



16 October 2015

Productivity Commission
Level 12
530 Collins Street
Melbourne Victoria 3000

Email: antidumping@pc.gov.au

Dear Sir/Madam

Submission to Productivity Commission's Research Paper on Developments in Australia's Anti-Dumping System

(i) Introduction

Qenos Pty Ltd ("Qenos") is an Australian manufacturer of polyethylene with manufacturing sites in Botany, NSW and Altona, Victoria. The company undertakes significant value-adding activities on locally-sourced gas and produces polyethylene for domestic and export consumption. Qenos employs approximately 700 people in the production and sale of polyethylene polymers across Australia, and contributes more than \$1 billion per annum to the Australian economy.

In recent years, Qenos has not been actively involved in the anti-dumping system. Prior to the Productivity Commission's 2009 review, Qenos was involved as an applicant company and participated in a number of anti-dumping inquiries (involving linear low density and high density polyethylene – "LLDPE" and "HDPE"). Qenos has followed recent developments and changes to the anti-dumping system and considers it appropriate to comment on the matters identified in this review.

(ii) Trends in anti-dumping activity, and the drivers of this activity

Qenos' involvement with the anti-dumping system occurred at a time when petrochemical supply in the region exceeded demand. During the late 1990s many Asian nations (including Korea, Malaysia, Indonesia, Thailand) expanded domestic production contributing to a significant oversupply of certain petrochemicals including polyethylene products. Producers with excess production capacity turned to export markets in order to maintain production levels at effective rates. With increased demand for petrochemical related products from 2006 onwards, the oversupply situation for key petrochemical products waned. However, following recent new investment in production capacity in the region (including in China and Thailand), it is likely that the oversupply position could re-emerge.

It is Qenos' experience that access to effective trade remedies is required in the often extended oversupply periods when export prices reflect marginal-costing strategies.

The role recent changes to the anti-dumping system may have played in anti-dumping activity

Qenos welcomes the establishment of the Commission. The additional resources including an increase in the number of operational investigators will permit the Commission to conduct and complete investigations within the prescribed legislative timeframes. Ongoing focus in securing qualified professionals to fulfill the roles of Trade Measures investigators is paramount to the effectiveness of investigations.

Qenos is also supportive of the recent changes to Australia's anti-dumping system that were introduced following the Productivity Commission's 2009 Inquiry and subsequent inquiry by the then Australian Customs and Border Protection Service ("ACBPS"). Qenos' experience with the anti-dumping system of more than a decade ago involved considerable uncertainty associated with investigation timeframe delays and material injury findings.

Qenos notes that the recent changes have included amendments that allow for:

- 'flexible' timeframe extensions;
- clarification of factors when considering material injury;
- establishment of the Anti-Dumping Review Panel ("ADRP");
- different forms of interim measures;
- repeal of s 269TAC(13) of the Customs Act;
- including a review of measure sin a continuation inquiry;
- aligning Australia's legislative provisions on subsidies with the WTO Subsidies and Countervailing Measures Agreement;
- the introduction of anti-circumvention provisions; and
- a range of additional measures that includes definitions of exporter categories, interested parties, etc.

The identified changes will assist in enhancing the effectiveness of the anti-dumping system. Qenos remains concerned, however, that despite announcements that the Anti-Dumping Commission ("the Commission") will endeavor to publish a preliminary affirmative determination ("PAD") at as close to Day 60 of an inquiry, recent practice has confirmed that preliminary measures are often delayed well beyond Day 60 and often beyond Day 100.

Delays in accessing measures highlight the inability of the anti-dumping system to address injurious dumping in a timely manner and confirm the apparent tardiness associated with securing much needed relief. Investigation delays are a significant area of concern to Australian manufacturers as each additional day where measures are not applied involves further injury to the Australian industry.

How anti-dumping measures have affected individual sectors and Australia's broader economy

It is often speculated that accessing anti-dumping and countervailing measures is a 'last resort' measure prior to the cessation of the industry in Australia. Qenos would contend that this generalization remains unsubstantiated and certainly was not the case for Qenos when it sought measures in 2003.

The anti-dumping system enables manufacturers to access relief from unfair pricing behaviours of exporters seeking to establish a foothold in the Australian market at dumped prices. In some instances, this behavior may be considered predatory, however, in most instances it coincides with a time where regional production exceeds demand. An inability to access relief when dumping (and subsidization) is occurring reduces sales and hence production output, and therefore impacts the re-investment decisions of the Australian manufacturer(s).

Qenos undertakes a substantial value-adding process of locally-sourced raw materials for further processing to ensure reliability of supply in Australia. The functions performed by Qenos are considered to be competitive with exporters in other countries – but only when the export prices of those exporters are at fair prices. The anti-dumping system operates to address circumstances where exporters dump (and/or subsidise) and cause material injury to the Australian industry. Access to measures at the earliest opportunity is critical to limit the injurious effects of dumping and to ensure that protracted periods of injury do not debilitate the Australian industry. It is therefore imperative that provisional measures are imposed at Day 60 of an investigation to ensure the injury experienced by the industry does not become unnecessarily protracted. Qenos understands that bipartisan support exists for a PAD and provisional measures to be applied at Day 60 – however, the application of this intent does not filter through to practice.

Any opportunities to improve outcomes from Australia's anti-dumping system

As indicated, urgent reform is required to apply a PAD and provisional measures from Day 60 of an investigation. There are some further additional areas for improvement that also require attention.

Level of profit in constructed normal values

Qenos notes the change to remove the zero profit provision of s.269TAC(13). Qenos remains concerned that any level of profit applied by the Commission when constructing normal values for the exporter under s.269TAC(2)(c) of the Customs Act that the level of profit to be applied is not at a minimal level that would permit the Australian industry to continue to suffer injury. Any real level of profit must be at a level that permits ongoing maintenance and re-investment in the manufacturing entity.

Non-verification of exporter data

It has also come to Qenos' attention that in some instances the Commission is accepting information from exporters without verification. This practice establishes an unsafe precedent with exporters completing exporter questionnaire on an unreliable basis. If the Commission elects to conduct a verification visit with the exporter, an amended exporter questionnaire will be furnished at the commencement of the verification visit. The non-verification of exporter questionnaires will encourage "gaming" by exporters. This behavior can only be discounted where the Commission conducts verification visits for all co-operative exporters (except in circumstances where 'sampling occurs') in all new investigations.

Country Hopping

Following the application of anti-dumping measures on high density polyethylene ("HDPE") in 2003, importers sought to source supply from countries not the subject of anti-dumping measures. In some instances, the exporters in the new source of supply countries were related/affiliated with an exporter already the subject of measures.

Qenos made an application for measures to address dumped exports from the new sources of supply. The investigation timeframes for the new application were the same as for the original investigation. Qenos submits that where anti-dumping measures already apply for certain goods, the anti-dumping system should cater for accelerated inquiries where new sources of supply at dumped prices emerge following the imposition of measures.

Public interest provision

Qenos notes that the government did not proceed with the Productivity Commission's 2009 recommendation to introduce a 'bounded' public interest provision. Qenos does not support any moves for this matter to be again considered. Anti-dumping measures apply to a limited volume (and value) of imports into Australia at any one point in time. Anti-dumping measures are applied at the discretion of the Minister (currently delegated to the Parliamentary Secretary). The measures are further tempered by the application of the lesser duty so that the level of duty applied is levied to ensure that only injury from the dumping (and/or subsidization) is countered. Hence the measures applied are rarely excessive.

The introduction of a public interest provision would impact investigation timeframes (extending investigations by further periods of no less than 30 days), add additional costs to the anti-dumping process (including that expended by the Commission), and add a further level of red tape to an already complex process that is viewed by many small to medium sized enterprises as user unfriendly and unnecessarily cumbersome.

Qenos does not consider that the introduction of a public interest test would deliver any additional benefits to users of the anti-dumping system that are not already available to the Minister (and the Commission), and is therefore opposed to any proposed test.

If you have any questions concerning this submission, please do not hesitate to contact me

Yours sincerely

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