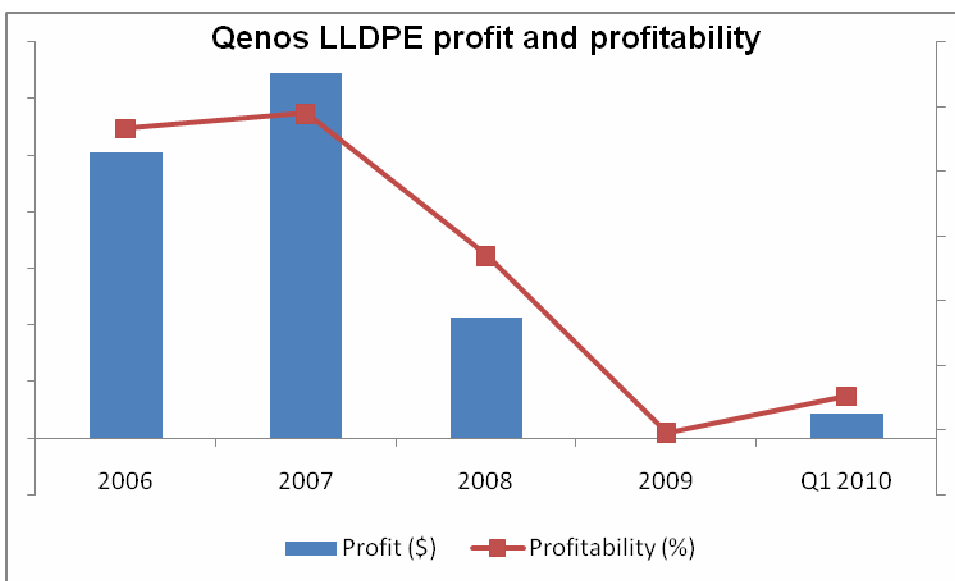
The chart shows that Qenos experienced price suppression in 2008, 2009 and Q1 2010. While CTMS appears to have decreased in 2009, selling prices decreased more markedly. Analysis is at [Confidential Appendix 5](#).

7.8.2 Price depression

The application claims that Qenos experienced price depression (except for film LLDPE). The chart above illustrates a substantial decline in selling price in 2009 to a level well below that prevailing in 2006. It therefore appears that Qenos has experienced price depression.

7.9 Profit effects

The application claims that Qenos experienced reduced profits and profitability. The chart below illustrates profit and profitability on Qenos' LLDPE sales using data provided in the application. Q1 2010 below reflects values for the twelve month period ended March 2010. As is apparent from the chart at 7.8.1, selling prices in Q1 2010 were below CTMS, so Qenos in fact made losses in Q1 2010 not apparent below.



The chart shows that Qenos experienced reduced profit and profitability in 2008 and 2009 with levels below those prevailing in 2006. Analysis is at Confidential Appendix 5.

7.10 Other economic factors

The application includes data on other economic factors at Confidential Appendix A-7 for the period 2006 to 2009 inclusive. The assessments below are based on that data.

7.10.1 Reduced sales revenue

Qenos' LLDPE sales revenue appears to have increased in 2007 and then decreased in 2008 and 2009.

7.10.2 Reduced capacity utilisation

Qenos' LLDPE capacity utilisation appears to have decreased in 2007 and 2008 and then increased in 2009, although to a level below that achieved in 2006.

7.10.3 Reduced return on investment

Qenos' return on investment appears to have increased in 2007 and decreased in 2008 and 2009 to a level below that achieved in 2006.

7.10.4 Assets

The value of assets used in Qenos' production of LLDPE appears to have decreased in 2007, 2008 and 2009.

7.10.5 Capital investment

The value of capital investment in Qenos' production of LLDPE appears to have decreased in 2007, 2008 and 2009.

7.10.6 Research and Development (R&D)

Qenos' expenditure on R&D for LLDPE appears to have decreased in 2007, increased in 2008 and decreased in 2009 to a level above that of 2006.

7.10.7 Capacity

Qenos' capacity to produce LLDPE appears to have remained the same between 2006 and 2009.

7.10.8 Employment

The number of Qenos' direct production employees allocated to LLDPE appears to have declined slightly in 2007, 2008 and 2009.

7.10.9 Productivity

Qenos' LLDPE productivity appears to have decreased in 2007 and 2008, and increased in 2009 to a level below that of 2006.

7.10.10 Stocks

Closing stock appears to have increased in 2007 and 2008 and decreased in 2009 to a level above that of 2006.

7.10.11 Cash flow measures

Accounts receivable appear to have increased in 2007, decreased in 2008 and increased in 2009 to a level below that of 2006.

Receivables turnover appears to have increased in 2007, increased in 2008 and decreased in 2009 to a level above that of 2006.

Inventory turnover appears to have decreased in 2007, decreased in 2008 and increased in 2009 to a level below that of 2006.

7.10.12 Wages

Total wages paid for direct production employees appear to have increased in 2007, increased in 2008 and increased in 2009.

Average wages per employee appear to have increased in 2007, increased in 2008 and increased in 2009.

7.11 Conclusion – other factors

Customs and Border Protection considers that the other factors described above generally tend to support the findings in relation to primary injury indicators discussed in this report.

7.12 Conclusion – economic condition of the industry

On the basis of an analysis of information contained in the application, it appears Qenos has experienced injury in the forms of:

- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced sales revenue, capacity utilisation and return on investment.

8 REASONABLE GROUNDS – IS THERE A LINK BETWEEN DUMPING AND SUBSIDISATION AND MATERIAL INJURY?

8.1 Finding

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that the dumping has caused material injury to the Australian industry producing like goods

8.2 The Applicant's claims

8.2.1 Injury caused by dumping

Qenos states that in Report 146 Customs and Border Protection concluded that the injury experienced by the industry *as a result of dumped exports* was negligible – attributing the injury experienced to the apparent collapse of the rotational moulding market in 2007 and the global financial crisis of 2008. [Emphasis added]

Qenos argues that:

The current application addresses a period subsequent to that over which the factors identified by Customs and Border Protection occurred and is not the subject of any extraneous factors that may unusually alter the demand for LLDPE on the Australian market.

The peak in demand for rotational moulding LLDPE for water tank manufacture of 2007 has passed and demand is at historical levels. Similarly, the Australian market has almost recovered from the contraction in 2008 due to the global financial crisis. Demand for LLDPE in Australia has therefore returned to a level of normality.

Anti-dumping measures applicable to certain Korean exports of LLDPE expired in December 2008. Korean exports to Australia more than doubled in 2009 over 2008, with Korean export prices undercutting Australian industry selling prices. As Korean export volumes are above negligible levels and export prices are comparable with export prices from Canada and the USA, Korean exports have been aggregated with exports from Canada and the USA and included in this application.

The Australian LLDPE market in 2009 and 2010 has expanded ... following the contraction evident in 2008. Qenos has sought to capitalise on the market growth but has been hampered by price undercutting from dumped imports which have contributed to reductions in selling prices.

Qenos has not experienced any production lapses during 2009 or 2010 to date that could be considered as a contributing factor to the material injury sustained by the industry.

The increased supply of dumped exports from Canada, Korea and the USA onto the Australian market in 2009 and 2010 has coincided with the decline in Qenos' selling prices and the erosion of the company's margin in its LLDPE business.

8.3 Assessment

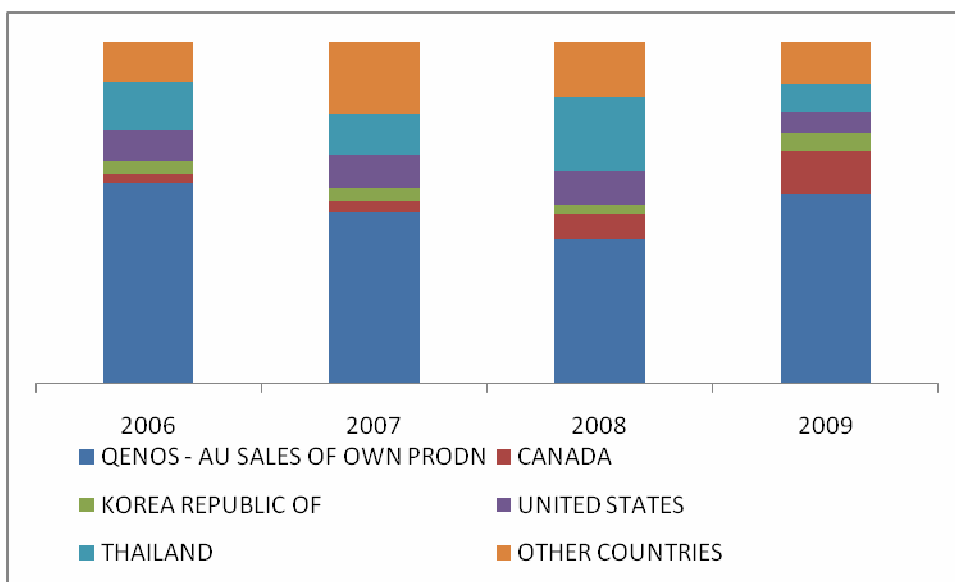
8.3.1 Influence on market price

On the basis of information contained in the application, it appears that:

- the Australian market share held by imported LLDPE from Canada, Korea and the USA was higher in 2009 than 2006; and that
- Qenos has been unable to maintain its selling prices in line with its costs and therefore has experienced price depression, price suppression and decreased profits and profitability.

Previous investigations concerning the Australian LLDPE market have found high levels of price sensitivity amongst customers of the Australian industry.

Imports from countries other than those nominated in the application represent a substantial proportion of the Australian LLDPE market, and may therefore influence prevailing prices. According to data from the Customs and Border Protection import database, and Qenos' application, the share of the Australian market is as per the chart below.



The chart above indicates that LLDPE exported from Thailand, and from other countries, were in substantial volumes. Volumes exported from Canada, Korea and the USA were proportionately larger than volumes from other countries in 2009 and appear sufficient to have influenced Australian LLDPE prices. Analysis is at Confidential Appendix 4.

Qenos supplied customer visit reports demonstrating price undercutting by imports from Canada, Korea, and the USA at confidential attachment A-9.2 of its application. Customs and Border Protection considers this information adequately support its claims in relation to price undercutting.

8.3.2 Factors other than dumping affecting economic performance

Report 146 includes detailed discussion of factors other than dumping that may have affected Qenos' economic performance. The major factors discussed were:

1. collapse in the rotational moulding market
2. withdrawal from the film market
3. global financial crisis

Collapse in the rotational moulding market

Interested parties submitted that injury to Qenos was caused by the collapse of the rotational moulding market during the 3rd quarter of 2007. Claims included 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.

As discussed at section 6.1.1, Qenos argues that the peak in demand for rotational moulding LLDPE for water tank manufacture of 2007 has passed and demand is at historical levels.

Withdrawal from the film market

Interested parties 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 and Qenos was subsequently unable to fully recapture its share of the film market. In that inquiry, Qenos rejected the claim that it withdrew from certain parts of the film market.

In this application Qenos does not appear to have addressed withdrawal from certain parts of the film market.

Global financial crisis

Interested parties submitted that injury to Qenos could be attributed to the onset of the global financial crisis (GFC) during the 3rd quarter of 2008, including claims that:

- global prices for all petroleum based commodities collapsed from the 3rd quarter of 2008;

- there was a significant reduction in market demand during the second half of 2008 and the 1st quarter of 2009;
- volumes of imports fell significantly during this time;
- regional market prices of LLDPE fell by more than 50% during the 4th quarter of 2008 and feedstock similarly fell;
- there was rapid deterioration in world markets left polyethylene producers with high cost inventories that needed huge discounting to sell;
- 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.

As discussed at section 6.1.1, Qenos argues that the Australian market has almost recovered from the contraction in 2008 due to the global financial crisis, and that demand for LLDPE in Australia has therefore returned to a level of normality.

Further Qenos states that the current application addresses a period subsequent to that over which the factors identified by Customs and Border Protection occurred and is not the subject of any extraneous factors that may unusually alter the demand for LLDPE on the Australian market.

Supporting Qenos' claim that the Australian market has almost recovered from the contraction in 2008 due to the global financial crisis and that demand for LLDPE in Australia has therefore returned to a level of normality, Customs and Border Protection observes that sales into the Australian market by volume appear to have returned to levels nearer those prevailing in 2006 and 2007.

8.3.3 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 conditions of competition between imported and domestically produced LLDPE appear to be similar. Qenos claims that it has been unable to maintain prices as a result of price undercutting by imports of LLDPE from Canada, Korea and the USA.

Customs and Border Protection import database shows that certain Australia based LLDPE importers purchased LLDPE from more than one of the three nominated countries. This indicates that LLDPE from different countries may be used interchangeably by purchasers.

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

8.3.4 Conclusion

It is reasonable to conclude that injury apparently experienced by Qenos may, for the purpose of assessing the application, be considered to be the result of price undercutting, price pressure and increased imported volumes of allegedly dumped imports from Canada, Korea and the USA.

8.4 Conclusion - Causal link

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

9 INVESTIGATION

For the purposes of the investigation:

- the investigation period to determine whether dumping has occurred is from 1 July 2009 to 30 June 2010; and
- examination of the Australian market and the economic condition of the industry will be undertaken from 1 January 2006 for the purposes of injury analysis.

10	CONFIDENTIAL APPENDIX
-----------	------------------------------

Confidential Appendix 1	Share of imports – by source country – according to Customs database
Confidential Appendix 2	Customs and Border Protection's export price calculations
Confidential Appendix 3	Examination of the dumping margin calculations provided in the application
Confidential Appendix 4	Australian market size, market share, sales volumes, import volumes
Confidential Appendix 5	Price effects and profit effects analysis
Confidential Attachment 1	Sales data included in application reconciliation