



Ms Lydia Cooke
Manager, Operations I
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2600

9 December 2011

Our ref 11276/80126545

Dear Ms Cooke

Quicklime exported from Thailand

We act for Alcoa of Australia Limited (Alcoa). We refer to the Australian Customs and Border Protection Service (Customs) investigation into alleged dumping of quicklime exported from Thailand following an application lodged by Cockburn Cement Limited (the Applicant), a domestic manufacturer of quicklime.

The purpose of this submission is to demonstrate that:

- (a) the investigation ought to be terminated - we consider that the application filed by the Applicant is so lacking in detail and superficial that Customs' Consideration Report No. 179 is tainted with legal, factual and evaluative errors;
- (b) the Applicant has failed to substantially comply with the requirements for a valid application:
 - (i) the application should not have been accepted by Customs because of a significant legal defect, namely, the decision by the Applicant to exclude what it called "captive production" by other producers; and
 - (ii) there was a failure to properly consider the issue of standing;
- (c) as acknowledged by Customs, there is no evidence of any relevant injury articulated in the application form;
- (d) there is no probative evidence of material injury;
- (e) Customs disregarded probative evidence on export price obtained from the Australian Bureau of Statistics (ABS) as well as its own import data base, and instead accepted the assertions of the Applicant;
- (f) even if there was dumping, this being a matter that will ultimately be determined by Customs, there is no probative evidence of any causal link to the importation of quicklime from Thailand, and

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- (g) Customs cannot, as a matter of policy, consider the question of threat of material injury after having found that there is no material injury.

1. **Contentions**

1.1 Our client contends that:

- (a) there is no dumping of quicklime by Chemman in the Australian market;
- (b) no injury has been suffered by the Applicant;
- (c) the Applicant was unable to provide the information necessary to determine whether dumping has occurred and, in consequence, there are no grounds to support the publication of a dumping notice in respect of quicklime from Thailand;
- (d) Customs' finding of threat of material injury, a claim not made by the Applicant, is highly speculative and conjectural. The finding is not based on any probative evidence and, having regard to the fact that the finding concerns a prediction of future events, Customs must have reasonable grounds to support such a finding, of which there are none; and
- (e) the Applicant's complaint is an attempt to exclude competition and the maintenance of its monopoly.

- 1.2 A more detailed consideration of the above matters as well other issues is addressed further below. However, properly distilled, this case is focussed on a single issue according to Customs' Consideration Report namely, threat of material injury. This issue is addressed in Part 12 below.

2. **Background**

- 2.1 Our client's Australian operations represent the world's largest integrated bauxite mining, alumina refining, aluminium smelting and rolling system. Alcoa also operates Australia's largest aluminium recycling plant and adds value to Australia's local, state and national economies at every stage.
- 2.2 Our client's operations support 6000 direct jobs, predominantly in regional Australia.
- 2.3 Quicklime is a critical raw material to Alcoa's alumina refining process. Without quicklime, our client's West Australian operations would cease to operate. As a raw material, the higher the "Available Calcium Oxide" (CaO) within the quicklime, the higher the quality and thus the more tonnes of alumina produced per tonne of quicklime. Moreover, the higher the CaO, the less the quantity of quicklime needed in the manufacturing process - reducing raw material needs and transportation costs.
- 2.4 Quicklime is however a low value product and shipping costs are prohibitive. Additionally, shipping quicklime is problematic due its reactive nature.¹ Both of these factors limit the opportunity for competitive supply to the West Australian market.

¹ ACTED Consultants, <http://www.chemlink.com.au/lime.htm>

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- 2.5 The Applicant, a monopoly supplier of quicklime to the West Australian market, relies on the above limitations and employs a strategy to extract a price for its quicklime which produces supernormal profits and which is set just below import parity.
- 2.6 This position is untenable for our client because:
- (a) the Applicant conducts its business and behaves as a monopolist;²
 - (b) the Applicant's quicklime, which it claims has 83% CaO,³ is low grade containing only [REDACTED] available CaO - the available CaO in the international quicklime markets is [REDACTED] and
 - (c) there is a significant supply risk to our client's West Australian operations - the Applicant's lime facilities are running at full capacity (see slide 12 of the investor presentation of Adelaide Brighton Limited, the Applicant's parent company) and will be unable to support our client's longer term needs.
- 2.7 Our client purchases quicklime from the Applicant primarily due to geographic expediency. [REDACTED]
- 2.8 It is true that our client explored alternative supply options before its previous supply contract with the Applicant ended in June 2011. [REDACTED] Adelaide Brighton, has publicly stated that:
- "Lime price increases to a major alumina customer in Western Australia (namely our client), effective from 1 July 2011, are expected to improve 2H2011 EBIT by \$6 million compared to 2H2010 EBIT"³ (our emphasis)*
- 2.9 Notably, our client considered a number of [REDACTED] options to ensure the ongoing viability of supply to its refinery operations before entering into the new supply agreement with the Applicant. [REDACTED]

² The Applicant has publicly stated that it produces 100% of the quicklime consumed in West Australia: see http://cockburnmentcommunity.com.au/media/25686/24032011_quicklime_production.pdf.

³ Adelaide Brighton Investor Presentation, 26 October 2011, slide 26.

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- 2.10 Our client views the present application as an attempt by the Applicant to prevent any effective competition in the West Australian market. Our client does not believe that the Chememan product is being imported at dumped prices and does not believe that the Applicant has suffered material injury. The Applicant has merely brought the dumping complaint to frustrate any prospective supply by Chememan so it can maintain its monopoly position as the only supplier of quicklime in the West Australian market.
3. **Decision as to the Applicant's standing is defective**
- 3.1 Customs found that the Applicant's application contained the information necessary to satisfy the requirements of section 269TB *Customs Act*.¹ We contend that absent certain information the CEO of Customs could not have been satisfied of a requisite jurisdictional fact underpinning the standing requirement.
- 3.2 The CEO of Customs could not have been reasonably satisfied of the standing requirement, and therefore fell into error, for the following reasons:
- (a) there is no evidence of any person who produces or manufactures like goods in Australia, other than the Applicant, who supports the Applicant's application;
 - (b) the total production of quicklime by Boral, Sibelco and Cement Australia is not identified in either the application or the Consideration Report;
 - (c) the "captive producers" are estimated to produce 670,000 tonnes (no actual or independent evidence was provided by the Applicant in this respect in its application) and Customs rejected the Applicant's claim that they ought to be excluded from the assessment of the Australian industry;² and
 - (d) the total production of quicklime in Australia is not identified in the Consideration Report.
- 3.3 In the absence of information concerning Australia's total production of quicklime or the quantity produced by Boral, Sibelco and Cement Australia, the Applicant's standing could not be properly determined. This legal error by Customs is fatal to the application; *Minister for Immigration, Multicultural and Indigenous Affairs v SGLB* (2004) 207 ALR 12 at [37]. In addition, Customs did not seek to further explore or investigate these issues with the Applicant but simply deferred the issue.
- 3.4 The issue of standing is a critical one and should have been correctly determined prior to initiating the investigation.
4. **Customs' finding of dumping**
- 4.1 The weight of evidence clearly supports the finding that the export price was as set out by the ABS, which was quoted by the Applicant in its application, and which Customs noted was consistent with its own import data base. Customs could not support the export price figure

¹ Consideration Report, page 6, paragraph 3.2.1² Consideration Report, page 7, paragraph 3.2.2.

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advanced in the application of \$80 and identified a wrongful calculation which increased the figure to \$97. That figure was still well below the comparable export price calculated by the ABS of \$120. This fact alone should have alerted Customs to the lack of reasonable evidence in support of the export price put forth by the Applicant.

4.2 Moreover, despite finding that the ABS data was consistent with Customs' own import data, Customs proceeded not to adopt the ABS figure because it considered that it was unprofitable and likely to be influenced by the relationship between Chememan Thailand and Chememan Australia. These findings were based on selling prices provided by the Applicant, which in turn, were constructed from verbal information provided by the Applicant to Customs. Customs therefore rejected the ABS data and relied on nothing other than assertions from the Applicant.

4.3 We submit that had the ABS export price been used to establish a prima facie export price, then Customs would not have found dumping and consequently, the application ought to have been rejected.

5. Investigation Period and Injury

5.1 The investigation period is the period 1 July 2010 to 30 June 2011.

5.2 Customs records in its Consideration Report that the information provided by the Applicant relates to the calendar years 2008, 2009, 2010 and the half year 2011.⁸ It acknowledges that the "graphs and indices [of sales and costs] information do not display meaningful data in relation to injury".⁹ The sentence is clearly intended to convey that Customs could not detect any injury suffered by the Applicant:

- (a) during the period that is the "injury investigation period";¹⁰ or
- (b) the investigation period.

5.3 That the above contention is correct is proved by the immediately subsequent paragraph (3rd paragraph) in 6.2 of the Consideration Report which states "*However, the applicant states that the injury effects of the dumped quicklime are best demonstrated in other ways*" (our emphasis). In other terms, the Applicant's sales and costs information does not evidence injury and that fact is conceded by Customs.

5.4 Rather than rejecting the application, Customs goes on to say that it will assess injury by reference to market share, sales volume, price undercutting, price depression, lost profit and profitability. Further, Customs stated that injury does not have to be present in all of these indices and that "sufficient injury" in only one or two could be considered material.¹¹

5.5 Addressing the other injury factors it is significant that:

⁸ Consideration Report, pages 11 and 18.

⁹ Consideration Report, page 18, paragraph 6.2.

¹⁰ The injury investigation period being both the investigation period and the preceding 3 years. The functional role of this period is to allow the CEO of Customs to assess whether there is sufficient causality between dumping and the alleged injury supposedly experienced by the domestic market.

¹¹ Consideration Report, page 18, paragraph 6.2.

Syme, Melissa, Clayton, Perth, Australia, 10/12/2011, 10/12/2011, 10/12/2011

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- (a) the Applicant conceded, and the Consideration Report records, that it "retained most sales";¹²
- (b) the Applicant's sales price of quicklime to our client in and during the investigation period did not reduce - on the contrary the Applicant's price increased [REDACTED]
- (c) the Applicant, in its investor presentation of 6 May 2010:
- (i) at slide 14, admits that it engages in a pricing strategy with an eye keenly attuned to "Import parity pricing...";
 - (ii) at slide 15, admits that "...[L]ime pricing [is] stable"; and
 - (iii) at slide 18, attributes the stability of its pricing to the strong Australian dollar which it regards as a "challenge".
- (d) the Applicant, in its investor presentation of 26 October 2011 at slide 26 states "[L]ime price increases to a major customer in Western Australia ... expected to improve 2H2011 EBIT by \$6 million compared to 2H2010 EBIT"; and
- (e) Quicklime sales constitute approximately 13% of Adelaide Brighton's total revenue, which was \$1072.9M in 2010. [REDACTED]
- [REDACTED] Based on these volumes and revenue derived from our client's purchase of the Applicant's quicklime, Adelaide Brighton's loss of revenue during the investigation period was less [REDACTED]

5.6 The above matters contradict any claim of price suppression and depression and belie the claim recorded at 6.5 of the Consideration Report concerning the "profit effect". As to the Applicant's claims that it was "required to negotiate the new contracts at lower prices" and this fed into "lost profits and profitability", we submit that this claim is wrong for the reasons set out in paragraph 6.3 below.

5.7 We will separately address the issue of price undercutting below but it is convenient to note that, as demonstrated above, the Applicant:

- (a) did not lose market share - it admits that it retained most sales and Customs has found that "lost sales as listed in confidential attachment A-9.2(a) ... to be immaterial";¹⁴
- (b) increased its sales price [REDACTED] and will enjoy greater profits directly attributable [REDACTED]

¹² Consideration Report, page 19, paragraph 6.3.1.

¹³ See Chronology (Appendix 1).

¹⁴ Consideration Report, page 19, paragraph 6.3.2.

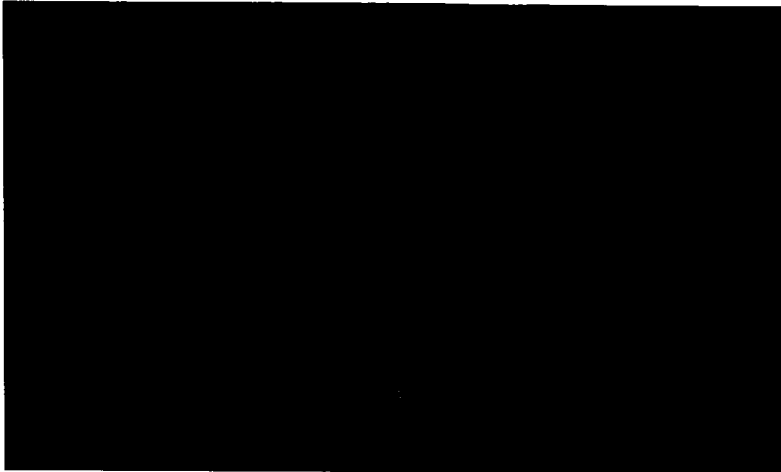
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5.11



- 5.12 It is also notable that the Applicant does not complain that its capital investment, return on investment, capacity utilisation, employment levels and productivity, stocks, cash flow measures and wages were in any way affected. It may be readily inferred in these circumstances that the Applicant's claim of alleged injury is hollow.¹⁶

6. **Price Undercutting**

- 6.1 We note that the following information was provided by the Applicant to support an argument of price undercutting:

- (a) "a summary" prepared by the Applicant of alleged prices to a range of customers; and
- (b) the above summary was based on verbal information gathered by the Applicant

- 6.2 On the basis of these materials, Customs noted that Chememan's prices undercut the Applicant by 25%. This information is inadequate and incapable of supporting or sustaining a claim of price undercutting. Indeed price undercutting can only occur when there is an actual sale. The reference at 6.4.1 of the Consideration Report that Chememan's selling prices were consistent with findings made when deducting back to an ex-distribution centre are likewise

¹⁶ See also *Equity and the Law of Trusts*, Professor Pettit, (3rd ed, 1974), at p 422: "In any case it is clear that an injunction can be obtained not only against the original guilty party, but against any third party who knowingly obtained the confidential information in breach of confidence or in any other fraudulent manner. Indeed, even if a man obtains the confidential information innocently, once he gets to know that it was originally given in confidence, he can be restrained from breaking that confidence."

¹⁷ See also Consideration Report, page 26, paragraph 6.6, which states that all these indices were relatively stable between 2008 and the first half of 2011.

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flawed because they involve hearsay information supplied by the Applicant which is not based on actual sales information. In this respect, we note that the Dumping Manual expressly states "sales information" provided by the importer is required and "verified information" from the exporter makes for a better assessment as to whether any claimed decline in market share has been taken up by imports from the nominated country."²⁰

- 6.3 The basis of the price undercutting claim as recorded in 6.5.1 of the Consideration Report is that the Applicant was required to negotiate the "new contracts" at lower prices. The main exemplar of this was Customs' reliance on the difference in price between the initial draft of a heads of agreement [REDACTED] and the price in the final agreement. It is said that "[t]he final price was significantly below the price in the first draft and the trading terms were also less favourable". [REDACTED]

- (a) Customs gave no significance to the prevailing price before the negotiations to establish a baseline or market price;

(b) [REDACTED]

(c) [REDACTED]

- (d) the Applicant has claimed that it was required to reduce its prices due to the influence of alleged dumped prices [REDACTED]

(e) [REDACTED] and

(f) [REDACTED]

- 6.4 Additionally, regard must be had to other factors. That is, factors other than price when analysing the extent to which the non-price effects have on sales: *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No. 2)*.²¹ As Customs itself noted recently, in Report No 173(b) "Investigation into Alleged Dumping of Consumer Pineapple exported from Thailand, the Thailand Pineapple Canning Co Ltd", factors such as quality differences should be assessed and findings of undercutting must be discounted if such factors are in play. There has

²⁰ Dumping Manual, page 110.

²¹ (2009) 258 ALR 515 at [76]

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at this time been no evaluation of factors other than price but we refer to Part 8 of this submission relating to the qualitative differences between the local and imported product.

6.5 We contend that only verified sales information can be considered cogent and probative evidence, not the incomplete and hearsay information provided by the Applicant. Actual sales information is the minimum required, while verified sales would provide a better assessment of, and more accurate determination of, issues such as price undercutting. In the absence of contracts or sales information relating to actual sales, the finding of price undercutting is flawed and no conclusion should have been drawn concerning it.

6.6 We submit that:

- (a) as a matter going to the credibility of the Applicant's claim and Customs' finding that Chememan engaged in price undercutting, during the course of our client trialling Chememan quicklime our client's contracted price for the Applicant's quicklime rose [REDACTED]
- (b) Customs should have considered the ABS information supplied by the Applicant, which showed the average FOB export price to Australia for quicklime, to be \$120;²² that is, marginally higher than Customs' determination of a normal price of \$119;²³
- (c) the ABS information was the most reliable indicator of export pricing available, a fact conceded by Customs itself, which found that its own import data stood in harmony with the ABS information; and
- (d) Customs should have placed no weight on the information provided to it concerning price undercutting and its reliance on the negotiation process with our client was in error in a number of ways including those specified in paragraph 6.3 above.

7. Causation - Link between injury and dumped imports

7.1 At 6.7 of the Consideration Report, Customs addresses the issue of causation. In short, it was said that it had evidence that the Applicant had reduced its price for quicklime to many of its customers in 2010 to 2011; that the price reduction coincided with the presence of quicklime from Thailand in the West Australian market; and imports from Thailand had undercut the price of quicklime offered by the Applicant. *In consequence of these factors and based on the information supplied by the Applicant*, Customs said that it was reasonable to conclude that the price reduction was in direct response to dumped imports.

7.2 One of the unusual features of the Consideration Report is that unlike other reports Customs has not provided a chart or graph under each injury factor. This is presumably so because there is no injury. More specifically, in respect of each of the injury factors put forward by the Applicant there is no real evidence of:

- (a) loss of sales;

²² Consideration Report, page 13, paragraph 5.2.1.

²³ Consideration Report, page 17, paragraph 5.4.

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- (b) loss of market share;
- (c) reduced sales revenue;
- (d) reduced profit; and
- (e) reduced profitability.

7.3 In consequence, the causation finding misfires. The Applicant's price reduction was not the result of "dumped imports" but because [REDACTED]. The fact that the indices of injury show that the Applicant did not suffer material injury (a fact conceded by Customs - see paragraphs 5.5, 5.7 and 5.9 above) tells against and nullifies any causation whether during the investigation period or at any time thereafter. Additionally, any finding on material injury has to take into account the whole of the Australian industry that produces quicklime, not just the Applicant, a monopolist that enjoys the advantage of location in West Australia. Once it is conceded that the price undercutting claim is baseless, the causation finding falls away.

8. **Likeness of Product and Qualitative Differences Between Local and Overseas Quicklime**

8.1 Quicklime quality is of critical importance to our client's longer term needs.

8.2 At A-3.3 of the Applicant's application it is stated that quicklime is a "like" product to the Chememan quicklime. At A-4.2 the Applicant claims that the Australian and imported quicklime products are the same and compete predominantly on price. These statements are apt to mislead. Whilst it is true that the quicklime produced by the Applicant and the imported Chememan quicklime have a similar end use, to say that they are like is an overstatement and ignores certain innate and other physical characteristics that make them significantly different from an end users' point of view.

8.3 Those innate and physical characteristics are displayed in the following facts:

- (a) firstly, unlike the the Applicant's product, the imported quicklime is sourced from a high grade limestone rock, not shell sand dredged from the ocean floor in Cockburn Sound, West Australia;
- (b) secondly, the feedstock for the Applicant's quicklime as dredged from shell sand has high impurity levels - the impurity levels of magnesium, silica and sulphur in the Applicant's quicklime (adjusted on a 100% Available CaO basis) [REDACTED]

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Quickline Key Guide			
	Applicant's quickline	Chememan quickline	Quantitative Difference for Chememan quickline
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

See Appendix 3 which details the impact of impurities in quickline on Alcoa's refining process

(c)

(d)

(e)

Delivered Available CaO% from Cockburn Munster Operations

(f)

(g)

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(i)

(ii)

8.4 In short, the qualitative differences are marked and it is too simplistic to characterise the product as "like". There are fundamental differences in the local and imported product that lead to many advantages for our client which include:

(a)

(b)

(c)

(d)

(e)

8.5

9. **Monopolisation of Quicklime Supply by the Applicant in West Australia**

9.1

As a result, the Applicant became a monopoly supplier of quicklime in the West Australian market. This monopoly situation was forecast as long as ago as 2006 when the then Minister for Goldfields-Esperance, the Honourable John Bowler, noted that as smaller lime producers shut their operations because of environmental issues or acquisition by larger concerns (namely Adelaide Brighton), customers for lime "would now be at the mercy of a monopoly".²³

9.2

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²³ See Ministerial Statement of the Honourable John Bowler entitled "Concern at closure of Toongana Lime Operation", dated 6 July 2006, available at <http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/CarpenterLaborGovernmentSearch.aspx?ItemId=124921&minister=Bowler&admin=Carpenter>.

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9.3

and depression and in our client's opinion

This belies any claim of price suppression

Minister
Bowler's dire prediction of 2006 proved to be prophetic and came home to roost during negotiations for the current contract with our client as detailed in Part 10 directly below.

10. The Applicant's Prices and Negotiation with our Client

- 10.1 One of the major evaluative defects in the Consideration Report is Customs' acceptance of the claim that "due to price undercutting by Chememman Australia, [the Applicant] had to reduce its prices to retain business..."²⁶ and that "when contracts with customers came up for renewal, [the Applicant] was required to agree to lower prices in order to retain its customers".²⁷ This error infected the whole of the conclusions in the Customs' Report
- 10.2 First, any credible assessment requires a consideration of the initial opening offer by the Applicant with its customers and, secondly, a comparison of quickline prices must be based on an assessment of price adjusted for 100% Available CaO.

²⁶ Consideration Report, page 20, paragraph 6.4.1

²⁷ Consideration Report, page 21, paragraph 6.7.1

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10.3 Dealing with the latter issue first, the Available CaO content is the chemical component which quicklime customers seek. The remainder of the quicklime is waste product made up of various impurities. As noted above, the Applicant quicklime is typically [REDACTED] Available CaO with the remaining [REDACTED] being waste of which a significant percentage are impurities that are detrimental [REDACTED]

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10.5

19.6

10.7

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10.10

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(d)

11. Supply Risk and Plurality of Supplier Choice

11.1 Our client has invested heavily in its operations in West Australia. The ongoing viability of its operations depends upon its ability to source the best raw materials at competitive prices and reduce quicklime supply risk. In this way, it is critical to our client's longer term needs that it be able to readily source raw material both locally and internationally by way of alternate supply.

11.2 As stated above, quicklime is a critical raw material to our client's operations (there is no alternative raw material that can replace quicklime). Supply interruptions have an immediate adverse effect on our client's ability to produce alumina. Our client's internal risk assessment is that a single arrangement with a monopolistic supplier presents a very high and unacceptable risk to our client's West Australian operations.

11.3 Additionally, the Applicant's Munster facility has been the subject of increased scrutiny by government regulators primarily due to the increasing proximity of residential housing to the Munster facility and the levels of dust emitted from its kilns.²⁸ Recent media reports indicate that the Applicant was charged by the Department of Environment and Conservation for causing pollution and breaching conditions of its operating licence.²⁹

11.4

11.5 This uncertainty forces our client to minimise the risks to its own operations by seeking out potential suppliers who may or can fill the breach. This is prudent and ordinary commercial practice.

11.6

²⁸ Department of Environment and Conservation, <http://www.dec.wa.gov.au/content/view/full/63721560>.

²⁹ ABC News, <http://www.abc.net.au/news/2011-09-23/the-applicant-cement-facing-fines-2939938>.

³⁰

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- (a) the annual reports of Adelaide Brighton consistently state that quicklime kiln capacity is fully utilised - indeed the 2010 Annual Report at page 3 records:

"Lime sales volumes increased due to strong demand from the Western Australian non-alumina sector. Lime margins improved as price increases and efficiency improvements more than covered input cost increases. Continued growth in demand sustained full capacity production at the major lime plants. In Western Australia, the threat of small-scale lime imports remains, however we are cautiously confident that we can maintain our competitive position because of our cost structure."

- (b) the 2010 Annual Report at page 7 records:

"The Munster (Western Australia), Angaston (South Australia) and Mataranka (Northern Territory) lime kilns continued to operate at full capacity, while the Dongara (Western Australia) plant operated efficiently supplying peak market demand when required";

- (c) as acknowledged by the Applicant itself, there is strong demand for quicklime from *non-alumina producers* (i.e. clients other than ours) and it is fact that that there is an expectation that there will be significant growth in the gold sector which is a heavy user of quicklime;

- (d)

- (e) the environmental issues referred to above concerning its Munster plant; and

- (f) the decreasing quality of its quicklime.

11.7 The challenges that the Applicant faces as reflected in subparagraphs (a), (e) & (f) above impact our client. Our client wishes the Applicant every success in overcoming them because, in truth, our client depends on the Applicant. That dependence must however be balanced with our client's need to secure the additional quicklime tonnage at competitive prices well ahead of its growth projects. Moreover, our client too faces challenges in that it will be competing against the non-alumina producers and Worsley for the Applicant quicklime. This challenge is made all the more acute because the Applicant is a monopolist in the West Australian quicklime market.

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12. Threat of Material Injury

12.1 As stated at paragraph 1.2 of this submission the single issue which seems to have unjustifiably troubled Customs, is the threat of material injury. In short, Customs found that the Applicant failed to establish material injury in the form of lost sales and market share¹¹ but Customs identified potential injury in the form of, *"the potential for future lost sales and market share"*.¹² Customs based its conclusion on the following discrete findings

- (a) that Chememan engaged in price undercutting;
- (b) that this *has* caused, and *will* cause the Applicant to negotiate lower prices for the sale of its quicklime; and
- (c) that the Applicant's customers are interested in purchasing larger quantities of quicklime, which could be met by Chememan and its distributional facilities.¹³

12.2 Insofar as subparagraphs (a) and (b) are concerned, they have been addressed in Parts 6 and 10 of this submission. As to subparagraph (c), this is addressed in paragraph 12.8 below.

12.3 Customs indicated that it will, even in the absence of an express claim raised by the Applicant itself, consider a threat of material injury.¹⁴ The reason why the Applicant has not raised a threat of material injury claim is that, to do so, would be inconsistent with a claim of actual material injury. Similarly, if Customs finds no actual material injury, it must terminate the case - it cannot continue the case on the grounds of an investigation into a threat of material injury. Customs cannot terminate the investigation and commence a new one into a threat of material injury, absent a fresh application. In any event, even if the Applicant were at some future point to lodge a fresh claim for threat of material injury, we make the following observations.

12.4 We submit that the finding of threat of material injury is wrong for a very simple reason which eluded Customs. The investigation period, as noted in paragraph 5.1 above, is the period from 1 July 2010 to 30 June 2011.

[REDACTED] it should not have been used as the basis of any assessment regarding threat of material injury (and incidentally any determination concerning loss of profit). It is trite that material injury, causal link and threat of material injury depend on dumped imports during the investigation period and not after it.

12.5 The principles guiding the evaluation of threatened material harm are addressed in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement). Article 3.7 provides the following guidelines:

¹¹ Consideration Report, page 19, paragraph 6.3.2

¹² Consideration Report, page 22, paragraph 6.7.4

¹³ Consideration Report, page 22, paragraph 6.7.4

¹⁴ Consideration Report, page 23, paragraph 6.7.4

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- (a) a determination of threatened material injury is to be based on facts and not merely on *allegation, conjecture or remote possibility*;³⁵
- (b) dumping which will cause harm must be clearly foreseen and imminent;³⁶
- (c) whether there is a likelihood of substantially increased importation of the dumped good;³⁷
- (d) the availability of other export markets to absorb any additional exports by the impugned producer;
- (e) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices;³⁸ and
- (f) the inventory levels of the product under investigation.³⁹

12.6 We note that *this is a non-exhaustive list of considerations and that "[n]o one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur"* (our emphasis).⁴⁰ We note the approach taken by Customs, whereby the presence of only one or two injury indicators would lead to a conclusion as to materiality (see paragraph 5.4 above).

12.7 In addition, guidance can be obtained from the US International Trade Commission, which also publishes a non-exhaustive list of factors relevant to the inquiry at hand one of which is capacity utilisation.⁴¹

12.8 It is submitted that no material threatened harm arises for the following reasons.

- (a) firstly, regarding capacity utilization, the Applicant's lime production facilities are at full capacity. [REDACTED]
- (b) secondly, as to whether there has been "a significant increase in the volume or market penetration of imports",⁴² as found by Customs, there is no evidence of actual loss of market share for the Applicant and Chemmanur has less than 2% of

³⁵ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 3.7.

³⁶ *Ibid.*

³⁷ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 3.7(i).

³⁸ *Ibid.*, Article 3.7(iii).

³⁹ *Ibid.*, Article 3.7(iv).

⁴⁰ *Ibid.*, Article 3.7.

⁴¹ <http://www.usimportlaw.com/page3.html>

⁴² See generally paragraph 11.6 of this submission and slide 12 of Adelaide Brighton's investor presentation.

⁴³ See <http://www.usimportlaw.com/page3.html>.

Ms Lydia Cooke, Australian Customs and Border Protection Service

9 December 2011

the market. There are no claims of other injury factors such as return on investment, loss of employment etc.

- (c) thirdly, there is no evidence that Chememan's prices are likely to cause a depression of domestic prices. The Applicant claims that it has been forced to negotiate reduced prices for its quicklime because of Chememan's prices.

[REDACTED] Further, the Applicant has failed to provide any evidence of actual sales prices attributable to Chememan.

- (d) fourthly, as to whether there is a "significant rate of increase of dumped imports into the domestic market",¹⁴ and "the availability of other export markets to absorb any additional exports by the impugned producer", these factors are irrelevant unless it is shown that Chememan's product was dumped.
- (e) fifthly, Customs' finding of threatened material injury is doubtful in the extreme given that the Applicant has conceded that its annual revenue and profit will continue at their current levels. Given that Customs noted that capital investment, return on investment, capacity utilisation, employment and productivity remained the same during the investigation period, a consistent level of annual revenue and profit would not pose any foreseeable risk of material injury.
- (f) Sixthly, Customs seems to have failed to heed the caution mandated in Article 3.8 of the Anti-dumping Agreement that "*special care*" be applied when considering a threat of material injury.

[REDACTED]

13 **Sales made to Chememan Australia by its overseas parent and arm's length transactions**

- 13.1 The *Customs Act* provides that the export price is the price paid or payable for the goods by the importer, less costs associated with the transport of the goods from their place of export, and consideration of a deductive export price must only occur where it can be established either that the transaction did not occur at arm's length or the importer itself has exported the goods.¹⁵
- 13.2 We note that, in arriving at deductive export prices prescribed by sub-s 269TAB(1)(b) of the *Customs Act*, at B-2 of its application the Applicant states that "*it is likely*" that the relationship between Chememan Australia and Chememan Thailand has influenced the price paid or payable for the goods.
- 13.3 The assertion of a relationship between the two companies is based on a finding of Customs as to the likelihood of sales between the companies being at a loss. However, this finding was based on accepting a selling price in the Australian market for which no written evidence was

¹⁴ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 3.7(i).

¹⁵ Section 269TAB of the *Customs Act*.

Ms Lydia Cooke, Australian Customs and Border Protection Service

9 December 2011

provided; the claim in support of the selling price was based on an assertion by the Applicant and the Applicant's own cost estimates.

13.4 Notwithstanding this, we presume that Chememan Australia refutes the claim and, with reference to s 269TAA, will be able to show that:

- (a) no consideration is paid for or in respect of quicklime supplied to Chememan Australia other than the price;
- (b) the price is not influenced by a commercial or other relationship between the parent company and its local affiliate or its associates and its related party suppliers or its associates; and
- (c) Chememan Australia does not derive, either directly or indirectly, any reimbursement, compensation or other benefit for, or in respect of, the whole or any part of the price of the subject goods subsequent to the purchase or sale.

14. **Conclusion**

14.1 Customs made the following findings in its Consideration Report:

- (a) lost sales were immaterial for both the Australian industry and the Applicant in particular;
- (b) there is no significant loss of market share and the Applicant's market share remains "steady";
- (c) revenue loss up to the end of June 2011, that is up until the end of the investigation period, is minor;
- (d) there is no price suppression; and
- (e) there is no actual loss of profit and profitability

14.2 Our client has demonstrated, through this submission, and we expect that Customs will be satisfied upon conducting its visit, that:

- (a) there was no proper basis for initiating this case;
- (b) the imported quicklime is of a significantly different grade such that it is not a like good to that produced by the domestic industry;
- (c) there is no price depression [REDACTED];
- (d) [REDACTED]

Ms Lydia Cooke, Australian Customs and Border Protection Service

9 December 2011

(e)

(f) it is essential for our client's business to have an alternative source of supply for quicklime.

(g)

Loss of profit and profitability

14.3

The Applicant has never justified the level of profit necessary for its business to show an adequate return on investment. Indeed no such argument was ever put.

Threat of material injury

14.4

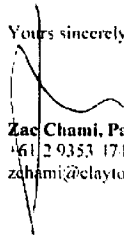
The Applicant did not claim a threat of material injury and, in the face of having found no actual material injury, Customs should not have proceeded with the investigation on the basis of a threat of material injury.

14.5

For the reasons outlined in this letter we contend that:

- (a) there is no justifiable or legally plausible case in support of dumping or threatened material injury; and
- (b) the investigation ought to be terminated (i.e. upon Customs undertaking its verification procedure).

Yours sincerely


Zac Chami, Partner
+61 2 9353 1744
zchami@claytonutz.com

CLAYTON UTZ

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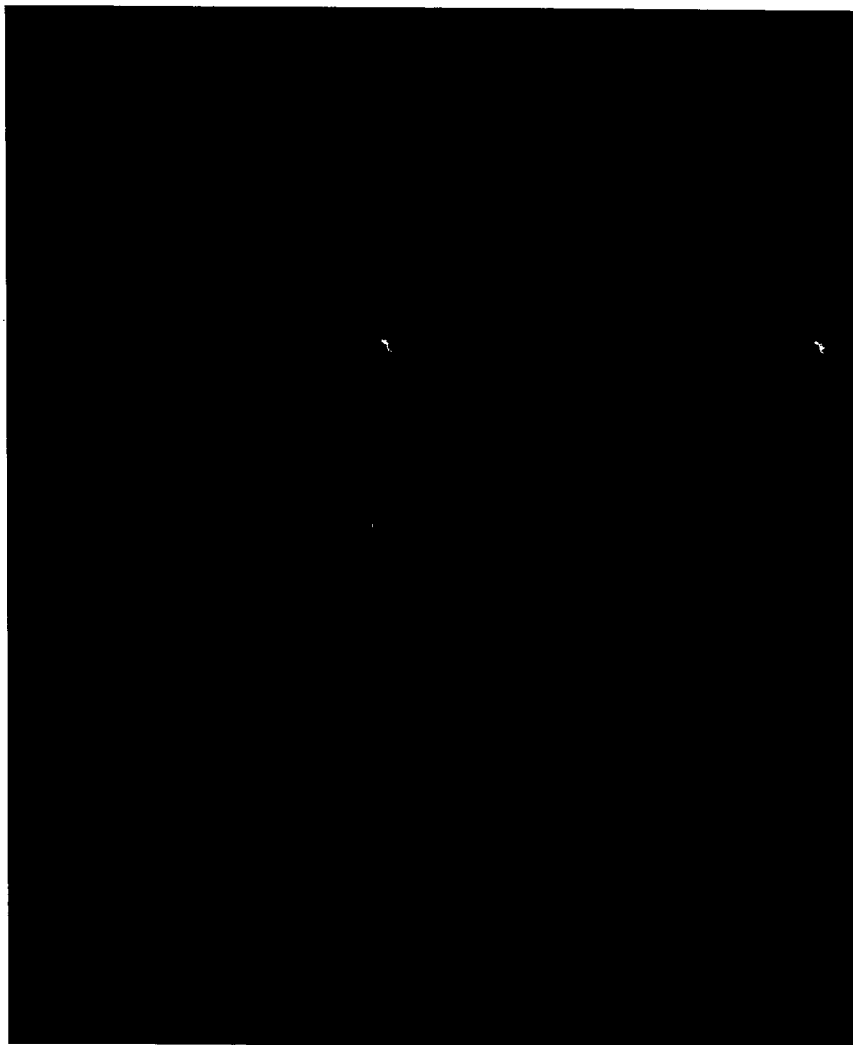
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9 December 2011

Appendix 1



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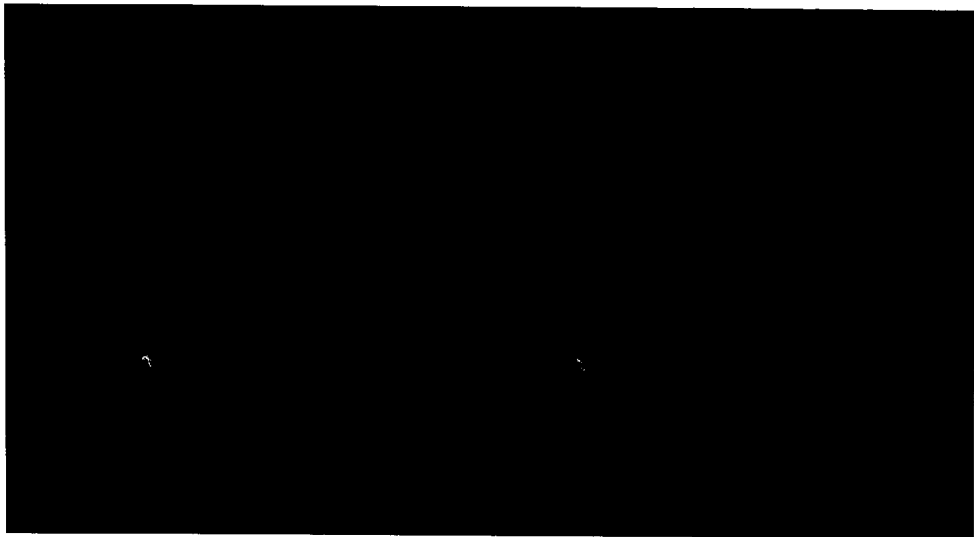
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Country: Multinational: Location: Port: Vessel: Date: Consignee:

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9 December 2011



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9 December 2011



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/29

Sydney Melbourne Brisbane Perth Adelaide Darwin Hong Kong

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9 December 2011

Attachments

1. Adelaide Brighton Investor Presentation, 6 May 2010.
2. Adelaide Brighton Investor Presentation, 26 October 2011.

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6 May 2010

The Manager
Company Announcement Office
Australian Securities Exchange Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

Dear Sir/Madam

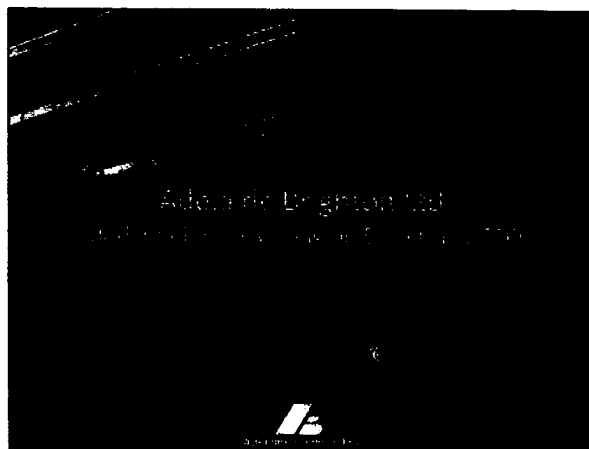
We attach copy of presentation being delivered to the Macquarie Securities Australia Conference on Thursday 6 May 2010 by Mr Mark Chellew, Managing Director.

Yours faithfully

Marcus Clayton
Company Secretary

FOR FURTHER INFORMATION

MS LUBA ALEXANDER
GROUP CORPORATE AFFAIRS ADVISER
TELEPHONE 0418 535 636



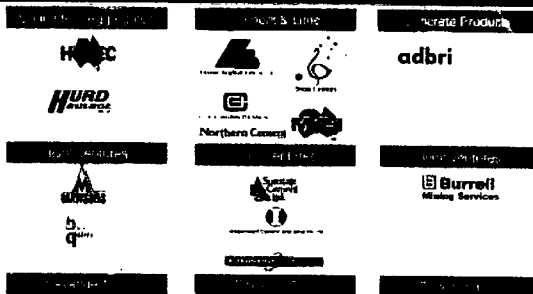
Adelaide Brighton at a glance

- Leading Australian construction materials and lime producing group
- Market shares
 - No. 1 Lime
 - No. 1 Concrete Products
 - No. 2 Cement
 - No. 4 Concrete and Aggregates
- 1,600 employees Australia wide (inc JV'S)
- Market capitalisation \$1.8 billion
- S&P/ASX 150 company
- TSR of 28% per annum over last 10 years
- Strong balance sheet – gearing 19% at end 2009

Sales by geographical segmentation

- WA
- VIC
- NSW
- QLD
- SA
- NT
- TAS

Major construction materials producer



Leading market positions

- A leading construction materials and lime producer for the construction and minerals processing industries
- Number 1 lime manufacturer positioned in key resources markets
- A leading cement supplier with access to major construction markets; healthy regional presence
- Number 1 cement importer with unmatched supply network
- Strategic aggregates and premixed business
- Number 1 national market share in concrete products

#1

#2

#1

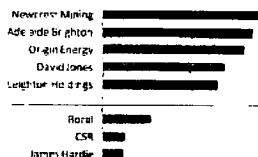
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#1

Total shareholder returns

- A decade long transformation into national construction materials supplier and the leading supplier of lime to the resources sector
- Returns underpinned by the rationalisation of capacity, reinvestment in cement and lime manufacturing and measured downstream growth
- Improved cost structure and competitive position have supported consistent growth in shareholder returns

S&P/ASX 200 Index TSR ranking
1 July 2001 to 31 December 2009



Source: eQuant. Includes ASX top 5 & one daily peers

Consistent long term strategy

- Focused and relevant vertical integration
 - Continued selective expansion of downstream to underpin cement asset utilisation and drive returns through the value chain
 - Fully vertically integrated position in New South Wales
- Evaluating lime capacity expansion to meet resource sector demand
 - Re-evaluating lime capacity expansion and \$25 million phased investment in Munster assets over next two years – improve plant throughput
 - Plans for \$40 million expansion Mataranka NT assets – additional 50 kt per annum to service growing resource sector demand
- Cost reduction and operational improvement
 - Continued focus on improved operating efficiency, returns and sustainability

Performance

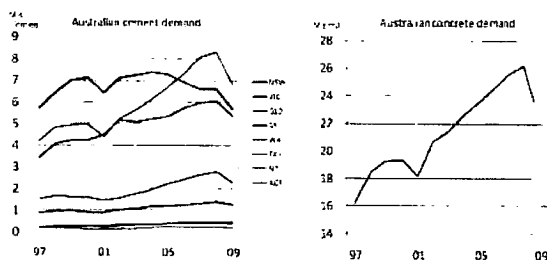
Year ended 31 December	2009	2008	Change
	\$m	\$m	%
Revenue	987.2	1,022.4	(3.4)
EBIT	185.3	189.1	(2.0)
PBT	168.6	155.3	8.6
NPAT attributable to members	123.1	120.8	2.0
	Cents	Cents	
EPS	20.4	22.2	(8.2)
Final dividend	8.0	8.5	
Full year dividend	13.5	15.0	

Strong balance sheet

Year ended 31 December	2010	2009
Net debt	\$175.4m	\$387.8m
Gearing - net debt/equity	19.6%	55.3%
Net debt/EBITDA	0.7 times	1.6 times

- Balance sheet strength and flexibility for further value enhancing organic acquisitive growth
- Gearing at low levels following equity raising in 2009 and positive earnings and cash flow outcomes
- Year end net debt 0.7x FY2009 EBITDA
- Debt facilities total \$520 million - \$310 million matures 30 June 2010 and \$210 million matures 30 June 2011
- Debt refinancing well progressed

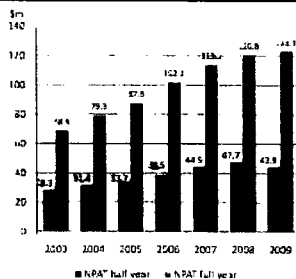
Market conditions



Key 2009 profit drivers

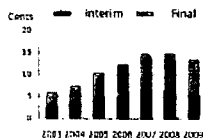
- Geographic and industry spread in the construction and resource sectors
- Sustained lime sales volumes to gold and alumina sectors
- 11% decline in cement sales
- Cement and lime price increases recover inflationary cost pressures
- Achieved target EBIT delivery from Profit Optimisation Plans. Concrete Products integration benefits delivered second half earnings recovery
- EBIT margin increased from 18.5% to 18.8%
- \$17.1 million reduction in net interest
- \$8 million unfavorable impact Australian dollar weakness versus 2008

Profit – half and full year

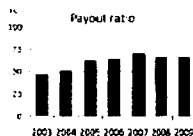
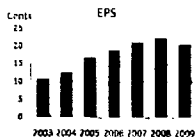


- Earnings spread between first and second half
- H2 has full impact of sales price increases
- Additional H2 delivery (from Profit Optimisation Plans)
- Concrete Products H2 profitability recovery
- Benefit from high Australian dollar in Q4
- Lower interest expense due to equity raising and cash rate reduction

Shareholder returns



- Payout ratio consistent with prior guidance
- EPS decline due to equity raising



Cashflow

12 months ended 31 December	2009 \$m	2008 \$m
Net profit before tax	168.6	155.3
Free cash flow	149.1	98.2
Net debt (increase)/decrease in net debt	212.4	(64.5)

Decrease in net debt as a result of:

- Tight working capital management
- \$7 million income tax refund
- Control of capital expenditure
- Reduction in dividends paid due to partially taken up DRP
- \$111 million (net) equity raising completed June 2009

Volumes and pricing

- 2009 Australian cement and concrete market declined 15%
- ABL cement sales down 11%
- Increased demand from mining and resources expected to offset decline in stimulus funding
- Import Parity Pricing – constrains potential for price increases
- Negotiations ongoing for cement supply contracts expiring in 2010 and 2011

Cement and Lime

- 2010 production expected to continue at capacity
- Management of increased energy costs
- Focus on maintaining benefits of Profit Optimisation Plans
- Cement and Lime pricing stable



Concrete and Aggregates

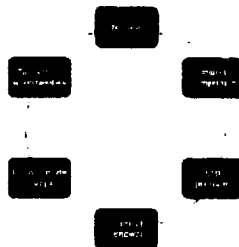
- Concrete prices are stable
- Continued growth in aggregates volumes
- Ongoing management of mix costs and asset utilisation



- Strength in Victoria, Tasmania and South Australia markets
- Weakness in New South Wales and Queensland
- Continued roll out of light weight products
- Focus on costs - rationalising shifts to match market demand



- Strong AS pressures import parity
- Threat of small scale opportunistic lime imports in Western Australia
- Cost pressures continue, particularly in energy – estimated impact \$8-\$10 million
- Cement contract renewal in Victoria, South Australia and Western Australia for supply from 2011
- Emission Trading Scheme and climate change – Government deferred implementation until after 2013
- Tax system uncertainties



Outlook

- Adelaide Brighton continues to pursue investment opportunities in line with the strategy of focused and relevant integration
- Strong AS positive impact on import profitability, but may constrain price increases
- Threat of small scale opportunistic lime imports in Western Australia
- Cost pressures continue, particularly in energy
- Cement demand stronger compared to 2009
- Anticipate concrete demand to be similar to 2009
- 2010 lime volume demand is predicted to be level to marginally to be higher than 2009
- On this basis Adelaide Brighton expects 2010 net profit after tax to be higher than 2009

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26 October 2011

The Manager
Company Announcement Office
Australian Securities Exchange Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

Dear Sir/Madam

We attach copy of presentation being delivered by Mr Mark Chellew, Managing Director and CEO on Wednesday 26 October 2011 to the Citi Australian & New Zealand Investment Conference in Sydney.

Yours faithfully

Marcus Clayton
Company Secretary

FOR FURTHER INFORMATION: MS LUBA ALEXANDER
GROUP CORPORATE AFFAIRS ADVISER
TELEPHONE 0418 535 636

Agenda

- Adelaide Brighton's competitive position
- Delivering strong shareholder returns
- Consistent long term growth strategy
- Divisional review
- Key profit and operational challenges
- Carbon tax
- Full year 2011 earnings likely to be in range of \$146-152 million

Competitive position

- A leading Australian integrated construction materials and lime producing company with high exposure to the engineering, infrastructure and resource sectors
- An S&P/ASX200 company with operations in all states and territories; 1,600 employees; AUD1.8 billion market capitalisation
- Well positioned to supply cement to all mainland states from its domestic manufacturing base, coastal supply and import facilities
- Market leader in lime in Australia, and 9th largest producer on world scale
- The second largest supplier of cement and clinker in Australia
- Market leader in concrete masonry products and an emerging position in aggregates and ready mixed concrete
- Adelaide Brighton is highly cash generative with low gearing and balance sheet capacity for organic and acquisitive growth

Leading market positions

- A leading construction materials and lime producer for the construction and minerals processing industries
- Number 1 lime manufacturer positioned in key resources markets
- A leading cement supplier with access to major construction markets; healthy regional presence
- Number 1 cement importer with unmatched supply network
- Number 1 national market share in concrete products
- Strategic aggregates and premix business

#1

#2

#1

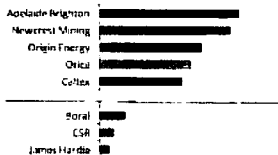
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#4

Total shareholder return

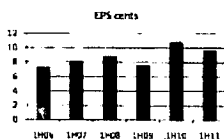
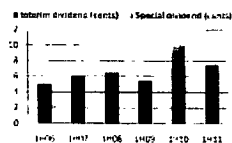
- A decade long transformation into national construction materials supplier and the leading supplier of lime to the resources sector
- Returns underpinned by the rationalisation of production capacity, reinvestment in cement and lime manufacturing and measured downstream growth
- Improved cost structure and competitive position have supported consistent growth in shareholder returns

S&P/ASX 300 Index TSR ranking
1 July 2001 to 31 December 2010

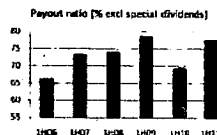


Source: eQuant, includes ASX top 3 & industry peers

Shareholder returns



- 2011 interim dividend:
7.5 cents, 100% franked
Dividend payout ratio of 77.6%
- 1H2011 EPS 9.7 cents, down from 10.8 cents
- Consideration of special dividends in future depending on circumstances at the time

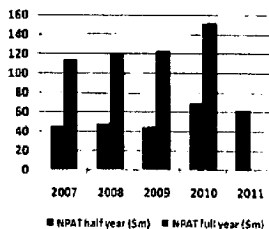


Performance highlights

Revenue	507.9	519.4	(2.1)
EBIT	92.4	98.7	(6.4)
PBT	84.5	92.1	(8.3)
NPAT attributable to members	61.5	68.8	(10.6)
EPS	9.7	10.8	(10.2)
Interim dividend	7.5	7.5	
Special dividend	-	2.5	
Net debt \$m	220.6	180.9	
Gearing %	23.9	19.8	

- Current debt facilities total \$360 million. Balance sheet strength and flexibility for further value enhancing organic and acquisitive growth

NPAT



- Profit typically higher in second half:
 - Seasonal variation in sales
 - Shutdown expenditure usually weighted to first half
- 2H2011 earnings expected to be higher than the first half boosted by:
 - Resumption of sales to time customer in NT in late June
 - Increased prices to a major lime customer in WA
 - The timing of infrastructure and resource projects in SA and WA
 - Strong AUD supporting import margins

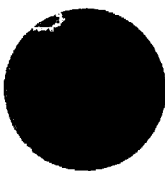
Adelaide Brighton revenue analysis

- 70% of revenue from Cement and Lime operations
- Major exposure to engineering construction and mining sectors
- WA, SA and Victoria are key geographic markets

Revenue - product group

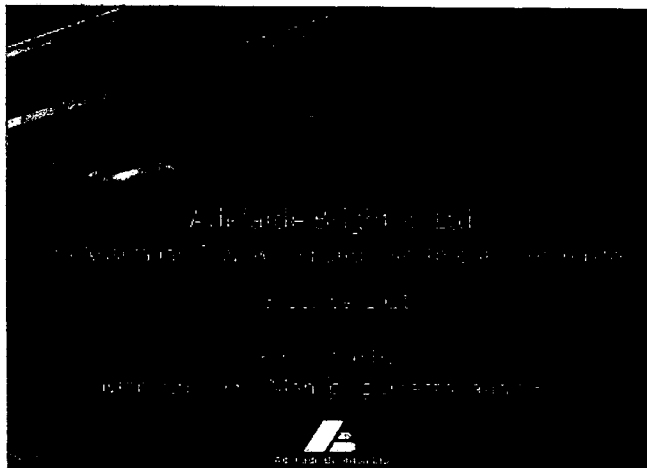


Revenue - by segment



Revenue - by state





Disclaimer

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Consistent long term strategy

- Consistent strategy over the last decade has supported long term shareholder returns:
 - Cost reduction and operational improvement
 - Lime development
 - Focused and relevant vertical integration
- Cement – investment to expand milling capacity
- Lime – capacity expansion and improvements in environmental performance
- Downstream acquisitions - four acquisitions year to date

Operational improvement continues

- Operational improvement
 - Adelaide Brighton has an ongoing focus on cost management across the Group, with particular emphasis on energy efficiency and reduction of its carbon footprint
 - The company will continue to evaluate its domestic footprint compared to the potential enhancement of import flexibility
 - Clinker and lime manufacturing facilities running at capacity
 - Expansion of Birkenhead cement milling capacity
 - Investment in Munster lime Kiln 6 brings capacity benefits and environmental improvements

Operational improvement in cement

- Expansion of Birkenhead (South Australia) cement milling capacity
 - \$60 million for the expansion of cement milling capacity by 750,000 tpa
 - Little carbon impact – clinker capacity maintained
- Reduce group reliance on imported cement
 - Environmental benefits through improved dust collection from the upgrade of ship loading facilities
- Expected to improve EBIT by \$10–\$12 million per annum when completed in early 2013
- Project is subject to planning approvals and renewal of long term supply contracts with ICL
- Investment over 2011 and 2012

Lime development

- Lime capacity expansion
 - Approved \$34 million for two projects bringing environmental improvements and 100,000 tonnes per annum capacity at Munster, Western Australia
 - \$24 million to replace the kiln 6 electrostatic precipitator with a heat exchanger and bag filter to reduce dust emissions
 - \$10 million for a new cooler bag house to meet expected future demand from the resources sector in WA
- Investment will occur over 2011 and 2012

Consistent long term strategy

- Focused and relevant vertical integration to underpin cement asset utilisation and drive returns through the value chain
- Four transactions completed year to date 2011 for a total consideration of \$47 million, which represents a multiple of 7.3 times estimated annualised 2011 EBITDA
- 1. *KMM, Kingaroy Qld*
 - Concrete and aggregate business acquired in January 2011 expected to benefit from infrastructure and resource projects
- 2. *Mundubbera, Queensland concrete business acquired in August 2011*
- 3. *South Coast Equipment, south of Wollongong NSW*
 - Concrete business acquired in March 2011
 - Well positioned to benefit from long term population growth in this region
 - Secures cement sales from Port Kembla operations

Consistent long term strategy

- 1. *Hammercrete, south east Qld and northern NSW*
 - Purchase of high quality assets, completed in July 2011
 - Hard rock quarry with approved volume limit of 500,000 tpa and reserves in excess of 20 years – services Gold Coast, southern Brisbane and northern NSW
 - Three concrete plants – Gold Coast, Brisbane and Toowoomba
 - Well positioned to benefit from projects and long term population growth
- Adelaide Brighton continues to evaluate potential acquisitions, with the expansion of our aggregates position being a key factor in future strategic growth

Contract renewal

- Cement supply agreement formalised with major cement customer:
 - SA cement supply until 31 Dec 2012 (with a further one year option exercisable by customer)
 - WA cement supply until 31 Dec 2012
- Lime supply contract with major WA alumina producer formally executed (in line with Heads of Agreement):
 - Effective from 1 July 2011 and covers supply for periods ranging between five and ten years
- Supply to ICL agreed in principle subject to ICL unit-holder approval
 - Cautiously confident that supply arrangements which expire towards the end of 2012, will be renewed on not materially different terms

Cement

- Loss of sales in 1H of circa 100,000 tonnes to a major customer in WA
- Mining sector partially offset residential activity and lull in SA infrastructure
- Victorian market was strong with sales in line with the pcip
- Cement net selling prices were in line with the prior year
- 1H2011 successful completion of significant planned cyclical maintenance
 - Limestone transport vessel, *MV Atracade II*, dry-dock
 - Birkenhead annual maintenance shutdown
- Major clinker kilns operated at capacity; production augmented by imports
- Stronger Australian dollar in first half 2011 supported import margins

Birkenhead limestone pre-blending

Lime

- Temporary suspension of operations at a major NT customer (sales resumed in June 2011)
- Excluding this temporary shutdown, lime volumes were in line with pcp
- Lime kiln production fully utilised at Munster WA. Smaller Dongara (WA) plant and Munster clinker kiln provide flexibility to supply peak demand
- Threat of small scale lime imports into WA remains
- Cautiously confident of long term position given low cost structure

Concrete and Aggregates

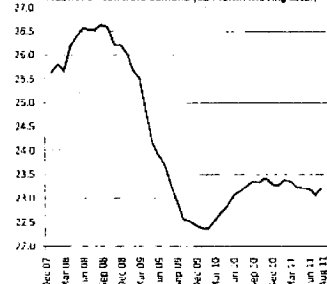
- Premixed concrete volumes in line with improving east coast market
- Austen Quarry (west of Sydney) volumes were in line with pcp
- After a slow start to the year, sales of quarry products to the Pacific Highway upgrade in northern NSW improved later in the first half
- Concrete and aggregate prices increased, further benefits being realised in second half
- Continued focus on control of quarry and concrete production costs, including raw materials and transport costs

Concrete Masonry Products

- First half revenue down 9% versus pcp
- Difficult trading conditions - soft housing and retail activity
- Continued weakness in Qld market made worse by very wet weather
- Price increases notified across all states with increases ranging from 5% to 7% in September 2011 and again in February 2012
- Programs to achieve savings in overheads and production costs and develop innovative and lower cost products
- Output volumes have been adjusted to meet market demand
- Concrete Products first half EBIT of (\$1.2) million down by \$2.0 million due to market weakness

Market demand

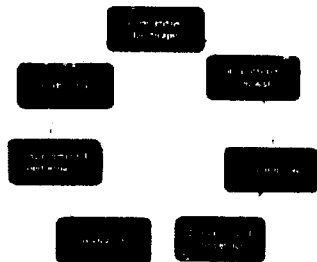
Figure 1: Australian concrete demand (12 month moving total)



- Concrete market peaked in mid 2008 after seven years of growth
- Downturn of about 15% over approximately 18 months
- National concrete market flat in 2011
- Recovery now appears to be plateauing
 - Soft residential market
 - Continued weakness in commercial
 - Declining government stimulus spend
 - End of some major infrastructure projects

Key profit and operational challenges

- Industry remains highly competitive
- ICL contract renewal nearing completion
- Threat of small scale opportunistic time imports in WA and strong AUD: impacting non-plumbe pricing
- Cement import risk in NT and north west WA
- High AUD limits the scope for cost recovery for any domestic manufacturer
- ~~Munster potential license changes (EPA licence renewal 30 March 2012) and possible spend of up to \$25 million for kiln bag house filter~~
- Carbon tax \$5 million impact on PAT in first 12 months, before mitigation



Carbon tax implications

- Adelaide Brighton is committed to lowering its carbon emissions and has significantly reduced its carbon footprint in Australia by:
 - Use of supplementary cementitious materials such as fly ash and slag
 - Use of alternative fuels and raw materials
 - Changes to cement standards
 - Closure of less efficient clinker facilities
 - ~~Developing its capability to import cementitious materials~~
- As a result of investment in import supply chain over the last 20 years, Adelaide Brighton is now the largest importer of cement and clinker into Australia
- This places the company in a strong position relative to our domestic cement and clinker competitors to deal with the potentially rising cost of local production given the proposed introduction of a carbon tax

Carbon tax implications

- Adelaide Brighton estimates that the impact of carbon tax effective 1 July 2012 to be circa \$5 million on profit after tax, before mitigation, in the first full 12 months of the scheme
- Considering proposed carbon tax and high AUD, Adelaide Brighton expects it will significantly mitigate the impact of the carbon tax over the next five years by:
 - Enhancing its import flexibility
 - Reducing reliance on domestic manufacture
 - Increasing the use of alternative fuels and cementitious substitutes
- The carbon tax as proposed is unlikely to have any significant impact on the long term growth strategy:
 - Operational improvement and asset utilisation
 - Meeting the significant growth in lime demand from the resources sector
 - Vertical integration into downstream concrete, aggregates and products markets

2011 Outlook

- National demand for cement in 2011 to be similar to 2010 levels
- Cement volumes are expected to be higher in the second half of 2011 than the first half – infrastructure and resource projects
- Excluding the temporary shutdown of a major customer in the Northern Territory in the first half of 2011, full year lime sales volumes are expected to be approximately the same as 2010 levels
- Strong AUD also increases risk of import competition and presents pricing challenges in non-alumina (mostly 200) lime business
- Strength of the AUD supports import margins – 2H imports hedged
- Lime price increases to a major alumina customer in Western Australia, effective from 1 July 2011, are expected to improve 2H2011 EBIT by \$6 million compared to 2H2010 EBIT

2011 Outlook

- Further improvements in prices of premix concrete and aggregate products are expected as the full benefit of 1 April 2011 prices increases are realised in 2H2011
- Concrete products to remain weak due to soft housing and retail activity
- Concrete products price increases have been notified to the market across all states with increases ranging from 5% to 7% in September 2011 and again in February 2012
- In the second half of 2011 shutdown costs are expected to be in line with pcg
- Cost management focus across the Group, with particular emphasis on energy efficiency and reduction of the company's carbon footprint
- Capital expenditure for FY2011 expected to be in the range of \$130 to \$140 million
- Significant land bank in WA, SA and Vic - over 5-10 years it is possible to realise circa \$100 million
- Continuation of successful long term growth strategy with investment in cement, lime and downstream operations
- Full year 2011 NPAT expected to be between \$146 and \$152 million