



**R E P O R T**

**INTERNATIONAL TRADE REMEDIES BRANCH**

**CONSIDERATION REPORT NO. 179**

**APPLICATION FOR A DUMPING DUTY NOTICE**

**QUICKLIME**

**EXPORTED FROM**

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## 2 Summary and recommendations

This report provides the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) consideration of an application for the publication of a dumping duty notice on quicklime exported to Australia from Thailand. Based on an assessment of the application, Customs and Border Protection recommends that the Chief Executive Officer of Customs and Border Protection (CEO) not reject the application but rather initiate an investigation to examine the claims made by the Australian industry in further detail.

### 2.1 Overview of the application

Cockburn Cement Limited (Cockburn Cement), an Australian manufacturer of quicklime located in Western Australia, has applied for anti-dumping measures to be put in place against quicklime exported to Australia from Thailand. Cockburn Cement has identified Chememan Co Limited (Chememan Thailand) as the producer and exporter in Thailand and Chememan Australia Pty Ltd (Chememan Australia) as the importer in Australia.

Cockburn Cement argues that dumped imports of quicklime from Thailand entered the market in Western Australia in March 2010. The price offered by Chememan Australia for these imports significantly undercut Cockburn Cement's prices. As a result, Cockburn Cement lost sales and was forced to lower its prices to retain business. The applicant argues that the dumped quicklime caused injury through loss of sales and market share, price undercutting, price depression, reduced sales revenue and reduced profit and profitability.

Dumping occurs when an overseas supplier exports goods to Australia below their 'normal value' in the country of export. As a result, dumping applications require applicants to provide an export price and a normal value for the goods under consideration. In this application a deductive export price has been calculated, ie, the applicant started with Chememan Australia's selling price in the market and deducted domestic delivery costs, overheads, importation costs and ocean freight to arrive at a free on board (FOB) price in Thailand. The applicant also constructed a normal value in Thailand based on its understanding of the cost to make and sell quicklime there.

Accordingly, the application listed the export price as AUD80/mt and the normal value as AUD143/mt. The applicant stated that this resulted in a dumping margin of AUD63/mt or 79%<sup>1</sup>.

### 2.2 Application of law to facts

Division 2 of Part XVB of the *Customs Act 1901*<sup>2</sup> sets out procedures for considering an application for a dumping duty notice.

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<sup>1</sup> The dumping margin is calculated using the following equation: (normal value – export price)/export price

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## 2.2.1 The role of the International Trade Remedies Branch

The International Trade Remedies Branch is responsible for preparing a report for the CEO examining an application for a dumping duty notice.

In this report, the following matters are considered:

- whether the application complies with subsection 269TB(4);
- whether there is, or is likely to be established, an Australian industry in respect of like goods; and
- whether there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

## 2.2.2 The role of the CEO of Customs and Border Protection

The Division empowers the CEO, after having regard to the International Trade Remedies Branch report, to reject or not reject an application for the publication of a dumping duty notice. Under s. 269TC(1) of the Act, the CEO must reach a decision based on the factors listed in section 2.2.1 above within 20 days of the application being lodged. In this case the decision must be made on or before 8 November.

If the CEO decides not to reject the application, the CEO must give public notice of the decision providing details of the investigation.

The CEO's powers have been delegated to certain officers of the International Trade Remedies Branch.

## 2.2.3 Findings and conclusions

Customs and Border Protection has examined the application and is satisfied that:

- the application complies with the requirements of subsection 269TB(4) (the reasons for being satisfied are set out in section 3 of this report);
- there is an Australian industry in respect of like goods (as set out in section 4 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 5 and 6 of this report). While the applicant has claimed that imports from Thailand are dumped by 79%, Customs and Border Protection has calculated a preliminary dumping margin of 23% based on the information provided in the application. The prima facie evidence shows that the Australian industry has suffered material injury and that this injury was caused by the dumped imports.

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<sup>2</sup> All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

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## 2.3 Recommendations

Customs and Border Protection recommends that the CEO decide not to reject the application.

If the CEO accepts this recommendation, to give effect to that decision, the CEO must publish the notice at **Appendix A** indicating that Customs and Border Protection will inquire into whether the grounds exist to publish a dumping duty notice.

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## 3 Compliance with section 269TB(4)

Customs and Border Protection is satisfied that the application complies with the requirements of section 269TB(4).

### 3.1 Legislative framework

Subsection 269TB(4) requires that the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

### 3.2 Customs and Border Protection assessment

#### 3.2.1 Approved form

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form.

The applicant submitted confidential and public record versions of the application along with numerous appendices and attachments. Customs and Border Protection considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information.

#### 3.2.2 Supported by Australian industry

An application is taken to be supported by a sufficient part of the Australian industry if Customs and Border Protection is 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 Australia.

The application identified the following Australian producers and sellers of quicklime:

- Cockburn Cement Limited;
- Boral;
- Sibelco; and
- Cement Australia.

In addition, the application identified the following companies that have captive production of quicklime, ie, these companies produce quicklime and use it in their production of other goods:

- Queensland Alumina;

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- Rio Tinto Alcan;
- Bluescope;
- OneSteel;
- Penrice Soda Holding Limited; and
- Australian Paper Mills

The applicant is of the view that as the companies in the second list do not sell quicklime but rather use the product internally, they are not members of the quicklime industry. However, the applicant stated that should they be included as part of the domestic industry it would not affect Cockburn Cement's standing as an applicant, ie, Cockburn Cement's production of quicklime would still be more than 25% of the entire industry's production.

The Act defines the Australian industry to be 'persons (including the applicant) who produce or manufacture like goods in Australia'<sup>3</sup>. The assessment of who is or is not a member of the Australian industry under the legislation must therefore take place on the basis of which companies produce the goods. Whether a company actually sell the goods into the market is not relevant to this assessment.

The companies that produce quicklime for their own internal use may do so to use it as an intermediary in the production of other goods. Regardless of the end use, the production of quicklime by these companies means that they must be considered part of the industry. Therefore, an assessment of whether the applicant has sufficient industry support must take into account all members of the Australian industry.

The applicant provided estimates of the production volume of the other identified members of the industry which were based on industry knowledge and kiln size. Based on the estimates provided by the applicant, Cockburn Cement meets both the 50% and 25% standing requirements.

Due to the confidential nature of applications, prior to initiation Customs and Border Protection has not contacted the listed producers of quicklime to confirm their production volumes and verify the information provided by the applicant. These volumes will be investigated after initiation. Should updated production volumes show that the applicant does not meet the necessary standing requirements, Custom and Border Protection will terminate the investigation promptly.

Based on the prima facie evidence provided in the application, Customs and Border Protection considers the application is supported by a sufficient part of the Australian industry.

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<sup>3</sup> s.269TB(6)

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## 4 Is there an Australian industry in respect of like goods?

Customs and Border Protection is satisfied that there is an Australian industry in respect of like goods.

### 4.1 Legislative framework

Subsection 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the CEO must firstly determine that the imported goods are 'like' to the goods produced by the Australian industry. Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'. This is examined in section 4.2 and 4.3 below.

The CEO must also be satisfied that the 'like' goods are in fact produced in Australia. Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. This is examined in section 4.4 below.

### 4.2 The goods the subject of the application

The goods the subject of the application is quicklime. The applicant provided further details 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 (CaCO<sub>3</sub>; 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 (CO<sub>2</sub>); 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.

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Quicklime  
Thailand

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## 4.3 Locally produced like goods

### 4.3.1 Applicants' claims

The applicant claims that the imported quicklime is like to the quicklime produced by the Australian industry. It stated that:

- both have the chemical name calcium oxide (CaO);
- both products are comprised primarily of CaO, although the actual percentages may vary;
- both products are grey to white in colour, caustic and a crystalline solid;
- both are produced from calcium carbonate;
- both are produced through calcination in a kiln; and
- customers can and have substituted imported quicklime for locally produced quicklime.

### 4.3.2 Customs and Border Protection's assessment

Customs and Border Protection has examined the evidence presented in the application and considers the Australian industry produces like goods to the goods the subject of the application as defined in s. 269T(1) .

The applicants have demonstrated that:

- the primary physical characteristics of imported and locally produced quicklime are similar;
- the imported and locally produced quicklime are manufactured in a similar manner;
- the imported and locally produced quicklime are commercially alike as they are sold to common end users; and
- the imported and locally produced quicklime are functionally alike as they have the same end-uses.

## 4.4 Manufactured in Australia

Cockburn Cement has two locations at which it manufactures quicklime, Munster and Dongara, both in Western Australia.

The applicant gave the following description of the manufacturing process:

*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.*

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*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 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 distribution.*

Based on the above description of the manufacturing process, Customs and Border Protection is satisfied that there is at least one substantial process of manufacture performed in Australia and, therefore, that the goods may be taken to have been produced in Australia.

Accordingly, Customs and Border Protection is satisfied that there is an Australian industry producing like goods to the imported goods. The remainder of this chapter examines the Australian quicklime market and provides an overview of the financial information provided by the Australian industry.

## **4.5 Australian market**

### **4.5.1 Background**

The applicant states that quicklime is used in a range of applications but the majority of it is used in the mineral processing industry, in particularly alumina, gold and steel. Cockburn Cement is located in Western Australia and is the main supplier of quicklime to this market. The applicant provided the following commentary on the uses of its quicklime:

*In Western Australia, approximately 70% of Cockburn Cement's quicklime production each year is used by the local alumina refineries as a process reagent in a number of applications including caustic regeneration, as a filter aid and in the phosphate removal circuits of the refineries. 20% of Cockburn Cement's quicklime production is used by the local gold industry as a pH modifier in the cyanidation process (gold extraction) whilst the remaining 10% is used by a variety of other industries for various applications. These include 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).*

Due to the demand for quicklime in the mineral processing industry the quicklime manufacturers are located near these industries. Cockburn Cement is located near four large alumina refineries in Western Australia. On the east coast of Australia the quicklime manufacturers are located in northern Queensland and New South Wales in mining regions.

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

Due to the continuous nature of mineral processing, the market has little variation throughout the year. The applicant believes the market has grown slightly over the past five years as a result of growth in the mineral industry.

Companies that produce and sell quicklime also manufacture cement, as there are synergies with producing, storing and distributing cement and lime products. 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.

## **4.5.2 Alternative products**

The applicant stated that there are no other commercially significant market substitutes for quicklime.

## **4.5.3 Imports**

Customs and Border Protection's import database shows that the Australian market is also supplied by imports from Indonesia and small quantities of imports from other countries. The volume of all imports, compared to the total Australian market is relatively small.

## **4.6 Australian industry information**

### **4.6.1 General accounting/administration information**

The applicant explained that its audited financial statements are consolidated into the Adelaide Brighton Limited annual report. It provided the unaudited, unconsolidated financial statements for Cockburn Cement for 2009 and 2010. The company operates on a financial year of January to December.

### **4.6.2 Australian industry's sales and costs**

The applicant provided information including a summary of domestic sales volumes and revenue as required in appendices A2, A3, A5 and A6 for the calendar years 2008, 2009, 2010 and the first half of 2011.

As required by appendix A4, the applicant included a detailed listing of domestic sales of quicklime for the period of July 2010 to June 2011.

The applicant completed an appendix A6 cost to make and sell spreadsheet for domestic sales. According to the applicant, no quicklime was exported. The information provided in appendix A6 included production and sales volumes, manufacturing costs, selling, distribution and administrative expenses and sales volumes for 2008, 2009, 2010 and the first half of 2011.

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Customs and Border Protection examined the detail in, and link between, these appendices, and despite some minor discrepancies, considers that they reconcile reasonably.

## 4.6.3 Other economic factors

The applicant completed appendix A7 showing movements in assets, capital investment, research and development expenses, return on investment, capacity, capacity utilisation, employment, productivity, stocks, cash flow measures and wages.

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## 5 Reasonable grounds – dumping

Customs and Border Protection is satisfied that quicklime appears to have been exported to Australia from Thailand at dumped prices. Using the information provided by the applicant, Customs and Border Protection has calculated a dumping margin of 23%.

### 5.1 Legislative framework

Subsection 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice. Under section 269TG, one of the matters that the Minister must be satisfied of to publish a notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods.

### 5.2 Export prices

The applicant identified the producer and exporter in Thailand as Chememan Thailand and the importer in Australia as Chememan Australia. The applicant provided Australia Bureau of Statistics (ABS) import data which listed the export price of quicklime from Thailand during the period July 2010 to June 2011. However, the applicant stated that the importer and exporter are related parties and there is sufficient information to indicate that the export sales are not arms length and the statistics do not actually reflect the real export price. Therefore, it argued that a deductive export price is more appropriate, in which the logistical, importation and ocean freight costs are deducted from the selling price of the imported quicklime in the market to determine a free on board price.

The export price using ABS data and the deductive method are examined below.

#### 5.2.1 Australian Bureau of Statistics export prices

The applicants obtained published import data for quicklime from the ABS for the tariff classification relevant to the goods. According to this data the average free on board export price to Australia during the period July 2010 to June 2011 is AUD120/mt.

Customs and Border Protection has compared the export prices for Thailand using the ABS data with export prices from its import database. This data supports the export price shown in the ABS statistics. The list of exports from Customs and Border Protection's import database is at **confidential attachment 1**.

#### 5.2.2 Methodology for deductive export prices

The applicant calculated a weighted average deductive export price for quicklime imported from Thailand. It calculated free on board (FOB) export prices using market intelligence regarding Chememan's into store price in Australia to its customers, less deductions for assumed capital and operating expenses, ocean freight, importation costs, domestic freight and into store costs. Deductions for capital and operating

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expenses were based on Chememan Australia's distribution facility handling 100,000mt of quicklime per year. The applicant accordingly calculated a deductive export price of AUD80/mt.

Customs and Border Protection examined the deductive export price calculations and found that the applicant had made an error in regards to container volume. After this error was corrected, the deductive export price was AUD97/mt. The calculations for the deductive export price are at **confidential attachment 2**.

## 5.2.3 Import volumes

From the information available from Customs and Border Protection's import database, it appears that imports from Thailand represent more than 3% of the total import volume of quicklime during July 2010 and June 2011 and that they are therefore not in negligible volumes as defined in section 269TDA.

## 5.2.4 Customs and Border Protection's Assessment

Article 5.2 of the World Trade Organisation Anti-Dumping Agreement states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Customs and Border Protection's import database supports the applicant's view that the importer and exporter of quicklime from Thailand are related companies. The relationship between these companies is further shown on the Chememan website at [www.chememan.com](http://www.chememan.com).

Customs and Border Protection also assessed the profitability of Chememan Australia's sales into the market, as unprofitable sales can indicate that the selling price between the importer and the exporter is not arms length. Customs and Border Protection started with the free on board import price, as listed in the ABS data, and added to this the ocean freight and importation and selling costs as provided by the applicant. It was found that Chememan Australia's selling price, as provided by the applicant, was unprofitable based on these calculations. This supports the applicant's claim that the sales between the importer and the exporter may not be arms length. These calculations are at **confidential attachment 2**.

For the purpose of initiation, Customs and Border Protection has found this is sufficient reason to use a deductive export price. The relationship between Chememan Australia and Chememan Thailand, and the nature of the sales between these companies, will be examined further in the course of the investigation.

Customs and Border Protection considers that, based on the information submitted in the application, the deductions for importation, selling and logistical expenses appear reasonable, with a correction made for container volume as outlined above.

The applicant provided estimates of Chememan Australia's selling price into the market based on verbal information it had gathered from a number of its customers. It indicated that it was unable to obtain any written evidence of the importer's prices

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to customers, however, it noted that all the verbal quotes it had received were similar when deducted back to an ex-distribution centre level.

Based on the explanation provided by the applicant, Customs and Border Protection considers that the applicant has provided the information that is reasonably available to it regarding Chememan Australia's selling price.

## 5.3 Normal values

The applicant stated that it was unable to obtain documentary evidence for the normal value of quicklime in Thailand. Therefore, it sought to construct a domestic selling price based on its estimates of costs and profits in Thailand.

### 5.3.1 Methodology for constructed normal values

The applicant constructed a normal value including costs for:

#### Variable manufacturing costs (raw materials, fuel and power)

The applicant constructed raw material costs based on the assumption that the producer sourced limestone from a quarry in close proximity to the plant. Costs were based on industry experience for drilling and blasting limestone, and industry standards for yield and conversion rates, ie, quantity of limestone required to produce one metric tonne of quicklime.

The fuel costs were based on the use of gas in the Thai production facility, as stated on Chememan Thailand's website. The gas cost was based on market intelligence from Thailand and was similar to Cockburn Cement's cost.

The power cost was also based on Cockburn Cement's own power cost. The applicant argued that this is conservative as Cockburn Cement's production facility is relatively energy efficient.

#### Variable manufacturing costs (labour, maintenance, depreciation and overheads)

The applicant calculated the labour and maintenance costs in Thailand based on Cockburn Cement's costs with downward adjustments to account for lower labour costs in Thailand.

Depreciation was calculated based on market intelligence regarding the costs of the production facility in Thailand. Overheads were assumed to be the same as Cockburn Cement's, taking into account that Cockburn Cement has a much larger economy of scale than the Thai producer.

#### Bagging and distribution costs

The applicant assigned a bagging cost to the Thai producer based on its understanding of the packaging of the product from Thailand. The cost assigned was significantly lower than Cockburn Cement's bagging costs.

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An inland freight cost was also assigned to the normal value, to transport the quicklime from the factory to the port to ensure it was comparable at the free on board level. This freight cost was based on market intelligence.

## Profit

The applicant included a profit margin of 20% as part of the constructed normal value and it claimed that this amount was a conservative (minimum) profit rate target (before tax) for a quicklime manufacturing company where appropriate returns are required to enable reinvestment in the capital intensive business of quicklime production.

Based on this cost model the applicant calculated a normal value of USD143/mt.

### **5.3.2 Adjustments**

The applicants stated that the normal values have been determined at the free on board level (as were export prices). While the normal value was determined in USD/mt and the export price was calculated in AUD/mt, due to the parity between these currencies during this period the applicants argue that no adjustment is required. It does not consider that any other adjustments are necessary.

### **5.3.3 Customs and Border Protection's assessment**

As noted above, Article 5.2 of the World Trade Organisation Anti-Dumping Agreement states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Customs and Border Protection considers that, based on the information submitted in the application, the amounts used by the applicant to estimate domestic selling prices in Thailand appear to be reasonable. The applicant has supported its detailed cost model with information that is reasonably available to it and, where assumptions have been made, has explained the basis for those assumptions. Where appropriate, the applicant has used information from its own production costs, adjusted, if necessary, to make them appropriate to its understanding of industry conditions in Thailand.

The applicant has also included a profit margin of 20% as part of the constructed normal value. Customs and Border Protection agrees that a reasonable level of profit needs to be applied to the cost to make and sell quicklime in Thailand. In this instance whilst the applicant has not provided any supporting evidence for its estimate of profit, it is reasonable compared with the Australian industry's profit margin. This supports the applicant's statement of a conservative rate of return on a quicklime manufacturing operation.

In calculating the dumping margin (as in section 5.4 below) Customs and Border Protection has found that dumping appears to have occurred whether or not a profit margin is applied to the applicant's normal value. As a result, for the purpose of

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determining a normal value at initiation, Customs and Border Protection has not included a profit margin. In the course of this investigation, Customs and Border Protection will seek information regarding an appropriate level of profit to apply should a constructed cost model be required for the determination of normal value.

Customs and Border Protection is also satisfied that, based on the information submitted in the application, no adjustments to domestic selling prices are required. The constructed normal value is at **confidential attachment 3**.

## 5.4 Dumping margins

The revised dumping margins are shown in the table below:

|                           |         |
|---------------------------|---------|
| Normal value              | AUD 119 |
| Export price              | AUD 97  |
| Dumping margin            | AUD 22  |
| Dumping margin percentage | 23%     |

As noted in section 5.3.3 the normal value does not have component of profit added. Should a constructed cost model ultimately be used to determine the normal value, a reasonable amount for profit will be added.

Customs and Border Protection is satisfied that, based on the information submitted in the application, the applicant has demonstrated that there appear to be reasonable grounds for concluding that quicklime has been exported to Australia from Thailand at dumped prices.

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## 6 Reasonable grounds – material injury caused by dumped imports

Customs and Border Protection is satisfied that exports to Australia of quicklime from Thailand at allegedly dumped prices appear to have caused material injury to the Australian industry.

### 6.1 Legislative framework

Subsection 269TC(1) requires that the CEO must reject an application for a dumping duty notice if, inter alia, he is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice. Under section 269TG, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that because of the dumping, material injury has been or is being caused or is threatened to the Australian industry producing like goods.

### 6.2 General

The applicant argues that injury caused by the dumped imports first occurred in 2010, when exports from Thailand entered the market. Chememan Australia, the importer, built a distribution centre in Henderson, Western Australia, which the applicant estimates can dispense 100,000mt of quicklime per year. The applicant claims that Chememan Australia subsequently approached its customers and offered quicklime prices that significantly undercut its own. As a result, Cockburn Cement states that it had to reduce its selling prices to these customers to retain their business. Accordingly, while it has only lost a relatively small volume of sales to date, the lost revenue associated with these sales is material. Furthermore, several customers have been trialling quicklime from Chememan Australia, which indicates that they may purchase larger quantities of quicklime from Chememan Australia should the trials be successful.

The application contained information only in relation to Cockburn Cement, which accounts for approximately 60% of quicklime produced and sold in Australia. The applicant provided sales and cost information by calendar year for 2008, 2009 and 2010 and for the first six months of 2011. As the information provided consists of both 12 months and a 6 month period, and injury commenced in 2010, graphs and indices of this information do not display meaningful data in relation to injury.

However, the applicant states that the injury effects of dumped quicklime are best demonstrated in other ways. Evidence provided by the applicant to demonstrate injury is examined below, along with information from Customs and Border Protection's import database.

In assessing injury, Customs and Border Protection examines a range of indicators including market share, sales volumes, price undercutting, price depression, lost profits and profitability. Injury does not need to be present in all of these indicators as sufficient injury in only one or two could be considered material.

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Customs and Border Protection considers injury to be material when it is injury which is not immaterial, insubstantial or insignificant, and greater than is likely to occur in the normal ebb and flow of business.

## 6.3 Volume effects – sales volume and market share

### 6.3.1 Applicant's claims

The applicant claims that while it has retained most sales by reducing its selling prices, some sales have been lost to Chememan Australia since imports commenced. It states that some customers have conducted trials of Chememan's material and that these trial volumes would have otherwise been supplied by Cockburn Cement. The applicant also argues that customers continue to trial Chememan's product which shows the possibility of these companies purchasing significant quantities of quicklime from Chememan Australia in the future.

As part of the application, Cockburn Cement provided a summary of the lost sales volumes at confidential attachment A-9.2(a). The applicant claimed that these sales by Chememan Australia represented injury in the form of lost sales and market share.

### 6.3.2 Customs and Border Protection's assessment

Customs and Border Protection has examined the lost sales as listed in confidential attachment A-9.2(a) of the application and has found them to be immaterial to both the Australian industry as a whole and to Cockburn Cement specifically.

Similarly, the industry has not lost significant market share. Cockburn Cement's market share has remained steady, as has the remainder of the Australian industry. The volume of imports of quicklime from Thailand has progressively increased since March 2010. However, in the first six months of 2011, imports from Thailand accounted for less than 2% of quicklime sold into the market in Australia.

The calculations regarding lost sales volumes and market share is at **confidential attachment 4**.

## 6.4 Price effects – price undercutting and price depression

### 6.4.1 Applicant's claims

The applicant stated that prices offered in the marketplace by Chememan Australia for quicklime imported from Thailand undercut its prices. The applicant provided a summary of the price undercutting to a range of customers in attachment A-9.2(b) of the application. This summary included details of the customers that had received price offers, as well as the price being offered by Chememan Australia, both at the FIS level and ex – distribution centre.

These estimates of Chememan Australia's selling price into the market are based on verbal information Cockburn Cement has gathered from a number of its customers. It indicated that it was unable to obtain any written evidence of the importer's prices to

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customers, however, it noted that all the verbal quotes it had received were similar when deducted back to an ex-distribution centre level.

The applicant also claims that it has experienced price depression. Price depression occurs when a company, for some reason, lowers its prices. The applicant argues that due to price undercutting by Chememan Australia, it has had to reduce its prices to retain business resulting in price suppression. Cockburn Cement provided evidence of its original and reduced sales prices to several customers, in the form of sales agreements and invoices.

## 6.4.2 Customs and Border Protection's assessment

A comparison between the prices offered by Chememan Australia and Cockburn Cement's selling prices listed in Appendix A4, shows that significant price undercutting did occur. Chememan Australia's prices undercut the Australian industry's prices by up to 25%. The calculations showing price undercutting are at **confidential attachment 5**.

Based on the explanation provided by the applicant, Customs and Border Protection considers that the applicant has provided the information that is reasonably available to it regarding undercutting by Chememan Australia.

The sales contracts and invoices provided by the applicant also indicate that since the start of 2010 the price at which Cockburn Cement sold quicklime to several of its customers has declined by up to 30%. This is evidence of price depression. The materiality of the injury resulting from this price depression is examined below in section 6.5.

## 6.5 Profit effects – reduced sales revenue, profit and profitability

### 6.5.1 Applicant's claims

Due to the price undercutting by Thai imports, Cockburn Cement argues that as its contracts with customers came up for renewal, it was required to negotiate the new contracts at lower prices to retain its customers. Cockburn Cement provided a summary of the lost revenue due to reduction in prices in attachment A9.2(b) of the application. It calculated the difference between the original price and the reduced price and multiplied this by the average number of tonnes each customer purchased over the course of a year. As the price reductions apply to contracts for a set period of time, the applicant considered that this yearly amount of lost revenue would continue into the foreseeable future. It considered that this reduced sales revenue also represented material injury in the form of lost profits and profitability.

### 6.5.2 Customs and Border Protection's assessment

Customs and Border Protection has found that the revenue lost up to the end of June 2011 was relatively minor. However, the applicant provided evidence that it had recently signed a Heads of Agreement at a reduced price to one of its largest customers. A head of agreement is a non-legally binding document that outlines the proposed terms of supply. The applicant provided several drafts of the heads of

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agreement and the copy that was eventually finalised. The price in the final agreement was significantly below the price in the first draft and the trading terms were also less favourable. The lost profit between the first draft and the final agreement was material and as the agreement is for a set period of time, it will continue to impact Cockburn Cement into the future. As Cockburn Cement's costs remain the same, this lost revenue will also impact the company's profits and profitability. The calculations regarding reduced sales revenue, profit and profitability are at **confidential attachment 6**.

## 6.6 Other injury factors

Customs and Border Protection examined the information provided in the appendix A7 – other injury factors. This showed that Cockburn Cement's capital investment, return on investment, capacity utilisation, employment and productivity has remained relatively constant between 2008 and the first half of 2011.

## 6.7 Link between injury and dumped imports

### 6.7.1 Applicant's claims

The applicant argues that the injury suffered by Cockburn Cement was caused by dumped imports of quicklime from Thailand. It argues that the need to reduce prices is a direct result of undercutting by these imports.

The applicant provided a timeline of Chememan Australia's activities in the market and Cockburn Cement's price reductions in response to these activities. The applicant argues that when contracts with customers came up for renewal, it was forced to agree to lower existing prices in order to retain its customers. It provided examples of before and after sales agreements with customers to demonstrate the effect the Thai imports had on the market.

The applicant also provided an email exchange between Chememan Australia and a customer which it argues shows its reduction in price to this customer was a result of a lower price offer from Chememan Australia.

### 6.7.2 Injury caused by factors other than dumping

The applicant argues that there are no other factors that caused it injury during this period. It states that the sole reason it lowered its prices was due to the competition with dumped imports.

### 6.7.3 Other imports

As previously noted, the Australian market is also supplied by imports from Indonesia and by smaller volumes from a range of other countries. Customs and Border Protection's import database shows that the prices of imports from Indonesia are similar to the price of imports from Thailand.

However, during the 2010 calendar year and the first half of 2011, imports of quicklime from Indonesia were to the Northern Territory while the imports of

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quicklime from Thailand were to Western Australia, where it competed with quicklime produced by Cockburn Cement. A small volume of imports from Vietnam, also similarly priced, was also imported into Western Australia. A complete list of imports during this period is at **confidential attachment 1**.

## 6.7.4 Customs and Border Protection's assessment

The applicant has provided evidence that it has reduced its price for quicklime to many of its customers in 2010 and 2011. Customs and Border Protection has found that the price reduction coincided with the presence of imports of quicklime from Thailand in Western Australia. Customs and Border Protection has also found that the price of quicklime supplied by Chememan Australia undercut the price of quicklime offered by the Australian industry. Based on the information provided by the applicant, it is reasonable to conclude that the price reduction was in direct response to the dumped imports. While the volume of these imports is small, their presence in the market can allow buyers to use their prices to negotiate lower prices with the Australian industry.

At this point, Customs and Border Protection has not identified any other likely causes of injury to the Australian industry, either due to other imports or market forces. To the contrary, aside from the competition from dumped imports, the quicklime industry in Western Australia has been very successful. Adelaide Brighton Limited's (Cockburn Cement's parent company) noted in the 2010 annual report:

*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 addition, while the volume of sales Cockburn Cement has lost to date is immaterial, Customs and Border Protection considers that the potential for future lost sales and market share is evident. The trial of the Thai product by Cockburn Cement's customers does indicate that these companies are considering purchasing larger quantities of the imported quicklime. Furthermore, the applicant estimated that the Chememan Australia distribution facility is designed to handle 100,000mt per year. The loss of this volume of sales and market share to dumped imports would be material injury. In addition, the Chememan website notes that:

*'As market grows, we plan to expand more distribution centers in Western and Northern Territories of Australia in the near future'<sup>4</sup>*

Therefore, Customs and Border Protection is of the view that based on the prima facie evidence, there is a link between the dumped imports and material injury to the Australian industry.

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<sup>4</sup> <http://www.chememan.com/operations-australia.php>, accessed 12 October 2011.

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Whilst the application by Cockburn Cement has claimed that actual injury caused by dumped imports occurred during the investigation period, where a finding of negligible injury caused by dumping is made, Customs and Border Protection will as a matter of practice, consider and determine whether a threat of material injury exists.

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## 7 Conclusion

Customs and Border Protection has examined the application and is satisfied that:

- the application complies with s. 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application exported from Thailand.

Customs and Border Protection recommends that the CEO decide not to reject the application for the publication of a dumping duty notice under s. 269TC(1).

For the purposes of the investigation:

- the investigation period to determine whether dumping has occurred will be from 1 July 2010 to 30 June 2011; and
- Customs and Border Protection will examine the Australian market and the economic condition of the industry from 1 January 2008 for the purposes of injury analysis.

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## 8 Attachments

|                           |                 |
|---------------------------|-----------------|
| Confidential attachment 1 | Imports         |
| Confidential attachment 2 | Export price    |
| Confidential attachment 3 | Normal value    |
| Confidential attachment 4 | Volume effects  |
| Confidential attachment 5 | Price effects   |
| Confidential attachment 6 | Revenue effects |

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