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Mr John Bracic
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Australian Customs and Border Protection Service
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commercial + international

By email

Dear John

Alleged dumping of quicklime from Thailand - ACDN 2011/53
Non-likeness of quicklime exported to Australia by Chememan Co., Ltd

I refer to my email dated 18 November 2011.

In that email it was stated:

> *You will have noted our reference to the applicant's quicklime as being a different and inferior product to Chememan's. It has come to our attention, in the course of being briefed by our client as to the circumstances of this matter, that the "likeness" of the products concerned is a very significant matter. They are not "like" each other. We will be writing to you shortly in that regard with more details, and with a request that this should be addressed at the earliest possible time in this investigation.*

This letter explains the situation described in that email.

In summary, we submit that the applicant does not produce like goods to those exported to Australia by our client Chememan Co., Ltd ("Chememan"). Chememan requests that Australian Customs consider this matter urgently, and as a preliminary matter.

On the basis that the imported and domestically-produced goods are not like each other, Chememan requests the termination of this investigation as against its exports. Failing that, the implications of these differences will nonetheless contradict the allegation that injury has been caused by "dumped" imports.

We emphasise the following points.

1 The two products – that produced by the applicant, and that produced by Chememan – are produced from different raw materials. This difference relates to both the structure of the material and its composition. This imparts a massive degree of difference between them

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2 The applicant's quicklime product is derived from dredging shell sand from the seabed. As stated in its application, the sand is first dredged and then pumped into a washing plant. Oversized shells are removed, leaving stockpiled sand as the raw material ready for processing.

3 The raw material from which Chememan produces the product it exports to Australia is not sand. The raw material used by Chememan is rock – namely, limestone rock. The rock is mined from a quarry. The first stage of its processing involves mining and crushing of this raw material to the lump sizes suitable for the calcination process. Quicklime produced from the calcination process is available in lump form of sizes 35 to 90 mm. If required, lump quicklime is further processed in the hammer and grinding mills to the required granular size, ranging from 25, 3, 0.6 and 0.15 mm.

4 The differences in the raw material - sand, on the one hand, compared with rock, on the other hand – render the products different ("non-like"):

(a) entirely – because of the different chemical characteristics that Chememan's raw material imparts to its finished product; and

(b) at the very least, at certain granular sizes – because of the different chemical characteristics and the larger granular size of some of the Chememan-produced quicklime.

5 All of the product exported to Australia by Chememan is not like that produced by the applicant because its chemical composition is different, including that:

(a) the available lime concentration in Chememan's product is far superior to that of the applicant's;

	Chememan standard	Chememan recent actual	Cockburn Cement	Difference
CaO	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	10-12%

(b) the magnesium oxide impurity content of the applicant's product is far inferior to that of Chememan's:

	Chememan standard	Chememan recent actual	Cockburn Cement	Difference
MgO	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	10 times

(c) the silica dioxide impurity content of the applicant's product is far inferior to that of Chememan's: and

	Chememan standard	Chememan recent actual	Cockburn Cement	Difference
SiO2	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	14 times

(d) the sulphur trioxide impurity content of the applicant's product is far inferior to that of Chememan's

	Chememan standard	Chememan recent actual	Cockburn Cement	Difference
SO3	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]	25 times

6 The raw material used is of central significance to these differences. A high grade rock resource is vastly different to a low grade shell sand resource. In terms of chemical properties, shell sand dredged from the sea has low available lime content and greater impurities. High impurities in quicklime adversely affect the production processes of end users.

7 With respect to granular size, shell sand "starts off" at a low particle size – the particle size of sand – and cannot be made "larger" as a finished product. The higher proportion of lime dust generated in the production process of end users as a result of using quicklime with small granular size creates serious environmental problems for end users.[1] The granular ("particle") size of Chememan's product is variable, from 0.15mm all the way up to 90mm, whereas the largest size that the applicant can offer is a 0.6mm product. The applicant can only rely on sifting of sand to deliver a granular size outcome: the outcomes are not controllable and limited to smaller sizes. Chememan's grinding process can deliver quicklime at predictable sizes through a much larger range.

8 These differences are practically demonstrated by the fact that Chememan's imports to date have been sample shipments of 3.0mm for large scale testing by one of its interested customers. That customer has invested in special machinery, and has undertaken special monitoring and testing, to be assured that Chememan's product is suitable for its production processes. None of this would be necessary if the products were immediately interchangeable.

9 Our client rejects the proposition stated in the application that:

> *As the Australian and imported quicklime are the same product, they are substitutable and this compete predominantly on price.*

It is wrong to make that statement. The proposition that they *"compete predominantly on price"* is misleading in at least two contexts:

[1] The applicant excludes quicklime kiln dust from the scope of its application. This concedes that particle size is important to likeness.

(a) it completely understates the quality of Chememan's quicklime, and the importance of the controllable (and larger) granular sizes available from Chememan's limestone rock resource and processing; and

(b) two products can only compete on price if the vendor of the overpriced product wishes to be competitive, instead of demanding that the anti-dumping system deliver protection for the maintenance of monopoly profits.

10 In other public statements, the applicant has itself drawn attention to both the "unique" nature of its product, and to the inferiority of its raw material when compared to terrestrial limestone (even, it seems, as compared to terrestrial *sands*). In a presentation to the WA Minerals Conference in 1997,[2] the Chief Executive of Cockburn Cement said the following:

> *A total carbonate content of 92% or above is needed to make lime of an adequate purity, ie, calcium oxide (CaO) level, for use in a range of industrial processes. Bearing in mind the plant locations shown... and the location criteria previously referred to, the only proven resource of sufficient quality or extent – and suitably located for the greater part of the WA lime market - is the shellsand of the sandbanks around Owen Anchorage, a few kilometres offshore between Fremantle and Woodman Point...*
>
> *Terrestrial deposits of limesand, which is similar to the Owen Anchorage shellsand, occur in other coastal areas along the WA coast, but so far the only such resources which have met the requirements of lime manufacturers are in the Dongara area near Geraldton, where Cockburn and Westlime are currently building lime plants.*
>
> *In future it maybe possible to use resources of less than 92% $CaCO_3$ level; this will depend on the development of suitable beneficiation processes to achieve the required quality for lime manufacture.*
>
> *The Nullabor Plain contains vast amounts of good quality limestone, but the transport cost penalty would render this resource uneconomic in relation to most of the WA lime market...* (underlining supplied)

11 This statement indicates the importance of available lime content, and of the resource that is used to produce it. However in the applicant's skewed reasoning, it appears that this quality is to be judged in terms of cost and distance.

12 In 1998 the then Anti-Dumping Authority reported its findings concerning a preliminary finding against a decision made by Australian Customs that certain coated paper imported from South Africa was not "like" the coated paper produced by the Australian industry. In that case, the imported paper was made from bagasse, which is sugar cane residue. The goods produced by the Australian industry were made from a different raw material, namely wood pulp. The Authority supported the negative preliminary finding arrived at by Australian Customs, saying:

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2 *WA's Unique Lime and Cement Industries* – paper presented to WA Minerals Conference by Don McDonald, Chief Executive, Cockburn Cement Limited (Perth, 21 May 1997)

> *The fact that two products are made from different materials (in this case, wood pulp and sugar cane pulp) in itself satisfies the Authority that they are not like goods as defined in the legislation. Nevertheless, the Authority examined the information available to Customs on the end-uses of the two products.*

Customs concluded that:

> *A2 art paper produced by Australian Paper is not a like good to coated papers produced from bagasse fibre and exported to Australia because of their different physical characteristics.*

Further:

> *The coated paper produced by Sappi [was] of a lower quality than that produced by Australian Paper...[and] the user regarded the two types of paper as not suitable for the same end-use.*[3]

13 In this administrative precedent we see the importance placed on what a product is made from, and the different qualities and physical characteristics that raw materials can impart. Being able to use one product for the same thing that you can use another product is not enough to make them "like goods" for anti-dumping purposes. The applicant's contrary attitude is simplistic and unrepresentative of the available authority.

14 In 2005 Australian Customs conducted a reinvestigation of a finding that primary silicon produced by the Australian industry was "like" imported secondary silicon. The reinvestigation report[4] explains that "primary use silicon" are those silicon grades alloyed with primary aluminium, having iron impurity levels of less than 0.4% and calcium impurity levels of less than 0.1%. "Secondary use silicon" refers to grades that are alloyed with secondary aluminium which have higher impurity levels. In that case Customs found that the impurity levels were such that the two products had sufficiently different end uses. In the instant case the two products have the same end uses however the way they can achieve those end uses and their suitability in performance and environmental terms, is very different. This comes down to the differences to which we have already referred.

.....

On behalf of our client, we request that Australian Customs consider these issues as soon as possible. If it is concluded that the goods are not "like" each other, as we have submitted, then this investigation should be terminated.

Lastly, one might ask:

- how it is Chememan can make available - to its existing and prospective Australian customers - such a high quality product, made from limestone rock, which must be

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[3] *Review of the Australian Customs Service's negative preliminary finding on certain coated paper from Finland, the Republic of South Africa and Sweden and coated paper between 75 and 90 gsm*, Anti-Dumping Authority Report No. 183 (1998)

[4] *Certain silicon from the People's Republic of China – Reinvestigation of certain matters* - Trade Measures Report No. 103 (December 2005)

transported over such long distances, at a competitive price; and

- why it is that those customers are prepared to make the investment required to qualify Chememan as a supplier, and to convert their processing practices as may be required in order to utilise Chememan's product in their processing.

The answer lies in the fact that Cockburn Cement's Australian market dominance, and ever increasing prices for low quality quicklime – quicklime which is only available in sub-optimal granular size - have forced the Australian resources industry that depends on this important input commodity to look for alternative sources of supply.

Chememan's higher quality, more suitable quicklime is being sampled by Australian customers so that they can assess whether it meets their needs, and how they might need to adjust their technical processes to accommodate its use.

Yours sincerely

Daniel Moulis
Principal