



*CUSTOMS ACT 1901 - PART XVB*

**TRADE MEASURES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO. 152**

**CONTINUATION INQUIRY**

**LINEAR LOW DENSITY POLYETHYLENE**

**FROM**

**THE REPUBLIC OF INDONESIA**

**30 January 2010**

**PUBLIC RECORD**

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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
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 (LLDPE<sup>1</sup>) exported to Australia from the Republic of Indonesia (Indonesia).

This statement of essential facts (SEF) sets out the facts on which the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation to the Minister for Home Affairs (Minister) in relation to the application.

### 2.1 Proposed recommendation

The CEO proposes to recommend to the Minister that the anti-dumping measures expire on the specified dates in July 2010.

### 2.2 Application of law to facts

#### 2.2.1 Authority to make decisions

Division 6A of Part XVB of the *Customs Act 1901*<sup>2</sup> provides for the CEO to alert interested parties to the anticipated termination of anti-dumping measures and provide them with an opportunity, before those measures expire, to apply for a continuation of the measures. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

#### 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 2009<sup>3</sup>.

#### 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 application<sup>4</sup> resulted in the measures (or persons representing 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 manner<sup>5</sup> by a person entitled to make the application.<sup>6</sup>

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<sup>1</sup> Refer to the full description of the goods in section 4.1

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901* (the Act), unless otherwise specified.

<sup>3</sup> In accordance with section 269 ZHB

<sup>4</sup> Under section 269TB

<sup>5</sup> Section 269ZHC

<sup>6</sup> Section 269ZHB(1)

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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.<sup>7</sup>

## 2.2.5 Statement of Essential Facts

The CEO is required to place on the public record a statement of the facts on which the CEO proposes to base his recommendations to the Minister concerning the continuation of the anti-dumping measures by **30 January 2010**.<sup>8</sup>

In formulating the statement of essential facts, the CEO must have regard to the continuation application, any submissions relating generally to the inquiry which are received within 40 days after publication of the initiation notice and any other matters that are considered relevant.<sup>9</sup>

## 2.2.6 History of the current anti-dumping measures

Anti-dumping measures applying to LLDPE exported to Australia from Indonesia were initially 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.

The measures have been the subject of two reviews, one in 2005 (Trade Measures Report No 89) and the other in 2008 (Trade Measures Report No 134).

The current anti-dumping measures on LLDPE from Indonesia, which are the subject of this continuation inquiry, are due to expire in July 2010.

## 2.3 Preliminary findings and conclusions

The CEO has made the preliminary finding that he 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 measure is intended to prevent. This is because

- volumes of LLDPE exported to Australia from Indonesia since 2005 have been small and there have been no exports to Australia since mid 2008;
- there is no evidence to suggest that the small volumes of imports from Indonesia up to mid 2008 were aggressively priced;

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<sup>7</sup> Section 269ZHD(4)

<sup>8</sup> Section 269ZHE(1) and within 110 days of the publication of the initiation notice, section 269ZHD(5).

<sup>9</sup> Section 269ZHE(2) & (3)

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- if the measures are allowed to expire, imports from Indonesia may resume but there is no evidence to suggest this would be in large volumes – the Indonesian manufacturers are oriented towards their domestic market and have spare capacity only because of raw material shortages;
- there is no persuasive evidence to suggest that, if imports did resume, they would be at dumped prices;
- the sole Australian manufacturer, 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; and
- no other countries have anti-dumping measures in place against exports of LLDPE from Indonesia.

Based on these preliminary findings, and subject to responses received to this SEF, the CEO proposes to recommend to the Minister that the anti-dumping measures expire on the specified dates in July 2010.

## 2.4 Final report

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

## 3 INTRODUCTION

### 3.1 Continuation inquiry process

Dumping duty notices (that have not been revoked) automatically expire five years after the date on which they were published, unless the Minister decides to continue them<sup>10</sup>.

Not later than nine months before a dumping duty notice expires, Customs and Border Protection must publicly announce that the relevant measures are due to expire and invite certain interested parties to apply within 60 days for continuation of measures<sup>11</sup>. If no application for continuation of the measures is received by Customs and Border Protection within the period allowed, the measures expire on the specified date.

If an application for continuation of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days to inquire and report to the Minister on whether continuation of the measures is justified. Within 110 days of the initiation notice, Customs and Border Protection must place on the public record an SEF on which it proposes to base its recommendation to the Minister concerning the continuation of those measures.

Before recommending the continuation of the measures, Customs and Border Protection must be satisfied that the expiration of the measures would lead, or would likely lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent.

Where the Minister decides to continue anti-dumping measures, the dumping duty notice will remain in force after the specified date for a further period of five years (unless the relevant notice is revoked before the end of that period).

In making the recommendations to the Minister in its report, Customs and Border Protection 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 SEF;
- this SEF; and
- any submission made in response to the SEF that is received by Customs and Border Protection within 20 days of the SEF being placed on the public record.

Customs and Border Protection is not obliged to have regard to any submission made in response to this SEF that is received after the 20 days stated above if to do so would prevent the timely preparation of the report to the Minister.

Customs and Border Protection may have regard to any other matter that it considers to be relevant to the inquiry.

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<sup>10</sup> Under section 269TM

<sup>11</sup> Under section 269ZHB

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## 3.2 Notification and participation

On 17 July 2009, Customs and Border Protection published a notice in *The Australian* newspaper in accordance with s.269ZHB inviting certain persons to apply to the CEO for the continuation of anti-dumping measures on LLDPE exports from Indonesia.

On 15 September 2009, Qenos, the sole producer of LLDPE in Australia, applied for the continuation of the measures. The application was lodged in accordance with s.269ZHC(2).

The CEO decided not to reject the application and published a notice in *The Australian* newspaper on 12 October 2009 advising of the initiation of the inquiry. Australian Customs Dumping Notice (ACDN) 2009/33 advising of the initiation of the inquiry was also issued.

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.

Customs and Border Protection prepared a report on the performance of Qenos based on previously verified data, updated data and documents supplied by Qenos. A non-confidential copy of the industry report was placed on the public record on 28 January 2010.

Qenos provided a submission on Indonesian market prices for LLDPE. A non-confidential copy of this submission was placed on the public record on 11 December 2009.

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 on 29 January 2010.

Customs and Border Protection has not addressed the Qenos submission of 28 January 2010 in this SEF as it is of the opinion to do so would have prevented the timely placement of the SEF on the public record.<sup>12</sup>

No other submissions were received.

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<sup>12</sup> Section 269ZHE(3)

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## 3.3 Responding to the SEF

At places in this SEF Customs and Border Protection states preliminary findings. It is important to note that the statement does not represent Customs and Border Protection's final views.

This statement is an important stage in the inquiry process and provides the opportunity for interested parties to be appraised of the facts established and importantly allows them to challenge or support those facts and to provide any further submissions.

Responses to this SEF should be received by **Monday 22 February 2010**.

Submissions should be sent to:

The Director  
Trade Measures Operations 1  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can be faxed to 02 6275 6990 or emailed to [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au).

Interested parties intending to respond to the SEF must include a non-confidential version of their submission for placement on the public record<sup>13</sup>. Submissions provided in confidence must be clearly marked "**IN-CONFIDENCE**".

The public record contains non-confidential submissions received from interested parties and other publicly available documents such as Customs and Border Protection's initiation report. These documents should be read in conjunction with the SEF.

Documents included in the public record are available at <http://adpr.customs.gov.au/Customs/>.

Alternatively the public record may be examined at the office address below during business hours by contacting Trade Measures Branch on telephone number 02 6275 6547.

Trade Measures Branch  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

All ACDNs and published reports are available on the internet at [www.customs.gov.au](http://www.customs.gov.au) (follow prompts for "anti-dumping").

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<sup>13</sup> In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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## 3.4 History of the measures

### 3.4.1 LLDPE from Indonesia

Anti-dumping measures applying to LLDPE exported to Australia from Indonesia were initially imposed in the form of a price undertaking from 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 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 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).

### 3.4.2 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 of Customs and Border Protection be satisfied that:

- there has been, or may be, dumping of some or all of the goods; but

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- 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, in accordance with s.269TDA(13), the CEO decided to terminate the investigation 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 decision to terminate that investigation may be subject to review by the Trade Measures Review Officer should an interested party submit an application for a review of the CEO's decision.

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.

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## 4 GOODS SUBJECT TO THE CONTINUATION INQUIRY

### 4.1 Goods subject to anti-dumping measures

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

Qenos stated 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.

## **5 LIKE GOODS AND THE AUSTRALIAN INDUSTRY**

This section of the SEF examines whether there continues to be an Australian industry producing like goods to the goods the subject of the measures.

### **5.1 Conclusion on like goods and Australian industry**

Customs and Border Protection considers that there continues to be an Australian industry producing like goods.

### **5.2 Like goods**

Section 269TB(1) refers to an Australian industry producing “like goods”. Like goods as defined in s.269T(1) means goods that are identical in all respects to the goods under inquiry or that, although not alike in all respects to the goods under inquiry, have characteristics closely resembling those of the goods under inquiry.

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

Qenos stated that its LLDPE is physically alike to the LLDPE exported to Australia from Indonesia. It advised that it manufactures LLDPE in pelletised form with densities ranging from 0.918 g/cm<sup>3</sup> to 0.938 g/cm<sup>3</sup>, melt indexes of between 0.8 g/10min and 20 g/10min and include any additives as required by its customers. Qenos explained that the imported LLDPE has similar physical properties to the LLDPE it manufactures.

Qenos states 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 are like goods to the LLDPE which has been exported from Indonesia.

### **5.3 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 goods, according to s.269T(2), (3) and (4). 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.

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## 6 AUSTRALIAN MARKET

### 6.1 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/cm <sup>3</sup> )	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.

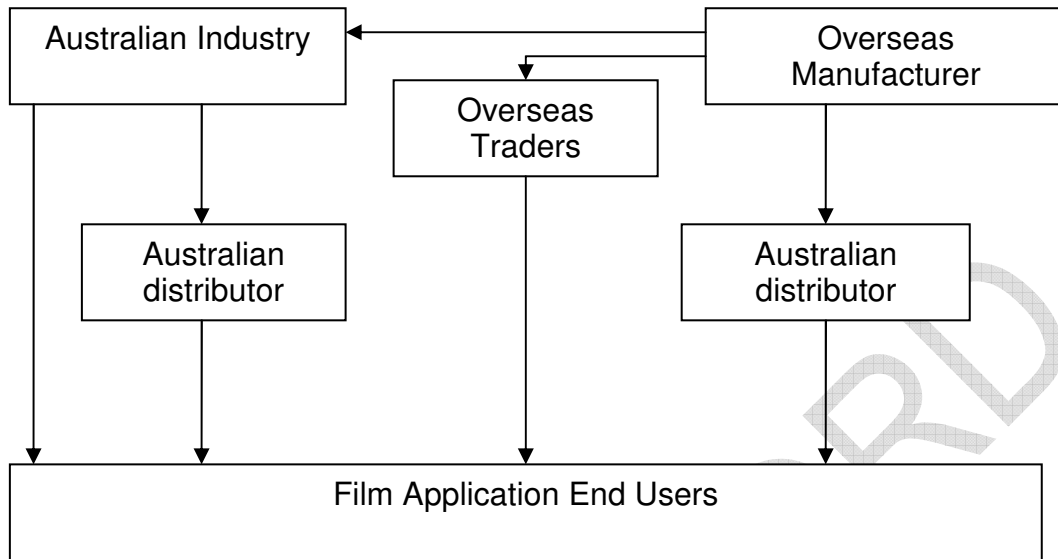
### 6.2 Distribution and marketing

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.

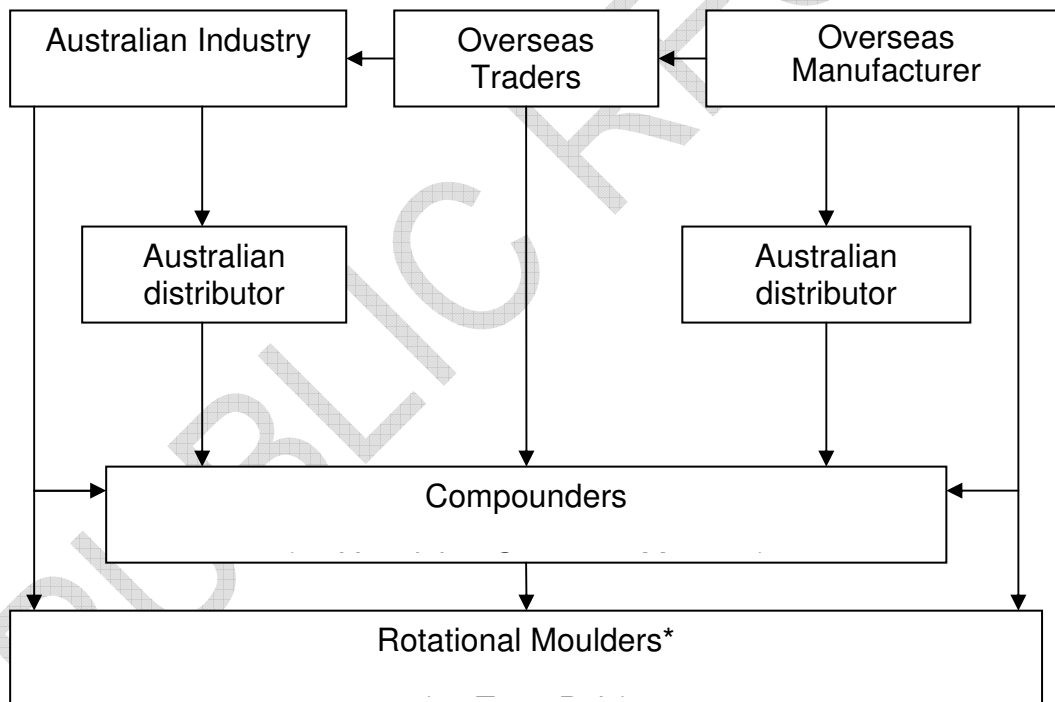
Diagrams of the distribution channels for the two market sectors are outlined below:

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- **Film**



- **Rotational**

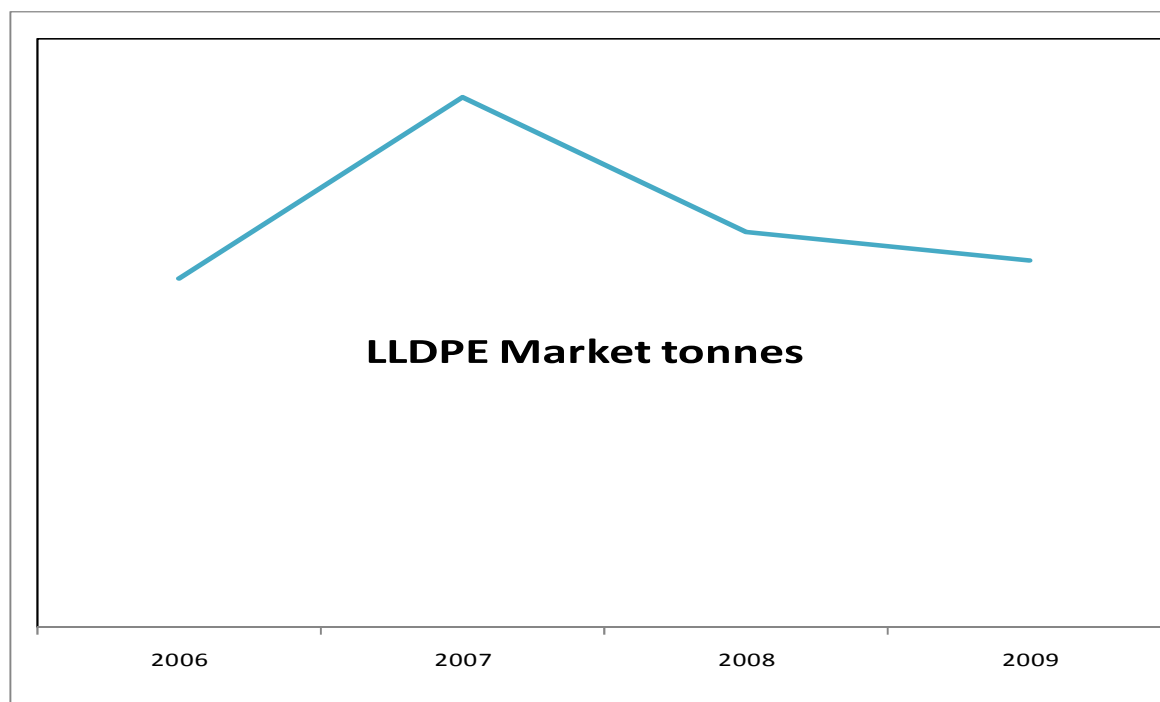


\*Some companies undertake both compounding and rotational moulding.

## 6.3 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;
- 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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## 7 INDONESIAN IMPORTS

Qenos advised that Australian Bureau of Statistics data for import clearances of LLDPE are subject to confidentiality restrictions.

Qenos used data from another source to support its claim that Indonesia has exported LLDPE to Australia in each of the last three years, albeit in relatively small volumes.

Customs and Border Protection sent questionnaires to Indonesian exporters and Australian importers of LLDPE on the initiation of the inquiry. No exporters responded to the questionnaire and only one importer responded to advise that their last importation of LLDPE from Indonesia was in May 2008.

Customs and Border Protection examined its database and identified small volumes of imports of LLDPE from Indonesia since the previous inquiry.

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

Imports of LLDPE from Indonesia were 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**

## 8 ECONOMIC CONDITION OF THE INDUSTRY

### 8.1 Preliminary findings

Customs and Border Protection found:

- the Australian industry's domestic sales volume increased to 2007 before declining - volumes have increased recently but are lower than at the time of the previous inquiry in 2005;
- the industry's market share has declined - whilst it is showing signs of recent improvement it is lower than at the time of the previous inquiry;
- unit prices increased steadily to 2007, were generally flat to 2008 and then declined in 2009 - prices have shown signs of recent improvement but are still below that in 2006;
- unit costs declined to 2007, increased to 2008 and were then relatively stable to 2009; and
- profit and profitability peaked in 2007 before decreasing over the rest of the period. Profit and profitability are below what they were at the time of the previous inquiry.

Customs and Border Protection considers that 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 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.

### 8.2 Introduction

Qenos claimed that it has experienced material injury during 2008, continuing into 2009. It claimed that the decline in its profits and profitability in 2008 and 2009, compounded by the effects of the GFC, has placed it in a vulnerable position.

Qenos further claimed that its performance over the period immediately prior to its application for the continuation of anti-dumping measures is extremely relevant.

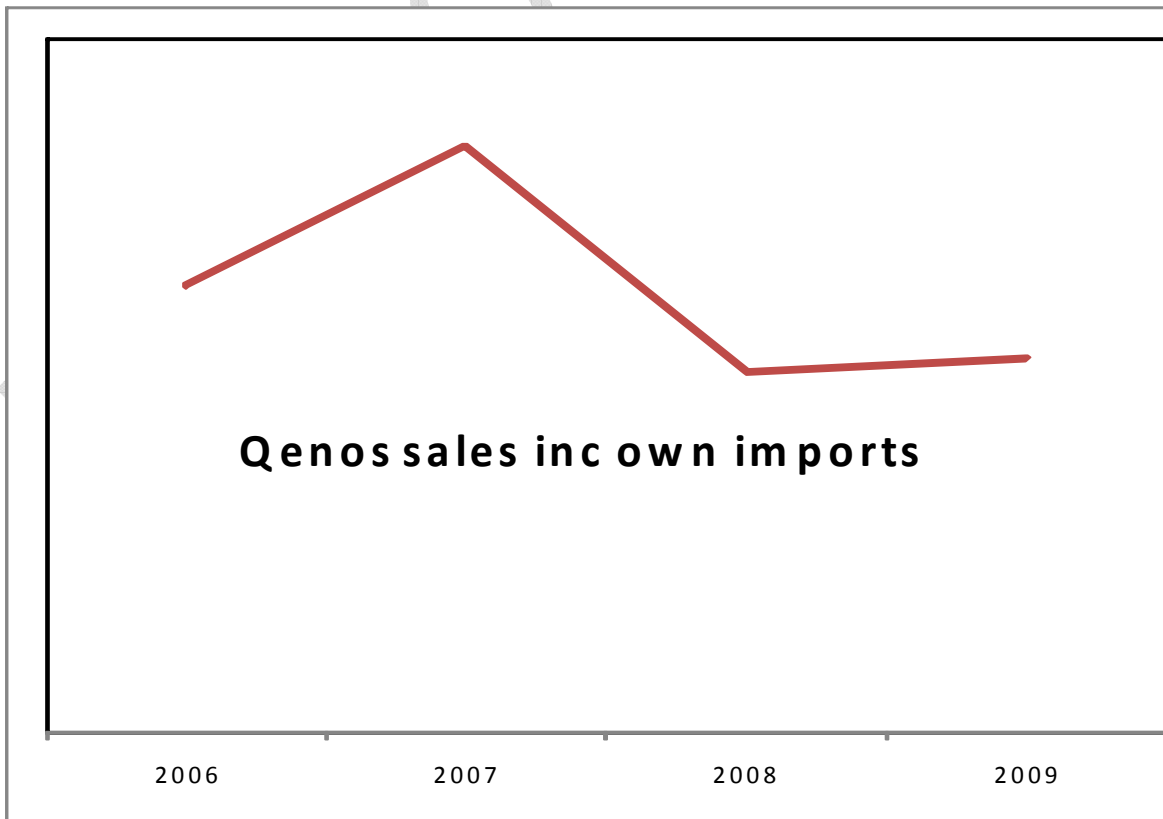
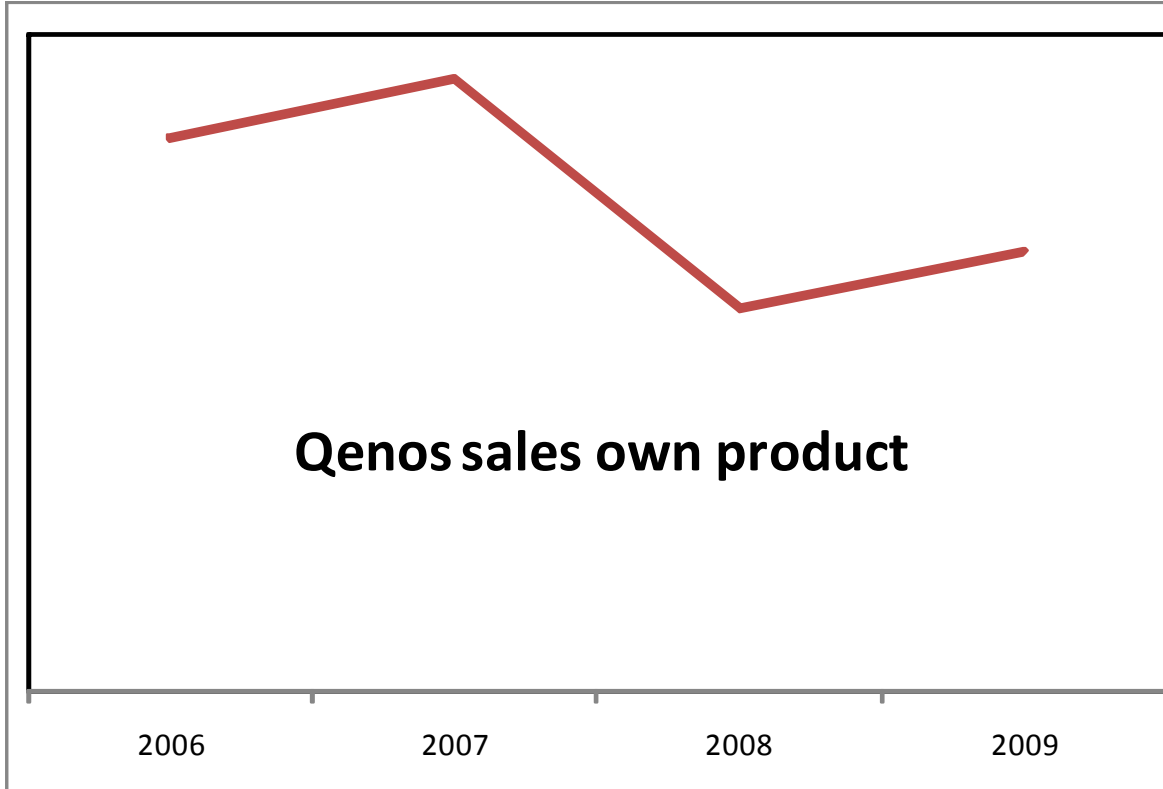
In its application, Qenos provided financial data for the inquiry period to March 2009. Following initiation of the inquiry Qenos provided data for the period April to September 2009. The data to March 2009 was verified during previous investigations. Qenos supplied requested documents to Customs and Border Protection to substantiate the data to September 2009.

Customs and Border Protection considered the performance of the industry since the previous inquiry. Industry data has been presented on an annual basis for the year ending September.

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## 8.3 Volume trends

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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# PUBLIC RECORD

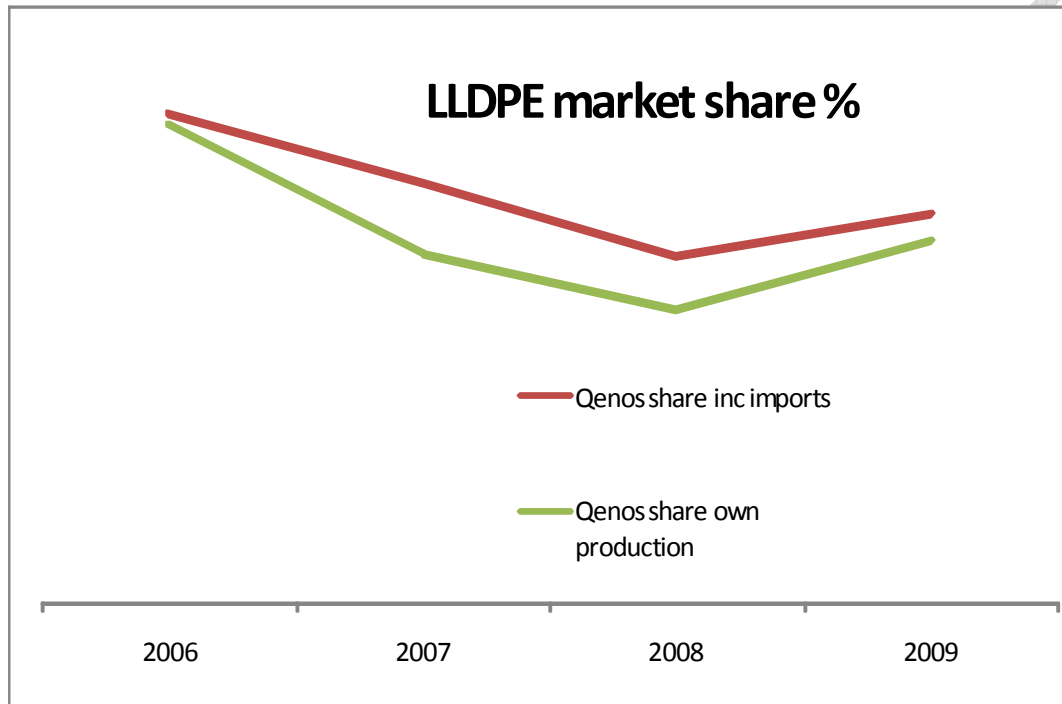
Qenos' sales volumes increased to 2007 declined to 2008 and increased in 2009.

Qenos sales volumes in 2009 were lower than they were in 2006.

## 8.3.1 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 since the previous inquiry.

## 8.4 Price effects

### 8.4.1 Price undercutting

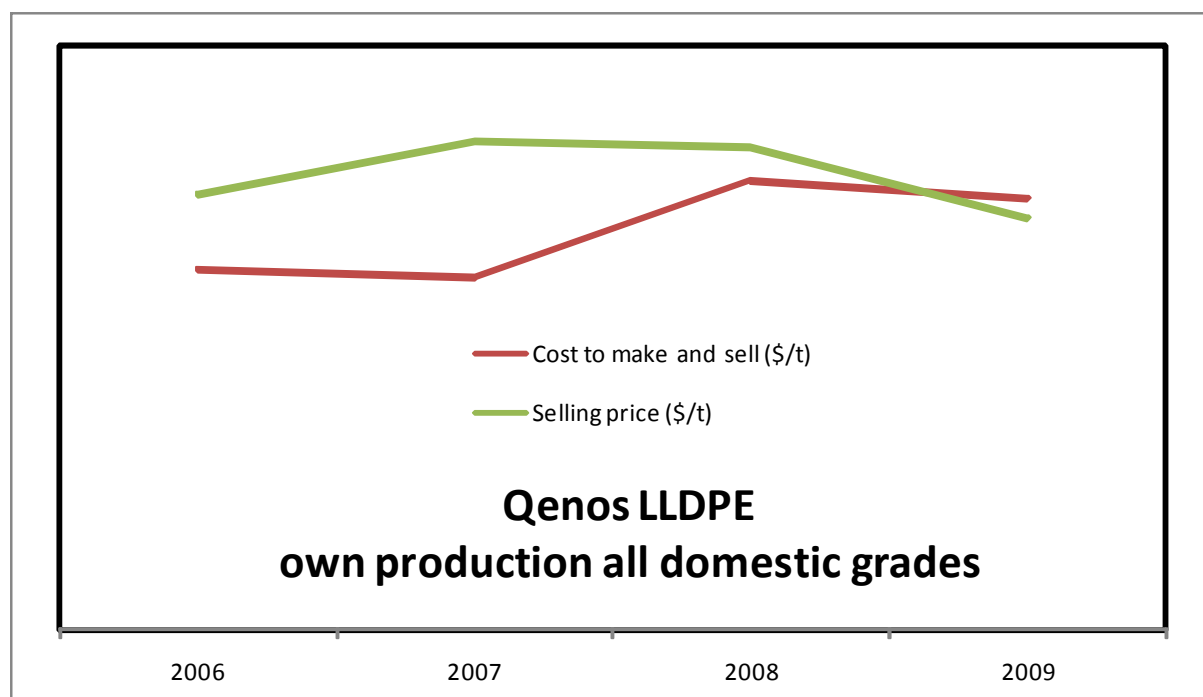
Customs and Border Protection did not conduct a price undercutting analysis as imports from Indonesia have been at very low levels and have ceased from May 2008.

In addition none of the importers of LLDPE from Indonesia provided information to the inquiry.

### 8.4.2 Prices and costs

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

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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 the previous inquiry.

As mentioned in section 6.3 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.

In its report 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'<sup>14</sup>. 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

<sup>14</sup> Trade Measures Report No. 146 at page 47.

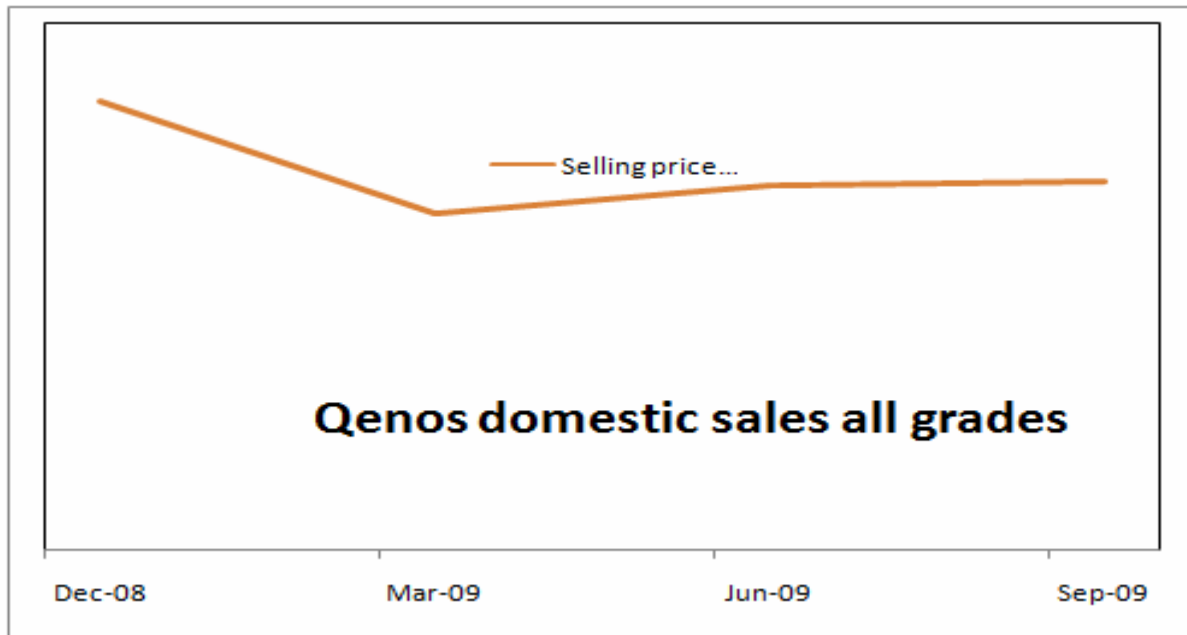
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# PUBLIC RECORD

timing of the change distorted the CTMS trends during the investigation period (1 January 2008 to 31 March 2009).

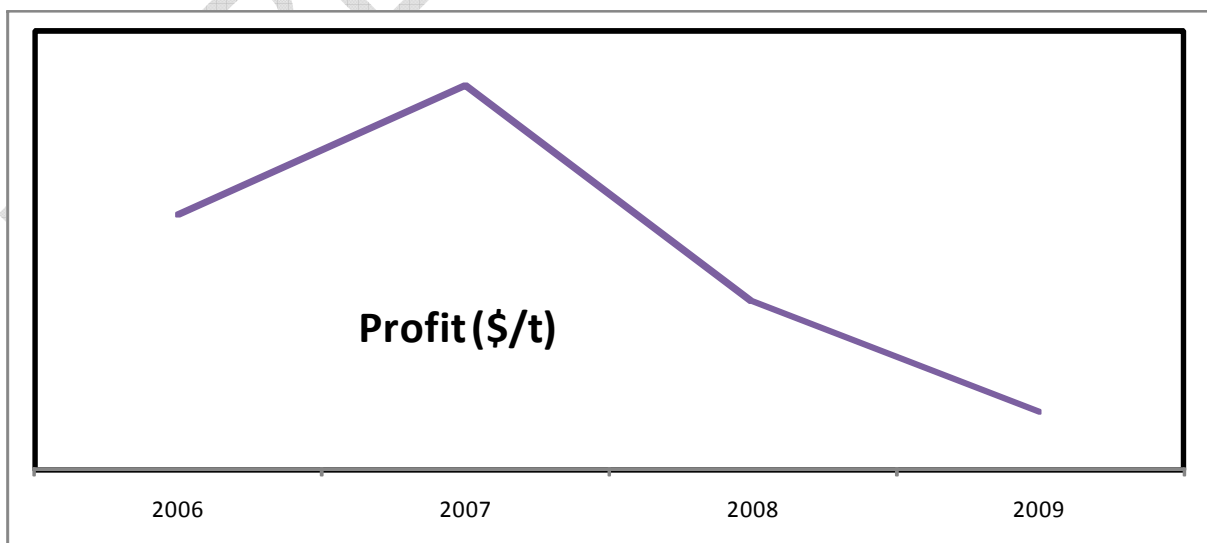
Customs and Border Protection considered that the GFC was more likely the cause of the price suppression and depression experienced by Qenos than imports from the USA and Canada.

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

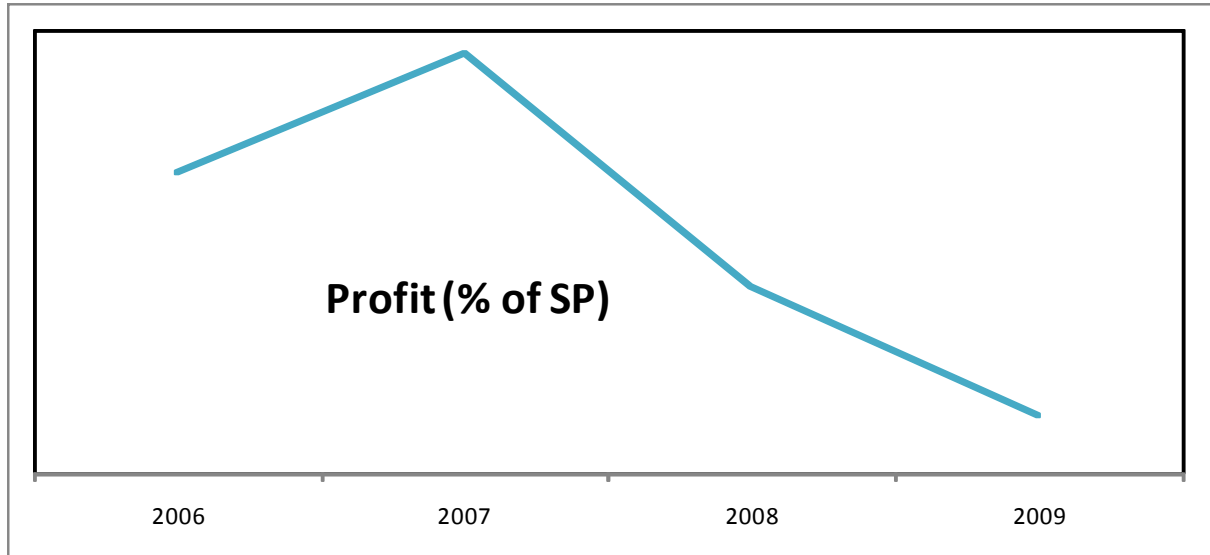


## 8.5 Profits and profitability

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 chart.



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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 previous inquiry.

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

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## 9 LIKELIHOOD OF DUMPING OR MATERIAL INJURY CONTINUING OR RECURRING

### 9.1 Preliminary findings

Customs and Border Protection considers that, if anti-dumping measures applying to LLDPE from Indonesia were allowed to expire:

- exports of LLDPE from Indonesia to Australia may resume but if they do there is no evidence to suggest that they will be in large volumes;
- if those exports of LLDPE from Indonesia resume, Customs and Border Protection is not satisfied that it is likely these exports will be at dumped prices;
- Customs and Border Protection is not satisfied that it is likely that material injury would continue or recur.

On the basis of information currently before it, Customs and Border Protection therefore makes a preliminary finding that it 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.

### 9.2 Claims by interested parties

#### 9.2.1 The Australian industry

Genos made the following claims in its application and subsequent submissions.

##### Are LLDPE imports from Indonesia likely to be dumped?

- The shift in demand for polymers (including LLDPE) in the second half of 2008 has led to excess capacity for all polyethylene producers. Reduced production volumes provide an impetus for producers to sell at distressed prices.
- Globally traded prices in September 2009 are now 25% below the prices at the same time in 2008.
- The Australian LLDPE market contracted from the end of 2007 in response to the reduced demand for roto-moulding grades of LLDPE and the onset of the GFC has impacted all suppliers in all polymer markets, LLDPE included.
- The freedom of exporters to adjust prices to the conditions of a particular market when unconstrained (by anti-dumping measures) is reflected in a commentary in an newsletter in relation to LLDPE sales for the Asia Pacific region that stated "Some traders in east China, Thailand and Indonesia said that in order to minimize their risks in the current downtrend, they had struck agreements with their suppliers to revise prices to match prevailing market levels when cargoes arrived."

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- In the absence of antidumping measures it is likely that Indonesian exporters would price according to the lowest selling prices on the Australian market in order to secure volumes.
- The current economic conditions which involve reduced demand and underutilised production facilities will contribute to increased likelihood of dumping to maximize sales volumes from facilities with low capacity utilisation rates.

## Indonesian normal values

- In a submission of 23 November 2009, Qenos provided what it said was pricing of LLDPE sold in Indonesia in 2008 and 2009. The information on domestic prices was not supported by any documentary evidence.
  - Prices from a producer for June to November 2009 were in the range of US\$ 1250-1300 per metric tonne (mt).
  - Prices from a local distributor ranged from US\$ 1250-1300 mt to US\$1350 mt from March to October 2009.
  - Prices from another distributor were US\$1,475-1550 mt for deliveries in October and November 2009 respectively.
  - All prices were delivered to customer.

## Indonesian exports and export prices

- Qenos provided export data from a trade statistics reporting service, TradeData, to show that exports of LLDPE from Indonesia have continued since 2005. Customs and Border Protection considers that exports of LLDPE have ceased since May 2008 and disagrees that they have continued into 2009. This is discussed further in section 9.3.1.
- The Qenos submission of 23 November 2009 noted LLDPE prices of an Indonesian trader for October to December 2009 at US\$1,105 CNF (cost and freight) that Qenos claimed appeared to reflect reduced demand and “distressed” prices. Customs and Border Protection does not consider the “trader prices” are reliable. This is discussed further in section 9.4.1.

## Distribution links in Australia

- TradeData export data indicates that an Indonesian exporter (or exporters) has maintained distribution links to the Australian market and continue to export to Australia.
- Indonesian exporters have continued to supply the Australian market with LLDPE into 2009 contrary to an article published in the Jakarta Post that indicated Indonesian exporters would exit the Australian market following the review of the measures in June 2008.

## Exporters' capacity

- Indonesian producers possess surplus capacity for LLDPE which can be exported to Australia. Qenos did not provide any evidence of surplus capacity of the Indonesian exporters.

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## Will material injury continue or recur due to imports of LLDPE from Indonesia?

### The Australian market

- Qenos referred to Trade Measures Report No 137 (continuation inquiry into LLDPE exported from Korea and Thailand) where the Australian market was estimated at approximately 160,000 MT in 2004. Qenos claimed the market grew to 220,000 MT in 2007 before returning to 2004 levels in 2008.
- Qenos claimed that the Australian market contracted from the end of 2007. Exporters that had enjoyed increased sales volumes on the Australian market during 2007 sought to maintain market share and position in the Australian market, resulting in dumping and material injury to the Australian industry.
- Imports from Canada and the USA improved market share at Qenos' expense during 2008. Qenos considers that it lost market share to imports at dumped prices and has sought remedies to address the injurious imports.
- Qenos understands that imports account for approximately 40-45% of the Australian market in 2008/09 though Indonesian imports have been in relatively small volumes in the last three years.

### The Australian industry

- Qenos claimed it has experienced material injury during 2008, continuing into 2009. Qenos also claimed that the decline in profits and profitability in 2008 and 2009, compounded by the effects of the GFC, have placed it in a vulnerable position. The impact of any further dumping will cause additional material injury.
- The performance of industry over the period prior to its application for this continuation is relevant as an industry that has experienced a decline in profits and profitability, reduced sales volumes and lost market share, has a far greater exposure to any future material injury from dumping than an industry that can be described as healthy.
- Qenos is vulnerable to any detrimental impacts of dumping that may occur in the short to medium term (i.e. 1 to 3 years).
- Qenos considers the conclusion in Trade Measures Report No. 95 that saw the measures continued against Indonesia in 2005 are again relevant in the present circumstances. These conclusions were:
  - exporters could re-establish supply channels for LLDPE;
  - importers can switch sources of imports to take advantage of lower prices;
  - Indonesian exporters possess surplus capacity;
  - the price sensitivity of the market for LLDPE suggests that even a small movement in sales volumes, prices and /or costs would impact the economic performance of Qenos.

### **9.2.2 Exporters and importers**

Customs and Border Protection did not receive any submissions to the inquiry from exporters and importers.

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## 9.3 Are exports likely to continue or resume

### 9.3.1 Exports to Australia since the last continuation inquiry

As noted in section 7 above, exports of LLDPE from Indonesia have been at negligible volumes since the previous inquiry (July 2005) and have 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.

The article in the Jakarta Post 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 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.

Genos claimed that export data from TradeData showed that exports of LLDPE from Indonesia continued into 2009.

Customs and Border Protection examined the TradeData export information provided by Genos in its application and compared this information to its database for imports of LLDPE from Indonesia.

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 from TradeData.

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

On the basis on information before it, Customs and Border Protection considers that exports of LLDPE from Indonesia ceased from May 2008.

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.

### 9.3.2 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. 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.



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However, information on the internet<sup>17</sup> 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 forecast capacity utilisation to increase if expected increases in ethylene production facilities come online with the aim of the producers to increase the capacity utilisation to reduce the dependence on imports.

Customs and Border Protection considers that the available evidence, including the reliance on imports, points to the capacity of the Indonesian producers being underutilised due to raw material shortages.

Customs and Border Protection considers that the available evidence points to Indonesian producers having spare capacity with the producers focused on supplying the Indonesian domestic market.

## 9.3.5 Summary

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.

## 9.3.6 Preliminary finding: likelihood of exports continuing or recurring

Exports of LLDPE from Indonesia since the previous inquiry have continued to Australia, though at negligible levels and ceased from May 2008. The available evidence shows that exports ceased from May 2008 due to the review of the measures being conducted at that time.

Customs and Border Protection's preliminary finding is that, if anti-dumping measures expire, exports of LLDPE from Indonesia will recur, but Customs and Border Protection considers that there is no evidence indicates that these exports would be in large volumes to Australia.

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

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## 9.4 What is the likelihood of dumping continuing or recurring?

### 9.4.1 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 response was received from exporters in relation to domestic pricing in Indonesia.

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

Customs and Border Protection does not consider the TradeData pricing 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 of 23 November 2009 that noted an Indonesian trader offering LLDPE at US\$1,105 CNF for October to December 2009. The company named in 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.

As noted in section 9.2.1 Qenos 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.

Customs and Border Protection was not able to find evidence to substantiate the LLDPE pricing provided by Qenos.

Qenos did not provide any calculations or information on dumping margins in its submissions.

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 from its database since July 2005. The information shows that there were no importations of the goods after the June 2008 quarter.

Analysis of these export prices on a weighted average quarterly basis shows that the export prices of the goods from Indonesia were higher than the normal values, export prices and non-injurious prices (NIP) in place since the period from July 2005 to May 2008.

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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.

Customs and Border Protection notes the claim by Qenos 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. Export volumes by Indonesian producers also remained at negligible levels. This evidence negates the claim by Qenos of Indonesian exporters reducing prices to secure volumes.

## **9.4.2 Anti-dumping actions by other authorities**

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

Customs and Border Protection did not identify any other countries that had anti-dumping measures in place against LLDPE exported from Indonesia.

## **9.4.3 Summary**

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.

## **9.4.4 Preliminary finding: likelihood of dumping continuing or recurring**

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.

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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.

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.

Therefore, Customs and Border Protection has made a preliminary finding 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.

## **9.5 What is the likelihood of injury continuing or recurring?**

### **9.5.1 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 9.4, 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.

### **9.5.2 The Australian market**

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

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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 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 to what it was since 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.

### 9.5.3 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.

### 9.5.4 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.

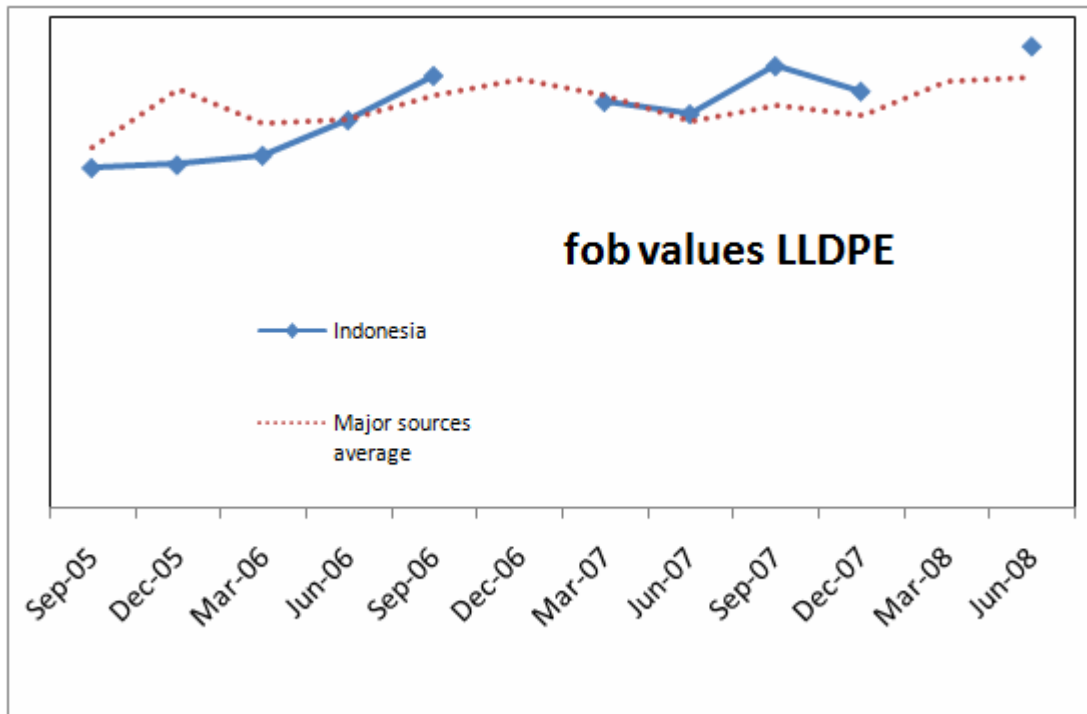
The following chart compares the fob values of LLDPE from Indonesia to fob values from major sources and indicates that at times the Indonesian imports have been price competitive in the Australian market.

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

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

## 9.5.5 Comparison of non-injurious prices and export prices

Genos 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.

Genos 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 where 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 available evidence to show that future exports may be injurious if the anti-dumping measures were to expire.

## 9.5.6 Summary

Customs and Border Protection found that:

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- 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 previous inquiry;
- the main sources of imports come from a number of countries
- imports from Indonesia have been at negligible levels since the previous inquiry; and
- imports of LLDPE from Indonesia have mainly been at a non-injurious price to the Australian industry.

## **9.5.7 Preliminary finding: likelihood of injury continuing or recurring if the anti-dumping measures were to expire**

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 since the previous inquiry.

However, the available evidence does not point to the likelihood of injury to the industry continuing or recurring if the anti-dumping 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 makes a preliminary finding 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.