



**ANTI – DUMPING SPECIALISTS**

ACN 056 514 213 ABN 87 056 514 213

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NON-CONFIDENTIAL

Ms Kim Farrant  
Australian Customs and Border Protection Service  
5th Floor Customs House  
5 Constitution Avenue  
Canberra ACT 2601

Dear Ms Farrant,

**RESUMED INVESTIGATION – QUICKLIME FROM THAILAND**

This submission, on behalf of Cockburn Cement Ltd (“Cockburn”), is in response to Anti-Dumping Notice No. 2013/73.

Among other things, this submission seeks an early Preliminary Affirmative Determination (PAD) and imposition of provisional measures in relation to quicklime from Thailand to protect the Australian industry from injury during the resumed investigation.

Facts established by the original investigation no. 179, resumed investigation no. 179A and findings of the Trade Measures Review Officer (TMRO) and Anti-Dumping Review Panel (ADRP) in relation to Customs’ terminations of investigations 179 and 179A respectively, must lead to a finding by this resumed investigation that imports of quicklime from Thailand have caused material injury to Cockburn in the form of substantially reduced profit through price depression brought by price undercutting of its non-alumina market sector prices by these imports during March-June 2010. Facts established by the said investigations also demonstrate the likelihood that the imports that caused the said material injury to Cockburn were dumped at a significant margin.

In view of these established facts that imports of quicklime from Thailand have caused material injury to Cockburn and the likelihood that such imports were at a significant dumping margin, the key focus of this resumed investigation must be determination of the dumping status of these imports which caused Cockburn’s price depression and consequential substantial loss of profit during March-June 2010.

It is of important note that Customs’ conduct of a “further injury analysis” involving the period immediately prior to the originally set investigation period in resumed investigation no. 179A, ie March-June 2010, confirms the finding of the TMRO in his review of Customs’ decision to terminate investigation no. 179 that injury experienced in the period prior to the originally set investigation period may be linked to dumping, by extension of the investigation period or otherwise.

**Customs’ grounds for termination of resumed investigation no. 179A**

Customs concluded in section 7.6 of Termination Report No. 179A (“TER 179A”) that –

- a) even with the inclusion of the additional period (January-June 2010) the resulting injury to the Australian industry as a whole is *less than 1% reduction in revenue and therefore not material*; and
- b) the particular injury suffered by Cockburn was *a result of the normal ebb and flow of business that is incurred when a competitor enters a once monopolistic market*.

Concerning point a) above, it is paramount that Customs' conclusion that Cockburn's injury during the extended period was not material does not take into account Cockburn's substantial loss of profit. The TMRO, in his review of Customs' termination of investigation no. 179, found that this substantial loss of profit represents material injury and the ADRP, in its review of Customs' termination of investigation no. 179A, also found that this substantial loss of profit represents material injury.

Concerning "the Australian industry as a whole", it is of important note that for the purpose of this investigation Cockburn has standing as the Australian industry producing quicklime, ie the "domestic industry". We refer to Article 4.1 of the Anti-Dumping Agreement ("the Agreement") which defines "domestic industry" as –

- *domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.* (Emphasis added.)

Customs has determined that Cockburn meets this definition, having a major proportion of the total domestic production of quicklime (about 50%). Consequently, Cockburn's material injury in the form of substantial loss of profit must be considered material injury to the Australian industry producing quicklime, ie the "domestic industry".

It is Customs' (now Anti-Dumping Commission) normal practice to consider material injury experienced by applicants for anti-dumping measures whose output of like products constitutes a major proportion of the total domestic production of those products, as material injury to the Australian industry producing like products, unless there is evidence to the contrary (which there is not in this case).

The matter of Customs' introduction of a "regional injury" consideration is discussed hereunder.

Concerning point b) above, we cite hereunder the conclusive findings of the ADRP in paragraph 59 of its report concerning the review of the decision to terminate resumed investigation no. 179A:

- *The existence of a monopoly is not a factor which can be used in the determination of material injury to an industry; and*
- *Any adverse result occurring to a monopoly arising from dumping cannot be characterised as something relating to the ebb and flow of business.*

In section 7.7 of TER 179A, Customs incorrectly claims that quicklime imports from Thailand have not increased since the investigation period and prices have been relatively stable. It has used this incorrect information to support its termination decision. The correct position is that the quantity of quicklime imports has substantially increased and FOB export prices of these imports have substantially decreased. Hereunder is data sourced from ABS import statistics demonstrating this substantial increase in volume and substantial decrease in FOB export prices:

Year	Quantity (mt)	Value (AUD)	Unit price (AUD/mt; FOB)
2010	5,573.76	693,254.98	124.38
2011	10,066.13	1,227,652.51	121.96
2012	14,645.43	1,778,896.97	121.46
Jan - Aug, 2013	12,223.56	1,380,039.94	112.90

\*Annualisation: While the actual volume of imports during Jan-Aug annualises to 18,335 mt, Chememan's acquisition of additional business (later discussed) means that the 2013 volume is likely to be >20,000 mt.

It is of note that all 2013 imports and a large portion of 2012 imports were by Chememan for the non-alumina sector as [REDACTED] imports ceased in early 2012.

It is also of note that, because of the substantial 2013 depreciation of the AUD against the USD and Thai Baht (THB), the decrease of FOB export prices in USD or THB terms must be substantially greater than those in AUD terms per the above table.

These substantial increases in import volumes and decreases in import prices have contributed to increased injury experienced by the Australian industry since the injury analysis period of the original investigation, injury which will continue to increase if anti-dumping measures are not imposed. This matter is further discussed in "Continuing and future injury" hereunder.

### **Regional injury**

Whether Cockburn's material injury constitutes "regional injury" as discussed in the 2012 Ministerial Direction, Article 4.1(ii) of the WTO Anti-Dumping Agreement ("the Agreement") and the Federal Court judgment re Swan Portland Cement Ltd v Minister for Small Business, is irrelevant to the question of whether Cockburn's material injury constitutes material injury to the domestic industry, ie the Australian industry producing quicklime.

As outlined above, Cockburn has standing as the domestic industry producing quicklime, being a producer whose quicklime output constitutes a major proportion (about 50%) of the total Australian production of quicklime. Cockburn meets the definition of "Domestic Industry" per Article 4.1 of the Agreement, the definition which provides the basis for Customs' standard practice of considering material injury experienced by applicants with domestic industry standing to be material injury to the Australian industry.

This matter of "regional injury", which is fundamental to Customs' termination decision re resumed investigation no. 179A, was not a consideration in the original investigation or the TMRO's review of the decision to terminate that investigation, for the reasons outlined above. That is, both Customs and the TMRO correctly considered injury to Cockburn to be injury to the Australian industry producing quicklime based on the Agreement definition and long-standing standard practise. The "regional injury" matter was never raised by Cockburn in support of its material injury claims and nor was it raised by any other party with opposed interests at any stage of the investigation.

It is paramount that the Federal Court judgment cited by Customs (and the ADRP) as precedent for its finding that Cockburn's material injury does not constitute material injury to

the Australian industry as a whole, ie *Swan Portland Cement Ltd v Minister for Small Business and Customs* (1991) 22 ALD 446, has no relevance to this investigation. The production of the applicants in that case represented "perhaps ten per cent" of the Australian industry as a whole and consequently their case before the Court that their injury should be taken to be injury to the Australian industry as a whole was totally dependent on the "regional injury" concept because they did not have standing as a "domestic industry" as defined in Article 4.1 of the Agreement.

It can only be assumed that this "regional injury" matter was introduced into this resumed investigation no. 179A by Customs to support affirmation of its decision to terminate the original investigation. Supporting this assumption is Customs' behaviour in various stages of the investigation, as outlined hereunder:

1. Fundamental to Customs' preliminary determination of termination per Statement of Essential Facts No. 179 (SEF 179) was its finding of no price undercutting of Cockburn's prices into the non-alumina sector by dumped imports from Thailand. When this finding was refuted by our response to SEF 179, Customs preserved its preliminary termination determination by introducing the new consideration of Cockburn's injury experienced because of price undercutting, price depression and consequential profit reduction not being able to be linked to dumping because that injury occurred outside the investigation period, to provide the basis for its final termination decision per TER 179.
2. When Customs' finding that Cockburn's injury caused by factors occurring outside the investigation period could not be linked to dumping, the basis for its final termination decision per TER 179, was refuted by the TMRO's review of that termination decision, to preserve its termination decision per TER 179, Customs introduced into resumed investigation no 179A the matter of "regional injury" as a basis for a negligible injury finding and consequent termination.

While the "regional injury" matter has no relevance to the matter of Cockburn's material injury being material injury to the Australian industry for reasons outlined above, we consider that if it were necessary to consider whether Cockburn's injury is "regional injury" and therefore may be judged to be material injury to the Australian industry as a whole, the 2012 Ministerial Direction cited in section 7.5 of TER 179A makes it clear that Cockburn's injury should be considered "regional injury". The injury experienced by Cockburn because of dumped imports from Thailand is confined to a particular region, viz Western Australia, and this injury does not directly affect the rest of Australian industry. The economic performance of members of the Australian industry other than Cockburn is totally unaffected by the dumping of quicklime into the Western Australia market because of the regional nature of the Australian market. While this is our view of Cockburn's injury in the context of "regional injury", we reiterate that "regional injury" is not a relevant consideration in this case.

### **Continuing and future injury**

#### ***Price depression and loss of sales***

As Customs was repeatedly advised during investigations nos. 179 and 179A, Cockburn's loss of profit attributable to price depression during March-June 2010 because of price undercutting by dumped imports from Thailand is compounded by the fact that the depressed prices are in respect of contracts having terms of [REDACTED].

Based on Customs' calculations of Cockburn's loss of profit during January 2010-June 2011, Cockburn's annual loss of profit because of the said price depression during 2010 is \$ [REDACTED] million.

Cockburn's annual profit losses in 2011 and 2012 because of the depression of term-contract prices during March-June 2010 are as follows:

2011	\$ [REDACTED] million
2012	\$ [REDACTED] million

Cockburn's material injury because of dumped imports from Thailand has been aggravated in 2013 by the loss of [REDACTED] mt in the non-alumina sector to dumped imports from Thailand. This loss together with the depression of term-contract prices during from March-June 2010, has resulted in a profit loss of \$ [REDACTED] million based on Cockburn's October full year forecast (FYF) for 2013.

Based on 2013 FYF tonnages and taking into account the on-going profit loss from depression of term-contract prices during March-June 2010 and losses of sales volumes to those customers to whom sales were lost to Chememan in 2013, Cockburn's FYF forecast loss of profit for 2014 is \$ [REDACTED] million.

Summarising the above, Cockburn's loss of profit because of depression of term-contract prices during March-June 2010 and loss of sales volume to dumped imports during 2013, is a total of \$ [REDACTED] million during 2010-2013 and the forecast loss of profit for 2014 is \$ [REDACTED] million. All of these losses of profit are attributable to dumped imports from Thailand.

### ***Price suppression***

We again request that the suppression of Cockburn's prices by dumped imports from Thailand also be taken into account in the Commission's analysis of injury by reason of dumped imports from Thailand.

It needs to be understood that Cockburn's loss of profit because of the reduction of its term contract prices during March-June 2010 is not limited to the difference between previous and new contract prices, ie the absolute amount of the price depression. But for the price offers of the dumped imports from Thailand, previous contract prices would have been increased for the new contracts because of CPI movements and energy and other cost increases.

At [confidential] attachment A hereto is a graph depicting the suppressing effect of the dumped imports on Cockburn's selling prices from 2010 to 2013. It demonstrates where prices during 2010 to 2013 may have been having regard to CPI movements and compound annual growth rate (CAGR) during 2004 to 2009, but for the dumping from Thailand.

We request that this resumed investigation has regard to the compounding effect of this price suppression on Cockburn's loss of profit because of the dumped imports of quicklime from Thailand.

### ***Future injury***

The on-going material injury from dumped imports from Thailand as outlined above is exacerbated by the recent downturn in the gold processing industry. This downturn, which has brought the closure of several Cockburn customers in this important market sector, has caused quicklime sales and production at Cockburn's Dongara plant to significantly decrease and further decrease is expected in the foreseeable future. Dongara sales, based on October

2013 full year forecast (FYF), decreased by █% in 2013 and are forecast to decrease by a further █% in 2014.

There are at present several Dongara customers trialling, or indicating their intention to trial, quicklime from Chememan Australia, the importer of the dumped product from Thailand. To lose these customers in the current market environment will have a severely damaging effect on the future operation of the Dongara plant. It may cause reduction in employee numbers and possibly plant closure.

Because of the serious consequences of loss of sales to dumped imports, Cockburn will do its utmost to retain its customers who have expressed interest in sourcing from Chememan and this is likely to mean further price reductions and consequential profit reductions.

It is clear that there is a serious risk of further material injury to Cockburn because of dumped imports from Thailand in the foreseeable future, be it by loss of sales or price depression/suppression.

Cockburn will provide the Commission with any required evidence of the abovementioned continuing and future injury through price depression/suppression and loss of sales and Cockburn is available for a verification visit by the Commission if required.

It is important in the context of the threat of future injury by reason of dumped imports from Thailand that Chememan, Thailand has recently installed a new 100ktpa kiln at its Thai quicklime production plant (refer to the link hereunder). This, together with increasing volumes of exports to Australia, contradicts Chememan's earlier advice to Customs, which had an influence on the decision to terminate the original investigation, that because of its lack of available production capacity its exports to Australia were likely to reduce in the future.

[http://www.maerz.com/incEN.php?show=news#news\\_82](http://www.maerz.com/incEN.php?show=news#news_82)

### **Provisional measures**

We consider it appropriate in the circumstances outlined above that the Commission makes an early Preliminary Affirmative Determination (PAD) vide section 269TD of the Act and imposes provisional anti-dumping measures on quicklime from Thailand to prevent material injury continuing while the resumed investigation continues and we hereby request that it does so.

### **Additional comments**

TER 179A and the ADRP's report concerning termination of investigation no. 179A refer to Cockburn's expansion and upgrade of its Munster plant as a negative factor in the future injury consideration. We would like to make it clear that the upgrade of the Munster mill was to meet environmental requirements and the increased production capacity was a result of this upgrade. Cockburn installed bag house filters on both kilns to stop dust emissions at a cost of about \$█ million and this installation of bag house filters resulted in increased production capacity, which is influenced by dust emissions.

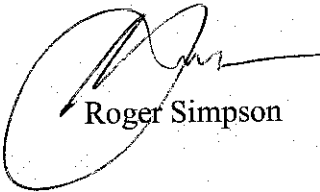
It is important that the Commission understands that relatively high profits are required by Cockburn to sustain its long term business requirements in this highly capital intensive industry, and the continuation of dumped imports from Thailand in increasing volumes and at

decreasing prices is going to have a continuing serious negative impact on Cockburn's future business unless anti-dumping measures are imposed.

While not relevant to the issue of material injury being experienced by Cockburn because of the impact of dumped imports from Thailand on its sales into the non-alumina sector, we would like to inform the Commission that an agreement between [REDACTED] [REDACTED] is about to be executed. This impacts on Customs' considerations concerning the effect of the quality of Cockburn's product vis-à-vis that of Chememan's product on its economic performance and removes the potentially negative impact of the imposition of anti-dumping measures on Chememan's product on [REDACTED] economic performance.

We look forward to meeting next week to discuss the content of this submission.

Yours sincerely,



Roger Simpson