From: Roger Simpson
Sent: Thursday, 12 December 2013 2:51 PM
To: FARRANT Kim
Cc: HATCHER Emma; STOCKWELL Julian; Drew.Elsbury@cockburncement.com.au; Vince.Valastro@cockburncement.com.au
Subject: Quicklime from Thailand

Dear Kim,

Despite the information provided at our meeting on 12 November concerning the continuation of the material injury caused to Cockburn by the depression/suppression of term contract prices in response to price undercutting by dumped imports of quicklime during March-June 2010 and the increasing volume of these imports at reducing prices (further evidenced by email of 25/11), there is nothing on the public record indicating that the Commission is doing anything to confirm the dumping status of the exports which caused the price depression/suppression in March-June 2010.

That the Commission appears to be doing nothing in this regard, strongly suggests that it is working on the development of grounds for another termination of this investigation and denial of protection to Cockburn against continuing material injury by reason of dumped imports from Thailand. This is despite it having been determined by this process that –

- material injury in the form of substantial reduction of profit caused by reduction of prices in term contracts in response to price undercutting by imports of quicklime from Thailand has been experienced by Cockburn, a representative of the Australian industry producing quicklime;
- imports of quicklime from Thailand, which caused the said material injury to the Australian industry, were found to be dumped at a margin of 48%; and
- it is open to the Commission to link injury caused by factors occurring prior to the originally defined period to dumping by extending the investigation period or otherwise.

It is quite incredible that Customs did not examine whether the material injury experienced by Cockburn because of factors occurring during March-June 2010 could be linked to dumping when it is open to do so.

That there is a current policy that injury occurring outside the investigation period should not be attributed to dumping established during the investigation period should not prevent investigation of the link between dumping and material injury occurring before the investigation period in this case given its particular circumstances. This policy is not mandatory and, like any non-mandatory policy, the particular circumstances of the case at hand should decide its application. It appears that Customs, and possibly the Commission, have a fear that to take the appropriate course of examining the link between injury factors occurring in the 4 months immediately prior to the investigation period in which a 48% dumping margin was found and dumping, will set a precedent for future cases. This fear is misplaced, as departure from the said policy in this case can only be a precedent for future cases in which the circumstances correspond with the circumstances of this case, which brought that departure.

It will certainly be a tragedy if an Australian industry is denied protection against continuing material injury by reason of dumped imports because of the Commission's misplaced fear of setting a precedent for future cases by not following its normal non-mandatory policy because of the particular circumstances of this case.

Please advise when we can expect a Statement of Essential Facts.

Thanks and regards,
Roger