



Australian Government
Australian Customs and
Border Protection Service

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CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NUMBER 179

**ALLEGED DUMPING OF QUICKLIME EXPORTED FROM
THAILAND**

20 February 2011

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11.1 Customs assessment.....

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2 SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by Cockburn Cement Limited (Cockburn Cement) in relation to the allegation that dumping of quicklime¹ exported to Australia from Thailand caused material injury to the Australian industry producing like goods.

This statement of essential facts sets out the facts on which the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation in relation to the application.

2.1 Preliminary findings

Customs and Border Protection has found that quicklime from Thailand was exported at dumped prices during the investigation period. However, Customs and Border Protection has found that the dumped exports caused negligible injury to the Australian industry. Provided that no new information is put to Customs and Border Protection that would establish that dumping has caused, or threatens to cause, material injury to the Australian industry, Customs and Border Protection proposes to terminate the investigation in relation to quicklime exported to Australia from Thailand.

2.2 Application of law to facts**2.2.1 Authority to make decision**

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

2.2.2 Application

On 6 October 2011, Cockburn Cement lodged an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of quicklime exported to Australia from Thailand. The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

2.2.3 Initiation of investigation

After examining the application, the CEO was satisfied that:

- there was, or was likely to be established, an Australian industry in respect of like goods; and

¹ Refer to the full description of the goods in section 5 of this report.

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- there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

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

2.2.4 Statement of essential facts

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

In formulating the statement of essential facts, the CEO must have regard to the application concerned, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant.

This statement of essential facts is due on or before 18 February 2011. As this date is a Saturday, the statement of essential facts will be published on the next working day, 20 February.

2.3 Preliminary findings and conclusions

Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation.

2.3.1 The goods and like goods (chapter 4 of this report)

Locally produced quicklime are like goods to the goods the subject of the application.

2.3.2 Australian industry (Chapter 5 of this report)

There is an Australian industry producing like goods, comprising of twelve Australian producers of quicklime. The applicant accounted for more than the required 25% of the Australian production of like goods during the investigation period and was the only producer located in Western Australia.

2.3.3 Market (Chapter 6 of this report)

The size of the Australian market for quicklime was approximately 2.1 million tonnes in 2010-11. The Western Australian market, where imports of quicklime from Thailand occurred, was approximately 1 million tonnes.

2.3.4 Dumping (Chapter 7 of this report)

Customs and Border Protection has found a dumping margin of 48% for Chememan Co. Ltd (Chememan Thailand), the sole exporter of quicklime from Thailand. This quicklime was imported by its subsidiary Chememan Australia Pty Ltd (Chememan Australia) and Alcoa of Australia Ltd (Alcoa).

2.3.5 Injury (Chapter 8 of this report)

The Australian industry suffered injury in the form of:

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

Customs and Border Protection also found that the price of imports from Thailand undercutting some sales by the Australian industry in the non-alumina sector.

2.3.6 Non-injurious price (Chapter 9 of this report)

Customs and Border Protection considers that the non-injurious price can be established by reference to Cockburn Cement's selling prices at a time unaffected by dumping. For the non-alumina sector this is January to December 2009 and for the alumina sector this period is the investigation period, July 2010 to June 2011.

2.3.7 Causation (Chapter 10 of this report)

Customs and Border Protection has found that dumping has not caused material injury to the Australian industry.

2.3.8 Threat of material injury (Chapter 11 of this report)

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

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3 BACKGROUND**3.1 Introduction**

On 8 October 2011, Cockburn Cement lodged an application requesting that the Minister publish a dumping duty notice in respect of quicklime exported to Australia from Thailand. The applicant subsequently provided further information in support of its application. As a result, Customs and Border Protection restarted the 20 day period for considering the application on 19 October 2011.

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

There have been no previous investigations into quicklime by Australian anti-dumping authorities.

The investigation period was 1 July 2010 to 30 June 2011. Customs and Border Protection is examining the Australian market from January 2008 for the purpose of analysing the condition of the Australian industry.

3.2 Responding to this statement of essential facts

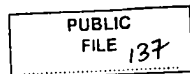
This statement of essential facts sets out the essential facts on which Customs and Border Protection proposes to rely. It represents an important stage in the investigation as it informs interested parties of the facts established and allows them to make submissions in response to the statement of essential facts. It is important to note that the statement of essential facts may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to this statement of essential facts. Responses to this statement of essential facts should be received by Customs and Border Protection no later than **12 March 2012**. Customs and Border Protection is not obliged to have regard to any submission made in response to the statement of essential facts received after 12 March 2012.

Submissions should preferably be emailed to tmops1@customs.gov.au. Alternatively they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

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Confidential submissions must be clearly marked accordingly and accompanied by a non-confidential version for inclusion on the public record. Customs and Border Protection may disregard confidential submissions unless they are accompanied by a non-confidential version. A guide for making submissions is available at the Customs web site (follow the links to: Anti-Dumping > Reference Material > Guidance for Submissions).

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

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4 THE GOODS AND LIKE GOODS**4.1 Preliminary finding**

Customs and Border Protection considers that locally produced quicklime are like goods to the goods the subject of the application.

4.2 The goods

The goods the subject of the application are described as follows.

Quicklime is also known as Calcium Oxide as this is the dominant chemical composition of quicklime (CaO). Other common names to describe this product are Burnt Lime and Unslaked Lime. Quicklime is a white to grey, caustic, crystalline solid at room temperature.

Quicklime is typically made by the thermal decomposition of materials such as limestone, that contains calcium carbonate (CaCO₃; mineral calcite) in a lime kiln. This is accomplished by heating the material to above 1100 °C, a process called calcination or lime-burning, to liberate a molecule of carbon dioxide (CO₂); leaving quicklime.

4.2.1 Tariff classification

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

Based on information provided in the application, Customs and Border Protection's Trade Services Branch confirmed that the goods are correctly classified to this tariff subheading. These goods are duty free from all sources.

4.3 Like goods**4.3.1 Points raised by Cockburn Cement**

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

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The company provided with its application the following table outlining the differences and similarities:

	Cockburn Cement Quicklime	Imported Quicklime	Reference
Chemical name	Calcium Oxide	Calcium Oxide	www.Chememan.com
Chemical formula	CaO (approx 78-84%)	CaO (approx 85%)	www.Chememan.com
Physical Characteristics	Grey to white, caustic, crystalline solid	Grey to white, caustic, crystalline solid	Market feedback
Raw Material	Calcium Carbonate	Calcium Carbonate	www.Chememan.com
Production Process	Calcination via kiln	Calcination via kiln	www.Chememan.com

4.3.2 Points raised by Chememan

Chememan argues that the imported and locally produced quicklime are not like goods. In particular, it argues that its quicklime is produced from a different raw material, high grade limestone rock, as opposed to low grade shell sand. As a result, the quicklime it produces has a calcium oxide content 10-12% higher than that of Cockburn Cement.

The high grade limestone rock it uses also results in less impurities in the quicklime produced, particularly magnesium oxide, silica dioxide and sulphur trioxide. These impurities can reduce the lifespan of machinery which comes into contact with the quicklime, inhibit chemical reactions and lower the efficiency of the product.

In addition, the production of quicklime from limestone rock means that the quicklime can be manufactured in a range of sizes. Chememan argues that the granular size range of its quicklime is from 0.15mm to 90mm. Cockburn Cement, on the other hand is limited in the size of its granules by the size of the shell sand it uses to produce quicklime and the largest size it can offer is 0.6mm. Chememan argues that the larger granular sizes require special machinery and testing in order to be used in the same processes and therefore the products are not immediately interchangeable

4.3.3 Points raised by Alcoa

Alcoa, a user of both Chememan's and Cockburn Cement's quicklime, also argues that the imported quicklime are not like goods to the quicklime produced by the Australian industry. It argues that the quality differences in the raw material and the resulting lower impurity levels result in fundamental differences between the products.

4.3.4 Customs and Border Protection's assessment

There are differences as well as similarities between the imported and locally produced quicklime. Imported quicklime is made from a different form of raw

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material, has a higher available lime content, has a lower level of impurities and can be manufactured in a larger range of sizes than quicklime produced by Cockburn Cement.

Having regard to the differences in technical specifications between the locally manufactured and imported quicklime Customs and Border Protection considers there are sufficient physical differences to reasonably conclude the Australian and Thai quicklime are not identical.

In the absence of identical goods, Customs and Border Protection must establish if the locally manufactured quicklime have characteristics closely resembling the imported Thai quicklime. In this broader context, Customs and Border Protection looks initially to physical characteristics, but also considers it is reasonable to have regard to the commercial likeness, functional likeness and production likeness.

In the case of quicklime, the key physical characteristic for end users is the presence of calcium oxide, the reagent in the chemical reactions for which quicklime is used. While the Australian quicklime may comprise slightly different technical specifications to the imported quicklime the key physical characteristic, calcium oxide, is the same and Customs and Border Protection has accordingly found them to be like goods.

When there are options available, end users may have a preference for lower levels of impurities in quicklime and different granular sizes but these differences are not sufficient to result in the goods being non comparable. Rather, they may speak to consumer preference in purchasing one product or the other.

The like nature of the imported and locally produced quicklime can also be seen in the commercial, functional and production similarities between the imported and locally produced quicklime.

Customs and Border Protection has found that the goods are commercially similar as they both compete in the same market sector. The customers that purchased imported quicklime also purchased quicklime from Cockburn Cement. Quicklime exported by Chememan Thailand to date has generally been for testing and product trials. While this suggests that the goods are not immediately interchangeable, the purpose of testing is to ultimately use the imported quicklime in place of the domestically produced product.

Both the imported and locally produced quicklime are functionally similar as they have the same end use and are purchased with the intention to be used primarily in the mineral processing industry.

Chememan Thailand has highlighted the different production processes used to produce the two products. Customs and Border Protection has found that quicklime produced by Chememan is manufactured from calcium carbonate in limestone rock that is crushed before it is fed into the calcination process. Quicklime produced by Cockburn Cement is manufactured from calcium carbonate in shell sand, dredged from the ocean floor. Both the crushed limestone and shell sand is fed into the kiln where it is heated to create calcium oxide. Therefore, despite the different forms of raw material, both are produced using a similar production process.

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After considering the arguments put forward by interested parties, Customs and Border Protection has found that quicklime produced by the Australian industry are like goods to the imported goods because:

- the goods are physically similar, being predominately calcium oxide with minor variations in the presences of other chemicals and granular size;
- there is a commercial likeness between the goods as they compete in the same market;
- the goods are functionally similar as they are both used for the same purposes; and
- the goods are produced using similar production methods.

Customs and Border Protection is of the view that the imported quicklime is of a higher quality than the quicklime produced by Cockburn Cement. Nonetheless, the goods share sufficient characteristics to be like goods. Issues regarding the quality differences between the locally produced and imported quicklime will be examined in the **Chapter 10 – Have dumped goods caused material injury?**

5 AUSTRALIAN INDUSTRY

5.1 Preliminary finding

Based on the information available, Customs and Border Protection considers that there are 12 manufacturers of quicklime in Australia. These manufacturers comprise of both companies that produce quicklime for sale and companies that manufacture quicklime for internal use.

Customs and Border Protection has found that:

- quicklime manufactured by the Australian producers are like goods;
- the like goods were wholly or partly manufactured in Australia;
- a substantial process of manufacture was carried out in Australia by the Australian producers; and
- there is an Australian industry producing like goods.

5.2 Introduction

Based on the information available, Customs and Border Protection has found 12 producers of quicklime in Australia. Of these producers, six companies produce quicklime for sale while the remaining producers use it for internal use.

Cockburn Cement is the only producer and seller of quicklime in Western Australia. It has a production capacity in excess of one million tonnes of lime a year and is the largest producer in Australia.

5.3 Support by a sufficient part of the industry

For an application to be initiated, it must be supported by a sufficient part of the Australian industry. Customs and Border Protection must be satisfied the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50% of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25% of the total production or manufacture of like goods in Australia².

In the application, the Cockburn Cement provided its estimates of the volume of quicklime manufactured by other producers in Australia. Using these estimates, Cockburn Cement calculated that it met the standing requirements to submit an application. In consideration report 179 (CON179), Customs and Border Protection noted that while it accepted these estimates for the purpose of initiation, the actual

² S. 269TB(6) of the Act

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production volumes of other manufacturers in Australia would be investigated following initiation. If Cockburn Cement was found not to meet the requirements of standing, the case would be terminated. Cockburn Cement was found to meet the standing requirement of accounting for more than 50% of total production commenting on the application, as it was the only company who did so.

Following initiation, all other identified producers were contacted and requested to provide information in relation to the investigation. Three responses were received.

Due to the limited amount of information provided by the Australian industry, Customs and Border Protection examined the production and market size estimates provided by both Cockburn Cement and Chememan Australia. In establishing its estimate of the size of the Australian market and production, Chememan Australia based its information on a statement made by the National Lime Association³, a peak body representing commercial lime manufacturers in Australia. This industry body estimated that the Australian demand for lime is 2.1Mt.

In the market size estimates from Cockburn Cement, Chememan Australia and the National Lime Association, Cockburn Cement accounts for almost 50% of quicklime production in Australia, more than the 25% required to lodge an application. Therefore, Customs and Border Protection is satisfied that the application was supported by a sufficient part of the industry.

5.4 Quicklime production process

Following is brief description of Cockburn Cement's manufacturing process for quicklime:

Cockburn Cement dredge shell sand (Calcium Carbonate) from the seabed in Owen Anchorage, off the coast from Woodman Point, approximately 7 km from the Munster operation. The trailer suction barge carries the sand back to Woodman Point and deposits it alongside the Cockburn Cement jetty.

The suction reclaimer pumps the sand into the washing plant at Woodman Point where oversized shells and soluble salts are removed. The washed sand is pumped in a fresh water medium to the shells and stockpile at Munster.

Stockpiled sand is reclaimed by front end loader and conveyed to the kiln storage hopper. The hopper feeds the sand at a controlled rate to the kiln pre-heater tower. The sand cascading down through the cyclones of the pre-heater is mixed with the rising hot gases from the rotary kiln. By the time it arrives at the bottom of the tower, it is already at 800°C.

The pre-heated sand slowly passes along the rotary kiln where it reaches its

³Securing a Clean Energy Future, Submission of National Lime Association of Australia to the Clean Energy Bill 2011 – Exposure Draft, 22/08/2011.

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maximum temperature of 1100°C. At this temperature, the calcium carbonate is decarbonated to form calcium oxide or Quicklime. The quicklime is discharged through coolers to storage silos for distribution⁴.

Chememan Thailand uses a similar production process. However, its source of calcium carbonate is limestone rock. This rock is mined from a quarry, transported to the factory and ground and crushed before it is fed into the kiln.

⁴ This description was provided in the non-confidential version of the application for anti-dumping duties on quicklime exported from Thailand which is available on the public record.

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6 AUSTRALIAN MARKET

6.1 Preliminary finding

Customs and Border Protection estimates that the size of the Australian market for quicklime was approximately 2.1 million tonnes, with the Western Australian market accounting for approximately 1 million tonnes. This was supplied primarily by Cockburn Cement. During 2010-11, imports from Thailand accounted for less than 1% and 2% of the Australian and Western Australian market respectively.

6.2 Introduction

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

Due to the high cost of transportation, the Australian market is largely geographically segmented. Suppliers on the east coast generally only supply to users on the east coast, while Cockburn Cement, located on the west coast is the main source of supply in Western Australia.

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

Approximately 20% of Cockburn Cement's quicklime is used in gold processing, while the remaining 10% is used in a range of applications including acidic effluent treatment and pH adjustment in mineral sands and other mineral processing, water treatment and building and construction (road construction & stabilization, additive in mortars).

Imported quicklime has the same end uses as the quicklime produced by the Australian industry.

6.3 Market supply

The Australian market is supplied primarily by the Australian manufacturers, while only a small amount of quicklime is imported. Based on data from Customs and Border Protection's import database, Indonesia was the main source of imports prior to quicklime from Thailand entering the market. However, none of the Indonesian quicklime was imported into Western Australia. During the injury and investigation period, imports into Western Australia largely came from Thailand with a small amount from another export source.

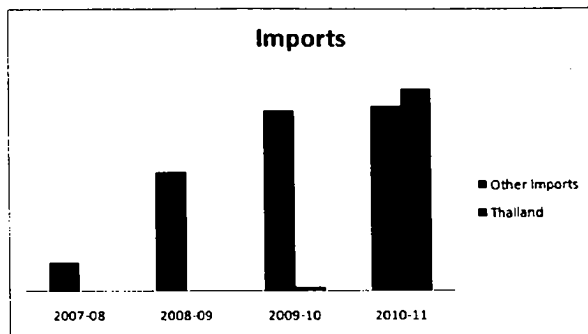
A chart of all imports, from Customs and Border Protection's import database is shown below:

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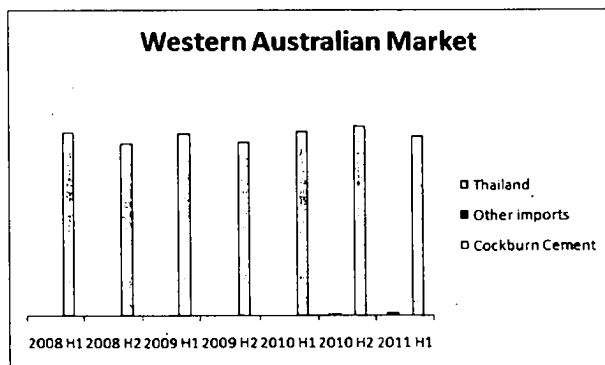
Cockburn Cement explained that the level of imports have been historically low due to the cost of establishing the necessary infrastructure to service the Australian market. In addition, the cost of transporting the goods to Western Australia meant that these goods were generally not competitive.

6.4 Market size

Customs and Border Protection estimated of the size of the Australian market, expressed in metric tonnes, using data verified during visits to the applicant and importers, data from Customs and Border Protection's import database and the estimate from the National Lime Association. The information gathered by Customs and Border Protection suggests that the market for quicklime in Australia has remained relatively constant.

The Australian market size is estimated to be approximately 2.1 million tonnes while the Western Australia market is estimated to be approximately 1 million tonnes.

To better demonstrate the impact of the imported quicklime on Cockburn Cement's market share, the quicklime market in Western Australia is charted below since the start of 2008:



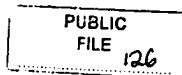
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6.5 Distribution arrangements

Quicklime is typically distributed in bulk. Due to the fine particle size and handling characteristics, it is normally transported in specialised closed tankers/iso containers and discharged pneumatically into customer storage silos.

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7 DUMPING INVESTIGATION

7.1 Preliminary findings

Dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Chememan Thailand was found to have a dumping margin of 48% during the investigation period.

7.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This chapter explains the preliminary results of investigations by Customs and Border Protection into whether quicklime was exported from Thailand at dumped prices during the investigation period.

7.2.1 Importers

Two importers of quicklime from Thailand were identified during the investigation period, Chememan Australia, a wholly owned subsidiary of the manufacturer in Thailand, and Alcoa. Customs and Border Protection undertook visits to these companies and the visit reports are on the public record.

7.2.2 Exporter - Chememan Thailand

Cockburn Cement identified one exporter of quicklime from Thailand, being Chememan Thailand. Following initiation of the investigation, a search of Customs and Border Protection's import database indicated that Chememan Co Pty Ltd (Chememan Thailand) and Chememan International (Chememan International) exported quicklime from Thailand to Australia during the investigation period. It has been verified that these companies are related, with Chememan International being a wholly owned subsidiary company of Chememan Thailand.

Chememan Thailand and Chememan International completed separate responses to the exporter questionnaire, providing details regarding their respective company, overseas supplier information, imports and expenses. Customs and Border Protection undertook a verification visit; the visit report is on the public record.

Chememan Thailand manufactures quicklime in Thailand. Chememan International, located in Singapore, acts as an export sales agent on behalf of Chememan Thailand.

Between July 2010 and August 2010, all sales of quicklime to the Australian export market, via Chememan Australia were negotiated between Chememan Australia and Chememan Thailand. Direct export sales between Chememan Thailand and Chememan Australia were discontinued however from September 2010 onwards, when Chememan Thailand registered a majority owned subsidiary, trading under the

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name Chememan International Pte Ltd, to operate as their sole trading agent responsible for the negotiation and execution of sales of quicklime produced by Chememan Thailand to export markets.

Customs and Border Protection formed the view that Chememan Thailand, Chememan International and Chememan Australia operate as a group with respect to the export of quicklime to Australia and were characterised as a single exporter for the purposes of determining a dumping margin. A detailed explanation of their relationships and the basis for collapsing them into a single exporter for dumping purposes are contained in the export visit report on the public record.

Chememan Thailand was found to export quicklime to Australia in aggregate form and powder form.

7.2.3 Export prices

With respect to exports to Australia of aggregate and powder quicklime produced by Chememan Thailand it was found that:

- the goods have been exported to Australia otherwise than by the importer;
- for indirect exports through Chememan International, the goods have not been purchased by the importer from the exporter;
- for direct exports by Chememan Thailand, the goods have been purchased by the importer from the exporter;
- the importer, trading intermediary and exporter are related parties; and
- the purchase of the goods between these related parties were not arms length transactions

On the basis of the above conclusions, export prices are unable to be determined under s.269TAB(1)(a). Export price were determined under s.269TAB(1)(b) for direct exports and s.269TAB(1)(c) for indirect exports. Regardless of the appropriate provision under which export prices are determined, export prices have been calculated using the same methodology and after having regard to all the circumstances of the exportations to obtain a price that is representative of a reliable export price that is unaffected by any association.

Section 269TAB(1)(b) operates in circumstances in which goods are sold to the importer by the exporter, but there is evidence that the transactions are not made at arms length. The section permits export price to be calculated by consideration of sales of the goods made in Australia by the importer to independent buyers. Under the section, export price is taken to be the price which the goods are sold to independent customers in Australia, less appropriate and verifiable deductions of costs incurred in relation to those goods by the importer after the point of export.

Source documentation and specific sales data provided by Chememan Australia have been used to calculate an FOB export price for quicklime exported by Chememan Thailand over the investigation period. This calculation was made by

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ascertaining the total invoice price on an ex-works basis for each sale to an end user made by Chememan Australia over the investigation period – that is, deducting all costs incurred by Chememan Australia in relation to the goods from the store at its facility at Henderson, Western Australia, to the customer from the net invoice price for each transaction. Relevant weighted average deductions under the following fields were then made from the ex-works price for each transaction:

- Chememan Australia's selling, general and administrative costs;
- costs associated with the terms of sale for each transaction using the average rate of interest for the period, provided by Chememan Australia;
- total importation expenses incurred by Chememan Australia;
- total ocean freight expenses incurred by Chememan Australia; and
- total marine insurance expenses incurred by Chememan Australia.

A proportionate deduction reflecting the SG&A costs associated with Chememan International's role as trader in the exportation process was also included in the calculation of export price.

7.2.4 Normal values

Sufficient quantities of domestic sales of aggregate quicklime that were at arms length and in the ordinary course of trade were found to have been made during the investigation period. Therefore, normal values for aggregate quicklime were established on the basis of the price paid or payable on the domestic market in Thailand, in accordance with s.269TAC(1).

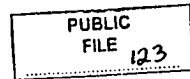
However, all domestic sales of powder quicklime considered to be secondary grade and had a different percentage of available lime content than the powder exported to Australia. Customs and Border Protection considers that a specification adjustment could not be reasonably made with any degree of surety. Therefore it was concluded that no relevant sales of powder quicklime existed on the domestic market for the purposes of s.269TAC(1).

Instead, the normal value for quicklime powder was established under s. 269TAC(2)(c), using the cost of manufacture of the goods plus amounts for the SG&A costs on the assumption that the goods, instead of being exported, had been sold for home consumption.

The following adjustments were made to the normal values to ensure they were fairly comparable to export prices:

- downward adjustment for domestic inland freight;
- downward adjustment for domestic packing;
- downward adjustment for domestic credit terms;
- upward adjustment for export handling and FOB charges;
- upward adjustment for export inland freight;
- upward adjustment for export packing; and

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- upward adjustment for export credit terms.

A profit margin was also added to the normal value for quicklime powder which is based on the weighted average rate of profit achieved on all like goods sold on the domestic market during the investigation period.

7.2.5 Dumping margin

A dumping margin for the investigation period was calculated by comparing the sum of the export price multiplied by the export quantity for each export transaction with the sum of the corresponding quarterly normal value multiplied by the export quantity for each export transaction. The product dumping margin for exports by Chememan Thailand is 48%.

7.2.6 Other exporters

Customs and Border Protection is not aware of any other exporters of quicklime from Thailand during the investigation period. Customs and Border Protection considers a dumping margin for all other exporters should be determined based on the export prices and normal values established for Chememan Thailand.

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8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Preliminary finding

The Australian industry suffered injury in the form of:

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

Customs and Border Protection also found that the price of imports from Thailand undercutting some sales by the Australian industry in the non-alumina sector.

8.2 Introduction

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

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

For the purpose of assessing material injury to the Australian industry, Customs and Protection has focused its analysis on the economic performance of Cockburn Cement from 1 January 2008. Given it represents approximately 50% 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 is considered to be representative of the Australian industry.

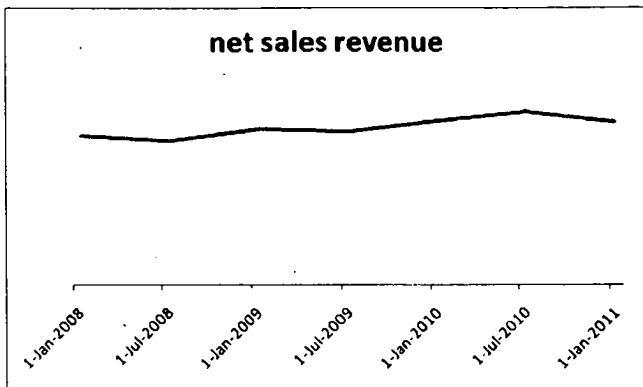
8.3 How injury is assessed

Section 296TAE of the Act outlines how injury to an Australian industry can be assessed. In addition, in September 1990, A Ministerial Direction was issued concerning material injury, which makes the following points:

- material injury is injury which is not immaterial, insubstantial or insignificant, and is greater than that likely to occur in the normal ebb and flow of business.
- material injury, or the threat thereof, will only rarely be taken as proven when the Australian industry producing like goods has not suffered, or is not threatened with, a "material" diminution of profits or when the dumped or subsidised imports do not hold (or threaten to hold) a sufficient share of the Australian market to cause or threaten "material injury".
- each case to be judged on its merits.

8.4 Revenue effects

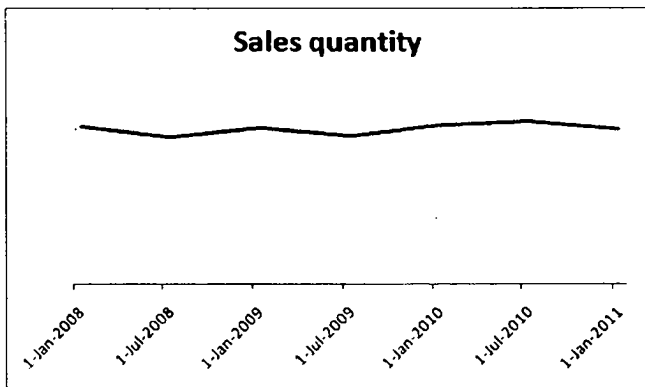
Movements in the applicant's revenue are illustrated in the following chart.



Revenue has remained relatively constant since the start of 2008. A small increase can be seen in the first half of the investigation period (a 5.7% increase in revenue from the previous six month period) followed by a small decline (a 6.5% decrease in revenue from the previous six month period).

8.5 Volume effects

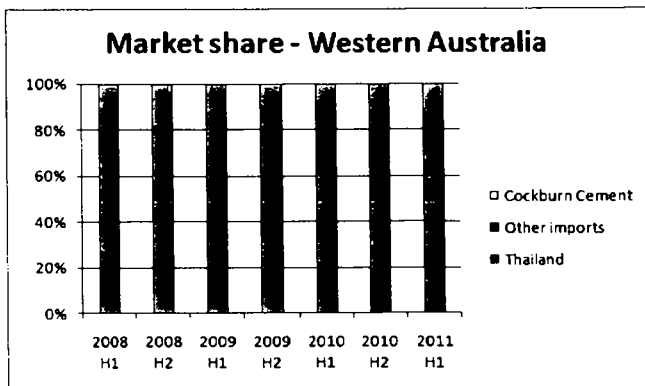
Movements in the applicant's sales volumes are illustrated in the following chart which shows that sales volumes have remained relatively constant since January 2008.



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Market share in the Western Australian market is charted below and shows that the entry of Thai quicklime imports into the Australian market has not had a material impact on Cockburn Cement's market share.



In its application, Cockburn Cement stated that it had lost sales to Chememan. The investigation has found that Thai quicklime imports during the investigation period were generally used for product testing by end-user customers and replaced very few potential sales by Cockburn Cement.

8.6 Price depression and price suppression

Price depression occurs when a company lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented; an indicator of price suppression may be if the margin between revenues and costs falls.

Movements in unit revenues and costs is illustrated in the following chart which shows that average unit revenue has gradually increased over the period, whilst corresponding unit costs have fluctuated over the same period.

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.

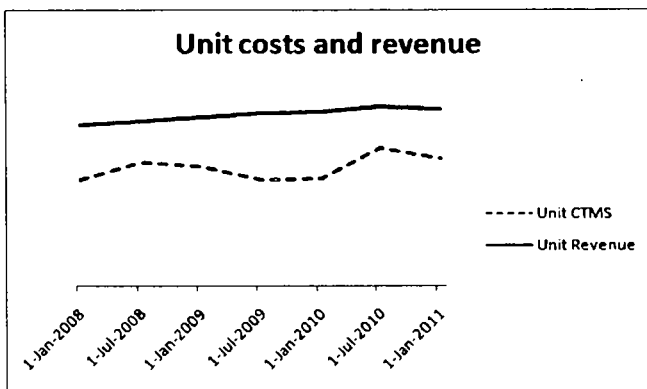
Customs and Border Protection has found that the lost revenue as a result of these price reductions in the non-alumina sector account for 2.2% of yearly revenue (based on the revenue for 2010-11). Customs and Border Protection has found that Cockburn Cement's selling price to the alumina sector was not impacted by dumped imports during the investigation period.

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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 2.9% total revenue lost. However, some of these prices did not come into effect until after the investigation period. Chapter 10 of this report examines Cockburn Cement's claims to determine whether the company would have been able to achieve the desired price increase in the absence of dumped imports.



8.7 Price undercutting

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, ie, 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 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 undercut the original price offered by Cockburn Cement. In one 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.

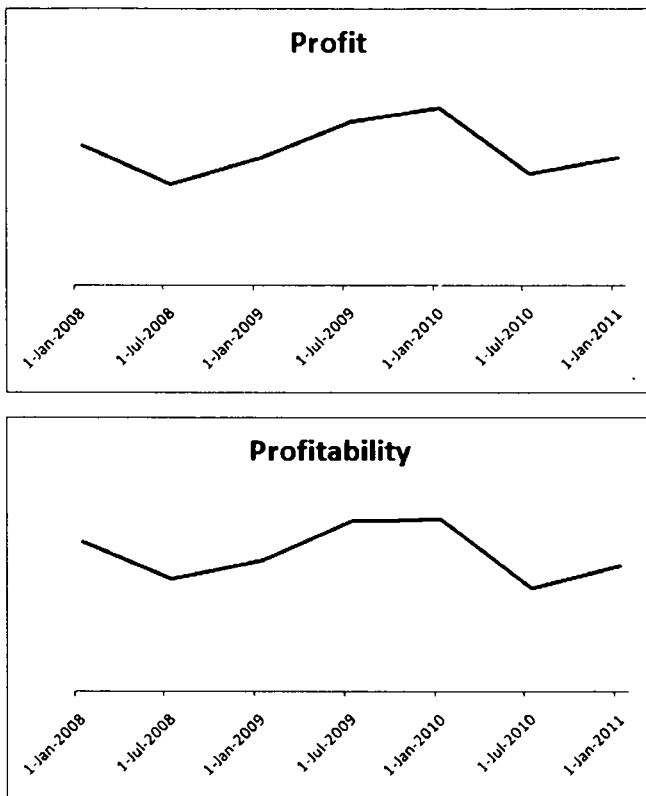
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To ensure that a comparison of prices from Cockburn Cement and Chememan to the alumina sector reflect the same terms and conditions, prices have been assessed on a 100% lime basis. Customs and Border Protection found that the price of imports from Thailand to the alumina sector, whether directly imported or purchased from Chememan Australia, did not undercut the Australian industry's prices during the investigation period.

8.8 Profit and profitability effects

Movements in profits and profitability are illustrated in the following charts.



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 is changes in the cost to make and sell the goods.

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 2010-11 revenue.

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8.9 Other economic factors

The applicant also completed an appendix A7, which looks at other injury factors. Cockburn Cement has not suffered injury in regard to any other economic factors.

8.10 Conclusion – economic condition of the industry

Based on an analysis of the information contained in the application and verified during visit to the applicant, the Australian industry suffered injury in the form of:

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

Customs and Border Protection also found that the price of imports from Thailand undercutting some sales by the Australian industry in the non-alumina sector.

Chapter 10 will examine whether this injury was material and whether there is a link between the dumped imports and injury.

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9 NON INJURIOUS PRICE

9.1 Preliminary findings

Customs and Border Protection makes a preliminary finding that the non-injurious price can be established by reference to Cockburn Cement's selling prices at a time unaffected by dumping, being January to December 2009 for the non-alumina sector and July 2010 to June 2011 for the alumina sector.

9.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping Agreement and the Tariff Act⁵.

The calculation of the non-injurious provides the mechanism whereby this lesser duty provision is given effect. The non-injurious is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping⁶.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious is calculated in FOB terms for the country of export.

9.3 Unsuppressed selling price

Customs and Border Protection generally derives the non-injurious by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price.

Customs and Border Protection's preferred approach to establishing an unsuppressed selling price observes the following hierarchy:

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

⁵ Subsection 8(5A) of the Tariff Act

⁶ The non injurious price is defined in section 269TACA

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Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

9.4 Australian industry

Cockburn Cement argued that the alumina and non-alumina sector have very different pricing, and therefore it calculated a separate non-injurious price for each sector.

For the non-alumina sector, it submits that the unsuppressed selling price should be based on industry's selling prices at a time unaffected by dumping, being the 2009 calendar year. It then sought to index these prices using the annual growth rate of the non-alumina sector between the period of 2004 and 2009. It argues that this is the price it could have achieved in a market unaffected by dumped imports.

Cockburn Cement also presented its view on what price it could achieve in the alumina sector in the absence of dumped imports. This amount was based on current contract prices for quicklime to this sector.

9.5 Customs and Border Protection's assessment

9.5.1 Non-alumina sector

Customs and Border Protection considers that 2009 is the most recent period unaffected by dumping and therefore Cockburn Cement's sales in that period should be used as a basis for the unsuppressed selling price.

However, Customs and Border Protection considers that the indexing submitted by Cockburn Cement in its assessment is not reflective of any actual considerations used in setting its prices and may therefore present a higher price than may realistically be achievable.

Customs and Border Protection considers it more appropriate to rely on the Perth CPI to index the 2009 actual prices to calculate an unsuppressed selling price achievable in the investigation period, as this CPI index has relevance to quicklime pricing.

Customs and Border Protection calculated the non-injurious price by deducting from the unsuppressed selling price the importation costs (such as port, clearance and into-store costs), ocean freight costs and where applicable the selling, general and administrative costs for both Chemman Australia and Chemman International.

9.5.2 Alumina sector

Customs and Border Protection has examined the unsuppressed selling price put forward by Cockburn Cement and is of the view that this does not reflect a price relevant to the investigation period, July 2010 to June 2011. The non-injurious price

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must relate to the same period as the exports under examination and allow for a proper comparison with determined export prices.

Customs and Border Protection is of the view that the price of Cockburn Cement's sales to the alumina sector during the investigation period were unaffected by dumping. These were sales and prices committed under long term contracts established prior to the commencement of imports from Thailand. Therefore, the weighted average price to all customers in this sector was used to establish the unsuppressed selling price.

Customs and Border Protection calculated the non-injurious price by deducting from the unsuppressed selling price the importation costs (such as port, clearance and into-store costs), ocean freight costs and where applicable the selling, general and administrative costs for Chememan Australia and Chememan International.

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10 HAS DUMPING CAUSED MATERIAL INJURY

Cockburn Cement claims that it has suffered injury due to dumped imports of quicklime from Thailand. Customs and Border Protection has examined the claims put forward by Cockburn Cement and other interested parties regarding the link between injury suffered by Cockburn Cement and the dumped imports. Customs and Border Protection has found that dumped exports have not caused material injury.

10.1.1 Claims by Cockburn Cement

Cockburn Cement argues that it has suffered injury from dumped imports in both the alumina sector (which accounts for approximately 70% of its sales) and non-alumina sector (which accounts for the remaining 30% of its sales).

In the non-alumina sector, it argues that that Chememan approached the majority of its customers and offered them lower prices. As a result, certain gold mining customers switched supply to Chememan and Cockburn Cement was required to lower its prices to recover these lost sales.

In order to retain other sales in the face of this undercutting, Cockburn Cement claimed it was also required to lower its prices to other customers. Cockburn Cement argues that these price reductions and the lost sales, while relatively low in volume, resulted in a significant contribution loss. Cockburn Cement argues that it has prevented further significant lost sales but it has experienced significant negative price and profit injury as a result.

In the application, Cockburn Cement provided a list of the customers to which it had reduced its prices, as well as the price it believed that Chememan was offering these customers. It also provided evidence, in the form of before and after invoices which supported its claims that it had been required to lower its price.

Cockburn Cement also argues that it suffered injury in the alumina sector. It argues that during the investigation period, it negotiated a contract renewal with a major customer. While it achieved a price increase on the previous price for a portion of the volume under the new contract, it considered that it didn't achieve the price increase it could have for the remaining volume due to the presence of dumped imports. In addition, it argues that the contract terms were not as favourable as in the previous contract.

While this new contract did not come into effect until after the investigation period, and therefore is not reflected in the sales and profit data examined as part of this investigation, Cockburn Cement argues that this constitutes material injury caused by the dumped imports. It argues that it was not able to achieve the prices it considered reasonable for a portion of the volume in the new contract due to the availability of dumped imports, which the customer had successfully trialed.

Cockburn Cement argued that it provided a secure source of supply of quicklime. The company operated three different kilns and always had several weeks' worth of quicklime in silos on site. In addition, while it was less efficient and more costly, it was able to use its clinker kilns to produce quicklime if necessary. Moreover, the

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company has plans to increase capacity in line with market growth. Therefore, it does not consider valid, arguments submitted by end-users that a secondary source of quicklime was needed to ensure security of supply.

10.1.2 Claims by Chememan

Chememan argues that it has not caused material injury to Cockburn Cement. It argues that its import activity was miniscule and therefore could not have been injurious. It argues that its storage facility in Henderson never achieved full capacity, but even if it would do so, the volume it could supply to the market from there would still be relatively small compared to the total quicklime market in Western Australia.

It also argues that Cockburn Cement's injury claims in the alumina sector are erroneous. It considers that this claim appears to be based on the fact that Cockburn Cement secured a price increase to this customer but not as high a price increase as it had hoped. Chememan argues that this cannot be due to the price of its imports as the customer in question did not have a long term contract with Chememan and at the time was only testing Chememan's product. At that stage, the price of Chememan's product for ongoing purchases had not yet been set.

In addition, a small but significant amount of the quicklime it sold into the market was produced and imported from another country.

Chememan claimed that it had been approached by various customers seeking an alternative supplier due to there only being a single supplier in the Western Australian quicklime market. It considered that in Western Australia, capacity/supply is a threat to end users as demand is continuing to grow whilst Cockburn Cement is running at full or near-full capacity.

Chememan advised that it is looking to adopt a niche market position in the Australian quicklime market. The company's objective was to introduce supply of a premium imported product that it regards as of superior quality to the domestically produced product, for the more discerning quicklime-using customers in the Western Australia region.

Chememan argues that during the investigation period it generally sold quicklime for testing purposes and currently no customers have a contract for quicklime supply. It argues that the quicklime it supplies is of a considerably better quality than the quicklime provided by Cockburn Cement and this is what attracts customers to its product.

Chememan argues that the applicant has enjoyed, and continues to enjoy, a position of dominance in the Western Australian market for quicklime. This is secured by the geography of the region, and the high cost of transportation in comparison to the relatively low commercial value of quicklime per unit, which prevents the entrance of domestic competition into the market.

10.1.3 Claims by Alcoa of Australia

Alcoa, a customer of Cockburn Cement and Chememan and a direct importer of Thai quicklime, argues that imports of quicklime from Thailand have not caused

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injury to the Australia industry. Alcoa argues that there has been a significant price increase in a new contract signed with Cockburn Cement compared to the previous agreement, which belies any claims of price suppression or depression.

While it notes that the ultimate price of the new agreement was lower than the price originally proposed by Cockburn Cement, it argues that it is typical during negotiations for price changes to occur and this is not evidence of lost revenue but rather a result of the negotiation process. Alcoa further stated that it did not use import prices or the threat that it would be seeking alternative quicklime sources to negotiate the new prices with Cockburn Cement.

Alcoa points to documents published by Adelaide Brighton Ltd, Cockburn Cement's parent company, indicating that the company was profitable and continuing to make even larger profits. It argues that the volume of imports was also very small and as a result, these could not impact Cockburn Cement's bottom line.

Furthermore, Alcoa argues that it is not the price of imports that has caused it to purchase quicklime from Chememan but rather the need to ensure security of supply and the preference for quicklime of a higher quality.

It states that it has been exploring alternative supply options, including Thailand, to ensure security of supply as it seeks to control its own supply chain. Alcoa claimed that if Cockburn Cement was to shut down for any reason its operation would suffer substantially. It further argues that Cockburn Cement is currently running at capacity and there have been environmental issues with the Cockburn Cement's facility, both of which could threaten to impact Cockburn Cement's capacity to supply. In addition, Alcoa advised that there would be increased demand for quicklime in Western Australia, particularly due to BHP Worsley's upgrade and expansion plans. Alcoa had concerns as to Cockburn's capacity to meet this further demand and the potential impact on supply.

As a result of these factors it was exploring other sources of quicklime supply from Thailand and other import sources. This strategy formed part of its overall strategic risk assessment as it had identified only having one supplier of quicklime as a significant risk that needed to be addressed by the company. Quicklime is the only raw material in the Alcoa system for which it currently has only one supplier.

Just as importantly, Alcoa argues that it is seeking better quality quicklime than is currently available from the Australian industry and for this reason it has been trialling quicklime from Chememan. It argues that quicklime particle size and quality were critical and correlated with its reactivity. It claims that it was willing to pay a premium for better quality quicklime product..

10.1.4 Claims by other interested parties

Other interested parties have claimed that the quicklime supplied by Chememan is of a superior quality and at a higher price. Therefore, it offers better value for money than the locally produced quicklime.

Notwithstanding this, parties have argued that the quicklime offered by Cockburn is priced lower than the Chememan's quicklime even taking into account the efficiency

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gains from the better quality quicklime. They disagree that the imported product has undercut the locally produced quicklime.

In addition, some parties have argued that there are growing issues regarding security of supply that may lead consumers to investigate other sources of quicklime, be it from Thailand or other countries. Due to environmental issues with Cockburn Cement's Munster facility, some customers see a threat to the continuity of supply of a critical reagent in their production.

10.1.5 Customs and Border Protection's assessment

In the course of this investigation, Customs and Border Protection has found that there are two market sectors for quicklime in Western Australia, the alumina and the non-alumina.

Non-alumina sector

The non-alumina sector accounts for approximately 30% of Cockburn Cement's sales. Customs and Border Protection has found that Cockburn Cement reduced its prices to customers in the non-alumina sector in 2010 and 2011. These price reductions, when annualised represent 2.2% of revenue lost and a substantial reduction in profit.

In the application, Cockburn Cement argued that prices offered by Chememan undercut its prices and provided an estimate of Chememan's offered prices. Sales information obtained from Chememan Australia shows that whilst there were some instances of price undercutting, the majority of sales in this sector did not undercut industry's prices.

Customs and Border Protection has established that the market intelligence information provided by Cockburn Cement in its application was flawed. As a result, in instances where Cockburn Cement claims to have reduced its prices in response to competition from imports, it is noticeable that Cockburn Cement's revised prices significantly undercut prices being offered by Chememan. Therefore, Customs and Border Protection does not consider that the price of dumped imports was the cause of the injury suffered.

Furthermore, Customs and Border Protection notes that the volume of quicklime imported into Australia from Thailand was very small - accounting for less than 2% of the West Australian market in 2010-11. Very few of Cockburn Cement's customers purchased quicklime from Chememan. Of those that did, no customer currently has a supply contract with Chememan for quicklime and the majority of the quicklime that has been imported was for testing purposes. Therefore, Customs and Border Protection is of the view that imports do not hold a sufficient share of the Australian market to cause material injury.

Alumina sector

Customs and Border Protection has found that the price of the dumped quicklime from Thailand during the investigation period was substantially higher than prices

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offered by Cockburn Cement during the investigation period or under the new negotiated contract.

Further, the volume of quicklime imports during the investigation period were of small parcels for product testing purposes. At the time of the new contract being negotiated certain alumina customers had not committed to a contract with Chememan. The customers had not established the imported product as a viable option and as a result, the price of these imports cannot be linked to the outcome of the contract negotiations.

There is also sufficient evidence to suggest that the level of certain impurities that may have a negative impact on production yields in particular sections of the alumina sector are high in Cockburn Cement's quicklime product. The level of impurities in Cockburn Cement's product is driven largely by the raw material source, being shell sand. This appears to have been a significant factor in the decision of certain alumina customers to commence product testing of imported quicklime.

Given the significant concern of the alumina sector regarding the levels of impurities, Customs and Border Protection is not satisfied that Cockburn Cement's desired price was achievable even in a market absent of imports. This is further supported by evidence of product trials of imported quicklime from Thailand at prices significantly higher than the price considered by Cockburn Cement to be a non-injurious price for the alumina sector.

Lastly, Customs and Border Protection notes that Cockburn Cement is the only manufacturer of quicklime in the Western Australian market and also that quicklime is a key and irreplaceable reagent in its customers' process. In recent years, Cockburn Cement has faced increasing environmental problems with its production process and the while the market for quicklime is growing, Cockburn Cement is almost operating at its present maximum capacity. While the company has expansion plans, customers may choose to buy product from multiple sources to ensure security of supply.

Therefore, there is not sufficient evidence to be satisfied of a causal link between the price of dumped imports and any injury the Australian industry may have suffered in the alumina sector. Cockburn Cement achieved a significant price increase from the previous contract with the customer in the alumina sector and Customs and Border Protection does not consider that it could have achieved a higher price increase in the absence of dumped imports.

Comparison of dumped export prices with the unsuppressed selling prices and non-injurious prices

A secondary tool used to assess whether dumped exports were the cause of material injury is to compare the dumped export prices to a non-injurious price. This is a rudimentary approach to estimating the degree of injury that can be attributed to dumped exports.

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As outlined in the previous chapter, Customs and Border Protection has calculated unsuppressed selling prices in Australia and non-injurious export prices for the alumina and non-alumina sector. The comparative pricing analysis shows that Chememan Thailand's prices to end-user customers in the Australian market were higher than the corresponding unsuppressed selling price in each sector. Even when Cockburn Cement's proposed unsuppressed selling price was used, all but sales to two customers were made above the unsuppressed selling price.

A further comparison of the respective non-injurious price with the corresponding weighted average export price of quicklime exported from Thailand shows imports into the alumina sector were made above the non-injurious price. Imports in the non-alumina sector were made marginally below the non-injurious price but the price difference was not significant.

It is worth noting that the selling price of imported quicklime to the alumina sector remains higher than the non-injurious price when beginning with the unsuppressed selling price proposed by Cockburn Cement.

This demonstrates that the prices of dumped exports during the investigation period were non-injurious and that any injury suffered by the Australian industry cannot be attributed to dumping.

10.1.6 Conclusion

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

- imports from Thailand account for a small proportion of the market;
- imports from Thailand during the investigation period were generally sold for product testing;
- none of Cockburn Cement's existing customers are currently in contract to purchase product from Chememan Australia;
- Chememan's sales that undercut industry's prices were a small proportion of the market;
- industry acted on flawed market intelligence when it reduced its prices;
- factors other than price, such as quality and security of supply, influence consumers in their buying decisions; and
- Cockburn Cement's negotiated prices to its alumina customers have significantly increased over previous negotiated prices.

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11 THREAT OF MATERIAL INJURY**11.1 Establishing a threat of material injury**

Threat of material injury arises in circumstances where the dumping is causing either no present injury, or is causing negligible present injury, but there is a future threat of material injury.

The WTO Agreement and the Australian legislation provide for a determination of threat of material injury to be subject to stringent tests.

Article 3.7 of the WTO Anti-Dumping Agreement 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 Anti-Dumping Agreement 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.

The Australian legislation, at s. 269TAE(2B), 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).*

In assessing the threat of material injury Customs and Border Protection considered 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/subsidised 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 affect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated have increased.

11.2 Responses to threat issues paper

On 20 January 2012, Customs and Border Protection published an issues paper inviting submissions from interested parties to the quicklime investigation on the issue of a threat of material injury. Interested parties were requested to confine their assessments to a 12 month future period and to address the factors outlined above and listed at Article 3.7 of the WTO Anti-Dumping Agreement.

11.2.1 Points raised by Cockburn Cement

Cockburn Cement submitted that the expiration of term contracts and pricing arrangements in the non-alumina sector over the next 12 months is a change in circumstance that is foreseeable and imminent. The presence and availability of dumped imports during that period is likely to negatively impact negotiations of those contracts, with the likely outcome being price depression, suppression and loss of profits.

Cockburn Cement further submitted that in relation to the alumina sector, the successful trialling of dumped imports will lead to a change in circumstance that is either:

- sourcing a significant proportion of the alumina sector's requirements from dumped imports, or
- sourcing the significant proportion from Cockburn Cement at significantly depressed prices.

Other factors relevant to the threat of material injury include:

- the importer of the dumped quicklime from Thailand has sold quicklime with a view to long term supply of large volumes
- trials conducted by end-user customers have demonstrated suitability of the dumped product;
- the exporter/importer of dumped product has invested substantial capital in the establishment of a distribution facility at Henderson, WA, and
- the exporter/importer of the dumped product has publicly announced its intention to establish additional distribution facilities in western and northern Australia.

11.2.2 Points raised by Chememan Thailand

Chememan Thailand submits that the Anti-Dumping Agreement places a strict test on the evidentiary standard required to demonstrate a threat of material injury allegation. Its submission referred to several previous dumping investigations conducted by Customs and Border Protection where threat was addressed, along with examples from other dumping authorities.

In relation to the specific factors outlined in the discussion paper, Chememan Thailand made the following observations:

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- imports by Chememan Thailand have decreased since the end of the investigation period;
- Chememan Thailand's excess capacity has diminished due to increased sales of quicklime to new and existing customers in other export markets;
- Customs and Border's discussion paper sets out that any price depression or suppression was not attributable to exports by Chememan Thailand, and
- Chememan does not have sufficient freely disposable inventories.

Further, Chememan Thailand outlined a number of other factors that it considered were relevant to the threat assessment. These included:

- That Chememan Thailand is unlikely to attain full utilisation of its Australian distribution operation over the next 12 months and if it did manage to achieve those levels, it believed it would be unlikely that exports would then be at dumped prices;
- quicklime exported directly by Chememan Thailand was not dumped;
- any impact of exported quicklime by Chememan Thailand was not due to its pricing but likely due to the quality differences between its product and the product produced by the Australian industry, and
- there are alternative import sources of supply into the Australian market.

11.1 Customs assessment

11.1.1 A significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation.

Imports of quicklime from Thailand commenced entering the Australian domestic market just prior to the investigation period in March 2010. As outlined at section 6.4 of this report, the volume of imported quicklime from Thailand represented approximately 1% of the total Australian market and 2% of the West Australian market during the investigation period.

Imports of quicklime from Thailand were also examined in the six month period following the end of the investigation period (ie 1 July 2011 to 31 December 2011). The import data shows a significant decrease in the volume imported over this period when compared to the corresponding period in the previous year.

Customs and Border Protection considers that imports of quicklime from Thailand have not entered the Australian domestic market at a significant rate of increase that would indicate a likelihood of substantially increased importation over the next twelve months.

11.1.2 Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially

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increased dumped/subsidised exports to the market, taking into account the availability of any other export markets to absorb any additional exports.

The issue of the exporter's capacity was examined during the visit to Chememan Thailand. The capacity utilisation of Chememan Thailand's quicklime operations over the investigation period was high. Whilst the remaining capacity is not insignificant, Customs and Border Protection notes that the volume associated with this excess capacity is significantly less than the potential lost sales volume estimated by Cockburn Cement.

Chememan Thailand also provided additional evidence showing that since the period of investigation, increased sales to new and existing customers in other export markets have largely absorbed the excess capacity. This has led to little freely disposable capacity.

Given the lack of freely disposable capacity, Customs and Border Protection queried Chememan Thailand on its ability to fulfil orders stemming from future contracts that may be established with customers in the alumina and non-alumina sectors. Chememan Thailand advised that two options were available to it, and that neither option would result in substantially increased capacity immediately.

Taking into account that other export markets have absorbed Chememan Thailand's excess capacity, the lack of present freely disposable capacity, and the inability for Chememan Thailand to suddenly substantially increase its capacity, Customs and Border Protection does not consider that a likelihood of substantially increased dumped exports to Australia exists.

11.1.3 Whether imports are entering at prices that will have a significant depressing or suppressing affect on domestic prices, and would likely increase demand for further imports.

As outlined in section 8.7 of this report, a comparison of selling prices showed that the majority of Chememan Thailand's prices were above the price offered by Cockburn Cement. It was found that in regards to three customers, the price offered by Chememan Thailand undercut the original price offered Cockburn Cement, prior to any price reduction. These three customers accounted for less than 1% of the volume of quicklime sold by Cockburn Cement.

Whilst price suppression is typically examined through a price undercutting analysis, Customs and Border Protection can also examines price suppression claims through underselling analysis. This is achieved by comparing the selling prices of the imported goods with a notional price that the industry could be expected to achieve in a market unaffected by dumping - often referred to as the unsuppressed selling price (USP).

For the purposes of assessing the threat of material injury, Customs and Border Protection has undertaken its underselling analysis using the USPs estimated by Cockburn Cement. These are considered to better approximate the prices that could be achieved by the industry over the next twelve months.

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In the non-alumina sector, the analysis shows that the selling prices of imported quicklime from Thailand into the Australian market were higher than the unsuppressed selling price for all but two customers. By volume, these two customers represented less than 1% of Cockburn Cement's total sales.

In the alumina sector, the analysis shows selling prices of imported quicklime from Thailand into the Australian market were higher than the unsuppressed selling price for all customers.

Therefore sales information gathered during the investigation shows that the imports of quicklime from Thailand were not entering the Australian market at prices which have significantly depressed or suppressed domestic prices of the Australian industry.

11.1.4 Inventories of the product being investigated have increased.

During the verification of Chememan Thailand's domestic sales information, Customs and Border Protection noted the increased domestic sales volume that occurred in February to May 2011. Chememan Thailand explained that this was a seasonal trend associated with the domestic sugar industry. In its response to the issues paper, Chememan Thailand referred to the stock build up that occurs in December-January to cater for the 'peak domestic selling season, which coincides with the seasonal sugar industry demand.'

Customs and Border Protection has no information which suggests or demonstrates that Chememan Thailand's quicklime inventories have increased beyond their normal or historical levels.

11.1.5 Other relevant factors

Both Cockburn Cement and Chememan Thailand raised the issue of likely future exports at dumped or undumped prices. Chememan Thailand submitted that it is unlikely that future exports would be dumped in a scenario where it reached full utilisation at its Australian distribution operation and direct exports were not dumped.

Alternatively, Cockburn Cement submitted that prices to alumina sector customers are likely to be significantly lower than the prices offered for the much smaller quantities for trialling.

Customs and Border Protection considers that both of these arguments are highly speculative with little evidence to support either statement.