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**Australian Government**

**Australian Customs and  
Border Protection Service**

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**INVESTIGATION INTO THE ALLEGED DUMPING OF  
QUICKLIME**

**EXPORTED FROM**

**THAILAND**

**EXPORTER VISIT REPORT**

**CHEMEMAN CO PTY LTD**

THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED  
THEREIN WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY  
NOT REFLECT THE FINAL POSITION OF CUSTOMS AND BORDER  
PROTECTION

February 2012

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**2 BACKGROUND****2.1 Background to the current investigation**

On 27 September 2011, Cockburn Cement Limited lodged an application requesting that the Minister for Home Affairs publish a dumping duty notice in respect of quicklime<sup>1</sup> exported to Australia from Thailand.

The investigation was initiated on 6 October 2011. Public notification of initiation of the investigation was made in *The Australian* newspaper on 31 October 2011. Australian Customs Dumping Notice (ACDN) No. 2011/53 provides further details of this investigation and is available at [www.customs.gov.au](http://www.customs.gov.au).

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 (1 July 2010 to 30 June 2011). It has been verified that these companies are related, with Chememan International being a wholly owned subsidiary company of Chememan Thailand. As such, they are referred to by Customs and Border Protection as forming part of the 'Chememan Group' of companies (along with Chememan Australia).

Chememan International and Chememan Thailand both confirmed that Chememan International, whilst registered in Singapore, with separate legal status, was a company with no staff and who conducted its operations through the offices of Chememan Thailand, in Bangkok. As such Customs and Border Protection regarded Chememan Thailand as representing both its own interests, and those of its subsidiary, Chememan International, during the visit.

Customs and Border Protection wrote to Chememan Thailand advising them of the initiation of the investigation, requesting co-operation with the investigation and providing copies of the exporter questionnaire for them to complete. Chememan Thailand and Chememan International completed separate responses to the exporter questionnaire, providing details regarding their respective company, overseas supplier information, imports and expenses. The completed importer questionnaires can be found at **confidential attachment GEN 1**.

**2.2 Purpose of meeting**

The purpose of the visit was to verify information submitted by the Chememan Group companies in their exporter questionnaire responses. The exporter questionnaire responses were supported by confidential appendices and attachments, including confidential spreadsheets containing sales and costs data requested in the exporter questionnaires.

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<sup>1</sup> Refer to the full description of the goods in section 4 of this report.

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Non-confidential versions of the exporter questionnaire responses were placed on the public record.

Customs and Border Protection will use the verified information to make preliminary assessments of:

- like goods;
- who is the exporter and who is the importer;
- export prices;
- normal values; and
- dumping margins.

### 2.3 Meeting

We advised Chememan Thailand generally of the investigation process and timeframes.

- The investigation period is 1 July 2010 to 30 June 2011.
- The injury analysis period is from 1 January 2008.
- A preliminary affirmative determination (PAD) may be made no earlier than the 60<sup>th</sup> day following the date of initiation of the investigation (30 December 2011). Provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made. Customs and Border Protection would not make such a determination until it was satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice.
- A statement of essential facts will be placed on the public record by 18 February 2012 or such later date as the Minister allows. The statement of essential facts will set out the material findings of fact on which Customs and Border Protection intends to base its recommendations to the Minister. The statement of essential facts will invite interested parties to respond, within 20 days, to the issues raised. Submissions received in response to the statement of essential facts will be considered when compiling the report and recommendations to the Minister.
- Customs and Border Protection's report to the Minister is due no later than 3 April 2012, unless an extension to the statement of essential facts is approved by the Minister.

We advised Chememan Thailand that we would prepare a confidential report on the visit. Chememan Thailand would be given an opportunity to review the visit report for accuracy. A non-confidential version of this visit report would be prepared in consultation with the company and placed on the public record.

### 2.4 Meeting dates and attendees

Verification meetings were held at the office of Chememan Thailand on 25, 26 and 27 January 2012.

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The following people were present at various stages of the meeting:

<b>Chememan Thailand/Chememan International</b>	
Sittichai Thiensathaporn	Executive Vice President
<b>Consultants</b>	
Mr Daniel Moulis	Principal, Moulis Legal
Mr Edmund Sim	Partner, Appleton Luff and Associates
<b>Australian Customs and Border Protection</b>	
John Bracic	Director, Operations 1
Andrew Mumberson	Customs Manager
Edward Macgregor	Supervisor, Operations 1

**3 COMPANY INFORMATION****3.1 Company background**

Chememan Co Pty Ltd (**Chememan Thailand**) is a privately owned proprietary company, limited by shares, registered in Thailand in 2003. Chememan Thailand is wholly owned by its founders, who together own 100% of the shares in the company, either directly or collectively through an unaffiliated holding company **[CONFIDENTIAL TEXT DELETED]**.

Chememan Thailand has two subsidiary companies that are relevant to this investigation:

- Chememan Australia Pty Ltd (Chememan Australia);
- Chememan International Pty Ltd (Chememan International); and

Chememan Thailand holds 99.9% of the shares in Chememan Australia. Chememan Thailand submits that from July 2010 to August 2010, Chememan Thailand exported quicklime and other lime products to Chememan Australia directly for sale in the Australian market by Chememan Australia.<sup>2</sup>

Chememan International is a private company limited by shares, registered in Singapore in September 2010, and is 100% owned by Chememan Thailand. Chememan Thailand submits that Chememan International acts as the sales agent of Chememan Thailand and purchases quicklime and other lime products produced by Chememan Thailand in Thailand, and by Vietnamese suppliers, for sale in export markets.

**3.2 Commercial operations**

Chememan Thailand has four principle operational sites in Thailand, which are managed through the company's central office located in Bangkok. Chememan Thailand submitted that it currently employs **[CONFIDENTIAL TEXT DELETED]** full time staff across its head office and operational sites. Chememan Thailand's operational sites are as follows:

- Tubkwang quarry;
- Kangkoi factory;
- Prabuddhabaht factory; and
- Klangdong factory

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<sup>2</sup> For a more detailed discussion of the operations of Chememan Australia see the visit report.

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Chememan Thailand submits that all the raw limestone that is used to produce its lime products is quarried from Tubkwang quarry, which is wholly owned by the company. The company submitted that royalties are paid to the Thai Government per metric ton of limestone that is quarried from the site. All raw limestone, once quarried, is crushed into lump form on site at the adjoining crushing plant which has an estimated annual processing capacity of **[CONFIDENTIAL TEXT DELETED]** metric tonnes of raw limestone.

Chememan Thailand advised that the actual volume of limestone quarried and crushed during the investigation period was **[CONFIDENTIAL TEXT DELETED]** ton, of which **[CONFIDENTIAL TEXT DELETED]** ton was exported and sold as limestone to an end-user in a third country market. The remaining **[CONFIDENTIAL TEXT DELETED]** ton of crushed limestone was used by Chememan Thailand to produce Quicklime products, and a small quantity of limestone powder.

Chememan Thailand advised that a small proportion of the limestone quarried and crushed at the Tubkwang site is transported to the limestone dressing plant located at the company's Kangkoi factory, where the limestone is ground into limestone powder. The majority of the crushed limestone, however, is sent from the quarry to the company's Prabuddhabaht factory, where it is fed into either one of the two vertical shaft gas-fired kilns operated by the company on-site. Once the limestone has been calcined in the kiln, it is stored in silos at the Prabuddhabaht facility before being crushed by hammer drill located on-site to produce aggregate quicklime products of varying micron-size ranging from 3-25mm, or fed into one of the two grinding mills also located on-site to produce quicklime powder of 0.6mm or 0.15mm micron-size.

The Company advised that during the investigation period small amounts (approximately **[CONFIDENTIAL TEXT DELETED]** ton) of quicklime were produced from shipments of lump limestone sent from the quarry to the Klangdong factory. The company advise that it operates a coal-fired rotary kiln at the site, under a tolling agreement made with the owner of Klangdong factory. A small quantity of quicklime produced at the Klangdong facility is ground to produce quicklime powder at a grinding mill located near Klangdong factory under a tolling agreement negotiated with the owner of the grinding mill.

### **[CONFIDENTIAL TEXT DELETED – commercial information about changes in tolling arrangements]**

Chememan Thailand submits that all domestic sales are negotiated individually between the company and prospective end-users, with price subject to negotiation on a case-by-case basis, usually occurring monthly. Similarly, Chememan Thailand submits that sales made to its trading agent, Chememan International (see below), are subject to negotiation as to price with respect to each transaction. Chememan Thailand submits that in some instances, domestic customers negotiate longer-term sales agreements. For more detailed discussion see section on domestic sales.



Delivery of product is offered domestically both on an ex-factory basis, or delivered to customers from the relevant site of production using the company's own trucks, or via rented freight transport. Transport costs, or lack thereof, are factored into price negotiations.

### 3.3 Accounting

Chememan Thailand submitted that it and Chememan International use the generally accepted accounting principles in their respective countries of registration – that is, Thailand and Singapore. As will be addressed in more detail below, whilst Chememan International is legally registered in Singapore, Chememan Thailand retains central control and oversight of its operations, [CONFIDENTIAL TEXT DELETED]. Both companies use the calendar year as their financial year.

Each company prepares management accounts on a monthly basis. The financial accounts of Chememan Thailand are audited by [CONFIDENTIAL TEXT DELETED]. The financial accounts of Chememan International are audited by [CONFIDENTIAL TEXT DELETED]. The audit reports for Chememan Thailand provided the following audit opinion.

*In my opinion, the financial statements.. present fairly, in all material respects, the financial position of Chememan Company Limited as at 31 December 2010 and the result of its operation for the year then ended in accordance with generally accepted accounting principles.*

The audit opinions for Chememan International were expressed in similar terms.

Copies of audited financial statements for 2009 and 2010 and monthly management accounts for each company were provided in the exporter questionnaire responses.

### 3.4 Production process

As mentioned above The Chememan Group stated that all the quicklime product sold domestically is produced using raw limestone quarried from its privately owned limestone quarry in Thailand. The limestone is then crushed, dressed and processed in one of three kilns operated by Chememan Thailand to achieve the chemical decomposition of the material, and the resultant calcination of the limestone, that produces the product sold as quicklime in the domestic market and which was exported to the Australian market by Chememan Thailand directly between July 2010 and August 2010, and through its trading agent, Chememan International from September 2010 to date.

Chememan Thailand submitted that some quicklime product sold for export markets outside the company's domestic market in Thailand is supplied by a small-scale quicklime production facility in Vietnam. Chememan Thailand submits that the production processes carried out across the four operational sites in Thailand are relevantly identical.

**3.5 Treatment of the Chememan Group of companies as a single exporter**

As discussed above, Chememan Thailand has identified that the corporate structure of Chememan Thailand reflects that the company, Chememan International and Chememan Australia are related parties by virtue of majority ownership of the two subsidiary companies by Chememan Thailand.

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

We have identified that aggregate and powder quicklime produced by Chememan Thailand was either sold directly to Chememan Australia in several instances or sold under the current arrangements whereby quicklime is purchased by Chememan International from Chememan Thailand on a free-on-board (FOB) basis and then sold by Chememan International to Chememan Australia on a CIF basis once it is exported from Thailand.

We have verified that under the current arrangements Chememan Thailand incurs all costs associated from point of production to point of export in Bangkok. Chememan International incurs and pays all costs once the goods are moved from the wharf in Bangkok onto the export vessel and shipped to the relevant destination. All sales made between Chememan International and importers, such as Chememan Australia, are made as back-to-back sales – that is, Chememan International does not at any point retain physical custody of the goods, but is responsible for arranging export of the goods from Thailand, incurring all associated shipping costs. Chememan International then invoices the importer for the goods on a CIF basis, that is, a price calculated as FOB plus associated shipping costs, and collects payment pursuant to the negotiated payment terms.

Legal ownership of the goods passes from Chememan Thailand to Chememan International when consideration is paid by Chememan International to Chememan Thailand. The company advised that Chememan International is invoiced for the goods once they have left the wharf in Bangkok and have passed the guard rail of the export vessel.

We are of the view that in the course of trade of goods manufactured by one entity and exported by another, involving transactions between companies that are appropriately seen to be related by some form of commercial relationship, the roles of involved parties are not always affected by the mere presence of a commercial relationship, nor is the extent to which transactions between the party are made at 'arms length' (this will be discussed in greater detail below).

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As such, Customs and Border Protection is of the view that in circumstances involving sales of goods between related parties, where one party is the manufacturer of the goods and the other party is responsible for the exportation of the goods, a number of factors related to the relationship between the parties will be considered in totality to form a view as to which party is to be appropriately identified as the exporter. The factors that will be considered include, but are not necessarily limited to:

- Whether or not negotiation has taken place between the two parties;
- Whether prices agreed between the parties reflect actual cost and include a reasonable profit;
- Whether prices are comparable to those arrived at by parties that are at arms length; and
- Whether the margins made by the parties to the transaction are comparable to those made by parties that are at arms length.

We note, and have verified, that Chememan Thailand, Chememan International and Chememan Australia are legally registered in different jurisdictions and, as such, are regarded to be separate legal entities. However, as is explained above, there is a close relationship between all three entities, reflected in the controlling ownership of both subsidiary companies by the parent entity, Chememan Thailand.

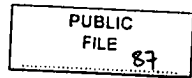
**[CONFIDENTIAL TEXT DELETED – details about interrelationships between related companies]** Logically, given that Chememan International is controlled and operated by **[CONFIDENTIAL TEXT DELETED]**. As will be discussed in due course, the relevant terms of sale, including determinations with respect to price of the goods, for these transactions are also subject to corporate decisions **[CONFIDENTIAL TEXT DELETED]**.

The consideration of price-negotiation between the parties will be addressed in more detail below under the discussion of arm's length transactions. However, insofar as it is relevant to the present discussion, we note that selected sales between Chememan Thailand and Chememan Australia directly, and selected sales between Chememan Thailand and Chememan Australia through Chememan International reflect internal transactions between the parties that are at a loss:

**[CONFIDENTIAL TEXT DELETED] [CONFIDENTIAL TEXT DELETED]** and that the terms of these transactions are significantly influenced by corporate decisions made by the parent company. As such, whilst each company is regarded to have separate legal entity, we are of the view that the companies operate as a group with respect to the export of quicklime to Australia and can be reasonably and defensibly characterised as a single exporter for the purposes of determining a dumping margin.

We note that Article 6.10 of the WTO Anti-Dumping Agreement states that

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*The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation.*

However, the issue of whether a group of related parties as a single exporter could be characterised as a single exporter for the purposes of an anti-dumping investigation was considered by a World Trade Organisation dispute settlement panel dealing with the case of **Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia**. In its consideration of the case, the panel found that the treatment of related parties a single exporter was not inconsistent with Article 6.10.

Consequently, this report includes verification for Chememan Thailand and Chememan International separately, and, where necessary and appropriate to do so, makes reference to previous separate verification and analysis in relation to Chememan Australia. However, the report amalgamates the data gleaned from all three entities in its consideration and analysis of export price and its calculation of the relevant dumping margin.

**4 GOODS UNDER CONSIDERATION AND LIKE GOODS****4.1 Goods the subject of the application**

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 (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.*

Further detailed information on the goods is contained in ACDN 2011/53.

**4.2 Tariff classification**

Quicklime is 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).

**4.3 'Like' goods**

Chememan Thailand submits that its quicklime is of a very high quality and purity. Chememan Thailand claims that the superior properties of its product are due to the high quality of the raw material used in the quicklime production processes. The quicklime and hydrated lime produced by Chememan Thailand are derived from limestone quarried from the company's limestone quarry in Thailand.

Chememan Thailand produce three variants of quicklime product –lump quicklime, aggregate quicklime and quicklime powder. The three broad product classifications are distinguished by the degree to which the raw limestone has, or has not, been crushed after calcination.

Chememan Thailand has the capacity to create more specifically refined products within each of these three broad product classifications by grinding the product to produce a product with a smaller micron-size or, conversely, limiting the degree to which the product is ground in the mill in order to produce a coarser end product. The company advised that the micron-size of a product will vary depending on the end use application for which the customer requires the quicklime.

For completeness in relation to the discussion about the qualities of the goods subject to the investigation, it should be noted that Chememan Australia has both orally, and in formal written submissions, made claims that the quicklime produced by Chememan Thailand is not "like" the domestically produced quicklime both in

terms of the product's quality and physical composition. Summary of the company's submissions in this regard can be found in the visit report in relation to Chememan Australia that is on the public record relevant to this matter.

To further verify the veracity of the claims made regarding the chemical and physical properties of the exported goods in question, Chememan Thailand was asked to provide, and provided, source documentation, and made appropriate submissions regarding the characteristics of the products it manufactures and sells domestically and for export.

**a) Quality**

Chememan Thailand submits that the quicklime produced by Chememan Thailand is of a very high quality with respect to the concentrations of the central active chemical compound for which quicklime is sought for application by its customers both domestically and in export markets, and has a very low rate of impurity.

The company advised that quicklime products, whilst composed of the base chemical compound calcium oxide, differ in physical characteristic and chemical concentration depending on the purity of the concentration of calcium oxide (the degree to which the quicklime is properly 'calcined') which is related to the chemical composition of the raw material used in the process of decomposition. Chememan Thailand submitted that as its quicklime products are all derived from high quality limestone from their quarry, all its products have a high rate of calcium oxide concentration, and a relatively low presence of impurities.

Chememan Thailand provided certificates of analysis for each of the three quicklime products it produces. The results are set out below, as shown on the source documents provided:

a) Aggregate quicklime CaO [CONFIDENTIAL TEXT DELETED - product specifications]

Chemical	Minimum concentration (per metric ton)	Recent tested concentration (per metric ton)
Calcium Oxide (CaO)	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]

Source: Certificate of analysis supplied by Chememan Thailand

b) Lump Quicklime CaO [CONFIDENTIAL TEXT DELETED - product specifications]

Chemical	Minimum concentration (per metric ton)	Recent tested concentration (per metric ton)

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		(ton)
Calcium Oxide (CaO)	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]
Magnesium Oxide [impurity] (MgO)	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]
Silica dioxide [impurity] (SiO <sub>2</sub> )	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]
Sulphur trioxide [impurity] (SO <sub>3</sub> )	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]

Source: Certificate of analysis supplied by Chememan Thailand

c) Powder Quicklime CaO [CONFIDENTIAL TEXT DELETED - product specifications]

Chemical	Minimum concentration (per metric ton)	Recent tested concentration (per metric ton)
Calcium Oxide (CaO)	[CONFIDENTIAL TEXT DELETED - product specifications]	[CONFIDENTIAL TEXT DELETED - product specifications]

Source: Certificate of analysis supplied by Chememan Thailand

Chememan Thailand submitted that end-users in various industries, and for various specific reasons, require a quicklime product with the greatest possible CaO concentration. The company advised, however, that some end users in the domestic market in Thailand are not as discerning as others with respect to CaO content given that the application of quicklime in their operations does not require such a high CaO content. As such, Chememan Thailand sells quicklime that is tested to have a purity rate below 90% (due to issues in the calcination process, but generally no lower than [CONFIDENTIAL TEXT DELETED - product specifications]), to particular customers for which purity is not a core concern. Chememan Thailand submitted that product that does not achieve the desired rate of chemical purity is designated to be 'secondary' quicklime. Such product is only sold domestically to particular end-users. Further discussion of secondary quicklime is included below.

We queried with Chememan Thailand why only one of the provided certificates analysis included comprehensive information regarding presence of impurities in the

product. The company advised that the concentration of impurities in quicklime is a concern for end users in certain industries, such as the mining and paper industries, given that the impurities can have various adverse effects in relation to the machinery/processes for which the CaO in quicklime is required.

#### ***b) physical composition***

As discussed above Chememan Thailand, has the capacity to offer much larger granular size by moderating the degree to which the limestone rock is broken down.

Chememan Thailand submitted that different industries require different micron-sized quicklime depending on the end-use for which the powder is intended. The company submitted that this ability to tailor its product to the specific end use is feasible only because raw limestone rock is used in the processes.

#### **4.4 Quicklime used domestically**

We asked the Chememan Group what was the difference between quicklime used domestically and quicklime exported to Australia. Chememan Thailand submitted that, whilst the variants of quicklime produced for sale in the domestic market and those products delineated for export to Australia are derived from the same raw limestone, and are produced in the same facilities in Thailand, there are slight differences in terms of physical specifications and, in some instances, chemical composition, between those products sold domestically, and those sold for export.

Specifically, Chememan Thailand submitted that it produces three variants of quicklime for commercial sale in Thailand. These are:

- Aggregate quicklime with a micron size of 5mm (allocated the product code NQA);
- Powder quicklime with a micron size of 0.15mm (allocated the code NQP); and
- Lump quicklime in micron sizes ranging from 15mm to 100mm (allocated the product code NQL)

The company advised that the significant majority of domestic sales of quicklime are of the lump variant, in various micron sizes. We have verified the accuracy of this statement with reference to the sales data of all products sold domestically during the investigation period. We have calculated that lump quicklime sales account for roughly [CONFIDENTIAL TEXT DELETED]% of the total volume of quicklime sold domestically during the investigation period.

In comparison, Chememan Thailand advised that it has exported, directly or indirectly, aggregate and powder quicklime to Australia and to other export markets. The company also submits that the aggregate quicklime exported to Australia is refined to a micron size of [CONFIDENTIAL TEXT DELETED]mm which slightly differs from the micron size of the aggregate product sold domestically (see above).



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The powder quicklime that has been sold for export to Australia during the investigation period has a micron size of **[CONFIDENTIAL TEXT DELETED]**mm and is not identical to the powder product sold domestically (also see above).

As mentioned above, Chememan Thailand advised that there are sometimes differences in the chemical composition of aggregate and powder quicklime sold domestically in comparison to quicklime that is sold for export to the Australian market. As also mentioned above, a small proportion of the total volume of quicklime that Chememan Thailand produces fails to achieve the 90% rate of CaO concentration that the company seeks to achieve with all its products. This 'secondary quicklime' is sold to some domestic end users, on the basis of **[CONFIDENTIAL TEXT DELETED]**% CaO content. Sales of secondary quicklime were excluded from the analysis of the company's domestic sales over the investigation period.

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## 5 SALES TO AUSTRALIA

## 5.1 General

Chememan Thailand exported the goods under consideration to a single Australian registered company – Chememan Australia - during the investigation period either directly or indirectly via its subsidiary trading company, Chememan International. Chememan Thailand also negotiated and fulfilled one non-recurrent transaction for the sale of quicklime product to an Australian registered end-user who arranged to import a quantity of quicklime from Thailand itself, for purposes of product testing.

In addition to the goods under consideration, it also exported other lime products to Australia, albeit in comparatively much smaller quantities.

## 5.2 Export sales process

Chememan Thailand described its export sales process for the period July 2010 to August 2010 as follows.

- All orders were placed with Chememan Thailand by Chememan Australia;
- Price was negotiated on a case by base basis between Chememan Australia and Chememan Thailand, monthly;
- Price was negotiated on a CIF basis, on the basis of corporate decisions made by Chememan Thailand regarding exchange risk costs associated with freight and associated incidental ex factory expenses along with cash flow imperatives and relevant market considerations (these considerations are discussed in more detail below);
- Ownership of the product passed from Chememan Thailand to Chememan Australia once the goods were unloaded from the vessel and entered Australian jurisdiction.
- Chememan Australia was invoiced with specified payment terms when the vessel left Thailand.

Chememan Thailand described its export sales process from September 2010 to August 2010, following the involvement of Chememan International as its sales agent, as follows:

- All orders were placed with Chememan Thailand by Chememan Australia;
- Chememan Thailand conducted **[CONFIDENTIAL TEXT DELETED]** sale of the goods to Chememan International on free-on-board (FOB) basis, calculating an FOB price that is consistent with the average FOB price of all export sales made by Chememan Thailand;
- **[CONFIDENTIAL TEXT DELETED]** Chememan International then sold the goods to Chememan Australia on a CIF basis, calculated by adding the associated costs of exportation to the FOB value of the goods;

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- Chememan Thailand incurred all costs associated with packing, transport and any incidental expenses incurred in moving the consignment from factory to port of export;
- An invoice designating Chememan International as the payee is prepared [CONFIDENTIAL TEXT DELETED], with the date of invoice being the date on which the goods have been loaded from the dock in Bangkok unto the vessel bound for Australia.

For the [CONFIDENTIAL TEXT DELETED] export sale conducted with [CONFIDENTIAL TEXT DELETED], the sales process was as follows:

- The order was negotiated between [CONFIDENTIAL TEXT DELETED] and Chememan Thailand;
- As [CONFIDENTIAL TEXT DELETED] had the operational capacity to collect the goods directly from the port of exportation in Thailand, the price of the goods for this shipment was agreed on an FOB basis taking into account corporate decisions made by Chememan Thailand regarding exchange risk costs and associated incidental ex factory expenses along with cash flow imperatives and relevant market considerations;
- Whilst the terms of sale were negotiated between Chememan Thailand and [CONFIDENTIAL TEXT DELETED], the transaction was officially executed [CONFIDENTIAL TEXT DELETED] through the subsidiary trading agent, Chememan International;
- Chememan Thailand conducted [CONFIDENTIAL TEXT DELETED] sale of the goods to Chememan International [CONFIDENTIAL TEXT DELETED];
- Chememan International then invoiced [CONFIDENTIAL TEXT DELETED] for the goods, at the agreed FOB price.

### 5.3 Pricing

#### Pricing and terms

As discussed above in greater detail the Chememan Group has exported quicklime to one Australian customer, Chememan Australia, since the company commenced operations as a supplier of commercial quantities of imported quicklime in Australia in May 2010.

As explained above Chememan Thailand has also executed one unique, non-recurrent export sale administered by Chememan Thailand with an Australian end-user, acting in the capacity of importer, for the purposes of its own product testing.

As dealt with above, it has been confirmed that between July 2010 and August 2010 Chememan Thailand directly exported quicklime product to Chememan Australia. Subsequently, all export level sales of quicklime produced by Chememan Thailand were negotiated and transacted by Chememan International, [CONFIDENTIAL TEXT DELETED].

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We asked Chememan Thailand to clarify the substance of the interaction between the companies in the Chememan group with respect to exports of the goods to Australia, and, specifically, to clarify the role that Chememan International plays in the sales process.

**[CONFIDENTIAL TEXT DELETED – interrelationships between related companies]**. Chememan Thailand advised that, in practical terms, Chememan International exists **[CONFIDENTIAL TEXT DELETED]** as the trading agent of Chememan Thailand with respect to some, but not all, of the companies export sales<sup>3</sup>. The company also clarified that **[CONFIDENTIAL TEXT DELETED]**.

Chememan Thailand advised that, for export sales both directly between Chememan Thailand and Chememan Australia and indirectly **[CONFIDENTIAL TEXT DELETED]** through Chememan International, price and the relevant terms of sale were negotiated **[CONFIDENTIAL TEXT DELETED]**

**[CONFIDENTIAL TEXT DELETED – details concerning Chememan pricing policy]**

**[CONFIDENTIAL TEXT DELETED – information about activity with a particular customer]**

Chememan Thailand submits that, in negotiating the terms of sale with **[CONFIDENTIAL TEXT DELETED]** for the **[CONFIDENTIAL TEXT DELETED]** between Chememan Group and **[CONFIDENTIAL TEXT DELETED]**, the company was cognisant of the fact that the **[CONFIDENTIAL TEXT DELETED]** sale for the purposes of obtaining a batch of product for sampling. The company advised that, given these considerations, the price charged for the product and terms of sale were negotiated with **[CONFIDENTIAL TEXT DELETED]** on the basis of considerations of a potential ongoing business relationship between Chememan Group and **[CONFIDENTIAL TEXT DELETED]** and prospects of future supply of quicklime in commercial quantities.

Chememan Thailand has submitted that the price agreed was unique to the circumstances of the transaction and that any future sales to **[CONFIDENTIAL TEXT DELETED]** would be subject to further negotiation.

**Discounts, rebates and allowances**

Chememan Thailand stated that it does not provide Chememan Australia with discounts, rebates or allowances and that the price on the invoice is the price paid.

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<sup>3</sup> **[CONFIDENTIAL TEXT DELETED – information about customers in third country markets]**.

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In a previous visit with Chememan Australia, and responses made by the company to the importer questionnaire sent by Customs and Border Protection, mention was made of short term loans made between Chememan Thailand and Chememan Australia. We note that the source financial documents provided to Customs and Border Protection by Chememan Australia indicate that Chememan Australia has received a number of short term loans totalling \$[**CONFIDENTIAL TEXT DELETED**] according to Chememan Australia's importer questionnaire response, which does not appear to have been fully repaid according to the Financial Report.

We have verified that the companies audited financial statement for 2010 states that the company passed a resolution in 2010 to convert existing debt with Chememan Australia to share capital, a total of AUD[**CONFIDENTIAL TEXT DELETED**].

### 5.4 Export sales verification - reconciliation to financial statements

To check the completeness and relevance of export sales to Australia, we sought to verify the information contained in the exporter spreadsheets upwards through management reports to audited financial statements.

Chememan Thailand provided 2009 and 2010 audited income statements, income statements from the management accounts for the period Jan – Dec 2010, an income statement for the investigation period and a turnover spreadsheet reconciling sales in the domestic and export sales spreadsheets to the income statement. These documents are at **confidential attachment EXP 2**.

Chememan Thailand also provided copies of audited income statements for the period 1 September to 31 December 2010, and income statements from the management accounts for the January-June 2011 period, an income statement from the investigation period and turnover spreadsheet reconciling sales in the export sales spreadsheets to the income statement. These documents are also at **confidential attachment EXP 2**.

We verified the management accounts for December 2010 to the audited financial statements.

We requested, and Chememan Thailand and Chememan International provided, a line by line download of the sales ledger for each company during the investigation period. The download identified customer, product code, invoice number, invoice quantity and invoice value. We verified total domestic and export sales for all quicklime and the goods under consideration. We also verified the total quantity and values for quicklime sales between the sales ledger and the export sales spreadsheet.

We are satisfied that the Chememan Group export sales spreadsheets are complete listings of exports of the goods under consideration to Australia during the investigation period. We are also satisfied that no irrelevant sales are included in the spreadsheets.

## 5.5 Export sales verification – verification to source documents

### Export sales spreadsheets

Chememan Thailand also prepared an export sales spreadsheet which was included with the response prepared under the company name Chememan Co., Ltd, titled 'Australian Sales'. This spreadsheet included line by line information relating to sales made between Chememan Thailand and Chememan Australia in July 2010 and sales between Chememan Thailand and Chememan International occurring between September 2010 and June 2011. This spreadsheet includes information relating to:

- customer;
- level of trade;
- model;
- quarter in which order placed (of calendar year);
- invoice date;
- payment terms;
- collection terms;
- sales quantity (in metric tonnes);
- revenue (gross and net invoice value);
- currency;
- exchange rate;
- ocean freight and marine insurance costs (where applicable);
- FOB export price;
- packing, inland transport and handling costs.

An export sales spreadsheet was also provided by Chememan Thailand, on behalf of Chememan International, with regard to the sales to Chememan Australia made by Chememan International. The spreadsheet included line-by-line information relating to:

- customer;
- level of trade;
- model;
- quarter in which order placed (of calendar year);
- product code and product description;
- invoice and purchase order number;
- invoice date;
- order number;
- shipping terms;
- payment terms;
- sales quantity (in metric tonnes);
- currency of sale (and rate of exchange);
- revenue (gross and net invoice value);
- currency;
- exchange rate;
- ocean freight and marine insurance costs; and
- FOB value (in Baht and AUD).

**Source documents**

Prior to the visit, we requested that Chememan Thailand provide supporting documents relating to 8 selected shipments of the goods in question to Australia. The selected 8 shipments included 1 shipment made directly between Chememan Thailand and Chememan Australia and 7 shipments made by Chememan International to Chememan Australia. For the 7 shipments made by Chememan International documents were also requested with regard to the sale of the goods between Chememan Thailand and Chememan International.

Chememan Thailand was asked, and provided, documents relating to each of the areas of interest set out below, for each of the shipments during the verification visit:

- Commercial invoice from Chememan Thailand;
- Inland transport to wharf;
- Handling and other FOB-related charges;
- Bill of lading;
- Commercial invoice from Chememan International (where applicable);
- Ocean freight (where applicable);
- Marine Insurance (where applicable);
- Proof of payment in relation to all relevant costs and transactions between parties with respect to two selected shipments from the cohort of 8.

These documents are at **confidential attachment EXP 4**.

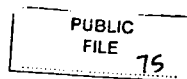
**Sales volume and value**

We were able to reconcile sales volume and values using the commercial invoices and packing lists provided during the verification visit to the export sales spreadsheets. There were no discrepancies identified in relation to sales volume or value in the documents provided with respect to the cohort of sampled shipments.

Chememan Thailand advised in its exporter questionnaire response that all direct exports between Chememan Thailand and Chememan Australia were invoiced to Chememan Australia in AUD using the exchange rate of Thai Baht to AUD published by the Siam Commercial Bank in Thailand on the day on which the invoice was prepared. The company indicated that the first two sales from Chememan Thailand to Chememan International in September 2010 were also prepared in AUD. All other sales between Chememan Thailand and Chememan International however were invoiced in USD. This was reflected in the export sales spreadsheet provided and, where relevant, verified with reference to the source documents provided at the visit.

The export sales spreadsheet prepared by Chememan Thailand included the gross invoice value in Thai Baht and the foreign currency relevant to the particular sale. We verified from the source documents that all invoices provided, reflected the volume and correct value, including currency values, reflected in the export spreadsheet provided.

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The company advised that all sales were recorded in the company's accounts on the basis of the gross invoice value represented in Baht.

### Proof of payments

We requested complete documentation from which to verify the proof of payment of all invoices with respect to two selected export shipments.

Both selected shipments reflect back to back sales of goods to Chememan Australia by Chememan International following an initial sale of goods on an FOB basis to Chememan International by Chememan Thailand. The sales spreadsheet indicated that for all sales made through this arrangement between the Chememan Group companies, the goods in question were invoiced to Chememan International on an FOB basis in USD, then invoiced by Chememan International to Chememan Australia on a CIF basis in AUD using the applicable US/AUD exchange rate issued by the Monetary Exchange of Singapore on the date of invoice.

We verified in relation to the selected 2 shipments that Chememan Thailand was invoiced:

- for internal transport of the goods from the factory to the wharf in Bangkok in Baht by a trucking company in Thailand;
- for the gate charge applicable to each transport truck delivering the goods to the wharf in Baht by the company responsible for the management of the wharf;
- for the customs clearance fee, and relevant administrative charges applicable to the shipment in Baht by the Thai Customs Service; and
- for the handling fee applicable for preparing the goods for shipment from the wharf in Bangkok to Australia in Baht by a freight forwarding and consolidating company in Bangkok.

We also verified that Chememan International was invoiced:

- by Chememan Thailand reflecting the FOB sale of the goods in AUD;
- by the relevant shipping company for the ocean freight costs applicable for the shipment charged in USD; and
- by Chememan Thailand for the marine insurance cost applicable for the shipment, covered by the insurance policy held by Chememan Thailand.

Finally, we verified that Chememan Australia was invoiced:

- by Chememan International, reflecting the sale of the goods, on a CIF basis, in AUD.

We verified, with respect to both selected shipments, that all invoices relating to selected shipments were paid in accordance with the terms of payment and that the price invoiced to each party was the same price listed in relation to the relevant cost, charge or sale value in the export sales spreadsheets provided by Chememan



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Thailand. We also verified proof of payment for each invoice related to the shipments, by the relevant party.

We are satisfied that the invoice values shown in the Australian Sales spreadsheets were the prices paid in relation to the two selected shipments, and that payment was made, in each instance, pursuant to the terms of sale.

### **Ocean freight**

The export sales spreadsheet provided by Chememan Thailand reflects the FOB price of the goods in Thai Baht for the three direct shipments between Chememan Thailand and Chememan Australia. The relevant cost of ocean freight and marine insurance (shown in Thai Baht) was added to the FOB price in each instance to calculate the net invoice value for each transaction on a CIF basis. We verified, in relation to the shipment selected from this group of direct sales between Chememan Thailand and Chememan Australia, that the invoice provided to Chememan Australia showed shipping terms on a CIF basis.

The spreadsheet provided by Chememan Thailand indicated that, for all sales made between Chememan Thailand and Chememan International, the goods were sold on an FOB basis. We verified that, for the selected 7 shipments, the initial sale of goods between Chememan Thailand and Chememan International were invoiced on an FOB basis and that the FOB value reflected on the invoice was correctly reflected in the export sales spreadsheet in each instance.

We observed that the export sales spreadsheet provided with respect to sales made by Chememan International to Chememan Australia represented that sales were made on a CIF basis, calculated by adding ocean freight and marine insurance costs (paid in USD) to the FOB value of each shipment. The net invoice value was represented in the spreadsheet in USD and converted to AUD using the exchange rate of the Monetary Authority of Singapore to arrive at a gross invoice value. We verified that, for each of the 7 selected shipments for which it was relevant, the invoice provided to Chememan Australia by Chememan International was on a CIF basis, and that the value of the invoice in AUD correctly corresponded to the gross invoice value shown in the export sales spreadsheet.

As reflected above, we also verified proof of payment of ocean freight by Chememan International with respect to two selected shipments.

### **Inland freight**

We observed that for all sales made by Chememan Thailand, both directly to Chememan Australia and to Chememan International, the cost of inland freight, along with associated ex-factory costs of packing and handling, up to the point at which physical custody of the goods was retained by the vessel of export, was incurred by Chememan Thailand.

Chememan Thailand advised that it utilises a third party trucking company to transport the goods from the manufacturing plants to the port. Packing, freight and

handling costs were separately captured for each shipment and reflected in the export sales spreadsheet. We verified that the values reflected in the spreadsheet corresponded to the source documents provided relating to ex-factory costs incurred by Chememan Thailand in relation to the 8 selected shipments.

### 5.6 The exporter

As discussed above, we consider Chememan Thailand, Chememan International and Chememan Australia, grouped as a single exporter to be the exporter of the goods in question.

### 5.7 The importer

We note that prima facie, Chememan Australia is identifiable as the importer of the goods in question given that it:

- negotiates directly with Chememan Thailand for the purchase of quicklime;
- is named as the consignee on the bills of lading; and
- arranges customs clearance, logistics, and storage of the goods after they have been delivered to the Australian port.

We consider that Chememan Australia is the importer of the quicklime produced by Chememan Thailand, albeit that it is acting within the corporate group of companies that are also identified as the exporter of the goods. The implications of this relationship is discussed in 5.8 directly below.

For [CONFIDENTIAL TEXT DELETED] between Chememan International and [CONFIDENTIAL TEXT DELETED], Customs and Border Protection consider [CONFIDENTIAL TEXT DELETED] to be the importer of the quicklime [CONFIDENTIAL TEXT DELETED].

### 5.8 Arms length

In determining export prices under s. 269TAB(1)(a), the legislation requires that the relevant sales are arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Furthermore, where:

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- goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss,

the Minister may treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

As mentioned above, submissions made by Chememan Thailand state that prices and terms of sale with respect to sales made to Chememan Australia – both directly, and through Chememan International, are influenced by internal corporate decisions made by Chememan Thailand relating to export risk and company cashflow, and factors relating to Chememan Australia's operations. Chememan Australia has previously submitted that the result of such considerations is an overt determination of product pricing that seeks to enable Chememan Australia to charge prices in the Australian market that are about **[CONFIDENTIAL TEXT DELETED – pricing policy]** Neither Chememan Thailand nor Chememan Australia has indicated that the relationship between the two companies influences prices or non-price based consideration beyond the basic decisions made as to pricing outlined above.

Similarly, Chememan Thailand submits that the relationship between itself and Chememan International does not have a significant influence on the prices charged with respect to internal transactions of product sold to Chememan International for export to Australia. **[CONFIDENTIAL TEXT DELETED]**. We are of the view that this indicates, at least to some degree, that pricing between parties is influenced by the corporate relationship between the parties.

However, notwithstanding the apparent marginal internal negotiations as to price, we did not find any evidence in our verification of data and submissions made by Chememan Australia to suggest that there is any consideration or benefit payable between Chememan Thailand and Chememan Australia, or between Chememan International and Chememan Australia other than price. Further, as stated above, we have verified with respect to sampled shipments that the price invoiced for shipment of goods by both Chememan Thailand and Chememan International is the price paid by Chememan Australia.

For completeness, we queried Chememan Thailand as to whether:

- there is any consideration payable for, or in respect of the goods, other than their price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

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- the buyer, or an associate of the buyer, will directly or indirectly be reimbursed, compensated or otherwise receive a benefit for, or in respect of, whole or any part of the price.

Chememan Thailand advised that no benefits, consideration or compensation is passed between it and any of its subsidiaries other than the price paid for the goods as reflected in the sales spreadsheets and supporting documentation for the selected sales.

In summation we found no evidence that the prices charged by Chememan Thailand to Chememan Australia, by Chememan Thailand to Chememan International and by Chememan International to Chememan Australia were influenced by the commercial relationships between the related parties. Further, we found no evidence to suggest that any of the parties will directly or indirectly be reimbursed or receive a benefit in respect of whole or any part of the product price.

Notwithstanding this, previous analysis and verification of sales data for a sample group of selected sales between Chememan Australia and Chememan Thailand and between Chememan Australia and Chememan International has indicated that, during the investigation period, sales were made at loss to Chememan Australia. We have also identified in the company's 2011 Financial Report that Chememan Australia operated at a loss overall in 2011. We identified that the unprofitability of sales was generally due to high selling, general and administrative costs allocated over a very low volume of sales.

Furthermore, it was apparent from the sales data provided by Chememan Thailand, with reference to the cost to make and sell information in relation to quicklime sold domestically and sold for export, that sales between Chememan Thailand and Chememan International were consistently sold at a price that was less than the cost to make the goods, and hence each transaction was made at an apparent loss to Chememan Thailand.

Therefore, we consider it reasonable, with reference to Section 269TAA, to treat the export sales by Chememan Thailand to Chememan International and sales to Chememan Australia by Chememan International and Chememan Thailand as being influenced by their relationship. Therefore, we are of the view that sales between Chememan Thailand, Chememan Australia and Chememan International have not been made at arms length.

**Influence of corporate interrelationships on transactions**

As has been discussed briefly previously in this report, we are of the view that the commercial relationship between the parties, has a direct influence on the terms of **[CONFIDENTIAL TEXT DELETED]** sales that form part of a chain of transactions leading to the sale of goods to end-users in Australia.

We accept the submissions made by Chememan Australia and Chememan Thailand separately that neither company intends to continue unprofitable trading and that the current pattern of trade at a loss for Chememan Australia is, simply put, a

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consequence of the high start-up costs of Chememan Australia and its status as a new entrant into the market. Similarly, the sales at a loss made by Chememan Thailand are also a consequence of the variables associated with the operations of Chememan Australia.

On this basis we regard sales between Chememan Thailand and its subsidiaries, and between these subsidiaries to be **[CONFIDENTIAL TEXT DELETED]** sales influenced by consideration of the transaction as part of a larger chain of transaction that occur between parties within the Chememan Group with respect to the goods produced in Thailand and sold to end-users in Australia. We are of the view that considerations as to profitability of sales must be looked at taking a holistic approach to the export transaction as a whole.

Similarly, with respect to the consideration of export price that follows, we regard the first arms-length transaction to be those sales made between Chememan Australia (as part of the single exporting group) and unrelated end-users in Australia.

**5.9 Export price – preliminary assessment**

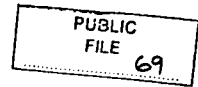
In summation of the above discussion, with respect to exports to Australia of aggregate and powder quicklime produced by Chememan Thailand we consider that:

- 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 purchases 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). We propose that export price should be 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, we have calculated export prices 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.

To summarise, 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.

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The relevant heads of cost under which deductions can be made are exhaustively set out under subsection (2) of 269TAB which refers to:

- any duties of Customs or sales tax paid or payable on the goods;
- any costs, charges or expenses arising in relation to the goods after exportation; and
- the profit, if any, on the sale made by the importer or, where the minister so directs, an amount calculated in accordance with such rates as the minister specifies in the direction as the rate that, for the purposes of paragraph 1(b), is to be regarded as the rate of profit on the sale by the importer.

We have used the source documentation and specific sales data provided by Chememan Australia to calculate an FOB value of quicklime exported by Chememan Thailand over the investigation period. This calculation was made by 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 calculated at a rate of **[CONFIDENTIAL TEXT DELETED]**%;
- 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 calculated at **[\$[CONFIDENTIAL TEXT DELETED]** per ton;
- Total ocean freight expenses incurred by Chememan Australia (as part of the CIF price of the goods) calculated at **[\$[CONFIDENTIAL TEXT DELETED]** per ton;
- Total marine insurance expenses incurred by Chememan Australia (as part of the CIF price of the goods) calculated at **[\$[CONFIDENTIAL TEXT DELETED]** per ton

We considered it appropriate, for the calculation of export price, to include a proportionate deduction reflecting the SG&A costs associated with Chememan International's role as trader in the exportation process. We note however, that Chememan International recorded negative costs associated with SG&A expenses during the investigation period. We verified with Chememan Thailand that this negative record of costs reflects earnings made by Chememan International as a result of foreign exchange transactions associated with its administration of export sales for Chememan Thailand. We have calculated that the negative SG&A costs, that are more appropriately seen as 'other income' in the company's annual report, represents roughly **[CONFIDENTIAL TEXT DELETED]**% of total revenue over the period. On this basis, a positive adjustment of **[\$[CONFIDENTIAL TEXT DELETED]** per metric ton was made to each transaction.

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Calculations of export price can be found at **confidential appendix 1**.

**6 COST TO MAKE & SELL****6.1 Introduction**

Chememan Thailand provided cost to make and sell (CTMS) spreadsheets for each type of quicklime (lump, aggregate and powder) and for each quarter of the investigation period. It advised that the cost of lump quicklime was the raw material cost for both aggregate and powder quicklime.

**6.2 Cost to make**

In its questionnaire response, Chememan Thailand provided copies of its profit and loss statement for the previous two calendar years. A reconciliation table was provided which showed a breakdown of the manufacturing costs over the 2010 accounting period (into separate half yearly periods) and the period of investigation for quicklime, hydrated lime and limestone. Trial balances for the first and second half of 2010, along with the first half of 2011 were provided.

These ledger accounts in these trial balances enable identification of the three product groups along with the start-up costs associated with a quicklime kiln. The start-up costs were entirely allocated to the cost of manufacturing quicklime. Using the three six monthly trial balances, we were able to confirm the total cost of manufacturing quicklime during the investigation period.

A summary costing sheet was also provided which outlined the manufacturing costs for each month of the investigation period. We requested and were provided with each monthly quicklime production costing report. We noted that the total cost of manufacturing identified in the reports reconciled to the summary table and summed to equal the total manufacturing costs identified in the trial balances.

The quicklime production costing reports separately identified costs for the lump, aggregate and powder produced on each of the vertical and horizontal kilns. We selected the month of March 2011 for further verification to source documents and concentrated on the larger kiln at the Prabuddhabaht site.

We were provided with a detailed production costing report for Prabuddhabaht kiln for the March 2011 month. We selected to verify to source documents the gas or energy costs, the limestone raw material costs which primarily captured the limestone quarry production costs and the associated production tons.

**Gas**

Chememan Thailand explained that the price it pays for gas usage was based on a complicated formula outlined in the supply agreement with its gas provider. We were provided with a copy of the relevant pages of the supply agreement to enable reconciliation to monthly invoices.



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We requested and were provided with gas invoices for each month of the investigation period. We selected a number of invoices for confirmation of payment and were provided with ledger account statements, payment vouchers, official tax invoices and bank cheques which all reconciled to the issued invoices. We were also able to reconcile the unit prices shown on the monthly invoices using the agreed supply pricing formula.

### Limestone production

Chememan Thailand provided a limestone production cost report for the selected month, March 2011. The cost report outlined detail cost items including the cost of drilling and blasting, loading and transportation, diesel and other manufacturing overheads. We were able to reconcile the limestone usage costs identified in the detailed production costing report for the Prabuddhabaht kiln by multiplying the volume of limestone taken out of inventory at the Prabuddhabaht site by the unit production cost of limestone produced.

The volume of limestone usage was verified to Prabuddhabaht inventory stock reports and the unit cost of limestone was reconciled back to the relevant production cost report and a limestone cost variance report which showed the weighted average unit variance cost.

From the limestone production cost report, we requested source documents demonstrating proof of payment for the drilling and blasting services and the loading/trucking services. These costs represented over **[CONFIDENTIAL TEXT DELETED]**% of the total production cost in that given month.

We were provided with relevant invoices, journal entries, payment vouchers and bank payment advices which reconciled to the amounts invoiced.

We are satisfied that the costs verified during the verification are the actual costs incurred by Chememan Thailand and recorded in its accounts.

Source documents relating to the costs of production are at **confidential attachment CTMS 1**.

### **6.3 Selling, general and administration (SG&A) expenses**

#### Indirect selling expenses (ISE)

Using the three half yearly trial balances covering the 2010 audited period and the first half of 2011, Chememan Thailand calculated the total ISE for the investigation period and allocated this across the total manufacturing cost to derive an ISE ratio. The company informed us that the ratio used in its cost to make and sell spreadsheets was incorrect as it was based on the ISE for the 2010 accounting year and not the investigation period.

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We recalculated the ratio using total ISE for the investigation period and revised the cost to make and sell spreadsheets. This had the effect of increasing the ISE ratio from [CONFIDENTIAL TEXT DELETED]% to [CONFIDENTIAL TEXT DELETED]%

### General and administrative expenses (GAE)

Chememan Thailand calculated the net GAE using the actual administration expenses taken from the relevant trial balances less amounts from 'other income'. The net GAE was used to calculate a GAE ratio of the total manufacturing costs for the investigation period.

We sought to better understand the nature of the items that comprised the 'other income' and requested relevant ledgers for the larger accounts. The accounts named 'Export Interco' were explained as relating to expenses incurred by the management of Chememan Australia. We did not consider that the income and expenses generated from these accounts were relevant to domestic production and/or sales and advised Chememan Thailand that we did not consider it reasonable to be included in the domestic cost to make and sell.

We recalculated the GAE ratio using total administration expenses less the adjusted 'other income' amount for the investigation period and revised the cost to make and sell spreadsheets. This had the effect of increasing the GAE ratio from [CONFIDENTIAL TEXT DELETED]% to [CONFIDENTIAL TEXT DELETED]%

### Interest ratio

Chememan Thailand calculated the net interest using the actual finance costs taken from the relevant trial balances less amounts for net realised and unrealised foreign exchange gains. The net interest was used to calculate an interest ratio of the total manufacturing costs for the investigation period.

We explained that for the purposes of establishing the domestic cost to make and sell we would require that Chememan Thailand establish how the foreign exchange gains and losses were relevant to the production or sale of the domestic goods. Chememan Thailand explained that this would extremely difficult to do and opted not to do so.

We recalculated the net interest ratio using only the company's actual finance costs for the investigation period and revised the cost to make and sell spreadsheets. This had the effect of increasing the interest ratio from [CONFIDENTIAL TEXT DELETED]% to [CONFIDENTIAL TEXT DELETED]%

Source documents relevant to selling, general and administration expenses are at **confidential attachment SG&A 1**. Revised calculations of SG&A are at **confidential appendix 2**.

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### 6.4 Cost to make and sell – summary

We are satisfied that sufficient information was available and verified to substantiate the CTMS quicklime by Chememan Thailand. We consider these CTMS are suitable for:

- determining a constructed normal value; and
- assessing whether domestic sales were sold in the ordinary course of trade.

The CTMS of the various models is summarised at **confidential appendix 2**.

**7 DOMESTIC SALES****7.1 Introduction**

Chememan Thailand is a seller of quicklime in the Thai domestic market. Specifically it sells quicklime in lump form in sizes from 15 to 100mm; in the aggregate size of 5mm; and in powder size of 100 mesh or 150 micron (0.15 mm).

Lump quicklime was sold in a mixture of minimum **[CONFIDENTIAL TEXT DELETED]** percent purity and minimum 90 percent purity in the period of investigation. Aggregate was sold at a minimum of 90 percent purity. Powder was only sold at the level of **[CONFIDENTIAL TEXT DELETED]** percent purity. In response to the exporter questionnaire, Chememan Thailand provided certificates of analyses for its quicklime sold in the domestic market.

Chememan Thailand advised that the first arms length sale of its quicklime was from itself to its customers – there were no intermediary parties involved in the transaction. We found no evidence to suggest that this was not the case.

Chememan Thailand submitted that it was the largest producer of quicklime in Thailand. Chememan Thailand was aware of seven other domestic producers of quicklime. The end uses of quicklime in Thailand were in a variety of applications such as zinc, steel, paper and sugar manufacture, and as a food additive.

Total sales of all like goods in the period of investigation was **[CONFIDENTIAL TEXT DELETED]**MT. This total comprised **[CONFIDENTIAL TEXT DELETED]**MT for lump, **[CONFIDENTIAL TEXT DELETED]**MT for aggregate and **[CONFIDENTIAL TEXT DELETED]** MT for powder.

**7.2 Price paid or payable in domestic sales****Domestic sales**

Chememan Thailand advised that all domestic sales were to end-user customers, with one exception, **[CONFIDENTIAL TEXT DELETED – name of particular domestic customer]**, who resold quicklime to sugar mills. **[CONFIDENTIAL TEXT DELETED]** purchased **[CONFIDENTIAL TEXT DELETED]**MT of **[CONFIDENTIAL TEXT DELETED]** percent purity lump quicklime in the period of investigation. The different level of trade for **[CONFIDENTIAL TEXT DELETED]** was identified in the domestic sales spreadsheet at D-4 to the response to the EQ.

The goods are sold in the domestic market in a number of different ways. In some cases, customers contact Chememan Thailand directly. In other cases Chememan Thailand contacts the customer. Chememan Thailand negotiates and agrees the price with each customer.

Other customers are on contracts of **[CONFIDENTIAL TEXT DELETED]** months. These customers have a rise and fall clause in their contracts to reflect changes in the cost of bunker oil used in production. Some customers with a small total volume

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request a fixed price contract and this may be agreed to by Chememan Thailand  
[CONFIDENTIAL TEXT DELETED – pricing policy].

We were advised that the company does not use price lists. Sales subject to contracts aside, prices quoted by Chememan Thailand may be effective for [CONFIDENTIAL TEXT DELETED – period of prices], depending on the customer. We were further advised that there were no discounts or rebates payable in respect of the invoiced price. The invoiced price was the price payable for quicklime. The invoiced price includes delivery if the goods were sold on a delivered basis. Chememan Thailand sells domestically on either an ex-factory or on a delivered basis. Goods sold on a delivered basis are transported either on Chememan Thailand's own trucks or delivered on trucks from outside freight companies.

Chememan Thailand recorded inland freight charges according to the circumstances of the sale. Sales of goods ex-factory accrued no inland freight charges. Sales involving delivery by contractors were recorded as a selling expense at the end of each month.

For sales of goods involving Chememan Thailand's own trucks, the various costs of operating and maintaining the truck fleet was compiled monthly. For the purpose of recording the cost a market freight rate for each customer by route/distance is multiplied by the shipped quantity during each month. The total of estimated freight cost, aggregated over all shipments delivered by Chememan Thailand's own trucks is the total standard cost. A variance is allocated each month to account for actual inland freight costs. The actual cost is recorded as a selling expense.

The monthly total accrued freight cost (whether by contractor or by Chememan Thailand's truck fleet) is allocated as a cost to all non ex-factory sales to each customer.

The costs of delivery, where applicable, were supported by documents supplied in the requested domestic sales documents. These costs were reconciled to D-4.

Most domestic sales are made on a cash basis (cash in advance or COD). Chememan Thailand allows some credit sales, generally with a [CONFIDENTIAL TEXT DELETED] credit period.

The actual sales process is summarised as follows:

- Chememan Thailand negotiates the price with customers;
- On receipt of an order, Chememan Thailand issues a sales confirmation or quotation to the customer;
- Delivery of the goods is either ex-factory or directly from the quicklime processing plant – Chememan Thailand does not distribute through regional warehouses;
- Where goods are delivered to the customer, the cost is recorded on a 'logistics movement' spreadsheet. The freight costs incurred by Chememan Thailand through contractors is payable on a monthly basis;
- Chememan Thailand issues a combined invoice and delivery note upon delivery of the goods to the customer;

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- Payment from the customer is by electronic transfer to Chememan Thailand's bank and recorded in the company's accounts
- The bank issues a payment advice.

### Verification of domestic sales

Chememan Thailand completed appendix D-4 to the EQ as part of its submission. It also provided documents relating to two domestic sales of its goods.

Prior to the visit we requested copies of documents relating to a further 12 domestic sales. The selected documents covered the investigation period and the various circumstances of sales.

For the selected sales we requested copies of the following documents:

- Purchase order;
- Order acceptance;
- Commercial invoice;
- Contract of sale, if applicable;
- Inland freight documentation; and
- Bank documentation showing proof of payment for invoices 2, 6 and 10.

Copies of these documents are at **Confidential Attachment Dom 1 to Dom 12**.

We matched details shown on the copies of the documents to the domestic sales spreadsheet at attachment D-4 to the submission. Also, Chememan Thailand provided proof of payment by the customer for all selected transactions, not just the three transactions requested.

In its response to the EQ, Chememan Thailand noted particular circumstances that apply to certain sales to individual customers.

For one sale to **[CONFIDENTIAL TEXT DELETED]**, the shipped quantity exceeded the quantity ordered. The customer refused to pay for the excess quantity, whereby Chememan issued a credit note for the difference. Although issued as a credit note, it was recorded as a negative amount (THB**[CONFIDENTIAL TEXT DELETED]**) in the spreadsheet at D-4.

For another customer, **[CONFIDENTIAL TEXT DELETED]**, quicklime could not be picked up by the customer from the designated factory due to a shortage of the product at that site. The goods were picked up from another production facility which incurred a higher freight cost for the customer which was reimbursed Chememan Thailand. Chememan Thailand issued a negative credit note to the customer in these circumstances and recorded the amounts in D-4.

For another sale to **[CONFIDENTIAL TEXT DELETED]**, the goods were shipped on the last day of the month and it was issued with an invoice that reflected the price for that month. However, the goods did not arrive until the first day of the next month where the price was higher. In this case a positive debit note was raised to account for this situation and was recorded in D-4.

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One customer, [CONFIDENTIAL TEXT DELETED], was allowed price adjustments to the price to reflect the CaO purity of the product, [CONFIDENTIAL TEXT DELETED]size as measured by the customer. This amount is adjusted monthly and includes consideration of the price of fuel oil (for quicklime production) and diesel oil (transportation). A monthly debit note is issued for all sales to [CONFIDENTIAL TEXT DELETED]with a positive or negative amount as appropriate. These were recorded in D-4.

Chememan Thailand paid commission to one customer, [CONFIDENTIAL TEXT DELETED] during the period of investigation. The commission was paid to [CONFIDENTIAL TEXT DELETED]at the rate of [CONFIDENTIAL TEXT DELETED]THB/MT. The commission was paid on a monthly basis and recorded in D-4. We requested, and were provided with, documents supporting the payment of commission to [CONFIDENTIAL TEXT DELETED] (Dom 13). In this period, D-4 showed [CONFIDENTIAL TEXT DELETED]sales and commissions payable in respect of sales from Chememan Thailand to [CONFIDENTIAL TEXT DELETED] totalling THB[CONFIDENTIAL TEXT DELETED]. Chememan Thailand provided a summary of sales to [CONFIDENTIAL TEXT DELETED]for the month, showing [CONFIDENTIAL TEXT DELETED]M/T of quicklime was delivered. The other documents provided by Chememan Thailand were a payment voucher, invoice journal, payment requisition by Chememan and receipt all showing THB[CONFIDENTIAL TEXT DELETED], confirming the commissions were paid as claimed.

Most deliveries are delivered in bulk, or by 'blower' trucks and incur no packing costs. Where packing is required, goods are delivered in 1-tonne bulk bags.

Packing was recorded, where applicable, as the total of the cost of the bags, packing labour costs, and packing overheads. These costs are aggregated monthly by product code. Dividing the total packing costs by the total number of bags results in the average cost of packing per bag.

We examined sales described in D-4 to copies of supporting documents and found no discrepancies. We reconciled sales data to higher level accounts as per Section 2 of this report. On this basis we are satisfied that D-4 is an accurate summary of domestic sales of like goods that occurred over the investigation period.

### Arms length

After examining Chememan Thailand's sales information contained in the questionnaire, the sales documentation in respect of the selected domestic sales and other material during our visit we found no evidence to suggest that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

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- the buyer, or an associate of the buyer, would, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

We are satisfied that domestic sales by Chememan Thailand of like goods during the period of investigation were arms length transactions in terms of s. 269TAA of the Act.

### **Suitability of domestic sales**

We assessed the volume of domestic sales in the ordinary course of trade against the volume of goods exported to Australia.

Firstly, we noted that quicklime in the form of 'lump' was not exported to Australia.

The aggregate quicklime sold in the domestic market was identical to the aggregate quicklime sold to Australia, with the exception of different bagging. We did not identify any factors in the Thai market which would otherwise make the sales of aggregate quicklime in the period of investigation unsuitable.

All domestic sales of powder quicklime were at [CONFIDENTIAL TEXT DELETED]percent purity and referred to as secondary grade. Sales of powder to Australia were at a minimum of 90 percent purity. We consider that a specification adjustment for the purpose of an adjustment could not be reasonably made with any degree of surety. Therefore we consider there are no relevant sales of powder quicklime sold on the domestic market for the purposes of s.269TAC(1).

### **Ordinary Course of Trade**

To determine whether domestic sales were made in the ordinary course of trade, we firstly established whether sales were unprofitable by comparing each domestic selling price to the corresponding quarterly cost to make and sell. We confined this analysis only to domestic sales of aggregate as there were no suitable domestic sales of powder during the investigation period.

The analysis shows that approximately [CONFIDENTIAL TEXT DELETED]% of aggregate quicklime sales were unprofitable. We then examined whether these sales were recoverable by comparing each individual domestic selling price with the weighted average cost to make and sell over the investigation period. The analysis shows that all sales at a loss were recoverable.

Therefore, all domestic sales of aggregate quicklime are considered to be in the ordinary course of trade.

Ordinary course of trade test calculations are at **Confidential Appendix 3**.

### **Sufficient volume of domestic sales**

The percentage of aggregate quicklime sold in Thailand in the ordinary course of trade relative to sales to Australia was [CONFIDENTIAL TEXT DELETED]%. We



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consider there are sufficient domestic sales of aggregate quicklime sold in the ordinary course of trade for the purpose of s.269TAAD.

### 7.3 Domestic sales – summary

Based on the verification process, we are satisfied that there were sufficient quantities of sales of aggregate quicklime that were at arms length and in the ordinary course of trade, to establish normal values on the basis of price paid on the domestic market. Therefore, for these sales, we consider that sufficient evidence has been given and verified to establish normal values in accordance with s. 269TAC(1) of the Act using domestic sales.

However, we are not satisfied that domestic sales of quicklime powder could be used for determining normal values in accordance with s.269TAC(1) of the Act as there were no relevant sales of these goods in the period on investigation. However, based on the information provided by Chememan Thailand, and the verification processes conducted on site, we consider that the normal value for quicklime powder should be established under s. 269TAC(2)(c), using the cost of manufacture of the goods plus amounts for the SG&A costs and profit on the assumption that the goods, instead of being exported, had been sold for home consumption.

A summary of domestic sales suitable for establishing normal values is at **confidential appendix 4**.

**8 ADJUSTMENTS**

We have formed the preliminary view that normal value for aggregate quicklime should be determined in accordance with s. 269 TAC(1) of the Act. Therefore, any adjustments to the selling price are made in accordance with s. 269TAC(8) of the Act, as discussed below.

For constructed domestic prices of quicklime powder, adjustments have been made in accordance with s.269TAC(9) of the Act.

**Packing**

Packing costs, whether for export or domestic sales have been described previously.

We consider that where relevant a downward adjustment to the domestic selling price or constructed CTMS, where applicable, be made to account for domestic packing and an upward adjustment for export packing.

**Inland freight**

Chememan Thailand provided details of inland freight from factory to wharf for the export goods. As noted under 'Export Price', inland freight charges were supported by documentary evidence.

As noted above, we are satisfied that domestic inland freight is accurately recorded in D-4 and supported by documentary evidence.

We consider that a downward adjustment to the domestic selling price or constructed CTMS, where applicable, be made to account for domestic freight and an upward adjustment for export inland freight.

**Credit terms**

Chememan Thailand submitted that verified data in Chememan Australia's importer questionnaire response can be used to calculate credit terms for export sales to Australia.

For domestic sales, Chememan Thailand provided the short term interest rate in response to the EQ. It also provided the payment terms for domestic sales in D-4. However we noted that for the selected domestic sales, the collection days exceeded the agreed credit terms. Chememan Thailand provided a revised domestic sales spreadsheet with the correct collection days against each individual transactions.

We consider a downward adjustment for domestic credit and an upward adjustment for export credit should be made to the domestic selling price.

**Handling and FOB related charges**

For the selected export transactions, we were able to verify the handling and FOB charges incurred by Chememan Thailand. We consider that an upward adjustment for handling and FOB charges is warranted.

**9 NORMAL VALUE****9.1 Profit for constructed normal values**

For the purposes of establishing a reasonable rate of profit to be used in constructing domestic selling prices for quicklime powder, we have examined all domestic sales of quicklime product. We are of the view that quicklime lump, aggregate and powder of [CONFIDENTIAL TEXT DELETED] calcium content have characteristics closely resembling the exported quicklime powder with 90% calcium content.

Therefore we consider that the overall weighted average profit ([CONFIDENTIAL TEXT DELETED]%) achieved on all domestic sales of like goods during the investigation period is suitable for constructing normal values.

**9.2 Conclusion**

We consider that information gathered from all sources and detailed in this report and its attachments, can be relied upon to establish normal values under s. 269TAC(1) and s. 269TAC(2)(c). We have made adjustments to the normal value under s. 269TAC(8) and s. 269TAC(9), as applicable, for packing, inland freight, credit terms and handling and FOB charges.

We calculated normal values using:

- for quicklime aggregate, sales on the domestic market that were arms length transactions and sold at prices that were in the ordinary course of trade; and
- for quicklime powder, the cost of manufacture of the exported goods plus amounts for SG&A expenses and profit.

In constructing normal values we added a margin for profit of [CONFIDENTIAL TEXT DELETED]%

Normal value calculations are at confidential appendix 5.

**10 DUMPING MARGINS**

We calculated a weighted average product dumping margin of 48%.

We note however that exports by Chememan Thailand to Australia were made through two distinct sales channels - goods stored and sold from inventory by Chememan Australia and goods sold directly in 1.25 tonne bulk bags by Chememan International. Given our approach to determining export prices, the calculations reveal that the costs associated with the operation of the Australian distribution business have greatly impacted on the overall dumping margin. This essentially reflects the start-up costs of Chememan Australia and the lack of successful product testing by potential customers translating to established contracts.

For exports of quicklime which were sold via Chememan Australia's distribution business, the dumping margin was calculated at **[CONFIDENTIAL TEXT DELETED]**%. However, for exports sold directly by Chememan International to end-users, which did not incur any of the additional selling, administration and general expenses associated with the Chememan Australia operation, the dumping margin was calculated at -4%

Calculation of dumping margins is at confidential appendix 6.

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**11 THREAT**

Chememan Thailand presented source documents which it considered relevant to the issues paper published by Customs and Border Protection and in particular the factors relevant to the assessment of threat. We were advised by Chememan Thailand that these documents would be formally submitted to Customs and Border Protection as part of a more fulsome submission.

These documents are at **confidential attachment THREAT 1.**