



Australian Government

Australian Customs and
Border Protection Service

AUSTRALIAN CUSTOMS DUMPING NOTICE NO.2012/38

Quicklime

Exported from the Kingdom of Thailand

Resumption of investigation into alleged dumping in respect of quicklime exported to Australia from the Kingdom of Thailand

CUSTOMS ACT 1901 – PART XVB

Purpose

The purpose of this notice is to advise all interested parties that the dumping investigation in relation to quicklime exported to Australia from the Kingdom of Thailand (Thailand) has resumed and to call for submissions to assist with the publication of a Statement of Essential Facts.

Background

On 3 April 2012, the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) terminated the investigation into the alleged dumping of quicklime exported to Australia from Thailand.

The investigation was terminated because, during the investigation period, although dumping of quicklime was found, the injury caused to the Australian industry by that dumping was assessed to be negligible.

In accordance with subsection 269TDA(13) of the *Customs Act 1901* (Customs Act), the delegate of the CEO decided to terminate the investigation. Australian Customs Dumping Notice No. 2012/12 provides further details of the termination.

Application to Trade Measures Review Officer (Review Officer)

On 27 April 2012, Cockburn Cement Pty Ltd, applicant for dumping duties representing the Australian industry, lodged an application with the Review Officer for a review of the decision to terminate the investigation.

Paragraph 269ZZN(b) of the Customs Act provides that the Review Officer is able to review the CEO's decision to terminate an investigation under section 269TDA. The Review Officer can only affirm or revoke the termination decision. Where a termination decision is revoked, the CEO is required to resume the investigation.

Trade Measures Review Officer's decision

On 25 June 2012, the Review Officer revoked the decision of the CEO to terminate the dumping investigation.

The Review Officer's reasons for revoking the termination decision are available at <http://www.tmro.gov.au>.

The Review Officer's report recommended that, in resuming the investigation, the CEO either amend the investigation period to also cover the six month period before the investigation period, or otherwise use the power in subsection 269T(2AD) to have regard to that same period and analyse not only injury sustained by the applicant during that period, but also whether such injury was caused by the dumping of quicklime.

The ability to extend an investigation period in this circumstance, and the Review Officer's view of the CEO's power under subsection 269T(2AD), if implemented, would represent a significant departure from Customs and Border Protection's practice. For this reason, Customs and Border Protection considers this to be a unique and complex decision, and believes that the implications of this approach need to be fully considered.

Resumption of investigation

The Review Officer's decision to revoke the termination decision has the effect of resuming the investigation into quicklime exported from Thailand as of **25 June 2012**. In this case, the Review Officer has also included, in its report, a non-binding recommendation regarding the way in which the CEO should resume the investigation. While the CEO is not required to accept the recommendation (to extend the investigation period or to have regard to injury sustained in an earlier period), the CEO will consider seriously the Review Officer's recommendation.

Customs and Border Protection considers that the approach outlined in the Review Officer's report could result in a number of possible outcomes. These include:

- amending the investigation period to cover the months preceding the specified investigation period; or
- maintaining the original investigation period but having regard to injury sustained by the applicant prior to that period and whether such injury was caused by dumping of quicklime; or
- confirming the CEO's original decision on the length of the investigation period.

The resumed investigation will focus on addressing the issues identified by the Review Officer as requiring further consideration. This may involve requests for, and verification of, further information from interested parties.

Subsection 269ZZT(2) of the Customs Act states that as soon as practicable after the reviewable decision has been revoked, a Statement of Essential Facts (SEF) must be published. Following the publication of the SEF, the normal investigation timeframes resume. Interested parties will have 20 days within which to make submissions in response to the SEF and Customs and Border Protection will then have a further 25 days to provide a report to the relevant Minister.

The date of the publication of the SEF will depend on the outcome of Customs and Border Protection's consideration of the Review Officer's recommendation and submissions from interested parties. However, Customs and Border Protection is aware that it is in the best interests of all parties for the resumption to be finalised as soon as practicably possible.

Submissions

The CEO **invites** interested parties to provide submissions in advance of the publication of the SEF.

To assist in the timely publication of the SEF, submissions by interested parties should preferably be lodged no later than **Tuesday 21 August 2012**, and addressed to:

Director, Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Or by email:
itrops2@customs.gov.au

Interested parties should note that the CEO is not obliged to have regard to a submission if to do so would, in the CEO's opinion, prevent the timely placement of the SEF on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- satisfy the CEO that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "In-Confidence". Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above. In either case, interested parties must provide two copies of each for the public record.

Public record

The public record used in the original investigation will be maintained for the resumed investigation. The public record contains, among other things, a copy of all submissions from interested parties. Letters and electronic mail are generally regarded as "submissions" if they contain information relevant to the inquiry.

Documents included in the public record are available at: <http://adpr.customs.gov.au/Customs/>. Alternatively, the public record may be examined at the office address below during business hours by contacting International Trade Remedies Branch on telephone number (02) 6275 8076, fax number (02) 6275 6888 or

International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Customs and Border Protection contact

Enquiries concerning this notice may be directed to the Case Manager on telephone number (02) 6275 5649, fax number (02) 6275 6990 or e-mail itrops2@customs.gov.au.

KIM FARRANT
National Manager
International Trade Remedies Branch
CANBERRA ACT

3 August 2012