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9 March 2012

Mr John Bracic
Director
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra ACT 2600

Dear Mr Bracic,

STATEMENT OF ESSENTIAL FACTS NO. 179 - QUICKLIME FROM THAILAND

This submission, on behalf of Cockburn Cement Ltd ("Cockburn"), is in response to Statement of Essential Facts No. 179 ("the SEF").

We take issue with Customs preliminary finding that dumped exports from Thailand caused negligible injury and do not threaten to cause material injury to the Australian industry. It is our view that the facts established by Customs investigation no. 179 ("the investigation") lead to the contrary conclusion that dumped exports from Thailand did cause material injury and do threaten material injury to the Australian industry. Our rationale for this view follows.

Executive summary

It is demonstrated by this submission that facts established by this investigation must lead to a finding that exports of quicklime from Thailand, in respect of which a sizeable (48%) dumping margin has been determined, have caused and threaten material injury to Cockburn as follows:

Non-alumina sector

Dumped exports from Thailand are the sole cause of substantial depression of Cockburn's selling prices resulting in an annual loss of revenue and profit of \$ [REDACTED], representing [REDACTED] % of Cockburn's net profit during the IP. And because this price depression is in respect of term-contracts with [REDACTED] year validity, the aggregate loss of revenue and profit caused by them is \$ [REDACTED].

Alumina sector

Dumped exports from Thailand are the sole cause of change to Cockburn's contractual supply arrangements with major customer, [REDACTED], resulting in either an annual loss of [REDACTED] tonnes sales volume representing \$ [REDACTED] revenue, or an annual loss of \$ [REDACTED] revenue and profit, with the initial annual loss occurring between [REDACTED] and [REDACTED]. And because the changed contractual arrangements have [REDACTED] validity, the aggregate

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loss caused/threatened by the dumped exports is at least [REDACTED] the abovementioned amounts.

Because the said change of contractual arrangements with [REDACTED] did not occur until after the IP [REDACTED] and therefore the above injury was not suffered by Cockburn during the IP, this injury is injury threatened by a change in circumstances making it clearly foreseeable and imminent.

In the circumstance outlined above, Customs cannot be satisfied that the injury that has been, or may be, caused by the dumped exports from Thailand is negligible. The entry of heavily dumped exports of quicklime from Thailand into the Australian market is the sole reason that the Australian industry's prices in the non-alumina sector were significantly depressed, with consequent material loss of revenue and profit, and its contractual supply arrangements with its major customer in the alumina sector changed from [REDACTED] to provide for a foreseeable and imminent loss of substantial sales volume or significantly depressed price and consequent material loss of revenue and profit. There were no factors other than the entry of the heavily dumped exports from Thailand which could have caused, or may cause, the said material injury.

Consequent upon the foregoing, the terms of s269TDA(13) of the Customs Act are not met and Customs has no authority to terminate this investigation. It must now report its conclusions and recommendations to the Minister on or before 3 April 2012. And taking into account the content of this submission, Customs' recommendation to the Minister should be publication of dumping duty notices under ss269TG(1) and (2) of the Customs Act in respect of quicklime exported from Thailand.

Higher quality – higher priced dumped exports

Throughout the course of the investigation, Chememan Co Ltd ("Chememan") and other interested parties submitted that the dumped exports from Thailand are of a higher quality than the quicklime produced by Cockburn and because of this entered the Australian market at higher prices than prices paid for Cockburn's quicklime. The SEF confirms this.

This circumstance raises serious doubts in respect of the validity of Customs' finding that the price depression and consequent loss of revenue, profit and profitability experienced by Cockburn in the non-alumina sector was not caused by the price of the dumped exports.

Fundamental to the said Customs' finding is its conclusion that Chememan's prices to customers in the non-alumina sector were just marginally lower than the price it considers Cockburn could have achieved in the absence of the dumped exports, ie the unsuppressed selling price ("USSP"). It is paramount that in reaching this conclusion, Customs did not take into account its finding that the higher quality of the dumped exports enabled Chememan to achieve higher prices in the Australian market.

In circumstances such as this, where dumped exports are of a higher quality and therefore achieve higher prices than the Australian industry's product, in establishing the effect of prices of the dumped exports on prices of the Australian industry's product, it is necessary to remove the effect of the higher quality on the prices of the dumped exports.

In this case, the higher quality leading to the higher prices of the dumped exports from Thailand in the non-alumina sector, comes from a higher level of available lime (CaO) and a lower level of impurities. The effect of the higher level of available lime, the primary quality factor influencing price, can be readily quantified, but the effect of the lower level of

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impurities cannot. The average level of available lime in Cockburn's quicklime during the investigation period (IP) was █% (evidenced to Customs). We understand that the available lime level of the dumped exports was █%. While the actual price effect of the higher quality of the dumped exports is not just because of the higher level of available lime, eg they also have lower impurity level. Customs must at least take into account the effect of the higher available lime level of the dumped exports in assessing price depression by reason of dumping.

In the price depression analysis, to ensure a fair comparison of the prices of the dumped exports and Cockburn's product to the non-alumina sector, Customs must either –

- (a) adjust the price of the dumped exports having 90% available lime, to a price for █% available lime, the level of Cockburn's product;
- (b) adjust the price of Cockburn's product (78% available lime) to a price for █% available lime (the dumped exports); or
- (c) adjust both to prices for 100% available lime.

This is a conservative approach as it ignores the effect of the lower level of impurities on the price of the dumped exports.

We consider it reasonable to adjust both prices of the dumped exports and Cockburn's prices to the non-alumina sector to a 100% available lime basis, as this is consistent with Customs' approach to comparison of prices in the alumina sector. In this regard we refer to the following statement in section 8.7 of the SEF –

To ensure that a comparison of prices from Cockburn Cement and Chememan to the alumina sector reflect the same terms and condition, prices have been assessed on a 100% lime basis.

The comparison of prices so adjusted, ie a fair comparison, will demonstrate price undercutting and underselling by the dumped exports in the non-alumina sector.

The above is particularly relevant to Customs' key finding that Chememan's prices to the non-alumina sector were higher than Cockburn's USSP to this sector. When adjusted to a 100% available lime basis, Cockburn's USSP becomes –

- (a) based on our assessment - \$█/tonne, and
- (b) based on Customs assessment - \$█/tonne.

(Discussion concerning USSP assessments follows).

It is paramount to the foregoing that in determining the level to which it considered it needed to reduce its prices to compete with the dumped exports, Cockburn took into account the relativity of the level of available lime of its product to that of the dumped exports.

Unsuppressed selling prices

Non alumina sector

Putting aside the above, which demonstrates that the USSP is to take into account the effect of the higher quality of the dumped exports on their prices in the Australian market relative to

those of Cockburn, we strongly disagree with Customs' assessment of Cockburn's USSP per section 9.5.1 of the SEF.

It is of important note that the USSP assessed by Customs is a critical element of its finding that the injury experienced by Cockburn cannot be attributed to dumping. It is demonstrated by the above section that the determination of the relativity of the price of dumped exports to the USSP must take into account price effect of the higher quality of the dumped exports. This sub-section relates to Customs' USSP assessment per section 9.5.1, ie the USSP pre adjustment for the price effect of the quality difference.

Customs found that 2009 is the most recent period unaffected by dumping and therefore Cockburn's sales in that period should be used as the basis for the USSP. We agree with this approach but strongly disagree with the indexing used by Customs to assess the price achievable by Cockburn in the absence of dumping during the IP, ie the USSP.

Customs applied the Perth CPI to 2009 actual prices in calculating the price it considers was achievable by Cockburn in the IP "as this CPI has relevance to quicklime pricing." Customs failed to take into account that other factors also have relevance to quicklime pricing, eg energy costs, and that actual selling prices achieved by Cockburn during the period 2004-2009, a period unaffected by dumped exports, [REDACTED]

Cockburn provided evidence to Customs proving that during the 2004-2009 period, its actual selling prices [REDACTED] while during the same period the Perth CPI compound growth rate was less than 4%, and submitted that the assessment of the USSP for the IP should have regard to this annual growth rate rather than the Perth CPL. The outcome of the calculation method submitted by Cockburn is a USSP [REDACTED] than the USSP calculated by Customs.

Customs rejected Cockburn's submission on the grounds that its USSP amount assessment is not reflective of any actual considerations used in setting its prices and may therefore represent a higher price than may have actually been achievable during the IP. We consider it unrealistic to use an annual growth according to the Perth CPI when evidence before Customs proves that the actual annual growth rate during the most recent five year period unaffected by dumped exports [REDACTED]. The evidence before Customs proves that in the absence of the dumped exports Cockburn could have achieved selling prices [REDACTED] the USSP assessed by Customs.

As discussed in the "Higher quality - higher priced dumped exports" section above, any USSP based on Cockburn's selling prices of its [REDACTED]% available lime product needs to be uplifted to take into account the effect of the higher ([REDACTED]%) available lime level of the dumped exports on Cockburn's prices during the IP. We submit that Customs' USSP assessment is flawed by the evidence before Customs that the actual growth rate of prices in the most recent five year period unaffected by dumped exports was [REDACTED], and it is the USSP submitted by Cockburn that should be used as the basis for calculating the USSP to be adjusted for available lime level differences between dumped exports and Cockburn's product.

Alumina sector

We strongly disagree with Customs' assessment of Cockburn's USSP per section 9.5.2 of the SEF.

Customs used Cockburn's weighted average price to all customers in the alumina sector during the IP to establish the USSP. This approach was based on Customs' view that these prices were unaffected by dumping as they were committed under long-term contracts established prior to the commencement of imports from Thailand.

Customs then found in section 10.1.5 of the SEF that prices of dumped exports from Thailand during the IP were higher than the USSP. That prices of dumped exports during the IP were higher than the USSP assessed by Customs on the basis of Cockburn's weighted average long-term contract price during the IP, is irrelevant to the consideration of whether dumped exports from Thailand caused or threaten material injury to Cockburn. It is also irrelevant to this consideration that the prices of the dumped exports during the IP were higher than the USSP proposed by Cockburn in relation to [REDACTED], as noted by Customs in section 10.1.5. Both are irrelevant because Cockburn's prices during the IP were fixed by long-term contracts [REDACTED] and their relativity to the price of the dumped exports is meaningless. Notwithstanding, Customs used both phenomena to support its finding that any injury suffered by the Australian industry cannot be attributed to dumping.

It is of note in this context that the abovementioned contracts with [REDACTED] commenced in [REDACTED] respectively. And while both contracts have provisions for [REDACTED], Cockburn's prices during the IP were effectively constrained by contractual terms and conditions set many years prior to that period and are not a true reflection of market prices at that time. Adequate cost recovery during the contract terms was not achieved using the contractual price review mechanisms and thus necessity for pricing to increase at the end of the contract terms to reflect real cost changes.

The real purpose of the assessment of an USSP in relation to Cockburn's sales in the alumina sector is not to establish its relativity to the price of the dumped exports during the IP, but rather to establish whether [REDACTED] is lower than it would have been in the absence of the dumped exports. Consequently, the relevant USSP is the price that Cockburn could have achieved for [REDACTED], but for the dumped exports from Thailand. And we submit that this should be the average of [REDACTED] of the said contract, agreed to by [REDACTED]. This is the price that would have been agreed [REDACTED] but for the dumped exports.

The relativity of Chemman's selling prices to [REDACTED] during the IP to the USSP proposed above has no relevance to the influence of the price of dumped exports on [REDACTED]. Chemman's prices to [REDACTED] during the IP were for small volume parcels for trialling and would not be representative of the price it could achieve for the [REDACTED]. This follows commercial logic and we note Chemman's submission reported in section 5.3 of Customs' visit report re Chemman that the price agreed for the sampling batches was *unique to the circumstances of the transaction and that any future sales to [REDACTED] would be subject to further negotiation.* (Emphasis added)

Has dumping caused material injury***Issues with Customs' findings******Non-alumina sector***

In section 10.1.5 of the SEF Customs found that –

- during 2010 and 2011 Cockburn reduced its prices; and
- these price reductions resulted in a 2.2% annual revenue loss and a substantial annual reduction in profit;

but Customs does not consider that dumped exports from Thailand were the cause of this injury suffered by Cockburn because –

- the majority of sales of dumped exports in the non-alumina sector did not undercut Cockburn's prices; and
- prices of dumped exports in the non-alumina sector were higher than Cockburn's USSP.

It is paramount that the above Customs' findings leading to its conclusion that the stated injury suffered by Cockburn was not caused by the dumped exports from Thailand are flawed by Customs not taking into account the effect of the quality difference between Cockburn's product and the dumped exports in its comparison of the prices of the dumped exports and Cockburn's actual selling prices and its USSP – please refer to sections "Higher quality – higher priced dumped exports" and "Unsuppressed selling prices" above.

In reaching its conclusion that the dumped exports from Thailand did not cause material injury in the non-alumina sector, Customs also took into account its consideration that the volume of the dumped imports from Thailand was very small and they did not hold a sufficient share of the Australian market. That the import volume was small in absolute and relative terms is not a valid consideration when the injury found to have been experienced by Cockburn is in the form of price effect, ie reduced prices and consequential loss of revenue and profit. Customs is well aware that the volume of dumped imports was small because Cockburn reduced its prices in response to the entry of dumped exports into the Australian market in order to preserve its sales volume and hence the price reductions and consequential revenue and profit injury found by Customs. Cockburn has not claimed material injury by reason of the volume of dumped exports.

Another factor cited by Customs as a reason for its view that dumped exports have not caused material injury, with which we take issue, is the influence of security of supply on customers in their buying decisions. Cockburn's comments in this regard follow:

- Cockburn strongly disagrees with the claims of Chememan and other interested parties that Cockburn poses a supply security risk to the Western Australian quicklime market. Cockburn Cement is the single largest quicklime manufacturer in Australia with a current quicklime production capacity in excess of 1.0 million tonnes per annum, supported by a live quicklime storage capacity at its Munster operation of 40,000 tonnes. Whilst the Munster facility has operated its designated quicklime kilns [REDACTED] Cockburn continues to have spare capacity at its Dongara quicklime manufacturing facility and the ability to

produce quicklime in its cement clinker kilns if required. Less than 1% of total quicklime production by Cockburn in 2011 was produced via these clinker kilns (which occurred during short maintenance periods on its designated lime kilns in early 2011).

- As reported to the ASX in Adelaide Brighton Limited's Interim Results Summary on 18 August 2011 (see attached), "...\$10 million is being invested in a new cooler bag house, which will increase lime production capacity by 100,000 tonnes per annum. This investment will improve efficiency and expand capacity to meet expected future demand for lime from the resource sector in Western Australia". Cockburn's internal long term modelling of lime demand in Western Australia suggests this capacity increase will ensure the total lime requirements of the Western Australian market will be met well into the future (including the increased quicklime requirements due to the expansion at BHP Billiton's Worsley alumina refinery, scheduled for commissioning in 2012).
- With regard to the "environmental issues" raised by interested parties, Cockburn continues to work closely with Western Australia's Department of Environment and Conservation (DEC) to ensure all of its obligations are met and / or exceeded. A strict, new operating license has recently been agreed with the DEC, which includes the installation of a \$24 million bag house filter on quicklime kiln 6 at Munster, ensuring previous concerns with dust and odour emissions from this site are addressed. This bag house filter is due for commissioning in March 2012 as per the agreement with the DEC. This substantial investment in "best practise" environmental controls reaffirms Cockburn's long term commitment to not only the community and environment but also to ongoing supply of lime products to the Western Australian market. Further information highlighting Cockburn's commitment to the community and environment can be found at www.cockburncementcommunity.com.au/environment.

Other factors considered by Customs to provide reasons for its view that dumped exports did not cause material injury and with which we take issue are –

- no customer currently has a supply contract with Chememan; and
- the majority of quicklime imported was for testing purposes.

That the dumped exports were entering the market for testing is, among other things, a clear indication to Cockburn that they represented serious competition and hence Cockburn's price reductions and consequent loss of revenue and profit. And no customer currently has a supply contract with Chememan because Cockburn was able to retain its business with customers approached by Chememan by reducing its prices and suffering consequential loss of revenue and profit.

Alumina sector

Due to the fact that during the IP Cockburn's sales in the alumina sector were the subject of long-term contracts providing for supply at fixed prices, it is not possible to establish injury through reduced prices and consequent loss of revenue and profit during the IP. The dumped exports did, however, cause the structure of Cockburn's supply contract [REDACTED] to change in a way that will cause material injury in the form of loss of sales or reduced price and consequent loss of revenue and profit. Notwithstanding negotiations in respect of the [REDACTED] contract taking place during the IP and those negotiations taking into account the dumped exports, the materially injurious effect of the dumped exports on the [REDACTED] contract was not considered by Customs to be material injury caused by dumped exports because the said contract did not come into effect until [REDACTED]. Consequently, this matter is discussed in the "Threat of material injury" section hereunder. Nevertheless, we submit as follows in respect of Customs' findings re the alumina sector in section 10.1.5 of the SEF.

The prices of dumped quicklime from Thailand were substantially higher than Cockburn's prices during the IP and under the new contract because –

- (a) Cockburn's prices during the IP were fixed by long-term contracts and do not reflect market prices at that time – please refer to the "Unsuppressed selling price" section above; and
- (b) the prices of the dumped exports during the IP were for small volume parcels for trialling and thus significantly higher than prices negotiated with [REDACTED] – please refer to the "Unsuppressed selling price" section above.

We strongly disagree with Customs' finding that the prices of the dumped exports cannot be linked to the outcome of the new contract negotiations. We cannot see how the fact that at the time of the new contract being negotiated alumina sector customers had not committed to a contract with Chememan, is relevant to the consideration of whether prices of the dumped exports influenced new contract negotiations – both alumina customers were contracted to Cockburn at the time and the dumped imports were for trialling with a view to commercial supply becoming available after the [REDACTED]. Also, whether the dumped exports were a viable option could not be established until new contract prices with Cockburn were established, but this did not prevent the availability of dumped exports impacting on new contract negotiations.

Concerning the level of impurities, this is another quality factor which should be taken into account in a fair comparison of the price of the dumped exports and Cockburn's price, just as respective available lime levels are taken into account by assessing both on a 100% available lime basis. The lower level of impurities in the dumped exports has enabled them to be higher priced than Cockburn's product, even when both are adjusted to a 100% available lime level. This price premium needs to be taken into account in considering the effect of dumping on Cockburn's selling price. We fail to see how the respective levels of impurities of the dumped exports and Cockburn's product can cause Customs to be not satisfied that Cockburn's

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"desired price" was achievable in a market absent of imports. Assuming that Cockburn's "desired price" is Cockburn's proposed USSP, it is of note that this proposed USSP is the price actually agreed by [REDACTED] - please refer to the "Unsuppressed selling price" section above.

With regard to Cockburn's alleged environmental and security of supply problems, please refer to the "Non-alumina" sub-section above.

That Cockburn achieved a significant price increase from its [REDACTED] contract in the [REDACTED] [REDACTED] has no relevance to the effect of the dumped exports on the [REDACTED] contract.

The effect of the dumped exports on the [REDACTED] is discussed further in the "Threat of material injury" section hereunder.

Essential facts leading to contrary findings

Our issues with Customs findings are discussed above. Hereunder we discuss essential facts not considered or not sufficiently considered by Customs in their preliminary finding that dumped exports caused negligible injury to the Australian industry. These facts lead to the contrary conclusion that dumped exports from Thailand have caused, and threaten to cause, material injury to the Australian industry.

There were no factors other than the entry of dumped exports from Thailand into the Australian industry in 2010/2011 that caused Cockburn to take the following drastic actions, ie dumping from Thailand was the sole cause of these actions:

- Cockburn substantially reduced selling prices to several of its non-alumina customers, with consequential material loss of revenue and profit; and
- Cockburn changed its traditional contractual supply arrangements with key alumina sector customer, [REDACTED]. The consequence of this change is Cockburn's annual loss of substantial sales volume or substantially reduced price [REDACTED] each having a material negative impact on revenue and profit.

The following facts are paramount to Cockburn's actions and consequent injury as outlined above:

- In early 2010 Chememan Australia commissioned a storage and distribution facility at Henderson, WA and flagged its intention to establish additional such facilities in western and northern Australia, thus demonstrating its intention to be a serious, long-term supplier of quicklime to the Australian market;
- Chememan Australia then sold or offered for sale quicklime supplied by its associate Chememan Thailand to all, or almost all, of Cockburn's customers at prices which were subsequently found by Customs to be dumped at substantial margins (ave 48%);
- In response to Chememan's sale or offer for sale of the dumped exports from Thailand to them, several of Cockburn's customers in the non-alumina sector

required Cockburn to reduce its prices if they were to continue to source from them rather than switch to Chememan's dumped exports;

- At the same time, Chememan Australia sold dumped exports from Thailand to Cockburn's major alumina sector customer, [REDACTED], for trialling, obviously with a view to becoming a long-term, large volume supplier to [REDACTED]; and
- [REDACTED] trials of Chememan's quicklime were successful, meaning that [REDACTED] had established an alternative supply source, viz dumped exports from Thailand.

The injurious effects of Cockburn's actions as outlined above, taken for the sole reason of the entry of dumped exports from Thailand into the Australian market, are as follows:

Non-alumina sector

The take-off of the customers whose prices have been reduced in response to the dumped exports represents about [REDACTED]% of Cockburn's sales volume in the non-alumina sector and about [REDACTED]% of Cockburn's overall sales volume.

The said price reductions resulted in an annual loss of revenue and profit to Cockburn of \$[REDACTED] million, which represents [REDACTED]% of Cockburn's net profit during the IP. And because the said price reductions are in respect of term-contracts with [REDACTED] validity, the aggregate loss of revenue and profit caused by them is \$[REDACTED]

This injurious effect must surely be considered material.

Alumina sector

The changed terms of Cockburn's contractual supply arrangements with [REDACTED] will cause Cockburn to either –

- (a) lose [REDACTED] tonnes of annual sales volume, representing [REDACTED]% of Cockburn's annual sales volume, and about \$[REDACTED]-revenue, [REDACTED]; or
- (b) lose about \$[REDACTED] of annual revenue and profit [REDACTED]

The first of these annual losses must occur before [REDACTED], the end of the first year of the new contract with [REDACTED].

When regard is had for the fact that the [REDACTED], the losses become

- (a) [REDACTED] tonnes of sales volume representing more than \$[REDACTED] revenue [REDACTED]; or
- (b) more than [REDACTED] revenue and profit.

Note: [REDACTED]

This is obviously material injury.

We reiterate that the abovementioned material injury is wholly attributable to dumped exports from Thailand, there are no factors other than the entry of these dumped exports into the market which could have caused Cockburn to reduce its prices in the non-alumina sector and to restructure its supply arrangements with [REDACTED]. Therefore, but for the dumping from Thailand, Cockburn would not have taken the said actions and suffered the consequential material injury. Had the exports from Thailand not have been dumped, ie had their prices been 48% higher, there would have been no reason for Cockburn to reduce its prices in the non-alumina sector nor enter into the said contractual arrangements with [REDACTED]. In fact, had prices of the dumped exports from Thailand been 48% higher, ie undumped, there probably would have been no interest in them in the Australian market (non-alumina or alumina sector).

It is paramount in this "but for" context that there does not need to be price undercutting or underselling for dumped exports to be the cause of injury to an Australian industry. There may be other factors, eg quality (actual or perceived), affecting the price relativity of the dumped exports to the Australian industry's product, resulting in downward pressure being exerted upon the Australian product by dumped exports without price undercutting or underselling. In this case, the relativity of the prices of the dumped exports from Thailand to Cockburn's price in the non-alumina sector is affected by the higher quality of the dumped exports – please refer to the "Higher quality – higher priced dumped exports" section above. Customs did not take this into account in its conclusion that the dumped exports from Thailand did not cause material injury to the Australian industry because it found no price undercutting or underselling.

In this regard, we refer you to Customs' investigation concerning consumer pineapple exported from Thailand by TPC (no. 173b), in which Customs concluded that due to dumped exports the Australian industry was unable to increase its prices and therefore suffered loss of revenue, profit and profitability, having found that price undercutting or underselling were of no consequence because there were other factors (including quality) affecting the price relativity of the dumped exports and the Australian product. Notwithstanding this precedent, in finding that dumped exports from Thailand did not cause reduction of Cockburn's prices and consequent loss of revenue and profit, Customs relies heavily on its finding that the prices of dumped exports from Thailand were higher than both Cockburn's actual prices in the non-alumina sector during the IP and the prices it considers Cockburn could have achieved in the absence of the dumped exports (the USSP), ie no price undercutting or underselling, without regard for the effect of higher quality on the prices of the dumped exports.

The matter of the impact of the dumped exports from Thailand on Cockburn's sales in the alumina sector is further discussed in the "Threat of material injury" section hereunder.

Threat of material injury

Issues with Customs' findings

Customs' assessment of threat of material injury in section 11.1 of the SEF fails to address Cockburn's submission that the entry of dumped exports from Thailand into the alumina sector of the Australian market in 2010/2011 caused major changes to Cockburn's contractual supply arrangements with [REDACTED] and such changes create a situation where material injury caused by dumping is clearly foreseen and imminent.

The said Customs' assessment merely considers whether the AD Agreement Article 3.7 **illustrative and non-exhaustive** list of factors to consider in making a threat determination apply to the circumstances of this case. It does not consider the specific circumstances of the effect of the dumped exports on Cockburn's contractual arrangements with [REDACTED] and the consequential foreseeable and imminent material injury.

In section 10.1.5 of the SEF Customs addresses the effect of dumped exports from Thailand in 2010/2011 on Cockburn's performance in the alumina sector of the market during the IP (1 July 2010 – 30 June 2011), but this has no relevance to the critical question of whether the [REDACTED] change to Cockburn's contractual supply arrangements with [REDACTED] constitutes a change in circumstance that makes injury foreseeable and imminent.

Customs' section 11.1 assessment of the application of the factors included in the **illustrative and non-exhaustive** list per Article 3.7 of the AD agreement is discussed hereunder.

Increase of dumped imports (11.1.1).

Imports of dumped imports from Thailand commenced in 2010, ie they came from a zero base in 2009.

The following factors caused there to be no significant increase in the volume of dumped imports during the IP or in the six month period to 31 December 2011 –

- Cockburn's price reductions in response to the dumped imports; and
- the existence of this dumping investigation.

Exporter's disposable capacity (11.1.2).

Chememan established the 100,000 tonne capacity distribution facility at Henderson, WA with the obvious intent of being a long term supplier to the Australian market. We cannot accept that in such circumstance Chememan does not have sufficient disposable capacity to supply the Australian market.

Price of imports (11.1.3)

Chememan's prices up to now have been in respect of small parcels for trialling. They are not representative of future prices for large volumes for commercial consumption.

In its comparison of selling prices of the dumped imports and Cockburn's product in the non-alumina sector, Customs did not take into account the effect of the higher quality of the dumped imports – please refer to "Higher quality – higher priced dumped exports" and "Unsuppressed selling prices" sections above.

Inventories (11.1.4)

No finding by Customs.

Concerning Chememan's claim that future exports to [REDACTED] will not be dumped because Customs found that during the IP the one direct export from Chememan to [REDACTED] was not dumped, we again refer Customs to Chememan's statement reported in the Visit Report re Chememan that prices charged for exports to [REDACTED] during the IP were unique and any future

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sales to [REDACTED] would be subject to further negotiation. If Chememan is to supply [REDACTED] it will obviously be at prices significantly lower than those of the trialling parcels supplied during the IP and used in Customs' negative dumping assessment, given that [REDACTED]

Essential facts leading to contrary findings

Historically Cockburn's contractual arrangements with [REDACTED] have provided for Cockburn being the exclusive supplier of quicklime to [REDACTED]. In 2010/11 [REDACTED] purchased dumped exports from Thailand for trialling, with a view to them providing an alternative to Cockburn's product. The outcome of the trials of the dumped exports is that they are a suitable alternative to Cockburn's product.

That [REDACTED] had established the dumped exports from Thailand as a suitable alternative to Cockburn's product, had a significant influence on 2010/11 negotiations between Cockburn and [REDACTED] in relation to the new supply contract which commenced on [REDACTED]. This influence resulted in the new contract providing for [REDACTED] and the applicable price \$ [REDACTED]/tonne, whereas the average price [REDACTED]

But for the availability of the dumped exports from Thailand as a suitable alternative to Cockburn's product, there can be no doubt that Cockburn's [REDACTED] supply contract with [REDACTED] would have provided for [REDACTED] and the price is likely to have been of the order of that agreed [REDACTED]. It is of note that the dumped exports from Thailand were [REDACTED] only suitable alternative to Cockburn's product during negotiations and they remain the only suitable alternative.

[REDACTED] has denied that its establishment of the dumped exports as an alternative to Cockburn's product had any influence on the new contract negotiations. Cockburn is adamant that it did. Both parties were aware of the availability of the dumped exports as a suitable alternative to Cockburn's product and on the balance of probabilities it must have had an impact on negotiations.

Chapter 11, "Threat of Material Injury", of the SEF does not address the nature and extent of the injury to be experienced by Cockburn after 1 July 2011 because of the effect of the dumped exports on its new supply contract with [REDACTED] in the contract will cause Cockburn to suffer annual losses as follows, with the first annual loss occurring before [REDACTED]:

- (a) [REDACTED] tonnes of sales volume at \$ [REDACTED]/tonne = \$ [REDACTED] lost revenue;
- (b) revenue and profit loss of \$ [REDACTED]

And the overall losses to Cockburn will be at least [REDACTED] the above amounts as the contract has a [REDACTED] validity.

Please refer to section "Has dumping caused material injury" above for our rebuttal of Customs' findings leading to its conclusion that the price of dumped imports cannot be linked to the outcome of the new contract negotiations because -

- [REDACTED] had not committed to a contract with Chememan at the time of negotiations;
- [REDACTED] had not established the dumped imports as a viable option at the time of negotiations;
- the level of impurities in Cockburn's product; and
- Cockburn's alleged environmental and supply problems.

In sections "Unsuppressed selling prices" and "Has dumping caused material injury" above, we have discussed the irrelevance of Customs' finding that prices of the dumped exports during the IP were higher than the prices offered by Cockburn during the IP or under the new contract. The relevant consideration, which Customs has not taken into account, is the effect of the dumped exports on [REDACTED]. And prices of the dumped exports and Cockburn's prices during the IP are irrelevant to this consideration. There can be no reason other than the availability of the dumped exports as a suitable alternative to Cockburn's product for there to be [REDACTED]

[REDACTED] Customs has failed to discuss this [REDACTED] in the new contract and at a price substantially lower than [REDACTED] in assessment of whether the dumped exports have caused or threaten to cause material injury.

Customs' finding in section 10.1.5 of the SEF that Cockburn achieved a significant price increase from the previous contract with [REDACTED] is irrelevant to the consideration of the price that Cockburn could have achieved in the absence of the dumped exports. As explained in the "Unsuppressed selling prices" section above, prices in the previous contract with [REDACTED] were not a true reflection of current market prices, being constrained by contractual terms and conditions on prices fixed some [REDACTED] years ago. The relevant consideration is not that prices of [REDACTED] were at significantly higher prices than those in the previous contract with [REDACTED], but the consideration that, but for the dumped exports, there would have been [REDACTED] in the new contract with [REDACTED]. We reiterate that Customs has failed to take this paramount consideration into account in its finding that there is no threat of injury from dumped exports from Thailand.

Section 269TAE(1) of the Customs Act requires that in determining whether material injury is caused or threatened, regard must be had to the size of the dumping margin in respect of the dumped exports. The dumping margin determined in this case is large, viz (48%). In its assessment of whether the dumped exports from Thailand have caused or threatened material injury in chapters 10 and 11 of the SEF, Customs has not taken this essential fact into consideration. Customs has had no regard for the paramount fact that, had the export prices of the exports from Thailand been undumped, ie had they been 48% higher, they would have had no influence on Cockburn's new contractual supply arrangements with [REDACTED]. There would have been [REDACTED]

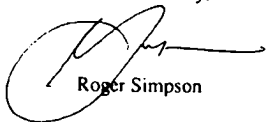
We reiterate that the consideration of whether injury to the Australian industry is threatened by the dumped exports from Thailand must take into account the fact that the exporter of the dumped product, Chememan, has invested substantial capital in the establishment of a distribution facility at Henderson, WA and has publicly announced its intention to establish additional distribution facilities in western and northern Australia.

Unfair competition from dumped exports

In closing, we make note of the paramount fact that had the exports of quicklime from Thailand entered the market at fair, ie undumped, prices they would not have caused the injury outlined above. That is, it was not fair competition in the marketplace which caused Cockburn to reduce its prices in the non-alumina sector and change its contractual supply arrangements with [REDACTED], it was unfair competition, viz heavily dumped exports.

Contrary to opinions expressed by certain interested parties, Cockburn is not seeking the imposition of anti-dumping measures on exports of quicklime from Thailand to prevent competition in the WA market. It recognises that fair competition is healthy and a fact of commercial life. However, being heavily dumped, the exports of quicklime from Thailand constitute unfair competition, and this unfair competition has caused and threatens material injury to Cockburn. Anti-dumping measures are sought by Cockburn to protect it against future injury by this unfair competition – the purpose of the anti-dumping discipline.

Yours sincerely,



Roger Simpson