



STATEMENT OF REASONS

KINGSTON, JAMAICA

REF. NO. SG-01-2003

October 16, 2003

IN THE MATTER OF an application, pursuant to Section 6 of the Safeguards Act, 2003, submitted by Caribbean Cement Company Limited to the Anti-Dumping and Subsidies Commission;

AND IN THE MATTER OF the initiation of a Safeguards investigation by the Anti-Dumping and Subsidies Commission pursuant to Section 8 of the Safeguards Act, 2003;

IN RESPECT OF an increase in imports into Jamaica of Ordinary Portland Grey Cement, originating in or exported from the following countries: Argentina, China, Egypt and Russia classified under Harmonized Tariff Schedule Codes: 2523.20, 2523.29 and 2523.291 (excluding Oil-Well Cement).

I. SUMMARY

On September 1, 2003 CCCL submitted its request to the Commission for relief from imports of Ordinary Portland Grey Cement hereinafter referred to as "OPC" or "cement" under the Safeguards Act, 2001 hereinafter referred to as "the Act".

CCCL, the applicant, alleges that OPC is being imported into Jamaica in such increased quantities and under such conditions as to cause serious injury and/or threat thereof to the domestic industry within the meaning of the Act and the accompanying Regulations, hereinafter referred to as "the Regulations". The Applicant further alleges that the Jamaican cement industry is in critical circumstances, and delay in taking action will cause damage that would be difficult to repair for the domestic industry, thus warranting the application of a provisional safeguard measure.

The Applicant contends that imports into the country of the product concerned are increasing rapidly both in absolute terms, and relative to domestic production and consumption, and in particular, that imports have increased from “9,100 metric tons (“MT”) in 1999 to 129,500 MT in 2002, and 152,500 MT through the first half of 2003. This means that cement imports entered into Jamaica in 2002 were thirteen times greater than those imported in 1999”.

II. PARTIES TO THE INVESTIGATION

The Applicant is Caribbean Cement Company Limited, also referred to as “CCCL”, with registered offices located at Rockfort, Kingston. CCCL is a limited liability company incorporated under the laws of Jamaica and is in the business of manufacturing and selling bagged, bulk and ready-mix cement. CCCL is also an importer of cement.

Third Party Importers are:

- (i) Mainland International Limited, also referred to as “Mainland”, with registered offices located at 8 March Pen Road, Spanish Town, St. Catherine;
- (ii) ARC Systems Limited also referred to as “ARC”, with registered offices located at 7 Ashenheim Road, Kingston 11;
- (iii) Bolide International Jamaica Limited, with offices located at 27 Shannon Drive, Kingston Free Zone, Kingston, Jamaica.

The Exporter/Producers are:

- (i) Shandong Metals & Minerals I/E Corp., 9 Tangyi Road, Qingdao, China 266011, Tel: 86-532-575-5583, Fax: 86-532-575-5615;
- (ii) PT Semen Cibinong, Bidakara Building, 9th - 10th - 11th floors, Jl. Jendral Gatot, Subroto Kav. 71 – 73, Pancoran, Jakarta 12870, Indonesia, Tel: 62 21 83793220, Fax: 62 21 83793221;
- (iii) The Siam Cement Public Company Limited, 1 Siam Cement Road, Bangsue, Bangkok 10800, Thailand, Tel: (066) 2586-3333, 2586-4444, Fax: (066) 2587-2199;
- (iv) Sinai Cement, 187 El Haram Street – Giza, Egypt, Tel: 202-386-8208, Fax: 202-386-6519;
- (v) Novoros Cement, Tel: 86172 53518, Fax: 86172 57720;

- (vi) Loma Negra CIASA, Bouchard 680 C1106ABJ – Ciudad, Autonoma de Buenos Aires, Tel: 54 4319 3000, Fax: 54 4319 3001.

(i) **Other Importers of Cement and Sources are:**

The Commission is aware of at least 17 other importers of cement from three different countries.

III. BACKGROUND

On September 30, 2003 the Commission informed the Applicant of its intention to extend the date for initiation from October 1, 2003 to October 16, 2003, pursuant to section 8(3) of the Act, which states in pertinent part:

Where [the investigating Authority receives a request and]

- (a) the request involves complex issues; or
- (b) the Investigating Authority has obtained additional information

the period specified in subsection (2) may be extended for such longer period as the Investigating Authority may determine.

The Commission required additional information to inform its analysis because CCCL's application omitted some data critical to assess and verify the information supplied by them. Gaps in the data forwarded by the Applicant necessitated the Commission's verification of the information from other sources such as the Statistical Institute of Jamaica (STATIN), the Planning Institute of Jamaica (PIOJ), Jamaica Customs and Fiscal Services.

IV. STANDARD FOR THE INITIATION OF A SAFEGUARDS INVESTIGATION

The standard for initiation of a safeguard investigation is set out in section 8 of the Safeguard Act, which provides that the Commission shall commence an investigation only when it determines that there is sufficient evidence of serious injury, or threat thereof to the domestic industry caused by increased imports. The sufficiency of the evidence relates to the prescribed information required pursuant to section 6(2) of the Act as set out in sections 2 and 3 of the Regulations to the Act.

V. THE PERIOD OF INVESTIGATION

The period of investigation will be from January 1999 to the month for which the most complete data is available in 2003.

VI. SCOPE OF THE INVESTIGATION

The Commission defines the scope of the investigation as follows:

*ORDINARY PORTLAND GREY CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES
ORIGINATING IN OR EXPORTED FROM ALL SOURCES (EXCEPT OIL-WELL CEMENT).*

The narrative definition is covered under separate sub-headings of the Tariff Schedule and represents the scope of the investigation, notwithstanding the tariff classifications below, which are provided for Customs' purposes.

2523.20	Portland Cement
2523.2910.0	Building Cement (grey)
2523.29	Other

The Commission will obtain further clarification on the scope of the investigation in respect of White Portland Cement during the initial stages of the investigation.

A. THE INVESTIGATED PRODUCT

The imported cement products that are the subject of this investigation consist of goods that fall within the scope of this investigation and have been classified with the tariff heading 2523.29. They may also be classified under the other tariff headings that are listed above.

The particular good produced by CCCL in Jamaica is Ordinary Portland Grey Cement (OPC), classified under the tariff heading, HS 2523.29 and HS Code 2523.291. Owing to the fact that in the Jamaican market all cement types are substitutable and thus a single fungible product, the Applicant contends, and the Commission agrees, that the scope of the investigation should encompass all cement types imported under the Harmonized System ("HS") Codes 2523.20, 2523.291 and 2523.29 that are used for any building or construction purposes, excluding oil-well cement (2523.292), regardless of type or quality, whether sold or imported per metric ton or in bulk, 1.0 or 1.5 MT O.P. Big (or Jumbo)

Bags, 42.5 kg sacks or 50 kg sacks, or packaged in any other form, and for distribution or sale on the local market in any form.

B. PHYSICAL CHARACTERISTICS AND USE

Portland Cement (OPC) is a hydraulic cement consisting mainly of compounds of lime, alumina, calcium, silica and iron oxide which when mixed with water and aggregate, chemically react to form concrete, the most widely used construction material in the world. There are eight types of Portland cement, which go from one to five. In addition to the eight types of Portland cement a number of special purpose hydraulic cements are manufactured, among these is white cement. White Portland cement is identical to Grey Portland cement except in colour. During the manufacturing process manufacturers select raw materials that contain only negligible amounts of iron and magnesium oxides, the substances that give grey cement its colour. The setting properties and strengths of White Portland cement are similar to Grey Portland cement. The Applicant claims that both the domestic and the imported goods conform to technical industry standards accepted worldwide and developed by the American Society for Testing and Materials (ASTM), specifically ASTM C-150. White Portland Cement also conforms to the same industry standard.

White Portland cement has the same uses as Grey Portland cement, in building and construction. However, White Portland cement may be preferred to Grey Portland cement for architectural purposes, such as pre-cast curtain walls and facing panels, terrazzo surfaces, stucco, finish coat plasters, cement paint, and decorative concrete, and is naturally chosen for its high degree of light reflection.

C. PRODUCTION PROCESS

Portland Cement, the basic ingredient of concrete, is a closely controlled combination of calcium, silica, aluminum, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Common among the materials used in the manufacture are limestone, shell and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand and iron ore. There are mainly two different processes, dry and wet, used in the manufacture of Portland cement.

Rock mined from a quarry is crushed and then stored with other raw materials to be further processed. After analysis, the raw materials are proportioned, ground to fine powder and blended. In the wet process, the raw materials are ground with water and fed into a kiln as slurry (there is enough water to make it fluid). This process is used where the limestone, shale and clay are soft. Later in the process, additional energy is used to remove the excess water. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used when the limestone, shale and clay need to be ground. In other respects, the two processes are alike.

As the raw materials move through the kiln, they are dehydrated (give off water vapour) and calcinated (give off CO₂), and later transformed to clinker from which cement is produced.

VII. LIKE GOODS

Section 2 of the Act states that “like or directly competitive product” in relation to “investigated product” means a locally produced product that is identical or similar to or directly competitive with an investigated product. The Commission found that the investigated product and the domestically produced product whilst not identical in all respects closely resemble each other and are thus considered to be like. This was based on an analysis of the following:

A. PHYSICAL AND CHEMICAL CHARACTERISTICS

The domestic product and the investigated product (being Portland Cement conforming to accepted industry standards), were found to have the substantially same physical and chemical characteristics. Differences may arise in the degree of fineness between the particles of certain cement types, and also in chemical composition because of colour. However, these differences are not substantial enough to render the products dissimilar.

B. PRODUCTION PROCESS

Based on the information available at this stage of the investigation all types of Portland cement go through the same type of production process. Production of cement in some countries may use different types of technology, but the end result is the same

C. DISTRIBUTION METHODS

Cement produced in Jamaica and the imported cement is sold in 3 categories (42.5 kg bags, 1.5 tonne jumbo sacks and bulk). They are sold directly to retail suppliers or distributors who then market it to the ultimate consumer. The Commission notes that differences exist in incentives offered to the same categories of consumers including: volume discounts, preferential payment terms and subsidised haulage to name a few.

D. END USE

Cement is used predominantly in the production of concrete and is consumed almost wholly by the construction industry. The chief end uses for cement are highway construction, building construction, concrete blocks, pre-cast concrete units and individual smaller units. Despite its difference in colour to the grey, white Portland cement is recommended for use in concrete, mortar and renders with or without pigments. As such white cement is primarily used for cast stones, floor and wall tiles, terrazzo finishes, to name a few. This difference however does not make it a dissimilar product.

E. SUBSTITUTABILITY AND COMPETITION

The cement produced by the domestic industry and those covered by the scope of the investigation are substitutable and therefore can compete directly with each other. Because all cement regardless of type is the binding agent in concrete there are no distinguishing characteristics for the consumer unless the cement is required for a specific purpose.

F. QUALITY AND PERFORMANCE CHARACTERISTICS

There is no information on record to suggest that there are any differences, actual or perceived, in quality and performance characteristics.

If the Commission finds that there is domestic production of a product, it is not necessary to look further and determine whether there are also domestic producers of directly competitive products.

The Applicant contends, and the Commission agrees, that the OPC produced by the domestic industry and sold within the local market is a "like product" because it is identical in all respects or closely resembles the imported goods with regard to uses and characteristics, regardless of whether the goods are sold or priced per MT in: bulk; 42.5 or 50 kg (*e.g.*, paper, plastic, 2-ply or 3-ply, or any other bags commonly used within the cement industry); "O.P. big bags" or Jumbo Bags weighing 1.5 MT; or, any other manner, and intended for use in concrete, concrete products, or any other such use as may be

applicable to those goods. The OPC cement produced by the Applicant has the same physical and chemical characteristics as the investigated product and they are substantially the same, each being Portland cement conforming to the requisite industry standards accepted worldwide. In addition, the end uses of domestically produced cement and imported cement are similar.

VIII. DOMESTIC INDUSTRY

The Applicant is the sole producer of Ordinary Portland Grey Cement in Jamaica and thus its production accounts for 100% of the like or directly competitive goods produced in Jamaica. Accordingly, the Commission is satisfied that the Applicant represents the producers as a whole of the like or directly competitive goods and that its production constitutes a major proportion of the domestic industry in accordance with section 1 of the Act.

IX. THE JAMAICAN MARKET

The Jamaican cement market is composed of one producer and many small suppliers that include retailers, distributors and ready-mix operators. The Applicant alleges that it has no ownership or equity interest in any cement suppliers, retailers, distributors, or ready-mix operators and the Commission has not found any evidence to suggest otherwise.

The Applicant has historically been the sole supplier of cement in Jamaica until 1999 when it encountered competition from Mainland, and, subsequently, other importers such as Bolide and ARC. Currently, cement is imported into Jamaica from at least 15 different sources, some of which can be classified as developing countries. The Applicant's sales, including imports as a percentage of total consumption, have declined by 9% between 1999 and 2002. On the other hand, for the 2002 period, the Applicant's sales from its own production have increased marginally as a percentage of consumption over its 1999 levels. The Applicant's marginal growth in sales over the 1999-2002 period represents approximately 21% of the growth in consumption over the same period.

X. INCREASE IN IMPORTS

The Commission sought to obtain data on imports from all sources from STATIN and Fiscal Services, however, discrepancies in the data had not been resolved by the time of this initiation. In this regard,

the Commission relied on data that it could obtain from Bills of Lading relating to each shipment to third party importers over the period of investigation. Historically, there has always been a shortfall between domestic production and market demand, which has been supplemented by imports, first by the domestic producer and additionally by other importers since 1999. Evidence provided by the Applicant shows a 100 per cent increase in imports in 1999 compared to 1998, representing an 11 per cent increase of the share of the domestic market when compared to 1998. In 2001 there was a reduction in imports. However, there has been an increase in imports since that period to the first half of 2003. Imports for the seven months to July 2003 were 107 percent higher than the corresponding period in 2002. The evidence provided also shows that imports for the first seven months of 2003 were only 2 per cent below total imports for 2002. There is the distinct possibility that imports for 2003 are likely to be twice that of 2002 if the current import trend continues. Moreover, imports of cement for the first half of 2003, as a percentage of the Applicant's domestic production, represents a 114 per cent increase over the same period in 2002.

XI. EVIDENCE OF INJURY

With respect to the question of serious injury to the Applicant, the Commission has observed from the data provided loss in market share, marginal price undercutting, a period of price depression corrected by price increases, and small price suppression. In addition, the Commission found that the significant increases in imported cement had a negative effect on the volumes of production, inventory and sales. The analysis of the economic impact shows a reversal of the growth trend and a reduction in profitability.

A. EFFECT ON MARKET SHARE

The Applicant's production of cement has grown marginally between 1999 and 2002 compared to a 31 per cent growth in the market for the same period. In 1999 locally produced cement controlled a significant portion of the domestic market, rising by 6 per cent in 2001, but was reduced to less than the 1999 figure by July 2003. When viewed with the additional consideration of cement produced from local clinker, the local industry's market share remained stable from 1999 to 2002, but is down by 4 per cent in 2003. Further, the information provided by the Applicant demonstrates that its market share declined by 6 per cent in the seven months leading up to July 2003 compared to the corresponding period in 2002.

B. PRICE EFFECTS

Price effects refer to changes in the level of prices in absolute and relative terms that are the direct result of increased imports into the Jamaican market. Price effects can be evaluated based on changes relative to previous price levels, the competition's price or the domestic industry's unit costs of production. Price effects were analysed in terms of price depression, price undercutting and price suppression.

(1) PRICE DEPRESSION

Price depression is usually the result of downward pressure on prices as a result of increased supply in the market or a deliberate lowering of prices to retain market share. This can be assessed on the basis of percentage changes in prices or trends in the levels of prices before and during the period when imports increased in the market. The Applicant maintains that its gross selling prices are set independently of these market forces, but rather are set on the basis of increases in the cost of production and exchange rates.

The Commission observed some price depression in 2000 to 2001 which was subsequently corrected by price increases. The Commission, however, did not have adequate information beyond May 2002 to adequately assess the issue of price depression.

(2) PRICE UNDERCUTTING

Price undercutting refers to instances where the goods under consideration are sold for prices below the domestic like good. In order to assess the extent of any price undercutting, the prices of the imported product and the domestic product must be compared at the same level of trade.

The Applicant alleges that there have been price effects as a result of the increased imports, including price undercutting. Information provided in its September 1, 2003 submission shows the trend of the competitors maintaining prices equivalent or 1 to 2 per cent below those of the Applicant.

The Commission is of the view that the measure of price effects, including price undercutting, is only meaningful if the price used is the net selling prices, which include the effects of discounts and rebates. The Commission finds that there is evidence of price undercutting, the extent of which will

have to be determined from additional financial data from which discounts and rebate levels can be analysed.

(3) PRICE SUPPRESSION

Price suppression is experienced when the domestic industry's margin between unit cost and selling price cannot be maintained.

The Applicant's net selling prices trended marginally downwards between 1999 and July 2003. However, its margin over the period has shown a gradual increase. A closer look at comparative half-year periods for 2002 and 2003 shows 3 per cent increase in the margin.

C. VOLUME EFFECTS

Volume effects refer to changes in the pattern of imports of the investigated product and its absolute and relative effect on the domestic industry's production, carrying inventory, sales and consumption quantities.

(1) PRODUCTION

With the advent of imported cement in 1999, the Applicant's production levels declined relative to its 1998 production levels, and it was not until 2001 that production surpassed the 1998 levels. The Applicant's 2002 production levels show a 3 per cent growth over the 2001 period, but its production for the first seven months of 2003 shows a five per cent decline compared to the same period in 2002.

(2) INVENTORY

The Applicant alleges that its inventory levels have risen as a result of the imports. The evidence provided by the Applicant shows that its inventory levels of clinker in the first half of 2003 increased by an average of 50 per cent of inventory levels for the entire 2001 period. In addition, the applicant's carrying clinker inventory for July 2003 represented a 107 per cent increase over its average inventory levels for the 2001 period. The Commission is of the view that with increased imports the Applicant has not been able to dispose of the level of cement it had expected resulting in the holding of large quantities of clinker.

(3) SALES

The evidence provided by the Applicant shows that for the first seven months of 2003 its sale of cement declined by six per cent in volume in the context of both the sale of imports growing by thirty two percent and market consumption growing by two per cent over the period.

D. ECONOMIC IMPACT

(1) PROFITABILITY

Quarterly financial information submitted by the Applicant for 2003 indicates negative effects on profitability during the period of significant increases in imports in the first seven months of 2003 when compared to the immediate prior six-month period. While sales revenue has shown a marginal increase in the previous six months, there was a greater, though marginal, increase in the cost of goods and a significant increase in the cost of operations resulting in a reduction in profits in the second half of 2002. In addition, the evidence provided by the Applicant shows that its profits as a percentage of sales decreased by 3 per cent between 2002 and 2003.

(2) CASH FLOW

Information provided by the Applicant shows a gradual improvement in cash flow, and for the first half of 2003 there were no negative effects on this position.

(3) ABILITY TO RAISE CAPITAL

Share prices reflect the market's valuation of a company, as well as investors' confidence in the ability of an organisation to maintain a certain level of stability and profitability. Share prices for CCCL have fallen from a high of J\$2.70 in January 2001 to \$2.50 as at July 2003, this compares with J\$3.00 in January 2003.

While share prices on the listed market can be used to show how investors view the strength of the company it is not a sufficient tool to determine the company's ability to raise capital. At this time the Commission has insufficient information on which to make a conclusive finding on this issue.

XII. THREAT OF INJURY

In accordance with Section 2(2) of the Regulation to the Act, a determination of whether increased imports have threatened to cause serious injury to a domestic industry shall be based on evidence that indicates that serious injury is clearly imminent. The factors on which to base a determination on threat of serious injury are listed in section 2(2) of the Regulations. These factors are objective criteria, the meeting of which demonstrates that a threat of serious injury to the domestic industry as a result of an increase in imports is present. While all pertinent factors including those identified above must be considered, all factors need not be present for the making of a determination of threat of serious injury.

(A) RATE OF INCREASE OF IMPORTS

The Commission relied on data for the named third party importers based on Customs documentation to analyse the rate of increase in imports. Imports by Mainland and ARC for 2002 represented a significant increase over the import levels in 2001. Imports for the first seven months of 2003 were 107 percent higher than the corresponding period in 2002.

(B) ACTUAL AND POTENTIAL EXPORT CAPACITY

Between 1999 to the present imports entered the Jamaican market from major suppliers other than the Applicant in countries such as Egypt, Russia, Argentina, Thailand, Indonesia, and China. In that time, antidumping measures were imposed against Thailand and Indonesia by Jamaica.

In examining the actual and potential export capacity of the countries of origin of third party imports since 1999 the Commission looked at data on their actual export performance, changes in inventory as well as changes in the level of domestic demand and the excess of production over domestic demand.

(1) CHINA

Imports from China first entered Jamaica in 2000 and have been increasing ever since. Since 1985 China has been the world's leading producer of cement, and today produces over one third¹ of total global output².

China is the second leading exporter of cement in the world, accounting for about 17 per cent of total world cement trade³. China's exports of cement have been growing steadily since 1999. With the move to modernize the Chinese Cement industry⁴ even in the face of projected increased domestic demand there will be significant excess to channel into overseas markets. It is projected that with the changes coming on stream cement output will increase by 3.4 per cent annually during the 2001 to 2005 five year plan and 2.9 per cent annually during the 2006 to 2010 five year plan⁵.

Owing to over capacity in the Chinese cement industry and increased competition, cement prices is extremely low. The Commission is satisfied that developments in the Chinese markets and industry, including the significant excess capacity and low prices as well as its selling arrangements make it an attractive source for those wishing to source cement from overseas.

(2) INDONESIA

Currently imports of cement into Jamaica from this source are not a significant threat against the domestic industry until the expiry of antidumping measures that have been put in place. There is, however, a high level of pressure to export and since the financial crisis in 1997 Indonesian firms have been aggressively pursuing export-oriented strategies. Also, Indonesia remains a net exporter of cement and has not imported cement significantly since 1998. In addition, domestic production has continued to outpace domestic demand. The changes in inventory coupled with the absence of imports indicate that Indonesia has reserves available to draw down when global demand dictates.

(3) RUSSIA

¹ This figure is projected to increase to about 40 per cent by 2010.

² Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p. v.

³ China's largest customer is the United States (42 % of all exports). The other major markets for Chinese cement are Taiwan (37.64 % of all exports), and Hong Kong (1.38 % of all exports).

⁴ CCCL September 1, 2003 Submission, Volume I of I, Appendix D. and Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development.

⁵ Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p.9.

Russian cement exports have not shown any significant growth since 2000. Part of the reason for this is the imposition by the Ukraine of a special duty. Russian companies exported most cement to Kazakhstan, Azerbaijan, Ukraine, and Belarus. Cement exports were less than 0.2 per cent of total production against previous years and had little impact on the Russian market. However, Russia has production levels in excess of domestic demand. While Russia is not at the moment experiencing significant export growth, it is noteworthy that it is giving the world's largest producer China, fierce competition in the US market. Russia has not significantly increased its capacity in recent years and there is significant under utilisation. Russia however, has the potential to be a significant exporter.

(4) THAILAND

As of 1997 Thailand has become a net exporter of cement, as domestic demand fell off due to the financial crisis. Currently, Jamaica has dumping measures in place against cement from Thailand. The Commission is of the view that imports of cement from Thailand do not pose a significant threat to the Jamaican industry at this time as long as antidumping measures are in place.

(5) EGYPT

Egypt has experienced significant increases in its capacity in recent times. This, coupled with a relatively flat domestic market, points to a significant incentive to export. In fact, with steady increases in its production, Egypt has moved from being a net importer of cement to a net exporter as of 2002 and is likely to be an ongoing source of imported cement, in the absence of measures.

(6) ARGENTINA

Argentina produces around 7.2 million tonnes⁶, with a clinker production capacity of about 11 million tonnes. Cement production comes from Cementos Avellaneda, Grupo Minetti, Loma Negra C.I.A. S.A., and Petroquímica Comodoro. Loma Negra was the leading producer with about 60% of the country's clinker capacity. This is the producer that is currently supplying the Jamaican Market. The company held a 50% share of Argentina's domestic market (International Cement Review, 2001, p. 52-54). In May 2000, Loma Negra completed the construction of a new distribution center in Vicente Casares near Buenos Aires at a cost of \$36 million (International Cement Review, 2001, p. 52-54). The silo has a capacity of 18,000 tonnes, and the mixer can produce 250 metric tons per hour of

⁶ 2000 estimates.

cement; the mixer can produce different types of cement and can change from one to another in 30 minutes. This speaks to the ability to product shift.

SUMMARY

These countries have significant capacity and are net exporters of the product and can meet demand from anywhere in the world, especially from a market the size of Jamaica.

C. BUILD UP OF INVENTORIES IN JAMAICA AND IN THE COUNTRIES OF EXPORT

The availability of inventories of the goods under consideration indicates an ability to erode to some degree the domestic industry's market share. Because of the importers' presence in the market this is possible in a relatively shorter period of time. Detailed information on all the named third party importers is not yet available. Generally when a shipment of cement has been imported the market does not absorb all the goods in the same day or month. Because of this lag it is likely that currently some importers are holding inventories of the product.

The inventory levels of the exporting countries are evaluated using both actual data on inventory as well as unused finished cement production capacity (UFPC). The Commission finds that inventory levels in the countries of export are significant based on actual inventory levels and the unused finished cement capacity.

D. EVIDENCE OF THE POSSIBILITY OF A FURTHER INCREASE IN IMPORTS

The Applicant has submitted evidence indicating that there is a strong possibility of a further increase of cement from these sources based on low prices, the possibility of product shifting to additional production facilities in a relatively short period of time in some countries such as Argentina, existing excess capacity, and the expected significant increase in global cement capacity that will prompt major producers to expand into markets around the world.

E. TRADE RESTRICTIVE MEASURES OF OTHER COUNTRIES

The relevance of considering trade restrictive measures in other countries is to determine the extent to which trade diversion might become a source of a likely increase in imports into the Jamaican market. The Commission has not found there to be any definitive Safeguard Measures imposed on imports from Thailand, Indonesia, Russia, China, Egypt or Argentina. Currently, only Russia seems to have had antidumping measures imposed on its cement imports into Lithuania.

F. THE POTENTIAL IMPACT OF INCREASED IMPORTS OF THE INVESTIGATED PRODUCT ON THE DOMESTIC INDUSTRY

With respect to the potential impact of increased imports of OPC cement on the domestic industry, the Applicant has provided information that provides support for the view that the imports have had an impact on their sales for the first seven months of 2003 compared to 2002. This impact is unprecedented when the Applicant's sales for the first seven months of 2003 are compared to similar seven-month periods between 1999 and 2003. The Applicant's market share has also been affected because, notwithstanding Applicant's marginal increase of sales from its domestic production, this marginal growth in sales was below the growth in the market. The Commission is of the view that this trend is likely to continue given the increased volumes of cheaper cement on the Jamaican market. Ultimately this will have an impact on the Applicant's revenue, profitability, and other financial indicators

G. OTHER FACTORS

A factor that the Commission has taken into consideration is the strong incentive for Third Party Importers to continue importing low priced cement to establish a customer base. The Commission has also pointed out in previous determinations on the issue of threat of injury the likelihood of increased imports especially with importers' ability to switch sources of supply. The Commission has drawn attention, in previous determinations, to the vulnerability of the domestic industry to the threat of injury resulting from the ability of importers to switch sources of supply.

Therefore, the Commission is of the view that the situation of the domestic industry could potentially worsen because of the impact of increased volumes of cement on the market. In addition, in a context where growth in the market itself has not been the result of a more buoyant economy, the supply

pressures in the Jamaican market and globally, might exert pressures on prices thereby having an impact on the Applicant's profits.

In considering a threat of injury it is not sufficient simply to show that the current level of imports will continue, but that there is the strong possibility that they will increase in the near future. In addition, the pattern of importation over the period of investigation must support the view of the strong possibility that imports will increase in the near future, together with the ability of importers to shift from one source of supply to the next, as well as, various incentives to continue importing. In the context where the Jamaican economy itself is not growing significantly, increased volumes of imported cement and their impact presently provide the strongest evidence of threat of serious injury to the domestic industry.

XIII. CAUSATION

Both the Act and the WTO agreement require that there be a demonstration of a causal link between any serious injury or threat of serious injury and increased imports. First, there must be the demonstration of the existence of a causal link between increased imports of the goods under consideration and the injury or threat, and second, injury caused by factors other than increased imports must not be attributed to the increased imports.

A. THE EXISTENCE OF A CAUSAL LINK

To establish causation it is not necessary to show that increased imports are the sole cause of injury or threat. The Commission therefore sought to identify if any correlation exists between absolute and relative changes in imports (on the basis of third party imports) and the injury factors examined.

The data clearly shows that movements in imports, relative or absolute can explain some of the variation in the injury factors examined, and therefore are a cause of serious injury or threat of serious injury. The Commission noted that while the level of correlations with the other factors examined point to other potential influences, changes in market share are mostly the result of the changes in imports and this relationship holds true whether the increase is relative or absolute.

B. NON-ATTRIBUTION

The Commission examined the other factors that over the period of investigation had or may have had a negative effect on Applicant's performance. The WTO Appellate Body has indicated as follows:

“ In a situation where several factors are causing injury “at the same time,” a final determination about the injurious effects caused by increased imports can only be made if the injurious effects caused by different causal factors are distinguished and separated.

Otherwise, any conclusion based exclusively on an assessment of only one of the causal factors - increased imports - rests on an uncertain foundation.”⁷

Where possible, the Commission separated and distinguished factors other than the dumped imports that could be exerting an influence on the domestic industry, so as to assess their bearing, influence, or effect on the domestic industry as distinct from the impact of increased imports.

1. **Macroeconomic Influences.** Factors such as changes in the exchange rate, increases in fuel prices and adverse weather conditions have historically had an impact on the domestic industry, primarily through its cost of production and lower demand. The Commission was persuaded however, that some of these influences also have an impact on importers in the same way. While they exerted a negative impact on the domestic industry, the industry undertook corrective measures. These corrective measures minimized the negative impact of exchange rate depreciation, for example.
2. **Discretionary Policy Changes.** There were no discretionary policy changes or changes in tariff or other tax rates identified to or by the Commission that would have had a negative impact on the cement industry.
3. **Developments in Technology.** The Applicant does not identify, nor were any technological changes identified by the Commission that was a factor in its difficulties. There are no developments in technology that are having a negative impact on the domestic industry .
4. **Contraction in Demand/Changes in Pattern of Consumption.** Total cement consumption has been increasing, hindered in some periods by weather conditions throughout the period of investigation. Therefore demand is not currently a factor, which has a negative impact on the domestic industry.

⁷ ABR US Lamb.

5. **Production Difficulties.** The Commission found no reason to discredit the assertion of the Applicant that its past operational problems which had an impact on production in the 1999 to 2000 period, such as equipment failures and the need for upgrades did not continue to have an impact on its operations beyond that time, as it instituted changes that reduced its unit cost of production and allowed it to expand production. In the latter part of the period of investigation, the Commission finds that production difficulties have not been a factor that had a negative impact on the domestic industry.
6. **Difficulty in Obtaining Raw Material.** There is no information at this time to suggest that difficulty in obtaining raw material is a factor that has had a negative impact on the domestic industry's production.

On the basis of the information provided in the application together with other information of which the Commission is aware, the Commission is of the view that there is a causal link between the increase in imports and the injury factors examined. Some relationships exhibit a correlation that would indicate damage to the domestic industry (that is as imports increase inventories increase, as imports increase market share declines). The Commission found that for those other relationships that currently do not exhibit a negative relationship there are strong indications they may threaten to do so.

XIV. THE PUBLIC INTEREST

Under the Safeguard Act, 2001, for a safeguard measure to be applied, there must be a consideration of and finding that the measure is in the public interest. Unlike in cases of dumping and subsidies, safeguard measures can be applied even where there is no unfair trade practice. Public interest considerations may be examined in the light of consumer interest and national interest. Consumer Interest looks at economic and social effects on the consumer as a result of a safeguard measure. Consumers include both final and intermediate consumers. The analysis of the national interest covers in its ambit the general social welfare of the country, taking into account the larger community interest.

The law does not require the Commission to reach any conclusion regarding the ultimate impact of the public interest analysis in order to initiate an investigation. Rather, it clearly assumes that the question of public interest will be part of the inquiry that takes place post-initiation.

XV. UNFORSEEN DEVELOPMENTS

The Commission notes that the WTO Appellate Body has indicated that a pre-condition for the application of a safeguard measure under the WTO Agreement on Safeguards is that the measure be consistent with Article XIX: 1(a) of the General Agreement on Tariffs and Trade (GATT) 1994 which provides:

“ If as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession”

The Act does not require that the Commission make any finding with respect to the question of unforeseen developments in order to commence the investigation. The Applicant has identified the following factors as unforeseen developments resulting in increased imports that have caused or threatened to cause serious injury to it: an extensive global overcapacity and overproduction in cement, the Asian economic crisis, the Latin American Financial crisis, and the collapse of the former Soviet Union and of certain economies of Europe. The Commission is of the view that this is an adequate identification of such unforeseen developments, for an investigation to commence, and now acts to initiate the investigation without making any finding as to the character or significance of such developments.

CONCLUSION

The Commission has decided to initiate an investigation on the basis of the application filed by Caribbean Cement Company Limited, pursuant to section 8 of the Safeguards Act, 2003. The Commission is satisfied that the application contains information disclosing sufficient evidence of a threat of injury caused by increased imports of cement.

XVI. INFORMATION

Interested parties are invited to file written submissions presenting facts, arguments and evidence that they feel are relevant to the alleged increase in imports, serious injury or threat of serious injury. Interested parties should identify themselves as such as soon as possible so that the Commission may forward to them the relevant guidelines for the filing of written submissions. Written submissions should be forwarded to the attention of the officer identified below. To be given consideration in this phase of the investigation, all information should be received by the Commission within 30 days of the date of initiation of the investigation.

Any information submitted to the Commission by interested parties concerning this investigation is deemed to be public information unless clearly marked confidential. Where the submission by an interested party is confidential, a non-confidential version of the submission (which summarises the information in the confidential submission) must be provided at the same time. This non-confidential version will be made available to other parties and the public upon request.

This Statement of Reasons along with the Notice of Initiation of this investigation has been provided to interested parties of these proceedings. For further information, please contact the Commission as follows:

**Mail: Anti-Dumping and Subsidies Commission
24 Trafalgar Road, Kingston 10 or
P.O. Box 494, Kingston 5.**

Attention: Sara-Ruth Allen, General Manager

**Telephone: (876) 920 7006 or (876) 968 7970
Email: antidump@cwjamaica.com**

Beverley Morgan

Chairman

ANTIDUMPING AND SUBSIDIES COMMISSION

