

PUBLIC RECORD



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

**TRADE MEASURES
CONSIDERATION REPORT NO. 152**

**APPLICATION FOR CONTINUATION OF
ANTI-DUMPING MEASURES**

Linear Low Density Polyethylene

exported from the Republic of Indonesia

6 October 2009

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1. Summary and recommendation

We have considered an application from Qenos Pty Ltd (Qenos) for the continuation of anti-dumping measures that apply to Linear Low Density Polyethylene (LLDPE) exported to Australia from the Republic of Indonesia (Indonesia).

We are satisfied that the application complies with section 269ZHC of the *Customs Act 1901* (the Act)¹. We are also satisfied that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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.

Accordingly, we recommend that Customs and Border Protection publish a notice indicating that it will inquire into whether the continuation of the anti-dumping measures is justified.

2. Background

2.1 Previous LLDPE investigations involving 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 on all other exporters of LLDPE from Indonesia. These measures were imposed in July 2000 by the then Minister responsible for Customs 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 in substitution for the lapsed undertaking.

A review of the anti-dumping measures was subsequently undertaken and was 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 from Indonesia were revised, and the revised measures remain in place today.

The measures are due to expire on 19 July 2010 in relation to PENI, and 27 July 2010 for all other exporters.

2.2 Current investigation concerning alleged dumping of LLDPE from Canada and the USA

An investigation is currently underway in relation to the alleged dumping of exported to Australia LLDPE from Canada and the United States of America (USA). Certain information that was gathered in relation to that investigation has been found to be relevant to our consideration of the application for continuation of measures in relation to LLDPE from Indonesia. In such instances, we have referred to the particulars of information we had regard to.

¹ All references to legislation are, unless otherwise specified, references to the *Customs Act 1901*.

2.3 Background to the current application

On 17 July 2009 Customs and Border Protection published a notice in *The Australian* newspaper. This notice was issued in accordance with s 269ZHB of the Act and invited certain persons to apply to the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) 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 on LLDPE exported from Indonesia. The application was lodged in accordance with s. 269ZHC(2) of the Act.

The legislation requires the CEO to examine the application and decide whether to reject, or not to reject, the application. The legislation specifies the matters to be considered in relation to an application. These matters are:

- *whether the application complies with section 269ZHC; and*
- *whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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.*

If the CEO is not satisfied in respect of each of these matters, the application must be rejected. If the CEO decides not to reject the application, the CEO must publish a notice indicating that it is proposed to inquire whether continuation of the anti-dumping measures is justified.

These matters are examined in the following sections of this report.

3. Goods, like goods and Australian industry

3.1 The goods subject to the 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.

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

3.2 Australian industry producing like goods

Qenos is the sole manufacturer of LLDPE in Australia and operates production facilities at Botany (Sydney) and Altona (Melbourne). Qenos states on its website that it currently produces approximately 120,000 tonnes of LLDPE resin annually.

Since the last continuation inquiry there has been a change in ownership structure at Qenos. Qenos states in its application that:

In 2006, China National Chemical Corporation (ChemChina) became the sole shareholder of Qenos Pty Ltd. In 2008, Qenos was included in a joint venture between ChemChina and the Blackstone Group – the China National Bluestar (Group) Corporation (“Bluestar”). Bluestar is the sole shareholder of Qenos Pty Ltd.

Having regard to the application, to previous investigations, and to the investigation currently on hand concerning alleged dumping of LLDPE from Canada and the USA, we consider it is reasonable to conclude that Qenos continues to be the sole Australian manufacturer of LLDPE and that it produces like goods to the imported LLDPE.

3.3 Australian market

Information on the Australian market has been compiled after considering information contained in the application, previous Trade Measures reports, the Customs and Border Protection commercial database, and the current investigation in relation to LLDPE from Canada and the USA.

The Australian market is supplied by Qenos and imports from a number of countries. The applicant noted that Customs estimated the Australian market in 2004 at approximately 160,000 tonnes per annum and it explained that the market size, after growing in 2007, returned to the 2004 levels in 2008. Qenos has augmented its local production with imported LLDPE.

The applicant stated that LLDPE exported to Australia from Indonesia in the last three years has been in relatively small volumes. We considered the information available including that in Customs and Border Protection commercial import database and consider that imports from Indonesia have been small and sporadic since early 2006.

4. Compliance with s.269ZHC

Section 269ZHC(1) specifies that an application under s 269ZHB must:

- (a) be in writing;
- (b) be in an approved form;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Sections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

The application lodged by Australian industry satisfies the requirements of s 269ZHC.

The applicant also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version adequately reflects the reasons for seeking continuation of the measures.

5. Consideration of reasonable grounds

This section of the report examines whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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.

We have assessed the claims of Qenos under three broad headings that accord with the structure of its application:

- Is it likely that imports from Indonesia will increase?
- Are LLDPE imports from Indonesia likely to be dumped?; and
- Will future imports of LLDPE from Indonesia cause injury, or threaten to cause injury to the Australian industry?

5.1 Is it likely that imports from Indonesia will increase?

The applicant claims that the factors relevant to the Customs and Border Protection recommendation to continue anti-dumping measures in 2005 are similarly evident at the time of this application. In particular, the applicant stated that:

- Indonesian exports of LLDPE to Australia have continued since 2005, indicative that an Indonesian exporter (or exporters) has maintained distribution links on the Australian market;
- The effectiveness of the anti-dumping measures has been to hold Indonesian export volumes to Australia at relatively low levels;
- The shift in demand for polymers (including LLDPE) has led to excess capacity for all polyethylene producers and reduced production volumes provide an impetus for producers to sell at distressed prices (noting that globally traded prices in September 2009 are now 25 per cent below prices evident at the same time in 2008).

Assessment

We noted in the Customs and Border Protection import database that exports of LLDPE from Indonesia to Australia have continued in recent years, albeit at relatively low volumes. It appears that the reduced volumes since 2000 have had a degree of correlation to the existence and level of anti-dumping measures.

During the course of the current investigation into alleged dumping of LLDPE from Canada and the USA, Customs and Border Protection has noted the rise of global LLDPE prices in late 2008 after which a rapid and significant decline in prices was evident.

While the applicant did not identify any direct evidence that indicates Indonesian exporters have any significant under-utilised capacity it is reasonable to expect the global economic downturn may have resulted in such a position. Given the previous and existing distributions channels to the Australian market for Indonesian LLDPE, along with its geographical proximity, it is reasonable to expect Indonesian LLDPE may, in the absence of anti-dumping measures, be directed to the Australian market.

5.2 Are LLDPE imports from Indonesia likely to be dumped?

The applicant stated that contrary to media reports following the last review of anti-dumping measures indicating Indonesian producers would exit the Australian market, the Indonesian exporters continued to supply the Australian market into 2009.

The applicant claimed that the Australian market has contracted in response to the global financial crisis and the reduced demand for roto-moulding grades of LLDPE which were supplied for water tank manufacture. It further stated that exporters sought to maintain market share and position in the Australian market which resulted in dumping and material injury to the Australian industry. The applicant refers to its claims of market share being lost to LLDPE imports from Canada and the USA, noting it has sought remedies to address the injurious nature of these imports. Qenos makes the point that material injury sustained is further compounded in a contracting market.

The applicant claims that exporters have freedom to adjust prices to the conditions of a particular market when unconstrained, and it draws on a ICIS newsletter quote for support.² Qenos claims it is likely that Indonesian exporters would, given excess capacity, price according to the lowest selling prices on the Australian market in order to secure volumes.

Assessment

As stated earlier, we observed continued exports of LLDPE to Australia, despite the anti-dumping measures in place, albeit in relatively small volumes.

We acknowledge that, when faced with excess capacity, some manufacturers may choose to sell into markets at dumped prices. Indeed this may be an economically viable decision that contributes to fixed costs and a firm's bottom line. It may also be considered necessary in order for the manufacturer to compete with prices in a depressed market. That said, we note the applicant did not attempt to quantify a contemporary normal value, nor attempt to assess any current or recent dumping of LLDPE from Indonesia. We also note the applicant did not identify whether LLDPE from Indonesia was subject of any other anti-dumping measures from other countries.

Customs and Border Protection found during its recent visit to Qenos for the purpose of the current investigation in relation to LLDPE from Canada and the USA that prices for LLDPE sold by Qenos in the investigation period (1 January 2008 to 31 March 2009) were depressed and suppressed.

Given the possibility of excess capacity for the Indonesian exporters, and the suppressed state of prices in the Australian market in recent times, it is reasonable to expect that, in the absence of anti-dumping measures, Indonesian exporters may export LLDPE at dumped prices to be competitive in the Australian market.

5.3 Will future imports of LLDPE from Indonesia cause injury, or threaten to cause injury to the Australian industry?

Qenos claimed that the decline in its profits and profitability in 2008 and 2009, compounded by the effects of the global financial crisis, have placed it in a very vulnerable position.

² Qenos application, p.7

It considers that the factors warranting continuation of anti-dumping measures in 2005 are again relevant in present circumstances, namely:

- exporters could re-establish supply channels relatively quickly;
- Importers can switch to imports to take advantage of lower prices with relative ease;
- Indonesian exporters possess surplus production capacity of LLDPE;
- Indonesian exporters have the capacity to undercut the Australian industry's selling prices; and
- The price sensitivity of the market for LLDPE suggested that even a small movement in sales volumes, prices and/or costs would impact the economic performance of the Australian industry.

In addition, Qenos notes that, prior to the imposition of anti-dumping measures, imports of LLDPE from Indonesia held a market share that was not negligible.

The applicant claims that the price sensitivity of the market for LLDPE is such that any future dumping and material injury likely to emerge as a result of permitting anti-dumping measures to expire, will undoubtedly result in a recurrence of material injury to the Australian industry.

Assessment

We note that during the course of the investigation into alleged dumping of LLDPE from Canada and the USA, that the Qenos profits and profitability in the investigation period (1 January 2008 to 31 March 2009) were lower than in the two preceding years.

We note that some distribution channels for Indonesian LLDPE have been maintained in the Australian market. We also consider that many LLDPE users can change relatively easily from one supplier to another. Further, we consider that the relatively high degree of price sensitivity for LLDPE has been demonstrated in previous investigations and it is likely that parties considering a purchase of LLDPE will consider price competitive offers, whether or not the product is dumped. In the context of this price sensitivity it seems reasonable to conclude that future dumping may cause material injury to the Australian industry.

6 Conclusion and recommendation

The application lodged by Australian industry satisfies the requirements of s 269ZHC of the Act.

The legislation also requires that the CEO make an assessment whether:

“there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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.”

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Having regard to the forgoing claims and available evidence, we consider there is reasonable grounds for the applicant to assert that the expiration of the anti-dumping measures might lead, or might be likely to lead to:

- increased exports of LLDPE from Indonesia;
- exports of LLDPE from Indonesia being at dumped prices; and
- material injury to the Australian LLDPE industry caused by exports of LLDPE from Indonesia at dumped prices.

Accordingly, we recommend that you as delegate of the CEO decide to accept the application. Thus, In accordance with s 269ZHD(4) of the Act you will need to publish a notice indicating that it is proposed to inquire into whether continuation of the measures is justified.

Denis O'Dea
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Operations 3
Trade Measures Branch

October 2009

Rod Jones
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Operations 1
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October 2009