

INVESTIGATION 515: PACT GROUP ADDITIONAL SUBMISSION

1. Overview

- 1.1 Pact Group makes the following submission on the Anti-Dumping Commission's analysis and findings to date, and in particular on the Australian Industry Verification Report, published on 17 September 2019 (**Verification Report**).

2. Like goods

Material differences between locally produced and imported HDPE

- 2.1 Pact disagrees with the Verification Report's finding that the HDPE manufactured by Qenos is identical to, or has characteristics closely resembling, imported HDPE. Pact considers that both the Consideration Report (published by the Commission on 24 June 2019) and the Verification Report fail to adequately differentiate between the types of HDPE exported to Australia from the types of HDPE that Qenos produces.
- 2.2 There are material differences between the HDPE manufactured by Qenos and imported HDPE. For example, [CONFIDENTIAL.] Pact considers this to be one example of meaningful differences between imported HDPE and locally produced HDPE.
- 2.3 [CONFIDENTIAL.]
- 2.4 In light of the above, when the characteristics and end uses of imported HDPE and the HDPE produced by Qenos are properly compared, they do not satisfy the definition of "like goods" in s 269T of the *Customs Act 1901* (Cth). Further, any imported HDPE grade that is not capable of being used interchangeably with Qenos' HDPE should be excluded from this investigation.

Ambiguity of tariff classification

- 2.5 Pact notes that section 2.3 of the Consideration Report published on 21 June 2019 identified two separate HDPE tariff classifications: Tariff Code 3901.20.00 and Tariff Code 3901.90.00, under Schedule 3 of the Customs Tariff Act 1995. The goods the subject of Tariff Code 3901.20.00 appear to be entirely separate from the goods the subject of Tariff Code 3901.90.00. To date, both Qenos and the Commission have failed to differentiate between goods with Tariff Code 3901.20.00 and the goods with Tariff Code 3901.90.00. Do these two categories of goods have different costs to make and sell? Which exporters are "dumping" goods with Tariff Code 3901.90.00 into Australia? Does Qenos produce goods in the 3901.90.00 category?
- 2.6 Pact requests that the Commission publish its findings in respect of the alleged dumping and resultant material injury relating to goods with tariff classification 3901.90.00 so that in the event that dumping duties are imposed, it is clear exactly which tariff classification they are relevant to.

3. Breakdown of HDPE market by application or end use

- 3.1 Pact submits that the market segmentation analysis, and the subsequent conclusions on dumping, injury and causation, must differentiate between the sub-categories of HDPE based on the *application or end use* of the HDPE (blow moulding, injection moulding, film and pipe), as well as between specific grades within the sub-categories.
- 3.2 Pact would encourage the Commission to break down HDPE into at least 6 sub-categories, based on application, to assess dumping and causation of injury. For example, it is not possible to use an injection moulding grade resin (which has a consistency similar to water

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when melted) for a blow moulding application (that requires a resin grade that has a consistency similar to toothpaste when melted). Assessment by application or end use is consistent with the breakdown of sales volume by application in Figure 2 of the Verification Report.

3.3 Pact submits that the analysis of dumping, injury and causation should recognise the following separate sub-categories of HDPE:

- (i) HDPE Pipe grade for pipe applications;
- (ii) HDPE Blow moulding grade for dairy applications;
- (iii) HDPE Blow moulding grade for general blow moulding applications;
- (iv) HDPE Injection moulding grade for injection moulding applications;
- (v) LLDPE grades for injection moulding, film, tape and other applications; and
- (vi) LDPE grades for injection moulding, film, tape and other applications.

3.4 As described in **Confidential Annexure A**, alleged dumping in certain HDPE sub-categories is negligible in volume compared with other sub-categories. By aggregating the margins and effects of alleged dumping in one sub-category with the margins and effects of dumping in other sub-categories, the Commission has attributed a disproportionately large share of responsibility to some sub-categories. Any analysis the Commission performs based on such an overly broad categorisation of HDPE will have the potential to distort the Commission's overall assessment of the dumping margins, and consequently the calculation of any dumping duty required to mitigate the alleged injury to the Australian HDPE production industry.

3.5 Pact submits that the sub-categories of HDPE in which there is clearly no dumping should be quarantined from the calculation of dumping duties applicable to sub-categories of HDPE where dumping may be occurring. Pact requests that the Commission clearly distinguishes between the different categories of the HDPE market by end use, and dismisses the investigation in relation to the following sub-categories: HDPE Blow moulding for dairy applications, HDPE Blow moulding for general blow moulding applications, HDPE for injection moulding, LLDPE and LDPE.

4. Dumping

4.1 The Commission recently published exporter verification reports for Chevron Phillips Singapore Chemicals (Private) Limited, Thai Polyethylene Co., Ltd, PTT Global Chemical Public Company Ltd, and Korea Petrochemical Ind. Co., Ltd. These reports show that either no dumping has occurred, or that where there has been dumping, the dumping margin is under the 2% threshold below which investigations should be terminated pursuant to s 269TDA of the *Customs Act 1901*. Consequently Pact is of the view that the investigations should now be terminated in relation to those exporters, rather than wasting the resources of the Commission, the exporters and the customers of those exporters.

4.2 Pact also considers that the prevalence of the ICIS price index as the key determinant of pricing in Australia and the South-East Asian region means that, logically, it is unlikely that dumping in non-negligible quantities is occurring. At page 12 of the Verification Report, the Commission states that "*HDPE pricing in the Australian market is determined by South East Asian regional price, or movement in the South East Asian regional price*". It is widely accepted that all HDPE producers in the South-East Asian region (including in Australia) price by reference to the ICIS South-East Asian HDPE price index. This index is driven by the normal market forces of demand for and supply of HDPE in the region.

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- 4.3 Given that the Commission's exporter verification reports have determined that sales by HDPE exporters involved in this investigation to the Australian market are in the ordinary course of trade as defined in s 269TAAAD (except for one-off special shipments of negligible quantities), there is no reasonable likelihood of material quantities of exporters' sales occurring at a lower price than the prevailing ICIS price for the region (which also indicates the price at which the exporter is selling on its domestic market). It would make no sense for those exporters to sell to Australian customers at a lower price than they could obtain by selling to other customers in the South-East Asian region, including in their local market. In other words, the fact that the ICIS index is used to determine pricing in the HDPE market makes it extremely unlikely that dumping is occurring.

5. Injury and Causation

Qenos' pricing and other business decisions have been constrained by the South-East Asian ICIS price index

- 5.1 Even if dumping is occurring (which is not supported by any evidence to date), Pact has concerns regarding the Commission's analysis of injury and causation so far. The Verification Report's preliminary assessment is that there appear to be reasonable grounds to support Qenos' claims that it experienced injury in the form of loss of sales volume and market share, price suppression (i.e. inability to increase prices), loss of profits and reduced profitability, reduced value of assets, reduced R&D expenditure, reduced return on investment, reduced number of employees, reduced productivity, and lower wages paid during the investigation period. However, while there may well be indications that Qenos is experiencing a range of struggles, the Verification Report does not deal in any meaningful way with the central issue of whether alleged dumping *caused* injury to Qenos.
- 5.2 At page 12 of the Verification Report, the Commission states that "*it does not appear that Australian HDPE pricing is cost driven*". Page 11 of the Verification Report refers to Qenos' description of itself as a "price taker" which sets pricing for key customers based on "*an agreed published pricing marker for the relevant application, such as the ICIS South-East Asian pricing marker or SAP Global Platts (Platts) expressed in United States dollars*" plus adjustments for other factors such as freight and exchange rate.
- 5.3 The fact that Qenos' ability to set its prices for Australian customers is constrained by the published ICIS South-East Asian pricing index means that, irrespective of Qenos' increased energy and feedstock costs, and aged plant and equipment, Qenos needs to set its domestic prices at a level that is directly competitive with the South-East Asian regional price. This may be a lower price point than that which would enable Qenos to protect its profit margins, R&D expenditure, return on investment, employment or wages.
- 5.4 By contrast, HDPE suppliers in other countries have in recent years experienced reduced energy and feedstock costs and increased investment in technologically advanced plant and equipment, resulting in lower costs to make and sell, increased profitability, and increased competitiveness. These favourable circumstances for HDPE suppliers in other countries have no connection with dumping. In a market where prices are index driven and fixed production costs are high, the impact of price declines will be felt most strongly by small and inefficient producers. However, the other participants in a market that is operating efficiently and competitively should not be penalised in order to prop up or carve out a particular level of profitability or market share for a struggling and inefficient producer in that market.

Qenos' predicament is caused by a range of factors that are unrelated to dumping

- 5.5 Under s 269TAE(2A) of the Customs Act, it is necessary to consider whether any injury to the Australian industry is caused by a factor other than exports to Australia, and to the extent that this is the case, such injury must not be attributed to the exports. Pact considers

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that, contrary to s 269TAE(2A), the Verification Report fails to consider other causes of Qenos' alleged injuries.

- 5.6 Pact submits that other sources of Qenos' injury include the following, which need to be recognised and quarantined from any determination of dumping duties:
- (a) injury associated with volume and pricing of imported like goods that are not dumped;
 - (b) injury associated with legitimate competition between Qenos and HDPE suppliers outside Australia, including suppliers from countries not named in this investigation;
 - (c) injury arising as a result of Qenos' aged and inefficient plants, and the normal decrease in profitability such plants experience in a competitive marketplace, including in light of technological advancements and investment in plant and equipment by overseas HDPE producers;
 - (d) injury that is caused by Qenos' poor customer management and onerous, inflexible contractual terms, resulting in breakdowns in the relationships between Qenos and its customers.
- 5.7 Pact submits that Qenos' injury is not due to exports to Australia at dumped price, but to a combination of factors unrelated to exports, including those listed above. In particular, Qenos' unreliable plant and its uncommercial conduct have meant that, in the normal ebb and flow of business, it has been incumbent upon downstream users acting prudently and strategically to look for alternate, more reliable sources of HDPE, resulting in "injury" to Qenos in the form of loss of market share. We refer the Commission to **Confidential Annexure C**, which provides evidence that Pact did not purchase imported product in order to obtain lower prices than were available from Qenos.
- 5.8 Pact also notes the obvious point that as production plants become older and less efficient, the expected profit margin of those plants should reduce over time.¹ Pact refers to **Confidential Annexure B**, which summarises evidence regarding Qenos' pre-existing profit declines.
- 5.9 Section 269TDA(13) of the Customs Act requires a dumping investigation to be terminated so far as it relates to a country if the export of the subject goods causes negligible injury. As the export of goods from the countries named in this investigation has caused negligible injury to Qenos (rather, Qenos' alleged injury is caused by a range of other circumstances as described above), Pact considers that the investigation should be terminated in relation to Korea, Thailand, Singapore and the United States.
- 5.10 In addition to failing to consider the factors other than exports which may have contributed to Qenos' woes, the Verification Report does not verify the alleged injury to the Australian Industry to a sufficiently granular level as to enable the Commission to calculate a dumping duty for each exporter or like good. Specifically, the report does not appear to assess:
- (a) the injury attributable to each sub-category of HDPE; and
 - (b) the injury attributable to each HDPE exporter.

¹ As an aside, Pact refers to the August 2008 TRADE MEASURES BRANCH REPORT No. 136 (**Report 136**) which reviewed the anti-dumping measures on exports of HDPE from Korea, Malaysia and Singapore and recommended that the anti-dumping measures expire. In Report 136, Qenos was found to have operated with a cost to make and sell higher than its sale price of HDPE for the entire 2002 to 2007 period that HDPE was subjected to dumping duties. It appears especially illogical for the Commission to find that Qenos has experienced price suppression and loss of profitability in relation to Qenos' plant at this time because, almost 20 years ago, those same plants were found to be so inefficient that they were operating at a loss when there was no dumping.

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6. **Efficacy of dumping duties**

- 6.1 Even if a dumping duty is imposed on the investigated countries, Australian importers of HDPE will still be able to purchase HDPE from other countries that export HDPE and may have even lower costs and greater efficiencies, such as the UAE and Saudi Arabia.
- 6.2 This means that even if dumping duties are imposed on exports from the investigated countries, Qenos is unlikely to benefit from the imposition of dumping duties. This is exactly what occurred when Australia imposed dumping duties on HDPE (or entered into price undertakings with some exporters) from 2002 to 2007. Report 136 (see footnote 1 above) found that the imposition of dumping margins on a subset of countries did little to alleviate Qenos' loss-making production of HDPE. The imposition of dumping duties simply shifted the countries from which downstream Australian users of HDPE imported HDPE to countries that were not named in the investigation.
- 6.3 Pact sees no logical reason to conclude that imposing dumping duties on a limited subset of exports in this case would result in any different outcomes than transpired from 2002 to 2007.

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Annexure A [CONFIDENTIAL]

Annexure B [CONFIDENTIAL]

Annexure C [CONFIDENTIAL]