Australian Government
Anti-Dumping Commission

PUBLIC RECORD

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS REPORT NO. 179B

ALLEGED DUMPING OF QUICKLIME EXPORTED FROM THAILAND

7 OCTOBER 2014

CONTENTS

ABBREVIATIONS

Abbreviation / short form	Description
$ or AUD	Australian dollars
ABS	Australian Bureau of Statistics
ACBPS	Australian Customs and Border Protection Service
the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
Anti-Dumping Agreement	The *World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
ADRP	Anti-Dumping Review Panel
ADRP Report	ADRP Report entitled *Quicklime exported from the Kingdom of Thailand – Review of Decisions to terminate an investigation to publish a dumping duty notice* published on 8 August 2013
Cockburn Cement	Cockburn Cement Limited
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
Customs Regulations	Customs Regulations 1926
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
Ex-Factory	Ex-Factory
FOB	Free-On-Board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Minister	Minister for Industry
NIP	Non-Injurious Price
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
SEF	Statement of Essential Facts
SEF 179	SEF for Investigation No. 179 published on 16 February 2012
SEF 179A	The SEF for the first resumed investigation published on 19 March 2013
SEF 179B	This SEF for the second resumed investigation published on 7 October 2014
TCO	Tariff Concession Order
TER 179A	Termination Report 179A, in relation to the second termination of the investigation due to a finding of negligible injury caused by dumping published on 2 May 2013
TMRO	Trade Measures Review Officer
TMRO Report	TMRO's Report entitled *Review of a termination decision – Application of Cockburn Cement Pty Ltd* published on 25 June 2012
USP	Unsuppressed Selling Price
WTO	The World Trade Organization

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This Statement of Essential Facts (SEF) No. 179B (SEF 179B) is in response to the Anti-Dumping Review Panel's (ADRP's) decision to revoke the then delegate of the Chief Executive Officer's (CEO's) of the Australian Customs and Border Protection Service (the ACBPS)[1] decision to terminate the investigation into the alleged dumping of quicklime exported to Australia from Thailand.

A chronology of key developments that preceded the ADRP's decision, are as follows:

- on 31 October 2011, an investigation into the alleged dumping of quicklime exported from Thailand to Australia was initiated. This followed an application seeking the publication of a dumping duty notice lodged by Cockburn Cement Limited (Cockburn Cement), an Australian manufacturer of quicklime;
- on 3 April 2012, the CEO decided to terminate the investigation due to the finding that dumped exports of quicklime had caused negligible injury to the Australian industry[2] (herein referred to as 'the CEO's first termination decision') – *Termination Report No. 179 (TER 179) dated April 2012* refers[3];
- Cockburn Cement sought a review of the termination decision by the Trade Measures Review Officer (TMRO);
- on 25 June 2012, the TMRO subsequently revoked the CEO's first termination decision;
- the investigation was resumed, and on 2 May 2013, the CEO[4] again decided to terminate the investigation due to the finding that dumped exports of quicklime had caused negligible injury to the Australian industry[5] (herein referred to as 'the CEO's second termination decision') – *Termination Report No. 179A (TER 179A) dated May 2013* refers;
- Cockburn Cement sought a review of the CEO's second termination decision by the TMRO;
- on 8 August 2013, the ADRP (which succeeded the TMRO in June 2013) revoked the CEO's second termination decision; and
- as a result, the Commissioner of the Anti-Dumping Commission (the Commissioner) is required to issue this SEF (i.e. SEF 179B) which has the effect of resuming the investigation.

This statement sets out the Commissioner's findings subject to any submissions received in response to SEF 179B.

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[1] All future references to the 'CEO' in this SEF also refer to the 'delegate of the CEO'. Also, while not explicitly stated, all references in this SEF to the 'CEO' refer to the 'then CEO'.

[2] In accordance with subsection 269TDA(13) of the *Customs Act 1901* (the Act). References in this SEF to 'section' and 'subsection' are used interchangeably.

[3] Termination Reports are accessible on the Anti-Dumping Commission's (the Commission's) website at www.adcommission.gov.au.

[4] A different delegate of the CEO made the second termination decision (as opposed to the delegate of the CEO that made the first termination decision).

[5] In accordance with subsection 269TDA(13) of the Act.

1.2 Key findings[6]

The Commissioner has reconsidered the key findings made in TER 179A[7], and has reconfirmed several of the key findings for this resumed investigation, as detailed below[8].

The Commissioner has found that it is not open to the Commissioner to amend the investigation period of 1 July 2010 to 30 June 2011 (herein referred to as the investigation period)[9].

The Commissioner has found that during the investigation period:

- quicklime was exported to Australia from Thailand at dumped prices;
- the volume of dumped goods was not negligible;
- the dumped quicklime exports caused negligible injury to the Australian industry; and
- there is no threat of material injury being caused to the Australian industry due to dumped goods.

Based on the key findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to again terminate the investigation.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB of the Act[10] sets out, 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.

1.3.2 Anti-Dumping Review Panel

On 27 May 2013, Cockburn Cement sought a review by the TMRO of the CEO's second termination decision made in relation to the quicklime investigation. On 10 June 2013, the ADRP replaced the TMRO, as the body that conducts merit review of relevant anti-dumping decisions made by the Minister responsible for anti-dumping matters and the Commissioner.

Following consideration of Cockburn Cement's application the ADRP revoked the CEO's second termination decision. The ADRP's decision was published in *The Australian* newspaper on 8 August 2013. The ADRP's Report[11] setting out its reasons for the decision is available on the ADRP's website at www.adreviewpanel.gov.au.

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6 These key findings are based on findings and conclusions made by the Commission, as detailed in this SEF.

7 TER 179A reflected findings in Statement of Essential Facts No. 179A (SEF 179A) - for the first resumed investigation, dated May 2013. SEFs are accessible on the Commission's website at www.adcommission.gov.au.

8 These findings are paraphrased.

9 The investigation period is discussed in more detail at Chapter 5 of this SEF.

10 All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated. The terms Division, section and subsection are used interchangeably in this SEF.

11 *Quicklime exported from the Kingdom of Thailand – Review of Decisions to terminate an investigation to publish a dumping duty notice, dated 8 August 2013* (ADRP's Report) refers.

The ADRP's findings are discussed further at Section 3.1.2.

1.4 Statement of Essential Facts No. 179B

Given the ADRP's revocation decision of the CEO's second termination decision, the Commissioner must, as soon as practicable, publish a SEF (SEF 179B) and resume the investigation.

Interested parties are invited to make submissions to the Commission in response to SEF 179B within 20 days of the SEF being placed on the public record (i.e. by **27 October 2014**). The Commissioner is not obliged to have regard to a submission made in response to this SEF received after 27 October 2014, if to do so would prevent the timely preparation of the final report for the investigation.

If no further information is provided that would warrant overturning the Commissioner's findings as specified in this SEF, the investigation will be terminated. If new information and supporting evidence is provided, the Commissioner will make final recommendations in a report to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)[12] due on or before 21 November 2014.

1.5 Findings and conclusions

Given the key findings for this resumed investigation reflect several of the findings specified in TER 179A, which relied on the findings specified in SEF 179A and also SEF 179, consequently, both TER 179A (**Non-Confidential Attachment 1** refers), SEF 179A (**Non-Confidential Attachment 2** refers) and Statement of Essential Facts No. 179 (SEF 179) (**Non-Confidential Attachment 3** refers), should be read in conjunction with this SEF.

In addition to reconfirming in this SEF several of the key findings made for TER 179A, the Commission has also made new findings and conclusions (Sections 1.5.8 and 1.5.9 refer).

The Commission's findings and conclusions are based on available information obtained and verified during the investigation (Investigation No. 179B (INV 179B) (current investigation), Investigation No. 179 (initial investigation) and Investigation No. 179A (first resumed investigation)).

Reconfirmed findings - from TER 179A

The Commission has reconfirmed the following findings specified in TER 179A.

1.5.1 Investigation period (Chapter 5 of this SEF)

The Commission has found that the investigation period is 1 July 2010 to 30 June 2011, and that this period cannot be altered or extended, once set and published

[12] The Minister for Industry has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation.

in the public notice (issued under subsection 269TC(4) of the Act). The Commission has found that any injury experienced prior to the investigation period cannot be attributed to dumped exports.

1.5.2 Good and like goods (Chapter 3 of TER 179A and Chapter 6 of this SEF)

The Commission has found that locally produced quicklime is like to the goods the under consideration (GUC).

1.5.3 Australian industry (Chapter 3 of TER 179A and Chapter 7 of this SEF)

The Commission has found that there is an industry producing like goods, comprising twelve Australian quicklime producers. Cockburn Cement was the only producer located in Western Australia (WA).

1.5.4 Dumping (Chapter 3 of TER 179A and Chapter 9 of this SEF)

The Commission has found that during the investigation period:

- quicklime exported to Australia from Thailand by Chememan Co. Ltd[13] (Chememan Thailand), the sole Thai exporter of the goods, was dumped at a margin of 48%;
- the dumping margin is not negligible; and
- the volume of dumped goods from Thailand was not negligible.

1.5.4.1 Non-Injurious Price (Chapter 3 of TER 179B and Chapter 11 of this SEF)

The Commission has found that it is appropriate to derive a Non-Injurious Price (NIP) by setting the Unsuppressed Selling Price (USP) for quicklime sold into:

- the non-alumina sector, as equal to Cockburn Cement's cost to make and sell (CTMS) for quicklime, plus a reasonable amount for profit; and.
- the alumina sector, as equal to Cockburn Cement's weighted average selling price during a period unaffected by dumping (in 1 July 2010 to 30 June 2011).

The NIPs for respective sectors have been adjusted to reflect 100% available lime content of the goods in order to ensure an appropriate point of comparison between quicklime with different concentrations of calcium oxide.

1.5.5 Causation (Chapter 8 of TER 179A and Chapter 10 of this SEF)

The Commission has found that during the investigation period the dumped exports caused negligible injury to the Australian industry (and therefore did not cause material injury).

1.5.6 Threat of material injury (Chapter 3 of TER 179A and Chapter 12 of this SEF)

The Commission has found that material injury was not threatened to the Australian industry due to the exportation of the goods into the Australian market.

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[13] This includes goods exported directly and indirectly through a related trader.

New findings - resumed investigation (No. 179B)

The Commission has made the following new findings, based on a reconsideration of information and evidence obtained and verified (as relevant) during the investigation.

1.5.7 Australian market (Chapter 8 of this SEF)

The Commission has found that the size of the Australian market for quicklime was approximately 2.4 million tonnes in 2010-11.

1.5.8 Economic condition of the Australian industry (Chapter 10 of this SEF[14])

The Commission has found that the Australian industry experienced injury in respect of its quicklime sales, in the form of:

- reduced sales revenue in the non-alumina sector[15];
- price depression in the non-alumina sector; and
- reduced profits and profitability.

While several of these findings reflect the findings made in TER 179A, the Commission has reassessed the quantum of the injury experienced.

[14] This Chapter also address whether or not dumped goods caused material injury to the Australian industry.

[15] While findings have been made in respect of the different market segments, the Commission has assessed the Australian market and Australian industry as a whole.

2 BACKGROUND

2.1 Application

On 6 October 2011, Cockburn Cement lodged an application requesting that the then Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of quicklime exported to Australia from Thailand.

On 19 October 2011, Cockburn Cement provided further information and data in support of its application. As a result, the 20 day period for considering the application recommenced.

2.2 Initiation of investigation

Following consideration of the application, the CEO decided not to reject the application, and the ACBPS[16] initiated an investigation 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 regarding the initiation of the investigation, and is available on the Commission's website at www.adcommission.gov.au.

In respect of the investigation, the public notice (in relation to the initiation of the investigation) advised that:

- the investigation period[17] for the purpose of assessing dumping was 1 July 2010 to 30 June 2011; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry was from 1 January 2008.

The investigation period is discussed in detail at Chapter 5 of this SEF.

2.3 Previous cases

There have been no previous dumping investigations into exports of quicklime in Australia.

2.4 Statement of Essential Facts No. 179

The Commissioner (and previously 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 SEF on which the Commissioner (and previously the CEO) proposes to base final recommendations in relation to the relevant application to the Minister.

On 20 February 2012, SEF 179 was placed on the public record. In formulating this SEF, the CEO had regard to the application concerned, submissions concerning publication of

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16 The Commission was established on 1 July 2013, and is responsible for administering Australia's anti-dumping system. The ACBPS was previously responsible for this administration.

17 As defined by subsection 269T(1) of the Act.

the notice that were received by the ACBPS within 40 days after the date of initiation of the investigation, and any other matters considered relevant.

Interested parties were invited to respond to SEF 179 by 12 March 2012. Submissions were received from Chememan Co. Ltd and Cockburn Cement.

2.5 Termination Report No. 179

On 3 April 2012, the ACBPS published TER 179 setting out its findings and conclusions in relation to exports from Thailand and reasons for the decision to terminate the investigation.

In TER 179, the ACBPS found that:

- 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.

A notice advising the termination decision was published in *The Australian* newspaper on 3 April 2012. TER 179 is accessible on the Commission's website at www.adcommission.gov.au.

2.6 Trade Measures Review Officer

On 27 April 2012, Cockburn Cement applied to the TMRO to review the CEO's first termination decision.

Following consideration of Cockburn Cement's application for review, the TMRO revoked this decision. On 25 June 2012, the TMRO's revocation decision was published in *The Australian* newspaper. The TMRO's Report[18] outlining the TMRO's reasons for the decision is accessible on the ADRP's website at www.adreviewpanel.gov.au.

2.7 Statement of Essential Facts No. 179A

On 19 March 2013, the ACBPS published SEF 179A for the resumed investigation. Interested parties were invited to respond to SEF 179A by 8 April 2013. Submissions were received from Cockburn Cement, Alcoa of Australia Ltd (Alcoa), Chememan Thailand, and the Government of Thailand (GOT).

2.8 Termination Report No. 179A

On 2 May 2013, the ACBPS published TER 179A setting out its findings and conclusions and the reasons for terminating the investigation.

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[18] *Decision of the Trade Measure Review Officer, Review of a Termination Decision, Application of Cockburn Cement Pty Ltd, dated 25 June 2012* (TMRO's Report) refers.

The ACBPS found that:

- quicklime was exported from Thailand at dumped prices during the investigation period;
- 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 was no threat of injury to the Australian industry.

A notice advising the termination decision was published in *The Australian* newspaper on 2 May 2013. TER 179A is accessible on the Commission's website at www.adcommission.gov.au.

2.9 Anti-Dumping Review Panel

On 27 May 2013, Cockburn Cement sought a review by the TMRO of the CEO's second termination decision.

Following consideration of Cockburn Cement's application for review, the ADRP (which replaced the TMRO on 10 June 2013), revoked the CEO's second termination decision. The ADRP's decision was published in *The Australian* newspaper on 8 August 2013.

The ADRP's Report[19] setting out the ADRP's reasons for the decision is available on the ADRP's website at www.adreviewpanel.gov.au.

The effect of the ADRP's decision is that the Commissioner must issue a SEF to resume the investigation.

2.10 Statement of Essential Facts No. 179B

SEF 179B is required due to the ADRP's decision to revoke the CEO's second termination decision, and is also required for the Commission to resume the investigation.

2.10.1 Responding to SEF 179B (this report)

As discussed at Section 1.4, interested parties have 20 days to respond to the SEF. Responses to this SEF should be provided to the Commission no later than 27 October 2014.

It is important to note that SEF 179B may not represent the final views of the Commissioner. Interested parties have 20 days to respond to SEF 179B. The Commissioner will consider these responses in determining whether the investigation should be terminated or whether a report should be prepared for the Parliamentary Secretary.

[19] ADRP's Report refers.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after 27 October 2014, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report to the Parliamentary Secretary.

Submissions should preferably be emailed to clientsupport@adcommission.gov.au.

Alternatively they may be sent to fax number +61 2 6275 6990, or posted to:

Director, Operational Policy
Anti-Dumping Commission
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record. A guide for making submissions is available at www.adcommission.gov.au.

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 Canberra (phone 1300 884 159 to make an appointment), or online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

3 ANTI-DUMPING REVIEW PANEL FINDINGS AND APPROACH TO RESUMED INVESTIGATION

3.1 Anti-Dumping Review Panel's findings in relation to the Chief Executive Officer's second termination decision (most recent review)

3.1.1 Background

Cockburn Cement sought a review of the CEO's second termination decision on the following grounds:

- the additional 'further injury analysis' undertaken for SEF 179A and TER 179A was inappropriate and incorrect; and
- the outcome of the investigation was prejudiced by the investigation period being set as 1 July 2010 to 30 June 2011. Cockburn Cement claimed that if the ACBPS had taken account of its price reductions between March and June 2010, it would have found that Cockburn Cement had suffered material injury during this period, and that it was caused by the dumped exports.

3.1.2 Findings

In making its revocation decision, the ADRP identified certain matters (raised by Cockburn Cement) that it considered did not support a finding that negligible injury had been caused to Cockburn Cement by dumped exports of quicklime from Thailand (during January 2010 to June 2011).

In TER 179A, the ACBPS found that whilst there is no requirement 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 Cockburn Cement (related to the CEO's first termination decision[20]), it would conduct a 'further injury analysis'. This additional analysis was to provide satisfaction to interested parties that all relevant matters have been considered in making the CEO's second termination decision. The ACBPS found that even if injury from an earlier period (preceding the investigation 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.

Upon review, the ADRP found that this 'further injury analysis' for the extended period, did not support a finding that negligible injury had been caused to the domestic market. The ADRP concluded that:

> *"68. It is incumbent on decision makers to carefully consider the outcome when the facts coincide with circumstances described in the [Ministerial] Direction. In the instant case the CEO is only entitled to terminate the investigation if the facts support a finding that negligible injury, in the sense discussed earlier in these reasons, has been, or may in the future be likely to be, caused to the domestic industry from the dumping. Findings of a [redacted]% profit drop to a producer which*

[20] This is discussed at Section 3.2.2.

supplies approximately 50% of the domestic market in circumstances where a 48% dumping margin exists in my view outweigh the totality of the contraindicative factors leaving me satisfied that the discretion of the delegate to terminate the investigation miscarried. I am satisfied that the facts arising from the further investigation analysis undertaken by Customs in SEF 179A, along with the earlier findings in SEF 179, do not support a finding that negligible injury has been caused to the domestic market"[21].

The Commission has assessed the conclusions and directions of the ADRP throughout this SEF.

3.2 Trade Measures Review Officer findings in relation to the Chief Executive Officer's first termination decision

3.2.1 Background

Cockburn Cement sought a review of the CEO's first termination decision predominately on the ground that the outcome of the investigation was prejudiced by the investigation period being set for the period 1 July 2010 to 30 June 2011. Cockburn Cement claimed that if the ACBPS had taken account of its price reductions between March and June 2010, it would have found that Cockburn Cement had suffered material injury during this period, and that it was caused by the dumped exports.

3.2.2 Findings

The TMRO agreed there can be no presumption that goods exported prior to the investigation period were dumped goods, without assessing whether these goods were dumped.[22] However, the TMRO stated that the CEO had the absolute discretion to set the investigation period, and that it was open to the CEO to extend the investigation period to include the period from March to June 2010 in its analysis[23].

In addition, the TMRO found that if the CEO decided not to extend the investigation period the CEO should consider whether any injury suffered in the months outside the investigation period were as a result of dumping[24].

The TMRO's findings in relation to the investigation period are discussed further at Section 5.6.

3.2.3 Anti-Dumping Review Panel's findings in relation to the Trade Measures Review Officer's findings

The ADRP considered that it was undesirable to reconsider decisions made by the TMRO, in relation to the grounds for review of the CEO's first termination decision[25]. The ADRP expressly neither agreed nor disagreed with the TMRO's findings in relation to

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[21] ADRP's Report, paragraph 68 refers.
[22] TMRO's Report, paragraph 33 refers.
[23] TMRO's Report, paragraph 35 refers.
[24] TMRO's Report, paragraph 38 refers.
[25] ADRP's Report, paragraph 36 refers.

whether or not the investigation period can be extended, or whether injury experienced outside of the investigation period can be attributed to dumping.

This issue is discussed further at Section 5.7.

3.3 Approach to the resumed investigation

The Commission considers that as this investigation is a resumed investigation and not a reinvestigation, it is not limited only to investigating and reassessing those matters referred back by the ADRP. Rather, the Commission considers that it is able to re-examine all aspects of the original investigation's findings insofar as they relate to the decision to terminate the investigation. As discussed at Sections 1.5.1 to 1.5.7, a number of findings for this investigation have not changed.

The Commission has received submissions from interested parties during the resumed investigation that address matters identified by the ADRP warranting further consideration and that also raise other issues. A number of these stakeholders, including Cockburn Cement, have made submissions in relation to the TMRO's findings for the review of the CEO's first termination decision (i.e. regarding setting the investigation period)[26].

Consequently, the Commission's approach to this resumed investigation is to address all relevant matters, which includes matters raised by the ADRP, the TMRO, and other interested parties.

The Commission has also reviewed the submissions, information gathered, and determinations made during INV 179 and INV 179A where warranted, and this material is discussed throughout this SEF.

3.4 Submissions received from interested parties

3.4.1 Valid submissions

On 17 September 2013, Anti-Dumping Notice (ADN) No. 2013/73 advising interested parties of the ADRP's decision to revoke the CEO's second termination decision, and inviting submissions, was published.

Submissions were received from the following parties:

- A WA based end user of quicklime;
- Clayton Utz on behalf of Alcoa (Australian importer);
- GOT - Department of Foreign Trade (foreign Government);
- Moulis Legal on behalf of Chememan Thailand (a Thai exporter); and
- Roger Simpson & Associates on behalf of Cockburn Cement (Australian industry).

The submissions received are listed in **Non-Confidential Attachment 4**. The non-confidential versions of these submissions are available on the Public Record for this investigation at www.adcommission.gov.au.

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[26] See the TMRO's Report for further detail on the TMRO's findings.

Each submission has been considered by the Commission in reaching the conclusions contained within this SEF.

3.4.2 Non-valid submissions

The Commission has only taken into account valid submissions where confidential and non-confidential versions of the submissions were provided. The Commission has disregarded any claims made in confidential emails (that were not supported by evidence), and where the interested party did not furnish a public version of its claims/submission for the public record. This approach is in accordance with section 269ZJ of the Act.

4 Compliance with World Trade Organization obligations

4.1 World Trade Organization obligations

Subsequent to the ADRP's revocation of the CEO's second termination decision, several interested parties made submissions in relation to World Trade Organization (WTO) obligations established by WTO Anti-Dumping Agreement (ADA) that are particularly relevant to the investigation. Specifically, these interested parties have expressed concerns in relation to Australia's compliance with several Articles of the WTO ADA that address the following:

- the extended duration of the investigation;
- contemporaneity of data; and
- regional injury and the definition of the Australian industry.

This Chapter addresses the Commission's views on these WTO related issues. The Commission notes that its finding in this SEF, that dumped exports of quicklime have caused negligible injury to the Australian industry, is not affected by these WTO related issues.

4.2 Duration of the investigation

4.2.1 Context

Article 5.10 of the WTO ADA sets out the maximum time that should be taken for an investigation, as follows:

> *"Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation"*.

4.2.2 Submissions to the resumed investigation

The GOT, Chememan Thailand, and a WA end user of quicklime have made submissions to the investigation claiming that the investigation has been conducted in a manner that is inconsistent with Article 5.10 of the WTO ADA[27]. Specifically they claim that as more than 18 months have passed since the initiation of the investigation, the length of the investigation is inconsistent with Australia's WTO obligations. Several of these submissions further request that the investigation be terminated immediately.

4.2.3 The Commission's assessment

The Commission notes that there is no equivalent provision in Australian legislation, as set out in Part XVB of the Act, reproducing the requirements of Article 5.10 of the WTO ADA or otherwise stipulating a maximum timeframe in which an investigation must definitively be concluded.

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[27] These submissions are available on the Electronic Public Record for the investigation, which is available on the Commission's website at www.adcommission.gov.au.

Section 269TDA of the Act sets out various circumstances under which the Commissioner must terminate a dumping investigation. None of those sections reproduce Article 5.10 of the WTO ADA or enable termination due to the duration of an investigation. Therefore, the Commissioner cannot under the Act terminate the investigation due to its extended timeframe.

However, the Commission notes that while the investigation was initiated in October 2011, it has been terminated on two occasions and subsequently resumed on two occasions following merit review processes. The investigation has not been ongoing since October 2011. The Commission also notes that the Commissioner is proposing to terminate the investigation, subject to submissions received in response to this SEF.

4.3 Contemporaneity of data

4.3.1 Context

Article 3.1 of the WTO ADA states that:

> *"A determination of injury for purposes of Article VI of GATT 1994 shall be based on **positive evidence** and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products"* (emphasises added).

Article 3.5 of the WTO ADA states that:

> *"It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry".*

4.3.2 Submissions to the resumed investigation

The GOT made submissions to the investigation claiming that the investigation has been conducted in a manner that is inconsistent with Articles 3.1 and 3.5 of the WTO ADA[28]. The GOT claims that as the relevant period of investigation ended a long time ago, data from this period of investigation cannot be used as positive evidence that would support the imposition of anti-dumping duties, and that the investigation should therefore be terminated.

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[28] These submissions are available on the Electronic Public Record for the investigation, which is available on the Commission's website at www.adcommission.gov.au.

At the time of making its submissions (in August 2012 and October 2013) the GOT also submitted that WTO jurisprudence supports its claims that dumping duties can only be imposed on the basis of a current situation and to remedy or prevent injury inflicted by dumped goods imported during the investigation period; and that dumping measures may not be imposed more than two years after the end of the investigation period.

4.3.3 The Commission's preliminary assessment

The investigation period (which is discussed at Chapter 5 of this SEF) is a period specified by the Commissioner in a notice under subsection 269TC(4) of the Act over which exportations to Australia are examined to determine whether dumping has occurred.

The investigation period set in the initiation notice was from 1 July 2010 to 30 June 2011. This period has not been changed in this resumed investigation.

As discussed previously, section 269TDA of the Act sets out the various circumstances under which the Commissioner must terminate the investigation. Similarly to the issue in relation to the investigation duration, none of those sections enable termination for the reasons requested by the GOT. The Commission acknowledges the uniqueness of this investigation, given its extended duration. However, the Commission considers that this issue is redundant, given the Commissioner is proposing to terminate the investigation (subject to submissions received in response to this SEF)[29].

4.4 Regional injury – definition of domestic industry

4.4.1 Context

Article 4.1 of the WTO ADA states that:

> *"For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:*
>
> *(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;*
>
> *(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further*

[29] Noting that for this case the requirements for the Minister to be satisfied to decide to impose dumping duties under subsection 269TG(2) have not bee met.

that the dumped imports are causing injury to the producers of all or almost all of the production within such market".

4.4.2 Submissions to the resumed investigation

Cockburn Cement stated in its submissions to the resumed investigation that 'regional injury' is not a relevant consideration as it meets the definition of 'domestic industry' under Article 4.1 of the WTO ADA.

4.4.3 The Commission's assessment

The Commission notes that Australia's dumping legislation does not reproduce the definition of domestic industry in the context of regional industry described in Article 4.1(ii) of the WTO ADA. The Commission notes that Article 4.1 is permissive and not obligatory. The Commission's approach to determining injury is set out in Chapter 10 of this SEF and is in line with the Act. The Commission has had regard to the *Ministerial Direction on Material Injury*[30], as it concerns regional injury, which is consistent with Article 4.1(ii) of the WTO ADA.

[30] On 27 April 2012, the Minister released a Ministerial Direction on material injury (Ministerial Direction). This Ministerial Direction is available on the Commission's website at www.adcommission.go.au.

5 INVESTIGATION PERIOD

5.1 Finding – TER 179A reconfirmed

The Commission has reconfirmed that the investigation period for this quicklime investigation is 1 July 2010 to 30 June 2011. The Commission considers that it is not open to the Commissioner to revisit or alter the investigation period, subsequent to the issuing of a public notice (under subsection 269TC(4) of the Act[31]). Furthermore, the Commission considers that the Commissioner has no legislative power to revisit or alter the investigation period.

The Commission also considers that the Act does not allow the Commissioner to have regard to a period prior to the investigation period for the purpose of determining if those earlier exports were dumped. Given this finding, the Commission is satisfied that any injury experienced by the Australian industry prior to the investigation period cannot be attributed to dumped exports of quicklime[32].

5.2 Key issue

While the ADRP did not make specific findings in relation to the investigation period, the issue has been strongly contested by interested parties, especially by Cockburn Cement. In both of Cockburn Cement's applications for merit review (to the TMRO and ADRP), Cockburn Cement claimed that it was prejudiced by the investigation period being set from 1 July 2010 to 30 June 2011. Cockburn Cement contended that the ACBPS should have taken into account price reductions in respect of contracts with customers in the non-alumina sector between March and June 2010. Cockburn Cement claims if these price reductions were taken into account the CEO would have found that dumped exports of quicklime had caused material injury.

This Chapter provides an overview of the relevant legislative framework in relation to the investigation period, views of the TMRO and other interested parties, and the Commission's views on this issue.

5.3 Legislative framework

5.3.1 The investigation period

The investigation period is defined in subsection 269T(1) of the Act as follows:

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

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31 This notice advises that the Commissioner has decided not to reject an application seeking the publication of a dumping duty notice has not been rejected by the Commissioner, and that an investigation will be initiated.

32 For the purposes of Cockburn Cement's application for the Minister to publish a dumping duty notice, that was lodged on 6 October 2011.

Subsection 269TC(4) of the Act specifies the requirements that need to be set out by the Commissioner[33] in a public notice, if a decision is made not to reject an application for the Minister to publish a dumping duty notice. Paragraph 269TC(4)(bf) refers to the investigation period, as follows:

> *"If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:*
> *……..*
>
> *(bf) indicating that a report will be made to the Minister:*
> *(i) within 155 days after the date of initiation of the investigation; or*
> *(ii) within such longer period as the Minister allows under section 269ZHI;*
>
> *on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; …"*

The Act reflects the relevant Articles in the WTO ADA, and Australia's WTO obligations. The WTO ADA assumes that the determination of whether dumping has occurred, which must be made before a country imposes dumping duty on exports, will be made by reference to a 'period of investigation' (Articles 2.2.1; 2.2.1.1; 2.4.1 refer). The WTO ADA does not address resetting or amending an investigation period.

There is no provision in the Act that expressly allows for the investigation period to be amended after it is specified in the relevant public notice by the Commissioner.

5.4 Policy approach to setting an investigation period

5.4.1 General

The investigation period is fundamental to an investigation, as it establishes the time period that will be the focus of the investigation and upon which the Commissioner will base final recommendations to the Parliamentary Secretary.

The exports of goods occurring during the investigation period will be examined to determine if they are dumped and causing material injury to the Australian industry producing like goods.

The purpose of setting the investigation period is to ensure that a reasonable time period is considered to determine if dumping has occurred and material injury has been caused by that dumping. It allows an investigation to be conducted, and assessments to be made, in an impartial and unprejudiced manner based on the facts present in that period. The Commissioner 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.[34] TER 179A stated that it was the ACBPS policy that

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[33] In this Chapter "CEO" and "Commissioner" are used interchangeably.

[34] *Dumping and Subsidy Manual* (Manual), August 2012, Section 3.2. This Manual is available on the Commission's website at www.adcommission.gov.au.

an investigation period will be nominated generally for a period of twelve months preceding the initiation date and ending on the most recently completed quarter or month.

TER 179B states:

> "*in the absence of submissions or facts arising during the initial phases of the investigation which suggest a 12 month period is unsuitable, that the Customs and Border Protection is likely to set a 12 month period*"[35].

The Commission notes that the text "*initial phases of the investigation*" referred to in the quote above, refers to the period when an anti-dumping application is being considered, and when an investigation has not yet been initiated. The Commission considers that its approach for setting an investigation period reflects the predominant approach adopted by other comparable anti-dumping administrations.

The Commission acknowledges that for several recent dumping investigations the investigation periods have respectively exceeded twelve months (e.g. for the dumping investigation for exports of certain power transformers the investigation period was three years). However, for these cases, the Commission identified compelling reasons (before the investigations were initiated) for setting the investigation periods at greater than twelve months (e.g. the relevant goods were extensive capital equipment that were supplied to meet specific project requirements through tender processes, and the development, manufacture and supply of the goods was completed over an extended period).

5.4.2 Submissions to resumed investigation

In its submission dated 21 March 2014, Cockburn Cement highlighted that for the dumping investigation into exports of hot rolled coil (HRC) exported from Japan, Korea, Malaysia and Taiwan anti-dumping measures were set by reference to prices for the goods outside of the investigation period. Cockburn Cement noted that this approach was supported by the TMRO following a reinvestigation in respect of HRC. However, the Commission notes for the HRC investigation (as confirmed during the HRC reinvestigation) that prices outside the investigation period were only referenced when recommending the level of anti-dumping measures to be imposed. These prices were not referenced for the Commission's dumping and injury assessments. For this investigation, the Commission found that *during* the investigation period dumped goods had caused injury to the Australian industry.

5.5 Facts of this case – TER 179A

TER 179A stated that:

> *"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 Anti-Dumping Practices formulated a recommendation at its meeting of*

[35] TER 179B, page 10 refers.

> *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"[36].*

TER 179A found that based on the information received in the application and the pre-initiation meeting, the investigation period established in this case was reasonable in the circumstances and within relevant policy guidelines.

TER 179A found 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.

5.6 Trade Measures Review Officer

As discussed at Sections 2.6 and 3.2, following a review of the CEO's first termination decision, the TMRO decided to revoke the CEO's decision. The TMRO found that it was the absolute discretion of the CEO to set the investigation period. The TMRO found that while it was uncommon for the ACBPS to revisit the identification of the investigation period subsequent to the initiation of an investigation, there may be case circumstances where adherence to the set investigation period leads to an unreasonable outcome.

The TMRO considered that the CEO had/has the power to amend the investigation period by virtue of Section 33 of the *Acts Interpretation Act 1901* (assuming that certain procedures are followed to ensure procedural fairness).

The TMRO concluded that:

> *"35. In my view, the particular circumstances of this case are such that it would have been appropriate for the CEO of Customs to have revisited and amended the investigation period when it became apparent that the bulk of any injury claimed to be suffered by the applicant was sustained in the 3 month period immediately preceding the investigation period"[37].*

In addition, the TMRO found that in the alternative to amending the investigation period the CEO can, and should have, had regard to the injury experienced by Cockburn

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[36] TER 179B, pages 10 to 11 refer.

[37] TMRO's Report, paragraph 35 refers.

Cement for the six months prior to the investigation period (i.e. January to June 2010). The TMRO found that it was open to the ACBPS to assess whether injury was experienced for the prior period by reference to export price and normal values for quicklime (to determine whether dumping was occurring).

Responding to a request by the TMRO, the ACBPS provided the TMRO with injury analysis for the period January 2010 to June 2011. Based on this analysis, the TMRO concluded that:

> *"30…….. 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[38] the export price and normal value in respect of a period commencing in January or March of 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"[39].*

5.7 Anti-Dumping Review Panel

As discussed at Sections 2.9 and 3.1, following a review of the CEO's second termination decision, the ADRP decided to revoke the CEO's decision. In its report, the ADRP indicated that because the legal basis for the ACBPS (in TER 179A) to conduct its 'further injury analysis' was not clear (i.e. whether it was on the basis of the CEO amending the investigation period, or whether it was on the basis of the CEO linking injury found to have occurred the investigation period, to dumping), that it would only focus on reviewing the 'further injury analysis'. The ADRP also indicated its reluctance to review the TMRO's findings. Therefore, the ADRP made no specific findings in relation to whether the investigation period could or should have been changed in this case.

5.8 Factual clarifications

The Commission considers that it is necessary to set out the facts as they were understood by the TMRO and the ADRP. When commenting on the investigation period, a key issue considered by the TMRO was the 'impact of the investigation period in this case'. The TMRO met ACBPS officials and requested additional injury analysis for the longer period (including the six months prior to the investigation period). The TMRO's report stated:

> *"29. As outlined above, the primary ground advance by the applicant is that the delegate of the CEO of Customs would have found that the applicant had suffered*

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38 This SEF has not corrected any formatting issues contained within direct quotes.

39 TMRO's Report, paragraphs 30 to 31 refer.

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. The TMRO considers that these circumstances are unusual"[40].

The TMRO held the opinion that the financial position of the applicant in the period immediately prior to the investigation was such that there was sufficient cause for the CEO to have 'revisited and amended the investigation period'. In the TMRO's Report, the TMRO cited an 'actual loss in revenue' and a 'reduction in profit'.

Given this factual background about the investigation period this resumed investigation (INV 179B) considered two important issues. The first was whether injury had to be assessed for the industry as a whole. On this matter the Commission agrees with Section 7.5 of TER 179A which commented that the TMRO had considered the level of injury to Cockburn Cement alone and not the whole of the Australian industry. This finding was been supported by the ADRP[41], where it expressed support for the finding by the ACBPS that it was necessary to examine injury for the Australian industry as a whole (this issue is also discussed at Section 10.5.3).

The second factual issue concerning the investigation was the data referred to by the TMRO. When the Commission examined the injury to the Australian industry as a whole over that 'further injury analysis' period, which as noted was a part of the TMRO's consideration of investigation period, the Commission calculated the injury figures as follows:

- the revenue decrease is [redacted]% [less than 1%] for the Australian industry as a whole. This varies slightly from the [redacted]% [less than 1%] decrease that was previously calculated by the ADRP. The TMRO had cited a [redacted]% [less than 2%] decrease but this related to Cockburn Cement only; and
- the profit effect to the Australian industry as a whole was not able to be calculated with any certainty. However, following the rationale of the ADRP at paragraph 67 which speculated about a likely effect on profit at the whole of industry level, this SEF has amended (and corrected) the percentage to be [redacted]% [less than 1%] not the [redacted]% [less than 3%] shown by the ADRP[42].

With these data clarifications a revenue fall of [redacted]% [less than 1%] for the whole of a large domestic market is insignificant, as is any likely profitability reduction on the whole of the industry.

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[40] TMRO's Report, paragraphs 29 to 30.

[41] ADRP's Report, paragraph 52 refers.

[42] ADRP's Report, paragraph 31 refers.

The Ministerial Direction in relation to material injury directs (among other things) that:

- material injury is injury which is not immaterial, insubstantial or insignificant; and
- the injury must be greater than that likely to occur in the normal ebb and flow of business.

Had the facts described above been before the ADRP it is unlikely that a change to an investigation period by extending it into an earlier period would have been found warranted (assuming that it was open to the Commission to extend the period, which as discussed above is not the case). The two percentages showing revenue and profitability declines are insignificant, and in line with the Ministerial Direction would not be greater than that likely to occur in the normal ebb and flow of business.

The ADRP's Report stated that:

> *"66. I note a high dumping margin of 48% found for the originally set investigation period is a relevant factor to consider when assessing the materiality of any injury caused (ss.269TAE(1(aa)). A revenue fall of [redacted]%[less than 1%] for the whole of a large domestic market is on the face of it insignificant. However while no profit loss was able to be estimated for the total domestic market, a [redacted]% profit drop to the producer which has approximately 50% of the domestic market suggests a level of injury greater than that which may arise from considering in isolation [redacted]% [less than 1 %] revenue reduction to the total domestic market. As against that the following principal factors are indicative that any injury caused may not be as significant as is reflected in the profit drop to Cockburn Cement's market: …"*[43].

There is no indication, in the Commission's view, having regard to these facts as recalculated in this current investigation (INV 193B), that there are any special circumstances to justify an extension to the investigation period as Cockburn Cement had argued in its application for review. This assumes that it would be open to the Commissioner to amend the investigation period, which the Commission has found is not the case.

Chapter 10 also discusses the injury related figures as they have been interpreted by various interested parties, including the TMRO and the ADRP.

5.9 Submissions to the resumed investigation

Cockburn Cement has made several submissions to the investigation arguing that the investigation period should be amended (by reiterating the TMRO's findings)[44]. Cockburn Cement also argued that if the Commissioner does not amend the investigation period, then the injury experienced in the months prior to the investigation period should be taken into account.

Other interested parties, including the GOT, Chememan Thailand (and its Australian importer, a related company), and Alcoa made submissions to the resumed investigation

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[43] ADRP's Report, paragraph 66 refers.

[44] These submissions are available on the Electronic Public Record for the investigation, which is available on the Commission's website at www.adcommission.gov.au.

claiming that there was no legislative basis for the Commissioner to revisit or amend the investigation period. These interested parties claim that even if the investigation period was extended to January 2010, or March 2010, the Commissioner would still find that dumped exports of quicklime had caused negligible injury (if the earlier period was assessed).

5.10 The Commission's assessment

The Commission has assessed and reconsidered whether it is open to the Commissioner to revisit or amend the investigation period (of 1 July 2010 to 30 June 2011) for the quicklime investigation.

In making its assessment, the Commission has considered legal, and policy and procedural considerations, which are detailed in the following Sections.

5.10.1 Legal considerations

Prescriptive requirements – setting an investigation period

The Commission considers that the setting of the investigation period only arises once, and in specific and prescribed circumstances, specifically where the Commissioner decides not to reject a valid application for the publication of a dumping duty notice. Paragraph 269TC(4)(bf) explicitly requires the Commissioner to specify an investigation period in the public notice advising the Commissioner's decision (to not reject an application, which will result in an investigation being initiated). The Commission considers it is at the Commissioner's discretion to set the investigation period (Section 5.4 refers) and there is no explicit power in the Act to enable the Commissioner to revisit or amend the investigation period (subsequent to the issuing of the public notice required by subsection 269TC(4) of the Act).

Given this prescriptive requirement, the Commission also does not consider that the investigation period can be amended under Section 33(1) or 33(b) of the *Acts Interpretation Act 1901*.

> *"(1) Where an Act confers a power or function or imposes a duty, then the power may be exercised and the function or duty must be performed from time to time as occasion requires….*
> *…*
> *Power to make instrument includes power to vary or revoke etc. instrument*
>
> *(3) Where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument".*

The Commission considers that there is sufficient contrary intention evinced throughout Part XVB of the Act that any alteration or consideration of periods prior to the investigation period is prohibited (sections 269TACB, and subsections 269TDA(2) and (17) of the Act refer). Therefore, the Commission considers the Commissioner can only

set the investigation period once (and cannot subsequently be amended), as prescribed by paragraph 269TC(4)(bf) of the Act.

Determination of dumping for a dumping investigation

The Act provides for the Minister[45] to impose dumping duties under subsections 269TG(1) and (2) of the Act. A key component of the anti-dumping system is the requirement by the Minister to determine whether dumping has occurred, in accordance with section 269TACB of the Act. The Commissioner is also required to consider this when making decisions and recommendations under section 269TE of the Act (in having regard to the same considerations as the Minister).

Section 269TACB of the Act specifies that:

> ***"Working out whether dumping has occurred and levels of dumping***
>
> *(1) If:*
>
> *(a) application is made for a dumping duty notice; and*
>
> *(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and*
>
> *(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;*
>
> *the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.*
>
> *(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):*
>
> *(a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or*
>
> *(aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or*
>
> *(b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or …"* (emphasis added).

Subsequent subsections of section 269TACB detail methods of determining whether dumping has occurred, and the relevant margin, in each case by reference to the investigation period. Section 269TACB clearly prescribes that the Minister, in exercising section 269TG powers must determine whether dumping 'has occurred', and the margin of that dumping, only by reference to any dumping which occurred in the investigation period.

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[45] As discussed at footnote 9, the relevant Minister for this investigation is the Parliamentary Secretary is the relevant decision maker for this investigation.

At all statutory stages in a dumping investigation commenced by application, a determination as to whether there 'has been dumping', and the further question as to whether such past dumping 'has caused' injury, must be made by reference to any dumping that occurred in the investigation period declared in the public notice issued under subsection 269TC(4) of the Act, in accordance with section 269TACB of the Act.

The Full Federal Court of Australia (Federal Court) decision of *Pilkington (Aust) Ltd v Minister of State for Justice & Customs (2002) 127 FCR 92* (Pilkington) held, and is binding authority to the effect, that determining whether dumping has occurred for the purposes of subsections 269TG(1) or (2) of the Act[46] is governed by section 269TACB of the Act, and therefore the determination must be made by examining exports during the investigation period. While the Federal Court did not specifically consider whether an investigation period once set can be amended, the Commission considers the Federal Court judgement seems to support the finding that the period cannot be amended.

Therefore, the Commission considers that it is not open to the Minister to decide that dumping has occurred for the purposes of subsections 269TG(1) or (2) of the Act by reference to any dumping that occurred prior to the declared investigation period. It is also clear that it is not open to the Commissioner to recommend that the Minister make such a finding. This is relevant for quicklime, given the investigation is examining whether there are grounds to recommend that a dumping duty notice be published in accordance with subsections 269TG(1) and (2) of the Act.

Further, determining whether past dumping 'has caused material injury' for the purposes of subsections 269TG(1) or (2) of the Act necessarily requires determining whether dumping has occurred applying section 269TACB of the Act, by examining exports during the investigation period.

Given the highly prescriptive nature of the legislative requirements in examining exports to assess whether dumping and material injury has occurred, the Commission considers that the Commissioner does not has an implied power under the Act to amend the investigation period, at any given point in time.

Considering a period prior to the investigation period

The Commission also has a different interpretation compared to the TMRO[47] regarding the purpose of subsection 269T(2AD) of the Act as a basis to consider a period prior to the investigation period.

Under subsection 269T(2AD) of the Act, the Commission considers that *for the purpose of determining whether material injury has been caused* to an Australian industry the Commission may examine periods prior to the investigation period. This is the basis on which the Commission sets an 'injury analysis period' as distinct from the 'investigation period'. This allows a comparison of the economic condition of the Australian industry at an earlier period with the conditions observed within the investigation period. Typically, the Commission will specify an 'injury analysis period' commencing several years earlier than the investigation period (i.e. for the quicklime investigation the injury analysis period was set from 1 January 2008).

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[46] Or in relation to a decision to terminate an investigation under subsection 269TDA(1) of the Act.

[47] TMRO Report, paragraph 25 refers.

The Commission considers that the injury period is not, and cannot be, used to assess exports occurring during that period to determine if they were dumped – that is the explicit purpose of the investigation period.

The TMRO further stated[48] that section 269TAB[49] and section 269TAC[50] of the Act do not in their terms limit the examination of the export price and normal value by reference to the investigation period, and therefore that it would be open to the ACBPS to determine the export price and normal value for a period prior to the investigation period, and then determine whether any injury in that period had been caused by dumping.

However, the Commission considers that in respect of a dumping investigation, sections 269TAB and 269TAC of the Act should be read in context with the rest of the Act – particularly subsection 269TC(4) and section 269TACB of the Act.

In effect, paragraph 269TC(4)(bf) of the Act provides:

> "*a report will be made to the Minister…on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period*" (paraphrased).

Therefore, the Commission considers that in a dumping investigation (i.e. for new anti-dumping measures) the question of whether goods are dumped must be based on the examination of exportations of the goods to Australia that occurred during the investigation period. Further, this test must be done based on an export price of goods exported during the investigation period and normal value of like goods during the investigation period.

Subsection 269T(2AD) of the Act provides that the Minister may consider information in relation to the Australian industry prior to the investigation period for the purpose of determining whether a causal link is established between dumping within the investigation period and any asserted material injury. In this context, the Commission considers subsection 269T(2AD) of the Act seems to reinforce the centrality of the investigation period (as a key component of the Minister's decision to publish a dumping duty notice).

The Commission considers that section 269TAB and section 269TAC of the Act are silent as to determining an export price or normal value (as relevant) with reference to an investigation period. The Commission considers this is because the methods described in those sections are also used for other processes within the anti-dumping system – such as reviews of measures, accelerated reviews (for new exporters) and duty assessments.

It is the Commission's view that the Commissioner may not have regard to a period before the investigation period to determine if dumping has occurred and that having such regard to an earlier period is not provided for by subsection 269T(2AD) of the Act. The Commission considers subsection 269TC(4) and section 269TACB of the Act can be interpreted so that the investigation as to whether dumping has occurred must be performed for exportations occurring within the investigation period. This is fundamental

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48 TMRO report, paragraphs 26 to 27 refer.

49 Relevant to the determination of export price.

50 Relevant to the determination of normal value.

to the anti-dumping system – the Commissioner must conduct an investigation as to whether goods are dumped, based on exportations to Australia during the investigation period.

Subsequently, the Commissioner is not able to presume that the goods exported prior to the investigation period were dumped, and cannot attribute any injury suffered as a result of those exports to dumping. The Commission also considers that for a new investigation section 269TAB and section 269TAC of the Act cannot be used to determine an export price and normal value of goods exported prior to an investigation period.

5.10.2 Policy and procedural considerations

TER 179A indicated that the setting of an investigation period is important to ensure a transparent and fair (and unbiased) investigation process. TER 179A indicated that there may be procedural fairness issues if the investigation period were to be altered at a later stage of the investigation. TER 179A advised that the investigation period is notified to all parties at the initiation of an investigation.

In its submission dated 1 October 2014 Clayton Utz on behalf of Alcoa stated that 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.

The TMRO indicated that if the investigation period were to be amended certain procedures would need to be followed to ensure procedural fairness was afforded to interested parties (e.g. such as publishing a revised notice specifying the revised investigation period, advising all interested parties of the changes, and possibly seeking an extension of investigation timeframes).

However, the Commission considers that changes to an investigation period (if provided for in the Act) could cause uncertainty for stakeholders (i.e. it would cause confusion regarding the status of submissions made consisting of information and data covering differing investigation periods). It could also potentially lead to investigation delays and duplication. The Commission considers that given the Act (reflecting Australia's WTO obligations) prescribes a strict legislative timeframe for conducting anti-dumping investigations the possibility that it is open to the Commissioner to amend an investigation period seems contrary to the intention of this legislative framework.

Notwithstanding that extension of time can be granted by the relevant Minster for an investigation, the Commission considers that seeking extensions of timeframe of an investigation in order to amend an investigation period is not appropriate nor does it accord with the intention of the extension provisions (provided for under section 269ZHI of the Act).

The Commission also considers that the identified purposes of the notification procedures in subsection 269TC(4) of the Act would be undermined if the Commissioner had the ability to vary the investigation period after the investigation had been initiated.

5.11 The Commission's conclusion

In conducting its assessment regarding whether it is open to the Commission to revisit or amend the investigation period, the Commission has considered several legal and, policy and procedural considerations (as discussed at Sections 5.10.1 and 5.10.2).

Based on this assessment the Commission has found that it is not open to the Commissioner to revisit or amend the investigation period, once it is set and specified in the public notice published under subsection 269TC(4) of the Act.

Therefore, in relation to the investigation for quicklime, the Commission considers that it is not open to the Commissioner to amend the investigation period of 1 July 2010 to 30 June 2011.

The Commission's analysis and assessment of whether dumped exports of quicklime caused or threatened to cause material injury to the Australian industry, has been completed in accordance with this finding (and has been confined to the investigation period, as set in the relevant notice published on 31 October 2011) (Chapter 10 refers).

6 THE GOODS AND LIKE GOODS

6.1 Finding – TER 179A reconfirmed

The Commission has found that the locally produced quicklime is like to the GUC (i.e. the quicklime exported from Thailand during the investigation period).

This finding has not changed from the finding as specified in TER 179A (and SEF 179A), and these reports should be read in conjunction with this SEF.

7 THE AUSTRALIAN INDUSTRY

7.1 Finding – TER 179A reconfirmed

The Commission has found that:

- like goods were manufactured in Australia; and
- there is an Australian industry that produce like goods in Australia (comprising of twelve producers, including Cockburn Cement).

This finding has not changed from the finding as specified in TER 179A (and SEF 179A), and these reports should be read in conjunction with this SEF.

8 AUSTRALIAN MARKET

8.1 New finding

The Commission has found that during the investigation period:

- the size of the Australian market for quicklime was approximately 2.4 million tonnes;
- the size of the WA market for quicklime was approximately 1 million tonnes, and was supplied primarily by Cockburn Cement; and
- quicklime imported from Thailand into the Australian (total) and WA markets accounted for less than 1% and 2% respectively.

Section 8.3 discusses the basis for updating the market size estimate for this SEF.

8.2 Market structure and end use

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 high transportation costs relative to the value of the product, the Australian quicklime market is geographically segmented. Suppliers on the East Coast predominantly supply quicklime to customers in Eastern Australia (EA), while Cockburn Cement, located on the West Coast, predominantly supplies quicklime to customers in WA.

During the investigation period approximately:

- 70% of Cockburn Cement's quicklime sales were to four alumina refineries located near the company's production facilities;
- 20% was used in gold processing; and
- 10% was used in a range of applications including mineral processing, water treatment and building and construction.

The Commission has found that imported quicklime has the same end uses as the quicklime produced by the Australian industry.

8.3 Market size

During the investigation, there has been limited cooperation from members of the Australian industry that produce quicklime. For TER 179 the ACBPS estimated the size and composition of the Australian quicklime market using data verified during visits to Cockburn Cement and importers, data from the ACBPS import database, and a market

estimate from the National Lime Association of Australia (NLAA), the peak body representing the Australian lime industry[51].

In 2011, the NLAA estimated the Australian market for quicklime to be 2.1 million tonnes, comprising both commercial lime manufacturers and integrated producers and users of lime. Given no new information had been provided in relation to the Australian market for quicklime subsequent to the CEO's first termination decision, this estimated market volume (of 2.1. million tonnes) was used for the purposes of TER 179A.

In November 2013, in a submission to the Department of Environment on the exposure drafts of bills to repeal the carbon tax and related legislation (of 4 November 2013), the NLAA estimated the Australian quicklime market in 2010 and 2011 to be 2.1 million tonnes and 2.7 million tonnes[52] respectively. The Commission considers it is appropriate to use the revised (and contemporary) NLAA estimates to recalculate the total Australian market size for quicklime.

The Commission considers it is reasonable to recalculate the Australian market size for the investigation period by deriving an average of the updated NLAA volumes for 2010 and 2011. The Commission has calculated a revised market size estimate of 2.4 million tonnes. The size of the WA market (based on Cockburn's verified data and data from the ACBPS import database) was approximately 1 million tonnes during the corresponding period (this has not changed).

The Commission's revised market size estimates and the updated NLAA data are at **Confidential Appendix 1**.

8.4 Market supply

The Australian market for quicklime is supplied primarily by Australian manufacturers and imports.

8.4.1 Import volumes

As discussed, during the investigation period, a relatively minor volume of quicklime was imported into Australia. Cockburn Cement claimed that the level of imports have been historically low due to the cost of establishing the necessary infrastructure to service the Australian market. In addition, the cost of transporting the goods to WA has meant that these goods were generally not competitive.

Figure 1 below highlights the volumes (in tonnes) of quicklime imported into Australia (for all States) during 2007/08 to 2010/11.

[51] This data was relied on due to the absence of cooperation from other Australian industry members. This data has been relied on throughout the investigation.

[52] Volumes were also provided for preceding calendar years.

Figure 1 – Total import volumes of quicklime (in tonnes) – Australian market (all States) – 2007/08 to 2010/11

Figure 1 shows that:

- prior to the investigation period, quicklime imports were sourced almost exclusively from Indonesia; and
- significant volumes of quicklime imported from Thailand entered the market in 2010.

In 2010/11, the total volume of quicklime imported from Thailand was approximately 15,000 tonnes.

The Commission has also considered the volumes of quicklime imported subsequent to the investigation period for the purposing of assessing whether there was a threat of material injury being caused to the Australian industry by dumped exports. This is discussed at Chapter 12.

8.4.2 Market shares

Total Australian market

Figure 2 below highlights total market shares (measured as a percentage) of the Australian quicklime market (all States) during the investigation period, based on the updated total Australian market size data[53].

[53] Representing of 2.4 million tonnes.

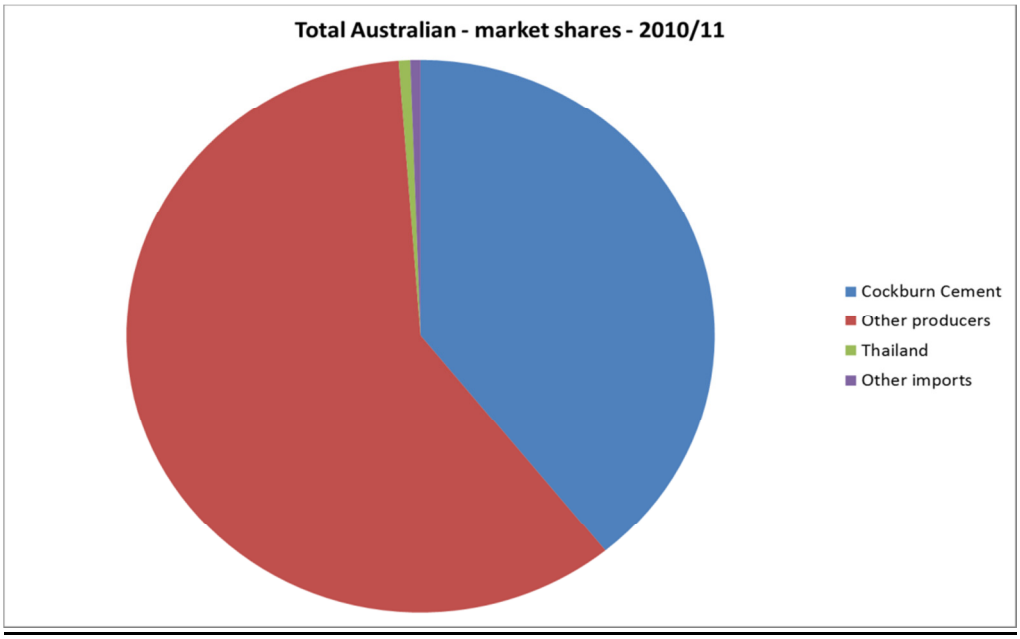

Figure 2 – Total Australian quicklime market (all States) – market shares (%) – 2007/08 to 2010/11

Figure 2 illustrates that in respect of shares of the total Australian quicklime market (all States):

- Cockburn Cement represented approximately 39.2%[54] of the market;
- other Australian producers represented approximately 59.6% of the market;
- total imports represented approximately 1.2% of the market; and
- imports from Thailand represented approximately 0.6% of the market.

Australian market – by geographical segment

As discussed at Section 8.2, the Australian quicklime market is geographically segmented, with Australian producers located in either EA or WA supplying quicklime exclusively to customers located in EA or WA (as customers are in close proximity to manufacturing sites).

The data contained in the ACBPS import database showed that the source of imports is usually characterised by State (i.e. destination of the goods). During the period January 2010 to June 2011, essentially all quicklime imported from Thailand was supplied to importers located in WA, while Indonesian imports were supplied to users located in other States.

Figures 3 and 4 below highlight the sources of imports (in tonnes) of quicklime supplied to customers based in WA and EA during 2007/08 to 2010/11.

[54] This figure has been rounded to 40% for the purpose of injury analysis.

Figure 3 – Import volumes (in tonnes) – all States (excluding WA) – 2007/08 to 2010/11

Figure 4 – Import volumes (in tonnes) – WA only – 2007/08 to 2010/11

Given that quicklime imported from Thailand was almost exclusively supplied to customers in WA, the Commission examined the WA market in more detail. During the investigation period quicklime was imported from Thailand by two importers (this included, Chememan Thailand and Alcoa (with a very minor volume supplied to the latter importer)). During the investigation period, the total WA market (all sources) held by imports from Thailand was relatively low at 1.6%.

9 DUMPING INVESTIGATION

9.1 Finding – TER 179A reconfirmed

The Commission found that during the investigation period, quicklime exported to Australia from Thailand:

- was dumped at a margin of 48%[55]; and
- the volume of dumped exports was not negligible.

Dumping margins for quicklime were calculated by comparing export prices with the corresponding normal values.

This finding has not changed from the finding as specified in TER 179A (and SEF 179A), and these reports should be read in conjunction with this SEF.

The Commission's preliminary calculations of export price, normal value and dumping margins in respect of quicklime are at **Confidential Appendix 2**.

[55] During the investigation period only one exporter (Chememan Thailand) directly exported quicklime to Australia. During this period, goods manufactured by Chememan Thailand were also exported indirectly through a related trader, Chememan Singapore Pte. For the purposes of TER 179A theses entities were collapsed and treated as one exporter. A dumping margin equivalent to 48% was also determined for all other Thai exporters.

10 ECONOMIC CONDITION OF THE INDUSTRY AND HAS DUMPING CAUSED MATERIAL INJURY

10.1 Finding – TER 179A reconfirmed

The Commission has assessed that quicklime exported to Australia from Thailand at dumped prices has caused injury to the Australian industry producing like goods, but that the injury is negligible[56].

While this finding reflects the finding specified in TER 179A, the Commission's underlying injury analysis and assessment has been updated (as discussed at Section 10.2).

The Commission has assessed that the injury experienced by the Australian industry is negligible (and therefore is not material). The Commission found that notwithstanding that:

- exports of quicklime were dumped at a relatively high margin of 48%;
- Cockburn Cement representing approximately 40% of the Australian quicklime market experienced injury; however the quantum of the injury was very limited (for Cockburn Cement only and for the whole of the Australian industry) that it could only be found to be negligible.

The degree of the injury caused by dumped goods experienced by the Australian industry was a central issue to the ADRP's review and findings (Section 10.4.3 refers).

10.2 Finding – new finding

Based on verified information and data, the Commission has assessed that the Australian industry appears to have experienced injury in respect of its sales of quicklime in the form of:

- reduced sales revenue in the non-alumina sector;
- price depression in the non-alumina sector; and
- reduced profits and profitability.

10.3 Legislative framework

Under section 269TG of the Act, one of the matters that 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.

Section 296TAE of the Act outlines how injury to an Australian industry can be assessed. In June 2012, the Minister gave a direction on how to assess material injury to the CEO (this was subsequently amended to incorporate references to the Commissioner). This Ministerial Direction[57] replaced the previous direction and Ministerial letters regarding

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[56] While this reflects findings made in TER 179 and TER 179A, the basis for the findings in this SEF are different. Contemporary data (provided by Cockburn Cement and published by the NLAA) and periods of assessment (i.e. the investigation period) have been used.

[57] This Ministerial Direction has been referenced previously in this SEF.

material injury. The Ministerial Direction is available on the Commission's website at www.adcommission.gov.au

10.4 Australian industry claims

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

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

Cockburn Cement represents approximately 40%[58] of total Australian production and a higher share of sales of local production, due to the captive use of quicklime by some producers. Cockburn Cement is the largest producer in Australia.

Cockburn Cement claimed that dumped exports entered the Australian market in March 2010.

10.5 Commencement of injury, and analysis period

10.5.1 General

For the purpose of assessing material injury to the Australian industry, the Commission has focused its analysis on the economic performance of the Australian industry from 1 January 2008. Given Cockburn Cement represents approximately 40% of total Australian production and a significantly higher share of the actual sales of local production due to the degree of captive production, Cockburn Cement's data has been extrapolated and used as a basis to assess the economic performance of the Australian industry, as a whole. Section 10.5.3 discusses the Commission's assessment of the economic performance of the Australian industry, as a whole.

10.5.2 Termination Report No. 179A

TER 179A did not recommend any change to the original investigation period of July 2010 to June 2011. TER 179A did however include an additional analysis (*Chapter 7: "Further Injury Analysis"* refers) where the ACBPS examined data as if the investigation period had been extended to cover the period January 2010 to June 2011. That longer 18 month period arose as a consequence of the TMRO's consideration of Cockburn Cement's review application made in respect of the CEO's first termination decision.

TER 179A noted that while there is no requirement for the ACBPS 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, that the ACBPS had conducted further analysis. This additional analysis was

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[58] This figure has been updated since TER 179A.

intended to provide satisfaction to all interested parties that all relevant matters have been considered in the CEO's decision to support its previous findings.

In TER 179A the ACBPS found that 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.

10.5.3 Anti-Dumping Review Panel

The ADRP conducted its review solely on the 'further injury analysis' that was completed for the period January 2010 to June 2011[59], and found that:

> *"the facts arising from the further investigation analysis undertaken by Customs in SEF 179A, along with the earlier findings in SEF 179, do not support a finding that negligible injury has been caused to the domestic market"*[60].

10.5.4 Statement of Essential Facts No. 179B

For this SEF, given the finding at Chapter 5 that the Commission considers it is not open to the Commissioner to revisit or amend the investigation period, the Commission has only assessed whether dumping caused material injury during the investigation period. The Commission considers that any injury experienced outside the investigation cannot be attributed to dumped exports.

The injury assessment in this Chapter reflects the Commission's approach. In addition, the Commission has updated and clarified certain revenue, profit and profitability figures (specified in TER 179 and TER 197A) that the Commission considers appear to have been misinterpreted by interested parties, including the TMRO and the ADRP.

10.6 Injury approach

10.6.1 Data

The injury analysis detailed in this Section is based on the financial information submitted, and verified, by Cockburn Cement; data from ACBPS import database; and data from the NLAA. For INV 179, Cockburn Cement provided half yearly production, cost and sales data for 1 January 2008 to 31 July 2011. Cockburn Cement provided its revenue and profit data in six months blocks. Therefore, a number of graphs in this Chapter cover the period January 2008 to June 2011.

Subsequent to the ADRP's decision to revoke the CEO's second termination decision, Cockburn Cement provided updated data for:

- total actual volume of sales for 2012 and full year forecasts for 2013 and 2014;
- total profit for 2012 and forecast profit for 2013; and
- the pricing impact on individual customers affected by the original downward pricing adjustment in 2010 and 2011.

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[59] A six month period was analysed, rather than three months only.

[60] ADRP's Report, paragraph 68 refers.

Only the updated data that relates to the injury analysis period and investigation period has been used by the Commission for its assessment of the economic condition of the Australian industry.

10.6.2 Different market sectors

Cockburn Cement supplies quicklime to the alumina and non-alumina market segments sectors in the Australian quicklime market. The Commission has analysed and assessed injury experienced in each sector (as relevant) and in the market as a whole.

10.6.3 Different geographical market segments

Submissions to the resumed investigation

In its submissions to the resumed investigation Cockburn Cement claimed that[61]:

- it is normal practice to consider material injury experienced by applicants for anti-dumping measures whose output of like products constitutes a major proportion of the total domestic production of those products as material injury to the Australian industry producing like products, unless there is evidence to the contrary; and
- 'regional injury' is not a relevant consideration as:
    - it has standing as the domestic industry producing quicklime; and
    - it meets the definition of 'domestic industry' per Article 4.1 of the WTO ADA.

The Commission's assessment

The Commission does not agree with Cockburn Cement's view. Although it may be open to the Commission to regard injury suffered to a particular member or members of the Australian industry as being representative of the entire industry as a whole, for the purpose of assessing the materiality of the injury, the whole Australian industry must be considered. Furthermore, in this case[62], exports of quicklime from Thailand are almost exclusively supplied to WA. The Commission therefore finds that it would not be appropriate to consider that injury suffered by Cockburn Cement must necessarily represent damage to the rest of the Australian industry. This is not to discount the possibility that any injury suffered by Cockburn Cement cannot also be regarded as material injury to the Australian industry as a whole, and the Commission has proceeded with its analysis below with that view.

The Commission does not dispute that Cockburn Cement had standing to bring the application for the original dumping investigation.

Australia's dumping legislation does not contain the regional industry exception provision at Article 4.1(ii) of the WTO ADA. The Commission's approach to determining injury is set out above in line with the relevant domestic legislation. This approach reflects the

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61 These submissions are available on the Electronic Public Record for the investigation, which is available on the Commission's website at www.adcommission.gov.au.

62 During the injury analysis period and the investigation period.

Ministerial Direction as it relates to regional injury (which is consistent with Article 4.1 of the WTO ADA), as noted above.

The Commission considers that there has always been a requirement to consider whether injury had occurred to the industry as a whole in accordance with the Federal Court decision in *Swan Portland Cement Limited and Cockburn Cement Limited and The Minister for Small Business and Customs and The Anti-Dumping Authority G377 1990* and with the Ministerial Direction. This requirement has been met according to the circumstances of each case regardless of whether a regional industry is involved.

Where the 'major proportion' constitutes a significant part of the total domestic production, the evidentiary requirement to consider whether the Australian industry as a whole is suffering a material injury, may be more easily met. However, in all cases it is necessary to examine whether there has been a material injury to the Australian industry as a whole. The ADRP also supports this view.

10.7 Volume effects

10.7.1 Sales volumes

Figure 5 below highlights Cockburn's quicklime sales volume (tonnes) for 2008 to 2011 (calendar years (CY)).

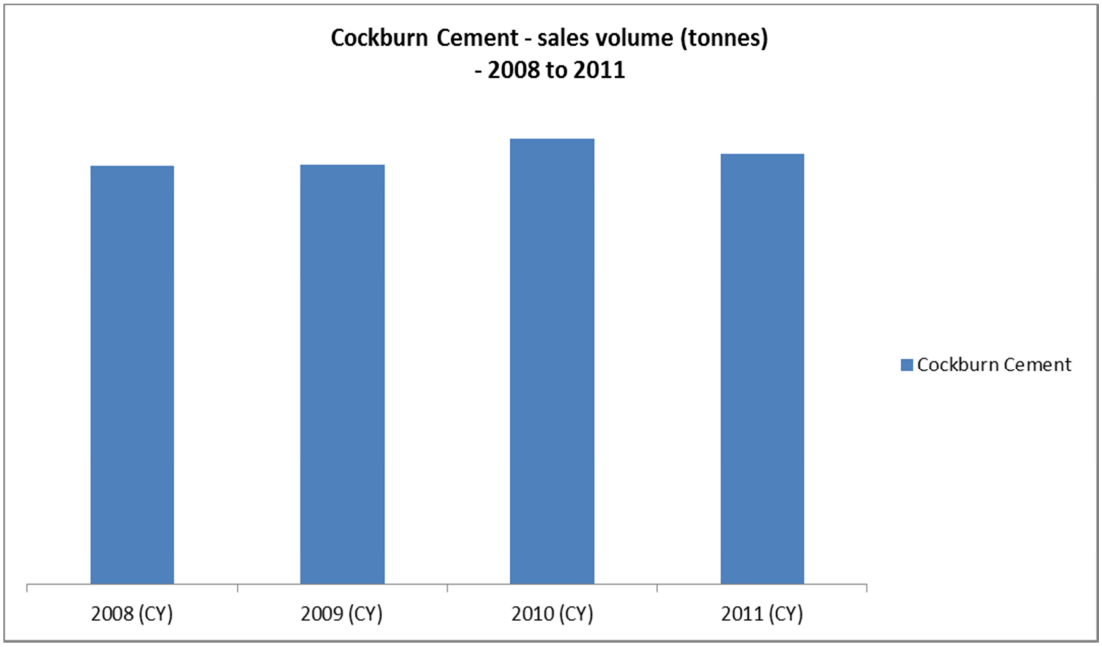

Figure 5 – Cockburn's quicklime sales volume (tonnes) – January 2008 to July 2011

Figure 5 highlights that Cockburn's quicklime sales volumes have remained relatively constant since 2008, with a slight decrease in 2011 compared to 2010.

Figure 6 below highlights Cockburn's quicklime sales volume (tonnes) for January 2008 to July 2011, in six month periods (to highlight the changes to volumes during the investigation period).

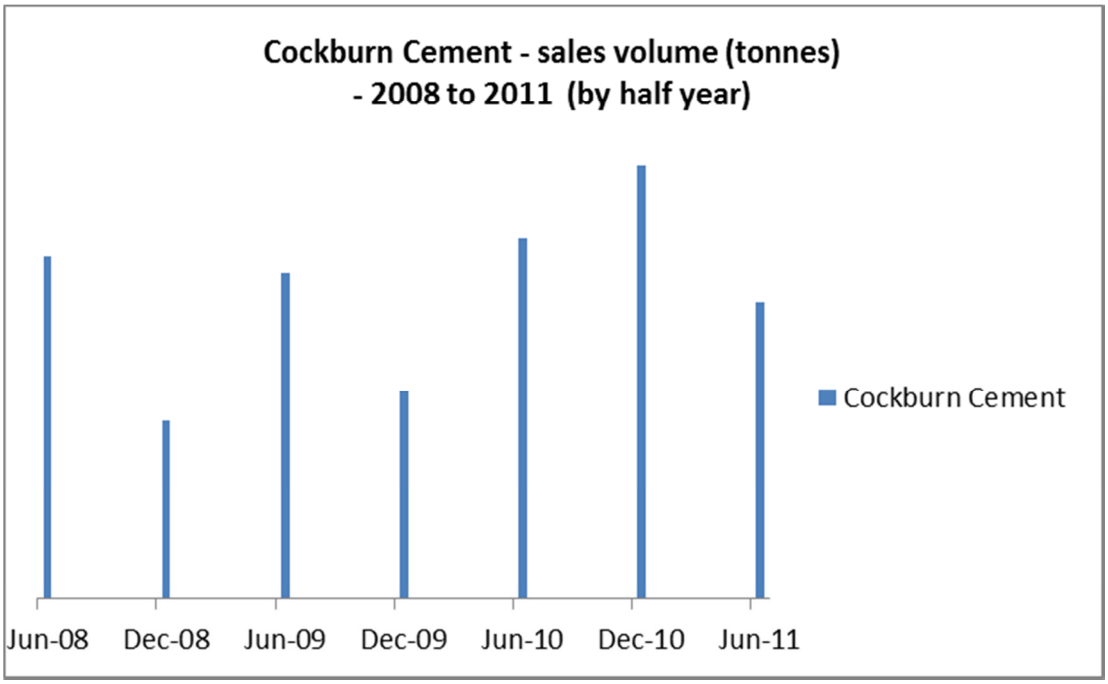

Figure 6 – Cockburn's quicklime sales volume (tonnes) – January 2008 to July 2011

Figure 6 shows a small increase can be seen in the first half of the investigation period followed by a small decline.

Figures 5 and 6 do not indicate that Cockburn Cement experienced reduced sales volume during the investigation period.

10.7.2 Market share

Figure 1 highlights the market shares held by the Australian industry (including Cockburn) and imports (from all sources) during the investigation period (Section 8.4.2 refers). The total Australian market and Cockburn Cement's market share were assessed for the investigation period (2010/11) using the updated NLAA market estimates, sales data from Cockburn Cement, and import data from the ACBPS import database. During the investigation period, the share of the total Australian market held by quicklime imports from all sources, including imports from Thailand, was approximately 1.6%. The market share held by Thai imports was approximately 0.6%.

In the absence of time series data for the Australian market the Commission further examined the WA market in order to compare the volumes of Thai imports relative to known Australian sales of local production[63]. Figures 7 and 8 below highlight the share of the WA market for quicklime held by Cockburn Cement and imports during 2008 to 2011 (by CY) (figure 7 refers), and during January 2008 to June 2011 (half yearly) (figure 8 refers).

[63] Due to the absence of cooperation from other Australian producers the Commission does not have time series data for these producers to examine market shares for the Australian market.

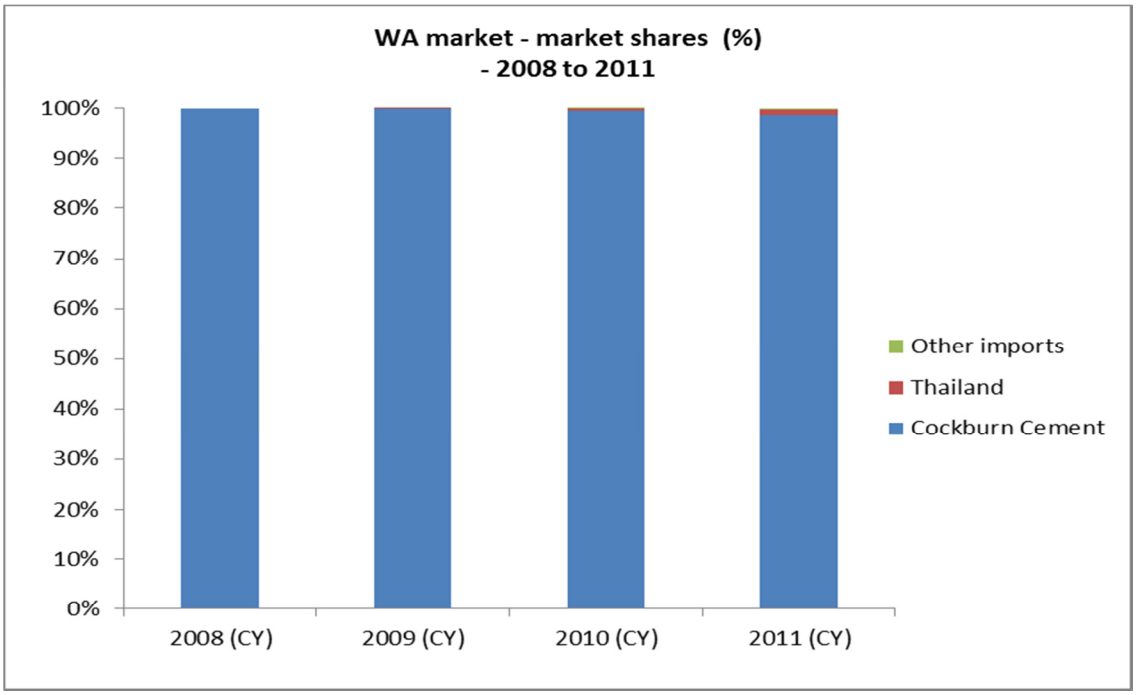

Figure 7 – Market shares (%) of the WA market for quicklime – 2008 to 2011 (CY)

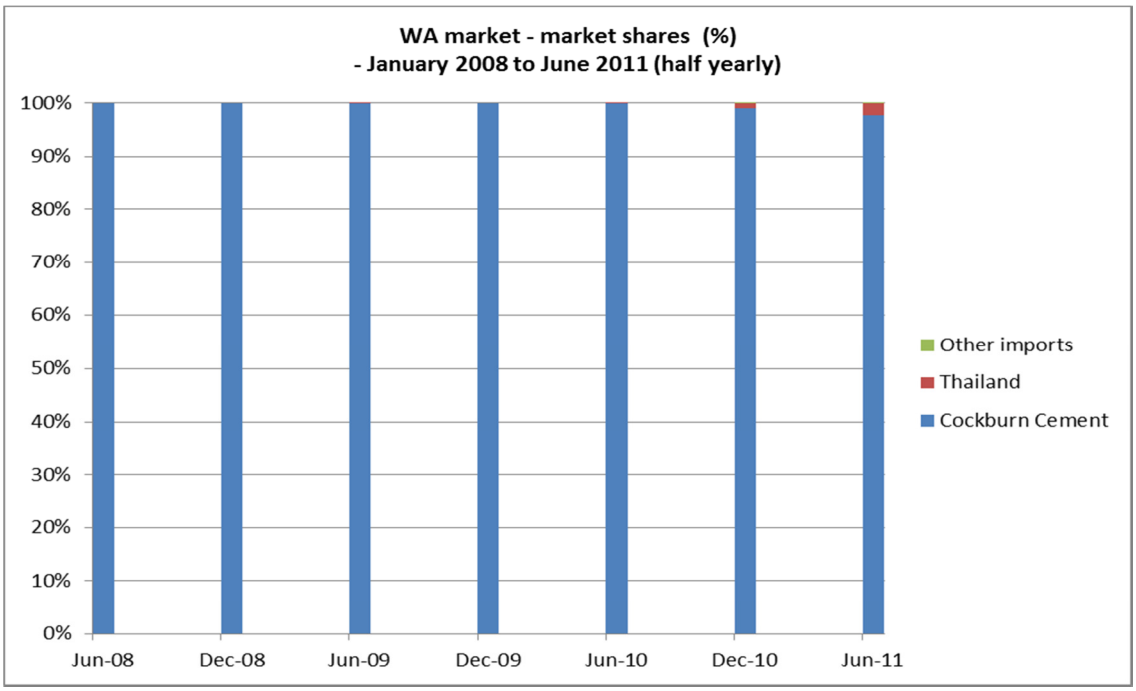

Figure 8 – Market shares (%) of the WA market for quicklime – January 2008 to June 2011 (half yearly)

Figures 7 and 8 highlight that the share of the WA market held by imports from Thailand during the investigation was insignificant at 1.6%. These figures also show that the entry of Thai quicklime imports into the Australian market during the investigation period did not have a significant impact on Cockburn Cement's market share.

10.7.3 Conclusion – volume effects

The Commission has found that during the investigation period Cockburn Cement:

- has not experienced lost sales volume, and
- has experienced a limited loss of market share in the WA market (only).

10.8 Price effects

10.8.1 Price undercutting

This SEF reconfirms the findings in TER 179 (Section 8.9 refers) concerning price undercutting, as detailed below:

> *"Cockburn Cement's quicklime prices to customers can vary significantly according to the volume of quicklime and/or other cement products a customer purchases. Therefore, an assessment of weighted average quicklime prices offered by Cockburn Cement and Chememan Thailand do not provide a meaningful comparison. Instead, prices have been assessed individually in regards to customers that are common to both parties. Prices were assessed taking into account the delivery terms each customer received from both suppliers, i.e., where customers purchased product ex-works (EXW) price was assessed on this level and where customers purchased product free into store (FIS) prices were assessed at this level.*
>
> *An assessment of prices based on quicklime volume shows that in the non-alumina sector, the majority of Chememan Thailand's prices during the investigation period were above the original price offered by Cockburn Cement (prior to any subsequent price reduction). It was found that in regards to three customers, the price offered by Chememan Thailand during the investigation period undercut the original price offered by Cockburn Cement. In one of these instances, Cockburn Cement reduced its price below the price being offered by Chememan Thailand but the customer continued to purchase the then more expensive product from Chememan Thailand due to other commercial considerations. These three non-alumina sector customers account for less than 1% of the total volume of quicklime sold by Cockburn Cement.*
>
> *In response to arguments put forward by Cockburn Cement, Customs and Border Protection has also conducted this assessment on a 100% available lime content basis. In this assessment it was found that sales by Chememan Thailand during the investigation period did undercut the prices offered by Cockburn Cement to all but one customer.*
>
> *To ensure that a comparison of prices from Cockburn Cement and Chememan Thailand to the alumina sector reflect the same terms and conditions, prices have been assessed on a 100% lime basis. Customs and Border Protection found that the price of imports from Thailand to the alumina sector, whether directly imported*

or purchased from Chememan Australia, did undercut[64] *the Australian industry's prices during the investigation period"*[65].

10.8.2 Price depression

Price depression occurs when a company, for some reason, lowers its prices.

Price depression and price suppression have been examined for the alumina market segment, the non-alumina market segment, and for Cockburn Cement as a whole.

Sales to the alumina and non-alumina market segments

The alumina sector accounts for 70% of Cockburn Cement's total quicklime sales.

TER 179 stated that:

> "*Customs and Border Protection has found that Cockburn Cement's selling price to the alumina sector was not impacted by dumped imports during the investigation period as these customers were in long term contracts which set the price"*[66].

In assessing data for quicklime sold into the alumina sector, the Commission reconfirms that there has been no price depression.

The non-alumina sector accounts for only 30% of Cockburn Cement's total quicklime sales. TER 179 stated that:

> *"Cockburn Cement claims that since March 2010, it has reduced its prices to many of its customers in the non-alumina sector due to the competition from dumped imports and provided a list of these customers and price reductions in attachment A-9.2(a) of the application"*.
>
> *However, of the price reductions listed, only four occurred during the investigation period. The lost revenue for these customers realised during the investigation period account for less than 1% of Cockburn Cement's revenue*"[67].

In assessing data for quicklime sold into the non-alumina sector, the Commission reconfirms that there has been some price depression.

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64 In this quote from TER 179 concerning price undercutting in the alumina sector, the reference to 'undercut' should have read 'not undercut' – Section 10.4.2 of TER 179 refers.

65 TER 179A, pages 25 to 26 refer.

66 TER 179A, page 24 refers.

67 Ibid.

10.8.3 Sales revenue

Sales to all market segments

Figure 9 below highlights Cockburn Cement's sales revenue for quicklime during January 2008 to July 2011, in six month periods (to highlight the changes to volumes during the investigation period).

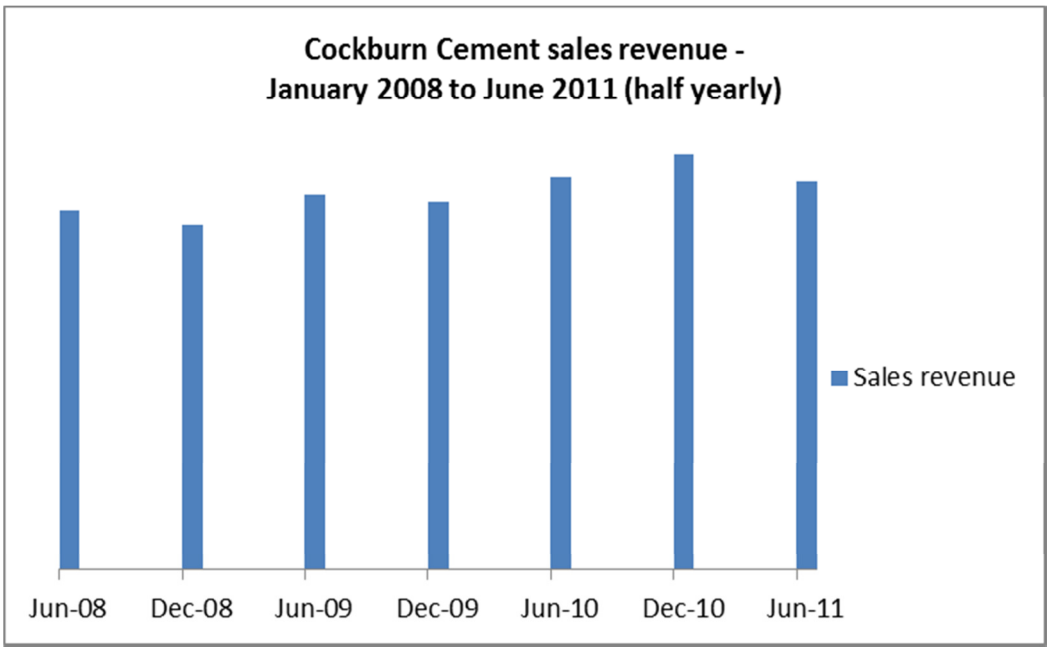

Figure 9 – Market shares (%) of the WA market for quicklime – January 2008 to June 2011 (half yearly)

Figure 9 shows a small increase in sales revenue in the first half of the investigation period (a [redacted]% increase in revenue from the previous six month period) followed by a small decrease (a [redacted]% decrease in revenue from the previous six month period).

The Commission considers that there has been an upward trend in revenue over the seven half year periods, as each December period has been higher than the previous December period. For the periods June 2008, June 2009, and June 2010 there has been an upward trend in sales revenue, and June 2011 was at a similar level to the slightly lower June 2010 period.

The Commission has also examined sales revenue over the three financial years to 2010/11 (in relation to sales made to both the alumina and non-alumina market segments). Sales revenue increased over the period. During the investigation period, sales revenue for quicklime supplied to the alumina and non-alumina market segments increased by [redacted]% over the previous financial year.

Lost sales revenue due to price depression in the non-alumina market segment

The Commission considers that this investigation is unusual in that the injury can be directly attributed to loss of revenue in sales to specific customers. The reduction in prices directly affects revenue and profit. TER 179 found that the price depression experienced by Cockburn Cement resulted in lost revenue (or revenue forgone). TER 179 (Section 8.8 refers) stated that:

"Customs and Border Protection has found that the lost revenue as a result of these price reductions in the non-alumina sector account for [redacted]% of yearly revenue (based on the revenue for 2010-11)" [68].

"Cockburn Cement also claims that it was unable to achieve price increases in new contracts that it considered to be reasonable. The difference between the price Cockburn Cement considered to be reasonable and the price it achieved in these contracts accounts for [redacted]% total revenue lost. However, some of these prices did not come into effect until after the investigation period[69]*".*

The Commission notes that the [redacted]% referred to in TER 179 represents the claimed lost sales revenue for calendar year 2010 expressed as a percentage of the total sales revenue for the investigation period (the calendar year in the numerator lags the investigation period in the denominator by 6 months). The calculation includes Cockburn's claimed lost sales for 17 customers. This compares to four customers identified with lost sales in the investigation period.

The Commission has assumed that the calculation referred to above was evaluating the applicant's injury claims over a longer period (and not just for the investigation period).

The Commission has reassessed the lost revenue for quicklime sales and its revised calculations (and source data) are at **Confidential Attachment 1**. The Commission has calculated that for the investigation period the estimated revenue reduction (or lost revenue) is [redacted]% [less than 1%] of Cockburn Cement's total sales revenue.

10.8.4 Price suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Figure 10 below highlights Cockburn Cement's unit sales revenue (Australian dollars ($) per tonne) and unit costs (Ex-Factory per tonne) for January 2008 to June 2011 (half yearly) in relation to quicklime sales.

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[68] TER 179, page 24 refers. Section10.3.2 of TER 179 stated "*Customs and Border Protection has found that the price reductions since the start of 2010, when annualised, represent [redacted]% of revenue lost …"*, TER 179, page 40 refers.

[69] TER 179, page 24 refers.

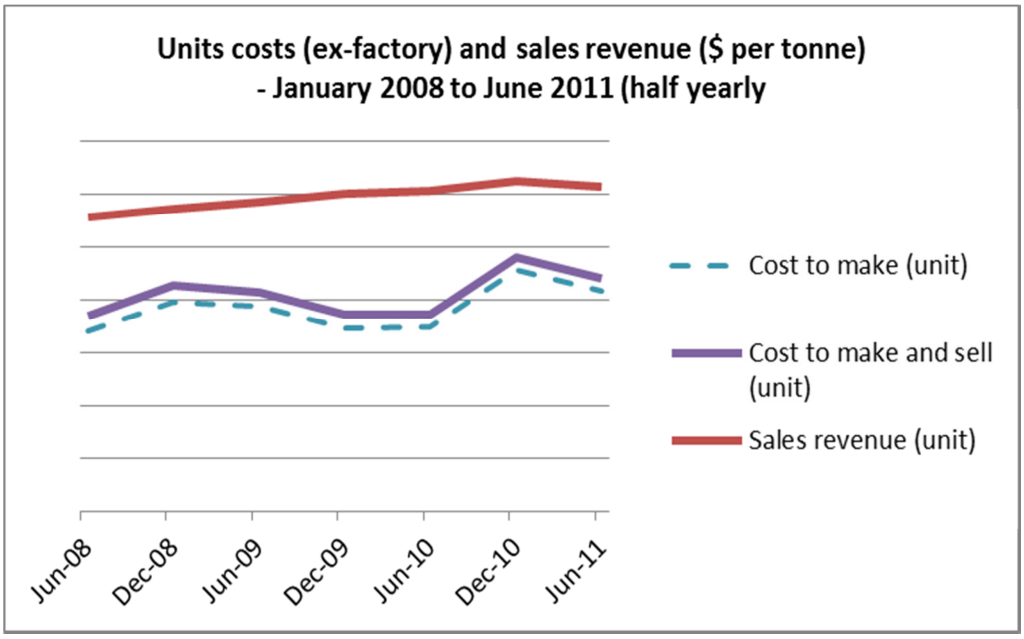

Figure 10 – Cockburn Cement's unit costs and sales revenue – January 2008 to June 2011 (half yearly)

Figure 10 shows that during the investigation period costs were at levels that exceeded costs for the preceding 18 months. Figure 10 shows that the margin between revenues and costs has fluctuated over the period examined. The margin narrowed slightly during the investigation period, but was at similar levels compared to 2008/09.

Cockburn Cement's cost data shows that the increase cost to make the goods was predominately driven by increased maintenance costs. The Commission notes that production volumes of quicklime did not vary significantly during the injury analysis period. In addition production volumes were not reduced during the investigation period. The Commission has not identified a price supersession trend in relation to quicklime. The Commission considers that the higher unit costs within the investigation period were driven by the increased maintenance costs and were not attributed to dumped imports of quicklime from Thailand.

10.8.5 Conclusion – price effects

Price undercutting

The Commission has found that prices of dumped exports of quicklime form Thailand did undercut Cockburn Cement's selling prices (on four occasions).

Price depression

The Commission has assessed that there has been some price depression in respect of Cockburn Cement's quicklime sales in the non-alumina sector, and no price depression in respect of quicklime sales in the alumina sector. The price depression in relation to non-alumina sales is quantifiable and relates directly to the reduction in prices to four customers during the investigation period. This price effect (i.e. reduced revenue) is estimated to be [redacted]% [less than 1%] of Cockburn Cement's total revenue during the investigation period.

Price suppression

The Commission has assessed that Cockburn Cement has not experienced any identifiable (or significant) price suppression. The Commission considers that during the investigation period increased production costs were driven by increases in maintenance costs and any price suppression that may have been experienced was a result of these increased costs (and not due to dumped exports from Thailand).

10.9 Profit and profitability

Figures 11 and 12 below highlights Cockburn Cement's:

- unit profit ($ per tonne) in relation to quicklime sales for January 2008 to June 2011 (half yearly) (figure 11 refers); and
- unit profit ($ per tonne) and profitability in relation to quicklime sales for January 2008 to June 2011 (half yearly) (figure 12 refers).

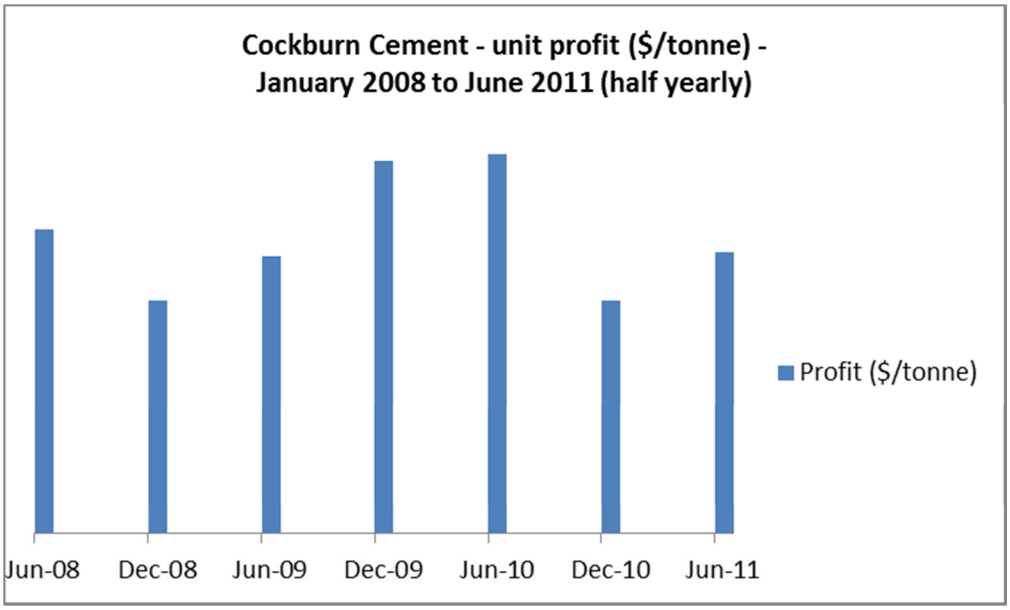

Figure 11 – Cockburn Cement's unit profit (tonne) – January 2008 to June 2011 (half yearly)

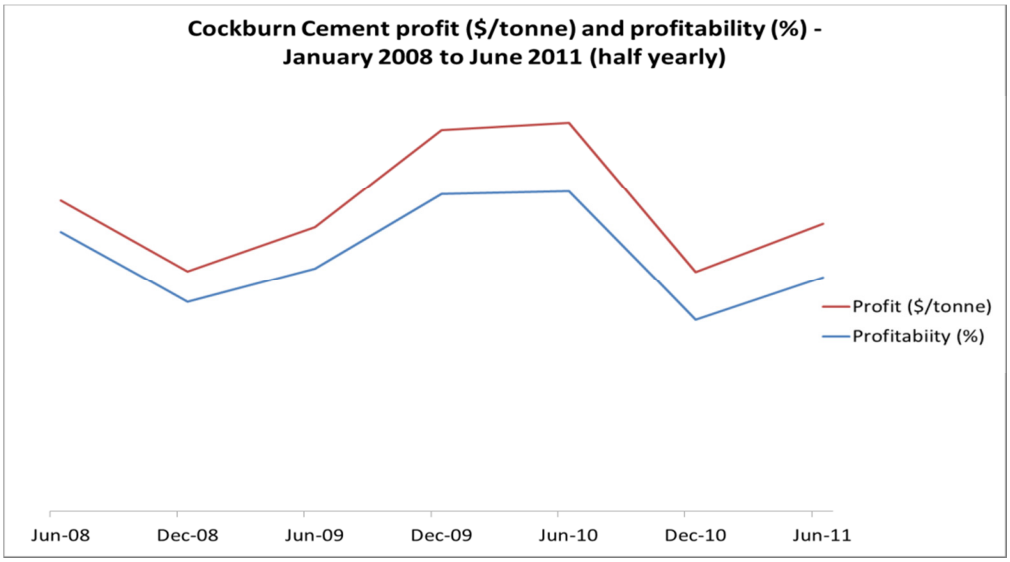

Figure 12 – Cockburn Cement's unit profit (tonne) and profitability – January 2008 to June 2011 (half yearly)

Figures 11 and 12 show that Cockburn Cement's unit profit increased in 2009/10 and, decreased in 2010/11 (with a significant decrease in the first half of the investigation period) to similar levels to that were achieved in 2008/09.

Figure 12 shows that trends in Cockburn's profitability reflect trends shown for profit for the period examined[70].

As noted at Section 10.7.4, the Commission considers that the decreased margin between revenues and costs during the investigation period was primarily due to rises in costs, in particular increases in maintenance costs. The Commission considers that these increases in costs have been a key driver in Cockburn Cement's profits and profitability (especially considering that production volume of quicklime varied very little over the entire period).

The Section titled "*The Commission's preliminary calculations – reduced profit and profitability – for this SEF"* below discusses the Commission's preliminary calculations of reduced profit and profitability experienced by Cockburn Cement during the investigation period (which underlie the finding that the injury experience by the Australian industry is negligible). However in the first instance, the Commission considers it is important to clarify and correct previous profit and profitability figures that have been relied on and appear to have been misconstrued by several interested parties, including the TMRO and the ADPR (as discussed immediately below).

TER 179 and TER 179A - clarifying previous profit calculations

TER 179 (at Section 8.10) stated that:

> *"Rises and falls in Cockburn's profits and profitability have occurred over the injury assessment period. The main driver behind the movement in profit over this period (are) changes in the cost to make and sell the goods.*

[70] Which reflects the trend for profit given both are measured on a per unit basis.

> *Cockburn Cement argues that the dumped imports from Thailand have impacted its profits and profitability. As it has reduced its prices while maintaining its sales volume the lost revenue has directly affected its profits.*
>
> *Customs and Border Protection found that these price reductions resulted in a substantial reduction in profits on the basis of (its) annual revenue"[71].*

The Commission notes that this calculation derives from the estimated lost revenue in the calendar year 2010 expressed as a proportion of the total profit realised during the investigation period (which differs to the calendar year in the numerator and it lags by six months). In TER 179 and TER 179A this proportion was described as a 'substantial'[72] reduction in profits for Cockburn in respect of quicklime.

TER 179 (Sections 8.10 refers) also stated that:

> *"Realised lost profit in relation to the four price reductions that occurred during the investigation period account for less than 1% of profit lost"[73].*

The ADRP stated that:

> "*The further injury analysis undertaken in the resumed investigation resulted in findings that Cockburn Cement suffered injury of a …. [redacted]% profit reduction*"[74].

The Commission has identified that this calculation was the estimated lost revenue as a proportion of total profit over the 18 months (i.e. January 2010 to June 2011), and <u>was not for the investigation period</u>.

Also, the [redacted]% profit reduction figure measures the change in absolute profit. It does not measure the change in profitability, although this was the context the calculation had been used in the TMRO and ADRP reports. The Commission notes that for the 18 months ended June 2011 the estimated profit reduction <u>in percentage points</u> for Cockburn Cement is [redacted]% [less than 2%]. The Commission has taken this analysis a step further and has calculated the actual decrease in profitability, for the investigation period, as discussed below.

<u>The Commission's calculations – reduced / loss of profit and profitability – for this SEF for the investigation period</u>

Table 1 below shows the actual and anticipated amounts of revenue, profit and profitability calculations for Cockburn Cement in respect of quicklime for the investigation period.

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71 TER 179, page 26 refers.

72 TER 179, page 26 refers. 10.3.2 of TER 179 also stated: '*Customs and Border Protection has found that the price reductions since the start of 2010, when annualised, represent … a substantial reduction in profit '*. 10.3 of TER 179, second paragraph, also refer to '*substantial reduction in profit*'. The '*substantial reduction*' profit calculation rests on the claimed lost sales of 17 customers, a much higher number of affected customers than the four customers associated with lost sales in the investigation period. It is apparent that this calculation was seeking to evaluate the applicant's injury claims over the longer period (TER 179, page 40 refers).

73 TER 179, page 27 refers. Section 10.3.2 of TER also discusses this issue (TER 179, page 40 refers).

74 ADRP Report, paragraph 57 refers.

Item	Figure
Total revenue (actual)	[redacted]
Profit (actual)	
Profitability (actual)	
Lost revenue	[redacted]
Total revenue (potential)	[redacted]
Profit (potential)	
Profitability (potential)	
	[revenue, profit and profitability figures]
Change in profitability	[redacted] percentage points [less than 1]

Table 1 – Revenue, profit and profitability figure for the investigation period – for Cockburn Cement

The Commission finds that Cockburn Cement's potential lost profit is [redacted] which represents a loss of profitability of only [redacted] [less than 1] percentage points.

Confidential Attachment 2 provides a comparison of revenue, profit and profitability figures and underlying calculations used for TER 179A (for the period 1 January 2010 to 30 June 2011) and for this SEF which reflects the investigation period (1 July 2010 to 30 June 2011).

10.9.1 Other economic factors

In the application, Cockburn Cement completed Appendix A7, which looks at other economic/injury factors. The Commission has assessed Appendix A7 and reconfirms the finding of TER 179 that Cockburn Cement has not suffered injury in regard to any other economic factors.

10.9.2 Injury to the Australian Industry as a whole

As discussed at Section 10.5.3, the consideration of any material injury involved weighing all of the relevant factors in the context of the Australian domestic market as a whole.

During the investigation period Cockburn Cement experienced: an estimated loss in revenue of [redacted] which is an estimated revenue reduction of [redacted]% [less than 1%]; and profit forgone of [redacted]% [less than 1%], calculated by comparing actual profitability of [redacted] to potential profitability of [redacted]. In terms of the Australian industry as a whole, based on a market share for Cockburn Cement of 40% (is the most recent estimate), the revenue reduction during the investigation period is estimated at [redacted]% [less than 1%].

Profit is not known for the whole Australian industry as it is made up of twelve producers six of whom produce for self-use. The very small decrease in profit in percentage terms experienced by Cockburn Cement during the investigation period, as this report has calculated, becomes diluted to an even lower amount when translated to a likely effect for the whole of the Australian industry. However in the case of profit data from other Australian industry members, a profit forgone figure cannot be accurately calculated.

10.10 Conclusion - economic condition of the Australian industry and - material injury and causation

Cockburn Cement

Based on an analysis of the information available Cockburn Cement suffered injury in the form of:

- loss of market share in the WA market (only);
- price depression and reduced sales revenue in the non-alumina sector; and
- reduced profits and profitability.

The Commission also found that the price of imports from Thailand undercut sales by the Cockburn Cement in the non-alumina market segment.

The Commission considers that the injury to Cockburn Cement caused by dumping during the investigation period can be quantified as follows:

- loss of market share of [redacted]% [less than 2%] in the WA market (only);
- reduced revenue due to price depression of [redacted] (representing a reduction of [redacted]% [less than 1%]) in the non-alumina sector; and
- profit foregone due to price depression, or expressed another way, a fall in profitability of [redacted]% [less than 1%], in the non-alumina sector.

Australian industry as a whole

The Commission is also required to consider injury to the whole Australian industry. When the injury to Cockburn Cement is extended to the whole of the Australian industry, during the investigation period the Commission has found:

- reduced revenue due to price depression of [redacted] (representing a reduction of [redacted]% [less than 1%]); and
- profit foregone due to price depression[75].

During the investigation period, the Commission has found that the resulting injury to the Australian industry as a whole is less than 1[76]% reduction in revenue and **therefore is negligible**. TER 179A stated that 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. However, the Commission considers that this is not relevant, as regardless of the market structure and the number of market participants, given the quantum of the injury experienced, the injury cannot be considered to have been greater than that likely to occur in the normal ebb and flow of business.

The Act does not define the term 'negligible injury'. The Macquarie Australian Dictionary defines 'negligible' as "*That may be neglected, or disregarded; very little*". The ADRP stated that:

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[75] Which as discussed previously cannot be accurately calculated for the entire Australian industry.

[76] Noting most of the injury factors were significantly less than 1%.

> *"44. The Act contemplates injury as being either material or negligible. That being the case even given the differing roles of the Minister and the CEO if injury does not reach the standard of materiality as that term is defined in the 2012 Ministerial Direction then it will be negligible. If material injury is injury which is 'not immaterial, insubstantial or insignificant' then negligible injury will be injury which is immaterial, insubstantial or insignificant. This is consistent with the ordinary meaning of negligible.*

The Commission considers this Chapter demonstrates that the injury experienced by the Australian industry as a whole (and Cockburn Cement individually) was insignificant (with all injury indicators measures at less than 1%[77])[78]. The Commission is satisfied that the injury suffered by whole of the Australian industry was negligible (and cannot be considered material).

The Commission's assessment of the economic condition of the Australian industry is at **Confidential Appendix 3**.

[77] These indicators were proportionately less than 1%.

[78] And accords with the definitions that have been provided of the term 'negligible'). Noting that these definitions are guidance only and not prescribed in the Act.

11 NON-INJURIOUS PRICE

11.1 Finding – TER 179A reconfirmed

The Commission has found that it is appropriate to derive a NIP by setting the USP for quicklime sold into:

- the non-alumina sector, as equal to Cockburn Cement's CTMS for quicklime, plus a reasonable amount for profit; and.
- the alumina sector, as equal to Cockburn Cement's weighted average selling price during a period unaffected by dumping (in 1 July 2010 to 30 June 2011).

The NIPs for respective sectors have been adjusted to reflect 100% available lime content of the goods, in order to ensure an appropriate point of comparison between quicklime with different concentrations of calcium oxide.

These findings have not changed from the finding as specified in TER 179A (and SEF 179A), and these reports should be read in conjunction with this SEF.

The Commission's USP and NIP calculations are at **Confidential Appendix 4**.

12 THREAT OF MATERIAL INJURY

12.1 Findings – TER 179A reconfirmed

The Commission has found that there is no threat of future material injury being caused to the Australian quicklime industry by dumping[79].

This finding has not changed from the finding as specified in TER 179A (and SEF 179A), and these reports should be read in conjunction with this SEF.

Notwithstanding that the Commission's finding has not changed, the Commission has considered contemporaneous data (given the extended investigation duration) to further support its finding that there is no threat of material injury.

12.1.1 Approach to establishing a threat of material injury

The threat of material injury arises in circumstances where the dumping is not causing material injury presently but there is a future threat of material injury.

The WTO ADA and the Act provide for a determination of threat of material injury subject to stringent tests.

Article 3.7 of the WTO ADA provides that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility. It also provides a non-exhaustive list of factors that should be considered and notes that no one factor can necessarily give decisive guidance. A totality of factors must lead to a determination of threat of material injury.

Article 3.8 of the WTO ADA provides that:

> *"With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care."*

Subsection 269TAE(2B) of the Act, provides that in determining whether or not material injury is threatened to an Australian industry:

> *" …the Minister must take account of only such* ***change in circumstances****, including changes of a kind determined by the Minister, as would* ***make that injury foreseeable and imminent*** *unless dumping or countervailing measures were imposed"* (emphasis added).

What is a "*foreseeable and imminent*" period is not defined in the legislation. A dictionary meaning[80] is '*likely to occur at any moment. Impending*'. The WTO ADA footnote 10 to

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79 This relates to the dumping that was assessed for the investigation period.

80 *The Macquarie Dictionary*, Sixth Edition, Macquarie Library, North Ryde, N.S.W.

Article 3.7 states:

> "*One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices*"

In assessing the threat of material injury the Commission considers the following factors:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the market, taking into account the availability of any other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated have increased.

12.1.2 Assessment of threat of material injury

The twelve month investigation period for the quicklime investigation ended in June 2011. There have been two termination reports both of which have addressed threat of material injury and both made a finding that there was no threat of a future material injury caused by dumping.

TER 179A found that:

> *"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"*[81]*.*

TER 179A considered updated import volumes, export prices (expressed as Free-On-Board (FOB)), and the market share of imports (which is discussed in subsequent sections) up until May 2013. Cockburn Cement provided Australian Bureau of Statistics

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[81] TER 179A, pages 19 to 20.

import volume and export price data up until December 2013[82], in order to demonstrate its claim of continued injury experienced subsequent to the investigation period.

The Commission notes that due to the unique circumstances of this investigation, and its extended duration, that data is now available for several financial years subsequent to the investigation period, while the investigation is ongoing. This is highly unusual, given the investigation period was in 2010/11. The Commission considers that volume and prices of quicklime imports would have changed during this period.

For the purposes of assessing whether dumped exports, during the investigation period, threatened to cause material injury to the Australian industry, an assessment of data up until May 2013 (as completed for TER 179A) is considered reasonable and appropriate in the circumstances (given the requirements specified under the Act (that the threat be imminent and foreseeable)).

12.1.3 New claim subsequent to TER 179A - increased capacity

Submissions to the resumed investigation

In its submission dated 16 October 2013, Cockburn Cement made the following new claim (that was raised subsequent to TER 179A) in relation to Chememan Thailand's quicklime production capacity:

> *"It is important in the context of the threat of future injury by reason of dumped imports from Thailand that Chememan, Thailand has recently installed a new 100ktpa kiln at its Thai quicklime production plant (refer to the link hereunder). This, together with increasing volumes of exports to Australia, contradicts Chememan's earlier advice to Customs, which had an influence on the decision to terminate the original investigation, that because of its lack of available production capacity its exports to Australia were likely to reduce in the future"[83].*

Cockburn Cement also made subsequent claims regarding Chememan Thailand's expanding production capacity and expanded product range. As a result Cockburn Cement claims [redacted]*"[84] [Cockburn's claimed response to Thai imports].*

The Commission's preliminary assessment

The Commission notes that Chememan Thailand states on its website that:

> *"Prabuddhabaht factory hosts two gas-firing vertical shaft kilns with annual quicklime production capacity of 350,000 MT, the largest in South East Asia."*

The Commission observes that the increased capacity has not resulted in significant volumes of quicklime being exported to Australia. The Commission notes that hydrated

82 Cockburn Cement's presentation to the Commission also included import forecasts for 2014.

83 Cockburn Cement's submission dated 16 October 2013, page 6 refers.

84 Cockburn Cement's letter to the Commissioner dated 27 February 2014.

lime which is a derivative of quicklime (and that is included in Chememan Thailand's product range[85]) is not considered to be the GUC.

12.2 The Commission's conclusion

This resumed investigation (and for SEF 179B) has reconsidered the question of whether or not there is a threat of future material injury caused by dumping, and has reconfirmed the findings specified in TER 179A.

The Commission has found that there is no threat of future material injury caused by dumping.

[85] As highlighted on Chememan Thailand's website at http://www.chememan.com/products/index.php#processes.

13 APPENDICES AND ATTACHMENTS

Appendix / Attachment No.	Title / description
Appendices	
Confidential Appendix 1	The Commission's revised Australian quicklime market size and updated NLAA data
Confidential Appendix 2	The Commission's export price, normal value and dumping margin calculations
Confidential Appendix 3	The Commission's assessment of the economic condition of the Australian industry
Confidential Appendix 4	The Commission's USP and NIP calculations
Attachments	
Non-Confidential Attachment 1	TER 179A
Non-Confidential Attachment 2	SEF 179A
Non-Confidential Attachment 3	SEF 179
Non-Confidential Attachment 4	List of submissions provided for the resumed investigation
Confidential Attachment 1	The Commission's revised revenue (and lost revenue) calculations and figures
Confidential Attachment 2	The Commission's comparison of revenue, profit and profitability figures used for TER 179A and SEF 179B