



ANTI – DUMPING SPECIALISTS

ACN 056 514 213 ABN 87 056 514 213

21 March 2014

NON - CONFIDENTIAL

Ms Kim Farrant
National Manager, Policy and Assistance Branch
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 2601

Dear Ms Farrant,

QUICKLIME FROM THAILAND

This letter is behalf of Cockburn Cement Ltd (“Cockburn”).

In my email to you on 17 October 2013 I brought to your attention the consideration of information outside the investigation period in the imposition of anti-dumping duties on hot rolled coil (HRC) from Japan, Korea, Malaysia and Taiwan (reinvestigation no. 209). This matter was again brought up at our meeting on 12 November 2013, when your staff undertook to follow it up (there had been no follow up in response to my email).

In paragraph 74 of the report of his review of the decision to publish a dumping duty notice in respect of HRC from Japan, Korea, Malaysia and Taiwan, the TMRO (Mr Stephen Skehill) made the following statement:

I do not consider that the Customs Act provides any express or implied prohibition on the CEO having regard to information concerning prices outside the investigation period when formulating recommendations to the Minister on the separate issue of what measures should be put in place as a result of dumping having occurred during the investigation period.

In his direction to Customs to reinvestigate its findings following the abovementioned TMRO report, the Minister directed that, among other things, Customs reinvestigate –

- *whether there were in fact sufficient grounds to warrant setting the measures by reference to prices other than those in the investigation period and, if so, the preferable methodology for adjustment of those prices.*

In its report to the Minister of its reinvestigation per the Minister’s direction cited above, Customs reports in section 4.5 and 4.5.2 as follows:

- *In its application to the TMRO, BlueScope also appealed on the grounds that the use of prices outside the investigation period was not permitted by law. As the TMRO did not agree with this assertion and instead agreed that Customs and Border Protection had acted appropriately in considering whether regard could be had to prices outside*

- the investigation period, the question of Customs and Border Protection's ability to have such a consideration was not examined as part of the reinvestigation; and*
- *the reinvestigation considers that it was appropriate to have regard to the data available for six months after the investigation period.*

Anti-Dumping Notice No. 2013/49 notifies the Minister's acceptance of Customs' finding that –

- *there were sufficient grounds to warrant setting the anti-dumping measures by reference to prices other than those within the investigation period.*

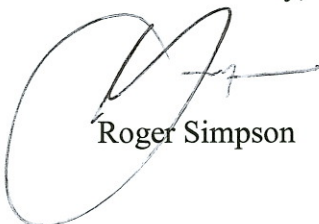
The above findings and Ministerial decision provide very strong precedent for the Commission to adopt the following considerations of the TMRO in his review of the initial decision to terminate the investigation re quicklime from Thailand (TER 179) in its conduct of this resumed investigation:

- *It is open to Customs to analyse not only any injury suffered by an applicant prior to the investigation period, but also to determine the export price and normal value for this period. This analysis enables the CEO of Customs to determine whether any injury suffered prior to the investigation period 'has been caused' by the dumping;¹ and*
- *I also consider that 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 the dumping.²*

It is extremely difficult to understand how in the HRC reinvestigation Customs accepted, without question, the TMRO's consideration that it is open for them to have regard to prices outside the investigation period when determining whether dumping occurred outside the investigation period, yet in this case Customs/the Commission have refused to determine the dumping status of imports of quicklime from Thailand in the four months immediately preceding the investigation period, which have been found to have been materially injurious to Cockburn.

We again request your reconsideration of Customs'/the Commission's decision to not determine the dumping status of imports of quicklime from Thailand during the first half of 2010.

Yours sincerely,



Roger Simpson

¹ Review of Termination Decision – Application of Cockburn Cement Pty Ltd, para 27.

² Ibid, para 36.