

12 November 2016

The Director
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commercial + international

By email

Dear Director

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

We refer to the Statement of Essential Facts ("the SEF") placed on the public record of this investigation on 10 October 2016.

Our client supports and agrees with the finding in the SEF to the effect that:

The Commissioner is satisfied that the dumped exports of quicklime from Malaysia, Thailand and Vietnam have caused negligible injury to the Australian industry.¹

and that, as a consequence:

...the Commissioner proposes to terminate the investigation:

...

- in accordance with subsection 269TDA(13), because the injury to the Australian industry, that has been, or may be, caused by dumped exports from Thailand, Vietnam and Malaysia, is negligible.²*

In our submission dated 13 September 2016, we stated:

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.³

¹ SEF, section 1.3.6, page 8.

² SEF, section 1.3.8, page 8.

³ EPR 348, document 026, page 3.

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The Commission's finding is to the same effect:

The applicant stated that the price for quicklime sold into the non-alumina sector is greater due to increased costs at the Dongara plant, however the Commission notes that even when separating the price of quicklime sold into the non-alumina sector from all other quicklime sold by Cockburn Cement, which results in a higher per tonne price, the non-alumina prices are still not being undercut by the dumped imports.⁴

The SEF also states:

The Commission observes that the average selling prices of imported quicklime from Thailand and Vietnam are above the USP proposed by Cockburn Cement.⁵

Rather than dwell on the recommendation in the SEF to terminate the investigation, which is straightforward and we feel fully justified based on what the Commission has found in its investigation, we would like to focus on a matter which is of at least equal concern to our client – the insufficient basis on which the two investigations have been initiated.

This is the second investigation that Cockburn Cement has agitated in recent times. The first investigation was initiated on 31 October 2011. This may not seem to be “recent”, however the Australian industry managed to keep that issue alive for over three years through a succession of administrative reviews (one by the Trade Measures Review Officer and another by its successor, the Anti-Dumping Review Panel). That application was found to be baseless by the Commission on each of the three occasions it was called upon to consider it, and had to be terminated three times before Cockburn Cement withdrew its opposition to the Commission's findings.

Despite the lack of merits of the claim, exporters and importers were forced by the Australian industry applicant to expend large amounts of time and cost in an effort to defend themselves. Further, the markets concerned (for quicklime and for the downstream resources) were significantly disrupted for a prolonged period of time thereby.

The termination of this investigation so soon after termination of the previous one focusses attention on the credibility and the legitimacy of the claims made in its applications. The Australian industry has been demonstrated, in each of the investigations it has requested, not to have suffered material injury at all. Going by its own public statements, the profitability that it has experienced at all relevant times has been very good. Its annual reports and market advice have extolled the robust health of its overall lime business and its prospects. It has a cheap and easily available resource under its control and use, a huge freight advantage over foreign exporters, a dominant market position as the largest scale Australian producer by far, and advantageous fixed-term supply contracts with its major customers.

On two occasions now the Commission has found that no material injury has been caused by reason of the allegedly dumped imports, to the extent on this occasion of stating that there was no price undercutting even after adjusting for available lime concentration,⁶ and that the “unsuppressed price” suggested by the applicant itself was less than the average price at which the exported product from Thailand and Vietnam was sold.⁷

In these circumstances our client requests the Commission to very fully and very carefully interrogate any future application that may be lodged by Cockburn Cement before deciding whether to initiate an investigation, and to refrain from doing so unless a very clear *prima facie* basis for the initiation of

⁴ SEF, section 8.4.1, page 45.

⁵ SEF, section 8.4.1, page 46.

⁶ SEF, section 8.6, page 47.

⁷ SEF, section 8.4.1, page 46.

an investigation is made out. The applicant's effort on this occasion, and the last, have both been short of the mark.

Our client's concern is underlined by the divergence of some of the most important assertions made in the application from the facts as found by the Commission. For example:

- The Commission has found that there was some dumping from our client, but only in the amount of 12.3%. Without agreeing with that summation, we would simply wish to note that the allegation in the application was that our client's exports were dumped in a range of 97% to 122%.⁸ Even at the bottom end of that range the applicant's estimation exceeds the dumping margin assessed by the Commission by a whopping 788%.
- Exaggerations are also apparent in the case of the allegations concerning the other source countries. The applicant alleged that Malaysian exports were dumped in a range of 30% to 46%.⁹ However the Commission has found the range for cooperative exporters to be from a non-dumped level to 7.6% dumping. For Vietnam, the applicant alleged that the margins were 68% to 89%.¹⁰ We believe that the Commission's factual finding, once corrected for certain double-counting of costs, will be that there has not been any dumping from that country at all.
- The Commission has found that the market size in the POI was 2.1 million tonnes.¹¹ However the applicant asserted, in its application, that the total Australian market for quicklime was only 1.6 million tonnes per annum.¹² This is fully 500,000 million tonnes or 24% less than the actual market size. This means that the "2015" import tonnage of the goods under consideration from the subject countries, quoted at 72,279 tonnes in the application, amounted to only 3.4% of the market.¹³
- The Commission found that the applicant's costs of production for quicklime supplied by the applicant to non-alumina customers (Dongara) had reduced from 2014 to 2015 (going by the inclination of the line on Figure 11 in the SEF).¹⁴ However, the application claimed that the cost variation for non-alumina quicklime had increased by 5.5%.¹⁵

In each of the cases mentioned above – each of which relates to a critical aspect of any complaint that dumping has caused material injury – the application appears to have been wrong.

Yours sincerely



Daniel Moulis
Principal Partner

⁸ Application, section B-6, page 37.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ SEF, section 5.1, page 16.

¹² Consideration Report, section 2.5.1, page 10.

¹³ Application, section A-4, page 13.

¹⁴ SEF, section 7.5, page 40.

¹⁵ Application, section A-8, page 19.