Canberra Office
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609
+61 2 6163 1000

Brisbane Office
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064
+61 7 3367 6900

Australia

facsimile: +61 2 6162 0606
email: info@moulislegal.com
www.moulislegal.com

moulislegal
commercial + international

13 September 2016

The Director
Operations 2
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria

By email

Dear Director

Chememan Co., Ltd
Alleged dumping of quicklime from Malaysia, Thailand and Vietnam

As you know, we act on behalf of Chememan Co., Ltd and its related companies ("Chememan"), including Chememan Australia Pty Ltd ("Chememan Australia") in relation to this investigation. In thatcapacity we have made a number of submissions regarding the applicant's injury allegations. We write again in that regard.

Firstly, to reiterate, as a matter of legal principle the only injury that is capable of triggering the imposition of dumping duties is *"material injury to the Australian industry producing like goods"*. Clearly, the materiality of the injury must be measured against the performance of the entire Australian industry, not against the performance of one part of the Australian industry, not against the performance of the Australian industry in one "sector", and not with regard to one factory that produces a small amount of the Australian industries' total output. This is clear from the terms of the *Customs Act 1901* ("the Act") and has been confirmed by the Federal Court of Australia.

The applicant's allegation that the entirety of the Australian industry – some 1.9 million tonnes – can be *materially injured* via the specific circumstances of a single plant with approximately 100,000 tonne production capacity is outlandish.[1]

In any regard, the applicant's allegation that imports of quicklime from Thailand and Vietnam have caused material injury to the entire Australian industry cannot be substantiated. As a starting point, we note that the only injury relevant to an investigation is injury caused by dumping.[2] We also note that Section 269T states, specifically, that:

> *(2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.*
>
> *(2AE) However, subsection (2AD) does not permit any determination under this Part that*

[1] As discussed during the verification of Chememan Australia, we do not understand it to be the case that Dongarra supplies all of the applicant's non-alumina customers. Indeed, Chememan believes that significantly more than half of the applicant's non-alumina customers are supplied via the Munster plant.

[2] We note that in some circumstances, the "threat" of injury may be relevant. However, this requires a different standard of investigation, with different considerations. WTO jurisprudence is clear in that regard.

> *dumping has occurred by reference to goods exported to Australia before the start of the investigation period*. [our emphasis]

In this case, the period of investigation is 1 January 2015 to 31 December 2015. Chememan notes a number of references in the Application and the Consideration Report to dumping that has occurred prior to the period of investigation. Consistent with Section 269TAE, Chememan would request that the Commission expressly reject such assertions in its material injury consideration, consistent with the clear guidance of the Act.[3]

Indeed, we would now like to further explore and explain the circumstances of Chememan's participation in the Australian market in the relevant period. **[CONFIDENTIAL INFORMATION DELETED – information regarding Chememan Australia's tender applications in the POI]**. However, Chememan Australia did have **[CONFIDENTIAL INFORMATION DELETED – number]** trials of its product "terminated" during that period. It is highly likely that the applicant won ongoing supply of quicklime to the projects to which these trials related. This means that in the period of investigation, the applicant **[CONFIDENTIAL INFORMATION DELETED – information regarding Chememan Australia's tender applications in the POI]** did not lose any "volume" to imports from Thailand and Vietnam. Any dumping identified cannot be found to have caused the applicant to have lost sales volume or market share.

We note that this is consistent with the information in the Consideration Report, which indicates that the applicant's sales volumes were in fact higher in 2015 than they had been in 2014. In the period of investigation, the applicant did not lose any sales volume to imports of quicklime from Vietnam and Thailand, whether or not those imports were dumped.[4]

We also note that the Application refers to the loss of 10,000 tonnes of sales by the applicant to an importer during the period of investigation.[5] Chememan Australia is not aware of a RFQ that matches this description. As noted above, **[CONFIDENTIAL INFORMATION DELETED – information regarding Chememan Australia's tender applications in the POI]**. There were a number of contract negotiations with pre-existing customers, or relating to pre-existing supply arrangements, but Chememan Australia does not consider that it was in competition with the applicant in relation to these negotiations. Changing over to Chememan's higher quality quicklime product is not an instantaneous process. Pre-qualification through product trials is required, and new modes of process control must be learnt and costed by the proposed customer before it can decide to commit to a new source of supply and implement the production changes required. Chememan Australia was already the source of quicklime in each of those negotiations.

That said, we are at a disadvantage with regard to the applicant's specific allegations, because of the dearth of detail in the non-confidential version of the application. Respectfully, insofar as the applicant has made specific allegations regarding Chememan Australia and its conduct in the Australian market, we would ask that the Commission provide Chememan Australia with further particulars. Any information regarding Chememan Australia should be put to Chememan Australia. Doing so, could not be said to risk revealing "commercially sensitive" information, given that the information relates directly to Chememan Australia.

Additionally, Chememan does not consider that it is possible for the applicant to have suffered any form of price injury as a result of imports of quicklime. It does not appear to be expressly stated in the

---

[3] For example, we note that that the applicant's application (at page 24) and Verification Report (at page 24) both reference "examples" of losses of contracts to the allegedly dumped imports over the period 2011 to 2015. Any of this evidence arising from outside the period of investigation is irrelevant to determining whether dumping has caused material injury. The law specifically states that it is not permissible to determine that dumping occurred prior to the period of investigation.

[4] *Consideration Report No. 328*, page 20.

[5] *Application for the publication of dumping measures – quicklime exported from Malaysia, the Kingdom of Thailand, and the Socialist Republic of Vietnam*, page 24.

Application or the Consideration Report, but we would expect that the applicant's sales to non-alumina customers are normally subject to long-term contracts. These contracts generally last for three years, during which time the price for quicklime paid under the particular contract is fixed. This is why the applicant's price trend as depicted on pages 22 and 23 of the Consideration Report is relatively static. Imports of quicklime during the period of investigation will not impact the prices the applicant charges for contracts it won prior to the period of investigation.

This also means that the applicant is constrained in its ability to increase its price in circumstances where its cost to make and sell changes. The price of the applicant's pre-existing supply contracts – which presumably represented the bulk of the applicant's sales during the period of investigation, whether to alumina or non-alumina customers - were fixed. It could not have raised its prices following the minor increase in costs precisely because its supply agreements would have restrained it from doing so. This inability to raise prices is not caused by imports of quicklime, but, rather, is a result of the commercial realities of the market. The applicant accepts the risk that its margin may lessen when it enters into fixed price contracts.

Indeed, it does not seem to be the case that there is any significant connection between the prices quoted by Chememan Australia and the prices quoted by the applicant. Based on feedback received from a number of entities that issued "RFQs" in the period of investigation, the applicant is far and away a cheaper source of supply when compared to Chememan and is clearly the price leader in the market. The customer feedback received by Chememan is to the effect that the applicant's prices were well below those offered by Chememan Australia, in some cases by margins of up to [CONFIDENTIAL INFORMATION DELETED - number]. Please refer to Attachment 1 [CONFIDENTIAL ATTACHMENT] for a summary of this feedback. Despite this significant undercutting, the Consideration Report makes it abundantly clear that the applicant, and its Dongarra plant, were significantly profitable during the period of investigation.

****

In summary:

- The applicant is only one part of the Australian industry.
- *Prima facie* it is not possible for the small injury that the applicant claims to have suffered as a result of dumping in the period of investigation to be *material injury to the Australian industry.*
- Imports of quicklime from Vietnam and Thailand cannot be found to have caused the applicant price or volume injury in the period of investigation.

Accordingly, we respectfully request that the Commission terminate this investigation at its soonest possible convenience.

Yours sincerely

Daniel Moulis
Principal Partner