

Gross & Becroft

L A W Y E R S

International Trade • Customs • Commercial Law

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Our Ref: RB:3001

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PUBLIC FILE VERSION

9 December 2011

BY EMAIL: tmops1@customs.gov.auDirector
Operations 1
International Trade Remedies Branch
Australian Customs & Border Protection Service
Customs House
5 Constitution Ave
CANBERRA ACT 2601

Dear Sir/Madam

Re: Quicklime exported from Thailand – Initiation of an investigation into alleged dumping – Australian Customs Dumping Notice Number 2011/53

We act on behalf of [CONFIDENTIAL TEXT DELETED – INFORMATION WHICH WOULD IDENTIFY PERSON MAKING THIS SUBMISSION] in relation to the abovementioned matter.

OUR CLIENT'S BUSINESS AND INTEREST IN THIS CASE

Our client owns and operates [CONFIDENTIAL TEXT DELETED – DETAILS OF BUSINESS].

[CONFIDENTIAL TEXT DELETED – DETAILS OF BUSINESS ACTIVITIES].

Quicklime is an integral part of our client's [CONFIDENTIAL TEXT DELETED – DETAILS OF BUSINESS] operations. [CONFIDENTIAL TEXT DELETED – DETAILS OF HOW QUICKLIME USED IN OPERATIONS]. The consumption of Quicklime in our client's operations is approximately [CONFIDENTIAL TEXT DELETED – DETAILS OF CONSUMPTION QUANTITIES]. Assuming a free into store price of around [CONFIDENTIAL TEXT DELETED – DETAILS OF PRICES] per tonne, it can be seen that this is a very significant input cost in

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percent as presently determined by Customs.

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- (d) We note from reading the submission by Chememan's representative that there may be a consideration of whether the imported products and local products are like products for the purposes of an anti-dumping investigation. We understand that the Thai product is derived from rock rather than sand and that the Australian product is "less efficient" in that more of it is required to be used in a production process. This has the potential to affect a customer's decision to buy one product versus another product.
- (e) There may be other external factors that are relevant to the anti-dumping investigation such as currency movements which have been significant in the period from 2009. This may remove or reduce the incidence of dumping.

ACTUAL OR THREATENED MATERIAL INJURY CLAIMS

We note that Cockburn's allegations concerning material injury focus principally on price effects. This is because it asserts that sales volumes have been maintained by reducing prices and other indicia, such as a lower return on investment, have not yet occurred. This assertion of lowering prices to match import prices has not been our client's experience. During [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION], our client obtained [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION] independent quotes one being from Cockburn and [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION] from importers. We attach a confidential spreadsheet 'A' which includes this pricing information [CONFIDENTIAL TEXT DELETED – SPREADSHEET NOT INCLUDED – HAS DETAILS OF PRICES OF DIFFERENT SUPPLIERS AND QUANTITIES REQUIRED]. This information demonstrates that price of bulk Quicklime on a free into store basis as quoted by Cockburn was [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION] less expensive than the price quoted by one supplier of imported goods and [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION] less expensive than the other supplier of imported goods. Even taking into account the efficiency gains of using the imported products due to the higher quantity of Australian product required for processing, the Quicklime from Cockburn was significantly cheaper than the imported products. [CONFIDENTIAL TEXT DELETED – INFORMATION RE QUOTATION].

Our client is now [CONFIDENTIAL TEXT DELETED – RELATIONSHIP TO COCKBURN] Cockburn and is concerned that if anti-dumping measures are imposed that our client will be subject to significant annual price increases for quicklime.

Whilst we appreciate that it is not possible for a profitable company like Cockburn to suffer injury as a result of dumping, we are mindful of statements made in the 2010 Annual Report of Cockburn's parent company, Adelaide Brighton Cement Limited, to the effect that Quicklime sales have continued to increase, profit margins have continued to increase and Cockburn has continued to improve the level of efficiency of its operations. This does not seem consistent with allegations of material injury in the dumping complaint.

This issue is particularly sensitive for the [CONFIDENTIAL TEXT DELETED – INFORMATION RE IDENTITY OF CLIENT'S BUSINESS] industry as contracts for the purchase of Quicklime are often fixed term contracts of up to several years. A lack of competition in the sale of this product will lead to higher input costs for [CONFIDENTIAL TEXT DELETED – INFORMATION RE

[CONFIDENTIAL TEXT DELETED – DETAILS OF BUSINESS] operations. There are no substitutes for Quicklime in our client's operations.

Our client is an "interested party" pursuant to the amendment to Section 269T of the *Customs Act 1901* as referred to ACDN no 2011/52.

LEGITIMATE CONCERNS ABOUT THE EFFECT OF ANTI-DUMPING MEASURES ON QUICKLIME CUSTOMERS

Our client's main concern is that Cockburn, an established company with in excess of sixty percent of the market in Australia for Quicklime, may be using the anti-dumping system to preserve its near monopoly status in the market. Further, we note that Cockburn has maintained a very strong market position in Australia due to Cockburn's Munster plant being in close proximity to its major customers in Western Australia, comprising four large aluminium refineries and various gold mines. This has the potential to create a 'natural' barrier to competition from overseas suppliers due to the large transportation and handling costs for suppliers who wish to compete with Cockburn.

Cockburn has advised in its anti-dumping application that it does not have price lists with customers but rather negotiates prices on a case by case basis. We are instructed that Cockburn's allegation that its prices are being undercut by imports is not correct in our client's experience, as will be discussed below. Our client is concerned that this anti-dumping action is a reaction to the prospect of Chememan competing in the market place with Cockburn and gradually acquiring an increased market share.

ISSUES REQUIRING INVESTIGATION BY CUSTOMS

We refer to Consideration Report Number 179 dated 27 October 2011 and make the following points:

- (a) It appears from Customs' own conclusions in section 6.7.4 of the Report that this case essentially concerns threatened material injury. There is little or no evidence in the application or in the Consideration Report that there is any present material injury being sustained by the Applicant. As required by Article 3.7 of the WTO Anti-Dumping Agreement special care must be taken by investigating authorities and any change in circumstances in market conditions (aka, threats) that would cause injury must be clearly foreseen and imminent. With this regard, we note that the market share of imports is presently very small relative to Australian production.
- (b) There are no significant substitutes for Quicklime (see Consideration Report Section 4.5.2) and therefore the imposition of anti-dumping duties is likely to negatively affect downstream users of this product directly and harm the profitability of their business and have other wider economic effects.
- (c) We note that there are a number of latent issues with regards to the allegation of dumping. For example, there is an issue of related party sales with Chememan and export prices have been calculated in the application using a deductive sales method. To date there are already significant differences in the estimates of alleged dumping margins, being seventy-nine percent as alleged by the Applicant versus twenty-three

IDENTITY OF CLIENTS BUSINESS], on top of other new imposts such as the carbon tax and the new mining tax.

In summary, our client's position is that it does not believe that the Applicant is suffering any actual or threatened material injury, and that the anti-dumping investigation commenced by Australian Customs ought to be terminated.

Please do not hesitate to contact the writer should you wish to discuss any matters raised in this submission or the matter generally.

Yours faithfully
GROSS & BECROFT



Dr. Ross Becroft
Principal

Encl.