Australian Government
Australian Customs and Border Protection Service

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NO. 179A

QUICKLIME EXPORTED FROM THAILAND

19 March 2013

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2 ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
Customs Regulations	*Customs Regulations 1926*
FOB	free on board
Injury analysis period	From 1 January 2008
Investigation 179	the original investigation into quicklime exported to Australia from Thailand.
Investigation 179A	this resumed investigation into quicklime exported to Australia from Thailand
Investigation period	1 July 2010 to 30 June 2011
SEF	statement of essential facts
SEF179	SEF for Investigation 179, issued on 16 February 2012
SEF179A	This SEF for the resumed Investigation
TER179	Termination Report 179, in relation to the termination of the investigation due to a finding of negligible injury caused by dumping
the Act	the *Customs Act 1901*
the Delegate	the Delegate of the CEO of Customs and Border Protection for the resumed investigation
the goods	the goods the subject of the application
the Minister	the Minister for Home Affairs
TMRO	Trade Measures Review Officer

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3 SUMMARY AND RECOMMENDATIONS

This resumed investigation is in response to:

- An investigation following an application by Cockburn Cement Limited (Cockburn Cement) for publication of a dumping notice in relation to quicklime exported to Australia from Thailand;

- A decision by a delegate of the Chief executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) to terminate that investigation in accordance with s.269TDA(14) of the *Customs Act 1901*;[1]

- an application by Cockburn Cement to the Trade Measures Review Officer (TMRO) for review of that termination decision; and

- a decision by the TMRO to revoke the termination decision.

This statement of essential facts (SEF) sets out the facts for the resumed investigation (investigation 179A) on which the CEO proposes to either again terminate the investigation, or base recommendations to the Minister in relation to the original application.

3.1 Preliminary findings

Customs and Border Protection has reconsidered the findings of Investigation 179.

Following this reassessment, the delegate makes the following preliminary findings:

- quicklime from Thailand was exported at dumped prices during the investigation period;

- however, the dumped exports caused negligible injury to the Australian industry;

- even if injury from an earlier period was taken into account, and dumping was found for that earlier period, the dumped exports would have caused negligible injury to the Australian industry; and

- there is no threat of injury to the Australian industry.

Customs and Border Protection seeks comments from interested parties on the preliminary findings expressed herein. Subject to those submissions, the delegate

[1] A reference to a legislative decision, section or subsection in this SEF is a reference to a provision of the *Customs Act 1901* unless otherwise specified.

will determine whether to again terminate the investigation or alternatively prepare a report for the Minister.

3.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Minister.

Note: this resumed investigation has been assigned to a different delegate of the CEO to that for Investigation 179.

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4 BACKGROUND TO THE RESUMED INVESTIGATION

4.1 Initiation – Investigation 179

On 6 October 2011, Cockburn Cement lodged an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of quicklime exported to Australia from Thailand. The applicant subsequently provided further information in support of its application. As a result, Customs and Border Protection restarted the 20 day period for considering the application on 19 October 2011.

Following an examination of the application, the CEO decided not to reject the application and an investigation into the alleged dumping of quicklime exported to Australia from Thailand was initiated on 31 October 2011. Public notification of initiation of the investigation was made in *The Australian* newspaper on 31 October 2011. Australian Customs Dumping Notice No. 2011/53 provides further details of this investigation and is available at www.customs.gov.au.

The investigation period was 1 July 2010 to 30 June 2011. The injury analysis period was from 1 January 2008 for the purpose of analysing the condition of the Australian industry.

4.2 SEF 179

The SEF was placed on the public record on 20 February 2012. In formulating the statement of essential facts, the CEO had regard to the application concerned, any submissions concerning publication of the notice that were received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant.

Interested parties were invited to respond to the statement of essential facts by 12 March 2012. Submissions were received from Chememan Co. Ltd and Cockburn Cement. These submissions are outlined in section 9.6 of the termination report (TER179) and were considered by Customs and Border Protection in preparing the report.

4.3 TER 179

Customs and Border Protection published TER179 in April 2012 setting out its findings and conclusions in relation to exports from Thailand and reasons for the decision to terminate the investigation.

In TER179, Customs and Border Protection found:

- quicklime from Thailand was exported at dumped prices during the investigation period;
- the dumped exports caused negligible injury to the Australian industry; and
- material injury was not threatened to the Australian industry because of the exportation of the goods into the Australian market.

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The termination was publicly notified in *The Australian* newspaper on 3 April 2012, and TER179 was place on Customs and Border Protection's website.

4.4 Appeal to the TMRO and revocation of termination

On 27 April 2012, the applicant applied to the TMRO to review the termination decision. There are two markets in Australia for use of quicklime, namely the alumina market and the non-alumina market. The application for review concerned the non-alumina market only. The TMRO accepted the application and conducted a review.

Following consideration of Cockburn Cement's application for review, the TMRO revoked the decision to terminate the investigation. The TMRO's decision was published in *The Australian* on 25 June 2012. The report outlining the TMRO's reasons for the decision was made available on the Australian Attorney-General's web site.

The effect of the TMRO's revocation is a resumed investigation requiring Customs and Border Protection to publish this SEF (SEF179A).

4.5 Responding to SEF179A

SEF179A represents an important stage in the resumed investigation. It informs interested parties of the facts established and allows them to make submissions in response.

It is important to note that SEF179A may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to SEF179A, and the delegate will consider these responses in making a final determination. Responses should be received by Customs and Border Protection no later than **8 April 2013**.

Under s.269TEA(4) of the Act, if it is determined that a final report should be prepared for the Minister, the delegate is not obliged to have regard to any submission made in response to this SEF received after DATE if to do so would, in the opinion of the delegate, prevent the timely preparation of Customs and Border Protection's final report.

Submissions in response to SEF179A should be emailed to itrops2@customs.gov.au. Alternatively they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 2
International Trade Remedies Branch
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Submissions containing confidential information must be clearly marked accordingly and a non-confidential version of any such submission is required for inclusion on the investigation 179A Public Record.

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A guide for making submissions is available at the Customs web site (follow the links to: Anti-Dumping > Reference Material > Guidance for Submissions).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection visit reports and other publicly available documents. It is available by request in Canberra (phone 02 6275 6547) or online at http://adpr.customs.gov.au/Customs/. This SEF should be read in conjunction with documents on the public record.

4.6 Previous Cases

There are currently no anti-dumping measures on quicklime. There have been no previous investigations in relation to quicklime.

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5 TMRO'S FINDINGS IN RESPECT TO TER179

5.1 TMRO's findings

The TMRO published a report outlining the reasons for the decision to revoke Customs and Border Protection's decision to terminate the investigation into quicklime exported to Australia from Thailand.[2]

Customs and Border Protection has assessed the conclusions and directions of the TMRO, published in his report, during the resumed investigation.

5.2 Approach to the resumed investigation

Customs and Border Protection has identified that the TMRO has only referred certain matters (raised by Cockburn Cement in its application for review of the termination decision) for reconsideration during the resumed investigation.

However, as this investigation is a resumed investigation and not a reinvestigation, Customs and Border Protection considers that it is not limited only to reassessing those matters referred back by the TMRO. Rather, Customs and Border Protection is able to re-examine all aspects of the original investigation's findings insofar as they relate to the decision to terminate the investigation.

Noting the above, Customs and Border Protection has received submissions from interested parties during the resumed investigation that address only those matters identified by the TMRO warranting further consideration.

A complete listing of the submissions considered within the resumed investigation can be found at **Appendix 1** to this SEF.

Consequently, the approach of this SEF is to address those matters referred back to Customs and Border Protection by the TMRO for reconsideration. Customs and Border Protection has also reviewed the submissions, information gathered, and determinations made during Investigation 179 where considered warranted, and discusses these throughout this SEF.

Chapters 4 (goods and like goods), 5 (Australian industry), 6 (Australian market), 7 (dumping), 8 (economic condition of the industry) and 9 (non-injurious price) of TER179 should be read in conjunction with this report. No findings in these chapters have changed as a result of the resumed investigation.

[2] Decision of the Trade Measure Review Officer, review of a termination decision, APPLICATION OF COCKBURN CEMENT PTY LTD, 25 June 2012.

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6 SUBMISSIONS IN RESPONSE TO RESUMED INVESTIGATION

Upon resumption of this investigation Customs and Border Protection sought submissions from interested parties regarding the claims made in the TMRO's report. Submissions were received from the following parties:

- Roger Simpson & Associates on behalf of Cockburn Cement Ltd (Australian industry)
- Clayton Utz on behalf of Alcoa of Australia Ltd (importer)
- Moulis Legal on behalf of Chememan Company Ltd (exporter)
- Department of Foreign Trade (Thai Government)

Arguments against the extension of the investigation period were provided by all parties other than Cockburn Cement. Parties raised issues of potential breaches of international and domestic laws in addition to contradictions to established case law precedents.

The following specific points were raised as part of the submissions:

- (Thai Government & Moulis Legal) The TMRO's recommendation to amend the investigation period or have regard to the extended period is a significant departure from the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade ("the Anti-Dumping Agreement") and the common interpretation and implementation by Members of this Agreement. To proceed this way would be a clear breach of Australia's international law obligations. In addition to this, to follow the recommendation would also be in breach of Australian laws in respect of Article 1 of the Anti-Dumping Agreement, which provides that:

  an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement.

- (Thai Government & Moulis Legal) The revocation of the no-injury finding by the TMRO, and any renewed investigation, using information which is now over 2 years old could not be said to be relevant and pertinent to the 'current situation'. Changed findings of material injury based on a resumed investigation of the type suggested by the TMRO could not lead to conclusions based on positive evidence as required by Article 3.1 of the Anti-Dumping Agreement. For example in *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*[3] the revocation of the no-injury finding by the TMRO, and any renewed investigation – using information which is now over

[3] WT/DS295/AB/R, 29 Nov 2005 (Appellate Body Report)

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two years old – could not be said to be relevant and pertinent to the 'current situation'.

- (Thai Government) "*Should the investigation period be changed in an attempt to "cherry-pick" a period as the best chance to protect the domestic industry, the Thai Government would have no choice but to urgently raise this matter with the WTO Committee on Anti-dumping practices as it would represent one of the most serious challenges to date to the fair, impartial and objective implementation of the Agreement*."

- (Moulis Legal) "*If Customs was to resume the investigation and deviate from its stated policy with regard to the length of the POI, on the off chance that doing so will make it more likely that dumping duties will be imposed, the impartiality and objectivity of the investigation would be called into question*."

- (Moulis Legal) The TMRO report suggested that section 269T(2AD) of the Act has some greater scope based on the fact that section 269TAB and section 269TAC do not limit the examination of export price and normal value by reference to the investigation period. The Full Court of the Federal Court of Australia expressly denied such an interpretation in *Pilkington*[4]. According to this case, sections 269TAB and 269TAC cannot be used to consider the normal value and export prices for a period outside the investigation period.

- (Moulis Legal & Clayton Utz) Sections 33(1) and (3) of the *Acts Interpretation Act 1901* do not operate in the way suggested by the TMRO. The period of investigation cannot be changed under these sections and the conclusion reached by the TMRO on this point is incorrect.

- (Clayton Utz) To change the investigation period would result in a breach of procedural fairness to other parties involved. Parties provided responses and submissions over the course of the original investigation addressing claims made in the initiating application, the SEF and issues paper by reference to the investigation period. There was a legitimate expectation that this was the period to address, not the 3 months prior.

- (Thai Government) Altering the investigation period to change the outcome in the domestic industry's favour would represent a serious challenge to the fair, impartial and objective implementation of the Anti-Dumping Agreement.

In support of its case Cockburn Cement raised the following points:

[4] Pilkington *(Australia Ltd v Minister of State for Justice & Customs) [2002] FCAFC 423*

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- There are no statutory provisions preventing Customs and Border Protection from determining the dumping status of imports of quicklime from Thailand for the period March to June 2010.

- The TMRO endorsed a finding of material injury prior to the investigation period.

- Customs and Border Protection was in error when selecting an investigation period that did not include the March to June 2010 period.

- During the investigation, Customs and Border Protection established no cause for Cockburn Cement's price reductions and lost revenue and profit reduction other than price undercutting by imports from Thailand.

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7 INVESTIGATION PERIOD

7.1 TMRO's view

The primary element of the grounds for review advanced by the applicant was that the outcome of the investigation was prejudiced by the investigation period being set as 1 July 2010 to 30 June 2011. The applicant argues that if Customs and Border Protection had taken account of its price reductions between March and June 2010, Customs and Border Protection would have found that the applicant had suffered material injury during this period, and that it was caused by the dumped exports.

The TMRO agreed there can be no presumption that goods exported prior to the investigation period are dumped goods.[5] However, the TMRO stated it was open to Customs and Border Protection to revisit the investigation period as part of the resumed investigation and extend the investigation period to include the period from March 2010 to June 2010 in its analysis.[6]

In the event the investigation period was not extended, the TMRO urged Customs and Border Protection to consider whether any injury suffered in the months outside the investigation period were as a result of dumping.[7]

7.2 Customs and Border Protection's approach

7.2.1 Policy regarding setting the Investigation Period

Customs and Border Protection is required to set an investigation period. The investigation period has a start and end date – events outside the investigation period are usually not taken into account when assessing dumping.[8] Customs and Border Protection's policy states that an investigation period will be nominated generally for a period of 12 months preceding the initiation date and ending on the most recently completed quarter or month. This is not an automated process. However, in the absence of submissions or facts arising during the initial phases of the investigation which suggest a 12 month period is unsuitable, Customs and Border Protection is likely to set a 12 month period. The period is in line with WTO obligations and best practice.

7.2.2 Facts of this case

In this case the 12 month period was set as the 12 month financial year period ending on 30 June 2011 prior to the initiation date in October 2011. This is in line with Customs and Border Protection's standard practice as demonstrated in other

[5] Decision of the Trade Measure Review Officer, review of a termination decision, Application of Cockburn Cement Pty Ltd, 25 June 2012, para 33.
[6] Ibid, para 35.
[7] Ibid, para 38.
[8] Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012, section 3.2

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dumping cases. It is also consistent with WTO guidelines - the WTO Committee on Anti-Dumping Practices formulated a recommendation at its meeting of 4-5 May 2000 that, as a general rule the period of data collection for dumping investigations (i.e. the investigation period) normally should be twelve months ending as close to the date of initiation as is practicable. The investigation period is established at the initiation of an investigation based on information provided in the application.

Meetings were conducted with the applicant and its consultant prior to initiation of the case to discuss the application and its parameters. The investigation period was known to be 12 months long and was not raised as an issue by the applicant or its representative. Through this process the applicant was provided the opportunity to address any concerns prior to the investigation period being established. All issues raised were addressed in the consideration report at the time of initiation.

7.2.3 Reasons why the investigation period should not be changed

Parties submitted that to alter the investigation period to provide a more favourable result to a particular party could bring into question Customs and Border Protection's unbiased approach to investigations.

An issue concerning procedural fairness may also arise if the investigation period were to be altered at this stage. The investigation period is notified to all parties at the initiation of an investigation. As pointed out in the submission from Clayton Utz, parties provided responses based on the parameters set at the initiation of the case. To alter the investigation period subsequently could lead to a breach of procedural fairness given the parties were not provided with an opportunity to respond to claims involving the additional time period.

In relation to linking injury outside the investigation period to dumping, both case law and legislation support the notion that the Minister should only have regard to information from the investigation period when determining whether or not dumping has occurred and deciding whether or not to impose measures.

In *Pilkington*[9] the full Federal Court held that even if other factors could be taken into consideration in making this decision, there is no obligation on the Minister to consider data outside of the investigation period when doing so.

In forming a conclusion in an investigation, Customs and Border Protection's policy is not to attribute injury that occurs prior to an investigation period to dumping. Injury can only be attributed to dumping during the established investigation period.[10] Section 269TACB of the Act states that when determining whether dumping has occurred, and the level of that dumping, the Minister must have regard to certain factors from the investigation period. There is no provision to include factors from

[9] *(Australia) Ltd v Minister of State for Justice & Customs [2002] FCAFC 423*
[10] Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012, section 21.2

outside of that period. Material injury must be linked to dumping, which by virtue of section 269TACB of the Act can only be established during the investigation period.

7.2.4 Conclusion

An investigation period is set to ensure reasonable comparison between export prices and the normal value. Based on the information received in the initial application and the pre-initiation meeting, Customs and Border Protection considers that the investigation period established in this case was reasonable in the circumstances and within these guidelines.

The delegate considers that due care was taken in the selection of the investigation period based on the information available at the time of initiation of the case and the applicant has suffered no injustice from the process. The appropriate investigation period was set on the basis that it was done so in line with existing policy and procedures and in accordance with WTO accepted practices.

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8 FURTHER INJURY ANALYSIS

8.1 Background

Whilst there is no requirement for Customs to consider data outside the investigation period when determining whether dumping has caused injury, for the purpose of addressing concerns raised by the TMRO and the applicant, Cockburn Cement, Customs and Border Protection has conducted further analysis. This additional analysis is to provide satisfaction to all interested parties that all relevant matters have been considered in Customs and Border Protection's decision to support its previous findings and proceed on that basis.

8.2 TMRO's view

The TMRO's view was:

'29. …the primary ground advanced by the applicant is that the delegate of the CEO of Customs would have found that the applicant had suffered material injury caused by the dumped exports if the investigation period had included the period between March and June 2010.

30. Subsequent to the meeting with the representatives of Customs, Customs have provided me with an injury analysis which covered the period between January 2010 and June 2011 based on material already available to Customs. The analysis concluded that an examination of the actual loss of revenue incurred by the Applicant during the period between January 2010 and June 2011 amounted to [redacted]% of revenue which in turn led to a reduction of [redacted]% in profit. In my view, these revenue and profit losses would be significant, and the CEO could be satisfied that they would constitute material injury for the purposes of s.269TG and 269TAE of the Customs Act.

31. However, in the absence of an investigation in to the export price and normal value in respect of a period commencing in January or March 2010, a conclusion cannot be drawn that the revenue and profit losses incurred by the Applicant during the extended period were caused by dumping. While the applicant has advanced propositions suggesting that the dumping margin of 48% found in respect of the investigation period would likely have been the same in the prior period, these propositions are not sufficient to found a final decision.'

8.3 Customs and Border Protection's approach in investigation 179

'10.4.2 During the injury period, Chememan's sales to the alumina sector did not undercut the price of Cockburn Cement's quicklime, but were significantly higher. Under the industry's argument these prices still depressed its prices due to the premium imported product could demand, as a result of its lower impurity levels. Industry gives not indication of how to calculate the premium reflective of the higher quality or even what it estimates is should be – but rather ascribes any price difference found to this factor.

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

In the non-alumina sector during the investigation period, the injury suffered by industry as it reduced its prices was immaterial. Injury that occurred outside this period cannot conclusively be linked to dumped imports.

In the alumina sector, the industry did not suffer injury in relation to price or volume and changes in contract conditions were found to be caused by factors other than dumped imports.'

8.4 Injury Analysis

Cockburn Cement claimed that the allegedly dumped exports of quicklime from Thailand have caused injury in the form of:

- loss of sales
- reduced market share;
- price undercutting;
- price depression;
- reduced sales revenue;
- reduced profits; and
- reduced profitability.

Customs and Border Protection has examined the data predating the investigation period under the assumption that the injury during that period was caused by dumping.

As Cockburn Cement had provided Customs and Border Protection its revenue and profit data in six months blocks, Customs and Border Protection has examined the period January 2010 to June 2011.

An examination of the actual lost revenue incurred by Cockburn Cement during this time shows that Cockburn suffered injury in the amount of [redacted]% as a percentage of revenue and an amount [redacted]% as a percentage of profit. Customs and Border Protection calculated that this resulted in a [redacted]% [less than 1%] loss in revenue for the Australian quicklime industry as a whole. Loss of profit to the industry as a whole cannot be determined due to lack of data.

There are three instances of price reductions for which the timing was unknown. In the calculation results noted above, Customs and Border Protection has assumed they occurred in April 2010. However, if they occurred prior to the entry of imports into the market they could therefore not be associated with the dumped product, and

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the resulting lost revenue would be [redacted]%, lost profit [redacted]% and lost revenue to the entire Australian industry would be [redacted]% [less than 1%].

8.5 Approach to determining material injury

In the TMRO's report, the TMRO noted that in his view these revised calculations represented a material level of injury to the Australia Industry. When examining the level of injury, the TMRO considered the level applicable to Cockburn Cement only.

On 27 April 2012, the Hon Jason Clare, Minister for Home Affairs released a Ministerial Direction on material injury[11], which directed:

Injury may be occurring in the part of the industry located in that region, without directly affecting the rest of the Australian industry. In this kind of 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*** *(emphasis added).*[12]

While it is possible to assess injury to one particular region in isolation from injury in other regions, any such injury must ultimately be considered in the context of material injury to the industry as a whole. Customs and Border Protection's policy states that to be consistent with the requirements of the legislation and any conclusions drawn from a sectoral analysis must explicitly be related back to the industry as a whole[13].

This is consistent with the findings of the Federal Court in *Swan Portland Cement Limited and Cockburn Cement Limited and The Minister for Small Business and Customs and The Anti-Dumping Authority G377 1990.*

The Ministerial Direction also specified that injury must be greater than that likely to occur in the normal ebb and flow of business:

In considering the circumstances of each case I direct that you consider that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

The consideration of the economic circumstances of the industry must be assessed as part of the findings of material injury in any case.

In addition, s269TAE(3) of the Act specifies, inter alia, the following economic factors as relevant to the determination of material injury:

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[11] Ministerial Direction on Material Injury 2012, Subsection 269TA(1) of the *Customs Act 1901*.
[12] Ibid.
[13] Dumping and Subsidy Manual, August 2012, p17

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- The quantity of goods manufactured in the industry
- Capacity utilization of the Australian industry
- The level of profits earned in the industry
- Level of return on investment in the industry
- Number of persons employed in the production of like goods
- Market share held by the Australian industry

In the case of quicklime, Cockburn Cement held a monopoly share in the Western Australian market. The entry of a competitor in the form of imports from Thailand created a period of uncertainty as the parties sought to gain or maintain (as the case may be), control of market share. Cockburn Cement's reduction in price came as a result of Chememan entering the market. In TER179 analysis showed that Cockburn Cement had reduced prices lower than necessary to compete with the new competition. In TER179 Customs and Border Protection found that there was no price undercutting in the alumina sector, and while there was undercutting in the non-alumina sector this was only when the analysis was done on available lime content and the injury caused by this undercutting was found to be immaterial.

TER179 also found that Cockburn Cement had not experienced injury in the form of any other economic factors, such as capacity utilisation or employment.

The entry of a competitor into the market is part of the ebb and flow of business. It can be expected that there will be some negative impact on a business that once held a monopoly in a particular market. However, since competition entered the market Cockburn Cement has stabilised its position and continued to trade at a profitable level, even increasing its output since competition entered the market[14].

Customs and Border Protection's position is that whilst the entry of Chememan into the Australian market did have some impact on Cockburn Cement's revenue and profit levels, the company was in a strong position from which it was able to continue trading at a profitable level.

The level of reduction in revenue, when examining the Australian industry as a whole, amounts to less than 1%. This result cannot be considered material injury. Whilst injury percentages were slightly higher for Cockburn Cement when examined on its own, when making an assessment of dumping levels and material injury, it is the Australian industry as a whole that must be considered.[15]

[14] Refer to commentary in section 8.7 on Adelaide Brighton's annual report
[15] Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012. Section 4.3, p.17.

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8.6 Customs and Border Protection's assessment in the resumed investigation

Customs and Border Protection has considered fully the TMRO's findings that inclusion of the extended period in analysis would result in a finding of material injury. Customs and Border Protection maintains that even with the inclusion of the addition period, the resulting injury to the Australian industry as a whole is less than 1% reduction in revenue and therefore not material. The particular injury suffered by Cockburn Cement was a result of the normal ebb and flow of business that is incurred when a competitor enters a once monopolistic market.

8.7 Future Threat

A review of data from Customs and Border Protection's import databases shows that imports from Thailand have not increased since the end of the investigation period. Overall the total imports of quicklime to Australia have decreased over the last 18 months. Throughout this period no measures have been in place, which indicates that measures are unwarranted as the future threat of increased import quantities that was perceived by the Australian industry has not been realised.

Note that in Figure 1 the figures for 2013 incorporate only the period July to December 2012, however if demand were to continue as is for the remainder of the 2013 financial year, total imports would not exceed those of the period of investigation, being 2011. This suggests that the imports remain those that are being used for trial purposes rather than the imports gaining an established foothold in the Australian market.

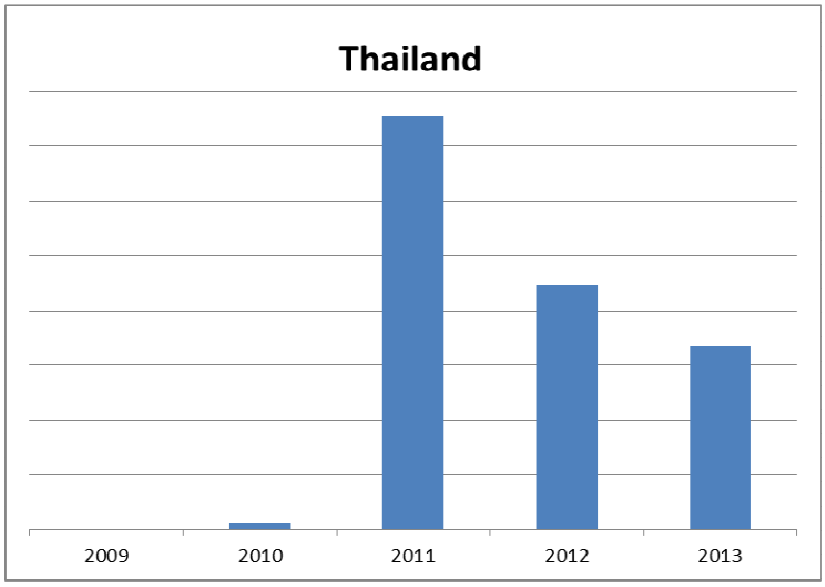

Figure 1: Imports of quicklime from Thailand in kilograms

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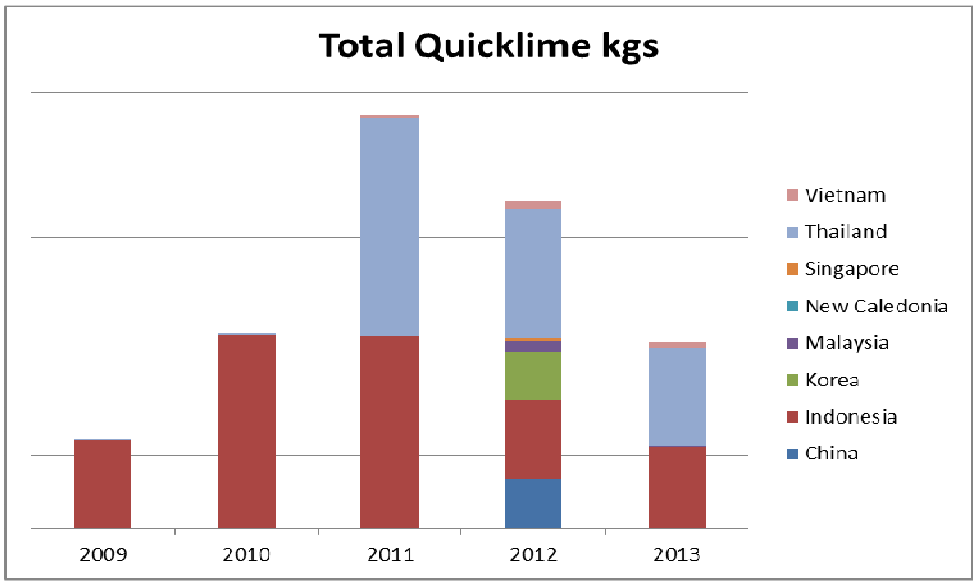

Figure 2: Total quicklime imports to Australia in kilograms

During the resumed investigation Cockburn Cement submitted that prices of quicklime imported from Thailand had reduced well below prices that were established during the original investigation period. Customs and Border Protection has analysed data from its database and disagrees with this assertion. As the graph below demonstrates, the declared prices per tonne of quicklime imported from Thailand have increased steadily over the past four years.

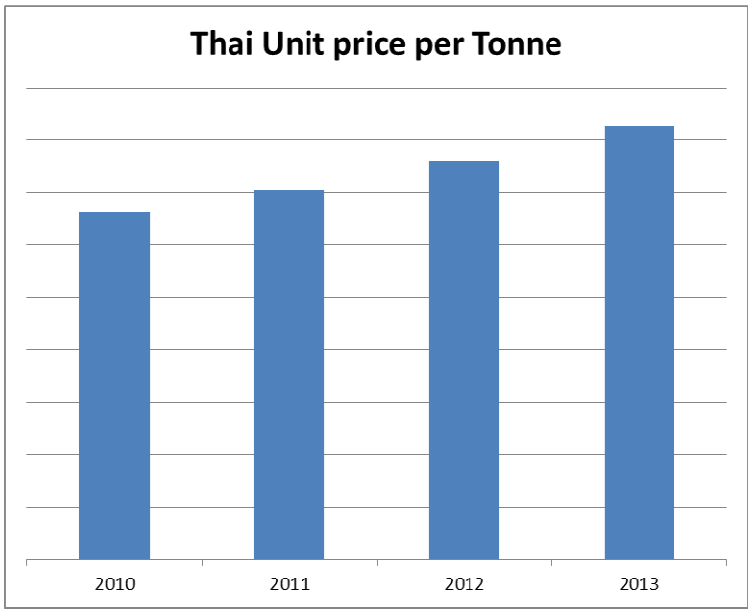

Figure 3: Australian FOB unit price per tonne of quicklime exported from Thailand.

We note that export prices of imports by Chememan Australia were calculated using a deductive export price during the original investigation. Customs and Border Protection does not have information relating to Chememan Australia's selling prices for the period after the original investigation, however Figure 3 shows the declared export price displays a general trend of price increase over the 4 year period examined. Of these prices Alcoa imports represented a significant proportion of the

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2011 and 2012 volumes, the remaining volume being imports by Chememan Australia.

Further to this analysis, Customs and Border Protection has considered the interim financial results summary released by Adelaide Brighton Ltd for the half year 30 June 2012 (**Non-confidential attachment 1**). This report prepared by Cockburn Cement's parent company indicates that demand for its lime products is still strong and future growth is expected. Production capacity is being increased to meet the increased demand. Formal supply agreements were executed in 2011 for periods ranging between five and ten years, "underpinning the long term position of the lime operations".

It appears that whilst the introduction of a new supplier into the market in the 2011 financial year did cause some uncertainty to the business, the long term negative effects have been negligible.

8.8 Customs and Border Protection's assessment of future threat

The threat of material injury caused by dumping was considered in the original investigation. No material has been presented in the resumed investigation to depart from the view that was expressed in TER 179.

Cockburn Cement has claimed that since termination of the investigation exports of quicklime from Thailand by Chememan have continued during 2012, and recently at a significantly reduced price. Information obtained from the Customs and Border Protection import database does not support these assertions and no evidence has been provided to the contrary to support the claims by Cockburn Cement. The analysis above shows there have been no significant price reductions in imported product from Thailand.

There is no evidence to suggest that there is a threat of material injury to the Australian industry that is foreseeable and imminent, unless dumping duties are imposed.

PUBLIC RECORD

9 Appendix 1

Submissions received in response to TMRO's decision:

Interested Party Type	Interested Party Name	Date received
Australian Industry	Roger Simpson on behalf of Cockburn Cement	21/08/2012
Exporter	Moulis Legal on behalf of Chememan Co. Ltd	21/08/2012
Importer	Clayton Utz on behalf of Alcoa of Australia Ltd	21/08/2012
Thai Government	Department of Foreign Trade, Thailand	21/08/2012
Australian Industry	Roger Simpson on behalf of Cockburn Cement - response to initial resumption submissions	28/08/2012
Exporter	Moulis Legal on behalf of Chememan Co. Ltd - response to Australian Industry submissions	10/09/2012
Australian Industry	Roger Simpson on behalf of Cockburn Cement - supporting evidence to submission dated 21 Aug 2012	24/09/2012