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By email

Dear Joanne

Quicklime from Thailand - resumption of investigation
Submission of Chememan Company Limited

We refer to Australian Customs Dumping Notice No.2012/38 ("ACDN 2012/38").

ACDN 2012/38 was published in response to the decision of the Trade Measures Review Officer ("TMRO") regarding the decision of the Chief Executive Officer ("CEO") of the Australian Customs and Border Protection Service ("Customs") to terminate the anti-dumping investigation into quicklime imported from Thailand.

The TMRO decided to revoke the termination decision. The basis for the revocation appears to be a "non-binding" recommendation that the period of investigation ("POI") be extended to take into account imports of quicklime from Thailand for a period of either 3 to 6 months before the POI that was the subject of the investigation.

ACDN 2012/38 states that the approach outlined by the TMRO could result in three possible outcomes, being:

- *amending the investigation period to cover the months preceding the specified investigation period; or*
- *maintaining the original investigation period but having regard to the injury sustained by the applicant prior to the that period and whether such injury was caused by dumping or quicklime*
- *confirming the CEO's original decision on the length of the investigation*

With respect, Chememan Co. Ltd. ("Chememan") submits that the final option is the only option open to Customs. We submit that the decision of the TMRO and his consequent advice to Customs is legally incorrect. Moreover, we have a strong concern that the TMRO arrived at his

decision by taking into account information, and by undertaking an investigative process, which was not open to him, and without due regard for Chememan's due process rights. Lastly, even if Customs were to undertake the process now suggested by the TMRO, the outcome would be no different and the investigation should again be terminated.

In this regard, we wish to make the following submissions:

- A POI is a fixed element of an anti-dumping investigation.
- Extending the POI to an earlier period of time could not now lead to findings based on positive evidence.
- Sections 33(1) and (3) of the *Acts Interpretation Act* 1901 do not operate in the way suggested by the TMRO in relation to the stipulation of the POI.
- Section 269T of the *Customs Act* 1901 ("the Act") does not operate in the way suggested by the TMRO.
- In making his decision the TMRO had regard to information which he was not entitled to either seek or consider.
- The decision of the TMRO has been made in a way that amounts to a denial of natural justice to Chememan.
- In any event, a resumption of the investigation which considered an extended POI would inevitably lead to the same outcome.

1 A POI is a fixed element of an anti-dumping investigation

The TMRO's review report ("the Review Report") explains the primary grounds for review as being that:

> *...the outcome of the investigation was prejudiced by the investigation period being set as 1 July 2010 to 30 June 2011. The applicant argues that if Customs had taken account of its price reductions between March and June 2010, Customs would have found that the applicant suffered material injury during this period, and that it was caused by the dumped exports.*

With respect, we do not see how this argument could have been countenanced as appropriate grounds on which to establish a TMRO review, or to subsequently revoke the decision of the CEO to terminate the investigation.

The anti-dumping laws contained in Part XVB of the Act are Australia's implementation of the terms of the WTO's *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("the Anti-Dumping Agreement"). Article 1 of the Anti-Dumping Agreement provides that:

> *An anti dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in*

accordance with the provisions of this Agreement.

The POI – which is taken into account for the respective purposes of deciding whether dumping has occurred and, if so, whether it has caused material injury – is a very important reference point for any investigation under this Article. This importance was acknowledged by the WTO Appellate Body in its report in *European Communities - Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*:[1]

> *As the Panel correctly noted, the POI 'form[s] the basis for an objective and unbiased determination by the investigating authority.' Like the Panel and the parties to this dispute, we understand a POI to provide data collected over a sustained period of time, which period can allow the investigating authority to make a dumping determination that is less likely to be subject to market fluctuations or other vagaries that may distort a proper evaluation. We agree with the Panel that the standardized reliance on a POI, although not fixed in duration by the Anti-Dumping Agreement, assures the investigating authority and exporters of 'a consistent and reasonable methodology for determining present dumping', which anti-dumping duties are intended to offset.* [emphasis added]

The WTO Committee on Anti-Dumping Practices has recommended that as a general rule:

> *the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable;*[2]

In line with this recommendation, Customs' policy, as stated in the Anti-Dumping and Countervailing Handbook ("the Handbook"), is as follows:

> *Customs and Border Protection will nominate an investigation period that is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month. However, the investigation period may cover a longer period to ensure that it includes a full financial accounting period.*[3]

The investigation concerning the alleged dumping of quicklime from Thailand was initiated based on a stated investigation period of 12 months. That period was the period of information-collection for dumping purposes. That period was the period that our client and all other interested parties were required to address. That period was the period investigated and analysed by Customs. The CEO's decision to terminate the investigation was based on the information obtained and the findings reached in respect of that period. On the basis of an objective and unbiased determination of the information pertaining to the POI, it was determined that there had been dumping, but that the dumping had not caused material injury to the Australian industry. Additionally, it was determined that dumping did not threaten material injury. This was the appropriate outcome, arrived at within the terms of reference set out for the statutory purpose that the CEO had a duty to fulfil.

A resumed investigation with a POI extending to an earlier time would undo the investigation itself. Customs' choice of the POI formed a critical reference point for its investigation. It in no

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1 WT/DS219/AB/R, 22 July 2003 (Appellate Body Report), para 80

2 The Recommendation was made in G/ADP/6 and adopted by the Committee in G/ADP/M/16 at para 83

3 Page 11

way prejudiced the investigation. It cannot be suggested that the stipulation of that period offended the due process rights of the applicant, or was unreasonable, as alleged by the applicant. A finding was made based on the POI. The POI cannot be unreasonable simply because it resulted in one particular finding and not another. To think otherwise would transform the exercise into a "moveable feast". The Applicant appears to want the process to be manipulated in such a manner so as to render the exercise a punitive one.

If Customs was to resume the investigation and deviate from its stated policy with regard to the length of the POI, on the off chance that doing so will make it more likely that dumping duties will be imposed, the impartiality and objectivity of the investigation would be called into question.

2 Extending the POI to an earlier period of time could not now lead to findings based on positive evidence

Changed findings of material injury based on a resumed investigation of the type suggested by the TMRO would be in breach of Article 3.1 of the Anti-Dumping Agreement. A resumed investigation dating back to that earlier time could not lead to conclusions based on *positive evidence* as required by Article 3.1 of the Anti-Dumping Agreement.

For example, in *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*[4] the Appellate Body stated that the imposition of dumping duties must be based on a determination of the *"current situation"*.[5] The term *"positive evidence"* was said to refer to evidence that is *"relevant or pertinent"* to the *"current situation"*.[6] The revocation of the no-injury finding by the TMRO, and any renewed investigation - using information which is now over two years old - could not be said to be relevant and pertinent to the *"current situation"*. Therefore the revocation itself cannot be said to be a determination based on positive evidence, and we submit that no resumed investigation conducted on the basis suggested by the TMRO could lead to findings based on positive evidence.

The original decision to terminate the investigation was based on an objective and unbiased determination of the current situation in the Australian market for quicklime. The finding that imports of quicklime neither caused nor threatened to cause material injury to the Australian industry was both an appropriate and reasonable outcome, and remains such.

3 Sections 33(1) or (3) of the *Acts Interpretation Act* 1901 do not operate in the way suggested

The Review Report suggests that Section 33(1) or (3) of the *Acts Interpretation Act 1901* ("the Interpretation Act") provides an avenue whereby the CEO may amend the POI, as noted in a public notice of initiation of the investigation. With respect, we do not think the Review Report provides an adequate analysis of these provisions. For our part, we do not think that they are

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4 WT/DS295/AB/R, 29 November 2005 (Appellate Body Report)

5 Para 165

6 *Ibid.*

relevant to the circumstances of this case. We submit that the POI cannot be changed under those Sections and that the conclusions reached in the Review Report in this regard are incorrect.

Section 33(1) of the Interpretation Act provides:

> *(1) Where an Act confers a power or function or imposes a duty, then the power may be exercised and the function or duty must be performed from time to time as occasion requires.*

The purpose of Section 33(1) has been described as being to overcome *"an inconvenient common law doctrine of somewhat uncertain extent to the effect that a power conferred by statute was exhausted by its first exercise".*[7]

Section 33(1) of the Interpretation Act relates only to statutory provisions which confer powers or functions, or which impose a duty to be exercised or performed. However, the obligation to publish a notice regarding the decision not to reject an application for an anti-dumping investigation arises only as a function of that decision and is not an independent power, function or duty. This is expressly noted by Section 269TC(4) of the Act which states:

> *If the CEO decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the CEO must give public notice of the decision...*

The need to publish a public notice of the decision to initiate the investigation is a procedural obligation, both under the Interpretation Act and as characterised by WTO law. The function, power or duty is the decision not to reject the application. The notice itself is *"not concerned with the substance of the decision to initiate an investigation".*[8] The imposition of a procedural obligation cannot be defined to be the conferral of a power, function or imposition of a duty.

Section 33(1) of the Interpretation Act only applies to an Act or a provision of an Act insofar as there is no contrary intention evident in that Act. Relevantly, Section 2 of the Interpretation Act provides that:

> *...the application of this Act or a provision of this Act to an Act or a provision of an Act is subject to contrary intention.*

If, contrary to our submission, it is considered that the publication of the notice itself and each of the details in it is a function, power or duty for the purposes of Section 33(1), then we alternatively submit that the Act does not intend that the notice and its details can be *"performed from time to time as occasion requires".*

It is the clear intention of the Act that the procedural obligation to publish a notice under Section 269TC(4) arises only at the point that the CEO has determined that Sections 269TB(1) and 269TB(2) do not provide grounds for the rejection of an application for an anti-dumping investigation. Once the notice has been published, it is not then susceptible to amendment.

This view is fortified by the fact that the provisions describing the details which are to be set out in such a notice allow some of those details to be changed but do not require the notice to be

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7 *Minister for Immigration and Ethic Affairs v Kurtovic* (1990) 21 FCR 193, per Gummow J p 211.

8 *Guatemala - Cement II para 8.89*

re-given or revised or recast. For example, under Section 269TC(4)(e) the notice is required to explain that a Statement of Essential Facts ("SEF") will be published within 110 days of the initiation of the investigation, or within such longer period as the Minister allows under Section 269ZHI of the Act. This 110 day limit is itself set by Section 269TDAA. Where the Minister extends the deadline for completion of the SEF, no amendment to the Section 269TC(4) notice is made. This is despite the fact that such an adjustment also affects the date on which the final report is to be provided to the Minister, as noted in Section 269TC(4)(bf)(ii). Similarly, where the CEO makes a decision to terminate the investigation under Section 269TDA, this does not have the effect of revoking, or even amending the initial Section 269TC(4) notice.

We submit that it is wrong to suggest that an initiation notice can be re-given with different details in it. As we have said, the giving of the notice is not a function, power or duty of the type to which Section 33(1) of the Interpretation Act applies, and the Act itself expresses contrary intentions about the nature and status of such a notice.

Section 33(3) of the Interpretation Act provides that:

> *Where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.*

In this regard, the Federal Court of Australia has previously held that there is:

> *...a conceptual distinction between a power to issue an instrument, which itself has an operative legal effect, and a power to make a statutory decision which is immediately operative but, in the interests of good administration, is thereafter recorded in writing.*[9]

The alleged "instrument" in this case would have to be the Section 269TC(4) notice, although this is not expressed in the Review Report.

It is clear from the terms of Section 269TC(4) that the procedural obligation to give public notice only arises at the point that the CEO makes a decision not to reject an application. It is a public notice of that decision. Therefore the publication of the notice is not a power to make, grant or issue an instrument, it is merely a procedural obligation that arises once the CEO has fulfilled his duty to examine an application under Section 269TC(1) or (2) and has determined that the application should not be rejected. The initiation of an antidumping investigation arises only as a result of the CEO's consideration of the application under Sections 269TC(1) or (2), and we very strongly doubt whether a notice issued on the making of a decision not to reject an application can be considered to be an "instrument".

Even if these points were not accepted, we would also point out that Section 33(3) of the Interpretation Act is subject to the "contrary intention" provision, as outlined above. The purpose of a notice under Section 269TC(4) is to give notice of a decision not to reject an application and to set out the parameters of the investigation which is to be conducted. The very nature of such a notice suggests that it is not intended to be re-given at some point after initiation. Imagine, for example, if the CEO was to now issue a new notice that he had not rejected the

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[9] Per Wilcox J, *Laurence v Chief of Navy* [2004] FCA 1535 at 558; Middelton J, *Nicholson-Brown v Jennings* [2007] FCA 634, at 26.

application and that he was now going to undertake an investigation with the parameters now stated in it. That has already happened and the investigation was terminated. Even if it is now resumed, it is self-evident that the application has not been rejected and that a large part of the investigation (its entirety, putting the purported resumption to one side) has already been conducted.

If the Section 269TC(4) notice is an instrument, then we submit that the circumstances of its issue and its purposes obviously evince an intention not to allow it to be issued again. There is a clear "contrary intent" to the application of Section 33(3) of the Interpretation Act to a Section 269TC(4) notice.

4 Section 269T of the Act does not operate in the way suggested

The Review Report refers to Section 269T(2AD) as a provision under which the extended investigation period can be considered. Section 269T(2AD) provides:

> *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*

It is noted that the CEO can consider a period outside the investigation period for the material injury analysis. In the case of the quicklime investigation he did: the injury analysis considered the details of the Australian market from 1 January 2008 onwards. As noted in the Handbook, while Section 269T(2AD) allows an examination of material injury indicators before the investigation period *"it cannot support an inference or presumption that material injury identified as occurring before the investigation period can be attributed to dumped imports"*.[10]

However, the Review Report seems to suggest that Section 269T(2AD) has some greater scope. The Report notes:

> *...it would have been appropriate for Customs to analyse not only the injury sustained by the applicant in the period immediately preceding the investigation period, but also to analyse the export price and normal value of the goods during this time under s 269T(2AD) in order to determine whether any material injury was caused by dumping.*

This suggestion is apparently based on the fact that Section 269TAB and Section 269TAC do not limit the examination of export price and normal value by reference to the investigation period.[11] With respect, this ignores the framework put in place by the Act and the current judicial explanations regarding what is required to be considered during the investigation.

Firstly, we would note that the Full Court of the Federal Court of Australian expressly denied such an interpretation in *Pilkington (Australian Ltd v Minister of State for Justice & Customs*[12] ("Pilkington"). In their joint judgement, the Justices found that *[n]o longer do the temporally*

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10 Page 120

11 *Decision of the Trade Measures Review Officer - Review of a Termination Decisions; Application of Cockburn Cement Pty Ltd*, paragraph 26

12 [2002] FCAFC 423

unconstrained terms of [Sections] 269TAB and 269TAC... govern the task under subsection 269TG(1) because Section 269TACB(1) *makes clear what the minister must do in relation to ascertaining "whether dumping has occurred".*[13] Similarly, the consideration of the CEO was limited to determining whether dumping has occurred.[14]

Section 269TACB sets out how the CEO must determine whether dumping has occurred and the levels of dumping. Relevantly, it provides:

> *(1) If:*
>
> *(a) application is made for a dumping duty notice; and*
>
> *(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and*
>
> *(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;*
>
> *the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.*

The focus on the investigation period is included in each provision in the section. According to the judgement in Pilkington, Sections 269TAB and 269TAC cannot be used to consider the normal value and export prices for a period outside the POI.

As well as being at odds with precedent, the position suggested in the Review Report simply cannot be applied under the terms of the Act. For example, the CEO is required to make his decision whether to terminate the investigation on the basis of the dumping determination required under Section 269TDA. Section 269TDA requires that an investigation be terminated for a number of reasons, including that the dumping margins are negligible or if a negligible volume of dumping is found. Each of these requires a determination of dumping under Section 269TACB and therefore a determination based on information from the POI. There is nothing within the Act that would allow the CEO to consider whether dumping occurred outside the POI.

As noted above, the specific decision that led to the termination of the investigation was made under Section 269TDA(13), which requires that an investigation be terminated where dumping is found (again under Section 269TACB, and therefore based on information from the investigation period) but the injury *caused by that dumping is negligible*. This clearly requires the finding that material injury has occurred to be linked to the finding that dumping has occurred. As the finding that dumping has occurred must be made on the basis of the information from the investigation period, so too must the finding that material injury has been caused. Even if the dumping law operated in the way suggested by the Review Report, the CEO at the time of making the termination decision cannot look beyond the POI to determine whether dumping has occurred outside that period.

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13 Ibid. at para 108

14 Ibid. at para 61

Similarly, a dumping notice can only be imposed by Section 269TG(1) and (2) where a finding that dumping has occurred is made, and that, because of that dumping, material injury has been caused to the Australian industry. Again, there must be a link between the dumping that has been determined to have occurred in accordance to Section 269TACB(1) and the material injury allegedly suffered. A finding that dumping or material injury has occurred outside of the POI cannot be said to be a finding that material injury has occurred because of the dumping that has been determined to have occurred within the POI. Thus, even if a hypothetical resumed investigation was not to be immediately terminated and recommendations were made to the Minister, those recommendations could not take into account dumping that had occurred outside the POI.

For these reasons we consider that the advice provided in the Review Report in this aspect to be incorrect. Customs has no ability to maintain the original POI, but determine whether dumping and material injury have occurred outside that POI. The second option listed from ACDN 2012//38 is not legally feasible.

5 In making his decision the TMRO had regard to information which he was not entitled to either seek or consider

We note that the CEO's decision was properly considered to be a termination decision, the review of which is guided by Section 269ZZT of the Act. Section 269ZZT(4) provides that:

> *In making a decision under this section, the Review Officer must have regard only to information that was before the CEO when the CEO made the reviewable decision*

The "reviewable decision" for the purposes of this matter was the decision to terminate the investigation under Section 269TDA(13). It is important to note that the decision in this regard does not relate to the setting of the POI. Rather, the decision to terminate an investigation under Section 269TDA(13) is made when:

> *(13) If:*
>
> *(a) application is made for a dumping duty notice; and*
>
> *(b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the CEO is satisfied that:*
>
> *(i) there has been, or may be, dumping of some or all of those goods; but*
>
> *(ii) the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible;*
>
> *the CEO must terminate the investigation so far as it relates to that country.*

It is the finding that the injury that has been caused by the dumped goods is negligible that is

the decision that the TMRO was required to review. We submit that the TMRO has no power to revoke a termination decision based on the proposition that information which Customs did not have would or could have led to a different decision.

This interpretation is consistent with current jurisprudence. In relation to a review of a ministerial decision – under which the TMRO is similarly expressly limited to having regard only to *relevant information*, being the information that the CEO had regard to in making his recommendations to the Minister – the Full Court of the Federal Court of Australia has held:

> *...in circumstances, such as the present, of a reviewable decision made pursuant to an application under s 269TB, the information to which the Review Officer must only have regard is limited to the information to which the CEO had regard, which insofar as it concerned the question as to whether dumping had occurred was, subject to the matters in subs 269TEA(2), limited to an analysis of whether dumping occurred by reference to the investigation period (subs 269TACB(1)).[emphasis added]*

This does not allow for a consideration of either the effect of the POI on the reviewable decision, or of the outcome which might have arisen using information the CEO did not have. There is no reason why the review of a termination decision – under which the TMRO is similarly limited to having regard only to the information that was before the CEO when the decision was made – would allow for a broader reconsideration of the investigation generally.

The Review Report does not identify any factor that detracts from the merits of the CEO's decision to terminate the investigation. We therefore consider that the CEO's decision could not have been revoked on the basis stated in the Review Report. In this regard, we believe that the TMRO acted outside the ambit of his power, and on that basis the revocation decision would be *ultra vires*. If that view were to be accepted, Customs has no grounds on which to legally resume the investigation.

6 The decision of the TMRO has been made in a way that amounts to a denial of natural justice to Chememan

We note that the Review Report refers to:

- requests by the TMRO for Customs to provide new analyses of information;
- compliance on Customs' part with those requests, and the submission of those new analyses to the TMRO;
- the consideration of those new analyses by the TMRO, assisted by explanations of them given by Customs to the TMRO in face-to-face meetings; and
- face-to-face meetings between the TMRO and representatives of the applicants.

We do not know what was discussed in these meetings.

Unless nothing was said or conveyed at those meetings – a nonsense – then clearly the TMRO has had regard to more than the information to which he is confined by the Act.

No written record has been made, or at least has not been made available to either our client or ourselves.

No information in any form has been provided regarding the notes of the meeting between the TMRO and the Applicant as is required under Section 269ZZX(1)(a)(ii).

The TMRO did not carry out his duty under Section 269ZZX to maintain a public record for the purposes of the review.

Frankly, both our client and ourselves were stunned by these revelations. Our client's due process rights have not been recognised, and the TMRO has strayed outside the limits of his review role.

7 In any event, a resumption of the investigation which considered an extended POI would inevitably lead to the same outcome

The basis of the revocation of the termination decision appears to be that a resumed investigation with an extended POI could lead to a finding that dumping had caused material injury to the Australian industry. We consider that we have established that no such resumption of investigation can be undertaken. Alternatively, Customs could simply acknowledge that it cannot and will not extend its investigation period even further back in time, and again terminate the investigation. Without detracting from our submissions in those respects, we are also of the opinion that consideration of information from an extended POI would not reverse the conclusions that the CEO has already made.

We would emphasise that Chememan only began exporting commercial quantities of quicklime into Australia in May 2010.[15] That was two months after the TMRO considers that Cockburn began to suffer material injury.[16] These exports began at the time that Chememan Australia Pty Limited's facilities were completed.[17] We have reviewed information from Chememan regarding sales to Australia during the January – June 2010 period, and find that only **[CONFIDENTIAL TEXT DELETED]** MT was exported to Australia in that period. This figure is supported by the graphs on page 15 of the Termination Report.

To put this into some perspective:

- The Australian market for quicklime is approximately 2.1 million tonnes.[18] Therefore, in the six month period, it could be estimated that the Australian market for quicklime was approximately 1.05 million tonnes. Therefore in the six months between January 2010 and June 2010, Chememan's exports amounted to 0.**[CONFIDENTIAL TEXT DELETED]**% of the quicklime in the Australian market.
- The applicant claims to supply about 60% of the quicklime produced and sold into the

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15 Exporter Visit Report page 9

16 *Decision of the Trade Measures Review Officer – Review of a Termination Decisions: Application of Cockburn Cement Pty Ltd*, paragraph 34

17 Importer Visit Report page 20

18 See page 14 of the *International Trade Remedies Branch: investigation Number 179 – Termination of an Investigation.*

Australian market.[19] Therefore, based on the figures quoted above, we can assume that it provides 1,260,000 tonnes a year, and 630,000 tonnes in a 6 month period. Therefore, in the six months between January 2010 and June 2010, Chememan provided an amount of quicklime equal to 0.**[CONFIDENTIAL TEXT DELETED]**% of the applicants' production over the same period.

- As Customs would be aware from Chememan's Exporter Questionnaire, the volume of quicklime exported by Chememan into Australia between July 2010 and June 2011 was **[CONFIDENTIAL TEXT DELETED]** tonnes. This is equal to 0.**[CONFIDENTIAL TEXT DELETED]**% of the overall Australian market. If the POI is extended over 18 months, as recommended by the TMRO we consider that the total volume of quicklime demanded in the Australian market would be 3.15 million tonnes. Therefore, over the extended POI, Chememan's exports would be equal to 0.**[CONFIDENTIAL TEXT DELETED]**% of the Australian market and 0.**[CONFIDENTIAL TEXT DELETED]**% of Cockburn's production over the same period.

These percentages are the based on the sum total of Chememan's exports to Australia in that period. No distinction is made between alumina and non-alumina sales. This is important to note because only sales to the non-alumina sector were determined to have been dumped. During the period Chememan Australia Pty Ltd only on-sold **[CONFIDENTIAL TEXT DELETED]**MT into the Australian market. Of this, only **[CONFIDENTIAL TEXT DELETED]** MT were sold to the non-alumina sector.

While we do not accept that there is any evidence to suggest that Chememan's **[CONFIDENTIAL TEXT DELETED]** MT of quicklime in question was dumped, it is obviously of such a small volume that it could not alter the finding that material injury had not been caused by the imports.

With respect, the proposition that the Australian industry could have been caused material injury in the spot sale non-alumina market merely because Chememan had available for sale 0.**[CONFIDENTIAL TEXT DELETED]**% of the quicklime demanded by the market cannot be supported.

The Termination Report also contains clear findings about the minor losses in profit levels – huge profit levels, given its near monopoly status (on "non-captive production" basis) as a seller of quicklime at the relevant time – and the price over-reaction of the Applicant to the miniscule levels of imports in the market place. These two points underline firstly that no material injury took place, and secondly that any minor impact on the Applicant's huge profit levels must have been a form of self-injury.

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The decision set out in the Review Report was flawed.

It has been based on a misconception of what the TMRO is empowered to do.

It contradicts law.

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[19] See Page 18 of the *International Trade Remedies Branch Consideration Report No.179 - Application for a Dumping Notice – Quicklime Exported From Thailand*

It was arrived at in breach of the information restrictions placed on the TMRO.

Our client's due process rights were disregarded in its making.

We believe that the TMRO did not have the power or the right to revoke the original termination decision based on the reasons in his report.

Customs could have arrived at the same conclusion, and denied any resumption.

Having resumed its investigation, and without prejudice to our opinion that there has been no basis for the resumption, the CEO should promptly confirm that the POI is not to be changed and that the investigation is to be re-terminated.

Please do not hesitate to contact me should you have any questions regarding the matters raised in this submission.

Yours sincerely

Daniel Moulis
Principal