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21 August 2012

Ms Joanne Reid
Director , International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra ACT 2600

Dear Ms Reid,

RESUMED INVESTIGATION - QUICKLIME FROM THAILAND

This submission to the captioned investigation is made on behalf of Cockburn Cement Ltd ("Cockburn").

Summary

For reasons provided in the Trade Measures Review Officer's report of his review of Customs' Termination Report No. 179 ("TER 179"), it was open to Customs to determine whether the material injury it found have been suffered by Cockburn prior to the investigation period was caused by dumped exports from Thailand.

Evidence before Customs at the time of making the termination decision per TER 179 demonstrates a very high likelihood that the material injury suffered by Cockburn in the non-alumina sector between March and June 2010 was caused by dumped exports from Thailand.

Consequent upon the foregoing, and the fact that Customs' examination of export price and normal value is not limited to the investigation period, the focus of this resumed investigation should be the determination of the dumping status of the exports of quicklime from Thailand which were the sole cause of the material injury sustained by Cockburn between March and June 2010.

Should Customs maintain its position that it is not open to them to determine that injury suffered prior to the investigation period has been caused by dumping, then it should amend the investigation period to include the period of the imports of quicklime from Thailand which were the sole cause of material injury to Cockburn between March and June 2010. For reasons provided in the said TMRO report, it is open to Customs to amend the investigation period.

Particular circumstances of this case

The particular circumstances of this case making it appropriate for Customs to determine the dumping status of the imports of quicklime from Thailand which were the sole cause of the material injury suffered by Cockburn between March and June 2010 are outlined hereunder.

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This investigation was initiated because Customs considered that the evidence included in Cockburn's application to the effect that dumped exports of quicklime from Thailand caused it to suffer material injury in the form of price undercutting, price depression and revenue and profit reduction between March and June 2010, provided reasonable grounds for the publication of a dumping duty notice in relation to exports of quicklime from Thailand – Consideration Report No. 179 refers. Having initiated the investigation on these grounds, it is incumbent upon Customs to investigate whether the injury suffered by Cockburn during March to June 2010 is material and whether it was caused by dumped imports from Thailand. Customs' investigation has established that the injury suffered by Cockburn during March to June 2010 is material (**substantial** reduction in profit) and that imports from Thailand were the sole cause of this material injury. However, Customs has failed to meet its obligation to determine whether these imports from Thailand which were the sole cause of Cockburn's material injury between March and June 2010 were dumped.

Furthermore, as outlined hereunder, evidence before Customs at the time of making the termination decision per TER 179 indicates a very high likelihood that the imports from Thailand which caused material injury to Cockburn during March to June 2010 were dumped.

All quicklime from Thailand entering the non-alumina sector is supplied by Chememan Thailand through Chememan Australia. Based on Customs' determination of an average product dumping margin of 48% for exports during the investigation period ("IP"), which includes a -4% margin for direct sales, the dumping margin for sales through Chememan Australia is likely to be around USD 75/tonne (150%) for exports during the IP, coming from an ascertained export price of about USD 50/tonne and an ascertained normal value of about USD 125/tonne.

The export price ascertained by Customs for sales through Chememan Australia during the IP was based on prices in sales by Chememan Australia to its customers, from which post-exportation expenses, including Chememan Australia's selling and distribution expenses, were deducted. Customs had sufficient verified evidence upon which to ascertain an export price for the January-June 2010 period. It had evidence of prices in Chememan Australia's sales to its customers during this period and of Chememan Australia's selling and distribution expenses. Customs would also have been aware that the other post-exportation expenses included in Chememan Australia's selling prices would have been little different during the January to June 2010 period to those during the IP, ie ocean freight, marine insurance, import duty.

From the abovementioned evidence/information, Customs would have known that the export price during January to June 2010 would have been little different than that during the IP. If anything, it would have been lower because Chememan Australia's selling and distribution expenses would have been higher because of its lower turnover during January to June 2010 than during the IP. Consequently, Customs would have known that for Chememan's exports during January-June 2010 to be undumped there would need to be an enormous decrease in the normal value ascertained for the IP. It would need to decrease from about USD 125/tonne to about USD 50/tonne, ie a decrease of about USD/75 tonne or 60%. Customs would know that this is impossible. Customs' investigation would have established that Chememan's domestic prices and costs during the IP were fairly stable and it would be reasonable to assume that those during January to June 2010 would be little different than those during the IP. Customs would certainly know that they could not be sufficiently different to cause the normal value for the January to June 2010 period to be about USD 75/tonne or 60% lower than that ascertained for the IP.

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Supporting the likelihood of there being little difference between the normal values during the IP and during January to June 2010 is the small difference between FOB export prices from Thailand during the IP and those during January to June 2010 according to official ABS import statistics (IP ave – USD 125/tonne; Jan-June 2010 ave – USD 127/tonne). This suggests a likelihood of little change in Thai domestic costs and prices during the IP and those during January to June 2010. There certainly could not have been sufficient difference in Thai domestic prices and costs to enable normal values to be at or below the level of export prices during January to June 2010.

The obligation cast by Customs initiation of this investigation on the reasonable ground that dumped imports from Thailand caused the material injury suffered by Cockburn between March and June 2010, and Customs' possession of evidence/ information indicating a very high likelihood that the imports from Thailand which were the sole cause of this material injury were dumped, are particular circumstances which make it appropriate for Customs to examine the normal value and export price of those imports in this resumed investigation to determine their dumping status.

Materiality of Cockburn's injury/ causation

Customs' investigation has established that price reductions since the start of 2010 caused Cockburn to suffer material injury through lost revenue and **substantial** reduction in profit – SEF 179 and TER 179 refer. The TMRO has endorsed the materiality of this injury and that the bulk of it was sustained in the 3 month period immediately preceding the IP.

It is of important note that the actual quantum of Cockburn's lost revenue and reduced profit during March to June 2010 is significantly greater than that considered by Customs to be material. In its assessment, Customs took into account just the actual amount of Cockburn's price reductions in response to the availability of imported quicklime from Thailand. The actual price effect of the imports from Thailand between March and June 2010 was significantly greater than this. The prices affected by the imports from Thailand were those in term contracts and historically prices in the renewal of such contracts are significantly higher because of CPI and cost (eg power/fuel) increases. Consequently, the effect of the imports from Thailand on Cockburn's prices during March June 2010 was to, not only cause Cockburn to reduce its prevailing contract prices, but to prevent significant price increases which would otherwise have occurred. That is, but for the imports from Thailand, Cockburn would have achieved prices significantly higher than those prior to reductions between March and June 2010, meaning that the lost revenue and profit reduction experienced by Cockburn because of imports from Thailand was substantially greater than that taken into account by Customs.

Precedent for taking into account price increases which would have occurred but for the dumped imports can be found in Customs' finding in relation to aluminium road wheels from China (Report No. 181).

It is paramount that Customs' investigation has established no cause for Cockburn's price reductions and consequent lost revenue and profit reduction other than price undercutting by imports from Thailand. It must follow that the material injury suffered by Cockburn between March and June 2010, as established by Customs and endorsed by the TMRO, was caused by imports from Thailand.

Conclusion

The circumstances of this case are such that it is reasonable, logical and rational for this resumed investigation to determine whether the imports from Thailand which caused the material injury suffered by Cockburn between March and June 2010 were dumped.

In closing, we bring it to Customs attention that, contrary to Customs expectation prior to the termination decision, imports of quicklime from Thailand into Western Australia continue, and continue to be offered to Cockburn's customers.

Yours sincerely,



Roger Simpson