



## Consideration report number: 348

Application for a dumping duty notice

Submitted by Cockburn Cement Limited

In relation to quicklime exported to Australia from  
Malaysia, the Kingdom of Thailand and the Socialist  
Republic of Vietnam

11 April 2016

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## Abbreviations

Abbreviation / short form	Full reference
ACBPS	Australian Customs and Border Protection Service
the applicant	Cockburn Cement Limited
AUD	Australian Dollar
Cockburn	Cockburn Cement Limited
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
DIBP	Department of Immigration and Border Protection
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Parliamentary Secretary	The Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Thailand	Kingdom of Thailand
Vietnam	Socialist Republic of Vietnam

# 1. Findings and recommendations

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application made under subsection 269TB(1)<sup>1</sup> of the *Customs Act 1901* (Customs Act) by Cockburn Cement Limited (Cockburn) for the publication of a dumping duty notice in respect of quicklime that has been imported into Australia from Malaysia, the Kingdom of Thailand (Thailand) and the Socialist Republic of Vietnam (Vietnam).

Cockburn alleges that the Australian industry for quicklime has suffered material injury caused by quicklime being exported to Australia from Malaysia, Thailand and Vietnam at dumped prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Customs Act. The relevant legislative provisions are set out in **Non-Confidential Appendix 1**.

## 1.1. Findings

In accordance with subsection 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 3, 4 and 5 of this report).

## 1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 January 2015 to 31 December 2015 be examined for dumping; and
- details of the Australian market from 1 January 2012 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in subsection 269TC(4).

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<sup>1</sup> A reference to a division, section, subsection, paragraph or subparagraph in this report is a reference to a provision of the *Customs Act 1901* unless otherwise specified.

## 2. The application and the Australian industry

### 2.1. Lodgement of the application

#### 2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

#### 2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged & received by the Commissioner under subsections 269TB(1) and (5)	22 March 2016	Cockburn alleges that the Australian industry has suffered material injury caused by quicklime that has been imported into Australia from Malaysia, Thailand and Vietnam at dumped prices.
Consideration decision due under section 269TC(1)	11 April 2016	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant last provided further information.

### 2.2. Compliance with subsection 269TB(4)

#### 2.2.1. Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with subsection 269TB(4).

#### 2.2.2. Legislative framework

Under subsection 269TC(1)(a), the Commissioner shall reject an application if not satisfied that it complies with all of the requirements outlined in subsection 269TB(4).

#### 2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with subsection 269TB(4).

Requirement for the application	Details
Is in writing under subsection 269TB(4)(a)	The applicant submitted confidential and public record versions of the application in writing. A non-confidential version of the application can be found on the Commission's website.
Contains such information as the form requires under subsection 269TB(4)(c)	The applicant provided the requested declaration, answered all relevant questions, completed all appendices and the public record version contains sufficient detail to allow a reasonable understanding of the substance of the information in the confidential version.
Signed in the manner indicated under subsection 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of Cockburn.

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Requirement for the application	Details
Supported by a sufficient part of the Australian industry under subsection 269TB(4)(e) and determined in accordance with subsection 269TB(6)	<p>As set out in section 2.4.1 the Commission is satisfied that there is an Australian industry producing like goods.</p> <p>Cockburn has provided information concerning its own quicklime production and that of other Australian quicklime producers.</p> <p>The Commission notes that Cockburn supports the application and comprises more than 25% of the total production in Australia. Cockburn is the only member of the Australian industry who has expressed opposition to or support for the application.</p> <p>Accordingly, persons who produce like goods in Australia and who support the application account for more than 50% of the total production of like goods produced by that portion of the Australian industry that has expressed either support for, or opposition to, the application.</p>
Lodged in the manner approved under section 269SMS, for the purposes of subsection 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by hard copy to the Commission's address provided in that instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).

### 2.3. The goods the subject of the application

The table below outlines the goods as described in the application and their corresponding tariff classification.

<b>Full description of the goods, as subject of the application</b>				
Quicklime, also known as Calcium Oxide (CaO) as this is the dominant chemical composition of quicklime.				
<b>Further information</b>				
Other common names to describe this product include Burnt Lime and Unslaked Lime. Quicklime is a white to grey, caustic, crystalline solid at room temperature.				
<b>Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)</b>				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
2522.10.00	26	kg	Quicklime <sup>2</sup>	Free for all countries of export

<sup>2</sup> The heading excludes goods of heading 2825 i.e. pure calcium oxide. Calcium oxide is the main component of quicklime however pure calcium oxide is classified separately.

<b>Previous investigations</b>
An investigation into alleged dumping of quicklime (Investigation 179) exported to Australia from Thailand was initiated on 31 October 2011 by the then Australian Customs and Border Protection Service (ACBPS), following an application by Cockburn. Investigation 179 was terminated in April 2012 and May 2013; those terminations were revoked by the TMRO and ADRP respectively and the investigation resumed. Investigation 179 was terminated a third and final time on 7 November 2014. The reason for all three terminations was that dumped exports to Australia of quicklime had caused only negligible injury to the Australian industry.
<b>Other administrations</b>
The Commission is unaware of any findings of, or investigations into, dumping of quicklime in other comparable jurisdictions.

## **2.4. Like goods and the Australian industry**

### **2.4.1. Finding**

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- Cockburn produces goods that have characteristics that closely resemble the goods the subject of the application, and
- the goods produced by Cockburn are wholly produced in Australia.

### **2.4.2. Legislative framework**

An application can only be made if there exists an Australian industry producing like goods to the goods the subject of the application. Like goods are defined under subsection 269T(1). Subsection 269TC(1) requires that the Commissioner reject an application for a dumping duty notice, if among other things, the Commissioner is not satisfied that there is or likely to be established, an Australian industry in respect of like goods. Subsections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia.

### **2.4.3. Locally produced like goods**

The table below summarises the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

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<b>Factor</b>	<b>Applicant's claims</b>	<b>Commission's assessment</b>
Physical likeness	Cockburn claims that the goods are physically similar, being predominantly calcium oxide with minor variations in the presence of other chemicals and granular size.	<p>In Investigation 179 the ACBPS found that the key physical characteristic for end users of quicklime was the presence of calcium oxide, the reagent in chemical reactions for which quicklime is used.</p> <p>Based on the Commission's physical likeness assessment, the physical characteristics of both the locally produced goods and the goods the subject of the application do not appear to have changed since the previous investigation. While Australian quicklime may comprise slightly different technical specifications to the imported quicklime the key physical characteristic, calcium oxide, appears to be the same and the Commission considers them to be physically like.</p>
Commercial likeness	Cockburn claims that there is a commercial likeness of the goods as they compete in the same market.	<p>In Investigation 179 the ACBPS found that the goods were commercially similar as they competed in the same market sector. The customers that purchased imported quicklime also purchased quicklime from Cockburn.</p> <p>The locally produced goods and the goods the subject of the application continue to compete in the same market. Consistent with the findings from Investigation 179 the Commission considers them to be commercially like.</p>
Functional likeness	Cockburn claims that the goods are functionally similar as they are both used for the same purposes.	<p>In Investigation 179 the ACBPS found that the imported and locally produced quicklime were functionally similar as they had the same end use and were purchased with the intention to be used primarily in the mineral processing industry.</p> <p>The locally produced goods and the goods the subject of the application continue to be used for the same end purpose, with the primary intention of use in the mineral processing industry.</p> <p>Consistent with the finding in Investigation 179 the Commission considers them to be functionally like.</p>



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Factor	Applicant's claims	Commission's assessment
Production likeness	Cockburn claims that the goods are manufactured using similar production processes.	<p>During Investigation 179 importer Chememan highlighted different production processes used to produce the imported and domestically produced products. The ACBPS found in Investigation 179 that:</p> <ul style="list-style-type: none"> <li>• Quicklime produced by Chememan was manufactured from calcium carbonate in limestone rock that is crushed before it is fed into the calcination process.</li> <li>• Quicklime produced by Cockburn Cement is manufactured from calcium carbonate in shell sand, dredged from the ocean floor.</li> </ul> <p>However the ACBPS found that both the crushed limestone and shell sand is fed into a kiln where it is heated to create calcium oxide. Therefore, despite the different forms of raw material, both are produced using a similar production process.</p> <p>Cockburn Cement continues to manufacture quicklime in the same manner and at the same plants as in the previous investigation. Further, Cockburn Cement understands that the production process utilised for the goods the subject of the application remain the same, with each export country the subject of this application using the same raw material limestone rock in the manufacture of quicklime.</p> <p>Consistent with the findings in Investigation 179, the Commission considers that they are produced using similar production methods.</p>
<b>Commission's assessment</b>		
<p>The Commission's assessment is that while the locally produced goods are not identical to the goods the subject of the application, the locally produced goods closely resemble the goods the subject of the application and are like goods in terms of physical likeness, commercial likeness, functional likeness and production likeness. The Commission notes the applicant was also able to provide technical data sheets for quicklime for two other Australian manufacturers on the east coast. The specifications for quicklime for each of the Australian manufacturers (including the applicant) are consistent and closely resemble the goods the subject of the investigation.</p>		

**2.4.4. Manufacture in Australia**

The table below summarises the Commission’s assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

<b>Applicant’s claims</b>
Cockburn claims that its quicklime is manufactured from locally-sourced raw materials in the form of shell sand. The decarbonation of shell sand to form calcium oxide (i.e. quicklime) in high temperature, capital-intensive industrial kilns at Cockburn’s kiln facilities in Munster and Dongara in Western Australia represents a substantial process of manufacture.
<b>Commission’s assessment</b>
The Commission considers that at least one substantial process of manufacture, the decarbonation of shell sand at Cockburn’s kiln facilities in Western Australia, is carried out in Australia and therefore the Commission considers that the like goods are manufactured in Australia.

**2.5. Australian industry information**

The table below summarises the Commission’s assessment of whether Cockburn has provided sufficient information in the application to analyse the performance of the Australian industry.

<b>Have the relevant appendices to the application been completed?</b>		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Not applicable
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Not applicable
A7	Other injury factors	Yes
<b>General administration and accounting information – Cockburn</b>		
History	The Commission understands that Cockburn began manufacturing operations in 1955. Cockburn joined the Adelaide Brighton group of companies in 1999.	
Ownership	Cockburn is fully owned by Adelaide Brighton Ltd (Adelaide Brighton). Adelaide Brighton is a publically listed company.	
Operations	Cockburn is a major cement and quicklime producer in Western Australia. Cockburn operates three lime kilns producing quicklime: two at Munster, Western Australia and one at Dongara, Western Australia.	
Financial year	Cockburn’s financial reporting period is 1 January to 31 December.	
Audited accounts	Cockburn provided annual reports for its parent company, Adelaide Brighton. Cockburn’s accounts are not separately audited and are consolidated within the Cement and Lime Division accounts of Adelaide Brighton.	
Annual reports	Adelaide Brighton’s 2014 annual report was provided with the	

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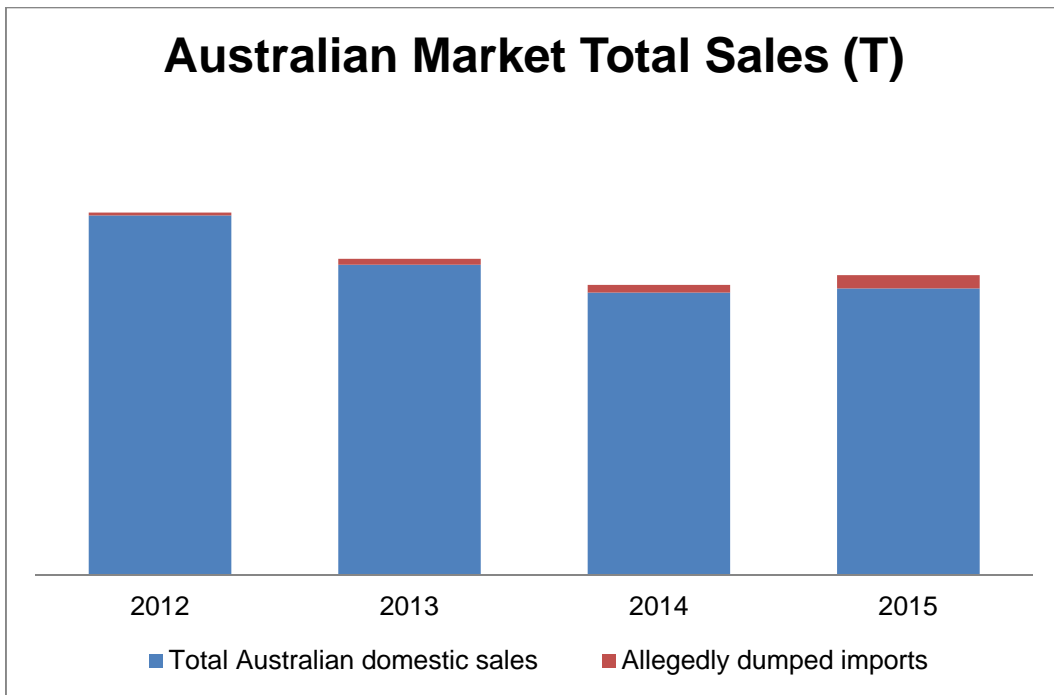
application. Earlier annual reports are available on Adelaide Brighton's website.		
Production and sales information	Cost to make and sell information	Other injury factors
The Commission has no significant concerns regarding the production and sales information provided.	The Commission has no significant concerns regarding the cost data provided.	The Commission has no significant concerns regarding the data provided in Appendix A7 to the application.
The Commission's assessment		
Based on the information in the application, the Commission is satisfied that there is sufficient data on which to assess the performance of the Australian industry from 1 January 2012.		

**2.5.1. Market size**

Cockburn estimated the size of the Australian market using:

- Australian Bureau of Statistics import data for the applicable tariff code; and
- Cockburn's own sales data and knowledge of the market.<sup>3</sup>

Cockburn completed Confidential Appendix A2 to the application, using the data obtained to estimate the size of the Australian market. Data gathered by Cockburn is set out below in Figure 1 for the period from January 2012 to December 2015.



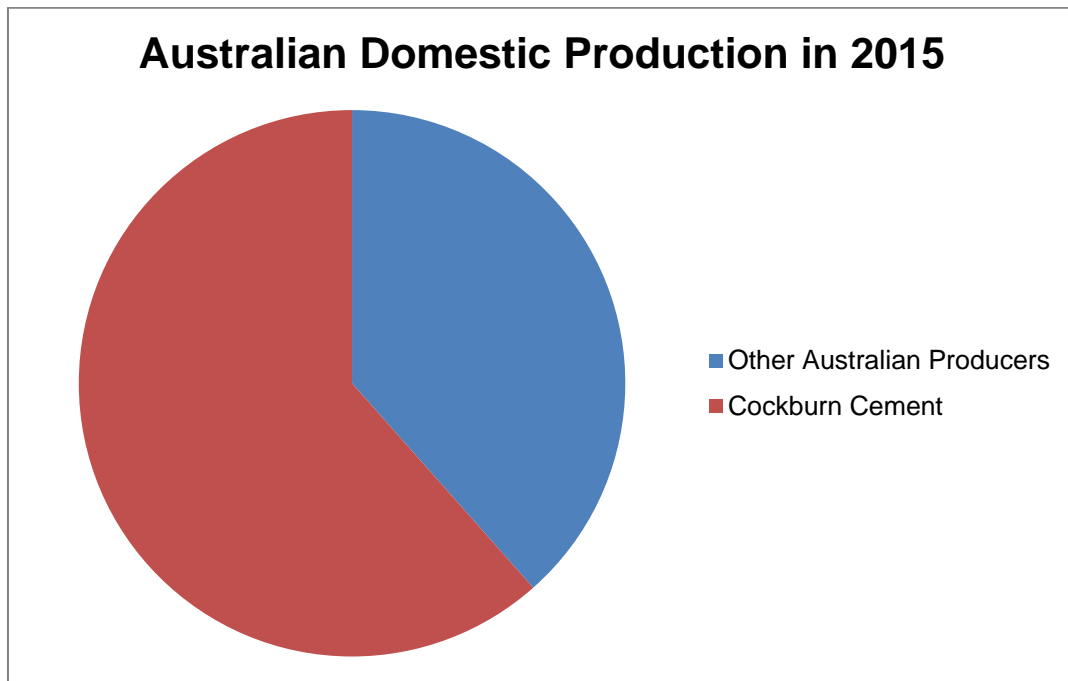
**Figure 1: Total Australian market sales of quicklime**

<sup>3</sup> Cockburn Cement provided quarterly production, cost and sales data for quicklime for the period from October 2011 to December 2015.

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The Commission compared the estimated import volumes in the application to data contained in the Department of Immigration and Border Protection (DIBP) import database. The Commission analysed the import data based on the tariff headings identified in the table at section 2.3 and identified minor differences in the import volumes. The majority of imports are from the three countries which are the subject of this investigation. The Commission considers the volume of imports from other countries to be immaterial.

The applicant claims that the Australian quicklime market is geographically segmented with Western Australia a discrete market segment from the customers and suppliers in the eastern States of Australia. One of the primary reasons for this is the cost of freight in transporting quicklime, which the Commission understands would be too excessive if transporting from the eastern states to the west. The applicant estimates the total Australian market for quicklime to be approximately 1.6 million tonnes per annum. Of this total, the applicant estimates the Western Australian market to be approximately 1 million tonnes, representing approximately 62% of the total Australian market. Cockburn is the major supplier of quicklime in Western Australia.<sup>4</sup> The estimates from the application for the size of the Australian domestic market and the proportion that Cockburn holds are illustrated in Figure 2 below (these estimates are based on production).



**Figure 2: Australian domestic production in 2015**

The applicant claims that quicklime is primarily used in Australia in mineral processing, such as alumina, gold and steel, and that in Western Australia the quicklime market can be divided into alumina and non-alumina processing. The applicant further claims that imported quicklime tends to be supplied to non-alumina industry customers.<sup>5</sup>

The Commission accepts that Cockburn has used the best available information it has to estimate the Australian market for quicklime. The Commission considers that the

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<sup>4</sup> Cockburn’s non-confidential application p 12, refers.

<sup>5</sup> Cockburn’s non-confidential application p 12, refers.

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information submitted by Cockburn is suitable for estimating the size of the Australian market for quicklime for the purposes of considering the application.

The Commission's assessment of the Australian market for quicklime is attached at **Confidential Attachment 2**.

## 3. Reasonable Grounds – dumping

### 3.1. Findings

Pursuant to subsection 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support Cockburn's claims that:

- the goods have been exported to Australia from Malaysia, Thailand and Vietnam at dumped prices;
- the estimated dumping margins for exports from Malaysia, Thailand and Vietnam are greater than 2% and therefore are not negligible, and
- the estimated volumes of goods from Malaysia, Thailand and Vietnam that appear to have been dumped are greater than 3% of the total Australian import volume of goods and therefore are not negligible.

### 3.2. Legislative framework

Subsection 269TC(1) of the Customs Act requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG of the Customs Act, one of the matters that the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)<sup>6</sup> must be satisfied of in order to publish a dumping duty notice is that the amount of the export price is less than the amount of the normal value of the goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

### 3.3. Export price

#### 3.3.1. Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

#### 3.3.2. The Applicant's estimate

The table below summarises the approach taken by Cockburn to estimate export prices and the evidence relied upon.

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<sup>6</sup> The Parliamentary Secretary is the relevant decision maker in relation to publishing dumping duty notices.

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Country	Basis of estimate	Details
Malaysia, Thailand and Vietnam	<p>The price determined having regard to all the circumstances of the exportation – subsection 269TAB(1)(c).</p> <p>The applicant considers that the findings from Investigation 179 are relevant in the current application – namely that the goods have not been exported to Australia otherwise than by the importer, and the transactions have not been at arms length. For this reason, export prices could not be determined under subsection 269TAB(1)(a) or subsection 269TAB(1)(b).</p>	<p><b>Invoice price:</b></p> <ul style="list-style-type: none"> <li>• Based on FIS price offers of goods imported to Australia.</li> </ul> <p><b>Less:</b></p> <ul style="list-style-type: none"> <li>• Importer margin – sourced from industry knowledge;</li> <li>• Warehousing, selling and general administration costs, inland freight, import clearance, handling and overseas freight – based on costs quoted to Cockburn by a freight forwarding company.</li> </ul> <p>For further information on Cockburn’s claims and methodology regarding deductive export price, refer to pages 30 and 31 in the non-confidential application.</p>

**3.3.3. The Commission's assessment**

The Commission examined the calculations and supporting evidence provided by Cockburn.

To verify the reliability of the export price calculated by Cockburn, the Commission compared the export price calculated by Cockburn to export prices from DIBP import data.

The Commission identified a variance between Cockburn’s estimated average FOB export price and the DIBP import data weighted average FOB export price, for imports of quicklime from Malaysia, Thailand and Vietnam. The Commission does not consider that the variance is material, and this will be further examined as part of the investigation.

The Commission accepts that an applicant can only provide information in its application that is reasonably available to it. Accordingly, the Commission considers that Cockburn’s use of the methodology outlined above to estimate the export prices of quicklime exported from Malaysia, Thailand and Vietnam is reasonable for the purposes of the application.

The Commission considers that Cockburn’s sources of information are broadly reasonable and contemporaneous.

The Australian industry’s calculation of export price and the Commission’s comparison are contained in **Confidential Attachment 3**.

### 3.4. Normal value

#### 3.4.1. Legislative framework

Normal value is determined by applying the requirements in section 269TAC taking into account whether the purchase or sale of the goods was an arms length transaction under section 269TAA, whether the goods were sold in the ordinary course of trade under section 269TAAD, whether there has been an absence or low volume of sales of like goods in the country of export, and whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value.

#### 3.4.2. The Applicant’s estimate

Cockburn was unable to obtain information for domestic selling prices of quicklime in Malaysia, Thailand and Vietnam and therefore was not able to determine normal values under subsection 269TAC(1). For the purposes of the application Cockburn calculated normal values on a constructed cost basis.

The table below summarises the approach taken by Cockburn to estimate normal values and the evidence relied upon. The applicant has been unable to obtain domestic selling price information for quicklime sold in each of the three export countries. For this reason, the applicant has used a constructed selling price methodology. For further information on Cockburn’s claims and methodology regarding normal value, refer to pages 31 to 34 in the non-confidential application.

Country	Basis of estimate	Details
Malaysia	Constructed normal value under subsection 269TAC(2)(c).	<p><u>Cost to make</u></p> <ul style="list-style-type: none"> <li>• Fuel costs – Petcoke fuel estimations from industry knowledge;</li> <li>• Power costs – assumed similar to Cockburn;</li> <li>• Raw materials – based on industry standards and knowledge; and</li> <li>• Fixed costs – based on industry knowledge and assumed similar to Cockburn.</li> </ul> <p><u>Selling, general and administrative expenses</u></p> <ul style="list-style-type: none"> <li>• Bagging and distribution costs – assumed similar to Cockburn.</li> </ul> <p><u>Profit</u></p> <ul style="list-style-type: none"> <li>• Profit rate based on industry knowledge.</li> </ul>



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Country	Basis of estimate	Details
Thailand	Constructed normal value under subsection 269TAC(2)(c)	<p><u>Cost to make</u></p> <ul style="list-style-type: none"> <li>• Fuel costs – Gas fuel estimations from Reuters article dated 18 September 2014;</li> <li>• Power costs – assumed similar to Cockburn;</li> <li>• Raw materials – based on industry standards and knowledge; and</li> <li>• Fixed costs – based on industry knowledge and assumed similar to Cockburn.</li> </ul> <p><u>Selling, general and administrative expenses</u></p> <ul style="list-style-type: none"> <li>• Bagging and distribution costs – assumed similar to Cockburn.</li> </ul> <p><u>Profit</u></p> <ul style="list-style-type: none"> <li>• Profit rate based on industry knowledge.</li> </ul>
Vietnam	Constructed normal value under subsection 269TAC(2)(c)	<p><u>Cost to make</u></p> <ul style="list-style-type: none"> <li>• Fuel costs – gas fuel estimations from industry knowledge;</li> <li>• Power costs – assumed similar to Cockburn;</li> <li>• Raw materials – based on industry standards and knowledge; and</li> <li>• Fixed costs – based on industry knowledge and assumed similar to Cockburn.</li> </ul> <p><u>Selling, general and administrative expenses</u></p> <ul style="list-style-type: none"> <li>• Bagging and distribution costs – assumed similar to Cockburn.</li> </ul> <p><u>Profit</u></p> <ul style="list-style-type: none"> <li>• Profit rate based on industry knowledge.</li> </ul>

Normal values were calculated by the applicant at FOB in AUD per tonne as shown in the table below.

Country	FY2015 Normal Value (AUD/tonne)
Malaysia	\$139.90
Thailand	\$211.33
Vietnam	\$179.84

**AUD/tonne constructed FOB normal values for quicklime from Malaysia, Thailand and Vietnam**

**3.4.3. The Commission's assessment**

The calculations and supporting evidence provided by Cockburn were examined by the Commission.

The applicant relied upon a constructed cost methodology under subsection 269TAC(2)(c). The Commission considers it reasonable that in the circumstances where domestic prices were not able to be obtained, a constructed cost methodology was utilised.

To confirm the reliability of the constructed normal value calculated by Cockburn, the Commission analysed verified cost data from a previous investigation for alleged dumping of Quicklime from Thailand. Utilising this data, the Commission noted discrepancies in the level of profit and selling, general and administrative expenses applied by the applicant in its calculations. The Commission applied an inflation factor to the verified cost data to account for increased costs since the previous investigation, noting that the cost of raw materials such as fuel may have increased at a greater rate than inflation. The result of this calculation was a normal value for Thailand that was lower than the applicant's estimate. In the absence of other information the Commission has applied the same costs for the normal values of both Malaysia and Vietnam.

The Commission is of the view that Cockburn's sources of information are reasonable in the circumstances. For comparison the Commission used the normal values based on the previous investigation in its assessment of dumping as outlined in the following section.

The Australian industry's estimation of normal value and the Commission's assessment are contained in **Confidential Attachment 4**.

**3.5. Dumping margins**

**3.5.1. Legislative framework**

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

**3.5.2. The Commission's assessment**

The table below summarises the dumping margins estimated by the application as well as the Commission's estimates. Dumping margins are expressed as a percentage of the export price.

<b>Country</b>	<b>The Applicant's estimate</b>	<b>The Commission's estimate</b>
Malaysia	26.5% – 43.3%	27%
Thailand	93% – 118%	12%
Vietnam	64.4% – 86.1%	18%

Assessed at the levels shown, the dumping margins are not negligible.

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Based on the information in the application and DIBP import data, the Commission determined that imports of quicklime from all countries represent more than 3% of the total import volume of quicklime for the investigation period. Accordingly import volumes are not negligible under subsection 269TDA(4).

The Commission tested Cockburn's dumping margins using DIBP import data for financial year 2015 (1 July to 30 June) and normal values based on verified information from the previous investigation (as outlined in the previous section). The Commission found materially different dumping margins in the ranges noted in column 3 of the table above, calculated under subsection 269TACB(4), all of which were not negligible. Therefore there appear to be reasonable grounds to support Cockburn's claims that dumping has occurred and dumping margins are not negligible under subparagraph 269TDA(1)(b)(ii).

The applicant further notes that the export prices from Malaysia, Thailand and Vietnam have not increased in line with the depreciation of the Australian dollar. The applicant considers that the dumping margins outlined above in their estimates have actually increased in the 2015 year.

A comparison of Cockburn's dumping margins and the Commission's dumping margin calculations form **Confidential Attachment 5**.

## 4. Reasonable grounds – injury to the Australian industry

### 4.1. Findings

Pursuant to subsection 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- loss of profits; and
- reduced profitability.

Cockburn has provided sufficient information in its application for the Commission to undertake an initial assessment of injury and causation.

### 4.2. Legislative framework

Under section 269TG of the Customs Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

### 4.3. The Applicant’s claims

The table below summarises Cockburn’s claims of injury.

Injury claims
<p><u>Volume effects</u><sup>7</sup></p> <ul style="list-style-type: none"> <li>• Lost sales volume; and</li> <li>• Reduced market share.</li> </ul> <p><u>Price effects</u><sup>8</sup></p> <ul style="list-style-type: none"> <li>• Price depression; and</li> <li>• Price suppression.</li> </ul> <p><u>Profit effects</u><sup>9</sup></p> <ul style="list-style-type: none"> <li>• Loss of profits; and</li> <li>• Loss of profitability.</li> </ul>
Other injury factors claims <sup>10</sup>
<ul style="list-style-type: none"> <li>• Decrease in capacity utilisation; and</li> <li>• Decrease in employment.</li> </ul>

Cockburn claims that had it not been for the dumped imports from Malaysia, Thailand and Vietnam, it would have experienced higher prices, greater sales volumes and revenue, and greater profits.

<sup>7</sup> Cockburn’s non-confidential application p18, refers.

<sup>8</sup> Cockburn’s non-confidential application p19, refers.

<sup>9</sup> Cockburn’s non-confidential application p 20, refers.

<sup>10</sup> Cockburn’s non-confidential application pp. 20-21, refers.

In its application, Cockburn claims that the Australian industry has suffered material injury caused by quicklime exported to Australia from Malaysia, Thailand and Vietnam at dumped prices. Cockburn claims that this material injury commenced in 2010/11 as exports of quicklime from Thailand entered the Australian market.

For the purposes of the following injury analysis, the Commission analysed Cockburn's injury claims from 1 January 2012 to 31 December 2015.

## **4.4. Approach to injury analysis**

### **4.4.1. Legislative framework**

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

### **4.4.2. The Commission's approach**

The following injury analysis is based on:

- Cockburn provided costs, sales and other financial data for itself as well as production volumes for other Australian producers; and
- DIBP import data.

In conducting its injury analysis the Commission is required to address injury to the Australian industry. Given that in the 2015 year Cockburn represented 62.5% of production of quicklime in Australia (refer to Figure 2 above), the Commission is of the view that Cockburn is representative of the Australian industry. Further, the Commission notes Cockburn's claims that the quicklime market operates on a regional basis, and that it is only the Western Australian market that has suffered material injury. Given that Cockburn is the only Australian producer of quicklime in Western Australia it is directly susceptible to allegedly dumped imports into that region. The Commission notes the below analysis focuses on sales into the non-alumina sector, and specifically Cockburn's manufacturing plant located in Dongara.<sup>11</sup> The unique economic factors and considerations relating to that plant (and to the wider quicklime industry) will be considered during the course of the investigation.

## **4.5. Volume effects**

### **4.5.1. Sales volume**

For the purposes of assessing volume effects, specifically in relation to Cockburn's sales, the Commission has separated its analysis of sales volume below into:

- loss of volume (a macro analysis); and
- lost sales (a micro analysis).

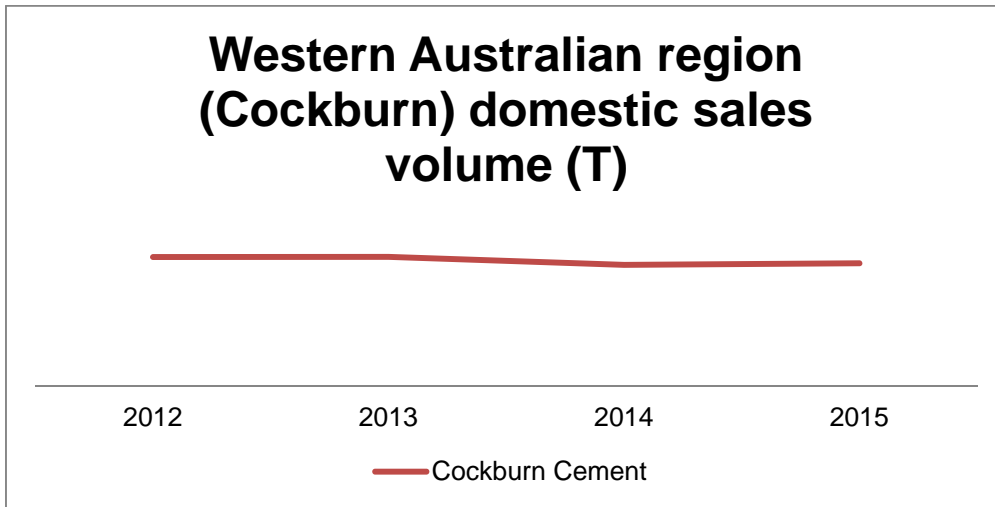
#### Loss of volume

Cockburn claims that it experienced a loss of sales volume due to growth in the volume of dumped imports of quicklime from Malaysia, Thailand and Vietnam.

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<sup>11</sup> Refer to Australian Customs Dumping Notice No. 2012/24 (New Ministerial Direction on Material Injury).

The figure below shows the volume of Cockburn’s sales of quicklime over the injury analysis period.

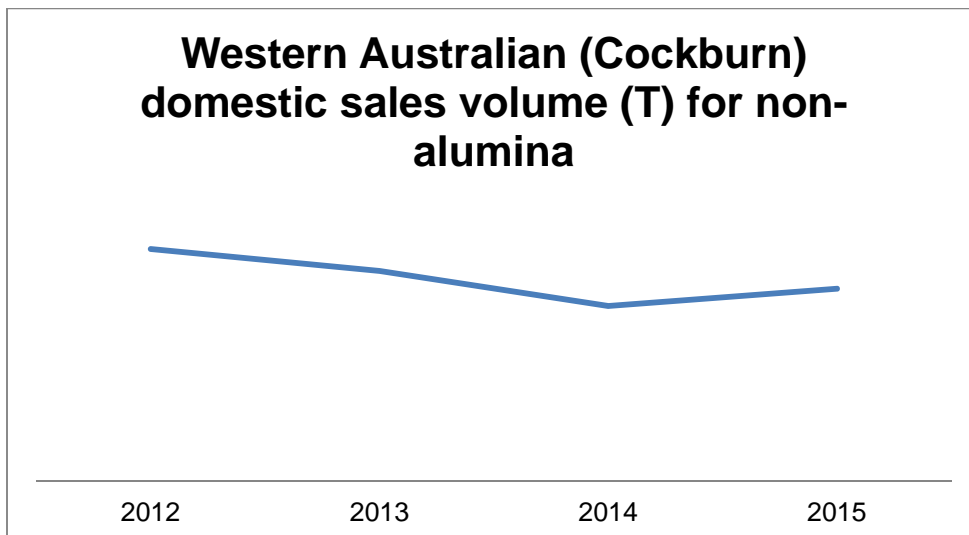


**Figure 3: Western Australian (Cockburn) region domestic sales volume of quicklime**

The Commission observes in the above figure that following a minor drop in sales volume in 2014, Cockburn’s sales volumes of quicklime increased slightly in 2015. Nonetheless sales volumes in 2015 were at a level lower than earlier years in the injury analysis period.

The applicant claims that material injury has been suffered more specifically in the non-alumina market.<sup>12</sup> The applicant explains the contrast between alumina processing and other applications including acidic effluent treatment, pH adjustment in mineral sands and other mineral processing, water treatment and also building and construction. These applications are described as “non-alumina”. Supply to the alumina industry is on the basis of long-term contracts, which were last negotiated in 2012/13 and are for 10 year periods. Supply to the non-alumina industry are not on the same long-term basis, thus are more vulnerable to the allegedly dumped imports.

The figure below shows the volume of Cockburn’s non-alumina sales over the injury analysis period.



**Figure 4: Western Australian (Cockburn) domestic sales volume of quicklime for non-alumina sector**

<sup>12</sup> Cockburn’s non-confidential application p 12, refers.

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The Commission observes that following a considerable drop in sales volume from 2012 to 2014, there was a slight increase in 2015. The sales volume into the non-alumina market in 2015 remains lower than the earlier years in the injury analysis period.

### Lost sales

Cockburn claims that it has lost sales as a result of the allegedly dumped imports from Malaysia, Thailand and Vietnam. Cockburn provided details of a number of instances in which it lost sales to allegedly dumped imports, amounting to a total of 60,000 tonnes from between 2013 and 2015. Cockburn claims that it lost these sales due to undercutting by the allegedly dumped imports.<sup>13</sup> Cockburn claims that the volume of allegedly dumped imports increased significantly over the injury analysis period.<sup>14</sup>

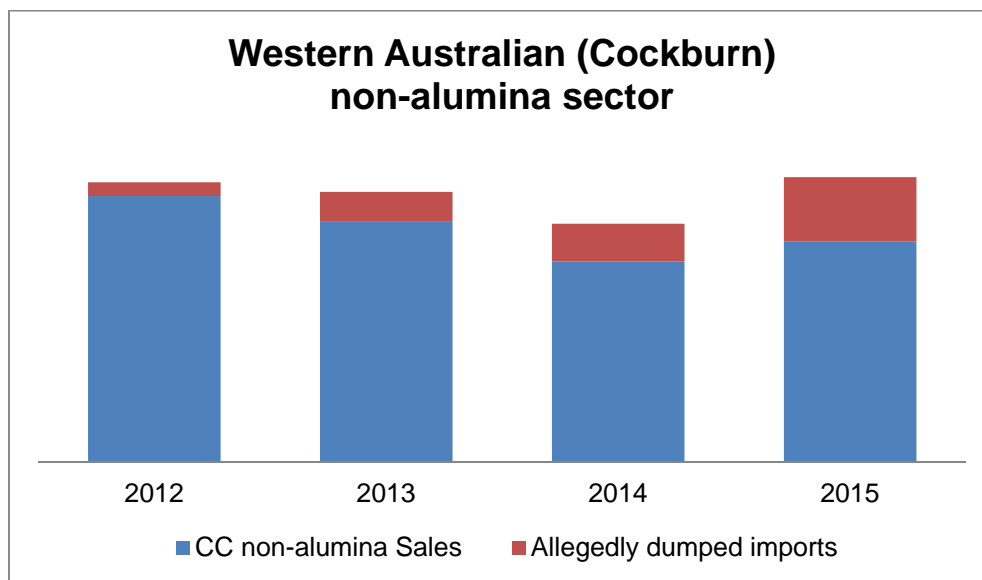
### 4.5.2. Market share

Cockburn claims that it lost market share over the injury analysis period to imports from Malaysia, Thailand and Vietnam.

Figure 1 above compares total Australian domestic sales with allegedly dumped imports over the injury analysis period. The Commission observes that the volume of imports, though still relatively small, is increasing. This is in the context of an overall decline in the size of the Australian market over the injury analysis period.

Figure 1 shows that that overall, the total import volume increased since 2012 with combined imports from Malaysia, Thailand and Vietnam growing in significance for every year of the injury analysis period.

Figure 5 below compares total Western Australian sales into the non-alumina sector with allegedly dumped imports over the injury analysis period, noting the applicant's claims that dumped imports are only sold into the Western Australian market. The Commission observes that the market share of imports, has increased each year since 2012.



**Figure 5: Comparison of applicant's sales into non-alumina sector with allegedly dumped imports**

The Commission's market share analysis is contained in **Confidential Attachment 2**.

<sup>13</sup> Cockburn's non-confidential application p 24, refers.

<sup>14</sup> Cockburn's non-confidential application p 22, refers.

### 4.5.3. Conclusion - volume effects

Imported quicklime does not form a high proportion of the Australian quicklime market however the Commission accepts that imports are increasing and gaining an increasing share of the market. The increasing share for imports comes at a time when the overall market size in Australia is decreasing. Based on the information currently available, the Commission considers that there appear to be reasonable grounds for Cockburn's claims that it has suffered loss of sales volume and reduced market share in the Western Australian market.

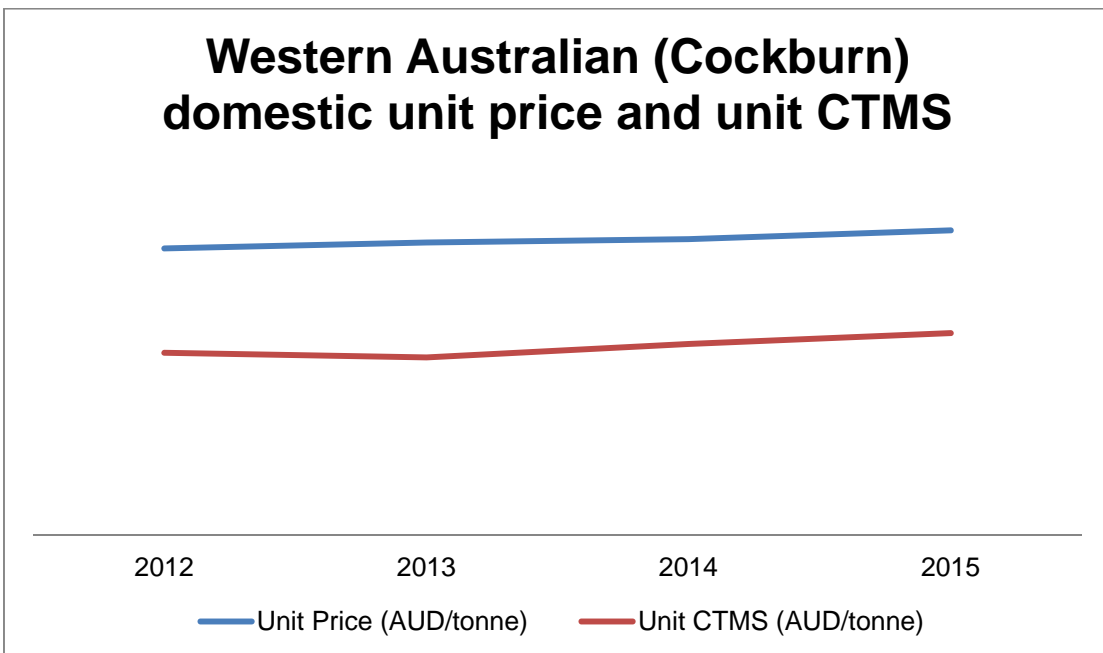
The Commission's assessment of the Australian industry's sales volume and market share are contained in **Confidential Attachment 2**.

## 4.6. Price effects

### 4.6.1. Price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be a decreasing margin between prices and costs.

Figure 6 below shows the movements in weighted average net unit prices (per tonne) and unit cost to make and sell (per tonne) for all quicklime provided by Cockburn over the injury analysis period.

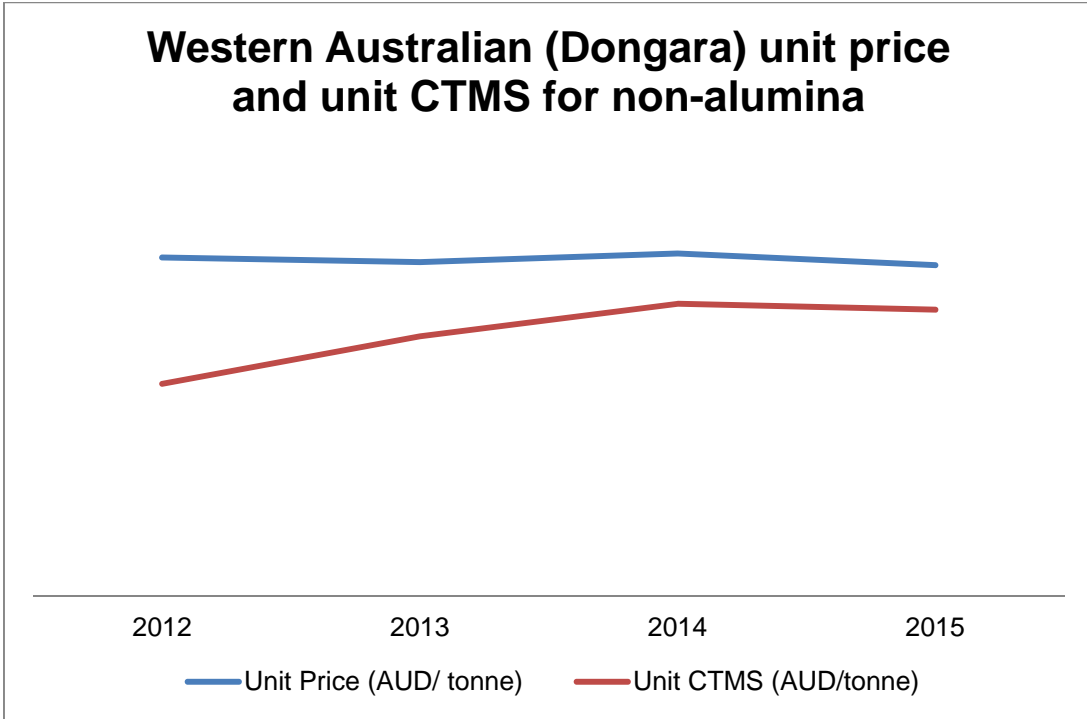


**Figure 6: Western Australian (Cockburn) unit selling price and unit cost to make and sell for quicklime**

Figure 6 shows that Cockburn's unit selling prices exceeded its unit cost to make and sell during the injury analysis period. The Commission observes that the amount by which prices exceeded costs (i.e the margin) has been decreasing during the injury analysis period from calendar year 2013.

Figure 7 below shows the movements in weighted average net unit prices (per tonne) and unit cost to make and sell (per tonne) for quicklime produced by Cockburn's Dongara plant, over the injury analysis period.

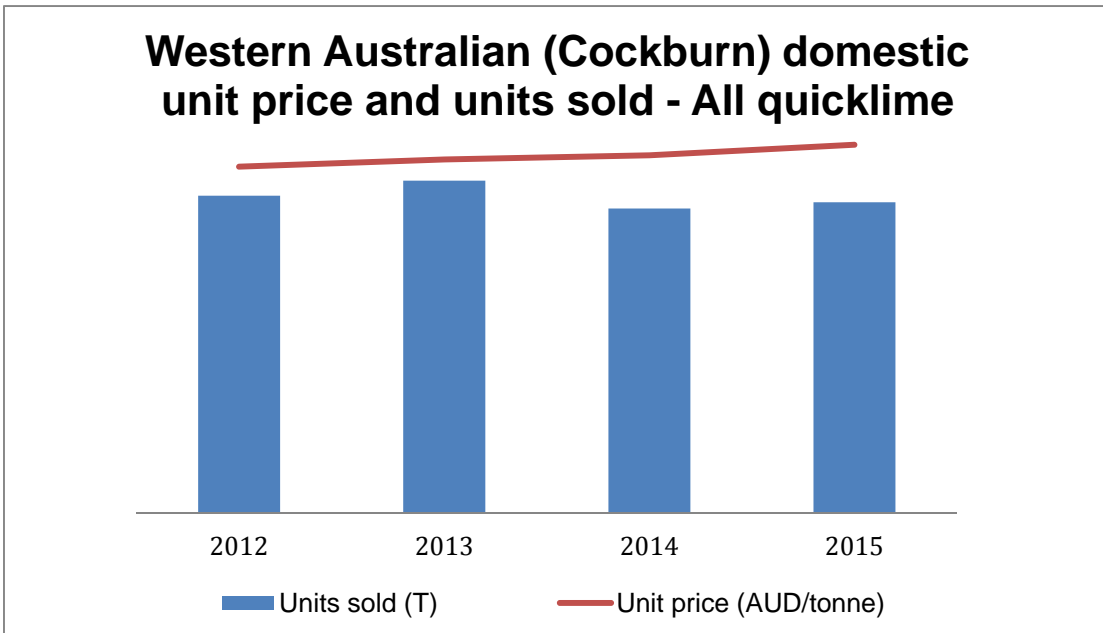




**Figure 7: Western Australian (Dongara) unit selling price and unit cost to make and sell for quicklime**

Figure 7 shows that the unit selling price for quicklime into the non-alumina sector from Dongara exceeded its unit cost to make and sell during the injury analysis period. The Commission observes that the amount by which prices exceeded costs (i.e the margin) has decreased significantly since the 2012 year.

Annual sales volumes and unit sales prices for the injury analysis period are shown below in Figure 8.

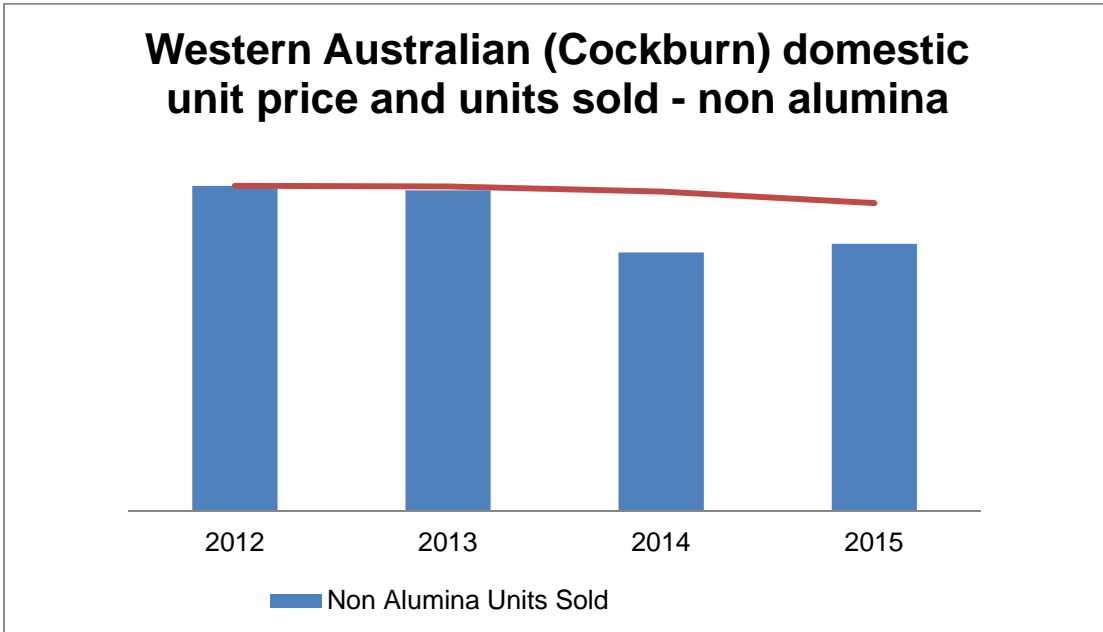


**Figure 8: Western Australian (Cockburn) domestic unit price and units sold showing sales volume and price trend for quicklime over the injury analysis period**

Figure 8 shows that Cockburn has had a slow increase in unit price over the injury analysis period, with relatively static sales volumes.

As noted earlier, the applicant claims that the effects of allegedly dumped imports have been most pronounced in quicklime supplied in non-alumina applications. This is because selling prices to the alumina sector are currently subject to long-term contracts and so price injury has been to the non-alumina segment of the market.<sup>15</sup>

Figure 9 below shows Cockburn’s non alumina units sold and unit price. Figure 8 shows a drop in non-alumina volumes and unit prices over the injury analysis period.



**Figure 9: Western Australian (Cockburn) domestic unit price and units sold showing sales volume and price trend for non-alumina quicklime over the injury analysis period**

The Commission’s assessment of price effects in the Australian industry is contained in **Confidential Attachment 6**.

#### **4.6.2. Conclusion – price effects**

Based on this assessment, there appear to be reasonable grounds to support the claim that the applicant, representing the entire Western Australian region and also being more than half of the total Australian industry (by volume), has suffered injury in the form of price depression in the non-alumina sector and price suppression more generally.

<sup>15</sup> Cockburn’s non-confidential application p. 22, refers.

### 4.7. Profit and profitability effects

Figure 10 below shows total and per unit profit over the injury analysis period.

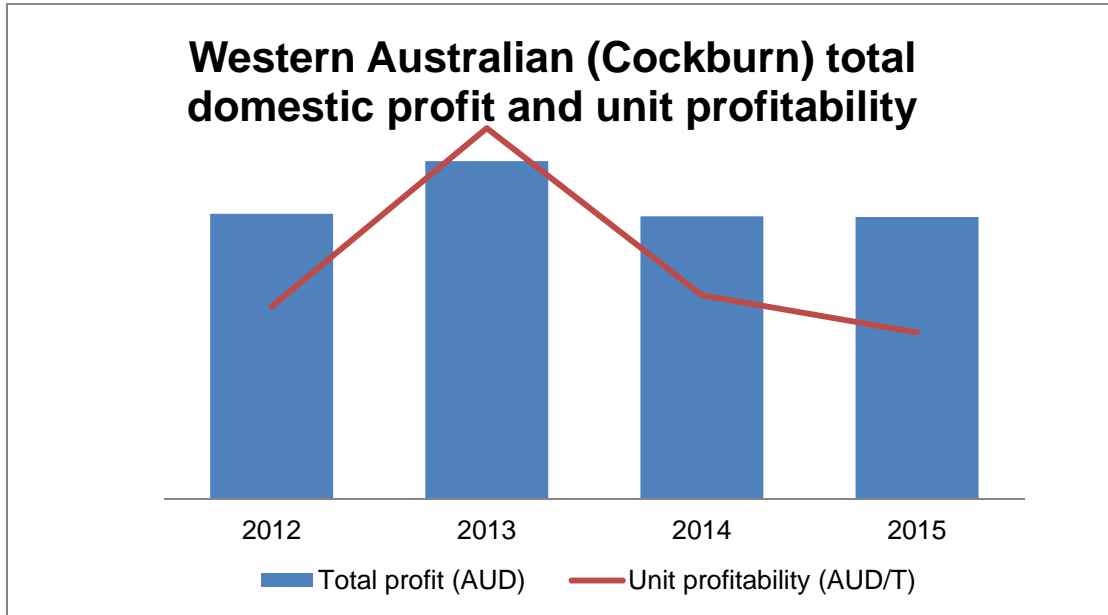


Figure 10: Western Australian (Cockburn) domestic profit and unit profitability for quicklime

Figure 10 shows that there was a lift in unit profitability and profit in 2013 however profitability declined in 2014 and remained flat in 2015.

The applicant has made reference to non-alumina sales and the material injury suffered in that specific market. In its application Cockburn has outlined the impact of the increasing allegedly dumped imports on the costs of production for its Dongara plant, which exclusively provides quicklime for non-alumina applications.

Figure 11 below shows the profitability of the Dongara site over the injury analysis period.

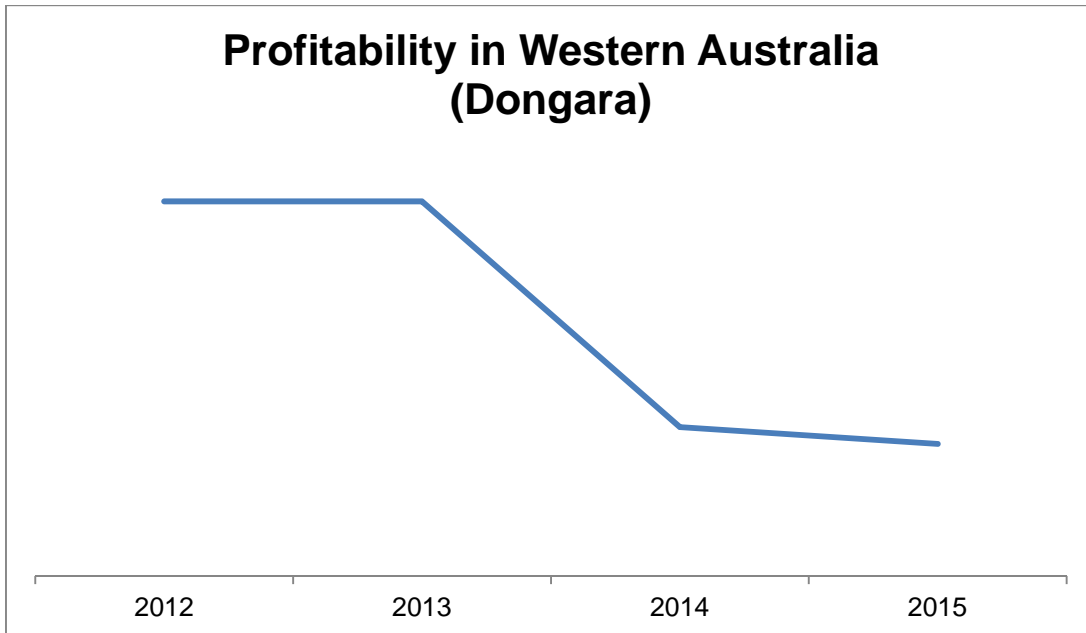


Figure 11: Profitability of Dongara site

Figure 11 shows the considerable decline in profitability at the Dongara plant over the course of the injury analysis period. The applicant has noted in their application that the Dongara plant exclusively provides for non-alumina sales, which are not subject to long-term contracts. The applicant states that material injury is suffered in the non-alumina sector with the Dongara site particularly susceptible to the increasing allegedly dumped imports. The unique economic factors relating to this industry and the operation of each particular site will be analysed during the investigation.

The Commission's assessment of the Australian industry's profit and profitability effects are contained in **Confidential Attachment 6**.

#### **4.7.1. Commission's assessment – profit and profitability effects**

Based on this analysis, there appear to be reasonable grounds to support the claim that the applicant, comprising the entire Western Australian region and also representing more than half of the whole Australian industry (by production volume in 2015) has suffered injury in the form of loss of profits and reduced profitability during the injury analysis period.

#### **4.8. Other injury factors**

Cockburn completed Confidential Appendix A7 as part of its application. This appendix contained quarterly data for the injury analysis period and sought to demonstrate:

- declining capital investment and assets employed;
- reducing capacity utilisation;
- reducing capital investment;
- reducing employment; and
- reducing revenue.

#### **4.8.1. Conclusion – other injury factors**

Cockburn's claims of other injury factors pertaining to the production of quicklime will be further examined during the course of the investigation.

## 5. Reasonable grounds – causation factors

### 5.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumped exports from Malaysia, Thailand and Vietnam, and that the injury is material.

### 5.2. Cause of injury to the Australian industry

#### 5.2.1. Legislative framework

Under section 269TG of the Customs Act, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that dumping has caused material injury to the Australian industry. This issue is considered in the following sections.

### 5.3. The Applicant’s claims

The table below summarises the causation claims of Cockburn.

Injury claimed to be caused by dumping
<p><u>Volume effects<sup>16</sup></u></p> <ul style="list-style-type: none"> <li>Claimed volume injury is most observable in sales of quicklime to the non-alumina sector. In 2010/11, the Australian industry supplied approximately 95 per cent of sales to the non-alumina sector in W.A. In 2014/15, the Australian industry’s share had fallen to below 85 per cent – as imports from Malaysia, Thailand and Vietnam increased.</li> </ul> <p><u>Price effects<sup>17</sup></u></p> <ul style="list-style-type: none"> <li>Claimed price injury has been primarily to the non-alumina segment of the market where sales volumes declined by 20 per cent as the selling prices for imported quicklime from Malaysia, Thailand and Vietnam undercut the Australian industry’s selling prices.</li> </ul> <p><u>Profit effects<sup>18</sup></u></p> <ul style="list-style-type: none"> <li>Claimed profit injury in the form of reductions in profit and profitability is attributed to the significant and aggressive increase in imports of quicklime from Malaysia, Thailand and Vietnam in 2013/14 and 2014/15 that have undercut the selling prices of the Australian industry, and have increased by almost 600 per cent since 2010/11.</li> </ul>
Injury claimed to be caused by other factors
<ul style="list-style-type: none"> <li>Cockburn claims that there are no other factors that have contributed to the loss of sales and/or price reductions experienced by the Australian industry in 2013/14 and 2014/15 other than the imports of quicklime from Malaysia, Thailand and Vietnam.</li> </ul>

#### 5.3.1. The Commission's assessment

##### Volume effects

The Commission observes that Australian market volumes have decreased over the injury analysis period (refer to Figure 1 above). It seems likely that this reduction in

<sup>16</sup> Cockburn’s non-confidential application pp. 22-23, refers.

<sup>17</sup> Cockburn’s non-confidential application pp. 23-25, refers.

<sup>18</sup> Cockburn’s non-confidential application p. 25, refers.

market volumes is having an injurious impact on the Australian industry that is additional to and largely independent of injury from allegedly dumped imports.

This increase of allegedly dumped imports is against the overall decreasing market trend. The Commission considers that increasing imports in an otherwise declining market is likely to exacerbate the injury suffered by the applicant.

The Commission notes the individual lost sales during the injury period shown in Table A-9.2.1 of the application. In circumstances such as those faced by the Australian quicklime market, where the market has declining volumes, sales by imports are likely to directly reduce sales that would otherwise have been made by the Australian industry.

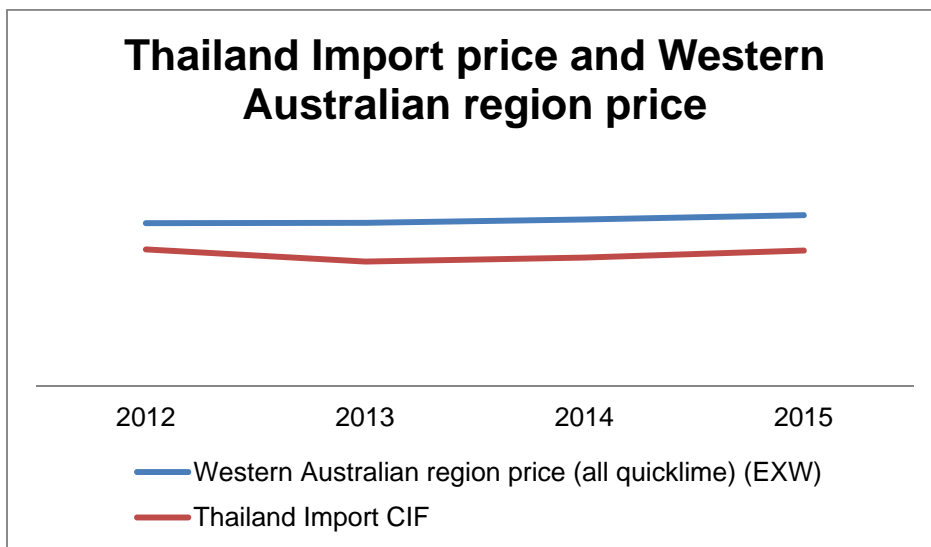
For purpose of this initial consideration of the application the Commission considers that there is a prima facie causal link between volume injury (in the context of declining market volumes) and allegedly dumped imports. The Commission will further assess the causal relationship between volume effects and allegedly dumped imports during the course of the investigation.

**Potential price effects**

Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian industry.

The evidence in the application supporting price undercutting predominantly relies on specific examples noted by Cockburn of sales lost to imported product. The figures below show the weighted average per tonne CIF price from Thailand and Vietnam, compared to Cockburn’s per tonne price from 2012 to 2015 for all quicklime sold in the Western Australian region. The export price was sourced from the imports database of the DIBP. The applicant provided details regarding all domestic sales by Cockburn in the 2015 year. The Commission analysed these sales and calculated an ex-works price, which was not materially different to Cockburn’s data. The Commission notes that the price of quicklime into the non-alumina sector is greater than into the alumina sector, thus the displayed level of price undercutting may in fact be greater.



**Figure 12: Comparison of Thailand import price and domestic price in Western Australia**

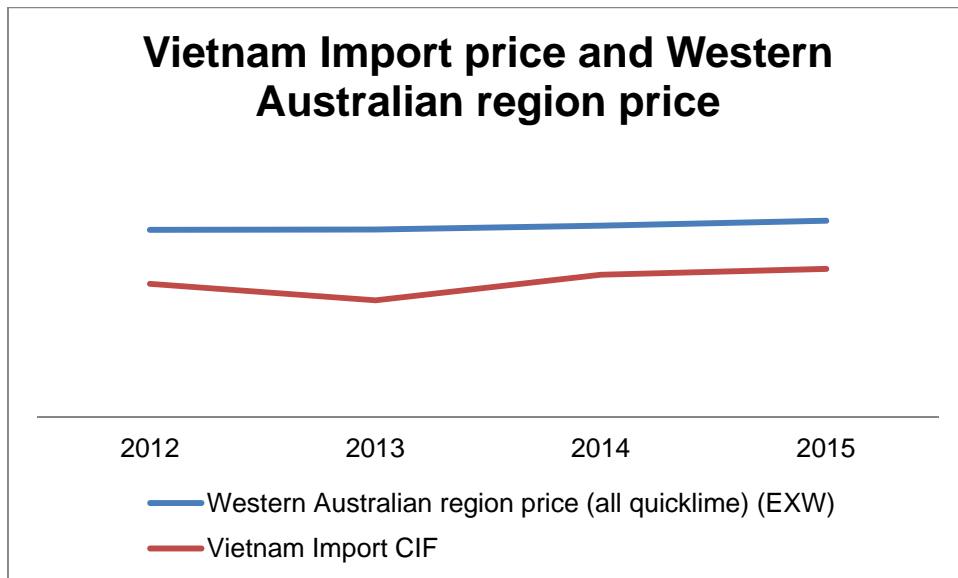


Figure 13: Comparison of Vietnam import price and domestic price in Western Australia

As shown in the above figures, the weighted average CIF export price of quicklime from Thailand and Vietnam has been lower than the Australian industry's price for all quicklime sold in the Western Australian region. Based on this analysis there appears to be reasonable grounds to support the claim that imports from these two countries undercut the Australian industry's prices. More information is required to conduct the same analysis for exports from Malaysia.

**Potential profit effects**

Cockburn Cement's unit profit declined over the injury analysis period, as demonstrated in Figure 14 below. The applicant noted that the allegedly dumped imports directly impacted on its sales into the non-alumina sector. As production capacity has decreased, costs have increased and led to reduced profit each year.

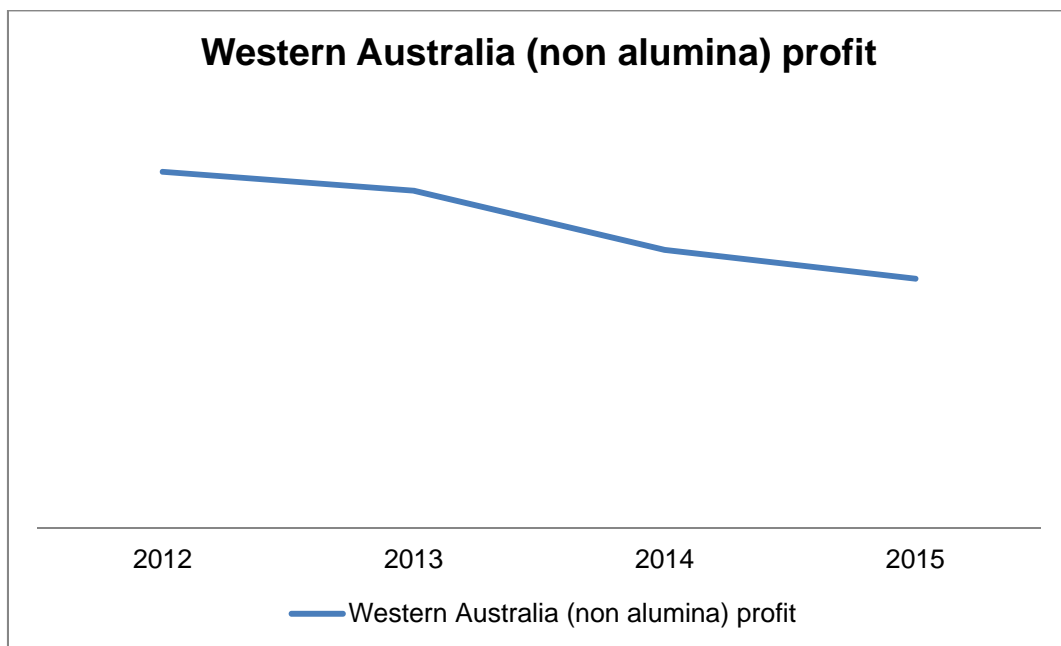


Figure 14: Unit profit for sales into non-alumina sector over injury analysis period

**5.3.2. Conclusion – material injury caused by dumping**

The Commission observes that, as allegedly dumped imports have increased over the injury analysis period, prices, unit profitability and volumes for the applicant have declined. This is consistent with what the Commission would expect to see if dumping was causing injury. Taking into consideration the proportion of the total Australian market which Cockburn holds, and its representation of the entire Western Australian region, the Commission is satisfied that there appear to be reasonable grounds for a finding that dumping has caused injury to the applicant. Whether this injury is material when considered in the context of the Australian industry generally will be considered during the investigation.

The Applicant did not claim there are any other causes of injury and none are apparent to the Commission based on the information available. Other possible causes of injury will be considered during the investigation.



## 6. Appendices and attachments

<b>Appendices</b>	<b>Title</b>
Appendix 1	Legislative framework

<b>Attachments</b>	<b>Confidentiality</b>	<b>Title</b>
Attachment 1	Public	Public notice
Attachment 2	Confidential	Commission's assessment of the Australian market for quicklime
Attachment 3	Confidential	Australian industry's calculation of export price and Commission's comparison
Attachment 4	Confidential	Australian industry's estimation of normal value and the Commission's assessment
Attachment 5	Confidential	Comparison of Cockburn's dumping margins and the Commission's dumping margin calculations
Attachment 6	Confidential	Commission's assessment of volume, price and profit effects in the Australian industry

# Appendix 1 – Legislative framework

## Part XVB of the *Customs Act 1901*

### Division 1A – Anti-Dumping Commission and Commissioner

#### 269SMS Form and manner of applications

- (1) The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.
- (2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.
- (3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

### Division 1 – Definitions and role of Minister

#### 269T Definitions

- (1) In this Part, unless the contrary intention appears:

...<sup>19</sup>

***investigation period***, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

***like goods***, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

...

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<sup>19</sup> Note: Ellipses are used in this Appendix to indicate an intentional omission of a whole section, subsection or paragraph of the legislation, without altering the original meaning of the legislation.

**269TA Minister may give directions to Commissioner in relation to powers and duties under this Part**

(1) The Minister may give to the Commissioner such written directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit, and the Commissioner shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Commissioner in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Commissioner's powers.

(3) Where the Minister gives a direction to the Commissioner, the Minister shall:

(a) cause a notice setting out particulars of the direction to be published on the Anti-Dumping Commission's website as soon as practicable after giving the direction; and

(b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice on the Anti-Dumping Commission's website.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

...

**269TAAD Ordinary course of trade**

(1) If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country;

at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

(2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.

(3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.

(4) The cost of goods is worked out by adding:

(a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

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- (b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.
- (5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

### **269TAA Arms length transactions**

- (1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:
  - (a) there is any consideration payable for or in respect of the goods other than their price; or
  - (b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
  - (c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
- (1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:
  - (a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;
  - (b) the period for which such an agreement or practice has been in force;
  - (c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.
- (2) Without limiting the generality of subsection (1), where:
  - (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
  - (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.
- (3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:
  - (a) the amount of the price paid or to be paid for the goods by the importer; and
  - (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

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- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
  - (d) such other matters as the Minister considers relevant.
- (4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:
- (a) both being natural persons:
    - (i) they are members of the same family; or
    - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
  - (b) both being bodies corporate:
    - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
    - (ii) both of them together control, directly or indirectly, a third body corporate; or
    - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or
  - (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or
  - (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
  - (e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (4)(a)(i), see also section 4AAA.

### **269TAB Export price**

- (1) For the purposes of this Part, the export price of any goods exported to Australia is:
- (a) where:
    - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
    - (ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

- (b) where:
  - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

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- (ii) the purchase of the goods by the importer was not an arms length transaction; and
- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

- (c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.
- (1A) For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.
- (2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:
- (a) any duties of Customs or sales tax paid or payable on the goods; and
  - (b) any costs, charges or expenses arising in relation to the goods after exportation; and
  - (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.
- (3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.
- (4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

### **269TAC Normal value of goods**

- (1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
- (1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.
- (2) Subject to this section, where the Minister:
- (a) is satisfied that:

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- (i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or
- (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

- (b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

- (c) except where paragraph (d) applies, the sum of:
    - (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
    - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or
  - (d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.
- (3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.
- (3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).
- (4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:
- (a) has a monopoly, or substantial monopoly, of the trade of the country; and
  - (b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

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- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;
  - (d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;
  - (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
    - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
    - (ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;
  - (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.
- (5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.
- (5A) Amounts determined:
- (a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and
  - (b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);
- must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).
- (5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.
- (5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and
  - (b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.



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- (5D) The normal value of goods (the exported goods) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:
- (a) both of the following conditions exist:
    - (i) the exporter of the exported goods sells like goods in the country of export;
    - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
  - (b) both of the following conditions exist:
    - (i) the exporter of the exported goods does not sell like goods in the country of export but others do;
    - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
  - (c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the Commissioner under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;
  - (d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the Commissioner giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the Commissioner may allow the exporter a further period for answering the questions.

- (5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.
- (5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.
- (5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.
- (6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

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(7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.

(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

- (a) relate to sales occurring at different times; or
- (b) are not in respect of identical goods; or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

- (a) in the case of unmanufactured raw products—the country of which they are products; or
- (b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(14) If:

- (a) application is made for a dumping duty notice; and
- (b) goods the subject of the application are exported to Australia; but
- (c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;

the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

...

**269TACB Working out whether dumping has occurred and levels of dumping**

- (1) If:
- (a) application is made for a dumping duty notice; and
  - (b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and
  - (c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;
- the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.
- (2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):
- (a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
  - (aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
  - (b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
  - (c) use:
    - (i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and
    - (ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.
- (2A) If paragraph (2)(aa) or (c) applies:
- (a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and
  - (b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.
- (3) If the Minister is satisfied:
- (a) that the export prices differ significantly among different purchasers, regions or periods; and
  - (b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

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- (4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:
  - (a) the goods exported to Australia during that period are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.
- (4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.
- (5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:
  - (a) the goods exported to Australia in that transaction are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.
- (6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:
  - (a) the goods exported to Australia in each such transaction are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.
- (10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

### **269TAE Material injury to industry**

- (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
  - (aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
  - (ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

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- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
  - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
  - (c) any change or likely change, during a particular period, in the proportion that:
    - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
    - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
  - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
  - (e) the difference between:
    - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
    - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
  - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
  - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
  - (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.
- (2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

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- (ab) if the determination is being made for the purposes of section 269TK—  
particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
  - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
  - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
  - (c) any change or likely change, during a particular period, in the proportion that:
    - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
    - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
  - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
  - (e) the difference between:
    - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
    - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
  - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
  - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- (2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
- (a) the volume and prices of imported like goods that are not dumped; or
  - (b) the volume and prices of importations of like goods that are not subsidised; or
  - (c) contractions in demand or changes in patterns of consumption; or
  - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

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- (e) developments in technology; or
  - (f) the export performance and productivity of the Australian industry;
- and any such injury or hindrance must not be attributed to the exportation of those goods.

(2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

(2B) In determining:

- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or
- (b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;

because of the exportation of goods into the Australian market, the Minister must take account only of such changes 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.

(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:

- (a) each of those exportations is the subject of an investigation; and
- (b) either:
  - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
  - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
- (c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
- (d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
- (da) if the determination is being made for the purposes of section 269TJ or 269TK:
  - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and



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- (ii) the volume of each of those exportations is not negligible; and
- (e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
  - (i) the conditions of competition between those goods; and
  - (ii) the conditions of competition between those goods and like goods that are domestically produced.
- (3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
  - (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
  - (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
  - (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
    - (i) for which there are sales or forward orders; or
    - (ii) which are held as stocks; and
  - (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
  - (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
  - (f) the level of return on investment in the industry; and
  - (g) cash flow in the industry; and
  - (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
  - (ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
  - (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
  - (k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
  - (m) investment in the industry.

...

## **Division 2 – Consideration of anti-dumping matters by the Commissioner**

### **269TB Application for action under Dumping Duty Act**

- (1) Where:
  - (a) a consignment of goods:
    - (i) has been imported into Australia;



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- (ii) is likely to be imported into Australia; or
  - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
- (b) there is, or may be established, an Australian industry producing like goods; and
- (c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

...

- (4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:
- (a) be in writing; and
  - (b) be in a form approved by the Commissioner for the purposes of this section; and
  - (c) contain such information as the form requires;
  - (d) be signed in the manner indicated in the form;
  - (e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry; and
  - (f) be lodged in the manner approved under section 269SMS.

...

- (6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:
- (a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
  - (b) account for not less than 25% of the total production or manufacture of like goods in Australia.

### **269TC Consideration of application**

- (1) The Commissioner shall, within 20 days after receiving an application under subsection 269TB(1) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:
- (a) that the application complies with subsection 269TB(4); or
  - (b) that there is, or is likely to be established, an Australian industry in respect of like goods; or
  - (c) that there appear to be reasonable grounds:

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- (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
- (ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

- (2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:

- (a) that the application complies with subsection 269TB(4); or
- (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or
- (c) that there appear to be reasonable grounds:
  - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
  - (ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

- (2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:

- (a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and
- (b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and
- (c) this Part has effect as if:
  - (i) the application had included that further information; and
  - (ii) the application had only been lodged when that further information was lodged; and
  - (iii) the application had only been received when that further information was received.

- (3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:
- (a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and
  - (b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

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- (4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:
- (a) setting out particulars of goods the subject of the application; and
  - (b) setting out the identity of the applicant; and
  - (ba) setting out the countries of export known to be involved; and
  - (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
  - (bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and
  - (bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and
  - (be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and
  - (bf) indicating that a report will be made to the Minister:
    - (i) within 155 days after the date of initiation of the investigation; or
    - (ii) within such longer period as the Minister allows under section 269ZHI;

on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; and

- (c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and
- (d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
- (e) stating that:
  - (i) within 110 days after the date of initiation of the investigation; or
  - (ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and

- (f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and
- (h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report

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referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.

- (5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.
- (5A) The Commissioner cannot vary the length of the investigation period.
- (6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:
  - (a) that a longer period is reasonably required for the party to make a submission; and
  - (b) that allowing a longer period will be practicable in the circumstances;the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.
- (7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:
  - (a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or
  - (b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.
- (8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:
  - (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
  - (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and
  - (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
    - (i) the exporter does not give the answers to the Commissioner within the period; or
    - (ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

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- Note Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.
- (9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:
- (a) that a longer period is reasonably required for the exporter to answer the questions; and
  - (b) that allowing a longer period will be practicable in the circumstances;
- the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.
- (10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation.

### **269TD Preliminary affirmative determinations**

- (1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:
- (a) that there appears to be sufficient grounds for the publication of such a notice; or
  - (b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;
- make a determination (a *preliminary affirmative determination*) to that effect.
- (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:
- (a) must have regard to:
    - (i) the application concerned; and
    - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
  - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.
- (4) If the Commissioner makes a preliminary affirmative determination:
- (a) the Commissioner must give public notice of that determination; and

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- (b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.
- (5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

### **269TDAA Statement of essential facts in relation to investigation of application under section 269TB**

- (1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to that application.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
- (a) must have regard to:
- (i) the application concerned; and
- (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
- (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

### **269TDA Termination of investigations**

*Commissioner must terminate if all dumping margins are negligible*

- (1) If:
- (a) application is made for a dumping duty notice; and
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
- (i) there has been no dumping by the exporter of any of those goods; or
- (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

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*Commissioner must terminate if countervailable subsidisation is negligible*

- (2) If:
- (a) application is made for a countervailing duty notice; and
  - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
    - (i) no countervailable subsidy has been received in respect of any of those goods; or
    - (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

*Commissioner must terminate if negligible volumes of dumping are found*

- (3) If:
- (a) application is made for a dumping duty notice; and
  - (b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:
    - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and
    - (ii) that have been, or may be, dumped;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

*What is a negligible volume of dumped goods?*

- (4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:
- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and
  - (b) subsection (5) does not apply in relation to those first mentioned goods.

*Aggregation of volumes of dumped goods*

- (5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:
- (a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and
  - (b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export



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and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and

- (c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

### *Negligible dumping margins to count in determining volume*

- (6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:
  - (a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and
  - (b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

...

*Commissioner must terminate dumping investigation if export causes negligible injury etc.*

- (13) Subject to subsection (13A), if:
  - (a) application is made for a dumping duty notice; and
  - (b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;
- (b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

...



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### *Cumulative assessment of injury or hindrance*

(14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:

- (a) each of those exportations is the subject of an investigation;  
and
- (b) either:
  - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
  - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
- (c) for the purposes of subsection (13A)—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
- (d) for the purposes of subsection (13A)—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
- (e) for the purposes of subsection (14A):
  - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
  - (ii) the volume of each of those exportations is not negligible; and
- (f) it is appropriate to consider the cumulative effect of those exportations, having regard to:
  - (i) the conditions of competition between those goods; and
  - (ii) the conditions of competition between those goods and like goods that are domestically produced.

### *Commissioner must give public notice of termination decisions*

(15) If the Commissioner decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Commissioner must:

- (a) give public notice of that decision; and
- (b) ensure that:
  - (i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export;  
or
  - (ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and

- (c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

...

*Definition—reasonable examination period*

(17) In this section:

reasonable examination period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

- (a) the whole or a substantial part of the investigation period; or
- (b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

total Australian import volume, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

## ***Customs (International Obligations) Regulation 2015***

### **Part 8—Anti dumping duties**

#### **Division 1—Ordinary course of trade**

##### **43 Determination of cost of production or manufacture**

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
  - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) If:
  - (a) an exporter or producer of like goods keeps records relating to the like goods; and
  - (b) the records:
    - (i) are in accordance with generally accepted accounting principles in the country of export; and
    - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.
- (3) The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:

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- (a) appropriate amortisation and depreciation periods; and
  - (b) allowances for capital expenditures and other development costs.
- (4) For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (5) If:
- (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of the goods mentioned in subsection (1); and
  - (b) the information mentioned in subsection (3) does not identify the item;
- the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (6) Subsection (7) applies if:
- (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
  - (b) the information mentioned in subsection (3) does not identify the circumstance.
- (7) The Minister must adjust the costs identified in the information:
- (a) to take the circumstance into account; and
  - (b) to reflect:
    - (i) the costs at the end of the start up period; or
    - (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

#### **44 Determination of administrative, selling and general costs**

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
- (a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the amount) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) If:
- (a) an exporter or producer of like goods keeps records relating to the like goods; and
  - (b) the records:
    - (i) are in accordance with generally accepted accounting principles in the country of export; and
    - (ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

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- the Minister must work out the amount by using the information set out in the records.
- (3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:
    - (a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or
    - (b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or
    - (c) using any other reasonable method and having regard to all relevant information.
  - (4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:
    - (a) appropriate amortisation and depreciation periods; and
    - (b) allowances for capital expenditures and other development costs.
  - (5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
  - (6) If:
    - (a) the Minister identifies a non recurring item of cost that benefits current production or future production (or both) of goods; and
    - (b) the information mentioned in subsection (4) does not identify the item;the Minister must adjust the costs identified by the exporter or producer to take that item into account.
  - (7) Subsection (8) applies if:
    - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start up operations; and
    - (b) the information mentioned in subsection (4) does not identify the circumstance.
  - (8) The Minister must adjust the costs identified in the information:
    - (a) to take the circumstance into account; and
    - (b) to reflect:
      - (i) the costs at the end of the start up period; or
      - (ii) if the start up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
  - (9) For this section, the Minister may disregard any information that he or she considers to be unreliable.
  - (10) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

**Division 2—Normal value of goods**

**45 Determination of profit**

- (1) For subsection 269TAC(5B) of the Act, this section sets out:
  - (a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.
- (3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:
  - (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
  - (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
  - (c) using any other reasonable method and having regard to all relevant information.
- (4) However, if:
  - (a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and
  - (b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.
- (5) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

**46 Determining whether conditions exist—matters to which the Minister must have regard**

- (1) For subsection 269TAC(5E) of the Act, the matters are set out in the following table.

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<b>Matters to which the Minister must have regard</b>	
<b>Item</b>	<b>Matter</b>
1	Whether the entity makes decisions about prices, costs, inputs, sales and investments: <ul style="list-style-type: none"><li>(a) in response to market signals; and</li><li>(b) without significant interference by a government of the country of export (see</li></ul>

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<b>Matters to which the Minister must have regard</b>	
<b>Item</b>	<b>Matter</b>
	subsection (2)).
2	Whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export.
3	Whether the generally accepted accounting standards in the country of export are in line with: (a) international financial reporting standards developed by; and (b) international accounting standards adopted by; the International Accounting Standards Board.  Note: The international financial reporting standards and international accounting standards could in 2015 be viewed on the International Accounting Standards Board's website ( <a href="http://www.ifrs.org">http://www.ifrs.org</a> ).
4	Whether the accounting records mentioned in item 2 are independently audited.
5	Whether the entity's production costs or financial situation is significantly affected by the influence that a government of the country of export had on the domestic price of goods in the country before the country's economy was an economy in transition.
6	Whether the country of export has laws relating to bankruptcy and property.
7	Whether the entity is subject to the bankruptcy and property laws mentioned in item 6.
8	Whether the entity is part of a market or sector in which the presence of an enterprise owned by a government of the country of export prevents market conditions from prevailing in that market or sector.
9	Whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy of the country of export.
10	If the land on which the entity's facilities are built is owned by a government of the country of export—whether the conditions of rent are comparable to those in a market economy.
11	Whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.

- (2) In assessing whether there is significant interference for paragraph (b) of item 1 in the table in subsection (1), the Minister must have regard to the following:
- (a) whether a genuinely private company or party holds the majority shareholding in the entity;
  - (b) if officials of a government of the country of export hold positions on the board of the entity—whether those officials are a minority of the members of the board;
  - (c) if officials of a government of the country of export hold significant management positions within the entity—whether those officials are a minority of the persons holding significant management positions;
  - (d) whether the entity's ability to carry on business activities in the country of export is affected by:
    - (i) a restriction on selling in the domestic market; or
    - (ii) the potential for the right to do business being withdrawn other than under contractual terms; or

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- (iii) if the entity is a joint venture in which one of the parties is a foreign person, or is carried on in the form of such a joint venture—the ability of the foreign person to export profits and repatriate capital invested;
  - (e) whether the entity's significant production inputs (including raw materials, labour, energy and technology) are supplied:
    - (i) by enterprises that are owned or controlled by a government of the country of export; and
    - (ii) at prices that do not substantially reflect conditions found in a market economy.
- (3) In this section:
- entity, in relation to goods, means:
- (a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; or
  - (b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export—the producer of the goods.
- government, of a country, includes any level of government of the country.

### **47 Determination of value—countries to which subsection 269T(5D) of the Act does not apply**

For subsection 269TAC(5J) of the Act, Schedule 2 prescribes countries to which subsection 269TAC(5D) of the Act does not apply.