



CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

REPORT TO THE MINISTER NO. 152

CONTINUATION INQUIRY

LINEAR LOW DENSITY POLYETHYLENE

FROM

THE REPUBLIC OF INDONESIA

16 March 2010

PUBLIC RECORD



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 - Part XV B

LINEAR LOW DENSITY POLYETHYLENE EXPORTED FROM THE REPUBLIC OF INDONESIA Finding in relation to continuation inquiry

Public notice under s. 269ZH(1)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its inquiry into whether the expiration of the anti-dumping measures applying to linear low density polyethylene (LLDPE) exported to Australia from the Republic of Indonesia (Indonesia) would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent. Recommendations resulting from that inquiry, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained in Trade Measures Report No 152 (referred to in this notice as "REP 152").

In REP 152, Customs and Border Protection recommended that the anti-dumping measures applying to LLDPE exported to Australia from Indonesia expire on 19 July 2010 and 27 July 2010.

I, BRENDAN O'CONNOR, Minister for Home Affairs, have considered REP 152 and accepted the recommendations and reasons for the recommendations, including all material findings of fact and law set out in REP 152.

Accordingly, I declare that I have decided to not take steps to secure the continuation of anti-dumping measures currently applying to LLDPE exported to Australia from Indonesia. These anti-dumping measures will expire on 19 July 2010 and 27 July 2010.

Copies of REP 152 are available on request from Trade Measures Branch, by telephone 02 6275 6547 or by fax on 02 6275 6888. Trade Measures reports are also available from the Customs and Border Protection internet site at www.customs.gov.au.

Enquiries about this notice may be directed to Operations 1, Trade Measures Branch, Customs and Border Protection on telephone 02 6245 5434, facsimile 02 6275 6990, or by email to tmops1@customs.gov.au.

Dated this

24th

day of

March

2010

A handwritten signature in black ink, appearing to read "Brendan O'Connor".

BRENDAN O'CONNOR
Minister for Home Affairs

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ABBREVIATIONS & SHORTENED FORMS

ACDN	Australian Customs Dumping Notice
Chandra Asra	PT Chandra Asra
Customs and Border Protection	Australian Customs and Border Protection Service
CEO	Chief Executive Officer of Customs and Border Protection
fob	free-on-board
GFC	Global Financial Crisis
Indonesia	The Republic of Indonesia
LLDPE	Linear low density polyethylene
Minister	Minister for Home Affairs
NIP	Non-injurious price
PT Indochem	PT Indochem Petrochemicals
PENI	PT Petrokimia Nusantara Interindo
Qenos	Qenos Pty Ltd
SEF	statement of essential facts
Titan	PT Titan Petrokimia Nusantara
USA	United States of America

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2 SUMMARY AND RECOMMENDATIONS

This continuation inquiry is in response to an application by Qenos Pty Ltd (Qenos) seeking the continuation of the anti-dumping measures applying to linear low density polyethylene (LLDPE¹) exported to Australia from the Republic of Indonesia (Indonesia).

This report to the Minister for Home Affairs (the Minister) provides the results of the Australian Customs and Border Protection Service (Customs and Border Protection) inquiry into whether the continuation of the anti-dumping measures is justified.

2.1 Recommendation

The Chief Executive Officer² (CEO) of Customs and Border Protection recommends to the Minister that the anti-dumping measures expire on the specified dates of 19 July and 27 July 2010.

If the Minister accepts this recommendation, to give effect to that decision, the Minister must publish the attached notice at **Appendix 1** declaring that he has decided not to secure the continuation of anti-dumping measures. If the Minister declares that he has decided not to secure the continuation of anti-dumping measures then on the specified days the dumping duty notices expire.

2.2 Application of law to facts

2.2.1 Authority to make decisions

Division 6A of Part XVB in the Customs Act 1901³ provides for the continuation of anti-dumping measures beyond their normal life of five years.

2.2.2 Notice of expiry

Notice of the anticipated termination of anti-dumping measures applying to LLDPE exported to Australia from Indonesia was published on 17 July 2009⁴.

2.2.3 Application

On 15 September 2009, Qenos, the sole producer of LLDPE in Australia, applied in writing for the continuation of the measures.

Qenos is the person whose application⁵ resulted in the measures and represents the whole or portion of the Australian industry producing like goods to the goods covered by the measures.

The CEO was satisfied that the application was made in the prescribed manner⁶ by a person entitled to make the application⁷.

¹ Refer to the full description of the goods in section 4.1

² The CEO's powers have been delegated to certain officers of the Trade Measures Branch.

³ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*

⁴ In accordance with section 269 ZHB

⁵ Under section 269TB

⁶ Section 269ZHC

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2.2.4 Initiation of the inquiry

After examining the application, the CEO was satisfied that there appeared to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The CEO decided not to reject the application and notice of the initiation of this continuation inquiry was published on 12 October 2009.⁸

2.2.5 Statement of Essential Facts

The CEO placed on the public record, on 1 February 2010, a statement of the facts on which the CEO proposed to base his recommendations to the Minister concerning the continuation of the anti-dumping measures.

Interested parties were invited to lodge submissions to the statement of essential facts (SEF) by no later than 22 February 2010.

2.2.6 Final report

Role of the CEO of Customs and Border Protection

The CEO must conduct an inquiry into the continuation of anti-dumping measures and recommend that:

- the Minister take steps to secure the continuation of the anti-dumping measures; or
- the anti-dumping measures expire on the specified expiry date.

The CEO must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the CEO is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

In deciding on the recommendations to be made to the Minister, the CEO must have regard to the application for continuation of the anti-dumping measures, any submission relating generally to the continuation of the measures to which the CEO has had regard for the purpose of formulating the statement of essential facts, the statement of essential facts, any submission made in response to that statement that is received by Customs within 20 days after the placing of that statement on the public record; and may have regard to any other matter that the CEO considers to be relevant to the inquiry⁹.

The CEO's final report and recommendation must be provided to the Minister by **16 March 2010**.

Role of the Minister

⁷ Section 269ZHB(1)

⁸ Section 269ZHD(4)

⁹ Section 269ZHF(3) and (4)

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The Minister must, after considering the report of the CEO and any other information that the Minister considers relevant, declare whether or not he has decided to take steps to secure the continuation of the anti-dumping measures concerned. This declaration is made by publishing a notice¹⁰.

2.3 Findings and conclusions

The recommendation contained in section 2.1 is based on the following findings:

- LLDPE produced by Qenos, the sole Australian LLDPE manufacturer, is a like good to LLDPE exported from Indonesia, (section 4 of this report);
- volumes of LLDPE exported to Australia from Indonesia since 2005 have been small and there have been no exports to Australia since mid 2008 (section 6 of report);
- there is no evidence to suggest that the small volumes of imports from Indonesia up to mid 2008 were aggressively priced (section 8);
- if the measures are allowed to expire, imports from Indonesia may resume but there is no evidence to suggest this would be above negligible volumes – the Indonesian manufacturers are oriented towards their domestic market and have spare capacity only because of raw material shortages (section 8);
- there is no persuasive evidence to suggest that, if imports did resume, they would be at dumped prices (section 8);
- Qenos, has not performed well in recent years but this has been caused by factors unrelated to dumping, in particular the global financial crisis, changes in the ethane supply contract for Qenos and the collapse in the rotational moulding market (sections 7 and 8); and
- no other countries have anti-dumping measures in place against exports of LLDPE from Indonesia (section 8).

In summary, having regard to all available information, Customs and Border Protection **is not satisfied** that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

Customs and Border Protection considers that the anti-dumping measures should expire on the specified expiry dates of 19 July and 27 July 2010.

¹⁰ Section 269ZHG

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3 INTRODUCTION

3.1 The current continuation inquiry

Anti-dumping measures applying to LLDPE exported to Australia from Indonesia are due to expire on the 19 July and 27 July 2010.

On 17 July 2009, Customs and Border Protection published a notice inviting eligible persons to apply to Customs and Border Protection for the continuation of the anti-dumping measures applying to LLDPE from Indonesia.

On 15 September 2009, Qenos, the sole producer of LLDPE in Australia, applied for the continuation of the measures. Customs and Border Protection examined the application and decided not to reject it. Public notification of the initiation of the continuation inquiry was made on 12 October 2009 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) 2009/33 was also published.

Customs and Border Protection placed a SEF on the public record on 1 February 2010. Interested parties were invited to lodge submissions in response to the SEF by no later than 22 February 2010. Two submissions were received in response to the SEF.

The report to the Minister is due on or before 16 March 2010.

3.1.1 Notification and participation

Customs and Border Protection prepared a report on the performance of Qenos based on previously verified data and updated data and documents supplied by Qenos. A non-confidential copy of the report was placed on the public record.

Customs and Border Protection notified and sent questionnaires to all known importers of LLDPE from Indonesia (since the original investigation). Customs and Border Protection did not receive any completed questionnaires from importers. Only one importer responded to advise that its last importation of LLDPE from Indonesia was in May 2008 and that it would not be participating in the inquiry.

Customs and Border Protection also notified and sent questionnaires to all known exporters of LLDPE from Indonesia (since the original investigation). Customs and Border Protection did not receive any completed questionnaires from exporters. One exporter responded to ask about the amount of dumping duty applicable to LLDPE exported from Indonesia.

3.1.2 Submissions by interested parties

Submissions prior to the SEF

Prior to the SEF, Qenos made a submission providing information on Indonesian market prices for LLDPE. A non-confidential copy of this submission was placed on the public record.

Customs and Border Protection addressed issues raised in that submission in the SEF and in this report.

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Qenos provided a further submission on the threat of material injury and the unsuppressed selling price on 28 January 2010. A copy of this submission was placed on the public record.

Customs and Border Protection did not address the Qenos submission of 28 January 2010 in the SEF as it was of the opinion to do so would have prevented the timely placement of the SEF on the public record.¹¹ Customs and Border Protection has addressed matters raised in the Qenos submission of 28 January 2010 in the relevant sections of this report

Submissions in response to the SEF

Customs and Border Protection received two submissions in response to the SEF, one from Qenos and the other from the Government of Indonesia. Copies of the submissions were placed on the public record.

These submissions are addressed at the relevant sections of this report.

3.2 History of the measures

3.2.1 LLDPE from Indonesia

Anti-dumping measures applying to LLDPE exported to Australia from Indonesia were initially imposed in the form of a price undertaking provided by Pt Petrokimia Nusantara Interindo (PENI) and a dumping duty notice for all other exporters.

These measures were imposed in July 2000 by the then Minister responsible for Customs and Border Protection following consideration of Trade Measures Report No. 8.

The measures were subject to a continuation inquiry (referred to as the previous inquiry throughout this report) and continued for a further five years after ministerial consideration of Trade Measures Report No. 95 of July 2005. PENI did not agree to continue the undertaking and the Minister published a dumping duty notice for PENI in substitution for the lapsed undertaking.

The measures have been the subject of two reviews.

The first review was in 2005 - Trade Measures Report No. 89 of May 2005 refers. After ministerial acceptance of the recommendations in that report, the variable factors relevant to the taking of measures in relation to LLDPE from Indonesia were revised for all exporters with the exception of PENI.

PENI was not subject to a review of the measures in 2005 as a dumping duty notice had been published for the company in 2005 in substitution for the lapsed undertaking. Dumping duty notices may generally not be reviewed within one year of their publication.

Another review of the anti-dumping measures was the subject of Trade Measures Report No. 134 of May 2008. After ministerial acceptance of the recommendations

¹¹ Section 269ZHE(3)

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in that report, the variable factors relevant to the taking of measures in relation to LLDPE for all exporters from Indonesia were revised, and the revised measures remain in place today.

Anti-dumping measures expire five years after the date on which they were published, unless revoked earlier. The measures are due to expire on 19 July 2010 in relation to PENI, and 27 July 2010 for all other exporters. PENI is now known as PT Titan Petrokimia Nusantara (Titan).

3.2.2 Investigation into LLDPE from Canada and the USA

An investigation has recently been concluded in relation to the alleged dumping of LLDPE exported to Australia from Canada and the United States of America (USA).

The investigation recommended that the CEO be satisfied that:

- there has been, or may be, dumping of some or all of the goods; but
- the injury, if any, to the Australian industry, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible.

On 20 November 2009 the CEO decided to terminate the investigation¹² into the alleged dumping of LLDPE exported to Australia from Canada and the USA. Trade Measures Termination Report No 146, available on the public record, contains details of the investigation and the reasons for the termination.

The investigation period was 1 January 2008 to 31 March 2009. The period from 1 January 2006 was examined for injury purposes.

Certain information that was gathered and verified in relation to that investigation was relied upon for this continuation inquiry.

¹² In accordance with s.269TDA(13)

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4 GOODS AND LIKE GOODS

4.1 Goods

The goods subject to anti-dumping measures are linear low density polyethylene (LLDPE), in a pelletised form and with a density of less than 0.94 grams per cubic centimetre, in various grades.

The goods are classified under tariff sub-heading 3901.10.00 statistical code 01, and 3901.90.00 statistical code 06 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty for LLDPE imported from Indonesia is 5 percent.

LLDPE is produced by the polymerisation of ethylene gas with a co-monomer, in the presence of various catalysts at controlled pressures and temperatures.

There are three co-monomers that may be used in the manufacture of LLDPE. The three co-monomers are sometimes referred to by the number of carbon units they contain, e.g. butene as C4, hexene as C6 and octene as C8.

4.1.1 Tariff concession orders

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

TCO	Characteristics
0827077	Density less than 905 kg/m 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

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

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

4.2 Like goods

Qenos stated that the LLDPE it manufactures is identical in all respects, or has characteristics closely resembling, the LLDPE that has been exported to Australia from Indonesia.

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Qenos stated that it manufactures LLDPE with the hexene co-monomer, which has characteristics closely resembling imported LLDPE with butene, hexene and octene co-monomers.

In the original investigation in 2000 and the continuation inquiry in 2005, Customs and Border Protection was satisfied that the LLDPE grades produced by Qenos were like goods to the LLDPE exported to Australia from Indonesia.

Customs and Border Protection remains satisfied that the LLDPE produced by Qenos is like goods to the LLDPE which has been exported from Indonesia and therefore there continues to be an Australian industry producing like goods.

4.3 Australian industry

In the original investigation into LLDPE from Indonesia in 2000, Customs and Border Protection determined that Qenos was the Australian industry producing like goods¹³. On the basis of information provided to it by Qenos during this inquiry and previous investigations, Customs and Border Protection considers Qenos is a producer of like goods.

Qenos is the sole producer of like goods to the goods under inquiry; as such Qenos comprises the Australian Industry.

¹³ In accordance with s.269T(2), (3) and (4).

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5 AUSTRALIAN MARKET

5.1 Market structure

Customs and Border Protection established that the Australian LLDPE market is supplied by Qenos and imports from a number of countries. Qenos is also an importer of LLDPE from the USA.

Imports from Indonesia have been at very low levels since the previous inquiry, with the last importation being in May 2008.

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

Application or Market Sector	Density (g/cm³)	Melt Index (g/10min)	Examples of end products
Film	0.918 -0.925	0.8 – 2.5	Films, plastic bags, shopping bags,
Rotational Moulding	0.930 -0.938	3.0 – 10.0	Tanks
Injection Moulding	0.925	20.0	House wares

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

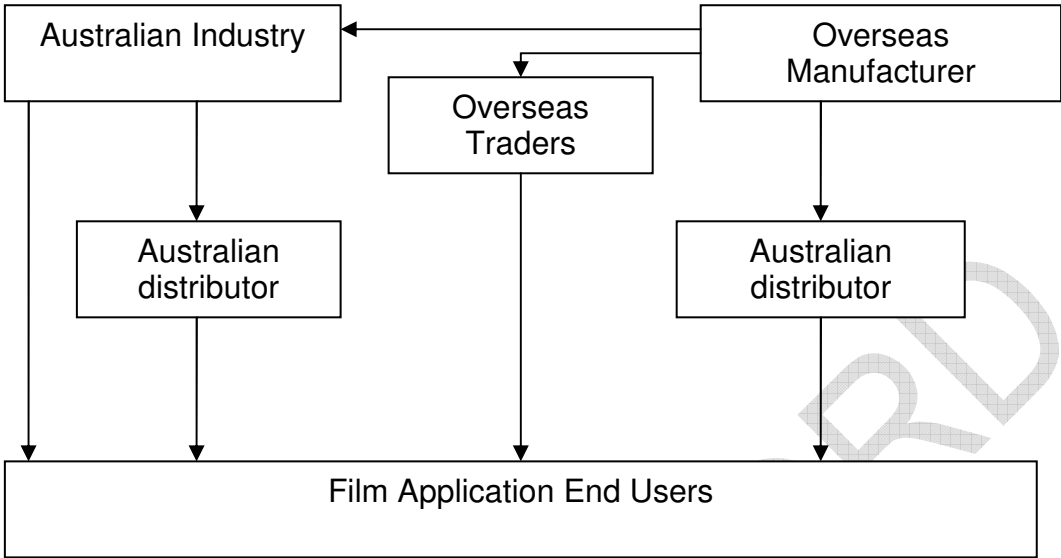
5.2 Distribution and marketing

During the investigation into LLDPE from Canada and the USA, Customs and Border Protection determined that there are two prominent market sectors in Australia, film and rotational moulding, with differing distribution channels.

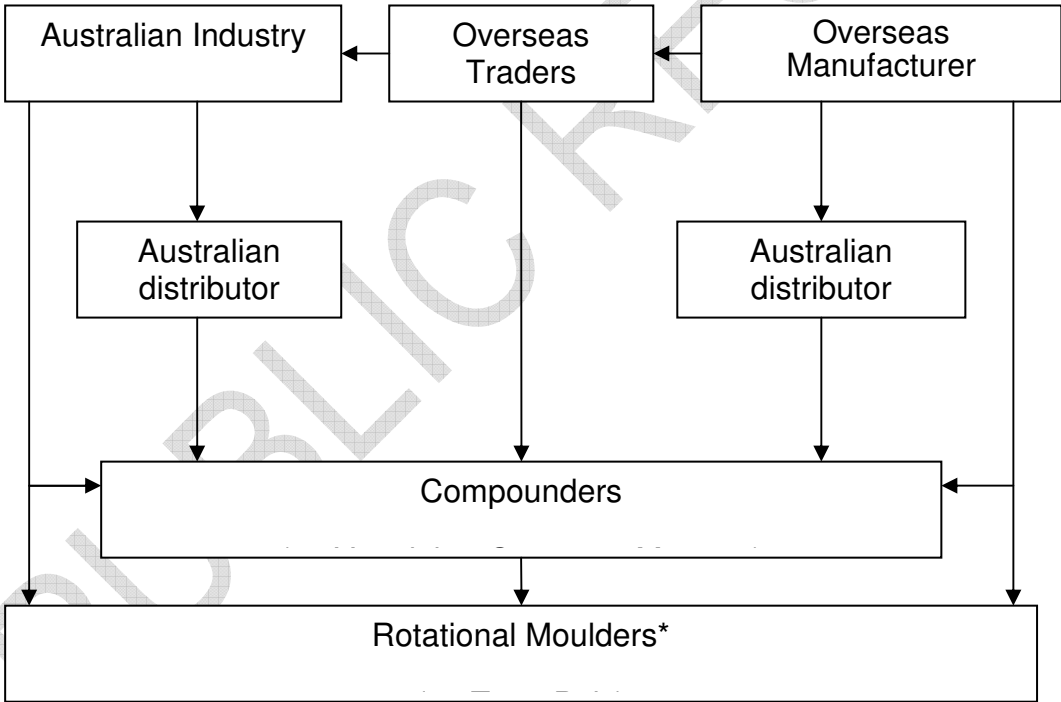
Diagrams of the distribution channels for the two market sectors are outlined below:

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- Film**



- Rotational**

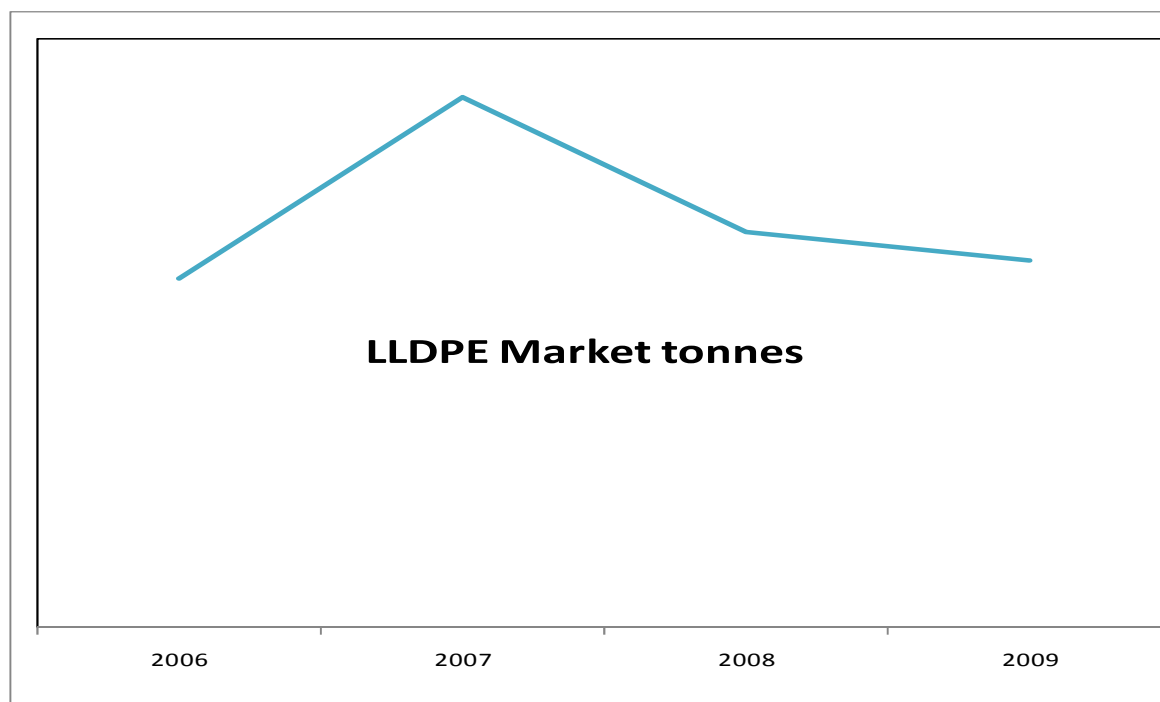


*Some companies undertake both compounding and rotational moulding.

5.3 Market size

Information gathered during this inquiry and previous investigations was used to calculate the market for LLDPE for the period from October 2005 to September 2009 as shown in the following graph.

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The graph displays annual tonnes for the year ended September.

The graph shows that the market grew significantly in 2007 and then experienced a significant decline in 2008. The market continued to decline in 2009 though at a much slower rate than in 2008. The market in 2009 is at a slightly higher level to what it was in 2006.

Interested parties (including Qenos) in the recent investigation into LLDPE from Canada and the USA submitted that the spike in the market in 2007 was due to the boom in demand for water tanks. This increased the demand for rotational moulding LLDPE. The demand then fell significantly from September 2007.

Customs and Border Protection noted in Termination Report No 146 that the available data supports the claim by interested parties that the boom in the LLDPE market in 2007 was predominantly due to a spike in demand for rotational moulding LLDPE.

In Termination Report No 146, the onset of the Global Financial Crisis (GFC) during the September quarter of 2008 was also noted as affecting the LLDPE market.

Various interested parties claimed that:

- global prices for all petroleum based commodities collapsed from the September quarter of 2008;
- there was a significant reduction in market demand during the second half of 2008 and the March quarter of 2009; and
- volumes of imports fell significantly during this time.

Qenos also noted in the investigation that the collapse in demand associated with the GFC was most notable in the December quarter of 2008 and the March quarter of 2009.

Data relating to the Australian market is at **Confidential Attachment 1**

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6 INDONESIA IMPORTS

There have been no imports of LLDPE from Indonesia since May 2008.

Imports of LLDPE from Indonesia have been negligible in terms of total import volumes of LLDPE as shown in the table below.

Indonesian imports as a percentage of total LLDPE imports. Year end September

2006	2007	2008	2009
0.4%	0.2%	0.1%	0.0%

Data relating to Indonesian imports is contained within **Confidential Attachment 1**

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7 ECONOMIC CONDITION OF THE INDUSTRY

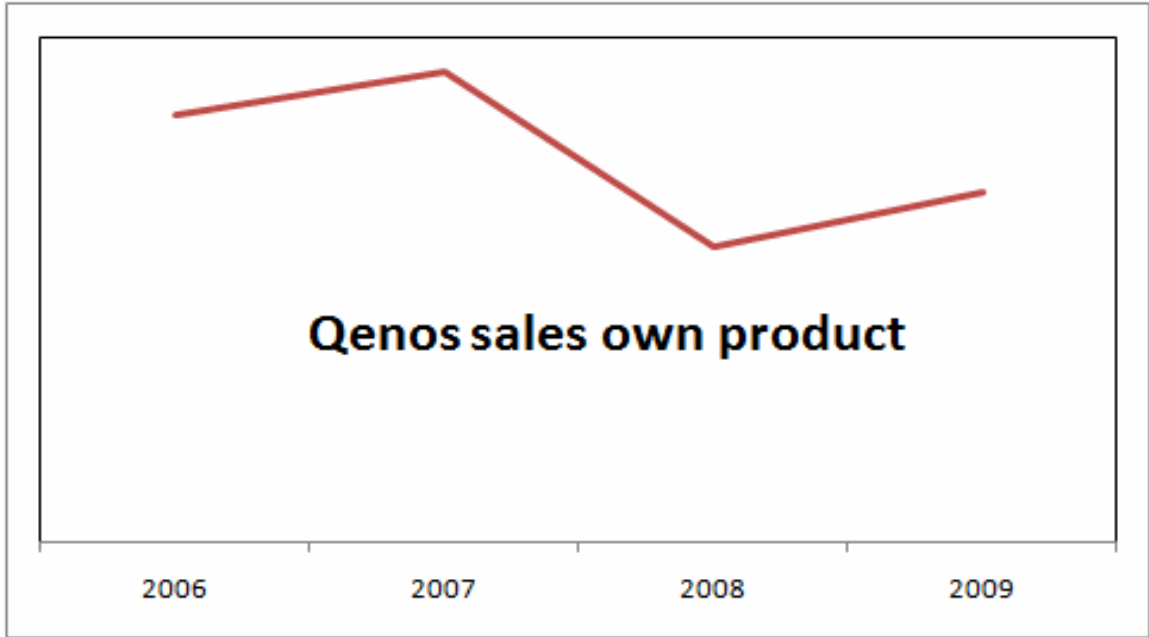
Customs and Border Protection found that since the previous inquiry the economic performance of the Australian industry improved to 2007 but has deteriorated since then. Whilst the industry has shown signs of recent improvement it is performing below what it was at the time of the previous inquiry.

Customs and Border Protection considers that the GFC, changes in the supply contract for the major raw material in the production of LLDPE and the collapse of the rotational moulding market have had an effect on Qenos' prices, costs, profits and profitability.

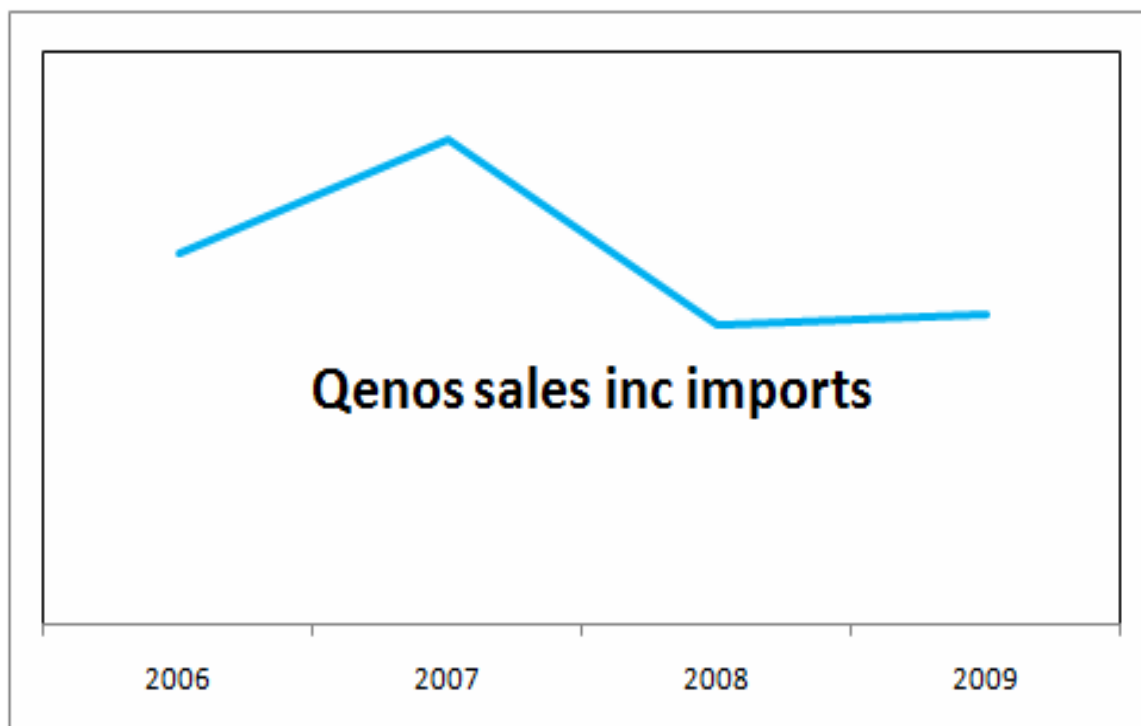
7.1 Volume trends

7.1.1 Sales volumes

Qenos' domestic sales volumes of LLDPE produced by Qenos and Qenos total domestic sales volumes of LLDPE, including LLDPE imported by Qenos, are presented in the following graphs.



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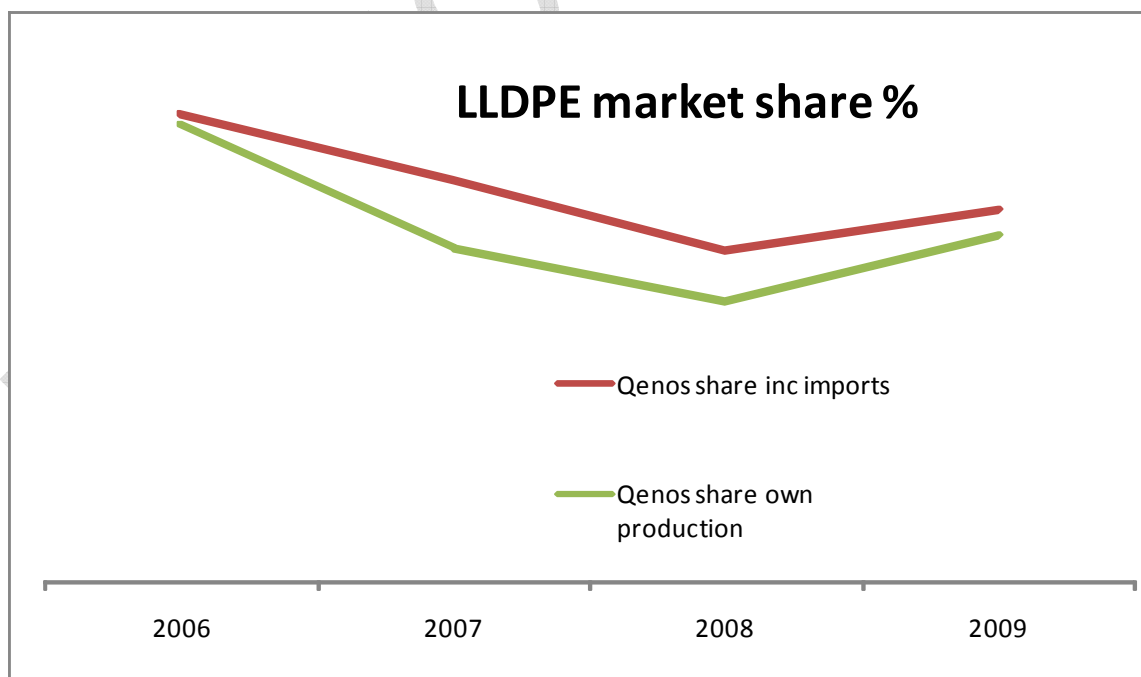


Qenos' sales volumes increased to 2007 declined to 2008 and increased in 2009. Qenos sales volumes in 2009 were lower than they were in 2006.

7.1.2 Market share

Qenos' market share since the previous inquiry is shown in the following graph.

Qenos share is shown for sales of LLDPE produced and sold by Qenos and sales of LLDPE including product imported and sold by Qenos.



Qenos' market share declined from 2006 to 2008 before increasing in 2009. Qenos' market share is below what it was at the time of the previous inquiry.

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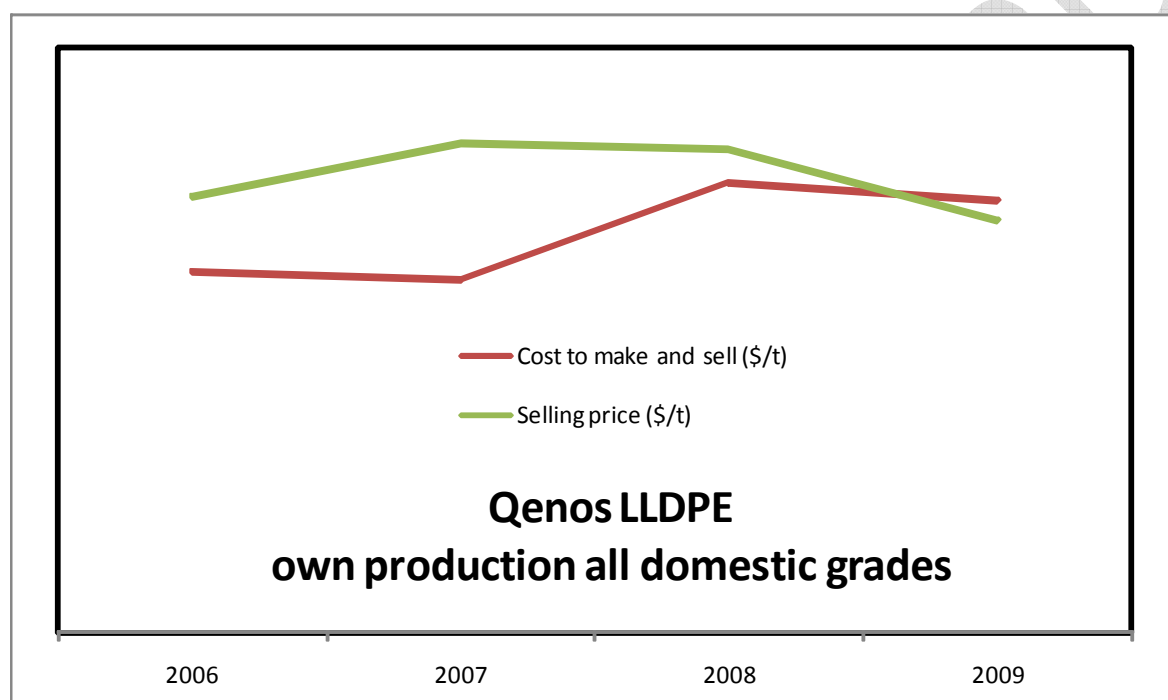
7.2 Price effects

7.2.1 Price undercutting

Customs and Border Protection did not conduct a price undercutting analysis as imports from Indonesia have been at very low levels since the previous inquiry and ceased in May 2008.

7.2.2 Prices and costs

Movements in the Qenos unit prices and unit costs for domestic sales of LLDPE are illustrated in the following graph.



Qenos' unit selling prices increased steadily to 2007, were generally flat to 2008 and then declined in 2009 to levels below that in 2006 for the year ended September.

Qenos' unit costs declined in 2007, increased in 2008 and were then relatively stable in 2009.

Qenos' unit prices were below its unit costs for the year to September 2009. The unit costs were higher in 2009 than in 2006, whilst unit prices were slightly lower in 2009 than they were in 2006.

Price depression occurs when there is a reduction in prices. Price suppression occurs when price increases which otherwise would have occurred have been prevented.

The graph above shows that Qenos has experienced price depression and price suppression since 2007.

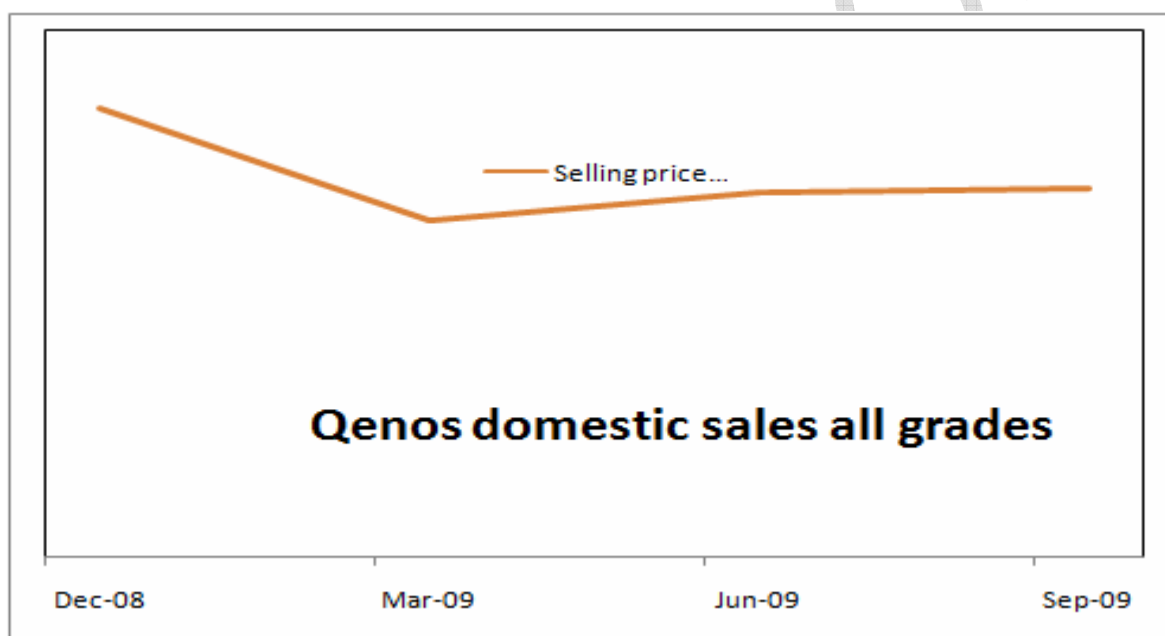
As mentioned in section 5.3 above, interested parties claimed that global prices for all petroleum based commodities collapsed from the September quarter of 2008 following the onset of the GFC.

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In Trade Measures Report No 146 providing reasons for terminating the investigation into LLDPE imports from the USA and Canada, Customs and Border Protection referred to a Qenos publication of April 2008 concerning 'the removal of the favourable clause in the Botany ethane supply contract which limited the impact of high oil prices'¹⁴. Qenos stated in that investigation that it was required to enter into a new contract which reflected increased oil prices in 2008. Ethane is one of the main raw materials in the production of LLDPE.

In the report, Customs and Border Protection considered that the change in Qenos' feedstock contract for the supply of ethane was not insignificant in its effect and the timing of the change distorted the CTMS trends during the investigation period (1 January 2008 to 31 March 2009). Customs and Border Protection considered that the GFC was more likely the cause of the price suppression and depression experienced by Qenos than imports from the USA and Canada.

Customs and Border Protection notes that unit prices are showing signs of recent improvement as shown in the graph below.

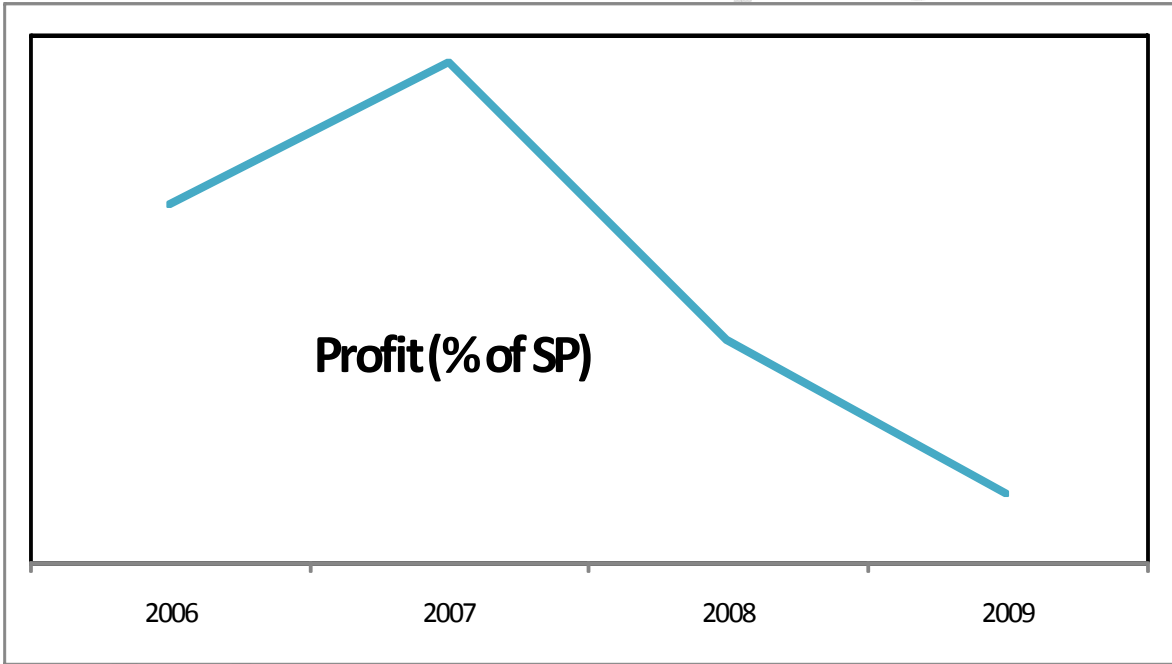
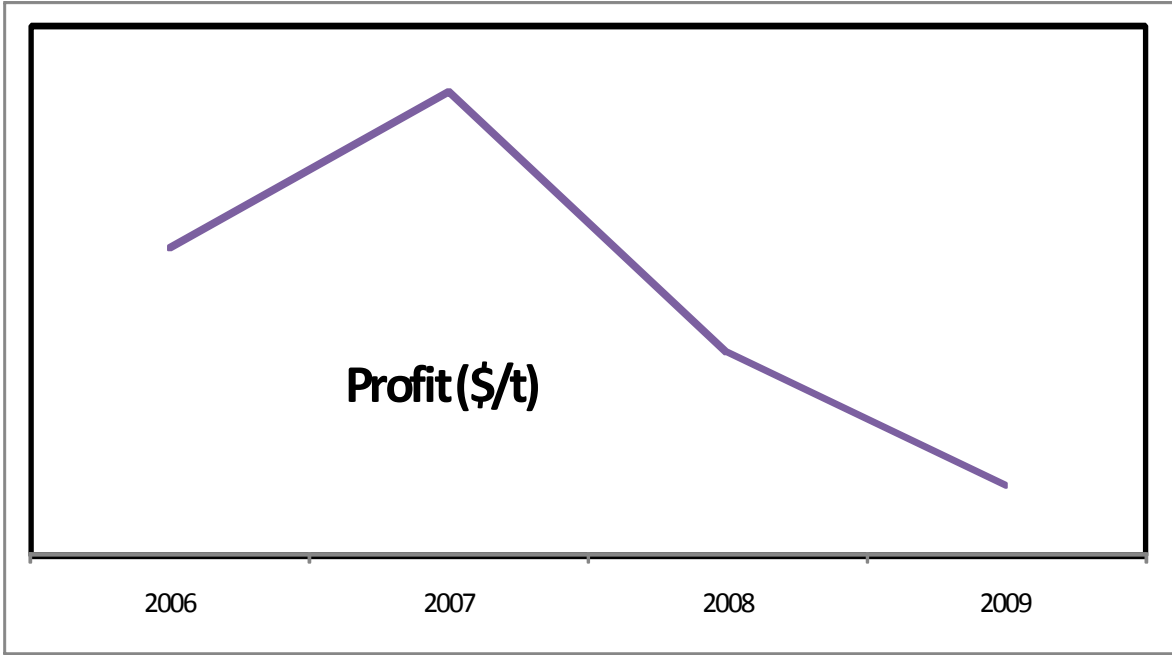


7.3 Profits and profitability

Movements in the Australian industry's profit per tonne and profitability (profit measured as a percentage of revenue) for domestic sales of LLDPE are illustrated in the following charts.

¹⁴ Trade Measures Report No. 146 at page 47.

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Profits and profitability peaked in 2007 before decreasing over the rest of the period. Profits and profitability are below what they were since the time of the previous inquiry.

Data relating to the Australian industry is at **Confidential Attachment 2**.

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8 LIKELIHOOD OF DUMPING AND MATERIAL INJURY CONTINUING OR RECURRING

Customs and Border Protection finds that, if the anti-dumping measures expire:

- exports of LLDPE from Indonesia to Australia may resume but if they do there is no evidence to suggest that they will be above negligible volumes;
- if exports of LLDPE from Indonesia resume, Customs and Border Protection is not satisfied that it is likely the exports will be at dumped prices;
- Customs and Border Protection is not satisfied that it is likely that the material injury that the anti-dumping measures are intended to prevent would continue or recur.

8.1 Information relied upon

In considering the likelihood of dumping and material injury continuing or recurring, Customs and Border Protection had regard to all available information including:

- Qenos' application;
- submissions from Qenos;
- submission from the Indonesian government;
- Trade Measures Report No 8, the original investigation;
- Trade Measures SEF No 95 and Trade Measures Report No 95, the previous continuation inquiry;
- Trade Measures Reports No 89 and 134, the reviews;
- Trade Measures Report No 137, the continuation inquiry into LLDPE from Korea and Thailand;
- Trade Measures Termination Report No 146, the investigation into LLDPE exported from Canada and the USA;
- Customs and Border Protection commercial database; and
- available information in the public domain.

8.2 Are exports likely to continue or recur?

8.2.1 Exports to Australia since the last continuation inquiry

As noted in section 6 above, exports of LLDPE from Indonesia have been at negligible volumes since the previous inquiry (July 2005) and ceased from May 2008. PENI/Titan, one of the main Indonesian manufacturers, has not exported LLDPE to Australia since the original investigation period in 1998.

There were no exports of the goods following the review of the measures which set higher variable factors from June 2008.

An article in the Jakarta Post referred to by Qenos notes that the Indonesian exporters claimed that they were leaving the Australian market following the review as the companies believed the dumping accusation against them was untrue and the

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measures were not revoked as requested. The setting of higher variable factors following the review may also have been a reason for exports ceasing from that time.

It appears that exports ceased due to either the higher variable factors or the measures not being revoked. In either case the cessation appears related to the review of the anti-dumping measures.

The Government of Indonesia in its submission confirmed that the Indonesian companies no longer exported LLDPE to Australia.

On the basis of information before it, Customs and Border Protection considers that exports of LLDPE from Indonesia ceased from May 2008, but there were small volumes exported prior to this. Customs and Border Protection also considers that the review of the anti-dumping measures finalised in June 2008 was the reason for the exports ceasing.

8.2.2 Distribution channels

Customs and Border Protection notes that imports of the goods continued into Australia until the June quarter 2008 and that imports of other polyethylene products continued into 2009. In one case the exporter of polyethylene products is also a producer of LLDPE.

Customs and Border Protection considers that LLDPE manufacturers in Indonesia have maintained distribution channels with Australian importers.

8.2.3 Export reliance

In Trade Measures SEF No 95, the inquiry into the continuation of the measures concluded in 2005, Customs and Border Protection noted that PENI (now Titan) exported LLDPE to a number of countries other than Australia. These exports accounted for less than 10 percent of the company's total LLDPE sales in 2004.

The article in the Jakarta Post referred to by Qenos notes that Titan and PT Chandra Asra (Chandra Asra), two major producers of LLDPE in Indonesia, produce a total of 400,000 MT of LLDPE each year, most of which is sold on the domestic market.

Customs and Border Protection also noted in Trade Measures SEF No 95 that PENI and Chandra Asra, in terms of capacity for exports, stated that their aim was to replace the market share of imports in the Indonesian domestic market. Customs and Border Protection noted in that SEF that Indonesia is a net importer of LLDPE.

Available information on the internet from the Bank of Indonesia¹⁵ shows that Indonesia has been and continues to be (to September 2009) a net importer of plastics in primary forms. LLDPE falls within the tariff code for plastics in primary forms.

United Nations statistical databases¹⁶ show that Indonesia continues to be a net importer of polyethylene with a specific gravity less than 0.94 in primary form, tariff code 390110, which includes LLDPE.

Customs and Border Protection considers that the available information shows that the focus of the Indonesian manufacturers is mainly towards the Indonesian domestic market rather than the export market.

¹⁵ <http://www.bi.go.id/web/en/Statistik/Statistik+Ekonomi+dan+Keuangan+Indonesia/Data+Query/?sec=11>

¹⁶ <http://comtrade.un.org/db/dqBasicQuery.aspx?px=HS&r=360&y=2008&p=36&rq=2&so=9999&rpage=dqBasicQuery&qt=n>

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8.2.4 Indonesian exporters' capacity

Genos' submitted that the shift in demand for polymers (including LLDPE) in the second half of 2008 led to excess capacity for all polyethylene producers. Genos did not provide any evidence in support of its claim that the Indonesian exporters had surplus capacity for the production of LLDPE.

Titan's website states its installed combined capacity for LLDPE and high density polyethylene (HDPE) is 450,000 MT per annum.

The Chandra Asra website notes annual capacity of 200,000 MT for combined LLDPE and HDPE production at one of its polyethylene plants whilst the other plant produces HDPE only.

The capacity of Titan for LLDPE production would appear to equal the total demand for LLDPE in the Australian market, which is estimated for the year ended September 2009 as being less than 200,000 MT.

However, information on the internet¹⁷ notes that the available capacity of Indonesian producers is limited by the availability of feedstock, ethylene and naphtha, required for producing polyethylene products such as LLDPE.

Information on the internet forecasts capacity utilisation to increase, if expected increases in ethylene production facilities come online, and that producers aim to increase capacity utilisation to reduce the dependence on imports.

Genos submitted that it was unaware how Customs and Border Protection could conclude that Indonesian producers have raw material shortages in the absence of cooperation from Indonesian producers/exporters.

Genos also submitted that the Indonesian production facilities comprised "swing" plants which could vary production between LLDPE and HDPE and producers could increase LLDPE production at the expense of HDPE output.

Genos did not provide any evidence in support of its contentions that the Indonesian producers had spare capacity or would increase LLDPE production at the expense of HDPE production.

Customs and Border Protection relies on the best available information. Information available from the internet notes that available capacity of Indonesian producers is limited by the availability of feedstock. Other available information points to Indonesia being a net importer of polyethylene products that includes LLDPE.

Customs and Border Protection considers that the reliance on imports by Indonesia points to a lack of capacity or a lack of utilisation of capacity in the Indonesian polyethylene market. This market includes LLDPE and HDPE.

Customs and Border Protection does not consider that there is evidence available to show that exports of LLDPE would increase even if the Indonesian producers changed the focus of their production from HDPE to LLDPE.

The available evidence, including the reliance on imports, points to the capacity of the Indonesian producers being underutilised due to raw material shortages.

¹⁷ <http://www.datacon.co.id/Plastic%20Resin.html>

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The available evidence points to Indonesian producers having spare capacity with the producers focused on supplying the Indonesian domestic market rather than the export market.

8.2.5 Finding: likelihood of exports continuing or recurring

Customs and Border Protection notes that:

- exports from Indonesia continued, albeit in negligible volumes since the previous continuation inquiry to May 2008;
- the cessation of exports from May 2008 is related to the anti-dumping measures in place;
- LLDPE producers in Indonesia have maintained distribution channels with Australian importers;
- available information points to Indonesia being a net importer of LLDPE with the main focus of the Indonesian producers being the Indonesian domestic market; and
- available information suggests that Indonesian producers have spare capacity but that any increase in production allowed by increased access to raw material will be directed towards import replacement.

Customs and Border Protection's finding is that, if anti-dumping measures expire, exports of LLDPE from Indonesia may recur, but Customs and Border Protection considers that there is no evidence to indicate that these exports would be above negligible volumes.

8.3 What is the likelihood of dumping continuing or recurring?

8.3.1 Exporters' domestic and export sales

Customs and Border Protection did not receive any responses from importers or exporters in relation to export prices from Indonesia. No responses were received from exporters in relation to domestic pricing in Indonesia.

Customs and Border Protection examined the information on quantities and unit values of LLDPE exported from Indonesia in the information provided by Qenos and found that the unit values were generally higher than identified imports of LLDPE that meet the description of the goods in the Customs and Border Protection database.

The information in Customs and Border Protection database contains more details, such as individual entries and more details on the description of the goods than the information provided by Qenos.

Customs and Border Protection considers that the information provided by Qenos contains products that are not the goods, such as low density polyethylene, that fall within the same tariff code as LLDPE.

Customs and Border Protection does not consider the pricing provided by Qenos reflects export prices and quantities of the goods under inquiry from Indonesia.

Customs and Border Protection examined the information provided by Qenos in its submission that noted an Indonesian trader offering LLDPE at US\$1,105 CNF for October to December 2009. Qenos considered that the prices were not in the ordinary course of trade and highlighted distressed prices. The company named in

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the Qenos submission offering the quoted prices is PT Indochem Petrochemicals (PT Indochem).

Customs and Border Protection research shows PT Indochem does not appear to be a LLDPE manufacturer in Indonesia. The company appears to have set up a website that gives the appearance of it being a manufacturer of polyethylene. However, information from the internet and other sources does not match up with the information on PT Indochem's website.

Customs and Border Protection considers that pricing from PT Indochem should not be relied on as being representative of LLDPE prices from Indonesia for the continuation inquiry.

Qenos also provided what it said was pricing of LLDPE sold in Indonesia in 2008 and 2009. The information on domestic prices was not supported by documentary evidence. Qenos did not provide any calculations or information on dumping margins in its submissions on export and domestic prices. Customs and Border Protection was not able to find evidence to substantiate the LLDPE pricing provided by Qenos.

Customs and Border Protection is not satisfied that Qenos has presented any evidence to show that exports of LLDPE from Indonesia have been dumped or may be dumped in the future.

Customs and Border Protection identified what it considered were exports of the goods since July 2005 from its database. The information shows that there were no importations of the goods after the June 2008 quarter.

Analysis of available export prices on a quarterly weighted average basis shows that the export prices of the goods from Indonesia were higher than the normal values, export prices and non-injurious prices (NIP) set for the measures at that time, the period from July 2005 to May 2008.

Customs and Border Protection notes that there was scope for the Indonesian exporters to reduce their export prices during this period and still export above the anti-dumping measures in place.

Customs and Border Protection also compared the prices of the small volume of exports to Australia prior to May 2008 with the normal value and NIP established in the review finalised in June 2008. The review period for that review was 1 October 2006 to 30 September 2007. Indonesian exporters did not participate in the review and the variable factors were ascertained having regard to all relevant information.

The analysis shows that export prices were lower than normal values and marginally lower than NIPs established by the review of the measures finalised in June 2008, suggesting that on this measure, the exports to Australia were at dumped prices.

Qenos claimed that in the absence of anti-dumping measures it is likely that Indonesian exporters would price according to the lowest selling prices on the Australian market in order to secure volumes. Customs and Border Protection considers that the available evidence shows that Indonesian exporters had scope to reduce their export pricing without incurring extra interim dumping duties.

The evidence does not show a pattern of aggressive export pricing. The available evidence shows that the Indonesian exports had scope to reduce their pricing to

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potentially capture a larger market share. However, export volumes by Indonesian producers remained at negligible levels. Customs and Border Protection considers that the above evidence is contrary to the claim by Qenos of Indonesian exporters reducing prices to secure volumes.

Qenos further submitted that it was disappointed that Customs and Border Protection had not afforded sufficient regard to comments in a trade newsletter in October 2008 that some traders in east China, Thailand and Indonesia will revise prices downwards to secure orders in periods of oversupply. Qenos did not provide any evidence of traders revising prices downwards.

The available evidence before Customs and Border Protection suggests that at times exports from Indonesia have been dumped. There is not conclusive evidence available to show a pattern of dumping from Indonesia or that dumping is likely to continue or recur.

Customs and Border Protection notes that Qenos has not provided evidence to show LLDPE from Indonesia has been dumped or will be dumped in the future.

Customs and Border Protection also notes that the available evidence does not support the Australian industry claim of Indonesian exporters pricing to the lowest prices on the Australian market if anti-dumping measures were not in place.

8.3.2 Anti-dumping actions by other authorities

Qenos did not identify whether LLDPE from Indonesia was subject of any other anti-dumping measures from other countries.

Customs and Border Protection is not aware of any other countries that have anti-dumping measures in place against LLDPE exported from Indonesia.

8.3.3 Finding: likelihood of dumping continuing or recurring

Customs and Border Protection notes that:

- export prices of LLDPE from Indonesia have been above the export prices, normal values and non-injurious prices in place since the previous inquiry;
- there is evidence that Indonesian producers may have exported negligible volumes of LLDPE to Australia at dumped prices; and
- there are no other countries that have anti-dumping measures in place for LLDPE exported from Indonesia.

The available evidence before Customs and Border Protection suggests that at times exports from Indonesia have been dumped. There is not conclusive evidence available to show a pattern of dumping from Indonesia or that dumping is likely to continue or recur.

Customs and Border Protection notes that the Australian industry has not provided evidence to show LLDPE from Indonesia has been dumped or will be dumped in the future.

Customs and Border Protection also notes that the available evidence does not support the Australian industry claim of Indonesian exporters pricing to the lowest prices on the Australian market if anti-dumping measures were not in place.

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Customs and Border Protection is not satisfied that, if the anti-dumping measures are allowed to expire, it is likely that exports of LLDPE from Indonesia to Australia will resume at dumped prices.

Customs and Border Protection finds that it is not satisfied that the expiration of the measures would lead or would be likely to lead to a recurrence of the dumping that the anti-dumping measure is intended to prevent.

8.4 What is the likelihood of injury continuing or recurring?

8.4.1 Current condition of the Australian industry

Customs and Border Protection considers that the economic performance of the Australian industry improved to 2007, deteriorated since then and is below what it was at the time of the previous inquiry.

As noted above in section 7.2.2, in Trade Measures Report No 146 Customs and Border Protection considered that the change in Qenos feedstock contract for the supply of ethane was not insignificant in its effect and the timing of the change distorted the CTMS trends during the investigation period. Customs and Border Protection also considered in that report that the GFC was more likely the cause of the price suppression and depression experienced by Qenos.

Customs and Border Protection also noted in Report No 146:

The evidence suggests that the collapse of the rotational moulding market has had a significant impact on Qenos' sales volume and market share during the first three quarters of the investigation period. In addition, the evidence suggests that the GFC has had a significant impact on Qenos' prices and profitability during last two quarters of the investigation period.

Customs and Border Protection agrees with the industry claim that it has suffered material injury during 2008 and into 2009. Customs and Border Protection also considers that the GFC, the collapse of the rotational moulding market and the change in the feedstock contract for the supply of ethane have had an effect on the economic performance of the Australian industry.

Customs and Border Protection also notes that the industry appears to be showing signs of improvement with its sales volumes and market share increasing in 2009 over 2008. Analysis of the industry sales data also shows unit sales prices increasing on a quarterly basis since the March 2009 quarter.

Qenos submitted that Customs and Border Protections preliminary findings attributing injury to factors unrelated to dumping was flawed. Qenos disputed the findings contained in Termination Report No. 146.

Qenos also submitted that it is vulnerable to any detrimental impacts of dumping that may occur in the short to medium term (1 to 3 years).

The Government of Indonesia submitted that the SEF noted that Qenos' sales volume and market share had increased from 2008 to 2009 and that the Indonesian exports of LLDPE to Australia had continuously declined in the last three years.

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The Government of Indonesia further submitted that the Indonesian exports were at negligible levels and could not be creating injury to the Australian industry and requested that the anti-dumping measures be terminated.

8.4.2 The Australian market

The Australian market for LLDPE is supplied by the Australian industry and imports of LLDPE from a number of other countries.

The Australian market for LLDPE since the previous inquiry has been affected by two major factors. These were the growth and collapse of the rotational moulding market and the onset of the GFC.

The following table, indexed to 2006 as the base year, illustrates the changes in the size of the Australian market over the period.

Year end September	2006	2007	2008	2009
Market	100.0%	151.9%	113.4%	105.3%

The market in 2009 is at a slightly higher level than what it was at the time of the previous inquiry.

The industry has lost market share over the period. Its market share increased in 2009 but is still below what it was at the time of the previous inquiry.

Imports from a number of other countries are present in the Australian market, but imports from Indonesia have been at negligible levels since the previous inquiry and ceased from May 2008.

8.4.3 Capacity of the Australian Industry

Customs and Border Protection considers that the industry has excess capacity and is presently operating approximately 40% below its capacity for the year ended September 2009 and approximately 20% below what it was producing in 2006.

8.4.4 Price competitiveness in Australia

Customs and Border Protection was not able to determine the type of LLDPE, whether film or rotational moulding, that was exported to Australia from Indonesia since the previous inquiry.

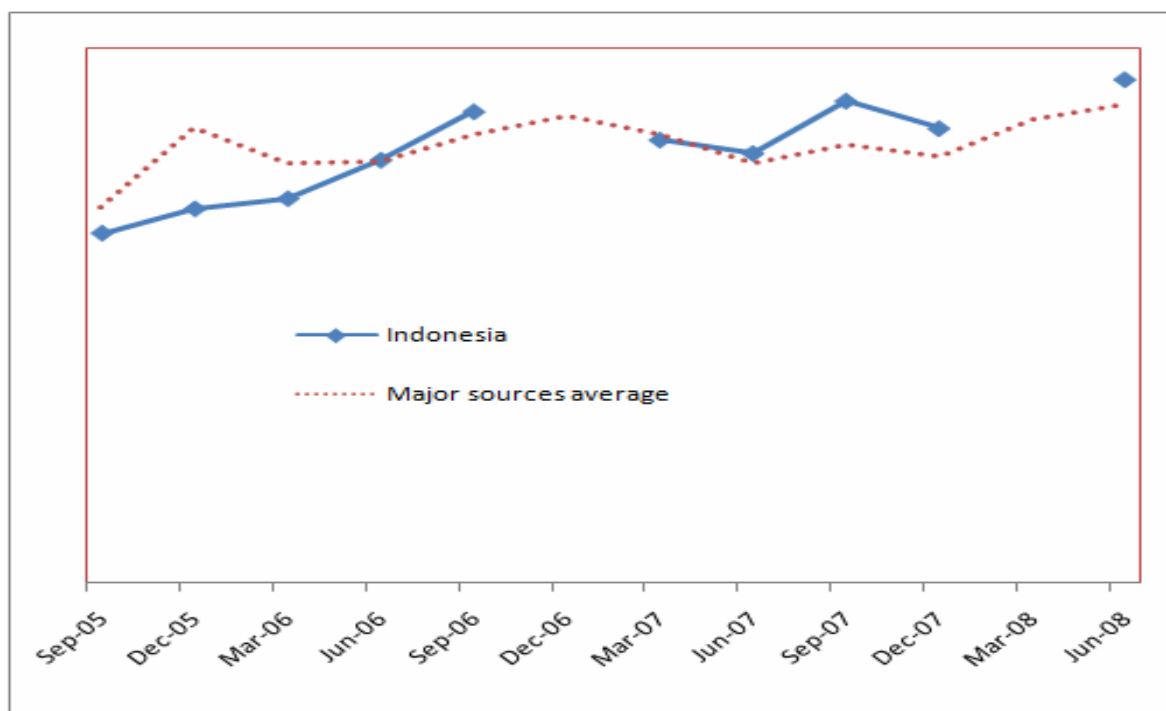
Prices for the different grades and types of LLDPE vary in the Australian market and without being able to identify the grade and type of LLDPE imported from Indonesia an assessment of price competitiveness is limited.

Given the above limitations, Customs and Border Protection compared the declared free on board (fob) values of the small volume of LLDPE imported from Indonesia up to May 2008 against fob values from other sources for the period since the previous inquiry.

The following chart compares the fob values of LLDPE from Indonesia to fob values from major sources and indicates that at times the Indonesian imports have been price competitive in the Australian market.

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As noted above, Customs and Border Protection found that there had been only negligible volumes of imports of LLDPE from Indonesia since the previous inquiry.



Data relating to Customs and Border Protection's assessment of dumping and fob values is at **Confidential Attachment 3**.

8.4.5 Comparison of non-injurious prices and export prices

Qenos claimed that in the absence of anti-dumping measures it is likely that Indonesian exporters would price according to the lowest selling prices on the Australian market in order to secure volumes.

Qenos provided commentary from a polyethylene newsletter that noted some traders in east China, Thailand and Indonesia said they had struck agreements with their suppliers to revise prices to match prevailing market levels when cargoes arrived.

Customs and Border Protection notes that analysis of imports of LLDPE from Indonesia shows that the majority (approximately 75%) have generally been above the established non-injurious price set for the anti-dumping measures applying to exports from Indonesia.

Customs and Border Protection also notes that there have been times when the Indonesian exporters could have reduced their export pricing and still stayed above the level of the measures in place. During the times when the Indonesian imports have been considered competitive in the Australian market, the volume of imports have remained at negligible levels.

Customs and Border Protection considers that the available evidence shows that exports of LLDPE since the previous inquiry have been negligible in volume and non-injurious in pricing and that there is not evidence to show that future exports may be injurious if the anti-dumping measures were to expire.

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Customs and Border Protection considers that the Australian industry's economic performance has deteriorated since the previous inquiry. The industry has lost market share, sales volume, profits and profitability. Whilst the industry is showing signs of recent improvement in performance in increasing sales, market share and prices, it is still weaker position than it was at the time of the previous inquiry.

However, the available evidence does not point to the likelihood of material injury to the industry caused by dumping continuing or recurring if the anti-dumping measures were to expire.

8.4.6 Finding: likelihood of injury continuing or recurring

Customs and Border Protection notes that:

- the economic performance of the Australian industry deteriorated since 2007 but is showing signs of improvement;
- the global financial crisis and the collapse in the rotational moulding market affected both the performance of the Australian industry and the Australian market for LLDPE;
- the change in the ethane supply contract for Qenos was not insignificant in its effect on the Australian industry;
- the size of the Australian market is slightly larger than what it was since the time of the previous inquiry;
- the main sources of imports come from a number of countries;
- imports from Indonesia have been at negligible levels since the time of the previous inquiry; and
- imports of LLDPE from Indonesia have mainly been at a non-injurious price to the Australian industry.

Customs and Border Protection considers that the Australian industry economic performance has deteriorated since the previous inquiry, the industry has lost market share, sales volume, profits and profitability. Whilst the industry is showing signs of recent improvement in performance in increasing sales, market share and prices it is still weaker position than it was at the time of the previous inquiry.

However, the available evidence does not support the likelihood of material injury, that the anti-dumping measures is intended to prevent, continuing or recurring if the measures were to expire.

Exports of LLDPE from Indonesia since the previous inquiry have been at negligible levels and generally non-injurious in pricing. The available evidence shows that exports have been at such levels where there was scope for the Indonesian producers to reduce pricing on exports and potentially increase the volume of exports.

Customs and Border Protection finds that it is not satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent.

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8.5 Conclusion on likelihood of dumping and material injury continuing or recurring

Qenos submitted that there exist no facts in the public arena to support Customs and Border Protection's preliminary conclusions in the SEF that dumping and material injury from Indonesian exports will not recur.

Customs and Border Protection considers that the test for continuing measures is a positive test. Customs and Border Protection does not need to be satisfied that dumping and material injury will not continue or not recur if the anti-dumping measures expire.

Customs and Border Protection must be satisfied that expiration of the anti-dumping measures would lead to a continuation or recurrence of dumping and material injury that the anti-dumping measures relating to LLDPE from Indonesia are intended to prevent.

Customs and Border Protection found that if the anti-dumping measures expire exports of LLDPE may recur but there is no evidence to indicate that those exports would be above negligible volumes.

Customs and Border Protection notes that there is not conclusive evidence to show a pattern of dumping or that dumping is likely to continue or recur. The available evidence does not support claims of Indonesian exporters pricing to the lowest prices on the Australian market if the measures were to expire.

Customs and Border Protection notes that exports of LLDPE from Indonesia since the previous inquiry have been at negligible levels and generally non-injurious in pricing. The available evidence shows that exports have been at such levels where there was scope for the Indonesian producers to reduce pricing on exports and potentially increase the volume of exports and their sales and market share.

On the evidence available, Customs and Border Protection is not satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

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9 EVIDENCE RELIED UPON BY CUSTOMS AND BORDER PROTECTION

In formulating the recommendations to the Minister in this report, Customs and Border Protection had regard to:

Topic	Evidence relied upon
Like goods	Information provided by interested parties and previous Trade Measures Reports.
Australian market	Information provided by interested parties, previous Trade Measures Reports and data held on Customs and Border Protection commercial database.
Exporter activity since the measures were imposed	Information provided by interested parties, previous Trade Measures Reports, Customs and Border Protection commercial database and available information in the public domain on the internet.
Economic condition of the industry	Information provided by interested parties, previous Trade Measures Reports and data held on Customs and Border Protection commercial database.
Likelihood of dumping or material injury continuing or recurring	Information provided by interested parties, previous Trade Measures Reports, data held on Customs and Border Protection commercial database and available information in the public domain on the internet.

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10 APPENDIX AND ATTACHMENTS

Appendix 1	Public notice of Minister's declaration ¹⁸
Confidential Attachment 1	Australian market LLDPE Imports of LLDPE from Indonesia
Confidential Attachment 2	Industry data
Confidential Attachment 3	Assessment of export prices and measures Fob values imports of LLDPE to Australia

¹⁸ Under section 269ZHG(1)