



Australian Government
**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

TERMINATION OF INVESTIGATION 179A

QUICKLIME EXPORTED FROM THAILAND

2 May 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	<i>Customs Regulations 1926</i>
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, published on 16 February 2012
SEF179A	The SEF for the resumed investigation, published on 19 March 2013
TER179	Termination Report 179, in relation to the original termination of the investigation due to a finding of negligible injury caused by dumping
the Act	the <i>Customs Act 1901</i>
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 (the 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.

3.1 Findings

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

Following this reassessment, the delegate makes the following 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.

Therefore, the delegate has terminated the investigation. The notice of termination is at **Attachment 1**.

3.2 Application of law to the facts

3.2.1 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

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

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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.

3.2.2 Application

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 CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

3.2.3 Initiation of investigation

After examining the application, the CEO was satisfied that:

- there was, or was likely to be established, an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

The CEO decided not to reject the application and notice of the initiation of this investigation was published on 31 October 2011.

3.2.4 Statement of essential facts 179

The CEO must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a statement of the facts on which the CEO proposes to base his recommendation in relation to the application.

Statement of essential facts 179 (SEF 179) 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.

3.2.5 Termination report 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;

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- 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.

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

3.2.6 Trade Measures Review Officer

On 27 April 2012, the applicant applied to the TMRO to review the termination decision.

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 this resumed investigation.

3.2.7 SEF 179A

On 19 March 2013, Customs and Border Protection published the statement of essential facts in relation to the resumed investigation (SEF 179A). Interested parties were invited to respond to SEF 179A by 8 April 2013.

3.3 Findings and conclusions

Customs and Border Protection has made the following findings and conclusions based on the available information.

3.3.1 Findings from TER179

The following findings from TER179 have not changed as a result of the resumed investigation:

- Locally produced quicklime are like goods to the goods the subject of the application.
- There is an Australian industry producing like goods, comprising of twelve Australian producers of quicklime. The applicant was the only producer located in Western Australia.
- The size of the Australian market for quicklime was approximately 2.1 million tonnes in 2010-11. The Western Australian market, where imports of quicklime from Thailand occurred, was approximately 1 million tonnes.
- Customs and Border Protection has found a dumping margin of 48% for Chememan Co. Ltd (Chememan Thailand), the sole exporter of quicklime from Thailand. This quicklime was imported by its subsidiary Chememan Australia Pty Ltd (Chememan Australia) and Alcoa of Australia Ltd (Alcoa).
- The Australian industry suffered injury in the form of:
 - reduced revenue;

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- price depression in the non-alumina sector; and
 - reduced profits and profitability.
- The price of imports from Thailand undercut sales by the Australian industry in the non-alumina sector.
 - In the non-alumina sector, the non-injurious price can be established using Cockburn Cement's costs plus a profit. For the alumina sector, the non-injurious price can be established by reference to Cockburn Cement's selling prices at a time unaffected by dumping, July 2010 to June 2011. The non-injurious price for both sectors should be adjusted to reflect 100% available lime content in order to ensure an appropriate point of comparison between quicklime with different concentrations of calcium oxide.

3.3.2 Investigation period (Chapter 6 of this report)

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.

3.3.3 Causation (Chapter 7 of this report)

Customs and Border Protection has found that dumping has not caused material injury to the Australian industry, even if injury found outside of the investigation period is taken into account.

3.3.4 Threat of material injury (Chapter 7 of this report)

Customs and Border Protection has found that it cannot be satisfied that there is a threat of material injury from dumped imports.

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4 TMRO'S FINDINGS IN RESPECT TO TER179

4.1 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.

4.2 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 report.

Consequently, the approach to the resumed investigation was 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 report.

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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5 SUBMISSIONS IN RESPONSE TO SEF 179A

Submissions in response to SEF 179A 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)
- Government of Thailand

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6 INVESTIGATION PERIOD

6.1 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.³ 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.⁴

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.⁵

6.2 Customs and Border Protection's approach

6.2.1 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.⁶ 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.

6.2.2 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 dumping cases. It is also consistent with WTO guidelines - the WTO Committee on

³ Decision of the Trade Measure Review Officer, review of a termination decision, Application of Cockburn Cement Pty Ltd, 25 June 2012, para 33.

⁴ Ibid, para 35.

⁵ Ibid, para 38.

⁶ Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012, section 3.2

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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.

Cockburn Cement submitted in its response to SEF 179A that:

Customs set the investigation period at 1 July 2010 to 30 June 2011 with clear knowledge that the circumstances which caused Cockburn to experience injury between 1 July 2010 and 30 June because of imports from Thailand, occurred between March and June 2010. The CEO's delegate who initiated the investigation was well aware of these circumstances prior to initiation and definition of the July 2010 – June 2011 investigation period.

Cockburn Cement further referred to a meeting between itself and Customs and Border Protection on 14 July 2011 where it claims a keynote of its presentation at that meeting was detail of the injury sustained for the period March 2010 to June 2010 because of dumped imports of quicklime from Thailand. On 11 September 2011 Cockburn Cement submitted a draft application in which its injury case was based on the injury sustained during the March 2010 to June 2010 period because of dumped imports from Thailand. Cockburn Cement submitted that Customs and Border Protection did not address any issues concerning injury in its response prior to the final application being lodged on 6 October 2011.

Customs and Border Protection does not dispute the claim by Cockburn Cement that injury sustained during the period March 2010 to June 2010 was referenced in its presentation to Customs and Border Protection and in its draft application. However, at that time Cockburn Cement's claims of injury were largely focussed on injury in the alumina sector and the claims relating to any injury in the non-alumina sector were not given prominence in pre-application discussions, nor post-application until such time as the case for injury in the alumina sector weakened.

Further, at no time during discussions that took place prior to and following formal lodgement of its application, did Cockburn Cement propose a specific investigation period or raise concerns with the investigation period nominated by Customs and Border Protection.

6.2.3 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.

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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*⁷ 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.⁸ 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 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.

6.2.4 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.

⁷ *(Australia) Ltd v Minister of State for Justice & Customs [2002] FCAFC 423*

⁸ Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012, section 21.2

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7 FURTHER INJURY ANALYSIS

7.1 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.

7.2 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 ■■■% of revenue which in turn led to a reduction of ■■■% 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.'

7.3 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.

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

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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.'

7.4 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 ■■■% as a percentage of revenue and an amount ■■■% as a percentage of profit. Customs and Border Protection calculated that this resulted in a ■■■% [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 the resulting lost revenue would be ■■■% lost profit ■■■% and lost revenue to the entire Australian industry would be ■■■% [less than 1%].

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7.5 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 injury⁹, 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).*¹⁰

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 whole¹¹.

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:

- The quantity of goods manufactured in the industry
- Capacity utilization of the Australian industry

⁹ Ministerial Direction on Material Injury 2012, Subsection 269TA(1) of the *Customs Act 1901*.

¹⁰ Ibid.

¹¹ Dumping and Subsidy Manual, August 2012, p17

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- 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 market¹².

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.¹³

Cockburn Cement submitted that consideration of its market share in Western Australia and its profitable trading level since entry of competition into the market is not relevant to whether a domestic industry has suffered material injury due to dumped imports.

¹² Refer to commentary in section 7.7 on Adelaide Brighton's annual report

¹³ Australian Customs and Border Protection Service Dumping and Subsidy Manual, August 2012. Section 4.3, p.17.

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7.6 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.

7.7 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.

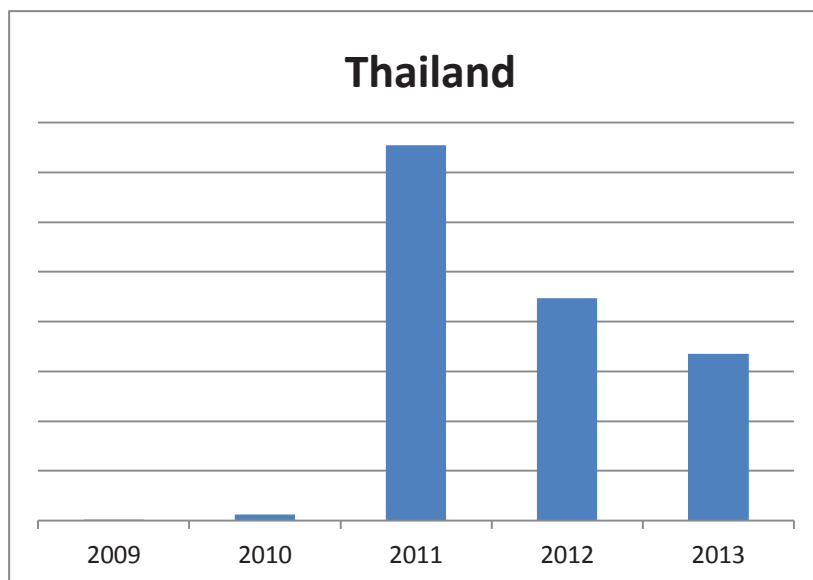


Figure 1: Imports of quicklime from Thailand in kilograms

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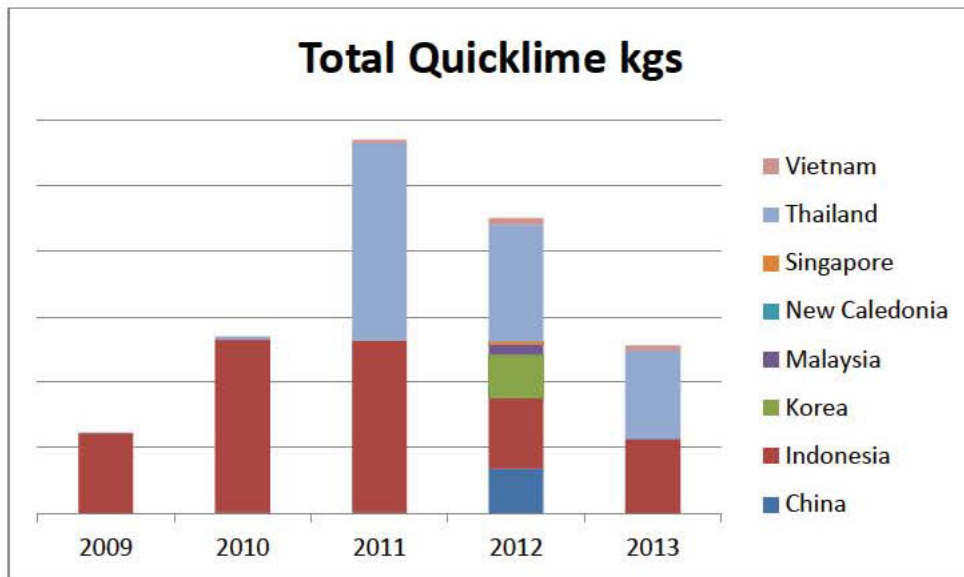


Figure 2: Total quicklime imports to Australia in kilograms

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. Cockburn Cement provided ABS import data in support of its assertion.

Customs and Border Protection has compared data from its import database with the data provided by Cockburn Cement and noted there were discrepancies in the data sets. Customs and Border Protection has relied on data from its import database for the purpose of its analysis.

In SEF179A the analysis of prices showed an increasing trend in export prices following the investigation period. Following a submission to the SEF from Cockburn Cement, Customs and Border Protection has re-checked its analysis and found a numerical error in the data it used for SEF179A. The updated graph below shows the declared prices per tonne of quicklime imported from Thailand. While the trend is no longer one of increasing prices, the graph shows that prices have remained relatively steady over the past four years with only a slight decrease in 2013 (which represents only a partial period).

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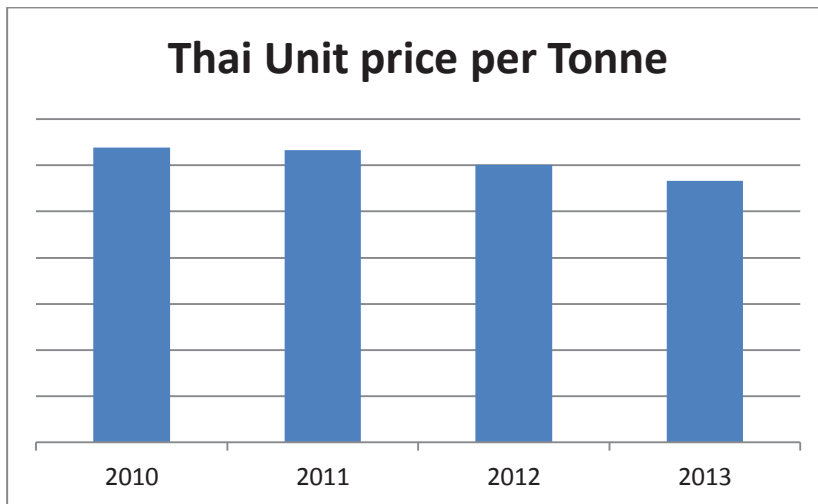


Figure 3: Customs line value unit price per tonne of quicklime exported from Thailand.

We note that export prices for exports 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. Of these prices Alcoa imports represented a significant proportion of the 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 2**). 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.

7.8 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.

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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.

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8 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

Submissions received in response to SEF 179A:

Interested Party Type	Interested Party Name	Date received
Thai Government	Department of Foreign Trade, Thailand	01/04/2013
Australian Industry	Roger Simpson on behalf of Cockburn Cement	08/04/2013
Exporter	Moulis Legal on behalf of Chememan Co. Ltd	08/04/2013
Importer	Clayton Utz on behalf of Alcoa of Australia Ltd	16/04/2013
Australian Industry	Roger Simpson on behalf of Cockburn Cement – supplementary submission response to SEF 179A	17/04/2013

PUBLIC RECORD

9 Attachments

Non- confidential attachment 1	Copy of termination public notice
Non-confidential attachment 2	Interim financial results summary released by Adelaide Brighton Ltd for the half year 30 June 2012



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 – Part XVB

Quicklime

Exported from Thailand

Termination of an investigation

Public notice under subsection 269ZZM(4) of the Customs Act 1901

On 31 October 2011 the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) initiated an investigation into the alleged dumping of quicklime exported to Australia from Thailand, following an application lodged by Cockburn Cement Limited.

Customs and Border Protection published a notice in *The Australian* on 31 October 2011 notifying of the initiation of the investigation, and issued Australian Customs Dumping Notice (ACDN) 2011/53, which contains further details on the investigation, available at <http://www.customs.gov.au/anti-dumping/notices.asp>.

The delegate of the CEO terminated the investigation on 3 April 2012. Following an appeal to the Trade Measures Review Officer (TMRO), the TMRO revoked the termination on 25 June 2012 and the investigation was resumed by Customs and Border Protection.

As a result of Customs and Border Protection's resumed investigation, the Delegate of the CEO of Customs and Border Protection is satisfied that there has been, or may be, dumping of some or all of the goods, but the injury, if any, to the Australian industry, that has been, or may be, caused by that dumping is negligible and, therefore, has decided to terminate the investigation in accordance with subsection 269TDA(13) of the *Customs Act 1901*.

In making the decision to terminate, the Delegate of the CEO has regard to the application, submissions from interested parties, the statement of essential facts no. 179 (SEF 179), submissions in response to SEF 179, a report of the Trade Measures Review Officer, statement of essential facts no. 179A, submissions in response to SEF 179A and other relevant information.

Termination Report no. 179A, which sets out reasons for the termination decision, including the material findings of fact or law upon which the decision is based, has been placed on Customs and Border Protection's public record, available at <http://www.customs.gov.au/anti-dumping/cases.asp>. Alternatively, the public record may

be examined at Customs House by contacting the case manager using the contact details provided below.

The applicants may request a review of the delegate's decision to terminate the investigation by lodging an application with the TMRO in the approved form and manner within 30 days of the publication of the public notice.

Enquiries about this notice may be directed to the case manager on telephone number 02 6275 5649, fax number 02 6275 6990 or itrops2@customs.gov.au.

Scott Wilson
A/g National Manager
International Trade Remedies Branch

2 May 2013



Adelaide Brighton Ltd

ACN 007 596 018

Adelaide Brighton Ltd

Interim results summary

Half year ended 30 June 2012

Import profitability declined by approximately \$3 million in the first half of 2012 versus the prior corresponding period. Import profitability and margins were negatively impacted by the higher cost of imported cement and a reduction in clinker imports to Sunstate Cement. This was partially offset by the impact of the higher Australian dollar which had a positive impact of approximately \$1 million versus the first half of 2011.

Lime

- ***Sales – Lime demand from the resources sector***
Lime sales volumes were higher than the prior corresponding period due to strong demand from the resources sector and a recovery in sales to a major customer in Northern Territory. Pricing improved due to the price reset on a supply contract with a major alumina customer in Western Australia, effective from 1 July 2011.
- ***Operations – Consistent production performance***
Demand for lime saw production at a high utilisation rate at the key Munster (Western Australia) lime operation and increased production at the smaller Dongara (Western Australia) plant.

Concrete and Aggregates

- ***Sales – Weather impacted volumes, however price increases being realised***
Excluding the impact of businesses acquired in 2011, premixed concrete volumes were lower than the prior half year due to the weak market demand and weather in the eastern States. Aggregate volumes were similarly impacted, although demand from the Pacific Highway upgrade resulted in strong volumes from the northern New South Wales quarries.

Concrete and aggregate prices increased compared to the prior half year supported by price rises effective 1 April 2012. Further benefits should be realised from this in the second half of 2012.

- ***Operations – Efficiency improvements ongoing***
Lower concrete volumes and cost inflation during the half year adversely affected unit costs. The business continues to focus on control of quarry and concrete production costs, including raw materials, transport costs and overheads.

Concrete Masonry Products

- ***Sales – Difficult market conditions, price increases announced***
With softening demand from residential construction and generally slow reseller activity, trading conditions remain difficult. Demand weakness across most markets was exacerbated by wet weather. Despite these pressures, sales revenue increased 2.3% as increases in prices were achieved in the first half.
- ***Operations – Focus on costs and product development***
Cost management programs resulted in savings in overheads and production costs and a slight improvement in margins compared to the prior corresponding period. The development of innovative and lower cost products with reduced carbon footprint has strengthened the concrete masonry offering.



Adelaide Brighton Ltd

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Adelaide Brighton Ltd

Interim results summary

Half year ended 30 June 2012

Cement - operational improvement and supply contract renewal

Supply negotiations with ICL have been agreed in principle and are now subject to ICL unit-holder approval. We remain cautiously confident that the supply arrangements which expire towards the middle of 2013, will be renewed on not materially different terms.

The previously announced \$60 million upgrade to the Birkenhead (South Australia) cement milling capacity has progressed with foundations underway and the new ship loader completed. This expansion will increase milling capacity by 750,000 tonnes per annum, reducing the Group's reliance on imported cement and providing environmental benefits through improved dust collection. Depending on market demand in Victoria and South Australia, exchange rates, the landed cost for cement and clinker and finalisation of supply contracts with ICL, this project is expected to deliver EBIT of \$10 – \$12 million per annum from mid-2013.

We remain cautiously confident that supply to a major cement customer in South Australia and Western Australia for 2013 and 2014 will be renewed on not materially different terms.

Lime - capacity improvement and environmental expenditure

The \$24 million bag house filter project at the Munster (Western Australia) lime kiln 6 was successfully commissioned within budget in 2012. It is expected that the \$10 million cooler bag house will be commissioned within budget by the end of August 2012. These projects will increase lime production capacity by 100,000 tonnes per annum to meet expected future demand for lime from the resources sector in Western Australia and improve environmental performance of the operations.

Planning is underway for a bag filter to be installed on the second of the two Munster lime kilns (kiln 5) by the middle of 2013 at a cost of circa \$18 million. This project is expected to improve dust emissions and satisfy changes to the operating licence required by the middle of 2013.

Formal agreements were executed in 2011 with a major alumina producer for the continued supply of their lime requirements in Western Australia. The new agreement was effective from 1 July 2011 and covers supply for periods ranging between five and ten years. This contract underpins the long term positioning of the lime operations.

Financial review

Cash flow and borrowings

Cash flow from operating activities increased by \$30.2 million to \$80.2 million due to higher operating earnings and a decline in company tax payments. This was partially offset by an increase in interest payments due to higher average levels of net debt.

Working capital increased marginally compared with 31 December 2011. Inventory levels increased by \$8.9 million to \$136.8 million and receivables rose by \$8.6 million to \$177.5 million, offset by higher payables of \$14.8 million. Outstanding debtor days grew marginally compared to December 2011, primarily due to the timing of receipts from customers.

Capital expenditure of \$64.5 million included significant spending on the Birkenhead and Munster projects outlined above. Full year 2012 capital expenditure (excluding acquisitions) is expected to be \$110 – \$120 million.



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Adelaide Brighton Ltd

Interim results summary

Half year ended 30 June 2012

Net debt increased by \$67.0 million compared to 30 June 2011 to \$287.6 million, representing net debt to equity of 29.7% which is within the targeted range of 25% to 45%.

The Company's cash flow and balance sheet position provides capacity to fund acquisitions and planned organic growth opportunities.

Debt facilities

The Group refinanced its debt facilities in 2011 and increased total facilities to \$500 million, with \$200 million maturing on 1 July 2013, \$140 million maturing on 1 July 2014 and \$160 million maturing 1 July 2015.

Dividends

An interim 2012 dividend of 7.5 cents, franked to 100%, has been declared. This dividend is in line with the ordinary interim dividend paid in the first half of 2011 and represents a payout ratio for the first half of 70.8%. The record date for determining eligibility to the interim dividend is 29 August 2012 and the payment date is 8 October 2012.

Other income – gain on acquisition

A gain of \$7.6 million was recognised relating to the finalisation of the fair value accounting for a 2011 acquisition. This gain follows confirmation that tax deductions in relation to a quarry right acquired can be claimed over the life of the quarry. These deductions will reduce future tax payments by \$7.6 million. The non-cash accounting gain has been recognised as other income and is non-taxable.

Interest and tax

Net interest of \$8.3 million was \$0.4 million higher than the first half of 2011, due to higher levels of net debt. Tax expense decreased by \$0.4 million to \$22.7 million. The effective tax rate was 25.2%, which is lower than the prior corresponding period largely due to the impact of the \$7.6 million gain on acquisition.

Outlook

Adelaide Brighton expects 2012 total cement and clinker sales volumes to be similar to 2011.

Demand remains robust in South Australia due to projects and in Western Australia and Northern Territory as a result of mining and resource projects. Continued weakness in the residential and non-residential sectors is expected for the remainder of 2012.

Lime sales volumes for 2012 are expected to be higher than 2011.

Lime prices will improve in 2012 due largely to improved lime pricing to a major alumina customer in Western Australia, effective from 1 July 2011.

The Australian concrete market plateaued in 2011 and is expected to remain subdued through 2012. Concrete and aggregates pricing is expected to improve with increases notified effective 1 April 2012.

Weakness in the concrete masonry market is likely to continue in 2012 due to difficult conditions in the east coast commercial and multi-residential sectors.

As plants are rationalised and quarries reach the end of their useful life, it is possible to realise circa \$100 million revenue over the next 2-10 years from the sale of surplus land