



ANTI – DUMPING SPECIALISTS

ACN 056 514 213 ABN 87 056 514 213

17 April 2013

NON-CONFIDENTIAL

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,

STATEMENT OF ESSENTIAL FACTS NO 179A – QUICKLIME FROM THAILAND

This submission is supplemental to our submission of 8 April 2013 on behalf of Cockburn Cement Ltd (“Cockburn”).

In his review of Customs’ decision to terminate investigation no. 179 on the fundamental ground that the material injury experienced by Cockburn between March and June 2010 because of imports from Thailand could not be attributed to dumping because it occurred prior to the July 2010 – June 2011 investigation period, the TMRO found that –

- a) it is open to Customs to extend the investigation period as part of the resumed investigation; and
- b) it is open to Customs to determine the dumping status of imports from Thailand in the period prior to the investigation period to enable it to determine whether the injury suffered by Cockburn in the 4 months immediately prior to the investigation period has been caused by dumping.

It is paramount that after more than 7 months of exhaustive examination of the abovementioned findings by the TMRO, Customs has found that there is no legislation, WTO jurisprudence or case law which refutes these findings. That is, Customs has found that it is open to Customs to adopt the TMRO’s recommendation that in its resumed investigation Customs either –

- amends the investigation period to cover the period between January and June 2010; or
- otherwise uses the clear power in s269T(2AD) to analyse whether the injury sustained by Cockburn between January and June 2010 was caused by the dumping of quicklime from Thailand.

It is conclusively demonstrated by our submission of 8 April 2013 that Customs’ investigation no. 179 found that **the injury sustained by Cockburn because of imports of quicklime from Thailand between January and June 2010 is material (substantial profit reduction).**

Having found that it is open to determine the dumping status of the imports of quicklime from Thailand which caused material injury to Cockburn between March and June 2010, the consideration for Customs is whether the particular circumstances of this case are such that it

is appropriate to do so, as recommended by the TMRO. Statement of Essential Facts No. 179A cites no particular circumstances of this case which make it inappropriate to adopt the said TMRO's recommendation.

Particular circumstances which do make it appropriate to determine the dumping status of imports between January and June 2010 include the following:

- At a meeting with Customs' officials, including the CEO's delegate for this case ("the delegate") and a member of the Operational Support directorate, in Canberra on 14 July 2011, Cockburn presented its case for applying for anti-dumping measures. The keynote of its presentation was detail of the injury sustained between March and June 2010 because of dumped imports of quicklime from Thailand;
- Following the said meeting on 14 July 2010, Cockburn was invited by Customs to make an application for the imposition of anti-dumping measures;
- On 11 September 2011 Cockburn submitted a draft application in which its injury case was based on the injury sustained between March and June 2010 because of dumped imports from Thailand;
- Customs' response to this draft application on 23 September 2011 provided a number of suggestions to improve the application, none of which related to the said injury case;
- On 6 October 2011 Cockburn submitted its application taking into account the suggestions provided by Customs on 23 September 2011;
- On 13 October 2011 Customs provided Cockburn with a list of deficiencies in the application which were to be addressed before initiation, none of which related to the said injury case;
- On 27 October 2011 Customs initiated investigation no. 179 on the basis of the prima facie case made by Cockburn in its application, of which the keynote was injury sustained by Cockburn between March and June 2010 because of dumped imports from Thailand; and
- Having initiated investigation no. 179 on the said basis, in its initiation notice Customs defined the investigation period as 1 July 2010 to 30 June 2011.

Summarising the above circumstances, Customs initiated investigation no. 179 and defined the July 2010-June 2011 investigation period with clear knowledge that **the keynote of Cockburn's case for imposition anti-dumping measures was injury sustained between March and June 2010 because of dumped imports from Thailand.**

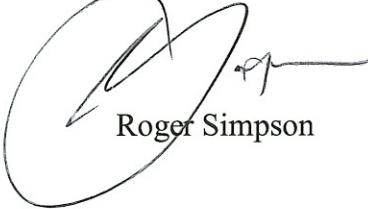
It follows from the above that by not determining the dumping status of the imports which caused Cockburn's injury between March and June 2010, **neither investigation no. 179 nor resumed investigation no. 179A have investigated the grounds upon which investigation no. 179 was initiated.**

Additional circumstances of this case which make it appropriate to determine the dumping status of imports between January and June 2010 in order to determine whether the material injury sustained by Cockburn during March – June 2010 was caused by dumping, are facts that –

- a) the period during which the majority of Cockburn's injury was sustained because of imports from Thailand was this 4 month period immediately preceding the investigation period;
- b) the dumping margin found by Customs during the investigation period which immediately followed the said injury period is 48%; and
- c) Customs has information in relation to export prices, domestic prices and costs (some verified) which make it extremely likely that imports from Thailand between January and June 2010 were dumped.

It is demonstrated by the above, together with our submission of 8 April 2013, that **it will be an absolute travesty of justice to terminate investigation no. 179A without determination of the dumping status of the imports which have been found by Customs to have caused material injury to Cockburn.**

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a small flourish.

Roger Simpson