Chevron Phillips Chemical Company LP

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Via Email (investigations1@adcommission.gov.au)
Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
Australia

Re: Statement of Essential Facts Regarding Investigation No. 515 Into Alleged Dumping of High-Density Polyethylene exported from the Republic of Korea, the Republic of Singapore, the Kingdom of Thailand and the United States of America

Dear Director:

Chevron Phillips Chemical Company LP ("CPChem US") submits this response to the Statement of Essential Facts ("SEF") issued by the Commission in Investigation 515 on January 15, 2020.

Summary of Comments

CPChem US agrees with the recommendation in the SEF to terminate the investigation but submits that: (i) Section 2 fails to acknowledge serious concerns raised by CPChem US and other interested parties about the Commission's decision to initiate Investigation 515 and that the Application failed to allege an economically plausible dumping claim; (ii) Section 3 should be revised to acknowledge that the Model Control Codes ("MCC") incorrectly concludes that HDPE resins produced by CPChem US in the United States are comparable to resins produced by Qenos Pty Ltd. ("Qenos"); (iii) Sections 4 and 5 omit material information about Qenos and the Australian market, including, without limitation, public statements in the weeks before the filing of the Application in which Qenos attributed its poor financial performance, shrinking market share, and other alleged injuries to government policies, lack of access to cost advantaged feedstocks, and other factors unrelated to dumping; and (iv) Section 6 should be revised to acknowledge that the Commission had insufficient data upon which to calculate a dumping margin for CPChem US in manner consistent with generally accepted methods of statistical analysis.

Section 2: Qenos Failed to Allege a Plausible Dumping Claim

The Commission lacked reasonable grounds to commence an investigation based on the information in the Application. For example, although it tempered the dumping margin estimates provided by Qenos somewhat, the Commission still overestimated dumping margins. The following table compares the estimates from the Consideration Report broken down by country with the range of final determinations contained in the SEF.

Country	Qenos' Estimate	Estimated Dumping Margin in Consideration Report	Range of Final Dumping Margin Determinations
Korea	17%	10.6%	-5.1% to -1.5%
Singapore	11%	10.4%	.9% to 5%
Thailand	45%	40.7%	.6% to 8.8%
United States	28%	19.8%	9.3% to 13.9%

Qenos also estimated that total imports from the United States constitute no more than 2% of the total imports of HDPE into Australia – an estimate insufficient to support the initiation of an investigation. The Commission inexplicably rejected this estimate and posited that volumes from the United States could be higher. This rank speculation proved unfounded.

Other concessions by Qenos also established the implausibility of its dumping complaint. For example, Qenos conceded in its Application that "very little material has landed in Australia directly from the USA" and that "Qenos has experienced an increase in energy costs in the last two year period, including all increases in feedstock costs." In its Application, Qenos also admitted that it has experienced "production outages that have impacted production output" and that a "sharp reduction in production volumes" should be attributed to "raw material cost increases associated with LPG not being economic in the HDPE production process." Qenos also admitted that its production volume "was reduced in 2018/19 due to a range of factors including (i) a shortfall of raw material ethane in 2018 first half and operational consequential disruptions . . . " Likewise, the Commission acknowledged in the Consideration Report that price depression was unlikely since "prices overall have risen during the period."

Media reports and public statements by Qenos also undercut any justification for initiating investigation in this case. For example, on 15 September 2017, the Financial Review published an article "Qenos looks at job cuts to ease gas price shock" in which it quotes Stephen Bell, the Qenos CEO, as stating that the "company had suffered a 60-70 percent increase in energy costs this year." Mr. Bell further explained that "We are facing more increases and clearly we can not absorb them or pass them on to our customers. . . We have to find efficiencies and our overseas competitors are not facing this problem. They can buy (ethane) at the international price." Mr. Bell blamed the employee layoffs not on worldwide competitors acting unfairly but on Australian government natural gas production policies.

Mr. Bell continued to rail against government policies in the weeks prior to the filing of the Application. On 16 May 2019 – approximately one month before Qenos filed its Application – Australian media reported that:

> "Chief executive Stephen Bell said the power bill at just one of its plants, at Port Botany in New South Wales, provided a sense of the problem. "In 2016 we paid $8 million dollars for electricity and in 2018 we paid $18 million dollars," he said. "That's just for the commodity; that doesn't include network charges and other costs. "We've taken more than $60 million of cost increases over that time. We can't pass a dollar of that on to our customers because our competition, who all come from overseas, don't have any of those increased costs." The gas shortage is a long way past being a theoretical problem. Qenos has let go of 15 per cent of its workforce in just the past year-and-a-half. "If we don't address the issue we're going to see a lot of jobs and a lot of industrial manufacturing disappear off the east coast of Australia," he said. "It's a consequence of

> a failure of government policy at all levels — state and federal, Liberal and Labor — over a long period of time. "We have plenty of gas in this country, we have an abundance of hydrocarbon, we're blessed and there's more than enough of those domestic and export customers.

D. Ziffer, "Gas exports blamed for soaring electricity prices and job losses" (16 May 2019) available at https://www.abc.net.au/news/2019-05-17/gas-exports-blamed-for-electricity-price-rises-job-losses/11121120.

The Commission also knew that Qenos had a history of filing objectively baseless petitions. For example, on 25 November 2009, the Australian Customs and Border Protection Service terminated an investigation initiated by Qenos on linear low density polyethylene originating in the United States and Canada without imposing any measures stating that "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." Similarly, on 20 January 2011, Australian Customs and Border Protection Service terminated another investigation initiated by Qenos on low density polyethylene from Canada, Korea and the United States.

By not acknowledging the implausibility of the dumping allegations in the Application, the Commission is bound to repeat the mistakes that led it to commence an investigation in this instance. It also will incentivize Qenos and disadvantaged domestics firms in other industries to continue making meritless dumping claims to financially burden foreign producers and deter competition at the expense of domestic consumers. Section 2 should be revised to state that the allegations in the Application did not support a plausible claim for dumping.

Section 3: The Material Control Code Structure Should Be Revised

Although the Commission made adjustments to the MCC in response to comments from CPChem US and other interested parties, the Commission continues to maintain incorrectly that CPC US resins are comparable to Qenos' resins. Qenos, produces fewer than 25 HDPE grades (*see http://www.qenos.com/internet/home.nsf/web/Products*) and those products have substantially different properties and applications than most HDPE products produced by CPChem US. Qenos products lack the additive packages and regulatory approvals of most HDPE products produced by CPChem US. Qenos also lacks the know-how and production facilities to manufacture those HDPE products. CPChem US refers the Commission to its own pricing analysis which establishes that resins produced by CPChem US in the United States are dissimilar from, and cannot be reasonably compared to, Qenos's product. The MCC structure thus lacked an economically plausible rationale and should be modified by the Commission.

Sections 4 & 5: The SEF Omits Material Information About the Industry and Australian Market

Sections 4 and 5 of the SEF paint an incomplete and, in some cases, misleading picture of Qenos and the HDPE market. As set forth in detail above, Qenos publicly attributed its poor financial performance, shrinking market share, and other alleged injuries to government policies, lack of access to cost advantaged feedstocks, and other factors unrelated to dumping. The media reports containing these public statements appeared just weeks prior to the filing of its Application and should be fully documented in Sections 4 and 5 of the SEF.

Further, while the SEF acknowledges in Section 8.4 that numerous market participants identified factors unrelated to dumping that could have adversely affected Qenos' financial condition, the list is hopelessly incomplete. For example, Section 8.4 fails to mention or, at best, mentions indirectly the following material factors impacting Qenos: (1) "poor customer management and onerous, inflexible contractual terms, resulting in breakdowns in the relationships between Qenos and its customers" as reported by end user Pact Group in its Additional Submission on Investigation, Doc. No. 48, and end user Iplex Pipelines Australia Pty Ltd. in its Submission, Doc. No. 7; (2) product performance, product quality, and customer service issues as reported by end user Visy Industries Australia Pty Ltd. in its Submission, Doc. No. 11; (3) effects from the depreciation of the U.S. dollar in relation to the Australian dollar and other currencies over the past year; (4) the absence of capital investment in Qenos by its ultimate parent company; and (5) the impact of domestic government regulatory policies. For transparency, Sections 4 and 5 of the SEF should disclose this information fully.

Section 6: The Dumping Margin Calculations for CPChem US Are Incorrect and Unreliable

CPChem US raised concerns with the Commission about its pricing methodologies and calculations. These concerns include failing to take transit time from the United States into account in determining normal value and using a negligible and statistically insignificant data set of imports from the United States with domestic sales to draw conclusions on pricing. In order to emphasize the policy of terminating investigations immediately upon a determination that negligible volumes have been imported, Section 6 should be revised to acknowledge that Commission had insufficient data upon which to calculate a dumping margin for CPChem US in manner consistent with generally accepted methods of statistical analysis.

Conclusion

CPChem US very much appreciates the professionalism and cooperation displayed by the Commission during the course of its investigation. However, the procedural safeguards implemented by the Commission failed to operate as designed in this particular matter to prevent the anti-dumping regime from being misused to harm foreign rivals and deter free and fair marketing completion. CPChem US respectfully requests that the Commission recognized that Qenos had no reasonable expectation of succeeding on the merits of its dumping claim from the outset and that it should have rejected the Application. By initiating an investigation, the Commission provided Qenos with an unfair competitive advantage. It should use the SEF as an opportunity to mitigate this harm by terminating the investigation but also admonishing Qenos to cease and desist from making spurious filings or engaging in other predatory conduct in the future.

Yours truly,

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