

ANTI-DUMPING AND SUBSIDIES COMMISSION

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STATEMENT OF REASONS INITIATION

KINGSTON, JAMAICA
November 26, 2009

CASE NO. AD-01-2009

IN THE MATTER OF a Complaint, pursuant to sections 22 and 23 of the Customs Duties (Dumping and Subsidies) Act 1999, submitted by the Caribbean Cement Company Limited to the Anti-dumping and Subsidies Commission.

AND IN THE MATTER OF Initiation of an investigation by the Anti-dumping and Subsidies Commission, pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act 1999.

IN RESPECT OF the dumping in Jamaica of Ordinary Portland Grey Cement and a Portland Blast Furnace Slag Cement originating in or exported from the United States of America, usually classified under Harmonised Tariff Schedule Codes 2523.290 and 2523.291.

I. SUMMARY

Complaint Submitted. On September 3, 2009, Particulars of Complaint In the Matter of an Anti-dumping Investigation Against Ordinary Portland Grey Cement Dumped on the Jamaican Market and Originating in or Exported from the United States of America was submitted to the offices of the Anti-dumping and Subsidies Commission (“the Commission”) on behalf of the Jamaican Cement Industry, the Caribbean Cement Company Limited (“CCCL”, the “Complainant,” or the “domestic industry”). The Commission in a letter dated September 10, 2009 informed the Complainant that the documents submitted are incomplete due to certain anomalies and requested that they be resolved in order to complete the filing. On September 14, 2009, additional documentation was provided on behalf of CCCL in order to complete the filing of the Complaint.

The Complaint alleges that Ordinary Portland Grey Cement and Portland Blast Furnace Slag Cement originating in or exported from the United States of America was and is being imported into Jamaica at dumped prices. Further, the Complaint contends that the dumping has caused, is causing and is likely to cause material injury to CCCL, the Jamaican Producer of like goods. The Complaint has requested that an investigation into the alleged dumping be initiated and anti-dumping duties applied.

The standard for initiation of an investigation once the Commission receives a Complaint is set out in section 22 of the Customs Duties (Dumping and Subsidies) Act 1999 (the “Act”). The Act provides that the Commission shall carry out an investigation into the matter if the Commission is satisfied that –

- (i) the Complaint is properly documented;

- (ii) there is evidence that the goods have been or are being dumped; and
- (iii) the evidence discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury.
- (iv) the Complaint has been made by or on behalf of the domestic producers of like goods.

Complaint Properly Documented. The Commission assessed the Complaint to determine whether it was properly documented in accordance with section 2 of the Act, which identifies the information that a Complaint should contain. The Complaint was found to be properly documented as it specifies facts that are reasonably available to the Complainant that show dumping of the goods alleged is occurring and disclose a reasonable indication that the dumping is causing or likely to cause material injury to the domestic producer of goods that are “like goods” to the imports that are being dumped.

The Commission informed CCCL that the Complaint submitted is properly documented on September 21, 2009.

Legal Standard - Sufficiency - Adequacy and Accuracy. A Complaint that sufficiently alleges all the necessary elements of dumping, injury and causation, after being checked for adequacy and accuracy of the facts alleged will require that an investigation be initiated (the Act, Section 22 and 2 (Interpretation Section)). The Commission is satisfied that the Complaint contains evidence that the goods have been and are being dumped, which discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury to the Jamaican domestic industry producing like goods.

Standing - By Or On Behalf of the Domestic Industry. The Complaint must be made by or on behalf of the domestic producers of like goods produced in Jamaica. A Complaint is considered to be made by or on behalf the domestic producers if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of total production of the like goods produced by that portion of the domestic industry expressing either support for or opposition to the Complaint . In addition, domestic producers expressly supporting the Complaint must account for more than twenty-five per cent of total production of the like goods. CCCL is the sole producer of the domestic like goods and therefore accounts for one hundred per cent of total production. The Complaint states that the filing was made on behalf of, and with the support of CCCL. The statutory threshold for standing is met.

The Decision to Initiate. On November 26, 2009, as required by the Act, the Commission initiates an investigation into the allegation of dumping in Jamaica of Ordinary Portland Grey Cement and Portland Blast Furnace Slag Cement originating in or exported from the United States of America. Documentation regarding business confidential treatment of information and a conforming Public Version of the Complaint required by the Commission for initiation of an investigation were received by the Commission on October 26, 2009, November 11, 2009 and November 24, 2009.

Verification or Validation of Information. The Commission verifies to the standard required for initiation, the information alleged in the Complaint. Information that resides only in the hands of the producer, the exporter or the importer cannot be considered and cannot be taken into account to determine whether to initiate an investigation. Such information will be sought and form part of the record and basis for decisions in the preliminary and final determinations. Therefore, information included in the Statement of Reasons for Initiation or relied upon by the

Commission in deciding whether to initiate an investigation is preliminary information and cannot be taken as an indication that the Commission has accepted or is relying on said information. A determination of whether or not goods are dumped and causing injury is made only after an investigation is carried out in accordance with the Act.

II. PARTIES TO THE INVESTIGATION

The entities or parties interested in the case and its outcome are identified according to the Act in the Complaint (“Interested Parties” or “Parties”). The Commission sought to verify information contained in the Complaint concerning the Parties involved from other sources, such as the Jamaica Customs, Fiscal Services Limited and available corporate documentation.

The Parties, the producer of the domestic like goods, the importer, and the exporter of the allegedly dumped goods are identified below:

The Complainant is Caribbean Cement Company Limited, hereinafter referred to as “CCCL” or “the Complainant” or “the Domestic Industry” with registered offices at Rockfort, Kingston and mailing address as P.O. Box 448, Kingston. Telephone: 876-928-6231, Fax: 876-928-7381. CCCL is a limited liability company incorporated under the laws of Jamaica and is in the business of manufacturing and selling bagged and bulk cement.

The Importer is Tank-Weld Metals, hereinafter referred to as “Tank-Weld” or “the Importer”, with registered offices located at 27 Seaward Drive, Kingston 11. Tel: 876-923-8800, Fax: 876-923-0317. Tank-Weld Metals is a part of the Tank-Weld Group which also includes Tank-Weld Special Projects, Tank-Weld Steel Fabricators and Tank-Weld Equipment Rentals. Tank-Weld is a conglomerate of companies in Jamaica, with subsidiaries catering to specific niches in the construction industry such as steel, lumber, cement, distribution, steel fabrication, civil engineering and contracting, heavy duty haulage and equipment rental¹. CCCL alleges that Tank-Weld has a ten-year contract with Vulcan for cement it distributes in the Jamaican market from its shipping port in Rio Bueno, Trelawny and has chartered a vessel to facilitate the importation of the cement.

The Exporter is Vulcan Materials Company, hereinafter referred to as “Vulcan” or “the Exporter” with registered offices located at 1200 Urban Centre Drive, P.O. Box 385014, Birmingham, Alabama 35242. Tel: 205-298-3000, Fax: 205-298-2911 and qualified to do, and doing business in the state of Florida. Vulcan Materials, together with its subsidiaries, engages in the production and sale of basic materials for the infrastructure primarily in the United States. The company operates in three segments: Aggregates, Asphalt mix and Concrete and Cement.

The Producer is the exporter, Vulcan Materials Company also referred to as “the Producer”. The Complaint alleges that Vulcan is producing and exporting cement to Jamaica from its Florida base of operations.

¹ <http://www.tankweld.com/index1.htm>

III. SCOPE OF THE INVESTIGATION

The Commission defines the scope of the investigation as follows:

**ORDINARY PORTLAND GREY CEMENT AND PORTLAND BLENDED
HYDRAULIC CEMENT USED FOR BUILDING OR CONSTRUCTION
PURPOSES ORIGINATING IN OR EXPORTED FROM THE UNITED STATES
OF AMERICA**

The goods that fall within the scope of this investigation are usually imported under the following Harmonised Tariff Schedule (HTS) Codes:

2523.290	Other
2523.291	Building Cement (Grey)

The Complainant contends that the scope of the investigation include all cement imported under HTS Codes 2523.20 (Portland Cement), 2523.290 (Building Cement (Grey)) and 2523.90 (Other Hydraulic Cements). The assertion is based on the argument that there is a need for the scope to be sufficiently broad in light of the likelihood of product substitution/interchangeability for import, sale and use in the local market and to guard against circumvention of a duty that may result from the investigation.

The Commission is not convinced at this time by this argument and after an extensive like-goods analysis, establishes the scope more narrowly as covering only non-specialty cement, which is imported for building and general construction purposes, regardless of the type or quality, whether sold or imported per metric tonne or in bulk, 1.0 or 1.5 metric tonne bags or 42.5 kg sacks or packaged in any other form and for distribution or sale on the local market in any form. The concern about potential circumvention is addressed by using the HTS codes as mere indicators of the tariff lines under which the applicable cement types have been imported in the past. The description and not the HTS codes control the scope of the investigation.

The Commission notes that the importer, Tank-Weld Metals imports White Portland Cement in very small quantities. This cement type has not been included in the scope of the investigation as White Portland Cement is a specialty type of cement not used for general construction purposes.

A. Goods Under Consideration

The goods under consideration are the imports that the Complaint alleges are being dumped, also referred to as “subject goods”. The Complaint identifies the allegedly dumped imports as a type of Ordinary Portland Cement (“OPC”) Type I and a blended OPC containing slag referred to as OPC Type IS originating in or exported from the United States of America. The Complaint submits that the imported goods are used for building and construction purposes and conform to local and international standards.

The Commission obtained information from the Jamaica Customs and Fiscal Services Limited which provided the description, tariff classification and the relevant international and local standards of the goods under consideration. The subject goods have been described as conforming to the Bureau of Standards Jamaica (“BSJ”) Standard Specification for Portland Cement (ordinary and rapid-hardening) JS32 Type I/II Portland Cement and the Jamaican

Standard Specification for Blended Hydraulic Cements JS301 Type PS (25) Portland Blast Furnace Slag Cement. The goods under consideration are classified under Tariff item and statistical key 2523.29(0) (Other) and 2523.291 (Building Cement (Grey)) and imported in 42.5kg bags and also in 1.0 and 1.5 tonne jumbo bags. The applicable rate of duty for this tariff item is generally forty per cent (40%).²

IV. LIKE GOODS

The Commission is required by the Act to identify the domestic industry producing the like goods in order to ascertain whether there is injury to the industry. The Commission must first examine the goods produced in Jamaica by the industry claiming injury in order to determine whether the goods are “like goods”, that is whether they are identical in all respects or have uses and characteristics closely resembling the goods under consideration.

The Complainant produces Ordinary Portland cement (OPC) Type I and a blended OPC containing Pozzolan OPC Type IP, referred to as Carib Plus and submits that the domestic like goods and the goods under consideration are similar, if not the same. They are both OPC cement types that have similar physical and chemical characteristics, manufacturing processes, the same end-uses and methods of distribution in the Jamaican market.

The Commission examined the following factors to determine whether the domestically produced goods and the goods under consideration are like goods:

1. Physical and Chemical Characteristics
2. Manufacturing and Production Process
3. Distribution Methods
4. Functions and End Uses
5. Substitutability and Related Factors
6. Quality and Performance Characteristics

1. Physical and Chemical Characteristics

Ordinary Portland Cement (OPC) is a hydraulic cement which is a finely powdered grey substance consisting mainly of compounds of lime, alumina, calcium, silica and iron oxide which when mixed with water and aggregate chemically react to form a solid mass called concrete. Blended Portland hydraulic cements comprise OPC and other materials that have characteristics associated with cement, referred to as “cementitious” properties such as pozzolan (fly ash) and blast furnace slag.

The Complainant submits that the locally produced goods and the goods under consideration conform to the following international and local technical industry standards which specify composition, physical properties, manufacture, labeling and packaging.

- i. The American Society for Testing and Materials (ASTM):
ASTM C150 – 07, Standard Specification for Portland Cement

² The duty rate of 40% has been, from time to time since 2006, the subject of suspension by the Government via application to the COTED for suspension of the CET.

- ASTM C545 – 08, Standard Specification for Blended Hydraulic Cement
- ii. The British Standard Specifications
 - BS EN 197 – 1: 2, Standard Specification for Portland Cement
- iii. The Jamaican Standard Specifications
 - JS 32: 2008, Standard Specification for Portland Cement
 - JS 301: 2008, Standard Specification for Blended Hydraulic Cement

The Commission is of the view that the goods under consideration and the domestically produced goods have similar physical and chemical characteristics and conform to the same Jamaican and American standard specifications for cement, referred to above.

2. Manufacturing and Production Process

Portland cement, the basic ingredient of concrete, is a closely controlled chemical combination of calcium, silicon, aluminium, 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. Lime and silica comprise about 85% of the mass. The manufacture and production process of cement has several stages. The first stage is extraction of raw materials by mining from a quarry. Common raw materials used include limestone, shells, and chalk or marl combined with shale, clay, slate, silica sand, and iron ore. The raw materials are then stored and homogenized. The sizes of the raw materials are then reduced in two stages by primary and secondary crushers. After being crushed and analysed the raw materials are proportioned in order to meet the specific chemical composition required.

Two different processes are primarily used in the manufacture of cement, referred to as the dry process and the wet process. In the dry process, once the raw materials have been proportioned they are ground to a fine powder, blended together and then fed to the kiln in a dry state. As the raw materials move through the kiln chemical reactions such as calcination and dehydration transform the raw materials into clinker. In the wet process, the raw materials in proportion are ground with water and fed into the kiln as slurry (there is enough water to make it fluid). This process is used where the limestone, shale and clay are soft. The mixture is then fed into a kiln at varying temperatures causing a series of chemical reactions to create clinker. The clinker is cooled and then finely ground together with gypsum to form portland cement. Both processes are similar however the wet process is more energy intensive to reduce the water content of the slurry. The dry process as a result is more thermally efficient as there is little or no water to evaporate. The dry process is more commonly utilized.

Blended hydraulic cement is produced by grinding together and blending portland cement clinker and gypsum with other materials that have cementitious properties, such as pozzolan and blast furnace slag in certain proportions.

3. Distribution Methods

The domestically produced cement is sold in 3 categories: bulk, 42.5 kg sacks and 1.5 tonne jumbo sacks. Cement exports to Jamaica by foreign exporters, trading companies, and domestic importers not associated with CCCL, are traditionally packaged in 42.5 kg sacks ready for retail, or in jumbo bags.

The Complainant has indicated that all sales in Jamaica either originate from the local factory or the importer's warehouse, and distribution is through retailers, traders/wholesalers, and other distributors before the product is utilised by the end-user.

The Commission based on the nature of the cement market in Jamaica is of the view that the domestic product and the imported product are sold directly to retail suppliers or distributors who then market the product to the ultimate consumer. The ultimate consumer includes contractors, government departments responsible for construction, block makers and private individuals.

4. Functions and End Uses

Cement is used predominantly in the production of concrete. Cement functions as the binding agent in concrete and is consumed almost wholly by the construction industry regardless of the type of cement. The chief end uses are, highway construction using ready-mix concrete, building construction using ready-mix concrete, concrete blocks, pre-cast concrete units and individual smaller units. Information before the Commission reveals that the domestic product and the good under consideration are both used for similar purposes.

5. Substitutability and Related Factors

The Complainant contends that the domestic product and the good under consideration are directly substitutable and compete with each other. If the products are seen as readily substitutable for each other, there is an inclination to consider them like goods. This can be supported by a comparison of the characteristics of the products. Since all cement regardless of type is the binding agent in concrete, there are no distinguishing characteristics for the consumer unless the cement was required for a specific purpose, and thus required a special type of cement for the binding process. However, the good under consideration may be used for all jobs that the domestically produced cement is used for and vice versa.

6. Quality and Performance Characteristics

The Complaint submits that the Jamaican market for cement does not require specialty cement and consumers do not distinguish between different types of cement and their uses.

There is no evidence on the record to suggest that consumers perceive that either the domestically produced goods or the goods under consideration are of a better quality or of superior performance.

V. PERIOD OF INVESTIGATION

The period of investigation ("POI") is the timeframe selected for which information and data on imports into Jamaica will be collected and assessed to determine whether the imports are being dumped, and if there is dumping, the effect of the dumping. Therefore, it is the timeframe to which information and data substantiating allegations of dumping and injury should refer to.

The POI for dumping is normally one (1) year or a minimum of six (6) months immediately prior to the date of initiation. The goods under consideration were first imported in May 2009.

The POI for injury should be at least three (3) years immediately prior to the date of initiation, in addition to the post initiation period for which data is available, and should include the period covered by the dumping data.

The Complainant CCCL suggests that the period of investigation should start from August 31, 2009 and cover a period beginning no earlier than 2006³. However, the Commission determines the period of investigation based on the date of initiation. The period of investigation (POI) for dumping and injury commences November 26, 2006 through to November 25, 2009 in addition to the post initiation period for which data is available.

VI. THE JAMAICAN MARKET

The cement market in Jamaica is supplied by one domestic producer and several importers all of which distribute cement to the consumer through retailers, distributors and ready-mix operators. The Complainant, CCCL has been producing cement since 1952 and is the sole operating manufacturer of cement in Jamaica. Before 1999, the Complainant was the sole supplier of cement to the Jamaican market, sometimes itself importing to supply the market. Thereafter, the market changed significantly to include other suppliers of imported cement.

The Complaint submits that historically, approximately 80% of the cement produced by CCCL was sold to suppliers who distribute cement to the ultimate consumer in 42.5 kilogram (kg) sacks⁴. The balance of the amount produced locally was sold in bulk or jumbo bags to consumers to complete larger projects.

In 1999, cement was initially being imported into the Jamaican market by one importer and this expanded subsequently to include other importers. In 2006, the market also saw an increase in imports due to shortage on the Jamaican market and on the world market. The level of importation was further heightened by a period in which the quality of cement produced by CCCL was diminished. At this time in 2006, the Complainant was itself a major importer of cement, accounting for more than fifty percent of total imports. This profile changed in 2007 as other importers increased cement imports into the market. In 2009, cement is being imported into Jamaica from more than twelve different sources by several importers.

The Complaint submits that cement consumption in Jamaica experienced a slight increase between 2006 and 2007 and decreased in 2008. Consumption is expected to decline further in 2009 due to the worldwide recession. This is supported by global reports that world consumption of cement is forecasted to decline by 1.7 per cent in 2009.⁵

The observations about the consumption of cement are supported by an examination of the activities in the construction sector in Jamaica, which have a direct impact on the demand for cement. In 2009, the construction sector has been characterized by a reduction in activity from all segments of the industry. The sector also continues to be adversely affected by the general

³ Particulars of Complaint – Cement from U.S.A, Volume I, page 4

⁴ Ibid, at page 13

⁵ 2009 Global Cement Consumption stabilization followed by 2010 recovery, July 30, 2009 at http://cementamericas.com/cement_newsline/2009-global-cement-0730/

downturn in the economy, which has resulted in the suspension or delay in some construction projects. The Commission accepts that the decrease in demand for cement correctly reflects the decrease in cement consumption for this period.

VII. IMPORT QUANTITIES OF THE GOODS UNDER CONSIDERATION

Section 26 (2) of the Act provides that to be actionable, the volume of the dumped imports (actual or potential) should not be negligible. The volume of the dumped imports is not considered negligible where it accounts for at least three (3) per cent of imports of the like product to the importing country.

The Commission found that the volume of imports is not negligible and therefore complies with the statutory threshold.

VIII. EVIDENCE OF DUMPING

The Complaint alleges that there is injurious dumping into Jamaica of Ordinary Portland Grey cement and Portland Blast Furnace Slag cement originating in or exported from the United States of America.

Dumping occurs where the Normal Value of the goods exceeds the Export Price of the goods.

$$\text{i.e. } NV > EP = \text{Dumping}$$

The normal value of goods imported into Jamaica, also referred to as the fair market price is the price at which like goods are sold in the ordinary course of business or trade for domestic consumption in the exporting country in accordance with section 3 of the Customs Duties (Dumping and Subsidies) Regulations 2000 (“Regulations”). The export price of goods shipped to Jamaica is generally the exporter’s sale price or the price at which the importer has purchased or agreed to purchase the goods as provided in section 19 of the Act. A fair comparison of the normal value and export price is required by the Act and Regulations whereby adjustments are made for costs, charges and expenses that would affect price comparability, as these become available to the Commission. The adjustments are necessary in order to obtain the prices of goods at the factory door, referred to as the ex-factory normal value and the ex-factory export price. These are discussed below.

A. NORMAL VALUE

As the basis for obtaining the normal value, the Complainant provided information on the sales of cement in the United States market, in particular the local Florida market for sacked or bagged and bulk cement from the manufacturer to the distributor. The Complainant also estimated the ex-factory normal value, furnishing information reasonably available to it regarding appropriate adjustments, such as discounts, packaging and movement expenses. The information provided general home market sales. The Complainant submits that the ex-factory normal value to cement customers in Florida was US\$109.07 for sacked cement, after making adjustments for discounts, transportation, packaging and other costs.

The Commission utilized the information provided in the Complaint and conducted independent research, where possible at this stage, to assess the domestic industry's estimates and found them to be reasonable. The Commission considers the price for bagged cement in the United States home market comparable, allowing for fair comparison with bagged cement exported to Jamaica.

B. EXPORT PRICE

The Complainant submitted a constructed export price estimate. The Commission accepted that the Complainant might lack available information sufficient to provide actual export prices. By virtue of section 20 of the Act and section 11 (2) of the Regulations, the export price can be constructed in circumstances where in the opinion of the Commission, sufficient information has not been furnished or is not available to enable the determination of the export price.

The Commission was able to derive estimates for export prices based on information received from the Jamaica Customs C-87 Forms and supporting Invoices and from Fiscal Services Limited. These documents would not have been available to the Complainant. The Commission therefore did not rely on the constructed export price provided in the Complaint. Adjustments such as ocean freight, transportation and packaging were made based on the information filed in the case, research and other information in the possession of the Commission. The estimated ex-factory export prices derived by the Commission are US\$88.23 and US\$78.85. The two estimates are the result of differences in cost and freight for the respective shipments.

The Complainant has not provided any factual information that there is any relationship between the importer and exporter for the purposes of this Report and therefore at this stage the presumption is that there is no relationship between the parties and the purchase of the goods by the importer is at arm's length.

C. ESTIMATED MARGIN OF DUMPING

The margin of dumping refers to the differential between the normal value and the export price expressed as a percentage of the export price. It is arrived at by comparing the estimated ex-factory normal values and to the ex-factory export prices. The calculation of the margin of dumping establishes the difference in the price that the exporter sells the like good to consumers in its own country market (normal value) and the price at which it exports to Jamaica (export price).

The estimated margins of dumping are 24.67% and 39.33% based on estimated ex-factory normal value and export prices in Short Ton. This is a sufficient indication of dumping for the purposes of initiating an investigation.

IX. ECONOMIC CONDITION OF THE DOMESTIC INDUSTRY 2005 – 2009

An examination of the Annual Reports of the domestic industry for the period 2005 – 2008 reveals that CCCL's total revenues have increased by 49.91%, while its total expenses have increased by 36.80%. Profits over the same period have increased by 321.13%. However, closing inventories have increased by 105.66%. Cement production has reduced by 14.24% from 2005 – 2008 and sales of cement have also reduced by 16.48% between 2005 and 2008.

Table 1. Financial Overview of Domestic Industry 2005 - 2009

	2009 2nd qtr. J\$'000	2009 1st qtr. J\$'000	2008 J\$'000	2007 J\$'000	2006 J\$'000	2005 J\$'000
Revenue/Sales	2,595,553	2,322,182	8,642,729	7,721,003	6,632,008	5,765,114
Annual Expenses			7,899,345	7,388,451	6,615,293	5,774,371
Profit/(Loss) after taxation			349,002	405,107	(117,749)	82,872
Inventories			2,500,812	1,482,302	1,663,212	1,216,020
Production -						
Cement			724,528	773,019	760,815	844,843
Clinker			578,067	519,598	604,174	542,114
Imports (tonnes)						
Cement			46,062	25,988	119,032	0
Clinker			75,931	73,799	77,520	101,434
Pozzolan			0	0	0	114,812
Cement Sold (tonnes)						
Local			720,260	807,484	843,295	862,400
Export			28,463	5,964	0	2,762

CCCL indicates that it was forced to focus on exports to help it to recover from losses in sales locally, which it argues is due to “dumped” goods. Exports by CCCL have increased by 930.52% between 2005 and 2008. The domestic industry has indicated that it follows a deliberate policy of timely price adjustments in order to address cost-push inflation. The year 2006 saw the implementation of two (2) price increases which contributed to an increase in revenues. However the company suffered a loss in net profits for the same period. Consumer claims for damages arising from the non-conforming cement that was released into the Jamaican market during February 2006 resulted in sizeable operating losses for the company. Production also decreased the company addressed these quality issues. In 2007, CCCL implemented three (3) price increases and two (2) price increases in 2008, which also contributed to increased revenue, though there was a fall in sales volumes. Based on CCCL’s initially reported revenues for 2009, the Commission has projected that total revenues could follow the increasing revenue trend of 2005 to 2008.

The Complaint indicates that CCCL has made substantial capital investment to increase production capacity and capacity utilisation for the period 2004 to 2008 which amounts to more than US\$177,000,000.00.

X. EVIDENCE OF INJURY

An assessment of whether there is material injury involves an examination of the actual or potential volume of the dumped goods and the consequent impact of the dumped goods on the market prices and on the domestic industry in accordance with section 12 of the Regulations. An

assessment of material injury also involves the identification of trends over time in relation to relevant economic indicators such as import volumes, market share, prices, output levels, sales, inventories, capacity and capacity utilisation rates and various measures of financial performance. The determination of materiality is based on positive evidence of the relevant economic indicators. The measure of materiality must be based on the overall effect of the empirical data taken separately or together or parts of a whole, the effect of which cannot be ignored as inconsequential.

The Complaint alleges that the goods under consideration have been and are being dumped and that the dumping is causing material injury to the domestic industry. In support of this allegation, the Complainant submitted information on price undercutting, price depression and suppression, loss of market share, decline in sales, surplus inventories, reduction in production and capacity utilisation, revenue and profit impairment and increased unit cost of production.

The Commission examined the Complainant's allegations and found that the information and facts submitted satisfied the initiation standard that the evidence disclose a reasonable indication that the dumping has caused, is causing and is likely to cause material injury. The evidence before the Commission at this time more readily supports a finding that the alleged dumping threatens to cause material injury to the domestic industry.

A. PRICE EFFECTS

Price Effects refer to changes in the level of prices in absolute and relative terms that are the direct result of dumped imports into the Jamaican market. This assessment involves an examination of (i) the prices of imported cement in relation to the selling prices of locally produced cement (price undercutting); (ii) the selling prices of the locally produced cement to ascertain any changes relative to previous price levels (price depression); and (iii) the ability of the domestic industry to maintain the margin between its unit cost of production and unit selling price (price suppression.) These are discussed below.

1. Price Undercutting

Price undercutting occurs where the prices at which the dumped imports are being sold are lower than the prices at which the domestic like goods are being sold. Price undercutting may be evaluated based on price comparisons for sales of the domestic and imported goods made under the same conditions at the same level of trade and for the same period.

The Complaint indicates that Tank-Weld offers higher list prices than CCCL. However, the Complainant alleges that there is price undercutting through the provision of "atypical credit terms", "likely discounts for other products" and "drastically under-compensated delivery" of the goods to customers by Tank-Weld which CCCL argues has effectively reduced the prices being offered by Tank-Weld to their customers.

In support of this claim, the Complainant presented evidence of prices for 42.5kg bags, jumbo bags and bulk cement from both Tank-Weld and CCCL that were adjusted to reflect their respective (alleged in the case of Tank-Weld) credit terms. Information was also submitted comparing the Complainant's ex-factory price plus delivery cost and an estimate of the Importer's price from its facility plus delivery cost, which could point to price undercutting in

the Western parishes. The Commission noted however, that this lower cost could be attributable to Tank-Weld's distribution location and proximity to the Rio Bueno port, which would give it the advantage of lower costs of delivery to areas in the Western parishes. No information was submitted in relation to the alleged discounts being offered for other products sold by Tank-Weld.

The Commission observed that whereas the factors alleged by the Complainant could point to price undercutting, the additional information required to reach a conclusion, includes information within the knowledge of the Importer, which would have to await the opening of the investigation.

2. Price Depression

Price depression is the reduction in the domestic industry's selling price, usually the result of downward pressure on prices by some factor such as increased supply in the market or deliberate lowering of prices to remain competitive. This can be assessed on the basis of percentage changes in the domestic industry's prices or trends in the levels of its prices before, during and shortly after the period of dumping.

The Complainant claims to have suffered price depression because it has been forced to absorb transportation costs and offer discounts and rebates in an effort to curb mounting inventories to compete with the unfairly traded imports.

The Commission did consider the net selling prices of the domestic industry over the POI to take account of discounts, rebates and credit charges offered in assessing the actual price of goods sold. The Commission found some indication of price depression.

3. Price Suppression

Price suppression is the inability of the domestic industry to make reasonable price increases in order to pass on increased cost to its customers. This is generally indicated by the shrinking of the margin between unit cost and selling price of the domestic like good.

The Complainant contends that it has experienced price suppression as the direct result of a reduction in sales and market share from May through to July 2009 due to dumped cement from the United States in the local market. Information and data on loss of sales and market share were relied on in support.

Upon assessing the information and data, the Commission observed that the average sales price decreased whilst the cost of sales increased for the same period. The Complainant has also indicated that it has had to absorb transportation costs. This information provides a reasonable indication that price suppression could in fact be occurring.

B. VOLUME EFFECTS

The examination of Volume Effects involves the assessment of the impact of the presence of the goods under consideration on the domestic industry as can be statistically measured by changes in quantities of the domestically produced good. The quantity assessment looks at changes in

sales volumes and how these changes affect the domestic industry's market share, production output and the volume of inventory carried.

1. Production

The Complainant alleges that the dumped imports from the United States have resulted in significant reductions in output, productivity and capacity utilisation. In addition, the domestic industry has been forced to curtail production due to displaced sales caused by the dumped imports. The Commission examined the information available on downtime of the domestic industry's mills and reduced production due to full silos, as well as increasing clinker and finished product inventories.

The Commission found that the data showed a decline in production quantities during the period of investigation.

2. Inventory

Changes in inventory levels can indicate injury to a company or industry. The Complainant indicates mounting inventories in the face of which it has offered market-wide discounts in an effort to reduce inventories.

The Commission examined the production and inventory quantities from 2006 to July 2009. Inventory volumes during the three months May to July 2009 have increased by 18% over the prior three months and 21% over the same period last year. These appear to be significant variances in inventory volumes. The Complainant attributes its higher inventories to the presence of the allegedly unfairly traded imports in the Jamaican market.

The Commission will in the course of the investigation examine closely the trends in the quantities over similar periods in previous years to test whether this attribution is appropriate.

3. Sales and Market Share

The Complaint contends that sales and market share declined from May 2009 through to July 2009 as dumped cement was sold in the local market. Evidence in the form of sales and market share data was submitted for the period 2006 - 2009. The Commission reviewed the data and found that there was a decline in sales for the period May – July 2009 when compared to previous years. The evidence also revealed a clear decline in CCCL's market share in May – July 2009 compared to the similar period in 2008.

C. ECONOMIC IMPACT

The Commission examined the economic impact of the allegedly dumped goods on the Jamaican industry.

1. Revenue

The Complainant submits that it was forced to accelerate its export programme and prematurely initiate exporting from Jamaica as a result of domestic sales lost to dumped imports. This

acceleration, it argues, resulted in loss of revenue to CCCL since the revenue generated from export sales is less than that generated by domestic sales due to higher sales and transportation costs and other factors.

The Commission analysed the information and data submitted by the Complainant on domestic and export sales, which revealed a reduction in revenue from domestic sales for 2009 when compared to the prior year. The Commission will require more information during the investigation in order to analyse the claim of revenues foregone as a result of supplementing domestic sales by exports.

2. Profitability

Profitability refers to an excess of revenues over the cost of generating those revenues. The Complaint claims that the domestic industry has suffered substantial material injury by reason of the less than fair value imports through revenue and profit impairment coupled with increases in the unit cost of production.

The Commission found that the information submitted substantiated the claim of increased cost of production combined with a reduction in revenues, resulting in reduced profits and thus, profitability.

3. Return on Investment

Return on Investment (ROI) measures the level of profits in relation to the level of investments or capital employed in generating those profits.

The Complainant does not make a claim that there is yet an actual decline in its return on investments. It contends that there is a threat of such decline in ROI. The Commission found that a conclusive assessment of the potential impact of the allegedly dumped goods on the domestic industry's return on investment in light of its "Expansion and Modernisation Programme" will require the examination of additional information during the investigation. The Commission found that the potential reduction in the company's ROI, has to be considered further in its analysis of threat of injury to the industry. This is referenced below.

4. Cash Flow and Ability to Raise Capital

The Complaint does not allege any impact on the domestic industry's cash flow or ability to raise capital by the allegedly dumped imports.

The Commission has no information from the industry or other research to assess at this time.

5. Employment & Productivity

CCCL maintains that its employees are adversely impacted by virtue of the dumped imports from the United States of America on the local market. The Complainant asserts that a decrease in production reduces the number of man hours needed to sustain its level of production, threatening employees.

However, the Commission notes that the Complaint does not state that employment has been affected by the dumped imports. The Complaint contends that there are potential adverse effects on employment and wages as a result of the dumped imports.

The information before the Commission revealed no observable effect on employment and productivity at this time. The Commission noted the argument as it relates to threat of material injury, which is analysed below.

6. Capacity Utilisation

The Complaint contains allegations that CCCL's capacity utilisation has been negatively impacted by the importation of the dumped cement. Data offered in the Complaint to support the allegation appears sufficient to support this observation. The Commission reserves on this matter and notes that it will conduct a close examination and deeper analysis of the expanded capacity that the company now has during the course of the investigation.

D. ADDITIONAL INJURY FACTORS

7. Exports

CCCL was successful in generating export sales over the POI.

CCCL contends in its submission that its strategic goal is to first supply the domestic market before exporting cement. The company notes that the expenses of selling, transportation and other factors related to export sales results in less revenue being generated from export sales compared to domestic sales.

The Commission notes that the company's export activity commenced prior to the presence of the goods under consideration in the Jamaican market. The domestic industry will be invited to substantiate its submission that the acceleration of its pre-planned export programme resulted from the presence of allegedly dumped exports and that loss of revenue has in fact or demonstrable is likely to result from such acceleration of exportation.

XI. THREAT OF MATERIAL INJURY

In accordance with section 13 of the CDDSA Regulations, a determination of threat of material injury may be made only where a particular situation is likely to develop into material injury. This development must be clearly foreseen and imminent.

The factors to be considered in making a determination that there is a threat of material injury are provided in sections 12 and 13 of the Regulations. They can be divided into three categories:

- (i) those factors that relate directly to the ability and capacity⁶ of the exporter to potentially increase the supply of dumped imports into the Jamaican market;

⁶ Capacity that is sufficient, freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the Jamaican market, **taking into account the availability of other export markets to absorb any additional exports.**; WTO Handbook on Anti-dumping Investigations.

- (ii) those that relate to the exporter's ability to indirectly affect the local industry's ability to supply its product to the Jamaican market and remain competitive⁷ (these factors would also impact on the future performance of an industry); and
- (iii) any other factors that may be deemed relevant in the circumstances (whether specific to the firm's operations or economy wide).

The Complainant contends that the threat of material injury to the industry is imminent, clearly foreseeable and substantiated by all the information in the Complaint. In addition to the factors already outlined with respect to threat, the Commission examined additional factors relating to the threat to the domestic industry of material injury.

1. Potential to Increase Supply to the Jamaican Market

The Complainant provides information on several factors that point to the potential for substantial increase of supply of the dumped goods to the Jamaican market. These factors include facts that will be examined in the context of the investigation, the major one being that Vulcan Materials has a contract with Tank-Weld to supply cement to Jamaica for ten years; that Vulcan Materials has freely disposable export capacity in light of the excess capacity of the cement industry in the United States and therefore, that the company is seeking to increase exports in order to maintain capacity utilisation in the face of a declining home market.

1.1 Rate of Increase of Dumped Imports

The Complaint has provided information that will be investigated further, that a public declaration was made by Tank-Weld's Chief Executive Officer of Tank-Weld's intention to obtain 15% share of the Jamaican cement market. Further the Complainant indicated that Tank-Weld has constructed a \$1.2 billion port development at Rio Bueno and leased a cargo ship to facilitate the rapid flow of cement imports from the United States. The existence of the port was verified by the Commission's research.

The Complainant has not submitted information on the availability of other export markets to absorb the expected excess, which is typically a part of this assessment. The Commission is of the view that the global recession is also relevant.

1.2 Export Capacity

The Complainant indicated and the Commission verified by review of cement publications available to it and by reasonable deduction, that there is a decline in the demand for cement in the United States market. The Complainant also suggests that the contracted market demand has resulted in a reduction in cement production.

Evidence submitted is that cement production in the United States fell from 98,167,000 MT in 2006 to 87,700,000 in 2008. This represents a 10.7% decline over the period due to the decline in the demand in that country for cement. The Commission agrees that with the reduced demand in the United States market, cement producers such as Vulcan is likely to be seeking to export to other markets in order to maintain capacity utilization. This view would garner support from

⁷ These may include Price suppressing or depressing effects, such as whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase the demand for further imports; WTO Handbook on Anti-dumping Investigations

information that Vulcan Materials has the third largest production capacity for cement in Florida at its Florida Rock Division coupled with the proximity of the Jamaican market to Florida relative to other export markets.

1.3 Increase in Inventory Levels of the Goods under Consideration

The existence of inventories of the dumped goods can indicate the possibility of further import penetration and reductions in the market share of the Complainant. The Complaint did not provide any information on the existence of inventories of the allegedly dumped goods. The Commission accepted that an accurate assessment of this factor would require information not available to the Complainant.

2. Threat of Material Injury Factors – Price Depression or Suppression and An Increase in the demand for further imports

The Commission is of the view that the cement market is price elastic and changes in the price of cement are likely to result in comparable changes in the level of demand. In light of Vulcan's unused export capacity and a multi-year contract for exports into Jamaica, there is a sufficient indication that the goods under consideration could have significant price depressing and suppressing effects on the domestic market prices in the immediate future.

2.1 Magnitude of The Margin of Dumping

The magnitude of the margin of dumping is an indication of the extent to which injury can be attributed to the dumped goods. The magnitude of the estimated margins of dumping of 24.67% and 39.33% are sufficient to provide a reasonable indication of the extent to which the domestic industry has been or can be injured by the dumped goods.

The Commission is of the view that there is a reasonable indication of threat of material injury based on the information before it at this time. On consideration of all the factors the Commission finds that the evidence discloses a reasonable indication of threat of material injury to the domestic industry by imports of the dumped cement. While the adverse effects on the domestic industry cannot be totally attributed to the dumped cement from the United States, it does appear to have an impact by its presence in the market.

XII. CAUSATION

a. Causal Link

In accordance with Article 3.5 of the WTO Anti-dumping Agreement and Section 22 paragraphs (2) and (4) of the Act, the Commission must find that the evidence before it discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury. It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of the Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Commission.

The Commission examined all the evidence provided by the Complainant and also records retrieved thus far from Fiscal Services, STATIN, BSJ, as well as corporate documents publicly available. The Commission concluded that the information and facts on the record thus far disclose a reasonable indication that the dumping is, at the very least, likely to cause material injury.

b. Non-Attribution Analysis

Article 3.5 of the WTO Anti-dumping Agreement also requires the Commission to examine any **known factors other than the dumped imports** which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. It has been recognized that investigating authorities are not required to scientifically separate by quantitative means such as econometrics the impact of other factors on injury that is observed in respect of the domestic industry. As long as one cause of injury is the dumped product, causation may be deemed to exist.

The Commission recognized the existence of factors other than the dumped imports, which at the same time could be negatively affecting the domestic industry under the broad headings: macroeconomic influences, discretionary governmental policy changes affecting the importation of cement, developments in technology, contraction in demand or changes in the pattern of consumption for cement, production capacity, export performance and productivity of the industry and imports other than the goods under consideration to the Jamaican market.

XIII. DECISION

For all the reasons outlined in this Statement of Reasons, the Anti-dumping and Subsidies Commission finds that there is sufficient evidence of dumping, causing at least threat of material injury to the domestic industry that produces like goods identified herein, and has therefore decided to initiate an investigation in accordance with section 22 of the Act with respect to the dumping of Ordinary Portland Grey cement and Portland Blast Furnace Slag cement originating in or exported from the United States of America.

ADDITIONAL GENERAL INFORMATION

Interested parties are invited to file written submissions presenting facts, arguments and evidence relevant to the alleged dumping or injury. Interested parties not named in this Statement of Reasons should identify themselves to the Commission as such, as soon as possible, so the Commission may forward to them the guidelines and timelines for filing 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 thirty (30) days of the date of initiation.

Parties are asked to note that any information submitted to the Commission by interested parties concerning this investigation is deemed to be Public information, unless clearly marked Confidential. Where an interested party makes a submission which it claims to be Business Confidential information, a Non-confidential version of the submission (which adequately summarizes the information in the Confidential submission) must be provided at the same time. The Non-confidential (or Public) version will be made available to other parties and the public upon request.

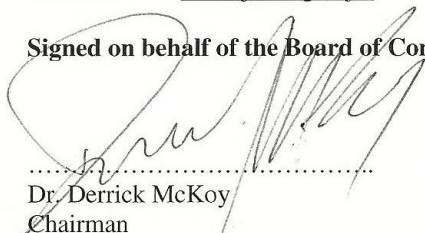
This Statement of Reasons along with the Notice of Initiation of this investigation has been provided to interested parties to these proceedings. For further information, please contact the Commission as follows:

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Signed on behalf of the Board of Commissioners,



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Dr. Derrick McKoy
Chairman
ANTI-DUMPING AND SUBSIDIES COMMISSION