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## Issues Paper 2012/179

### Quicklime from Thailand – Case No: 179

The purpose of this discussion paper is to outline the Australian Customs and Border Protection Service's (Customs and Border Protection) preliminary findings in regards to the alleged dumping of quicklime from Thailand. Submissions are invited in response to this paper but must be received no later than 3 February 2012. If confidential, a non-confidential version of the submission must be also provided.

Submissions can be provided by post to:

Director Operations 1  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Or by email: [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au) or fax (02) 6275 6990.

#### **1. Dumping**

On 23 December 2011, exporter questionnaire responses were received from Chememan Thailand Co. Ltd (Chememan Thailand) and Chememan International Pte Ltd (Chememan International). After having regard to the information submitted by Chememan Thailand, Chememan International and other relevant information obtained during the importer visit to Chememan Australia Pty Ltd (Chememan Australia), Customs and Border Protection has preliminarily determined that during the investigation period, quicklime was exported to Australia from Thailand at dumped prices.

#### **Export price**

Customs and Border Protection has preliminarily found that:

- Chememan Thailand is the exporter of the goods;
- in most cases, the importers did not purchase the goods from the exporter, and
- export price cannot be determined under s.269TAB(1)(a) or (b).

Therefore, export prices have been determined under s.269TAB(1)(c) having regard to all the circumstances of the exportations.

To calculate export prices, Customs and Border Protection has used the first established arms length transaction outside of the Chememan group of

related entities. This involves sales made directly to endusers in Australia. Deductions were made to these selling prices for the following expenses to calculate free-on-board export prices for Chememan Thailand:

- Chememan Australia's selling, general and administrative expenses;
- importation expenses;
- ocean freight;
- marine insurance, and
- Chememan International's selling, general and administrative expenses;

#### Normal value

Customs and Border Protection has preliminarily found that:

- there are a sufficient quantity of like goods sold in the ordinary course of trade on the Thai domestic market, and
- relevant domestic sales made by Chememan Thailand were at arms length transactions.

Therefore, domestic sales are suitable for establishing normal values in accordance with s.269TAC(1).

In accordance with s.269TAC(8), the following adjustments have been made to domestic prices to ensure proper comparison with the export prices:

- domestic inland freight (downward);
- domestic credit terms (downward);
- domestic packing expenses (downward);
- export packing expenses (upward);
- export inland freight to port (upward);
- export handling and FOB related expenses (upward),
- export credit terms (upward)

#### Dumping margin

A preliminary comparison of the weighted average export price over the investigation period with the weighted average normal value over the investigation period shows that the goods were dumped by a margin of 21.4%.

## **2. Past or present material injury caused by dumped imports**

Cockburn Cement Limited (Cockburn Cement) claims that it has suffered injury due to dumped imports of quicklime from Thailand in the form of lost sales and market share, price undercutting, price depression, reduced sales revenue and reduced profit and profitability.

#### Non-alumina sector

Customs and Border Protection has found that Cockburn Cement reduced its prices to customers in the non-alumina sector in 2010 and 2011. These price reductions represent approximately 2.2% of potential lost revenue.

Customs and Border Protection has analysed prices to the non-alumina sector by Cockburn and the major importer, Chememan Australia, during the investigation period. A comparison of free-into-store weighted average monthly unit selling prices shows that prices offered by Chememan Australia were higher than prices offered by Cockburn Cement for all but two customers. These two customers represent less than 1% of Cockburn Cement's non-alumina sales and 0.5% of total sales.

#### Alumina sector

Cockburn Cement also asserts that it lost potential revenue from new contracts in the alumina sector by not achieving the price it could have otherwise achieved in the absence of dumped imports. This potential lost revenue accounted for approximately 2.9% of its total revenue.

To ensure that a comparison of prices from Cockburn Cement and Chememan Australia to the alumina sector reflect the same terms and conditions, Customs and Border Protection has calculated prices on a 100% lime content basis. The analysis shows that Chememan Australia's prices were higher than Cockburn Cement's prices to the alumina sector throughout the investigation period.

There is sufficient evidence to suggest that the level of certain impurities that may have a negative impact on production yields in particular sections of the alumina sector are high in Cockburn Cement's quicklime product. The level of impurities in Cockburn Cement's product is driven largely by the raw material source, being shell sand.

Given the significant concern of the alumina sector regarding the levels of impurities, Customs and Border Protection is not satisfied that Cockburn Cement's desired price was achievable even in a market absent of imports. This is further supported by evidence of product trials of imported quicklime from Thailand at prices significantly higher than the price considered by Cockburn Cement to be a non-injurious price for the alumina sector.

Material injury is injury which is not immaterial, insubstantial or insignificant, and greater than is likely to occur in the normal ebb and flow of business. Having regard to the following preliminary facts, Customs and Border Protection is of the view that dumped imports have caused negligible injury over the investigation period:

- imports from Thailand account for a very small proportion of the market;
- all imports from Thailand during the investigation period were sold for product testing;
- none of Cockburn Cement's existing customers are currently in contract to purchase product from Chememan Australia;

- Cockburn Cement has experienced a negligible loss of sales volumes; and
- Cockburn Cement's negotiated prices to its alumina customers have significantly increased over previous negotiated prices.

## **2. Threat of material injury caused by dumped exports**

Threat of material injury arises in circumstances where the dumping is causing either no present injury, or is causing negligible present injury, but there is a threat of material injury caused by dumped exports. The WTO Agreement and the Australian legislation provide for a determination of threat of material injury to be subject to stringent tests.

Article 3.7 of the WTO Anti-Dumping Agreement provides that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility. It also provides a non-exhaustive list of factors that should be considered and notes that no one factor can necessarily give decisive guidance. A totality of factors must lead to a determination of threat of material injury.

Article 3.8 of the WTO Anti-Dumping Agreement provides that:

*With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.*

The Australian legislation, at s. 269TAE(2B), provides that in determining whether or not material injury is threatened to an Australian industry:

*...the Minister must take account of only such **change in circumstances**, including changes of a kind determined by the Minister, as would **make that injury foreseeable and imminent unless dumping or countervailing measures were imposed**" (emphasis added).*

In assessing the threat of injury Customs and Border Protection considers, *inter alia*, factors such as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped/subsidised exports to the market, taking into account the availability of any other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing affect on domestic prices, and would likely increase demand for further imports; and
- whether inventories of the product being investigated have increased.

In 1997 Customs and Border Protection issued a policy advice (Policy Advice 1997/6) that clarified the circumstances in which a threat of material injury case arose. The advice concluded that:

*In circumstances where an applicant alleges both past/present injury and threat of material injury, if Customs is satisfied that the claim of past/present material injury has been made out it will be unnecessary to proceed to an examination of the allegation of threat of material injury.*

However, where there is insufficient evidence to be satisfied that the industry has suffered past or present material injury, Customs and Border Protection is not precluded from considering the issue of threat. This is supported by the relevant termination provision (s.269TDA(13)(ii)) which requires that the CEO be satisfied that:

*the injury, if any, to an Australian industry....,that has been, **or may be**, caused by that dumping is negligible" (emphasis added).*

In Consideration Report CON179, Customs and Border Protection made the following observation:

*... while the volume of sales Cockburn Cement has lost to date is immaterial, Customs and Border Protection considers that the potential for future lost sales and market share is evident. The trial of the Thai product by Cockburn Cement's customers does indicate that these companies are considering purchasing larger quantities of the imported quicklime. Furthermore, the applicant estimated that the Chememan Australia distribution facility is designed to handle 100,000mt per year. The loss of this volume of sales and market share to dumped imports would be material injury. In addition, the Chememan website notes that:*

*'As market grows, we plan to expand more distribution centers in Western and Northern Territories of Australia in the near future' (emphasis added).*

Later in that report, Customs and Border Protection stated that:

*Whilst the application by Cockburn Cement has claimed that actual injury caused by dumped imports occurred during the investigation period, where a finding of negligible injury caused by dumping is made, Customs and Border Protection will as a matter of practice, consider and determine whether a threat of material injury exists.*

Following the initiation of the investigation and soon after receiving a completed importer questionnaire response from Chememan Australia, Customs and Border Protection developed a clearer understanding of the nature and terms of sales of the imported goods. Information submitted to the investigation, and information obtained from Customs and Border Protection's inquiries suggests that imports to date have been sold to customers for the

purpose of product testing with a view to establishing longer term contracts with both the alumina and non-alumina sectors.

Based on this information it is clear then that the volume of imports during the investigation period does not reflect the potential or forecasted import volume of quicklime on the basis of successful product testing leading to established contracts with customers. This raises the issue of threat and whether further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

The fundamental issue to be established in a threat assessment is that "the change in circumstance which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent."<sup>1</sup> Footnote 10 of the Anti-Dumping Agreement provides one example as guidance to this issue which "is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices."

**Request for submissions on the issue of a threat of material injury**

Customs and Border Protection requests that interested parties provide submissions to the investigation detailing their claims in respect of a threat of future material injury. Interested parties are requested to confine their assessments to a 12 month future period as Customs and Border Protection does not consider events beyond this period to be imminent or clearly foreseeable.

Any submission in this regard should carefully consider the matters listed at Article 3.7 of the WTO Anti-Dumping Agreement and outlined in section 2 of this paper, including any other factors that parties consider support their claims of a threat of material injury or the absence of a threat. It should also make clear any claims in respect of any change in circumstances and any foreseeable and imminent injury.

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<sup>1</sup> Article 3.7 of the Anti-Dumping Agreement