

URGENT
No. 0310/ 3629



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๒ October B.E. 2556 (2013)

Dear Commissioner,

**Subject: Second resumption of investigation into alleged dumping
Quicklime imported to Australia from the Kingdom of Thailand**

On behalf of the Royal Thai Government (“RTG”), the Department of Foreign Trade (“DFT”) wishes to refer to the Anti-Dumping Review Panel (“ADRP”)’s report issued on 8 August 2013 and the DFT’s most urgent letter No. 0310/2228 dated 21 August 2012, concerning revocations of terminating decisions and resumptions of an investigation into alleged dumping of Quicklime imported from Thailand.

The DFT is fully aware that the decisions to terminate the foregoing investigation have been based on the recognition that alleged dumping of the stated product has not caused material injury to Australian domestic industry. However, as concluded by ADRP, it contradicted the finding of the investigating body and found that the injury caused by alleged dumping of Quicklime is material. Consequently, the investigating body has been instructed to resume the investigation (for the second time) based on a recommendation that injury data occurred 6 months before the period of investigation (POI) should also be included for further determination. With the resumption of the investigation, the Thai exporter is now a subject of an unnecessary lengthy investigation lasting for more than 23 months and of a dated/an irrelevant injury assessment. The DFT strongly believes that, to properly address the concerned issues, the following comments must be highlighted for your kind and fair attention.

(1) Continuation of the investigation would be in breach of Australia's obligation under WTO

Article 5.10 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade ("Anti-Dumping Agreement") specifies a definite time limit on the duration of an anti-dumping investigation. Except in special circumstances, an investigation should be concluded within one year, and in no case more than 18 months, after its initiation. The Quicklime investigation was initiated on 27 September 2011 which was a full 23 months ago. The requirements of Article 5.10 are clear and unequivocal, thus the investigation, which cannot now be concluded, must be abandoned.

(2) The period of investigation cannot and shall not be extended or changed

According to the first revocation made by TMRO, it considered that by including a further period of 6 months to the original POI; that is from 1 January 2010 – 30 June 2011. It could lead to a conclusion that the injury occurred was not negligible. The DFT considers that this is an unprecedented and unsustainable way of conducting an AD investigation. Nonetheless, the CEO of the Customs and Border Protection Services agreed that the POI should not be changed and that even a period of six months had been added to the original POI; the injury occurred could still be deemed negligible. However, according to the finding of ADRP for the second revocation, an extension to the period of POI has recurrently been advised for the purpose of injury assessment. This specific conduct regrettably cannot be considered unbiased or objective within the meaning of the Anti – Dumping Agreement. Furthermore, any consideration relating to the proposed extension of POI cannot lead to a lawful imposition of AD duties, for two reasons.

Firstly, the existence of supposed injury does not in itself provide a sufficient ground to impose AD duties. Under article 3.5 of the Anti-Dumping Agreement, there shall be a firm establishment to demonstrate that dumped imports have caused injury. However, the "Dumping" was not evidenced during the period of six months which was to be included to the POI. For this reason, there were no positive evidences to conclude that dumping had caused any injury during that period.

Secondly, the WTO appellate body¹ indicates that AD duties can only be imposed on the basis of current situation and that AD duties can only be imposed to offset or prevent injury inflicted from dumped imports occurred at a time of an investigation. Furthermore, a decision to impose anti-dumping measures shall not/cannot be made more than two years after POI has ended².

¹ WT/DS219/AB/R, 22 July 2003 (Appellate Body Report), para 80

² WT/DS295/AB/R, 29 November 2005 (Appellate Body Report), para 165

The DFT would like to stress that the operation of this investigation has now led to a situation in which it is inconsistent with the Anti – Dumping Agreement in both form and substance. By continuing the investigation over a time period passing 18 months since initiation, it would be a clear breach of Australia's obligation under WTO. Moreover, the continuance of the investigation, which concerns the POI that ended over 27 months ago, cannot provide evidentiary basis or be considered as positive evidences to support the imposition of AD duties either in the present or in the future. Therefore, we would respectfully request that the investigation shall be discontinued.

The DFT looks forward to hearing a favorable reply in due course and wishes that the raised issues would receive a positive response.

Yours sincerely,



(Miss. Banjongjitt Angsusingh)

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