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NON-CONFIDENTIAL

27 October 2014

Mr Dale Seymour
Commissioner
Australian Anti-Dumping Commission
1010 Latrobe St
Docklands Vic 3008

Dear Mr Seymour,

STATEMENT OF ESSENTIAL FACTS NO. 179B – QUICKLIME FROM THAILAND

This submission, on behalf of Cockburn Cement Ltd ("Cockburn"), is in response to the captioned Statement of Essential Facts ("the SEF").

To again terminate this investigation and allow material injury caused by dumped imports from Thailand to Cockburn, the accepted representative of the Australian industry producing quicklime, to cumulate, will discredit the Anti-Dumping Commission ("the Commission") and the Australian government.

It is clear from the facts established by this investigation, which has lasted for 3 years during which Cockburn has suffered cumulating material injury, that but for dumped imports from Thailand, Cockburn's profits would have been substantially higher during the investigation period ("IP") and since. It is obvious that the 48% dumping margin determined by Customs for the IP would have applied to imports during the 4 month period immediately preceding the IP. It is therefore an obvious fact that material injury suffered by Cockburn during the IP and since is because of dumped imports of quicklime from Thailand.

The Commission is not confirming the obvious dumping status of imports from Thailand between January and March 2010 and that the material injury caused by these imports is therefore by reason of dumping, because it is of the view that to do so will undermine its non-mandatory policy to not attribute injury occurring outside the IP to dumping. It is grossly unfair that Cockburn is paying the price of suffering cumulating material injury because of dumping when protection to it against dumped imports is denied because of this view, which has no substance. Whether to extend the IP to enable consideration of the status of imports outside the IP which have caused material injury to a domestic injury is discretionary and depends on the particular circumstances of individual investigations – there is no legal requirement or prohibition to doing so. The circumstances of this case are such that it is definitely appropriate for it to be done. This does not mean that it will be necessarily appropriate for it to be done in future cases and need only be done when the Commission is

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satisfied that the particular circumstances of future cases are such as to make it appropriate, as they are in this case.

The particular circumstances of this case which make it appropriate for the Commission to extend the IP to enable its determination of the dumping status of the imports which have been found to have caused material injury to Cockburn are essentially as follows:

- Customs erroneously defined the IP on initiation of the investigation as July 2010 to June 2011, when the injury case in Cockburn's application was primarily based on the undercutting of its prices by Thai imports and consequent reduction of its long-term contract prices between March and June 2010;
- Customs' investigation found that there was material injury caused to Cockburn by price undercutting by Thai imports and consequent reduction of its long-term contract prices between March and June 2010 in the primary form of substantially reduced profit;
- Customs' investigation found that imports from Thailand during the IP were dumped at a very high margin of 48% and that it is highly unlikely that export prices and normal values between January and June 2010 would have been meaningfully different than those during the IP; and
- Consequent upon the foregoing, there can be very little doubt that dumped imports from Thailand have caused material injury to Cockburn, the representative of the Australian industry producing quicklime to this investigation.

Despite its strenuous efforts to do so over the past 2½ years, the Commission has been unable to find legal provisions which conclusively debar amendment of an IP. The SEF acknowledges that the Customs Act is silent on this matter and merely provides the Commission's opinion as to why an IP cannot be amended, its desired outcome. The Commission claims that amendment of an IP is prohibited, but it provides no reference to any legislation which conclusively forbids such amendment. That there is "no explicit power in the Act to enable the Commissioner to revisit or amend the investigation period" does not lead to a conclusion that it is not open to do so. The Commission states that it does not consider that the IP can be amended under Section 33 of the Acts Interpretation Act, which is contrary to Mr Stephen Skehill SC's (TMRO) consideration, without providing grounds for non-acceptance of this consideration. In summary, the SEF provides no explicit legal basis for the Commission's non-acceptance of Mr Stephen Skehill SC's conclusion that it is open for the July 2010-June 2011 IP to be extended to include January to June 2010 and the circumstances of this case make it appropriate to do so. Mr Skehill's conclusion is correct and but for the Commission's unjustified concern that its non-mandatory policy will be undermined by its acceptance of this conclusion, the Commission would accept it.

It is of note, and an example of the biased and subjective nature of this investigation, that the matter of regional injury and question of injury to the whole Australian industry did not arise until the first resumption of this investigation (no. 179A), when it was introduced by Customs to support its termination intent. The matter of regional injury was never raised by Cockburn or any other interested party and is irrelevant when Cockburn, with about 50% of Australian quicklime production, was accepted by Customs as representative of the Australian industry producing quicklime for this investigation. It is normal Australian and global practise for material injury suffered by an applicant who is considered to be representative of a domestic industry to be considered material injury to the domestic industry as a whole when no other domestic producers are participants in the investigation.

The Commission's statement in section 1.5.5 of the SEF that during the IP dumped imports caused negligible (not material) injury to the Australian industry is false, as the facts established by this investigation prove that but for the imports from Thailand during the first half of 2010, which were obviously dumped, Cockburn's profit during the IP would have been $[redacted] million, or [redacted]%, higher. This is obviously material injury to Cockburn and the Australian industry of which Cockburn has 50% production and in respect of which there were no other participants in this investigation.

Concerning the Commission's procedural fairness considerations per section 5.10.2 that –

- change to the IP could cause uncertainty to stakeholders; and
- potentially lead to investigation delays;

these have no relevance to this investigation because there could be no uncertainty or confusion to stakeholders if the IP was extended to include January to June 2010 and it would not lead to a significant delay when it is considered that this investigation has already taken 3 years. It should be borne in mind that the IP should have been extended immediately following the TMRO's conclusion on 25 June 2012 that it is open and appropriate to do so. It should also be borne in mind that the only additional activity brought by the extension of the investigation period is simple determination of the dumping status of imports from Thailand during January to June 2010 (export price details are already before the Commission).

In summary, it will be an absolute travesty, which will be inexplicable by the Commission and Australian government, if this investigation is terminated and an Australian industry allowed to continue to be materially injured by dumped imports on the sole ground that the Commission has (unjustified) concern that a particular non-mandatory policy may be undermined if it is not terminated, when –

- the applicant's case which brought initiation of this investigation was based on injury by reason of dumped imports from Thailand undercutting and causing depression of its long-term contract selling prices between March and June 2010;
- despite this case of the applicant, the investigation period was (erroneously) defined as July 2010 to June 2011;
- the investigation found that the price undercutting and price depression brought by imports from Thailand during March to June 2010 had caused material injury to the Australian industry producing quicklime in the principal form of substantial profit reduction;
- the investigation found that imports of quicklime from Thailand during the investigation period of July 2010 to June 2011 (immediately following the March-June 2010 injury period) were dumped at a margin of 48% and it is unlikely that normal values and export prices during this period would have been meaningfully different during March-June 2010;
- in June 2012, in a review of Customs' decision to terminate the investigation because of its policy to not attribute injury outside the IP, it was found by Mr Stephen Skehill SC (TMRO) that it is open for Customs/the Commission to extend the July 2010-June 2011 IP to cover the injury period of March-June 2010 or otherwise analyse whether the injury experienced during March-June 2010 was caused by dumping and that the particular circumstances of this case make it appropriate to do so. Mr Skehill consequently revoked the termination decision;
- the resumed investigation following Mr Skehill's revocation of the original termination decision came up with another termination decision based on other factors, eg no material injury experienced by Australian industry, which was again revoked on review by the Anti-Dumping Review Panel (ADRP); and

- this resumed investigation by the Commission provides no conclusive legal basis for non-acceptance of Mr Skehill SC's conclusion that it is open and appropriate for the Commission to extend the July 2010-June 2011 investigation period to enable analysis of whether the material injury experienced because of price undercutting and price depression during the 4 months immediately preceding it was because of dumping.

In view of the above, it will be prudent and consistent with government policy to wherever possible protect Australian industries against unfair competition from dumped imports, for you to not adopt the SEF recommendation that this investigation be terminated and to direct that the IP be extended to enable the determination of the dumping status of imports during January-June 2010, so that it can be determined whether material injury experienced by the Australian industry between March and June 2010 is attributable to dumping.

Yours sincerely,

Roger Simpson