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Ms J Reid
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By email

Dear Joanne

Quicklime from Thailand – resumption of investigation
Response to submissions of Australian industry

We refer to the submissions of Cockburn Cement Limited ("Cockburn") dated 21 and 28 August 2012.

We understand that the time for making submissions regarding the proposed Statement of Essential Facts ("SEF") as was advised by Australian Customs and Border Protection Service ("Customs") has passed. However, Cockburn's recent submissions in this resumed investigation are significantly flawed. Our client Chememan Company Limited ("Chememan") could not let the assertions made therein go unchallenged.

That being said, we emphasise that the contents of this letter are made without prejudice to the submission previously made by Chememan.

First - the way in which Cockburn has chosen to interpret what was said by Customs in Termination Report 179 is a serious distortion of what was actually said, and of what was intended. We will not detail the individual examples of over-reaching, over-statement, and over-exaggeration in Cockburn's recent submissions. Cockburn's submissions suggest that Customs actually made a finding that dumping caused it material injury, or that it would have done so if the period of investigation had been longer. Those suggestions are diametrically opposed to Customs' actual findings in the Termination Report.

Based on the insignificant levels of quicklime imported prior to the commencement of the original period of investigation, a resumed investigation which considers those earlier imports would not lead to a different outcome. Cockburn can extrapolate its faulty interpretation of Termination Report 179 to any extent imaginable, but it will not alter this core, undeniable reality.

Secondly - we note that Cockburn believes its near monopoly status and huge profit levels have *"no bearing"* on whether material injury has been caused by dumped goods. In this regard we respectfully but entirely disagree. Our position is supported by the *Ministerial Direction on*

Material Injury 2012, which notes:

> *I understand that the law does not prevent judging the materiality of injury caused by a given degree of dumping or subsidisation differently, depending on the current economic condition of the Australian industry suffering the injury. In considering the circumstances of each case I direct that you consider that an industry which at one point is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping and subsidisation.*

This is necessarily a direction to consider the economic condition of the Australian industry in determining whether material injury has been suffered. The economic condition of the industry is a measure by which to gauge the "materiality" of the injury.

It is therefore apposite to consider Cockburn's near monopoly status and huge profit levels when determining whether dumping has caused it material injury. It is evident that Cockburn was at all relevant times – and continues to be - in a very strong position economically speaking. The amount of quicklime imported by Chememan prior to the period of investigation – even assuming that it was dumped - was insignificant. Taking that volume of imports into consideration would do nothing to change the finding that Cockburn had not suffered material injury.

We do not accept that the volume of quicklime imported by Chememan could lead to any form of price depression or suppression. Whatever the basis of Cockburn's apparent decision to reduce its prices prior the period of investigation – which only occurred in relation to one market segment it operates in, and even then only for a few customers – its effects were self-injurious and do not meet any reasonable materiality standard. It is clear that Cockburn was and remains "healthy". It can obviously "shrug off" the effects of the presence of any dumped or subsidised products – especially as they were imported in such miniscule volumes. Any contrary view would render both the material injury test and the Ministerial direction inconsequential.

Thus, if it were legally possible to extend the period of investigation to include the small amount of quicklime imported before July 2010 – and we continue to maintain that it is not - then there could still only be a finding that Cockburn had not suffered any material injury as a result of imports from Chememan.

We do not believe the submissions of Cockburn in this resumed investigation have raised any substantive grounds that detract from the correctness of Customs' initial decision to terminate the investigation, or of the previous submissions made by Chememan.

We reiterate that the only option open to Customs in relation to the Trade Measures Review Officer's recommendation is for the SEF to confirm that the POI will not be changed, and that the re-investigation is to be re-terminated.

Yours sincerely

Daniel Moulis
Principal

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