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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**TERMINATION REPORT
NO. 348**

**ALLEGED DUMPING OF QUICKLIME
EXPORTED FROM MALAYSIA, THE KINGDOM OF THAILAND
AND THE SOCIALIST REPUBLIC OF VIETNAM**

24 November 2016

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
The Act	<i>Customs Act 1901</i>
The applicant	Cockburn Cement Limited
CFR	Cost and freight
COGS	Cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
FOB	Free On Board
GATT	General Agreement on Tariffs and Trade
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
NIP	Non-injurious Price
OCOT	Ordinary course of trade
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
SEF	Statement of Essential Facts
USP	Unsuppressed Selling Price
WTO	World Trade Organization

1 SUMMARY

1.1 Introduction

This Termination Report No. 348 (TER 348) has been prepared in response to an application by Cockburn Cement Limited (Cockburn Cement) for the publication of a dumping duty notice in respect of quicklime exported to Australia from Malaysia, the Kingdom of Thailand (Thailand) and the Socialist Republic of Vietnam (Vietnam).

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

1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act)¹ describes, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) for the purpose of making a report to the Parliamentary Secretary. Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

1.2.1 Application

The applicant alleges that the Australian industry has suffered material injury caused by exports of quicklime to Australia from Malaysia, Thailand and Vietnam at dumped prices.

Having considered the application, the Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application. As such, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of quicklime from Malaysia, Thailand and Vietnam on 18 April 2016.

Consideration Report No. 348 (CON 348) and Anti-Dumping Notice (ADN) No. 2016/40 provide further detail relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission's) website at www.adcommission.gov.au.²

1.2.2 Preliminary affirmative determination

In accordance with subsection 269TD(1), the Commissioner may make a PAD if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if there appears that there will be sufficient grounds subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 17 June 2016³) and the Commonwealth may require and take securities at

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

² See number 3 and number 4 on the public record for this investigation (EPR 348).

³ If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day.

the time of a PAD or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry while the investigation continues.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made. A status report in relation to this investigation was published on 17 June 2016.⁴

Pursuant to the PAD Direction, if the Commissioner has published a status report, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the Statement of Essential Facts (SEF).

At the time of publication of the Statement of Essential Facts (SEF) on 10 October 2016⁵, as the Commissioner was not satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of quicklime exported to Australia from Malaysia, Thailand and Vietnam, no PAD under subsection 269TD(1) was made.

1.2.3 Changes following the SEF

The SEF was published on 10 October 2016. After publication, the Commission received several submissions from interested parties. The Commissioner has considered these submissions and the Commissioner has reviewed the findings made in the SEF. In addition to considering points raised in submissions, the Commission has also revised other findings, the key revision being the dumping margin for Binh Son Investment and Mineral Company Limited (BSIM).

1.3 Findings and conclusions

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced quicklime is 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods. Cockburn Cement is the sole applicant and represents over 60 per cent of the total Australian production.

1.3.2 Australian industry (Chapter 4)

Based on the information available, the Commission has found that like goods are wholly manufactured in Australia and there is an Australian industry producing like goods.

1.3.3 Australian market (Chapter 5)

The Australian quicklime market is geographically segmented due to the high cost of freight. The Australian quicklime market in Western Australia is supplied from local production by Cockburn Cement and by imports from several countries, the major countries being Malaysia, Thailand and Vietnam.

⁴ See number 14 on the public record.

⁵ See number 33 on the public record.

1.3.4 Dumping (Chapter 6)

The Commissioner has determined that the goods have been exported from the cooperating exporters at the rates provided in Table 1 below.

Exporter / manufacturer	Dumping margin
Thailand	
Chememan Company Limited (Chememan Thailand)	12.3%
Vietnam	
Binh Son Investment and Mineral Company Limited (BSIM)	4.8%
Malaysia	
Unichamp Mineral Sdn Bhd (Unichamp Mineral)	-4.2%
RCI Lime Sdn Bhd (RCI Lime)	7.6%

Table 1: Dumping margins

1.3.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that Cockburn Cement has experienced injury in the forms of:

- reduced market share;
- price suppression;
- reduced profits;
- reduced profitability; and
- reduced capacity utilisation.

1.3.6 Causation assessment (Chapter 8)

The Commissioner is satisfied that the dumped exports of quicklime from Malaysia, Thailand and Vietnam have caused negligible injury to the Australian industry.

1.3.7 Non-injurious price (Chapter 9)

The Commission has calculated a non-injurious price for the purposes of assessing causation.

1.3.8 Conclusion (Chapter 10)

Based on the findings outlined in this Termination Report, the Commissioner is terminating the investigation:

- in so far as it relates to quicklime exported by Unichamp Mineral from Malaysia in accordance with subsection 269TDA(1)(b), as he is satisfied that no dumping occurred; and
- in accordance with subsection 269TDA(13A)(b), because he is satisfied that the injury to the Australian industry, that has been, or may be, caused by dumped exports from Thailand, Vietnam and Malaysia, is negligible.

2 BACKGROUND

2.1 Initiation

On 22 March 2016, the applicant lodged an application under subsection 269TB(1) for the publication of a dumping duty notice in respect of quicklime that has been imported into Australia from Malaysia, Thailand and Vietnam.

Cockburn Cement 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. Cockburn Cement alleges that the industry has been injured through:

- lost sales volume;
- reduced market share;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced capacity utilisation; and
- reduced employment.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of quicklime from Malaysia, Thailand and Vietnam on 18 April 2016. Public notification of initiation of the investigation was also made on 18 April 2016.

ADN 2016/40 provides further details relating to the initiation of the investigation and is available on the Commission's website at www.adcommission.gov.au.

In respect of the investigation:

- the investigation period for the purpose of assessing dumping is 1 January 2015 to 31 December 2015; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by dumping is from 1 January 2012.

Submission from Chememan Thailand

Chememan Thailand provided a submission requesting confirmation that Cockburn Cement had met the requirements of subsection 269TB(4) with regards to its application. As noted in CON 348 the Commission has found that Cockburn Cement's application satisfied the requirements of subsection 269TB(4).

2.2 Previous cases

An investigation into the alleged dumping of quicklime 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 Cement (Investigation 179).

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Investigation 179 was terminated in April 2012 and May 2013. Both of those terminations were revoked following review by the then Trade Measures Review Officer and Anti-Dumping Review Panel 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.

2.3 Statement of Essential Facts

A SEF was published on 10 October 2016 and is available on the public record. The SEF indicated that goods exported from Malaysia by Unichamp Malaysia had not been dumped, while goods exported from Thailand, Vietnam and by RCI Lime in Malaysia had been dumped. However, the SEF concluded that dumping had not caused material injury to the Australian industry for quicklime and proposed that the Commissioner would terminate the investigation.

2.4 Submissions in response to the SEF

The Commissioner received several submissions from interested parties during the course of the investigation. These submissions have been considered by the Commissioner in reaching the conclusions in this report. The submissions received throughout the course of the investigation are listed in Appendix 1.

The Commissioner received four submissions in response to the SEF, which raised several issues. In summary, these issues are:

- the calculation of the dumping margin for RCI Lime is incorrect, and specifically the inclusion of certain costs and the methodology applied in determining credit terms needs to be addressed;
- the finding of there being negligible injury is incorrect when considering the impact of dumped goods on Cockburn Cement's market share, profitability and revenue;
- the uplifting of prices to reflect 100 per cent lime content in the imported and locally produced quicklime is not an appropriate adjustment and must be reversed to provide a true price undercutting analysis; and
- the non-injurious price the Commission determined does not follow the preferred methodology.

2.5 Public Record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this final report.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commission considers that the locally manufactured quicklime is a like good to the goods the subject of the application.

3.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

“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”

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.3 The goods

The goods the subject of the application (the goods) are:

Quicklime, also known as Calcium Oxide (CaO) as this is the dominant chemical composition of quicklime.

3.4 Tariff classification

The application states that the goods are classified to tariff subheading 2522.10.00 (statistical code 26) of Schedule 3 to the *Customs Tariff Act 1995*.

3.5 Like goods

3.5.1 Investigation 179 finding

In investigation 179 the then ACBPS found that the locally produced goods were like to the goods the subject of the application. The ACBPS found as follows:

- Physical likeness

The key physical characteristic for end users was the presence of calcium oxide, the reagent in chemical reactions for which quicklime is used.

- Commercial likeness

The goods were commercially similar as they competed in the same market sector. The customers that purchased imported quicklime also purchased quicklime from Cockburn Cement.

- Functional likeness

The imported and locally manufactured quicklime were functionally similar as they has the same end use and were purchased with the intention to be used primarily in the mineral processing industry.

- Production likeness

Although parts of the production processes differed – namely that the raw materials were different – both raw materials were fed into a kiln which was heated to create calcium oxide. Therefore, despite the different forms of raw material, both led to for the formation of quicklime using a similar production process.

The ACBPS thus concluded that the locally produced goods were like to the goods the subject of the application.

3.5.2 Points raised by Cockburn Cement

Cockburn Cement claims that the quicklime manufactured locally is a like good to the imported quicklime. As outlined in the application, Cockburn Cement argues that quicklime is predominantly composed of calcium oxide, and acknowledges that the calcium oxide content (the available lime content) of the imported quicklime is higher than the available lime content of its own quicklime. It further acknowledges that there may be some differences in the substances that make up the remainder of the quicklime. However, it states that these differences do not ultimately change the nature of the product, as both products are essentially calcium oxide. While its quicklime is produced from shell sand and the imported quicklime from other sources (including limestone or lime rock), Cockburn Cement argues that both products are manufactured in a similar way, as both raw materials have the same basic chemical composition, i.e. calcium carbonate (CaCO₃). Both products are used for the same purpose and both are used by the same customers.

3.5.3 The Commission's assessment

The Commission must consider whether the locally manufactured product is like to the goods the subject of the application. The Commission gathered evidence from Cockburn Cement, importers, and exporters. The Commission's determination with regards to the like goods framework can be outlined as follows:

- Physical likeness

The Commission gathered specification sheets for locally manufactured quicklime and the quicklime exported from all four cooperating exporters, outlining the available lime content. While Cockburn Cement's quicklime may comprise slightly different technical specifications to the imported quicklime, the key physical characteristic, calcium oxide, appears to be the same (with a range of available lime across the locally manufactured product and the imported product from 78 to 97 per cent) and the Commission considers them to be physically like.

- Commercial likeness

The investigation determined that the locally manufactured quicklime and the imported quicklime compete in the same market, with evidence of customers using both imported and locally produced products during the injury analysis period. The Commission therefore considers them to be commercially like.

- Functional likeness

During the investigation Cockburn Cement and each of the importers confirmed that imported quicklime has the same end use as the quicklime manufactured by Cockburn Cement, thus they are considered to be functionally like.

- Production likeness

The investigation confirmed that although the exporters used different raw materials in their manufacture of quicklime compared to Cockburn Cement, all raw materials were fed into a kiln, which is then heated to create calcium oxide. Despite the difference in raw materials the Commission considers the locally manufactured quicklime and the imported quicklime to be produced using similar production methods.

While the locally manufactured goods are not identical to the goods the subject of the application, based on the above discussion, the Commission considers that they have characteristics closely resembling those of the goods under consideration and are therefore like goods. The Commission has not departed from the findings in Investigation 179.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commission has found that like goods are wholly manufactured in Australia and there is an Australian industry producing like goods.

4.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Cockburn Cement

The following extract is taken from the Australian industry verification visit report, available on the public record, and a record of the Commission’s visit to Cockburn Cement’s production facilities.

During the verification meetings, we conducted an inspection of the production facilities at both Dongara and Munster. We observed the production process as outlined below.

Munster

Cockburn Cement explained that they dredge shell sand off the coast of Woodman Point, around 7km from their Munster plant. A trailer suction barge picks up the sand and carries it back to Woodman Point before depositing it next to Cockburn’s jetty. A suction reclaimer then pumps that sand into their washing operations at Woodman Point where it runs through a filter to eliminate debris and shells. The washed sand is then pumped around 6km via pipe (both under and above ground level) to the Munster plant.

At the Munster plant, the sand is collected by a front-end loader and transported to a kiln storage hopper. The hopper then feeds the sand into the pre-heater tower, where it moves through the tower and is mixed with gases from the kiln. It then passes through the kiln where it reaches a maximum temperature of 1100 degrees Celsius – at this temperature the calcium carbonate is decarbonated to form quicklime. Ultimately the quicklime moves through the coolers and then to storage silos.

Dongara

The process at the Dongara plant differs in that there is no dredge process. The sand is collected via front loaders from sand dunes which have built up over many years around 2km from the Dongara plant site. This sand is transported back to the plant itself and the process of moving it into the hopper and through the kiln process is similar to that described above.

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Further information in relation to Cockburn Cement's production processes and product range is available in the visit report on the public record.⁶

The Commission is satisfied that the quicklime produced by Cockburn Cement is wholly manufactured in Australia.

4.4 Other domestic producers of quicklime

The application included Cockburn Cement's production volumes and estimates of production volumes for three other producers of quicklime located in the eastern states of Australia for the year ending 31 December 2015: Boral Ltd (Boral); Cement Australia Pty Ltd (Cement Australia); and Sibelco Australia Ltd (Sibelco). Cockburn Cement's estimates of production for these entities were based on its knowledge of the industry. The application contained no indication of whether Boral, Cement Australia or Sibelco supported or opposed the application.

Upon initiating the investigation, the Commission invited Boral, Cement Australia and Sibelco to participate in the investigation and provide information relating to their production quantities and sales of locally manufactured quicklime. The Commission was able to obtain information relating to production quantities of the locally manufactured quicklime by some of these companies, but not all. The Commission notes that Sibelco imported quicklime into Australia during the investigation period and thus was directly involved in the investigation.

4.5 Conclusion

The Commissioner is satisfied that there are "like goods" wholly manufactured in Australia and that there is an Australian industry comprising Boral, Cement Australia, Cockburn Cement and Sibelco.

⁶ See number 19 on the public record.

5 AUSTRALIAN MARKET

5.1 Finding

The Commissioner finds that the Australian market for quicklime is supplied by Cockburn Cement, producers in the eastern states of Australia (Boral, Cement Australia and Sibelco), and imports from a number of countries, the largest of which is Thailand. The Commission estimates that the size of the Australian market during the investigation period was approximately 1.55 million tonnes.⁷

5.2 Background

Quicklime is predominantly used in Australia in mineral processing, such as alumina, gold and steel. Companies that manufacture and sell quicklime are generally located in mining regions.

Due to the high cost of transportation, the Australian market is geographically segmented. Suppliers on the east coast generally only supply to users on the east coast, while Cockburn Cement, located on the west coast, is the main source of supply in Western Australia. Each of the importers who participated in the investigation confirmed that this geographical segmentation exists.

5.3 Market structure

In Western Australia, quicklime is primarily used in alumina processing. Approximately 70 per cent of Cockburn Cement's quicklime is sold to alumina processors and the quicklime plant in Munster is located in the vicinity of four alumina refineries.

Approximately 20 per cent of Cockburn Cement's quicklime is used in gold processing, while the remaining 10 per cent is used in a range of applications including acidic effluent treatment and pH adjustment in mineral sands and other mineral processing, water treatment and building and construction. Gold processing, together with these other applications, are considered to be non-alumina in nature.

5.4 Market share

The Commission was able to obtain some data for the 2015 year in relation to other producers of quicklime in Australia. Based on this data, Cockburn Cement's verified sales data, verified sales data from exporters, and import data obtained from the Australian Border Force (ABF) import database, the Commission has estimated the respective shares of the total Australian market in 2015, which is shown in Figure 1 below. Imports from countries not subject to the application for measures represents less than one per cent of the total volume of imports and this has not been included in the below analysis.

⁷ The Commission notes that this had been incorrectly stated in the SEF as 2.1 million tonnes.

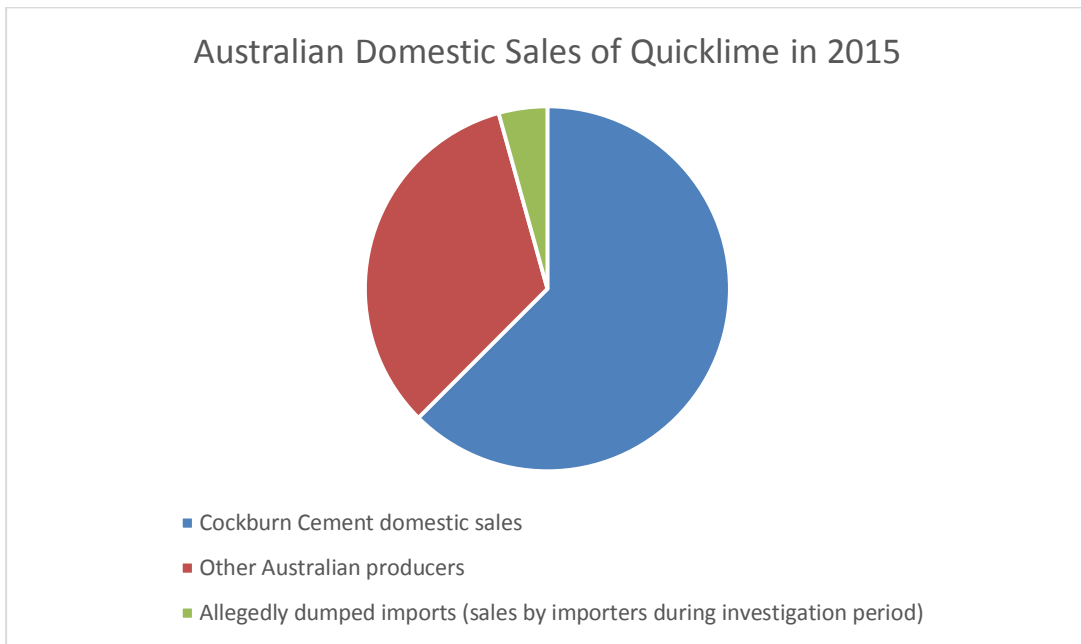


Figure 1: Australian market for quicklime in 2015

Cockburn Cement does not claim that there has been injury to other Australian producers of quicklime located in the eastern states of Australia. Further, after making contact with other producers of quicklime in Australia, the Commission did not establish any other claims of injury during the investigation period. Thus it is apt for the Commission to focus on the Western Australian market, while recognising that for the Commissioner to recommend measures he must find injury to be material in the context of the Australian industry as a whole. Cockburn Cement is the only manufacturer of quicklime in the Western Australian market, with the dumped imports being imported into Western Australia only.

The Commission has estimated the shares of the Western Australian market for quicklime in 2015, which is shown in Figure 2 below.

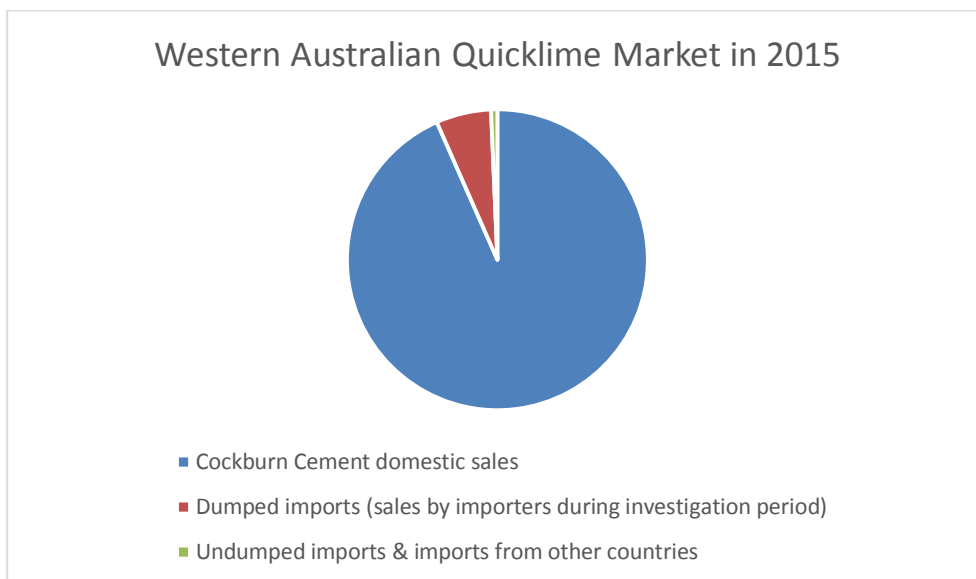


Figure 2: Western Australian quicklime market in 2015

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The Commission has also undertaken a comparative analysis of the Western Australian market for quicklime over the course of the injury analysis period, depicted in Figure 3 below.

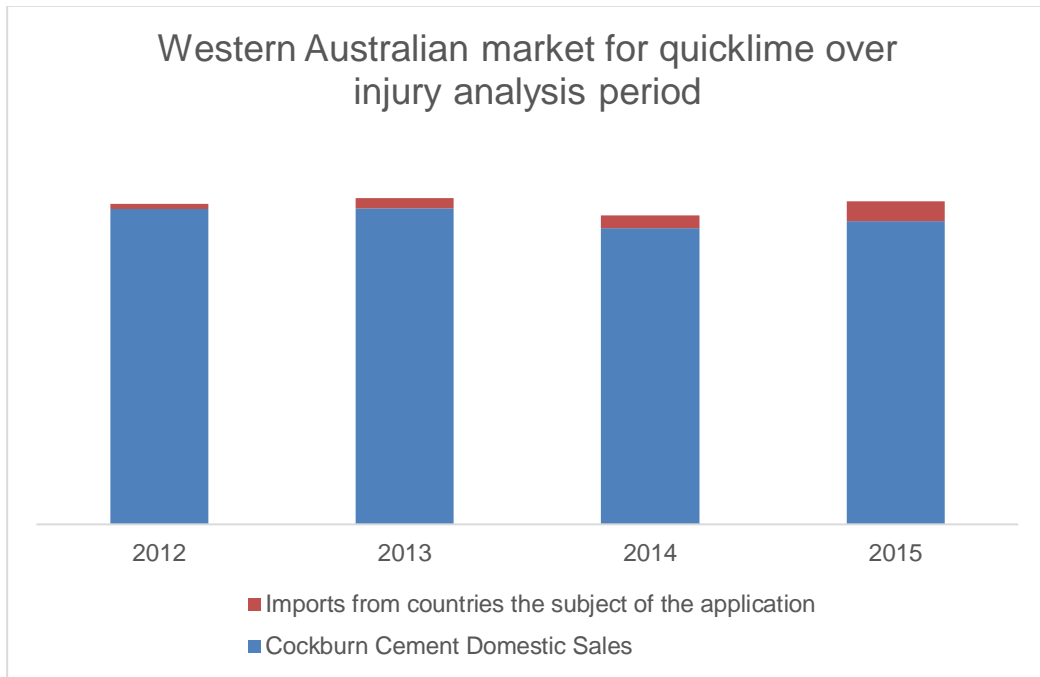


Figure 3: Western Australian market for quicklime over the injury analysis period

More specifically, Cockburn Cement claims that the impact of the imports is felt directly in its sales to the non-alumina market. The Commission has analysed Cockburn Cement’s sales into the non-alumina market over the injury analysis period and compared this with the level of imports, noting that on the information available from the Australian Border Force and verified data, quicklime exported to Australia arrives in Western Australia and is purchased by customers in the non-alumina sector. This analysis is depicted below in Figure 4.

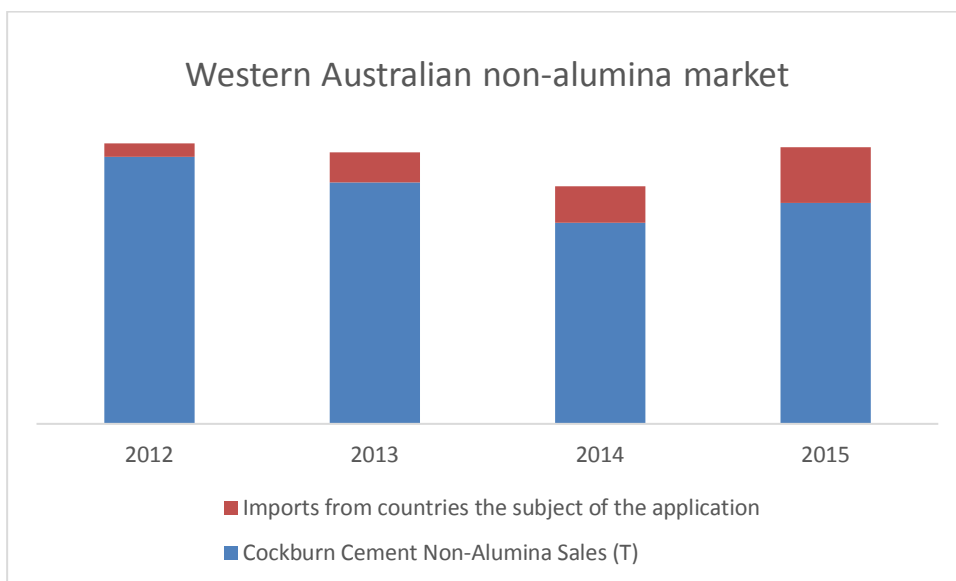


Figure 4: Western Australian non-alumina market over the injury analysis period

6 DUMPING INVESTIGATION

6.1 Finding

The Commissioner has found that:

- quicklime exported to Australia by Chememan Thailand, BSIM (Vietnam) and RCI Lime (Malaysia) during the investigation period was dumped;
- Unichamp Mineral (Malaysia) was not found to be dumping; and
- the volumes of dumped goods from Thailand, Vietnam and Malaysia were not negligible.

The dumping margins are summarised in Table 2 below.

Country	Exporter	Dumping Margin
Thailand	Chememan Thailand	12.3%
	Uncooperative and All Other Exporters	22.0%
Vietnam	BSIM	4.8%
	Uncooperative and All Other Exporters	8.0%
Malaysia	RCI Lime	7.6%
	Unichamp Mineral	-4.2%
	Uncooperative and All Other Exporters	27.1%

Table 2: Dumping margins

6.2 Legislative framework

In any report to the Parliamentary Secretary under subsection 269TEA(1) following a dumping investigation, the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the goods have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB. For all dumping margins calculated, the Commission compared 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, in accordance with subsection 269TACB(2)(a).

6.3 Cooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'. At the commencement

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of the investigation, the Commission contacted all known exporters of the goods and each identified supplier of the goods within the relevant tariff subheading for quicklime as identified in the ABF's import database, and invited them to complete an exporter questionnaire.

The Commission received completed exporter questionnaire responses from the following exporters:

- BSIM;
- Chememan Thailand;
- Lhoist (Malaysia) Sdn Bdn (Lhoist);
- RCI Lime; and
- Unichamp Mineral.

Following receipt of the exporter questionnaire from Lhoist, the Commission confirmed that Lhoist did not export quicklime to Australia during the investigation period, but rather had two sample shipments which were subsequently returned to Lhoist. As such, Lhoist was not examined further as part of the Commissioner's investigation.

The Commission undertook verification visits to Chememan Thailand, BSIM, RCI Lime and Unichamp Malaysia. These exporters are considered to be cooperative exporters.

6.4 Uncooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The Commission received five responses to its exporter questionnaires. One purported exporter (Lhoist) was found not to have exported the goods during the investigation period. All other exporter questionnaires were complete and enabled the Commission to conduct verification visits.

The Commission considers those exporters that did not provide a response to the exporter questionnaire to be uncooperative in that they did not give the Commissioner information considered to be relevant to the investigation. For uncooperative and all other exporters, given that these exporters have not provided relevant information via a response to the exporter questionnaire, the Commissioner will use subsection 269TAB(3) and subsection 269TAC(6) to calculate dumping margins for those exporters, having regard to all relevant information and as required by subsection 269TACAB(1).

6.5 Dumping assessment – Chememan Thailand

6.5.1 Verification

Chememan Thailand provided a completed response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit to Chememan Thailand during June 2016 to verify the information disclosed in its exporter questionnaire.

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The verification team was provided a full description of the facilities and production process and confirmed that Chememan Thailand was the producer of the goods under consideration.

A verification report covering the findings is available on the public record.⁸

6.5.2 Model Matching

Chememan Thailand sells three forms of quicklime in the Thai domestic market – powder, aggregate and lump.

As noted in the visit report for Chememan Thailand, the Commission observed that the quicklime powder sold domestically in Thailand is not identical to the exported quicklime powder. The exported quicklime is of a coarser grade which is larger in size than the domestic product.

In the previous investigation the then ACBPS, when determining the correct method for calculation of normal value, did not find there were relevant sales of quicklime powder on the domestic market for the purposes of subsection 269TAC(1) due to the difference in calcium oxide content. In this investigation, while there are sales of a similar calcium oxide content, there are no domestic sales of the same coarse powder exported to Australia. The quicklime powders are also sold to a different level of trade - while the fine powder is sold directly to end user customers, the coarse powder is sold to a distributor in Australia who then on-sells to end user customers. As such, the Commissioner is of the view that there is an absence of sales of like goods in Thailand that would be relevant for the purpose of determining a price under subsection 269TAC(1). The Commission has therefore constructed normal value for quicklime powder under subsection 269TAC(2)(c).

The Commission identified identical products of aggregate quicklime sold in the domestic Thai market and has therefore determined normal value for aggregate quicklime under subsection 269TAC(1).

Chememan Thailand did not export quicklime in lump form during the investigation period.

6.5.3 Export price

As noted in the verification visit report for Chememan Thailand, the Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

Therefore, the export price for Chememan Thailand was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.5.4 Normal value

The Commission is satisfied that for the aggregate form of quicklime there are sufficient volumes of domestic sales in arms length transactions and at prices that were made in the ordinary course of trade (OCOT). The Commission is therefore satisfied that the

⁸ See number 27 on the public record.

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prices paid in respect of domestic sales of aggregate are suitable for assessing normal value under subsection 269TAC(1).

For the quicklime powder the Commission has constructed normal values in accordance with paragraph 269TAC(2)(c). To construct the normal value for each quarter, the Commission has used:

- the weighted average CTM for Australian export sales; plus
- the selling, general and administrative (SG&A) costs applicable to like goods sold domestically; plus
- profit realised from domestic sales of the same general category of goods.

As required by subsections 269TAC(5A) and 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the costs of production, SG&A costs and profit were established in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation), respectively.

The cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records. SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records. The amount of profit was worked out under subsection 45(3)(a) of the Regulation, being profit from the sale of the same general category of goods. The Commission considered subsection 45(2) of the Regulation, however did not calculate profit under this provision as it was not reasonably practicable to do so. There are no domestic sales at the same level of trade as the exports to Australia, therefore to take profit from the domestic sales of the fine powder would result in the normal value being constructed at an incorrect level of trade. Further discussion regarding this level of trade difference is contained in the Commissioner's consideration regarding the normal value methodology below.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsections 269TAC(8)⁹ and (9)¹⁰ as follows:

⁹ For all exporters, where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(8).

¹⁰ For all exporters, where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(9).

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Adjustment Type	Deduction/addition
Domestic inland freight	Deduct domestic inland freight expenses for subsection 269TAC(1) normal values only.
Domestic handling and other charges	Deduct domestic handling and other expenses for subsection 269TAC(1) normal values only.
Domestic packaging	Deduct domestic packaging expenses for subsection 269TAC(1) normal values only.
Domestic credit term expenses	Deduct domestic credit term expenses for subsection 269TAC(1) normal values only.
Export inland freight	Add export inland freight expenses for subsection 269TAC(1) and paragraph 269TAC(2)(c) normal values.
Export handling and other charges	Add export handling and other expenses for subsection 269TAC(1) and paragraph 269TAC(2)(c) normal values.
Export packaging	Add export packaging for subsection 269TAC(1) and paragraph 269TAC(2)(c) normal values.
Export credit term expenses	Add export credit term expenses for subsection 269TAC(1) normal values only.

Table 3: Adjustments to Chememan Thailand’s normal value for quicklime

Submission relating to normal value methodology

Cockburn Cement provided a submission in relation to the visit to Chememan Thailand and specifically regarding the model matching the Commission undertook. Cockburn Cement asserts that subsection 269TAC(2)(c) should only be used where there are no sales of like goods on the domestic market in the exporting country or, where there is a low volume of sales of like goods in accordance with subsection 269TAC(2)(a)(i). Cockburn Cement states that as Chememan Thailand has sufficient sales of quicklime in powder form, normal value can be determined under subsection 269TAC(1).

Cockburn Cement also raised concerns with the level of profit applied under subsection 269TAC(2)(c). Cockburn Cement asserts that the level of profit applied reflects all of Chememan Thailand’s domestic quicklime sales in the OCOT – i.e. powder, aggregate and the lower-priced lump quicklime.

Commissioner’s consideration regarding normal value methodology

The Commissioner is satisfied that calculating a normal value under subsection 269TAC(2)(c) is the most appropriate methodology for quicklime powder in the circumstances. In Investigation 179, the ACBPS took the view that due to differences in the calcium oxide content, there were no relevant sales of powder in the domestic market for the purposes of section 269TAC(1). In the present case, while there are sales of quicklime with the same calcium oxide content, there are no domestic sales of the same coarse powder exported to Australia – there are only sales of a fine powder which supplies different uses. Further, the sales of the respective powders are to a different level of trade - while the fine powder is sold directly to end user customers, the coarse powder is sold to a distributor in Australia who then on-sells to end user customers. For this reason, the Commission does not believe a specification adjustment is possible and normal value cannot be determined under subsection 269TAC(1) because the sales are

not relevant for determining a price under that subsection.¹¹ Further information regarding this is contained in the verification visit report for Chememan Thailand.

The Commission is also satisfied that for quicklime powder, under the subsection 269TAC(2)(c) methodology, profit has been calculated appropriately. As referred to in the verification report for Chememan Thailand, the Commission considered sub-regulation 45(3)(a), which directs attention to goods in the same general category – in this case the fine quicklime powder. The Commission determined all quicklime powder to be in the same general category and the resulting profit margin was used in the constructed normal value. The Commission calculated the profit margin based only on sales of quicklime powder and did not include sales of aggregate and lump, as asserted by Cockburn Cement.

6.5.5 Dumping margin

The Commission has calculated the dumping margin for Chememan Thailand as 12.3 per cent.

6.6 Dumping assessment – BSIM

6.6.1 Verification

BSIM provided a completed response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit during July 2016 to verify the information disclosed in its exporter questionnaire.

The verification team toured BSIM's facility and confirmed that BSIM was the producer of the goods under consideration. The goods exported to Australia are made to order by BSIM under instruction from Chememan International Pte Ltd (Chememan Vietnam). Customers place orders and Chememan then determines whether the product will be sourced from Chememan Thailand or from BSIM. Where it is BSIM, they are then instructed to produce certain quantities of quicklime. The Commission has determined that BSIM is the manufacturer of the goods and the exporter for the purposes of the legislation.

A verification report covering the findings is available on the public record.¹²

6.6.2 Model Matching

BSIM does not manufacture quicklime for domestic market consumption, thus there is no requirement to carry out model matching.

6.6.3 Export price

The Commission notes that BSIM does not deal directly with customers in Australia who received the goods exported to Australia. As noted above, there is an intermediary (Chememan Vietnam) that provides orders to BSIM and deals directly with customers in Australia. The Commission determined that, in relation to the goods exported by BSIM

¹¹ Subsection 269TAC(2)(a)(i) refers.

¹² See number 31 on the public record.

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and delivered to Australia during the investigation period, the intermediary listed in BSIM's Australian sales spreadsheet is not the beneficial owner of the goods at the time of importation and therefore is not the importer of the goods.

The verification team did not find that there was any consideration payable in respect of the export sales other than the price, or that the price was 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. Thus, the verification team concluded that export sales of quicklime by BSIM that were delivered to Australia during the investigation period were arms length transactions. However, the verification team did note that further investigation should be conducted into certain commercial relationships which are outlined below.

BSIM stated that they have a commercial relationship with a separate entity to the intermediary mentioned above. BSIM stated that this relationship has influenced the formation of their manufacturing business and its operations during the investigation period. The verification team did not identify any legally related entities, suppliers or customers, but did consider that BSIM's manufacturing operations may have been influenced by these commercial relationships during the investigation period.

The Commission has considered the commercial relationships established by the verification team and has determined that there is consideration payable for or in respect of the goods other than their price. The verification team gathered evidence that the mills utilised by BSIM have been provided to them under a financing arrangement with a third party. During the investigation period, BSIM did not make any repayments under the financing arrangement. Therefore, the Commission considers that all export sales of quicklime by BSIM that were delivered to Australia during the investigation period were not arms length transactions.

BSIM confirmed that its sales of quicklime are to an intermediary, Chememan Vietnam, which then sells the goods to Australia. Export prices cannot be determined under subsection 269TAB(1)(a) or subsection 269TAB(1)(b) as the goods that have been delivered to Australia by BSIM have not been purchased from it by the importer. Export prices have therefore been determined under subsection 269TAB(1)(c) being the price the Minister determines having regard to all the circumstances of the exportation. As noted above, given the commercial relationships established and the non arms length nature of the transactions, the Commission has used a deductive export price methodology in order to determine a price that is unaffected by the commercial relationships.

Correction following publication of the SEF

In the SEF published on 10 October 2016 the Commission stated that the preliminary dumping margin for BSIM was 30.5 per cent. Following the SEF the Commission revisited the calculation of the deductive export price methodology and found an error. In calculating the deductive export price the cost of freight and insurance had inadvertently been double counted. Further, there were inconsistencies in the appropriate use of exchange rates, and an assumption made that the costs incurred on the verified samples were representative of costs for the entire investigation period. The Commission recalculated the deductive export price using a more accurate methodology to determine a price unaffected by the commercial relationships, and the resulting dumping margin is provided below.

6.6.4 Normal value

As noted above, BSIM did not make any domestic sales of like goods during the investigation period. Subsection 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price. BSIM's only third country sales were of goods it did not manufacture and its role was that of a trader. These sales are not suitable for normal value to be ascertained under subsection 269TAC(2)(d) as the Commission is unable to determine whether they were made in the OCOT. Further, there are no other producers of quicklime in Vietnam from which the Commission could obtain domestic sales data for the purposes of determining a normal value under subsection 269TAC(1). For this reason the Commission considers that normal value should be constructed under subsection 269TAC(2)(c).

To construct the normal value for each quarter, the Commission has used:

- the weighted average cost to make (CTM) for Australian export sales under section 43(2) of the Regulation; plus
- verified SG&A costs applicable to the export sales.

As noted above, BSIM did not make any domestic sales of like goods during the investigation period nor did it make domestic sales of the same general category of goods. The Commission was not able to identify any other exporters or producers of like goods in Vietnam. As a result, the Commission considered subsection 44(3)(c) of the Regulation, using any other reasonable method having regard to all relevant information. The Commission considered BSIM's verified export SG&A costs as the most appropriate in the circumstances.

BSIM stated that it had not attempted to sell like goods in the domestic market because it did not believe it could sell its like goods profitably. BSIM submitted that as any amount of profit is to be assumed when constructing normal value, no profit should be applied, or cannot be applied. The Commission considers there are no domestic sales, or sales in the same general category of goods, that have been made by BSIM. Further, the Commission identified no other exporters or producers of quicklime in Vietnam thus there is no data on the amount of profit realised by these exporters or producers, to determine whether an amount of profit worked out under subsection 45(3)(c) of the Regulation exceed 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, for the purposes of subsection 45(4) of the Regulation. For this reason, there was insufficient information available to the verification team to establish an actual amount of profit by BSIM or to calculate a profit under section 45 of the Regulation. The Commission therefore has not added an amount of profit in the construction of normal value.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9)¹³ as follows:

Adjustment Type	Deduction/addition
Export Packaging	Add cost of export packaging
Inland Transport	Add inland transport costs
Terminal, handling & seal fees	Add packaging charges
Export sales commissions	Add export commissions
Export tax	Add export tax

Table 4: Adjustments to BSIM's normal value for quicklime powder

6.6.5 Dumping margin

The Commission has calculated the dumping margin for BSIM as 4.8 per cent.

6.7 Dumping assessment – RCI Lime

6.7.1 Verification

RCI Lime provided a completed response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit during July 2016 to verify the information disclosed in its exporter questionnaire.

The verification team was provided with a full description of the facilities and production process and confirmed that RCI Lime was the producer of the goods under consideration.

A verification report covering the findings is available on the public record.¹⁴

6.7.2 Model Matching

The Commission considers that the goods manufactured by RCI Lime for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia. The Commission considered it appropriate to distinguish quicklime powder from other quicklime products, noting that quicklime powder was subject to an additional grinding process and was costed separately by RCI Lime to capture those additional expenses.

The Commission therefore considers normal value can be determined under subsection 269TAC(1) using domestic sales of quicklime lump and quicklime powder.

¹³ For all exporters, where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(9).

¹⁴ See number 23 on the public record.

6.7.3 Export price

In the verification visit report for RCI Lime, the verification team was satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in an arms length transaction by the importer from the exporter.

The Commission undertook a verification visit to the importer of the goods from RCI Lime, Merchant Cement and Lime (Merchant). In verifying selected imports, the verification team noted that some sales resulted in considerable losses. Merchant stated that this was as a result of significantly high start-up costs, particularly in implementing its local supply chain in Esperance and through to Kalgoorlie. Merchant stated that the unit SG&A costs will reduce considerably as its sales volume start to increase. The Commission sought additional data from Merchant for the 2016 calendar year, to determine whether sales were now profitable. The Commission confirmed that the profitability of Merchant has improved significantly, with unit SG&A costs being lower than during the investigation period. The Commission is satisfied that sales from RCI Lime to Merchant are at arms length.

Therefore, the export price for RCI Lime was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.7.4 Normal value

As noted in the verification visit report for RCI Lime, the Commission established that the domestic sales provided by RCI Lime were suitable for use in determining normal value under subsection 269TAC(1).

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8)¹⁵ as follows:

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit
Domestic freight	Deduct the cost of domestic freight
Domestic handling	Deduct the cost of domestic handling
Domestic packaging	Deduct the cost of domestic packaging
Domestic commissions	Deduct the cost of domestic commissions
Export inland freight	Add the cost of export inland freight
Export handling	Add the cost of export handling
Export packaging	Add the cost of export packaging
Export credit	Add the cost of export credit

Table 5: Adjustments to RCI Lime’s normal value for quicklime

¹⁵ For all exporters, where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(8).

Submission from RCI Lime

Following the verification visit, RCI Lime made a submission regarding kiln relining and selling costs, calculation of the normal value and the credit adjustment methodology.

The Commissioner has considered all the matters raised in the submission and is of the view that an adjustment to costs incurred on kiln five for the 100 per cent replacement of firebricks may be warranted. While these costs are not considered to be a 'one-off' (as claimed by RCI Lime), they are considered to meet the requirements of subsection 43(5) of the Regulation. The Commission has therefore adjusted the kiln relining costs for kiln five to sit evenly across the period, since the bricks were last replaced in full. Notwithstanding this view, it is noted that a redistribution of the relevant relining costs does not influence the dumping margin calculated in this case.

Submission received in response to SEF

RCI Lime submitted two points in relation to the calculation of the dumping margin:

- a. That relining costs for one of its kilns should be removed from its CTMS calculation as they are non-recurring. RCI Lime stated that these relining costs were incurred due to an abrupt overheating of the furnace in one of its kilns, which was an unprecedented event and for which it has taken steps to prevent in the future.
- b. That the methodology used by the Commission in calculating credit costs is unfair, as the Commission has used the largest credit period taken from the samples for Australian sales, while taking the credit period (and not the actual payment period) for domestic sales.

Commission's consideration

In relation to the costs for relining one of its kilns, the Commission acknowledges that while unexpected, this cost could occur from time to time and for that reason should form part of the repairs and maintenance of RCI Lime's operation. The Commission notes that the section of the kiln which required relining was similar to the section in several other kilns owned and operated by RCI Lime which require replacement of firebricks each year.

In relation to the calculation of credit costs, at the time of the verification visit, RCI Lime was requested to provide proof of payment documents for all transactions (both domestic and Australian sales). This was not provided during the visit, and the verification team encountered difficulties in gathering sufficient information in order to properly verify costs. Further, the verification team was not able to substantiate the average number of days taken for payment as suggested by RCI Lime, which did not follow the methodology for a credit adjustment referred to at page 69 of the *Dumping and Subsidy Manual* (the Manual), and stated in the exporter questionnaire. Given the lack of reliable evidence to support RCI's suggested approach, the Commission has not altered the methodology utilised for credit costs.

6.7.5 Dumping margin

The Commission has calculated the dumping margin for RCI Lime as 7.6 per cent.

6.8 Dumping assessment – Unichamp Mineral

6.8.1 Verification

Unichamp Mineral provided a completed response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit during July 2016 to verify the information disclosed in its exporter questionnaire.

A verification report covering the findings is available on the public record.¹⁶

6.8.2 Model Matching

The Commission considers that the goods manufactured by Unichamp Mineral for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia.

The Commission therefore considers normal value can be determined under subsection 269TAC(1).

6.8.3 Export price

As noted in the verification visit report for Unichamp Mineral, the Commission is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

Therefore, the export price for Unichamp Mineral was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.8.4 Normal value

As noted in the verification visit report for Unichamp Mineral, the Commission established that the domestic sales provided by Unichamp Mineral were suitable for use in determining normal value under subsection 269TAC(1).

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8)¹⁷ as follows:

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit
Domestic inland freight	Deduct the cost of domestic inland freight
Export inland freight and handling	Add the cost of export inland freight and handling
Export packaging	Add the cost of export packaging
Export credit	Add the cost of export credit

¹⁶ See number 20 on the public record.

¹⁷ For all exporters, where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(8).

Table 6: Adjustments to Unichamp Mineral's normal value for quicklime

6.8.5 Dumping margin

The Commission has calculated the dumping margin for Unichamp Mineral of -4.2 per cent.

6.9 Uncooperative and all other exporter dumping margins

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest of the weighted average export prices of those that were established for cooperating exporters in the investigation period. This calculation was undertaken separately for each country.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of the weighted average normal values of those that were established for the cooperating exporters in the investigation period. This calculation was undertaken separately for each country.

This dumping margin for uncooperative and all other exporters from Malaysia, Thailand and Vietnam are as follows:

- Malaysia - 27.1 per cent
- Thailand - 22.0 per cent
- Vietnam – 8.0 per cent.

6.10 The Commissioner's assessment

The Commissioner has found that:

- quicklime exported to Australia by Chememan Thailand, BSIM and RCI Lime during the investigation period was dumped;
- quicklime exported to Australia by Unichamp Mineral was not dumped; and
- the volumes of dumped goods from Thailand, Vietnam and Malaysia were not negligible.

A summary of the Commission's dumping margins are set out in Table 7.

Country	Exporter	Dumping Margin
Thailand	Chememan Thailand	12.3%
Vietnam	BSIM	4.8%
Malaysia	RCI Lime	7.6%
	Unichamp Mineral	-4.2%

Table 7: Dumping margins

6.11 Volume of dumped imports

Pursuant to subsection 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than 3 per cent of the total volume of goods imported into Australia over the investigation period if subsection 269TDA(5) does not apply. The Commission confirmed that subsection 269TDA(5), relating to aggregation of volumes of dumped goods, does not apply.

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from each of Thailand, Vietnam and Malaysia was greater than three per cent of the import volume and is therefore not negligible. Accordingly, the Commissioner does not propose to terminate this investigation against Thailand, Vietnam and Malaysia under subsection 269TDA(3).

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Finding

The Commissioner has assessed that Cockburn Cement, in relation to its production and sale of like goods, has suffered injury in the form of:

- reduced market share;
- price suppression;
- reduced profits;
- reduced profitability; and
- reduced capacity utilisation.

Under subsection 269TG(1), one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that because of dumping, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

7.2 Introduction

This chapter outlines the economic condition of the Australian industry and an assessment as to whether the Australian industry has suffered injury.

In the application, the applicant claimed that the Australian industry has suffered material injury caused by quicklime being exported to Australia from Malaysia, Thailand and Vietnam at dumped prices. The applicant claimed that the injurious effects of dumping have been:

- lost sales volume;
- reduced market share;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced capacity utilisation; and
- reduced employment.

7.3 Approach to injury analysis

CON 348 advised that the investigation period for this investigation is 1 January 2015 to 31 December 2015 and that the Commission would examine the Australian market and the economic condition of the Australian industry from 1 January 2012 for the purposes of injury analysis.

The following analysis relies on publically available information, data from the ABF import database and verified sales and cost data provided by the Australian industry, importers and exporters.

As outlined previously, in its application Cockburn Cement noted that the quicklime market in Australia operates on a regional basis, and that it is only the Western Australian market that has suffered injury. Cockburn Cement is the only major producer of quicklime

in Western Australia, thus it claimed it is more susceptible to dumped quicklime into that region. The Commission undertook verification visits to the applicant and importers, and also sought information from other Australian manufacturers of quicklime who did not originally comment on the application. Cooperating entities confirmed that the geographic segmentation of the market is due to the cost of freight from the eastern states of Australia to Western Australia and that as a result, imports directly into Western Australia may impact Cockburn Cement specifically.

In addition to the above, there is also a regional separation between the Munster and Dongara plants owned by Cockburn Cement, both of which are located in Western Australia, with the primary reason again being the cost of freight to service customers in different locations. The Commission has taken this into account in its analysis where appropriate.

The Commission met with Cockburn Cement to verify information and data provided to the Commission in support of the application and to gather an understanding of the economic condition of the Australian industry. The Commission's findings were presented in the Australian industry verification report.

Submission from Chememan Thailand

Chememan Thailand provided a submission regarding material injury, noting the following points regarding injury:

- the Australian industry must suffer material injury and the application of Cockburn Cement focuses specifically on the Western Australian market, on sales into a particular segment of that market and on the performance of one of its production sites;
- evidence of regional injury may be taken into account when determining whether there has been material injury to the Australian industry, in accordance with the *Ministerial Direction on Material Injury 2012*; and
- it does not accept that evidence of material injury arising out of the Western Australian non-alumina market suffices to meet the requirement in section 269TG of material injury to the Australian industry.

Commission's assessment

A determination of material injury in the context of a section 269TG notice (or a section 269TJ notice) must be based on an assessment of injury to the Australian industry as a whole. As such, it is the Commission's view that Cockburn Cement alone cannot constitute the Australian quicklime industry for the purposes of the injury analysis, given there are other producers of quicklime in Australia. Any conclusions in relation to Cockburn Cement's injury will also need to address the connection between those conclusions and the outcomes for the Australian industry as a whole. However, the fact that there are other Australian producers, or that these other producers may not have suffered injury, does not necessarily preclude a finding that dumping has caused material injury to the Australian industry.

The *Ministerial Direction on Material Injury 2012* directs that in considering cases with regional implications, the Commissioner must bear in mind that an industry's vulnerability to dumped or subsidised imports may be confined to a specific region of Australia. Injury

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may be occurring in the part of the industry located in that region, without directly affecting the rest of the Australian industry. In this circumstance it is still possible to take account of regional injury of this kind and, in appropriate circumstances, to judge such injury to be material to the industry as a whole.

The meaning of “Australian industry” has been considered by the Federal Court of Australia and was a central issue in *Re Swan Portland Cement Limited and Cockburn Cement Limited v. the Minister of Small Business and Customs and the Anti-Dumping Authority* [1991] FCA 49 [*Swan Portland Cement*]. In that case the applicants were of the view that the Western Australian clinker industry should be regarded as a separate market and a separate industry for the purposes of a dumping investigation. In support of its position, the applicants argued that it was appropriate to have reference to Article 4 of the General Agreement on Tariffs and Trade (GATT) Anti-Dumping Code (the precursor to Article 4 of the World Trade Organization (WTO) Anti-Dumping Agreement) for the purposes of interpreting the meaning of “Australian industry”.

Article 4 of the GATT Anti-Dumping Code (and, later, Article 4 of the Anti-Dumping Agreement) allow for alternative definitions of the domestic industry in certain circumstances. In particular, they allow GATT/WTO Members (in certain circumstances) to consider the domestic industry as comprising less than the industry as a whole – e.g. where a producer’s collective output of products constitutes a major proportion of the total domestic production. In exceptional circumstances these Articles also allow for the territory of a Member to be divided into two or more competitive markets. These alternative definitions of domestic industry do not form part of Australia’s domestic anti-dumping legislation.

In *Swan Portland Cement*, Lockhart J. noted that the term “Australian industry” is clear and unambiguous and as such found that it was not necessary to resort to the international agreements to assist in interpreting this term. He concluded that “Australian industry” refers to the industry as a whole. In particular, he stated (at paragraph 39) that:

the expression “Australian industry” in the context of the anti-dumping legislation refers to an industry viewed throughout Australia as a whole and does not refer to a part of that industry, whether the part be determined by geographic, market or other criteria. The difficulty seems to me to lie, not in defining the expression, but in determining on the facts of a given case whether a particular industry answers the statutory description of an Australian industry. The latter is not a question of construction; it is a question of identification by the relevant fact finding body, in this case, the Authority.

Lockhart J. went on to explain that the determination of whether material injury to an Australian industry producing like goods has been, or is being caused, or is threatened, is not an exercise of counting heads of markets, production or distribution centres or things of this kind. It is essentially a practical exercise designed to achieve the objective of determining whether, when viewed as a whole, the relevant Australian industry is suffering material injury from the dumping of goods.

Ultimately, Lockhart J. accepted that the relevant market for clinker was the market in Western Australia. He went on to explain that the clinker industry must be regarded throughout Australia as a whole but noted that this did not mean that the injury caused by dumping only in Western Australia, and which may injure only the players in the market in Western Australia, could not constitute material injury to the Australian clinker industry as a whole. In particular he stated (at paragraph 41):

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Plainly it may where, for example, the continuance of the dumping may annihilate the West Australian industry. I find no difficulty with the proposition that an injury of this kind may constitute material injury to the Australian market as a whole. It depends on the facts of the case and inevitably it is a question of degree that involves balancing all relevant considerations and integers before concluding whether or not the dumping constitutes material injury to the Australian industry.

In the Commission's view, both *Swan Portland Cement* and the *Ministerial Direction on Material Injury 2012* state that regional injury may constitute material injury to the entire Australian industry in certain circumstances, which involves an analysis of the facts of a particular case. In this case the Commission has assessed the injury suffered by Cockburn Cement and, whether this can be considered material within the context of the entire Australian industry.

7.4 Volume effects

7.4.1 Sales Volume

Figure 5 indicates the trend of Cockburn Cement's domestic sales, across all quicklime sales (both the alumina and non-alumina market), over the injury analysis period.

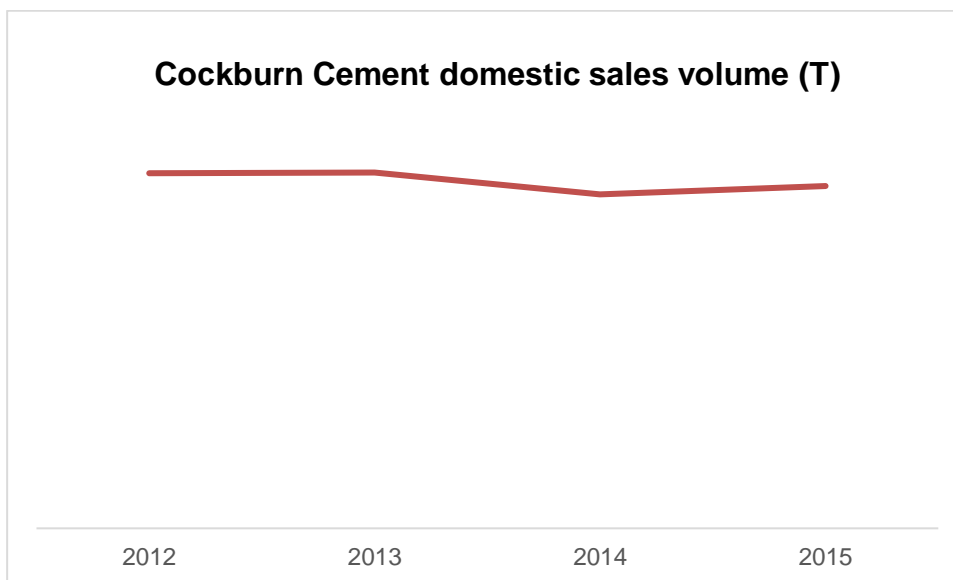


Figure 5: Cockburn Cement domestic sales volume of quicklime

Figure 5 indicates that over the injury analysis period, Cockburn Cement's domestic sales volume of quicklime remained relatively steady, although from 2013 to 2014 there was a noticeable decline in sales before a slight increase in 2015.

Cockburn Cement claimed that material injury has been suffered more specifically in the non-alumina market. In its application Cockburn Cement explained the difference between alumina processing and other applications including gold processing, 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 and as sales into this market are not subject to long-term contracts, Cockburn Cement claimed that it is more vulnerable to dumped imports in this market segment. Further, Cockburn Cement claimed that imports directly impact its Dongara plant, which supplies quicklime solely into the non-alumina market.

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The figure below shows the volume of Cockburn Cement's sales of quicklime into the non-alumina market from its production plant in Dongara.

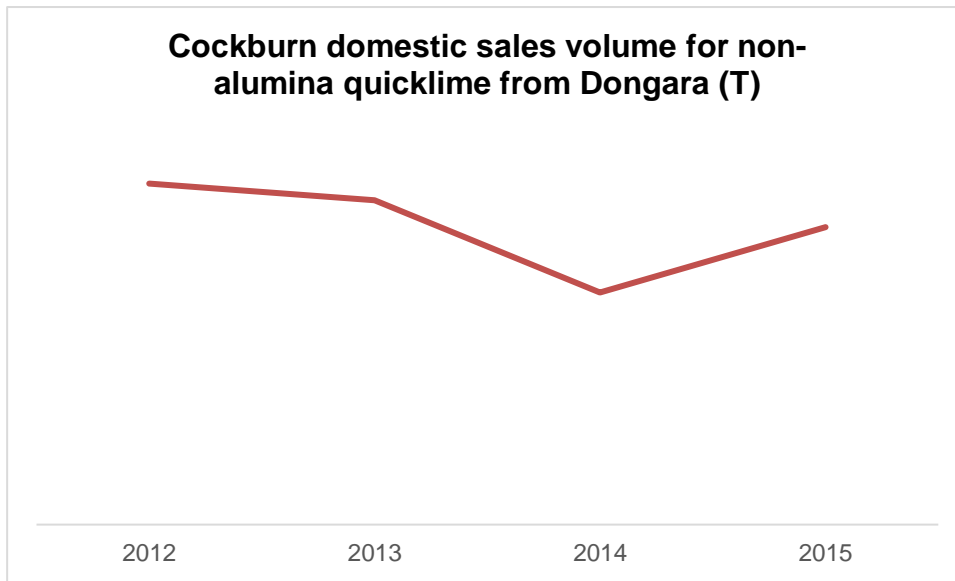


Figure 6: Cockburn Cement domestic sales volume of non-alumina quicklime

Figure 6 indicates that over the injury analysis period, sales of quicklime into the non-alumina market from Dongara decreased from 2012 to 2014, before a sharp increase in 2015 saw sales return close to the levels in 2013. Cockburn Cement provided additional data to the Commission in relation to sales into the non-alumina market from the Dongara plant for the first two quarters of the 2016 year. Using the average of these two quarters, the volume of sales for the 2016 year is projected to be slightly greater than the 2015 year.

The Commission concludes that while overall sales of quicklime remained steady for Cockburn Cement over the injury analysis period, sales into the non-alumina market from Dongara fluctuated with a decrease in 2014 followed by an increase in 2015.

7.4.2 Market Share

In CON 348, the market share in relation to the Australian quicklime market was illustrated as is shown in Figure 7 below.

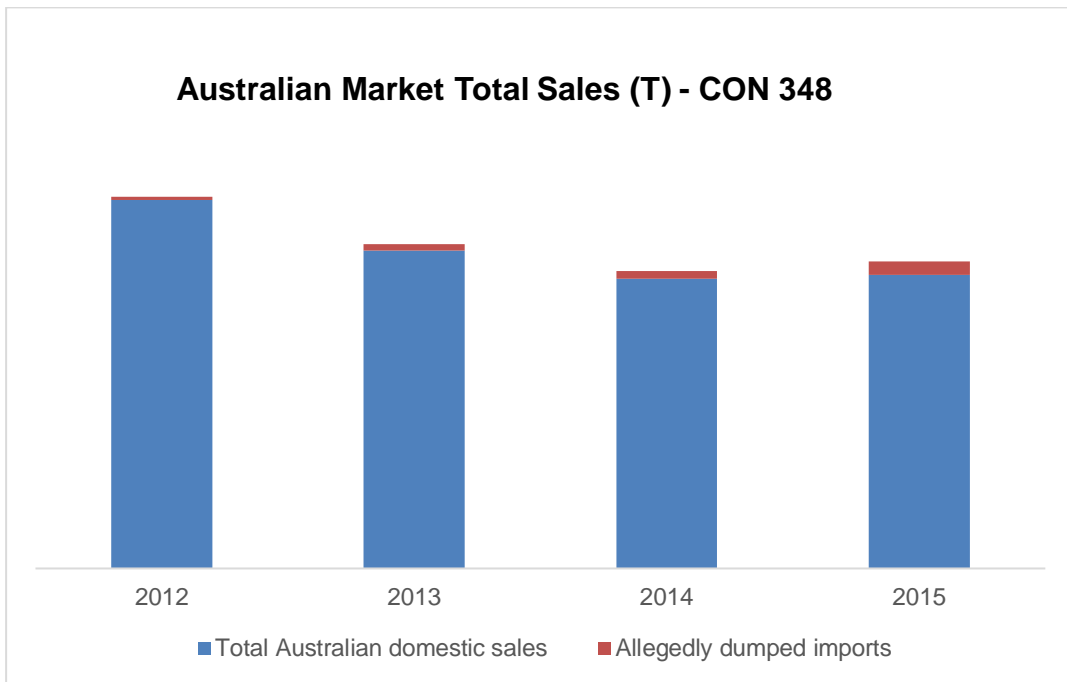


Figure 7: Total Australian market sales of quicklime

Figure 7 is a reflection of the entire Australian market (including estimates of other locally manufactured quicklime) and the share of allegedly dumped imports. The Commission observes that although the percentage of allegedly dumped imports had increased, these allegedly dumped imports captured a small proportion of the total Australian market.

As a result of verification visits undertaken (and referred to above in Chapter 6), the Commission identified that one exporter in Malaysia was not dumping. Removing the total volume of quicklime exported from this exporter resulted in the dumped quicklime representing less than five per cent of the total Australian market in the 2015 year. The Commission revised Figure 7 to illustrate the share of imports that are not dumped and this is outlined in Figure 8 below.

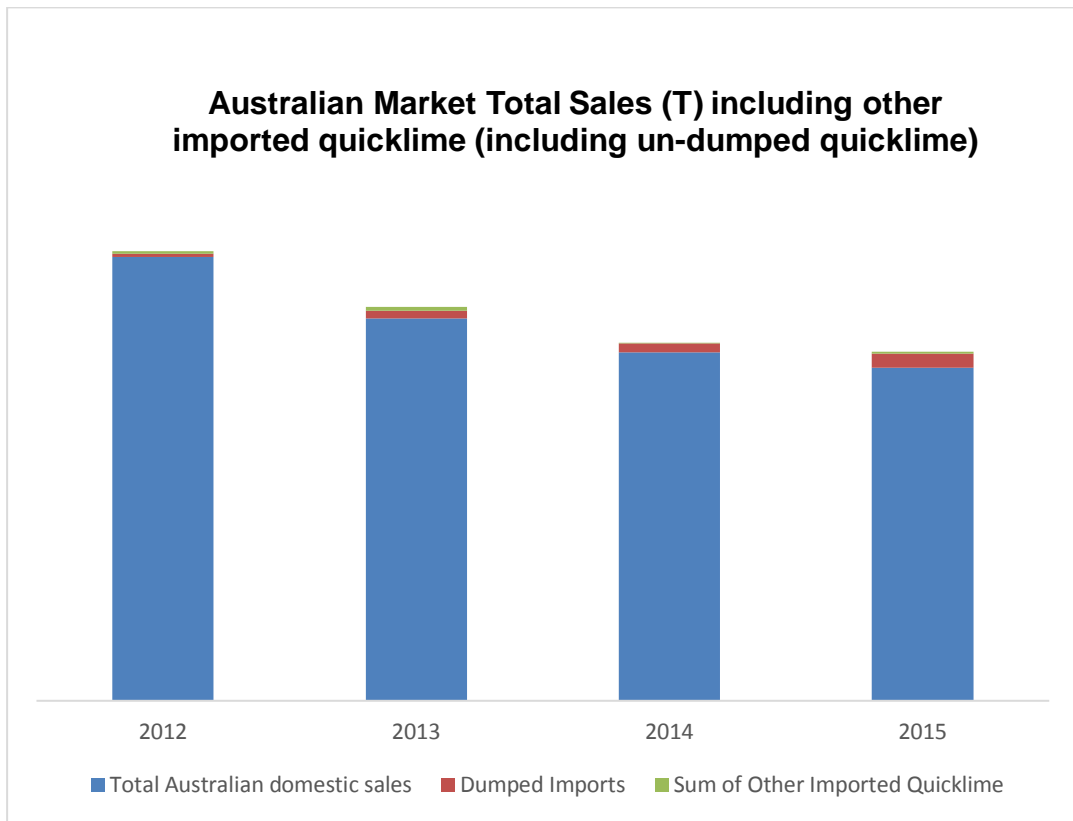


Figure 8: Total Australian market sales including other imported quicklime

As noted earlier, Cockburn Cement draws a distinction between quicklime sold into the alumina market and quicklime sold into the non-alumina market. Figure 9 below charts the share of dumped imports with Cockburn Cement’s sales of quicklime into the non-alumina market only.

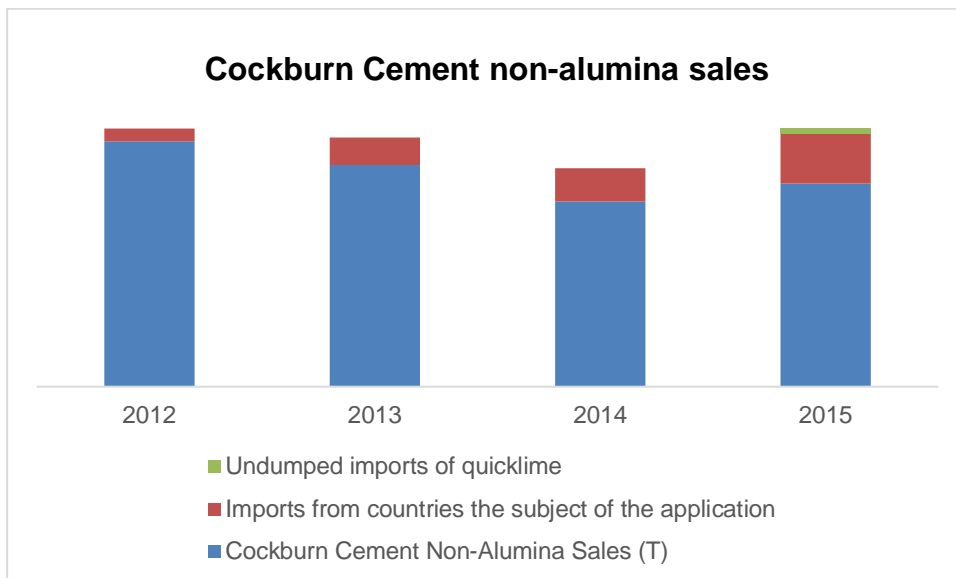


Figure 9: Comparison of Cockburn Cement’s sales into non-alumina sector with dumped & undumped imports of quicklime

The Commission observes that in the non-alumina market specifically, the share of allegedly dumped imports of quicklime is increasing each year,

The Commission concludes that while the share of dumped imports remains very small in the context of the total Australia market, when viewed as a proportion of the non-alumina market in Western Australia the share is slightly greater. The Commission notes that the level of dumped imports in 2015 has only increased by seven per cent (when compared to imports from those countries in 2014) as a percentage of the Western Australian non-alumina market.

7.5 Price suppression and depression

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 the margin between prices and costs.

Figure 10 below charts the unit price and unit CTMS for all quicklime sold by Cockburn Cement over the course of the injury analysis period.

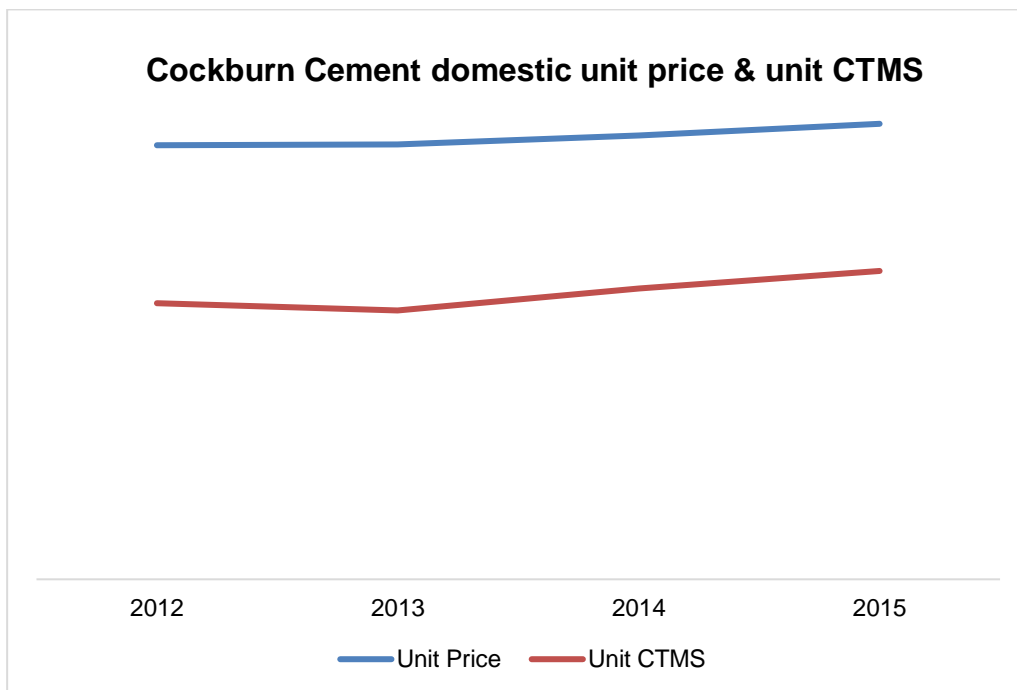


Figure 10: Cockburn Cement unit selling price and unit cost to make and sell for quicklime

Figure 10 shows that Cockburn Cement's unit selling prices exceeded its unit cost to make and sell during the injury analysis period. This analysis is for the sale of all quicklime products, regardless of the specific market it is sold into. The Commission observes that the amount by which prices exceeded costs (i.e. the margin) has remained relatively consistent from the 2013 year onwards.

Figure 11 below shows the movements in weighted average net unit prices (per tonne) and unit cost to make and sell (CTMS) (per tonne) for quicklime produced by Cockburn Cement's Dongara plant, over the injury analysis period.

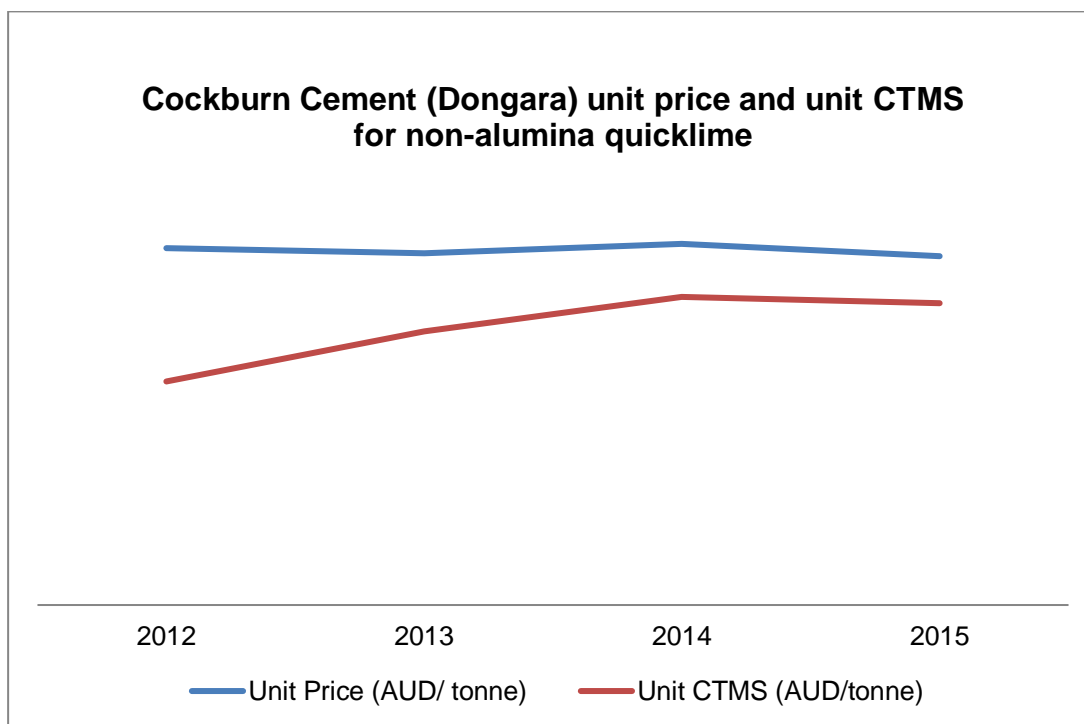


Figure 11: Cockburn Cement (Dongara) unit selling price and unit CTMS

Figure 11 shows that the unit selling price for quicklime into the non-alumina sector from Dongara exceeded its unit CTMS during the injury analysis period. The amount by which prices exceeded costs (i.e. the margin) has decreased since the 2012 year. The Commission observes that the unit selling price for quicklime into the non-alumina market has been steady over the course of the injury analysis period, with no significant movement.

The Commission concludes that while there has been a minimal change in the unit price and CTMS for all quicklime for Cockburn Cement, there is has been a reduction in the amount by which prices exceed costs in the non-alumina market. Despite this, sales into the non-alumina market from Dongara remain profitable.

7.6 Profits and profitability

Cockburn Cement relied on the information presented in its application to explain the injury to its profits and profitability. Cockburn Cement does not claim injury to its sales into the alumina market as these are subject to long-term contracts, but claims injury has been suffered to its non-alumina sales, and more specifically to the Dongara plant.

Figure 12 below outlines the total profit of Cockburn Cement sales of quicklime over the injury analysis period.

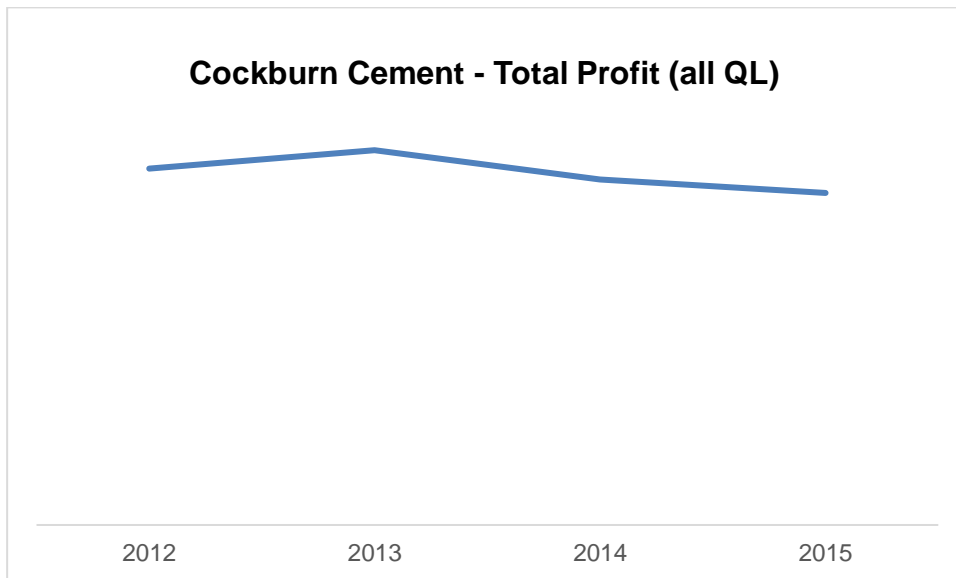


Figure 12: Total Profit of Cockburn Cement for sale of all quicklime

Figure 13 below outlines the sales revenue of Cockburn Cement's sales into the non-alumina market from the Dongara plant.

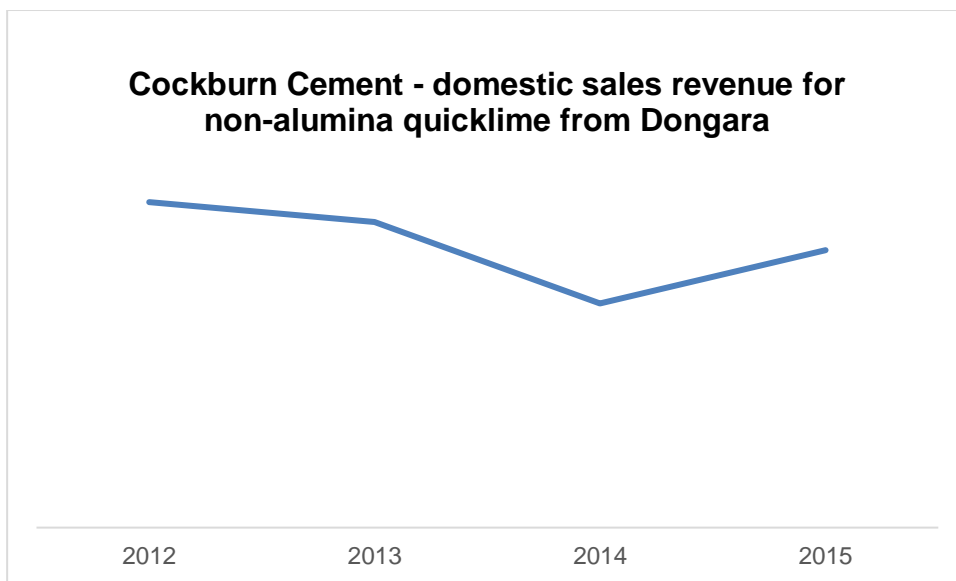


Figure 13: Sales revenue of Cockburn Cement for non-alumina sales from Dongara

The Commission observes from Figure 13 that over the course of the injury analysis period, the sales revenue of quicklime sold from Dongara into the non-alumina market has declined. However, during the investigation period there was an increase in sales revenue such that the level of revenue has returned close to the level in 2013.

Figure 14 below outlines the rate of profitability for the Dongara plant over the course of the injury analysis period.

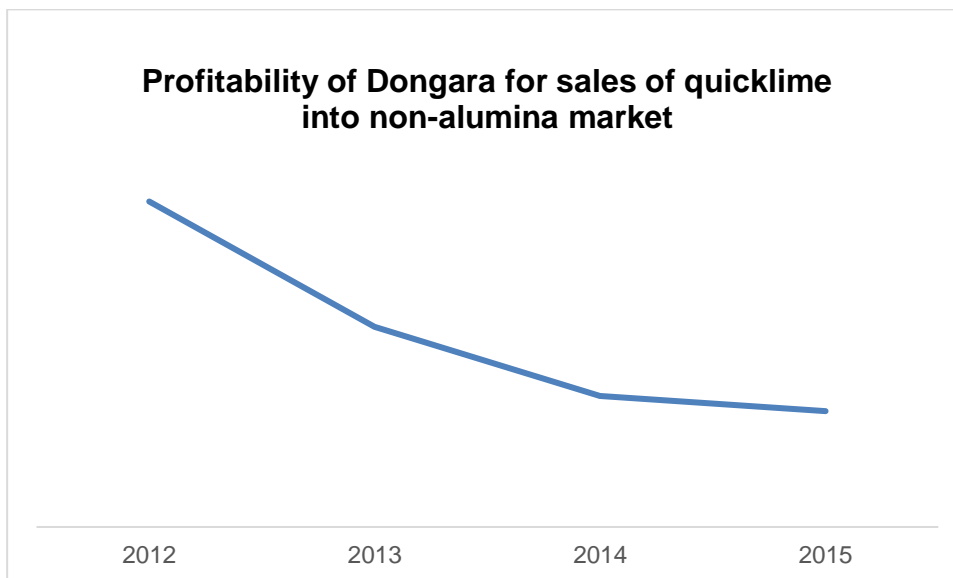


Figure 14: Profitability of Cockburn Cement for non-alumina sales from Dongara

The Commission observes from Figure 14 that over the course of the injury analysis period, the profitability of quicklime sold from Dongara into the non-alumina market has declined. From 2014 to 2015 the decline in level of profitability has steadied, representing approximately a one per cent decline from the level in 2012.

The Commission notes that despite this decline in profitability, Cockburn Cement was able to achieve profit and profitability in all four quarters during the investigation period, with the final quarter producing a profit similar to levels for the 2013 year.

The Commission concludes as follows:

- the level of profit for Cockburn Cement in relation to all quicklime remains steady;
- while there was a reduction in sales revenue in the 2014 year for Dongara, there was an increase in 2015 such that revenue returned to near 2013 levels; and
- profitability from Dongara has reduced during the injury analysis period but has steadied in 2015, with the Commission noting that profitability in the final quarter of 2015 matched profitability from the 2013 year.

7.7 Other economic factors

Cockburn Cement completed Confidential Appendix A7 for each financial year ending 30 June, for 2012 to 2015 to support its claims in terms of certain other injury factors. These claims have been outlined below.

7.7.1 Reduced Employment

In its application for measures, Cockburn Cement claimed that it had reduced employees (and wage expenses) in order to reduce total production costs to remain competitive against offers for imported quicklime. The Commission sought data specific to the Dongara plant in relation to the number of employees over the injury analysis period. As noted in the Australian industry verification report, the data showed that the number of employees in relation to quicklime had remained consistent going back to 2012 and that as a result, the impact on employee numbers as a form of injury was minimal.

7.7.2 Decreased Capacity Utilisation

In its application for measures, Cockburn Cement claimed it had suffered injury in terms of reduced capacity utilisation as sales volumes continued to decline. The Commission verified sales information for the Dongara plant and noted that the plant was below expected capacity. Cockburn Cement stated that if sales continued to decline and capacity utilisation decreased, there was a risk that this plant would be forced to close. Cockburn Cement stated that if Dongara were to close, it would not be able to service customers in the north of Western Australia, as the cost of transport would be too excessive to transport quicklime from the Munster plant. Cockburn Cement claims that these customers would, in effect, be lost customers.

Having received data for the first two quarters of the 2016 calendar year, the Commission notes that the sales volumes are projected to increase from the 2015 year, which may slightly increase capacity utilisation.

7.8 Finding

Based on the analysis of the information contained in the application and obtained and verified during the industry verification visit, the Commission considers that Cockburn Cement has experienced injury in the form of:

- reduced market share;
- price suppression;
- reduced profits;
- reduced profitability; and
- reduced capacity utilisation.

The Commission notes, as outlined above in section 7.3, that parts of this analysis is based on the injury claims specific to Cockburn Cement in Western Australia, and its Dongara plant.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Commissioner's assessment

The Commissioner is satisfied that during the investigation period, while certain exports of quicklime from Malaysia, Thailand and Vietnam were dumped, the injury to the Australian industry that has been caused by those exports is negligible.

8.2 Legislative framework

In any report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened. Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

The Commissioner has conducted this analysis in accordance with the *Ministerial Direction on Material Injury 2012*.¹⁸

8.3 Cumulative effects of exportations

Subsection 269TAE(2C) sets out the requirements for assessing the cumulative effects of goods exported to Australia from different countries. In relation to a dumping investigation, where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation), the cumulative effects of such imports may be assessed if:

- the margin of dumping established for exporters in each country, against whom the investigation has not been terminated under subsection 269TDA(1)(b), is not negligible; and
- the volume of imports from each country is not negligible; and
- a cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and between the imported goods and like goods that are domestically produced.

Having regard to the size of the dumping margins, the volume of imports and the conditions of competition between the goods exported from Malaysia, Thailand and Vietnam and like goods produced by Cockburn Cement, the Commission considers it

¹⁸ *Ministerial Direction on Material Injury 2012*, 27 April 2012, available at www.adcomission.gov.au.

appropriate to consider the cumulative effect of the dumped imports from all three countries in accordance with the requirements of subsection 269TAE(2C).

8.4 Price effects

In its application Cockburn Cement made the following claims regarding price effects:

- price injury has been to the non-alumina market specifically;
- it has provided specific examples of where it has lost sales to imported quicklime from Thailand and Vietnam, and claimed that these sales were undercut by dumped imports;
- it has provided specific examples of where it has reduced prices in response to lower prices offered by one importer

The Commission has considered each of these claims below.

8.4.1 Price undercutting

Selling prices over investigation period

Price undercutting occurs when an imported product is sold at a price below that of the Australian industry. The Commission verified sales data over the investigation period for Cockburn Cement as well as for each of the verified importers. The Commission calculated an ex-works price for Cockburn Cement for the investigation period, noting that it provided data for the sales of all quicklime and also for quicklime sold specifically into the non-alumina market. The Commission also calculated the comparable sales price for each of the importers based on verified data. The Commission compared these selling prices on a 100 per cent available lime content basis – which has required an uplift to each of the prices depending on the actual available lime content of each product. This is consistent with Investigation 179.

The uplift is necessary because in carrying out a price undercutting analysis the prices being compared need to be actually comparable. For example, a comparison of prices at a different level of trade would not be meaningful. The Manual addresses this issue where it states: “The Commission will undertake a price undercutting analysis that focuses on data that covers transactions made during the investigation period. This analysis compares the price of the imported goods with the sales price of the locally produced goods, ensuring that the transactions are made under the same conditions (e.g. timing, volume, discounts, delivery, credit, same customer etc.)”. In this case, the lime content differed between products being compared and this was considered to have an important effect on price. It was necessary therefore to account for this difference in the undercutting analysis. This analysis is contained in **Confidential Attachment 2**.

The Commission calculated weighted average selling prices, taking average prices over the full investigation period, on a per tonne basis. Based on the analysis of the verified data and the weighted average prices calculated, the applicant was not undercut by the dumped imports. The applicant stated that the price for quicklime sold into the non-alumina sector is greater due to increased costs at the Dongara plant, however the Commission notes that even when separating the price of quicklime sold into the non-alumina sector from all other quicklime sold by Cockburn Cement, which results in a higher per tonne price, the non-alumina prices are still not being undercut by the dumped imports.

Comparison with USP proposed by Cockburn Cement

On 12 September 2016 the Commission received a submission from Cockburn Cement in relation to the correct price to be considered for the purposes of establishing an unsuppressed selling price (USP). Cockburn Cement claims that for the period immediately preceding the investigation period, market selling prices were already influenced by the allegedly dumped exports from Malaysia, Thailand and Vietnam. Cockburn Cement submitted that prices from 2012 for sales into the non-alumina market, uplifted by 7.56 per cent to reflect changes in CPI, are suitable for calculation of the USP. While the Commission does not agree with this method of calculating the USP (as outlined in section 9.2 below), the Commission has applied the USP suggested by Cockburn Cement for the purposes of further analysis. The result of this method to calculate an USP, together with a comparison for the prices of the imported quicklime, is contained in **Confidential Attachment 2**.

The Commission observes that the average selling prices of imported quicklime from Thailand and Vietnam are above the USP proposed by Cockburn Cement.

Noting again that the Commission does not agree with the USP proposed by Cockburn Cement, the verified sales of imported quicklime from both Malaysian exporters are below the proposed USP, however the Commission does not take this as an indication of causation. As outlined in section 6.8 above, the Commission did not find dumping from Unichamp Mineral. In relation to RCI Lime, the Commission found that its prices are approximately 10 per cent lower than the USP and notes that the importer in Australia transports its goods using its own infrastructure – including ships, trucks and pneumatic tanks - to transport quicklime from Malaysia through to customers in Australia. As a result of this business model, the importer incurs much lower costs of transport than the applicant and other importers of quicklime face. This competitive advantage inevitably results in a lower selling price and the Commission is not of the opinion that this is indicative of material injury being caused by dumping. In addition, the Commission notes that the volume of imported quicklime from RCI Lime represents just over 10 per cent of total imported quicklime over the investigation period, and less than 4 per cent of the total non-alumina volume of Cockburn Cement.

Commission's calculation of USP/NIP

The Commission has determined a USP in accordance with the methodology outlined in section 9.2 below. From this, the Commission then deducted verified import costs in order to obtain a NIP for comparative purposes. The Commission compared the NIP for each respective exporter of the goods with the FOB export price. This analysis is contained in **Confidential Attachment 3**. For each of the exporters of quicklime during the investigation period, the FOB export price is above the NIP.

Based on the above the Commission does not consider the price effects claimed by Cockburn Cement to have been established. Based on the analysis of price effects the Commission does not consider material injury to have been caused as a result of price undercutting.

Submission received in response to SEF in relation to uplift of prices

Cockburn Cement submitted that quicklime sold into the Australian market is not sold on the basis of lime content. Cockburn Cement submitted that there is no requirement to supply customers with quicklime that is price adjusted to a 100 per cent available lime content, and that in making this adjustment the Commission is being inconsistent with the pricing behaviour of industry participants. Cockburn Cement submit that this adjustment must be reversed for the purposes of a true undercutting analysis.

Cockburn Cement further submit that it has experienced price undercutting, and provided a specific example to illustrate this.

The Commission's consideration

For the purposes of undercutting analysis, the Commission undertook an uplift of prices to reflect 100 per cent available lime, consistent with Investigation 179. The Commission notes that this uplift is based on the quality of quicklime from the Australian industry and the exported product, confirmed through verified specification sheets. Based on the verified data, Cockburn Cement's quicklime obtains the highest uplift in prices, as it has the lowest available lime content. Thus, given the Commission did not find undercutting based on the uplifted prices, it follows that undercutting could not occur if the actual selling prices were used. Nevertheless, the Commission undertook further analysis to confirm whether undercutting had taken place using weighted average selling prices over the investigation period. The Commission confirmed that the verified ex-works prices for each of the importers was higher than the USP determined by the Commission, regardless of whether the uplift factor is applied. This Commission further confirmed that the verified ex-works prices for each of the importers was higher than the USP suggested by Cockburn Cement.

Cockburn Cement provided one detailed example to illustrate the price reductions it was forced to make during the investigation period as a result of a tender process. The customer in this example sought a third-party auditor to compare the tender offer and Cockburn Cement's offer, for the purposes of exercising a price review and lowering its existing contracted price with Cockburn Cement. The Commission acknowledges that on the information presented, Cockburn Cement was required to lower its prices by approximately 5 per cent of the original price. This does not take into account any uplift of prices to reflect 100 per cent available lime content. The Commission notes that the example provided was a contract for the provision of approximately 1500 tonnes of quicklime per year, representing less than 1 per cent of the quicklime produced by Cockburn Cement in the 2015 year for the non-alumina market and less than 0.2 per cent of all quicklime produced by Cockburn Cement in 2015. The Commission does not conclude this one example of price reduction is indicative of material injury being suffered by Cockburn Cement.

Further discussion regarding this claim by Cockburn Cement is contained in the "Lost Sales" analysis below.

8.5 Volume effects

As discussed in Chapter 7, Cockburn Cement experienced a slight decline in sales volume over the injury analysis period. The Commission's analysis identified that during the investigation period:

- the dumped imports from Malaysia, Thailand and Vietnam represented less than five per cent of the total Australian quicklime market in the investigation period;
- the volume of dumped imports from these countries increased from the 2014 calendar year by 1.7 percentage points in the total Australian market;
- the volume of dumped imports from these countries increased from the 2014 calendar year by 2.8 percentage points as a part of the WA market specifically; and
- specifically in relation to the Dongara plant, the Commission observes a 28 per cent increase in Cockburn Cement's sales volume into the non-alumina market from 2014 to 2015, and based on data provided to the Commission for the first two quarters of the 2016 calendar year, sales volumes are expected to increase further.

The Commission notes that in an overall quicklime market in Australia which has remained relatively flat, it considers that the market share which Cockburn Cement has lost is immaterial, with figures indicating that although the volume of imports has slightly increased from 2014 to 2015, Cockburn Cement's own sales of quicklime into the non-alumina market have also increased.

8.6 Lost Sales

In its application Cockburn Cement provided seven specific examples of lost sales volumes to allegedly dumped imports. Cockburn Cement claims that the selling prices at which it lost the identified sales were undercut by the dumped imports. All of the examples provided by Cockburn Cement relate to competition with the same importer of the goods.

The Commission has considered each of these examples, noting that some tenders were lost in the 2013 year. Cockburn Cement stated during the Commission's visit that agreements in the non-alumina market are generally for periods of one to three years. The Commission notes that one example of lost sales volume was in late 2011, imports under which would, on the available information, have elapsed prior to the investigation period. For the remaining examples of lost sales volume, most of which were lost in the 2013 year, the Commission is unable to determine whether dumping had occurred or whether prices were undercut in the years prior to the investigation period. The Commission can, however, analyse whether prices have been undercut for those agreements which continued into the investigation period.

The Commission has considered each of the remaining six examples of lost sales volume, on the assumption that the agreements continued during the investigation period. The Commission was able to verify the prices at which the importer of the goods was selling to the respective customers for four of the remaining six examples. In each example the Commission determined an ex-works price from the importer's facility for comparison to the ex-works price of Cockburn Cement. Again uplifting these figures to reflect 100 per cent available lime content, the Commission determined that in none of the

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four examples were Cockburn Cement's prices undercut. The prices for the importer remained over 10 per cent higher than Cockburn Cement's prices and in some examples considerably greater. The Commission notes that even without the uplifting of prices, no undercutting is present in these four examples.

The Commission has also considered the volume that these lost sales represented to Cockburn Cement, with the analysis separated into the Munster and Dongara plants respectively. Although in 2013 the volume of lost sales represented just under 20 per cent of the total sales volume from Dongara into the non-alumina market in that year, the Commission notes that after a decline in sales volume in 2014, in 2015 the sales volume from Dongara returned to near the 2013 levels. In relation to Munster, each of the lost sales represented less than 6 per cent of the total volume of non-alumina quicklime sold from Munster in the respective years. The Commission notes that even if these lost sales all continued into the investigation period, the total volume of those lost sales would represent 3 per cent of Cockburn Cement's total quicklime sales, and 2 per cent of the total Australian industry. This analysis is contained in **Confidential Attachment 5**.

Cockburn Cement also provided three examples of where it allegedly had to reduce selling prices in order to obtain specific customers, claiming that this was done in response to price offers for imported quicklime that undercut Cockburn Cement's prices at the time. In 8.4.1 the Commission acknowledges that Cockburn Cement was able to provide evidence of one example of a lower price being offered by one of the importers of quicklime. In the remaining two examples the Commission does not consider there to be sufficient evidence to illustrate that price depression has occurred. Based on the verified weighted average prices the Commission found during the investigation, the Commission does not consider the claim of prices to be undercut during the investigation period to be accurate.

Submission regarding continued impact of dumped imports from Cockburn Cement

Cockburn Cement provided a further submission in relation to the continued impact of dumped imports, the public version of which was placed on the Commission's public record on 20 September 2016. Cockburn Cement referred to a tender process it had lost to the allegedly dumped imports, and provided details regarding the pricing proposals which it claimed had undercut its own prices. The Commission contacted the successful party to the tender and obtained details regarding its pricing proposals. Based on the data obtained there is no evidence of price undercutting contributing to lost sales volume.

Based on the above the Commission considers that the injury due to lost sales volume is negligible.

Submission in response to SEF in relation to lost sales volume

Cockburn Cement submits that the injury attributable to the dumped goods is reflected in its lost sales volume, and provided information regarding this. This information had previously been provided to the Commission in Cockburn Cement's application and also during the investigation.

The Commission's consideration

The Commission has considered each of the lost sales above, noting particularly that the Commission was able to establish, with respect to a recent lost sale outside of the investigation period, that there was no evidence of price undercutting contributing to the lost sale. As noted above, the Commission considers the loss of sales volume experienced by Cockburn to be expected in the normal ebb and flow of business.

8.7 Injury caused by factors other than dumping

Subsection 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than the dumped goods. During the investigation, the Commission considered each of the following possible causes of injury:

- chemical quality of quicklime; and
- competitive nature of the market.

8.7.1 Chemical quality of quicklime

Throughout the course of the investigation the Commission was able to obtain specification sheets for the quicklime manufactured by Cockburn Cement, as well as by the cooperative exporters. These specification sheets outlined the content of available lime in the quicklime, with the Commission noting it is the available lime content that determines the quality of a particular volume of quicklime produced. The Commission noted that the quicklime manufactured by Cockburn Cement has the lowest available lime content when compared with the imported products. A table summarising the available lime content is contained in **Confidential Attachment 2**.

The Commission notes that due to the lower available lime content in the quicklime manufactured by the Australian industry, customers may need to purchase a greater volume of quicklime in order to meet their processing needs (in both the alumina and non-alumina markets). It would normally be anticipated that customers would pay a higher price for a product that is of a slightly better quality in terms of available lime content. Nevertheless, the Commission accounted for the difference in lime content in its undercutting analysis by uplifting all figures to represent 100 per cent available lime content.

8.7.2 Competitive nature of the market

As noted in its application for measures to be imposed, Cockburn Cement is the only manufacturer of quicklime in Western Australia. During the course of the investigation, and as shown in several of the importer verification reports available on the public record, several importers reiterated the views from customers that for many years they had sought alternative sources of quicklime other than Cockburn Cement. The concern expressed was that Cockburn Cement had a monopoly on the quicklime market in Western Australia, with no other local manufacturers and with the high cost of freight making it unfeasible for manufacturers in the eastern States to transport quicklime to Western Australia. When imports of quicklime appeared on the market, this inevitably had an impact in that there was now a need for competitive pricing. The Commission considers it reasonable that in moving to a competitive market there has been a loss of

some sales volume. The Commission considers this loss of sales volume to be expected in the normal ebb and flow of business.

8.8 Findings

In conclusion, the Commission has found that:

- in considering the ex-works selling price of quicklime sold into the non-alumina market by Cockburn Cement, the comparable price for each of the importers is not undercutting Cockburn Cement's prices;
- the Commission calculated an USP and deducted verified costs to determine a NIP, and for each of the exporters of quicklime during the investigation period, the FOB export price is above the NIP; and
- although increasing in volume, the rate of increase of dumped imports is small, and the sales of quicklime by Cockburn Cement into the non-alumina market increased during the investigation period, with figures provided by Cockburn Cement for the first two quarters of the 2016 period indicating that these sales will increase again.

The Commissioner is also satisfied that injury from other factors has contributed to Cockburn Cement's injury. These other factors include:

- a market preference for quicklime sourced from other sources, which has a higher available lime content; and
- the nature of the quicklime market in Western Australia moving from monopoly supply to a competitive market.

9 NON-INJURIOUS PRICE

9.1 Assessment of NIP

The Commission has determined a NIP by first calculating an USP taking the CTMS for Cockburn Cement and including profit from the 2012 calendar year. The Commission has then deducted verified import costs to deduce the NIP. These deductions are necessary in order to bring the price back to a FOB level. An analysis of how the NIP compares to the FOB export price for each exporter is contained in section 8.4.1 above.

9.2 Discussion

The Commission generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This is referred to as the USP. The preferred approach of the Commission to establish the USP observes the following hierarchy¹⁹:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry CTMS plus profit; or
3. selling prices of un-dumped imports.

As noted above in section 8.4.1, Cockburn Cement submitted that the USP should be calculated using 2012 prices for quicklime sold into the non-alumina market from Munster and Dongara, uplifted by the CPI.

The Commission notes that under the first step of the hierarchy above, the selling prices of the industry should come from a time which is unaffected by dumping. The Commission notes the previous investigation in relation to quicklime dumped from Thailand was in relation to the investigation period from 1 July 2010 to 30 June 2011. The then ACBPS established that dumping had occurred during the investigation period, and this was first stated on the public record on 19 March 2012. In addition to this, the Commission notes that in its application for measures, Cockburn Cement refers on several occasions to the impact of dumped imports in the 2012 year.

The Commission does not consider that 2012 is a period unaffected by dumping and therefore does not consider that Cockburn Cement's selling prices from that period are suitable for the purposes of determining an USP.²⁰ Further, and as noted in the Manual at page 130, selling prices no older than five years are generally used. The Commission does not consider prices from the 2010 or 2011 years suitable, as dumping had been confirmed in the 2011 financial year, and any prior period is dated.

The Commission has therefore proceeded to the second step in the hierarchy and taken a weighted average of the verified industry CTMS from the investigation period. This cost is specifically for the sale of quicklime into the non-alumina market, which is the market for which Cockburn Cement claims injury.

¹⁹ Refer to page 129 of the Manual.

²⁰ Note that this is discussed in further detail below in response to a submission from Cockburn Cement.

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Following the Commission's practice in relation to determining a reasonable amount of profit to be added to the verified CTMS, the first step is to consider a weighted average profit rate achieved by the industry in the most recent period unaffected by dumping, with a preference for a one year minimum. Where this is not possible, the Manual states that a profit rate from the Australian industry's similar category of goods can be used, where this data is verified. Where neither of these options is suitable, the Commission can then consider a profit rate based on return on investment, or from appropriate profit surveys.

The Commission considers a profit rate from the 2012 calendar year to be the most suitable for the purposes of calculating a USP. The Commission notes that while this period may be affected by dumping, as alleged by Cockburn Cement, this data remains the most appropriate for use for the purposes of this analysis. The Commission notes that Cockburn Cement did not provide data for a period prior to 2012 where the data is divided into sales for the alumina and non-alumina market. Based on the information on hand for the years prior to 2012, the profitability is based on total quicklime sales (that is, the data for years prior to 2012 did not distinguish between sales for the alumina and non-alumina markets and this is a limitation on using the data from these years).

In addition, the Commission has not verified data based on sales of a similar category of goods by Cockburn Cement. Further, the Commission does not have data with regard to return on investment or from profit surveys. The Commission does have data for the injury analysis period, and while the level of allegedly dumped imports increases over the injury analysis period its lowest level occurred in the 2012 year. Given the circumstances the Commission considers the reasonable rate of profit to be applied is taken from the 2012 calendar year, noting that on the available information this level of profit is the highest for the years for which the Commission has obtained data.

Having calculated the USP based on the above methodology, the Commission then deducted verified costs relating to each respective importer's profit and SG&A costs, as well as other verified import costs. This then provided a NIP for each exporter (on an annual basis) and the Commission then undertook analysis to compare this with the weighted-average FOB export price of quicklime from each of the exporters. This analysis is contained in **Confidential Attachment 3** and is outlined in section 8.4.1 above.

Submission in response to SEF in relation to non-injurious price

Cockburn Cement submits that the 2012 selling prices for quicklime cannot be disregarded as the starting point for determining the USP. Cockburn Cement submits that the Commission's first preference in deriving the USP is to use market selling prices and that the Commission can take into account inflation in calculating the USP. Cockburn Cement submits the correct methodology is to take the 2012 market selling price and adjust for CPI.

The Commissioner's consideration

While the Commission acknowledges, as noted in the hierarchy above, that industry selling prices are the starting point in determining the USP, these must be from a time unaffected by dumping. The Commission reiterates the points made in the SEF, primarily that the then ACBPS established that quicklime from Thailand was dumped during the investigation period in Investigation 179 (1 July 2010 to 30 June 2011), a decision that was placed on the public record on 19 March 2012. Further, in its submission in response

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to the SEF, Cockburn Cement do not address the repeated references in their application for measures to the impact of the allegedly dumped quicklime in the 2012 year. Based on these two points, the Commission cannot conclude that the 2012 period is unaffected by dumping and has therefore proceeded to the second step in the hierarchy – to construct industry prices. The Commission has also analysed the result if the USP proposed by Cockburn Cement was used, and this is discussed in section 8.4.1 above.

10 CONCLUSION

Section 269TDA outlines when the Commissioner must terminate an investigation.

Based on the findings outlined in this Report the Commissioner has terminated the investigation:

- in so far as it relates to quicklime exported by Unichamp Mineral from Malaysia in accordance with subsection 269TDA(1)(b), as the Commissioner is satisfied that no dumping occurred; and
- in accordance with subsection 269TDA(13A)(b) for the remaining exports from Malaysia and all exports from Thailand and Vietnam, because the Commissioner is satisfied that the injury to the Australian industry, that has been, or may be, caused by dumped exports from those countries, is negligible.²¹

²¹ Note that subsection 269TDA(13A) must be read in conjunction with subsection 269TDA(14B) regarding cumulative assessment of injury.

11 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Analysis of Injury
Confidential Attachment 2	Analysis of Price Undercutting
Confidential Attachment 3	USP and NIP Analysis
Confidential Attachment 4	Deductive Export Price for Vietnam
Confidential Attachment 5	Lost Sales Volume Analysis
Appendix 1	List of Submissions received

APPENDIX 1

Date Received	Submission from	Subject of submission	EPR No.
22/05/2016	Chememan Company Limited	Response to original application for the publication of a dumping duty notice	5
03/06/16	Lhoist (Malaysia) Sdn Bhd	Response to original application for the publication of a dumping duty notice	12
12/06/16	Chememan Company Limited	Further submission in response to application for dumping duty notice	13
28/07/2016	Cockburn Cement	Submission regarding merits of application and material injury	16
16/08/2016	Chememan Company Limited	Submission regarding material injury	18
12/09/2016	Cockburn Cement	Submission regarding unsuppressed selling price	24
12/09/2016	Cockburn Cement	Submission regarding exporter visit to RCI Lime Sdn Bhd	25
14/09/2016	Chememan Company Limited	Submission regarding Australian industry and material injury	26
19/09/2016	Cockburn Cement	Submission regarding material injury	28
20/09/2016	RCI Lime Sdn Bhd	Submission regarding calculation of dumping margin	29
03/10/2016	Cockburn Cement	Submission regarding exporter visit to Chememan Thailand	30
27/10/2016	RCI Lime Sdn Bhd	Response to publication of SEF	34
28/10/2016	Lhoist (Malaysia) Sdn Bhd	Response to publication of SEF	35
31/10/2016	Cockburn Cement	Response to publication of SEF	36

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12/11/2016	Chememan Company Limited	Response to publication of SEF. The Commission notes that although this submission was received after the due date for submissions in response to the SEF, no new evidence or arguments were raised for the Commission to consider.	37
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