

# **PUBLIC FILE**

Linear-Low Density Polyethylene (LLDPE) exported from Canada

Consideration of an application for dumping duties

8 November 2004

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## 1. INTRODUCTION

On 20 September 2004 Qenos Pty Ltd (Qenos) submitted an application requesting that the Minister for Justice and Customs (Minister) publish a dumping duty notice in respect of linear-low density polyethylene (LLDPE) exported to Australia from Canada. The applicant provided additional information at various times following that date, the last being received on 20 October 2004.

Anti-dumping measures currently apply to exports of LLDPE from Indonesia, the Republic of Korea and Thailand.

Section 269TC(1) of the *Customs Act 1901* specifies that three matters must be considered in making a decision to reject the application. These matters are that:

- the application complies with s. 269TB(4);
- there is, or is likely to be established, an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods.

## 2. THE IMPORTED GOODS

The applicant identifies the goods as classified to subheading 3901.10.00, statistical code 01 of the *Customs Tariff Act 1995*. The applicant also notes that some LLDPE is entered under subheading 3901.90.00, statistical code 06, depending on polymer content. The rate of duty is nil for Canada.

The applicant describes the goods as follows:

*The imported product the subject of this application is linear-low density polyethylene (LLDPE), in various grades, in a pelletised form, with a density of less than 0.94 grams per cubic centimetre.*

*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 (C8).*

*LLDPE is produced by the polymerisation of ethylene gas with the co-monomers identified above, in the presence of various catalysts at controlled pressures and temperatures.*

Qenos has supplied contact details for producers and importers at section B-1.4 of the application.

Quarterly import volumes for the September 2003 to June 2004 quarters were analysed to assess the % volume of imports (**Customs Confidential Attachment 1**). The volume of total exports from Canada was greater than 3% of total imports during the examination period. Substantial volumes were also exported to Australia from other countries, XXX of whose volumes are greater than that of Canada.

An owner/supplier matrix of the volume of exports from Canada for the period 1 July 2003 to 30 June 2004 from Customs Commercial Database (CCDB) can be seen at **Customs Confidential Attachment 2**.

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### 3. COMPLIANCE

Section 269TB(4) requires that the application:

- ❑ be in writing;
- ❑ be in an approved form;
- ❑ contain such information as the form requires;
- ❑ be signed in the manner indicated in the form; and
- ❑ be supported by sufficient part of the domestic industry.

#### 3.1 THE APPLICANT

The applicant is Qenos, the sole manufacturer of LLDPE in Australia. Qenos is a joint venture company owned by Orica Investments Pty Ltd (50%) and ExxonMobil Chemical (50%).

#### 3.2 LIKE GOODS

Qenos describes its product 'like' to the imported goods as:

*Qenos manufactures hexene LLDPE. The Qenos facility does not produce butene or octene LLDPE.*

*Qenos, however, does produce two equivalents which compete directly with imported butene and octene LLDPE. These equivalents include:*

- (i) "butene-fighter" LLDPE which competes directly with imported butene LLDPE copolymers; and*
- (ii) Qenos C6 LLDPE which competes directly with the imported range of LLDPE (i.e. C4, C6 and C8); and*
- (iii) C6 LLDPE blended with imported metallocene LLDPE.*

In previous investigations relating to LLDPE, Trade Measures Reports No. 8 and No. 67, Customs found that the LLDPE produced by the Australian industry was like goods to the imported goods. In Trade Measures Reports No. 67 Customs concluded:

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

In the current application Qenos claims that

*The essential characteristics of imported goods from the countries nominated in this application are no different to those of the imported goods nominated in previous applications. Similarly, the characteristics of LLDPE manufactured by Qenos at the time of this application are, essentially, the same as the characteristics of LLDPE manufactured by Orica in 1998 and Qenos in September 2002.*

Based on previous investigations and the applicant's current claims, the LLDPE produced by Qenos can be considered to be like goods to LLDPE exported to Australia from Canada.

#### 3.3 AUSTRALIAN PRODUCTION

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Qenos is the sole Australian producer of LLDPE. Australian production from 1 January 2000 to 30 June 2004 has been provided quarterly at Appendix A-6 to the application. Production volumes provided at Appendix A1 agree with volumes reported in Appendix A-6.

### **3.4 CONCLUSION**

Based on the evidence provided in the application and the findings of previous investigations, I am satisfied that there is an Australian industry and the goods produced in Australia are "like goods" to the goods the subject of the application.

## **4. SUPPORT FOR THE APPLICATION**

Section 269TB(6) requires that the application be supported by a sufficient part of the Australian industry. The application is taken to be supported by a sufficient part of the Australian industry when the person(s) who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 per cent of the total production or manufacture of like goods by that part of the Australian industry that have commented; and
- account for not less than 25 per cent of the total production or manufacture of like goods in Australia.

As Qenos is the sole manufacturer of LLDPE in Australia, the support criteria are satisfied.

Based on my examination of the evidence supplied, I am satisfied that the application is supported by sufficient part of the Australian industry.

## **5 REASONABLE GROUNDS**

The application must include reasonably available evidence of dumping, material injury and causal link. The evidence must be such that an objective and unbiased investigating authority, looking at the facts before it, could properly determine that there is sufficient evidence of dumping, injury and causal link. Simple assertion, unsubstantiated by relevant evidence, is not considered sufficient to initiate an investigation.

## **6 MATERIAL INJURY**

### **6.1 PREVIOUS APPLICATIONS**

Customs completed its most recent investigation into LLDPE in July 2003, resulting in measures being imposed on LLDPE from Korea and Thailand, except for exports by Hyundai Petrochemical Co. from Korea which were found not to be dumped. Details of the investigation can be viewed in Trade Measures Report No. 67. Measures are also currently applicable to LLDPE from Indonesia, except for exports by PT Petrokimia Nusantara Interindo from whom a price undertaking has been accepted. Details of that investigation can be viewed in Trade Measures Report No. 8.

### **6.2 APPLICANT'S CLAIMS**

From sections A8 and A9 it appears that Qenos is claiming injury in the forms of:

- lost volume;

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- ❑ lost market share;
- ❑ price undercutting;
- ❑ price suppression; and
- ❑ reduced profit and profitability.

Genos claims material injury from Canada commenced in July 2003 but that material injury from dumping has continued unabated since the commencement of the investigation period of the last investigation (ie since the December 2001 quarter).

### 6.3 INDUSTRY DATA CONTAINED IN APPENDICES TO THE APPLICATION

Appendix A-1: Australian Production - Information agrees with production tonnes reported in Appendix A-6.1.

Appendix A-2: Australian Market – Genos has supplied data for all quarters 1 July 1999 to 30 June 2004. Genos volume and sales value data agrees with Appendix A-3 and A6.1 from the March 2003 quarter onwards. Customs has used data from Appendix A6.1 and CCDB to establish the Australian market to June 2004.

Appendix A-3: Sales Turnover - Genos has supplied data for all quarters 1 July 1999 to 30 June 2004. Genos volume and sales value data agrees with Appendix A-2 and A6.1 from the March 2003 quarter onwards. Customs has used Appendix A6.1 for sales turnover.

Appendix A-4: Domestic Sales – Genos has provided sales data, including rebates and discounts, for the period 1 July 1999 to 30 June 2004.

Appendix A-4 volume and sales value data does not agree with Appendix A6.1 from the March 2002 quarter onwards. Genos noted that some adjustments would be required in order to align the data. The difference between the appendices is minimal however and does not affect injury assessment. Customs has used data from Appendix A4 and A6.1 as appropriate.

Appendix A-5: Sales of other production – Appendix A-5 has been completed. Data matches that reported in Appendix A2 and A4 apart from minor variation in some quarters.

Appendix A-6.1: Cost to Make and Sell (CTMS) & Profit - Domestic sales – data required by Appendix A6.1 was provided in the format adopted by Customs during the last LLDPE investigation (hereafter referred to as Appendix A6). Comparisons with other appendices are described above. Customs has used the Appendix A6 data as the basis for injury analysis.

A modified version of Appendix A6 was provided which claims to remove injury attributable to factors other than dumping. This version of Appendix A6 has been used as the basis for causation examination and is discussed in section 8.2.

Appendix A-6.2: CTMS & Profit - Export sales – Genos has not supplied a separate Appendix 6.2. Export sales data is separately identified in Appendix A-6.

A comparison of data provided in each of the appendices by Genos is contained in **Confidential Attachment 3**. The comparison outlines the differences between the appendices in absolute and percentage terms. The discrepancies are not considered sufficient to distort analysis.

Index data in the application covering Genos' sales, costs and profits appears to have been calculated using Appendix A6 data rather than Appendix A2 or A3 data. On this basis, index calculations appear to be correct, apart from minor discrepancies in the indices of cost, price,

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profit and profitability variation for 2003 and 2004 ytd. The size of these discrepancies is not considered to be significant.

### 6.4 VOLUME EFFECTS

Qenos claims that imports from Canada began to emerge in significant volume from July 2003.

#### Assessment

The Australian market has been examined at **Customs Confidential Attachments 4 and 5**. Due to Qenos' claims that the source of supply has 'switched' to Canada since the imposition of measures since the last investigation, Korea and Thailand have also been separately identified.

An examination of the data at **Customs Confidential Attachment 4** indicates that since the June 2003 quarter (the last quarter prior to alleged injury from dumping from Canada) Qenos' sales volumes have been higher than those achieved prior to the commencement of injury in the last investigation (ie pre December 2001 quarter) although in the June 2004 quarter volume has XXXXXXXXXXXXXXXXXXXX.

The total market for LLDPE has grown from approximately XXX tonnes in the year to 30 September 2001 (the last year prior to injury from dumping) to XXX tonnes in the year to 30 June 2004 (the period of alleged injury from dumping from Canada). Analysis of the data at **Customs Confidential Attachment 5** shows that Qenos' market share in the year to 30 June 2004 is below that achieved in the 12 months to 30 September 2001.

The volume and market share of imports from Canada have increased, whilst imports from XXX have decreased since the March 2003 quarter. Imports from XXX have remained fairly steady, whilst imports from other sources have increased.

As noted in subsequent sections relating to causal link, production and sales were affected by factors other than dumping.

### 6.5 PRICE EFFECTS

#### 6.5.1 PRICE UNDERCUTTING

Qenos claims that prices of imported LLDPE from Canada have undercut its prices to several major customers. No evidence of actual prices of Canadian LLDPE in the market was provided in the application to support this claim, with Qenos claiming that market intelligence has been difficult to obtain following the imposition of provisional measures in June 2003.

In order to construct an estimated market price for Canadian LLDPE, Qenos has used ABS import data on CIF prices. Only values reported under sub-heading 3901.90.00 statistical code 06 have been included by Qenos in its calculations, as individual country data under sub-heading 3901.10.00 statistical code 01 is not available from the ABS. Qenos has then applied a mark-up to the CIF prices covering onshore costs and trader commission.

Qenos has used its constructed market prices to compare to its selling prices to two of its customers (XXXXXXXXXXXX). Its analysis indicates no price undercutting in the last two quarters of 2003, but price undercutting in the first two quarters of 2004.

Qenos noted that the calculated marked up CIF prices for Canada appear to be higher than Qenos' selling prices in the last two quarters of 2003. Qenos claims that actual selling prices of LLDPE were lower than those calculated from CIF prices and that they were still undercut and

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lost volume in those quarters. Qenos claims that market prices of imported Canadian LLDPE must have been lower than those offered by Qenos as it was not able to secure volumes from customers previously supplied by dumped Thai product after the imposition of provisional measures in June 2003. Qenos provided documentation which indicated prices offered to one customer (XXXXXXXXXXXX) which resulted in no sale. Qenos also noted that it had lost sales to another major customer XXXXXXXXXXXXXXXXXXXXXXXXXXXX which it has not been able to recover, and believes that this customer has also been lost because of undercutting of its prices by imported Canadian LLDPE, based on increased volumes of Canadian imports XXXX

Qenos calculated that if prices were at or below the Qenos price, but imports were purchased at the CIF prices indicated in ABS statistics, then sales in the Australian market by Canadian importers in the September 2003 quarter must have been made at a loss (ie sales dumping).

### Assessment

In order to check the undercutting claims by Qenos, export prices from the CCDB (which covered import information for both tariff sub-headings) were marked up using the same markup used by Qenos. The markup used by Qenos, on reviewing information from the previous LLDPE investigation, appears to be reasonable. These constructed market prices were compared to average net selling prices from sales transactions data provided in Confidential Appendix A4 of Qenos' application for XXXX and XXXX as well as for two other significant customers which Qenos claims Canadian imports have undercut on price (XXXXXXXXXXXX). The four customers examined represent XX% of Qenos' sales over the year to 30 June 2004. This analysis is contained in **Customs Confidential Attachment 6**. The comparison based on these estimates suggests that Qenos was undercut by Canadian imports for all four customers in the June 2004 quarter and for three of the four customers in the March 2004 quarter. No undercutting was apparent in the last two quarters of 2003.

While there was no undercutting evident in the last two quarters of 2003, examination of Qenos' prices and CIF values from Canada at that time shows that if the Canadian product were being sold at or below Qenos' price, then sales of Canadian product would have been sold at a loss (ie sales dumping has occurred) in the Australian market.

### 6.5.2 PRICE DEPRESSION

Price depression occurs when for some reason an industry lowers its selling prices.

Qenos has not specifically claimed injury from price depression. As identified in previous investigations, the major driver of LLDPE prices is the price of ethylene, the main raw material. The price of ethylene may fluctuate within a broad range. Any price injury must therefore be examined in the context of movements in costs. Price movements do not, of themselves, demonstrate the existence, or lack thereof, of injury.

### 6.5.3 PRICE SUPPRESSION

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

An examination of selling prices and cost to make and sell (CTMS) is provided in **Confidential Attachment 7**. Qenos has advised that production and sales volumes and costs were significantly impacted by two events, the NSW bushfires and the Moomba gas outage in 2003 and 2004 respectively. The impact of these events are included in **Confidential Attachment 7**, where CTMS is XXXXXXXXXXXXXXXXXXXX in the December 2002 to June 2003 quarters and the March and June 2004 quarters.

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Qenos claims that the September and December 2003 quarters were “normal ebb and flow quarters for Qenos’ LLDPE business (having resumed regular production rates)”. In comparing those two quarters to the period prior to the December 2001 quarter (when injury from dumping commenced), the margin between Qenos’ costs and its selling prices has deteriorated.

### 6.5.4 LOST PROFITS AND PROFITABILITY

An examination of profit and profitability is provided in **Confidential Attachment 8**. The graphs clearly demonstrate a deterioration in profit and profitability since the commencement of injury in the December 2001 quarter.

As noted above, the impact of the NSW bushfires and the Moomba gas outage significantly affected production and costs, the effects clearly evident in the December 2002 to June 2003 quarters and the March and June 2004 quarters. However, in the September and December 2003 quarters (claimed to be normal ebb and flow quarters), profit and profitability levels are also below those achieved prior to the commencement of injury in the December 2001 quarter.

### 6.6 OTHER ECONOMIC FACTORS

Qenos provided annual information on some of the factors in Confidential Appendix A7 up to the end of 2003 only. Indices to June 2004 for some of those factors identified were provided in the text of the application. The source data used to calculate the 2004 indices does not appear to have been provided. The indices cannot be matched back to the data provided in Appendix A7.

Deterioration of other economic factors was not specifically addressed in the text of the application. Index information shows a decline in asset values, return on investment (ROI), capacity utilisation and revenue from 2001 to June 2004 YTD. An assessment of injury for other economic factors cannot be done without source data to June 2004. The source data to December 2003 at Appendix A7 appears to show a deterioration in ROI from 2001 to 2003 but insufficient evidence has been presented to substantiate this claim.

### 6.7 CONCLUSION

Based on the evidence presented it appears that injury has been suffered in the form of lost market share, price undercutting, price suppression and lost profit and profitability.

Injury in the form of lost volume is not evident.

## 7. DUMPING

### 7.1 EXPORT PRICE

Qenos has used ABS FOB export price information to calculate dumping margins. A copy of the ABS report was provided. Only values reported under sub-heading 3901.90.00 statistical code 06 have been included by Qenos in its calculations, as individual country data under sub-heading 3901.10.00 statistical code 01 is not available from the ABS.

A summary of Customs Commercial Data Base (CCDB) quarterly average FOB export prices can be viewed at **Customs Confidential Attachment 9** to this report. The export prices in the CCDB (covering sub-heading 3901.10.00 and 3901.90.00) have been utilised when considering this application - not the estimates by Qenos.



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Normal values for exports from Canada over the period July 2003 to June 2004 have been calculated on a pro-rata basis using a weighting of XX% C8 and XX% C4.

All exports over the period were compared to calculated monthly normal values on date of valuation. The valuation date approximates invoice date and is considered comparable with domestic pricing in the country of export. The time difference between date of valuation and date of entry finalisation (home consumption in Australia) was XXX days. Weighted average dumping margins are calculated in **Customs Confidential Attachment 10** and summarised in Table 1 below.

Further comparisons of export prices and normal values were done on the basis that all imports from Canada were either C4 or C8. In both instances the dumping margins were not negligible. These calculations are included in **Customs Confidential Attachment 10**.

**Table 1: Dumping margins comparison**

	Exports compared (t)	Normal value (\$A)	Export price (\$A)	Dumping margin (\$A)	Margin (% of EP)
Applicant's estimate	13,628	1,433	981	452	46.1
Customs' estimate	XXX	XXX	XXX	XXX	XXX

The comparison of the weighted average export price and the weighted average normal value resulted in dumping margins from Canada that were not negligible. Even if a level of trade adjustment were required the magnitude of margin is such that the dumping margin would still not be negligible.

## 8 CAUSAL LINK

As stated previously, it appears that Qenos is claiming injury from:

- lost volume;
- lost market share;
- price undercutting;
- price suppression; and
- reduced profit and profitability.

During the claimed injury period, Qenos appears to have suffered injury in the form of lost market share, price undercutting, price suppression and reduced profit and profitability.

### 8.1 APPLICANT CLAIMS

In reference to injury commencement and support of causal link, Qenos provided the following to support the continuation of the injury established in the previous investigation:

*The Australian industry also understands:*

- measures were imposed on LLDPE exported by CCC Chemicals, the "...marketing arm for several manufacturing companies.." in Thailand including the joint venture producer of which The Dow Chemical Company is a major shareholder;*
- a significant proportion of exports of LLDPE from Canada (and The Netherlands) have been manufactured by the Dow Chemical Company (and/or related companies);*
- importers (i.e. DCAL) involved with shipments of LLDPE from Thailand in the*

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*previous anti-dumping application have also been involved with the importation of LLDPE from Canada;*

- as was evident with imports from Thailand in the previous inquiry, DCAL's imports have again been predominantly sold into the stretch cling film segment of the LLDPE market*
- it is apparent that the import volume previously sourced from Thailand - which now attract interim dumping duties - have been substituted with imports from Canada;*
- the selling prices for imports from all source countries other than Canada have increased dramatically from the second half of 2003, whereas import prices for LLDPE sourced from Canada have remained stable (particularly in the first half of 2004) indicating customers who previously benefited from dumped Thai and Korean sourced LLDPE are continuing to benefit from dumped prices from Canada (which have been at increasingly greater margins of dumping); and*
- following the imposition of provisional measures in June 2003, imports from Canada replaced imports of Thai origin as the major source country for imported LLDPE. Prior to, and immediately following the Minister's decision to impose interim duties on imports from Korea and Thailand, CIF values from Canada can be seen to significantly undercut both Qenos prices and competitor imports from other source countries (according to competitive pricing information available to Qenos – See Confidential Attachment A-8.1). The Canadian prices have forced Qenos to reduce prices at certain customers to retain volume (e.g. XXXXXX and XXXXXX) and have also precluded Qenos from regaining market share because of the presence of dumped imports.*

*It is also apparent that other exporters in Canada (e.g. XXXXXXXXXXXX) have exported LLDPE to Australia since the imposition of measures against certain LLDPE exports from Korea and Thailand. Qenos understands that these imports have been supplied to Qenos' customer XXXXXXXXXXXX for rotomoulding applications in May and June 2004 (approximately 1800-2000 tonnes).*

*These facts indicate that this application may be described as a "country hopping" application – where parties previously involved with the importation of LLDPE from countries which attracted provisional measures, "switched" to new sources of supply for dumped LLDPE prior to the imposition of interim dumping duties.*

In the above, Qenos refers to 'country hopping'. 'Country hopping' is the practice whereby after an application is lodged, importers may change their source of supply by importing dumped goods from a company or country not covered in an investigation or by any subsequent anti-dumping measures. There is no provision within the Australian anti-dumping legislation which covers this situation although in 1992 Ministerial Advice was given regarding the general principles to be observed when such a practice occurs.

The 1992 Ministerial Advice points to the move in source happening 'reasonably quickly' because action has been or is likely to be taken against imports from existing sources. In the current application it appears that the 'switch' in source commenced soon after the imposition of provisional measures but the new sources of allegedly dumped imports were not identified to Customs for approximately 12 months after anti-dumping action had been taken.

Thus, whilst the injury established in the previous investigation is recognised, given the time elapsed since the imposition of measures, it is necessary for the Australian industry to establish that the injury from allegedly dumped imports is current – it is not sufficient to rely upon previous injury only.



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*“Following the imposition of provisional measures in June 2003 which confirmed the Australian industry’s understanding that certain exports of LLDPE from Korea and Thailand had been made at dumped prices resulting in material injury to Qenos, it was anticipated that Qenos would recover lost profit and profitability through increased sales volumes and improved margin”.*

The application then goes on to claim that Qenos’ sales volumes have declined and Canadian imports into Australia had risen markedly.

### **Assessment**

Import volumes and the shares of the market held by Qenos and by imports were examined. This examination was based on sales data provided by the applicant, and on import data obtained from CCDB. The analysis of sales volumes and market share does not make any adjustment to account for the production disruptions discussed above.

Whilst recognising that Qenos sales volume was comparatively low in the June 2004 quarter, when viewing data for the whole of the claimed injury period, no injury was found in the form of lost volumes following the June 2003 quarter. Qenos sales volumes were higher in the period following the June 2003 quarter than those achieved prior to the December 2001 quarter (the commencement of injury from dumping).

The market for LLDPE has grown since the commencement of injury from dumping. Qenos’ market share since the June 2003 quarter (the last quarter prior to alleged injury from dumping from Canada) is below that achieved in calendar year 2001.

Market share from Canada has grown since the alleged commencement of injury from Canada (the September 2003 quarter), as has the volume and market share from several other sources. While it is apparent that there has been a “switch” in sourcing of imports, it is not clear whether any market share lost by Qenos was gained by imports from Canada or whether it was gained by other sources. Market share lost by Qenos in the March and June 2004 quarters is most likely affected by lower production and sales volumes XXXXXXXXXXXX as a result of the Moomba gas outage discussed above.

### **8.4 PRICE EFFECTS**

Regarding price effects eg price suppression and profits and profitability, Qenos made the claim that since measures were imposed in June 2003, imports from Canada had substituted the large volumes of imports from Thailand. Qenos claims that while export prices for LLDPE from other source countries have increased substantially, import prices from Canada have declined and substantially undercut Qenos prices. Qenos further states that the imports from other countries have not been priced in the same aggressive manner as Canadian LLDPE imports.

In addition to the undercutting analysis provided, Qenos states that its model of CTMS and profit data adjusted to remove manufacturing disruptions demonstrates price injury attributable to dumping.

### **Assessment**

The data provided by Qenos appears to indicate injury in the form of price undercutting by importers of Canadian LLDPE. Further examination of the Qenos ‘model’ was undertaken regarding price suppression and profits and profitability.



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freight and insurance costs applicable to different countries. While it doesn't take into account importer profit (or loss), in the absence of actual or constructed prices in the market, CIF data is considered to be the best available information.

Weighted average FOB and CIF export prices are at **Customs' Confidential Attachment 16**. Over the examination period (1 July 2003 to 30 June 2004) LLDPE from six countries with significant volumes (XX), representing 47% of imports, had CIF prices lower than Canada (XX% of imports). Imports from a further source (XXX), representing 10% of imports, had CIF prices at similar levels to Canada.

Whilst recognising that overall CIF prices from some countries were lower than the overall weighted average Canadian CIF price over the examination period, it should be noted that Canadian prices in the March 2004 quarter were lower than those from most other sources, and in the June 2004 quarter were lower than those from all other sources. In addition, sales in the last two quarters of 2003, where Canadian CIF prices were significantly higher than those from other high volume sources, appear to have been made at a loss, meaning that actual selling prices of Canadian LLDPE in the Australian market may have been lower than those calculated based on CIF price. This would make reported Canadian CIF prices for the last two quarters of 2003 overstated from a deductive export price viewpoint.

From examination of the information available, it would appear that Canadian prices were close to or below prices from other sources in at least the first two quarters of 2004, and Canadian sourced sales are claimed to be at a loss in the last two quarters of 2003. This indicates that market prices of Canadian LLDPE would have been at or below price levels from other sources across the examination period.

### 8.6 COMPARISON OF EXPORT PRICE AND NON-INJURIOUS PRICE

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and where possible and appropriate, preliminary examinations are made during the application consideration period for the purposes of assessments of injury and causal link.

Qenos has made quarterly comparisons between its own calculated USP/NIPs and FOB prices which indicate that Canadian LLDPE has been imported at prices below Qenos' NIP. USPs were calculated based on cost to make and sell (CTMS) plus an amount for profit. The CTMS used was the CTMS adjusted to remove the effects of manufacturing disruptions (as discussed in section 8.2).

#### Assessment

Customs undertook similar calculations using export prices obtained from the CCDB, Qenos' adjusted CTMS and other data available to Customs.

Unsuppressed selling price was calculated by applying a rate of profit to Qenos' adjusted CTMS. The profit rate selected was the same as that used in setting the USP and NIP in the previous investigation, XXX

Deductions were made from the USP to arrive at NIPs for each country based on reasonable on-costs for a representative importer/distributor in Australia. Deductions were made for profit, SG&A expenses, cartage to store, port and clearance charges and overseas freight and insurance charges. No deduction was made for Customs duty as Canada has a duty rate of zero for LLDPE.

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Export prices for LLDPE exported from Canada were compared to non-injurious prices over the period July 2003 to June 2004. Comparison was made on 12 month and quarterly bases.

When viewed on a quarterly basis export prices for LLDPE were higher than the NIPs in the September and December 2003 quarters but lower than the NIPs in the March and June 2004 quarters. As noted previously, Canadian imports in the last two quarters of 2003 are claimed by Qenos to have been sold at a loss.

When viewed over the 12 month period as a whole, the weighted average Canadian FOB export price was below the calculated NIP.

Calculation of NIPs is at **Customs Confidential Attachment 17** to this report. Comparative data used to evaluate the profit and selling and administration rates is at **Customs Confidential Attachment 18**.

### 8.7 CONCLUSION

During the examination period, it would appear that LLDPE from Canada has been exported at dumped prices. Qenos also appears to have suffered injury from dumping in the forms of price suppression and lost profit and profitability, and potentially lost market share. As noted by Qenos, factors other than dumping have in part contributed to this injury. However based on the information available, it appears that dumped imports from Canada have caused material injury to Qenos.

### 9. RECOMMENDATION

Based on my examination of the application and of Customs' records, the application appears to meet the requirements of s. 269TB(4) of the *Customs Act 1901*, and there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods.

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### 10. LIST OF ATTACHMENTS

No.	Status	Title
1	Customs confidential	Import volumes
2	Customs confidential	Owner supplier matrix
3	Confidential	Comparison of Qenos appendix data
4	Customs confidential	Australian market – volume
5	Customs Confidential	Australian market – percentage
6	Customs Confidential	Undercutting analysis
7	Confidential	Qenos CTMS & selling price
8	Confidential	Qenos profit and profitability
9	Customs Confidential	Quarterly FOB export prices
10	Customs Confidential	Dumping margins
11	Confidential	Methodology for adjusted CTMS
12	Confidential	Qenos ethylene production volumes
13	Confidential	Qenos LLDPE production volumes
14	Confidential	Qenos LLDPE sales volumes
15	Confidential	Qenos adjusted profit and profitability
16	Customs confidential	Quarterly CIF export prices
17	Customs confidential	Analysis of FOB prices vs NIPs
18	Customs confidential	Importer profit & SG&A