



## ANTIDUMPING & SUBSIDIES COMMISSION

24 Trafalgar Road ~ Kingston 10 ~ OR ~P.O. Box 494 ~ Kingston 5 ~Jamaica

Phone: 968-7970, 920-1493/7006, 929-7973 ~ Fax: 926-4622

Email: [antidump@cwjamaica.com](mailto:antidump@cwjamaica.com)

# STATEMENT OF REASONS

**KINGSTON, JAMAICA**  
**July 2, 2002**

**REF. No. AD-01-2002**

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

*AND IN THE MATTER OF* the **Final Determination** by the Anti-Dumping and Subsidies Commission, pursuant to section 30 of the Customs Duties (Dumping and Subsidies) Act, 1999.

*IN RESPECT OF* the dumping in Jamaica of Ordinary Portland Grey Cement, originating in or exported from Indonesia.

### **I. SUMMARY**

On January 3, 2002, the Commission initiated an investigation pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act, 1999 (hereinafter known as “the Act”) into the alleged injurious dumping into Jamaica of Ordinary Portland Grey Cement originating in or exported from Indonesia.

The investigation was initiated in response to a complaint filed by Caribbean Cement Company Limited of Kingston, Jamaica.

The Commission made an affirmative Preliminary Determination on April 3, 2002 that the goods under consideration had been dumped and were likely to cause material injury to the domestic industry. Further, the Commission indicated that the evidence on the record, at that time, did not support an affirmative Preliminary Determination concerning the imposition of retroactive duties at the Final Determination. The Commission also found that neither the estimated margin of dumping, nor the volumes of dumped goods imported was *de minimis*, and instructed that provisional duties in the amount of 56.21 per cent should be imposed.

As a result of the investigation subsequent to the Preliminary Determination, the evidence has revealed and the Commission is satisfied that the goods under consideration have been dumped, that the margin of dumping is not *de minimis*, that the volume of dumped goods is not negligible and that the dumping of the goods under consideration is likely to cause material injury to the domestic industry. Accordingly, the Commission has made an Affirmative Final Determination in accordance with section 30 of the Act and has decided to impose a definitive anti-dumping duty, in the amount of 9.98 per cent on goods which are the same description as those to which the Final Determination applies, effective July 2, 2002. Furthermore, the Commission found that the facts of the case do not support an affirmative Final Determination in relation to the imposition of retroactive anti-dumping duties on goods that entered Jamaica between the dates of Initiation and Preliminary Determination.

## **II. PARTIES TO THE INVESTIGATION**

**The Complainant** 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.

**The Importer** is Mainland International Limited, also referred to as “Mainland,” with registered offices located at 8 March Pen Road, Spanish Town, and St. Catherine. Mainland is in the business of importing hardware items, commodities, and pharmaceuticals for wholesale and retail sales across Jamaica. It also manufactures zinc for sale.

**The Exporter/Producer** is PT Semen Cibinong TBK, also referred to as “Cibinong,” with registered offices located at Bidakara Building, 10<sup>th</sup> Floor, Jalan Jendral Gatot Soebroto Kav 71-73, Jakarta 12870 Indonesia. Cibinong is in the business of producing cement.

**Other Parties** are International Materials Incorporated, hereinafter referred to as “IMI”, with offices at 936 County Lane Road, Bryn Mawr, Pennsylvania 19010, USA. Blue Atlantic Investments Limited, hereinafter referred to as “Blue Atlantic”, with offices at The Courtyard, 12 Hellier St., St. Hellier Jersey, Channel Islands and a mailing address at P.O. Box 1246, South Independence Square Str., Basterre, St. Kitts, West Indies. Harricrete Limited hereinafter referred to as “Harricrete” with offices located at Las Lomas No. 2, Trinidad and Tobago.<sup>1</sup> The Importer claims that IMI and Blue Atlantic are in the business of providing logistic support. The Complainant claims that these two entities are in the business of buying and selling commodities on the international market.

---

<sup>1</sup> In the Statement of Reasons at Initiation, case no. AD-01-2002 dated January 3, 2002, the Commission identified Harricrete Limited as one of the other parties associated with this case. This was based primarily on the Complainant’s submissions that made reference to Harricrete as an interested party. At the Preliminary Determination, the Commission was in the process of attempting to verify Harricrete’s connection to the subject transactions. The Commission reviewed additional information from the Complainant concerning Harricrete’s involvement in the shipment of cement from Indonesia to Jamaica. However, the Commission could find no evidence to substantiate the Complainant’s allegation that Harricrete is involved in the transactions from shipping documents or any other documents on the record, including letters of credit related to the shipments of cement.

### **III. BACKGROUND**

On November 1, 2001 CCCL submitted a complaint alleging that Ordinary Portland Grey Cement originating in Indonesia was dumped. The Complainant also claimed that the alleged dumping of the goods under consideration has caused, is causing and/or is likely to cause material injury to the Complainant.

On December 6, 2001 the Commission received supplemental information from the Complainant consisting mainly of detailed financial data for the period of investigation. On November 22, 2001, the Commission had requested this information and after its receipt the Commission informed the Complainant, by letter dated December 13, 2001, and the Government of Indonesia, by letter dated January 3, 2002, that the complaint was properly documented.

On January 3, 2002, the Commission initiated an investigation pursuant to section 22 of the Act into the dumping of Ordinary Portland Grey Cement originating in or exported from Indonesia. Subsequently, in furtherance of its investigation the Commission forwarded questionnaires to Cibinong and Mainland as well as Indocement Tunggal and PT Semen Gresik (other Indonesian cement producers).<sup>2</sup> All parties were required to provide responses within a thirty-seven day period, which expired on February 8, 2002.

The Commission granted Cibinong an extension of the February 8 deadline to February 20 on specific sections of the Commission's questionnaire and maintained the February 8 deadline for the remainder. On February 11 and 21, Cibinong transmitted its responses to the Commission. The responses did not conform to the Commission's filing requirements, in that the required number of copies and supporting documentation were not filed and Cibinong failed to serve a copy of the non-confidential version of its submission on the other parties involved. The Commission reminded Cibinong of its obligations and the ramifications for non-compliance and assumed the responsibility of distributing copies of Cibinong's non-confidential submission to all other parties. The Commission has followed the same procedure with all subsequent submissions by Cibinong.

Based on a review of the responses submitted, the Commission forwarded supplemental questions on March 6, 2002 to all parties and advised that responses were due on March 13, 2002. Parties were advised of the importance of meeting the deadlines in order to have the information considered in the making of the Preliminary Determination. The Commission had received responses to the supplemental questions from Mainland, CCCL, Cibinong and Blue Atlantic in time for consideration in the Preliminary Determination. The response from IMI was received on April 3, 2002 and was considered in the making of the Final Determination.

Specifically, in relation to the question of whether the goods produced for consumption in Indonesia and the goods produced for export to Jamaica were like goods for the purposes of determining the normal value, the Commission sent an addendum of follow-up questions to Cibinong on March 15,

---

<sup>2</sup> While neither PT Semen Gresik nor Indocement Tunggal shipped cement to Jamaica, the Commission asked questions of them with a view to ascertaining Indonesian market information from third parties. Indocement declined to participate in the investigation. The Commission received a response from Gresik on March 25, 2002 indicating its intention to respond and requesting an extension, which the Commission granted. The Commission revised its questionnaire and narrowed the questions focussing on receiving information relevant to determining normal values. Gresik provided an incomplete response which the Commission was unable to use in its analysis.

2002, requesting specific information on the similarities and differences between the OPC Type I sold in Indonesia and the OPC Type I sold for export. These responses were due on April 24, 2002 and have not been received to date.

On April 29 the Commission sent out supplemental questions to all parties. The purpose of these requests for information was to identify and reiterate all questions for which the Commission had not received responses and to make specific requests for certain source documents which the Commission intended to use in order to verify some of the information it had received via submissions by that date. On May 27 and May 29 responses were received from all parties except Cibinong that has not responded to any of the Commission's requests made subsequent to the making of the Preliminary Determination. The Commission is aware that Cibinong has received the requests for information, although there has been no acknowledgement of the Commission's communications.

With each request for information the Commission has reminded all parties that a failure to respond or an unsatisfactory response to the Commission's request for information, could result in Commission's use of "facts available," pursuant to sections 4(6) and 10 of the Act, in the making of its determination. (Please refer to detailed discussion on Facts Available in section X of this document.)

On May 31, 2002 and June 3, 2002 the Commission conducted verification visits on the premises of CCCL and Mainland respectively.

#### **IV. SCOPE OF THE INVESTIGATION**

For the purpose of this investigation, the Commission defines the scope of the investigation as:

***ORDINARY PORTLAND GREY CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES ORIGINATING IN OR EXPORTED FROM INDONESIA.***

The narrative definition above represents the scope of the investigation notwithstanding the tariff classifications below. The scope of the investigation includes, but is not limited to, the following tariff classifications which are provided for Customs' purposes.

Under the Harmonized System (HS), the Ordinary Portland Grey Cement, which is the subject of the investigation, is classified under tariff item number 25.23 as follows:

<b>HS CODE</b>	<b>PRODUCT DESCRIPTION</b>	<b>DUTY APPLICABLE</b>
<b>25.23</b>	Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinkers.	15%
<b>2523.10</b>	Cement clinkers	Free
<b>2523.20</b>	Portland cement:	
<b>2523.21</b>	White cement	Free
<b>2523.29</b>	<b>Other:</b>	
<b>2523.291</b>	<b>Building cement (grey)</b>	15%
<b>2523.292</b>	Oilwell cement	Free
<b>2523.299</b>	Other	Free
<b>2523.30</b>	Aluminous cement	Free
<b>2523.90</b>	Other hydraulic cements	Free

#### **A. GOODS UNDER CONSIDERATION**

The scope of the investigation includes the goods under consideration defined by the Complainant; the Commission finds support for the above tariff classifications for OPC imported from Indonesia from the relevant Customs C-78 entry forms. The goods under consideration were labelled as OPC Type I. However, the scope of the investigation includes all cement types, because the Complainant claims, and the Commission agrees, that in the Jamaican market all OPC types are substitutable and are thus a single fungible commodity. The scope of the investigation has been defined more narrowly than that alleged by CCCL in its complaint, because the Commission has excluded oilwell cement (2523.292), as it is a specialized product with unique properties unlikely to be imported into Jamaica as a substitute to OPC.

The goods under consideration fall within:

- The American Society for Testing and Materials (ASTM) C150-85 Standard Specification for Portland Cement,
- The British Standard Specifications BS 12:1996; and
- The Jamaican Standard Specifications JS32: Part 1:1999.

The Commission found that, on the Customs Entry (C-78) documents, the goods under consideration (OPC) were categorized under the general tariff heading 2523.29, which is listed as “other” (see the Table above). The Commission’s review of the Tariff Schedule revealed that the goods could be classified under the more specific heading, 2523.291 – “Building cement (grey)”. On this basis, the Commission determined that the scope of the investigation should encompass goods imported into Jamaica under both the general and more specific tariff headings.

## **B. PHYSICAL CHARACTERISTICS AND USE**

Ordinary 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. Over 90% of the cement consumed has no substitute for its use.

The goods under consideration in this case have been labelled and imported as OPC Type I. The Complainant alleges that the goods under consideration conform to those technical industry standards accepted worldwide and developed by the American Society for Testing and Materials (ASTM), specifically ASTM C-150 for cement Type III. Portland Cement Type I differs from Type III cement. Type I is considered a general purpose cement and Type III a speciality cement, in that Type III is used when the particular project requires that the cement attain a “high early strength.”

The Importer refers to the goods under consideration as a “Type I... a more finely ground material such that the grain size meets the Jamaican standard of ‘rapid hardening.’ Its strength development is significantly superior to the like good produced locally”. At the Preliminary Determination, the Commission indicated that it was pursuing further investigations to determine whether the comparable product in Indonesia to that which is exported to Jamaica is a Type I or a Type III, as this could affect its normal value calculations. The Commission uncovered no evidence to suggest that the goods exported to Jamaica and referred to as OPC Type I were different from the OPC Type I sold on the Indonesian market.

## **C. PRODUCTION PROCESS**

Typically, two different processes, dry and wet, are used in the production of Portland cement. The goods under consideration are produced using the dry process. Portland Cement is a closely controlled combination of calcium, silica, 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.

Rock mined from a quarry is crushed in either one or two stages, 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 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 the wet process, the raw materials are ground with water and fed into the kiln as slurry. This process is used where the limestone, shale and clay are soft. Later on in the process, additional energy is used to remove the excess water. 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 CO<sub>2</sub>). Finally, in the hottest section of the kiln near the tip of the flame, the final chemical reactions occur and the materials fall out of the kiln into a cooler where they are air quenched. The remaining elements unite to form a new substance with new physical and chemical characteristics. The new substance is called clinker. Once cooled, the clinker nodules are ground with a small amount of gypsum (the amount of gypsum will control the setting times) and a fine powder is produced. Only then is it called cement.

## **V. LIKE GOODS**

Section 2 of the Act defines like goods, in relation to any other goods, as goods which are identical in all respects with those other goods, or in the absence of identical goods as aforesaid, goods for which the uses and other characteristics closely resemble those of the other goods. In order to establish whether the domestically produced goods are like goods to the goods under consideration a number of characteristics are examined; physical and chemical characteristics, production process, end-use, distribution methods, substitutability and competition and quality and performance characteristics.

The OPC produced by the domestic industry emerges from a similar production process as the goods under consideration. The physical and chemical characteristics of the domestically produced goods and the goods under consideration are substantially the same, each being Portland grey cement conforming to the requisite industry standards accepted worldwide. With regard to quality and performance characteristics, there is no information on the record to suggest that consumers perceive that either the domestically produced goods or the goods under consideration is better than the other. Furthermore, the rapid hardening feature of the goods under consideration is not such that it could be considered material and thus render the goods dissimilar. The distribution methods of the domestically produced goods and the goods under consideration are the same and there are no major differences in function and use between the goods under consideration and the domestically produced goods. Mainland and CCCL agree that the domestically produced goods and the goods under consideration are directly substitutable for and compete with each other.

Therefore, the Commission is satisfied that the goods under consideration and the domestically produced goods closely resemble each other in uses and other characteristics and thus relative to the goods under consideration (previously defined in the section on scope), the domestically produced goods are considered to be like goods.

## **VI. PERIODS OF INVESTIGATION**

The period of investigation (POI) is the timeframe selected for which imports into Jamaica will be assessed to determine whether the imports from the named countries have been dumped and, if so, the effect of the dumping.

The POI for dumping commences one year prior to the date of initiation, that is January 4, 2001 through January 3, 2002. The goods under consideration were first imported in September 2001 and then again in February 2002. Both these shipments have been examined in the dumping analysis.

The POI for the injury analysis commences three years prior to the date of initiation, that is January 4, 1999 through January 3, 2002. For purposes of the Final Determination, the Commission has analysed information provided by the Complaint for the period up to and including May 2002.

## **VII. THE DOMESTIC INDUSTRY**

CCCL is the sole producer of Ordinary Portland Grey Cement in Jamaica and thus its production accounts for 100 per cent of the like goods produced in Jamaica.

Accordingly, the Commission is satisfied that the Complainant represents more than 25 percent of the total Jamaican production of the like goods and that the complaint has been made by or on behalf of the domestic producers of like goods because the complaint is supported by a domestic producer whose collective output constitutes more than 50 per cent of the total production of like goods. Thus, the complaint submitted by CCCL has met the threshold for standing set forth in section 22 (2)-(4) of the Act.

## **VIII. THE JAMAICAN MARKET**

Prior to July 1999 the Complainant was the sole supplier of cement to the Jamaican market, after which it encountered competition from the Importer. The total supply of cement in the Jamaican market is now determined by the relative availability of cement from these two sources.

In 2000 annual demand for cement had remained relatively flat relative to its 1999 levels. However, in 2001 consumption grew by approximately 4.51 per cent over its 2000 levels. Given the decline in demand in the last quarter of 2001, as a result of adverse weather conditions and the containment of capital expenditures in 2001 that led to a number of projects being set back, it is likely that demand would have registered a higher level of growth. The record evidence reveals that while total consumption grew in 2001, CCCL sales remained relatively flat, while Mainland's sales grew over the same period.

At the Preliminary Determination, the Commission was of the view that, in 2002, it is possible that there would be a boost in the demand for cement emanating from remedial work to bridges, roads, and buildings that were damaged during the flood rains in late 2001 as well as the resumption of those projects that were set back as a result of expenditure cuts towards the end of 2001. However, the rainfall experienced in the second quarter of 2002 will affect this outcome, and it is still early to ascertain the impact that these recent floods will have on the sector.

## **IX. ECONOMIC CONDITIONS OF THE DOMESTIC INDUSTRY**

The Jamaican industry has seen steady improvements in growth, stability and profitability over the five-year period 1997-2001. After making losses for the years 1997 and 1998, CCCL underwent major restructuring in 1999, which eliminated its long-term debt and the consequent finance charges. Reported operating profits for 1999 represented a significant turnaround in CCCL's performance. Notwithstanding further competition in the market in 2000, additional improvements in profitability were made. However, reported operating profits in 2001 declined relative to their 2000 levels.

In order to assess the industry's true operational efficiencies, the Commission adjusted the reported profits for exceptional items, finance charges and any amortized gain or loss. This reveals that the



operating losses reported for 1997 and 1998 were not as a result of operating inefficiencies and further that the improvements reported for 1999 and 2000, were not as buoyant as they appear when evaluated in isolation. Generally, the figures indicate that, after a small contraction in growth in 1998, CCCL has shown steady growth in its profitability to the year 2001. The performance in 2001, after making these adjustments, represented an improvement over 2000 due mainly to gains in sales revenues and reductions in costs. The improvement in sales revenues was due mainly to strategic adjustments made by CCCL.

CCCL's production has fallen short of market requirements in previous years. However, at the beginning of 2001 there seemed to be a reversal of this trend. In fact, the production in 2001 represented the highest level since 1997, with levels for 2001 exceeding the 2000 levels by 14.37 per cent. The Commission has observed a positive correlation between reported imports of clinker and increased cement production in June, August and September 2001, which would account for increased annual production levels relative to 2000. CCCL's production for the last five years averaged just under 550,000 MT which would indicate that CCCL's production capacity has not met the required consumption demand of approximately 650, 000 MT per annum.

The overall trend for CCCL has been a return to profitability. Support for this position is found in the Chairman's Statement from CCCL's Annual Report for the year ended December 31, 2000. The payment of a dividend in 2000, the first since 1997, is an indication of renewed profitability and confidence in the renewal of CCCL's fortunes and the ability to maintain an increasing level of returns. However, it should be noted that improvements in the operating results since 1998 have been largely attributable to the reduction in finance charges and not necessarily to any significant improvements in sales and operating efficiency. Profitability as measured by the return on investment, even though still below the benchmark national Treasury bill rate of 17.32 per cent has shown improvement to over 11.84 per cent in 2000 and a further improvement to 16.11 per cent in 2001.

## **X. USE OF FACTS AVAILABLE**

In section 4(6) and 10 of the Act, the Commission is given the discretion to use facts available in making its finding.

Section 4(6) of the Act states that:

The Commission may require the importer of any goods or such other person as the Commission considers appropriate, to state within such time as the Commission shall specify such facts concerning the goods and their history as it may think necessary to determine whether the goods are being dumped or subsidized and if such information is not furnished to its satisfaction, the Commission may make a finding as to such facts on the basis of the information available to it. (emphasis added)

Section 4(6) gives broad discretion to the Commission for making a finding on the basis of the facts available to it, in relation to the goods and their history. For the use of available facts in this scenario, the threshold is that information has not been furnished to the Commission's satisfaction. In this section, the Act contemplates that the Commission will turn to other facts on the record and base its findings on those facts.

Unlike section 10 of the Act, section 4(6) does not direct the Commission to have regard to Annex II of the WTO Anti-dumping Agreement<sup>3</sup> in making its determination on the basis of facts available. Consequently, how the available facts should be used, pursuant to section 4(6), is not expressly confined to the manner outlined in Annex II of the WTO Anti-Dumping Agreement.

Section 10 of the Customs Duties (Dumping and Subsidies) Act states that:

Where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Commission may make such determination as it thinks appropriate on the basis of the facts available and, for the purposes of this subsection, the Commission shall have regard to the provisions of Annex II of the Anti-dumping Agreement.

Section 10 deals essentially with parties that are uncooperative throughout the investigation process. In this context, the Commission's discretion in making determinations on the basis of the available facts must be exercised with regard to and in the manner provided for in Annex II.

Annex II sets forth certain considerations that the Commission should take into account and a simple procedure that it should follow before making its determination on the basis of facts available. Specifically, the Commission should give notice of its intention not to accept the information presented and thereafter give the presenter of said information the opportunity to cure the defect. If the information provided to cure the defect is considered not satisfactory by the Commission then the reasons for the rejection of such evidence and information should be given in any published determinations. Annex II sets forth rights and responsibilities on the part of both the Commission and the parties, when the Commission must resort to using "facts available", and effectively injects additional elements of transparency and fairness in the investigation process.

When the Commission has resorted to using facts available in the making of this Determination, it has been as a result of the contemplation of the abovementioned sections, and the Commission has ensured that in doing so, it has complied with Annex II of the WTO Antidumping Agreement.

## **XI. EVIDENCE OF DUMPING**

Dumping occurs when the normal value of the goods exceeds the export price of the goods shipped to the country of import. This investigation relates to the injurious dumping into Jamaica of Ordinary Portland Grey cement, originating in or exported from Indonesia.

The normal value of the goods is the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country. The export price of goods shipped to Jamaica is generally the transaction price to the importer in Jamaica. Both prices are adjusted for any costs, charges and expenses that would affect price comparability. The normal value and export price are discussed below.

---

<sup>3</sup> The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement) provides the international framework of rules and obligations concerning the conduct of dumping investigations on which Jamaican legislation is based.

**A. NORMAL VALUE**

In keeping with its analysis at Initiation and at the Preliminary Determination, the Commission has used Indonesian prices for cement, specifically manufacturer to distributor prices, as the basis for normal value calculations. Indonesia is considered a viable export market, because the volume of sales in Indonesia accounts for at least 5 per cent of the volume of exports to Jamaica over the period of investigation.

The price that the Commission has used as the base price for the normal value calculations, is based upon evidence furnished by both the Complainant and the Exporter, that is the manufacturer to distributor prices.

**B. EXPORT PRICE**

Section 19 of the Act addresses the determination of the export price of the goods under consideration. It states in pertinent part that:

The export price of the goods sold to an importer in Jamaica, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of –

- (a) the exporter's sale price for the goods adjusted by deducting therefrom [export price adjustments]..., and
- (b) the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting therefrom all costs, charges, expenses, duties and taxes described in paragraph (a).

The Commission used the F.O.B. price for cement quoted on Jamaica Customs C-78 entry forms as the importer's purchase price. Supporting documentation for the September 5, 2001 shipment, as well as relevant information from the Importer's submission confirm this price.

At the Preliminary Determination, the Commission, used facts available on the record, to determine the exporter's sale price and derived an average export price from the Exporter's Annual Report 1999. The Commission was satisfied then that the estimate derived therefrom was the best approximation of the export price, based on the facts on the record. Subsequent to the Preliminary Determination, the Commission sought clarification of the export prices from all parties involved in the investigation, specifically the transaction price for the goods under consideration between Cibinong and IMI.

Cibinong did not respond to any of the Commission's requests for information subsequent to the Preliminary Determination and the responses from IMI and Blue Atlantic were not particularly helpful in providing clarification on the transaction price between Cibinong and IMI or Blue Atlantic for the respective shipments. However, separately the Complainant and the Importer have provided evidence in the form of copies of the supplier's invoice for the September shipment. The details of the invoice show that Cibinong's FOB price of the cement was the same as that reflected on the Jamaica Customs C-78 entry forms. The copies of the supplier's invoice are identical and thus the Commission believes that the information thereon is reliable.

The Commission queried whether buyer's commissions were paid to IMI and Blue Atlantic, and Mainland's response indicated that no additional payments were made to either company. Mainland's representatives suggested that both companies made their revenue on the shipping charges. The Complainant alleged that the actual selling price for the goods under consideration may be much lower than the importer's purchase price as evidenced by the Customs documentation and that this is as a result of collusion between the other interested parties. The Importer has denied the Complainant's allegation of collusion. The Commission found no evidence on the record to support the Complainant's allegations of collusion. The supporting documentation furnished by the Complainant which includes, among other things, published annual reports from the Producer/Exporter, could support an exporter's sale price that is much lower than that quoted on the Customs documentation, however, the documentation refers to average prices or prices to countries outside of the Caribbean.

It is the view of the Commission, that the record evidence supports the importer's purchase price and the revision of the exporter's sale price, from that gleaned from Cibinong's Annual Reports and used as the base export price at the Preliminary Determination, to the price noted on the supplier's invoice from Cibinong to IMI for the September shipment. Based on the evidence before the Commission, both the importer's purchase price and the exporter's sale price are the same.

### **C. ISSUES OF PRICE COMPARABILITY**

To ensure price comparability, the Commission makes adjustments, where appropriate, to base prices for normal value and export price to account for differences that may arise between countries due to variations in quantities, level of trade, physical characteristics, and any other differences demonstrated to affect price comparability. The Commission uses verifiable information submitted by the interested parties to determine the nature and amount of these adjustments. Adjustments cannot be made where costs and differences in cost do not affect price comparability.

#### **1) NORMAL VALUE ADJUSTMENTS**

Discounts or Rebates - The information provided by the Complainant indicated that no discounts or rebates were given to distributors; therefore on the basis of this information no adjustment was made to the normal value.<sup>4</sup> The information provided by the Exporter did not address this issue.

Packing for Export - The Complainant's submission indicated that Cibinong produces paper bags and that it uses special packaging for export as compared with products sold for domestic use. The Commission accepted the Complainant's claim for an adjustment on this basis and added the export packing costs to the starting price. The Importer has also made a claim for a similar adjustment, but has not provided estimates for the amount of the adjustment. From the documentary evidence provided by the Complainant, the Commission deduced an estimated additional charge for the packaging of the goods for export.

Packing in Indonesia - Based on information provided by the Complainant, the Commission deduced an estimated price for domestic packing and deducted this estimated price from the starting price. Submissions received from the Exporter did not address questions related to this issue.

---

<sup>4</sup> Ordinarily the amount for discounts or rebates is subtracted to arrive at the net price to the purchaser which forms the basis for normal value calculations.

Difference in quantities sold in Indonesia - Indonesian cement is sold on its domestic market in 40 kg or 50 kg bags and the cement sold for export to Jamaica is in 42.5kg bags. Because of the conversion to metric tons throughout its analysis, an adjustment for this difference was not necessary.

Movement expenses – The Complainant claimed that Cibinong’s prices to its distributors include transportation of the goods from the factory to outside the retail outlet. The Commission accepted the Complainant’s claim for an adjustment for movement expenses and deducted this from the starting price. Submissions received from the Exporter did not address questions related to this issue.

Indirect Selling Expenses - Indirect expenses are not sale-specific and are generally incurred regardless of whether the sale is made or not, and therefore do not affect price comparability. In certain jurisdictions, this adjustment is made to normal value when it is being compared to a constructed export price in limited circumstances, such as where normal value is determined at a different level of trade than constructed export price sales. Indonesian domestic sales were at the same level of trade as those to the Jamaican market, therefore the adjustment is not applicable in this instance. The Commission did not accept the Complainant’s claim for this adjustment.

Direct Expenses - Information concerning adjustments for these expenses was not provided in the submissions. Therefore, no adjustment has been made.

Physical Characteristics – The Importer claimed that an adjustment should be made for differences in physical characteristics, given that the imported cement has the “rapid hardening” feature. An adjustment for physical characteristics can only be made where the physical characteristics of the exported good differs from the foreign like good. The record evidence does not reveal a cost differential between the Type I cement sold in Indonesia and that exported to Jamaica, nor does it reveal that the rapid hardening feature of the imported cement justifies an adjustment for differences in physical characteristics.

## **2) EXPORT PRICE ADJUSTMENTS**

Transportation – The Complainant claimed that the cost of transporting the product from Cibinong’s factory to the port is included in the export price and claims that an adjustment should be made. The Commission has accepted this claim and has deducted the transportation costs from the base price. Submissions received from the Exporter did not address questions related to this issue.

Freight - No adjustment was necessary, as base prices are FOB.

Additional export packing - The Complainant claimed that the goods were packaged in slings, the cost for this was included in the export price and an adjustment should be made therefor. Information provided by the Importer also supported this claim. The Commission has therefore accepted this adjustment and deducted the cost of packaging in slings from the base price.

Loading costs – The Complainant’s submission included costs for loading the goods for shipping. The Commission has accepted that an adjustment should be made for loading, as the evidence on record reveals that loading costs are in fact included in the export price. The Commission has therefore deducted these charges from the starting price. Submissions received from the Exporter did not address questions related to this issue.

Special Order - The Importer claimed an adjustment for the additional expense of the special order that exports in 42.5 kg bags from Indonesia represent, however, the Importer has not provided estimates for the amount of this adjustment. The Commission was unable to make such an adjustment at this time.

Buyer's Commission – The Importer claims and the documentary evidence reveals that the Importer makes payments for its shipment of the cement to IMI and Blue Atlantic for each shipment respectively. The payment reflects the CARICOM and Supplier's invoice price. The Importer indicates that it does not pay a Commission in addition to or further to its payment to IMI and Blue Atlantic. The Importer's representatives surmised that the logistics companies made their revenue on the shipping. Thus the Staff is not convinced based on the evidence that an adjustment for a buyer's commission is necessary.

#### **D. MARGIN OF DUMPING**

The margin of dumping refers to the differential between the normal value and export price, expressed as a percentage of the export price. The margin of dumping is based on a comparison of the base price for normal value, and the base price for the export price; each adjusted to account for costs, charges and expenses that would affect price comparability. The resulting margin of dumping is 9.98 per cent for the goods under consideration.

## **XII. EVIDENCE OF INJURY**

The Complainant alleged that the goods under consideration have been and are being dumped and that such dumping has caused, is causing and/or is likely to cause injury to the Complainant. In order to determine whether the domestic industry has suffered, is suffering or is likely to suffer material injury, the Commission analyses the actual or potential impact of the dumped goods in the context of the following factors: volume and price effects, sales, inventory, market share, profitability, return on investment, cash flow, capacity utilisation, ability to raise capital, productivity employment and wages.

Data over the POI for injury<sup>5</sup> were used so that the trends in the various indicators of injury could be assessed for a period before and during the period when the dumped goods were actually in the Jamaican market, in order to determine their impact on the domestic industry. The injury analysis is conducted primarily with the use of trend<sup>6</sup> analysis; this provides the context for specific economic indicators in terms of absolute values. The Commission has also looked at the results of the aforementioned analysis in relative terms in order to add depth to the analysis. In the instant case, the Commission's analysis indicated that any seasonality present in the data is not significant enough to skew an analysis of sequential periods with respect to the factors being analysed.

The Commission's analysis of injury at Final Determination benefits from more data than it had at the Preliminary Determination in that the period that the dumped imports have been in the market has effectively doubled. At Preliminary Determination, the period that the dumped imports were in the market was the four months, September to December 2001. At the Final Determination, the period has been extended to nine months, which includes January to May 2002, and the Commission has analysed data for this additional period.

---

<sup>5</sup> See section VI above.

<sup>6</sup> A trend captures the underlying movement in a series and is stable; in fact the trend in any data is used as reliable basis on which to forecast long-term performance, in the absence of any adverse shocks.

**A. VOLUME EFFECTS**

Volume effects refer to changes in the pattern of imports of the goods under consideration, relative to such variables as Jamaican consumption (which is an indication of the level of effective demand) or production of the domestic like good and relative to past import volumes.

There were no known imports of cement from Indonesia in the past, nor are there any imports in the current year that are subject to antidumping duties.<sup>7</sup> For the period September 2001 to May 2002, imports represent 16.09 per cent of domestic production, and 13.69 per cent of total consumption. Import penetration, relative to consumption has translated into an actual share of the market of equal proportion (14.71 per cent) that is, the volume of cement imported over the period was actually sold.

**B. PRICE EFFECTS**

Price effects is a term that refers to changes in the level of prices in absolute and relative terms, that are the direct result of the introduction of dumped imports into the Jamaican market. As will be seen below, 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.

The documentary evidence reveals that price undercutting has occurred but does not reflect the occurrence of price suppression or depression.

**1) PRICE DEPRESSION**

Price depression is the reduction in the domestic industry's selling price and can be assessed on the basis of percentage changes in its prices or trends in the levels of its prices before and during the period of dumping. The rate of change of these prices usually would give an indication of the severity of the impact of the dumping as it relates to price.

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 remain competitive. The Commission has seen no indication that CCCL's prices have declined in light of the competition provided by the dumped imports. In fact, CCCL had indicated that because of rising costs it increased its prices in June 2001 and then again in February 2002. The Commission is satisfied that there was no price depression as a result of the presence of the dumped Indonesian cement on the Jamaica market.

**2) PRICE UNDERCUTTING**

Price undercutting refers to instances where the goods under consideration are sold at prices below the price of 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.

---

<sup>7</sup> The dumped imports being analysed are country specific, that is, from Indonesia. If there were in fact imports of similar products that are subject to antidumping duties then a distinction would be made, and the imports of the similar products would not be aggregated with those that are the subject of this investigation. Also total market supply would be equal to total domestic production plus imports of similar goods (both subject and non-subject).

At Initiation, CCCL estimated the margin of price undercutting at approximately 13.18 per cent<sup>8</sup>. However, the Commission noted in its Statement of Reasons at the Preliminary Determination that the evidence presented indicated that there was price undercutting of 0.78 per cent on average prices, which, at the time, was considered to be an insignificant price effect.

The Complainant as well as the Importer increased prices in February 2002, a comparison of the average prices of the Importer and the Complainant for the period February to May 2002 reflect price undercutting of 1.06 per cent. In absolute terms, a price differential of 1.06 per cent does not suggest significant price undercutting. However, information gleaned from the Importer and the Complainant during the verification visits indicates that, in relative terms, small variations in cement prices may be significant, as cement is typically purchased in large quantities and so even a small price differential may represent a significant saving to the consumer, so consumers would generally be more inclined to purchase the lower priced cement. The Commission observed a particular trend in the Importer's pricing strategy which is to maintain some amount of price undercutting relative to the domestic industry.

### **3) PRICE SUPPRESSION**

Price suppression is experienced when the domestic industry's margin between unit cost and selling price cannot be maintained. Price suppression will not be evident during the review period unless there has been a significant increase in unit costs or reduction in selling price, since the dumped imports entered the market.

CCCL's monthly data on unit costs exhibited a high degree of variability due to CCCL's practice of valuing inventory at the end of each quarter and adjusting the variations against the cost of sales in that month. There is considerably less variation in CCCL's unit costs on a quarterly basis than the monthly data would reflect and this gives a better reflection of the company's true margins over the period. In particular CCCL's margins actually widened during the period following the introduction of the dumped cement. CCCL's attempts to increase its margin through the reduction in cost and an increase in unit price have overshadowed any suppressing effects the imports may have had on prices. CCCL has indicated that one factor that impacted on its decision to increase prices in June 2001 and February 2002 was the desire to preserve the margin between unit cost and selling price. Thus, the Commission satisfied that price suppression has not occurred as a result of the introduction of Indonesian cement on the market.

## **C. ECONOMIC IMPACT ON THE DOMESTIC INDUSTRY**

### **1) SALES**

CCCL's sales to the local market increased by 0.11 per cent for the period September 2001 to May 2002 relative to the period September 2000 to May 2001, while CCCL's total sales volume declined by 0.85 per cent, based on the decline in export sales. The sales value (revenue) for the period under investigation increased by 15.95 per cent over the prior year period, due mainly to the two price increases that had an impact during the period September 2001 to May 2002 relative to the similar prior year period.

---

<sup>8</sup> In September, CCCL's prices were 13.96 per cent higher than they were before June 2001.



The Commission notes that, given the characteristics of the Jamaican market at present, the volume of dumped cement currently being imported by Mainland has not had a significant impact on CCCL's sales volumes of locally produced cement, which declined by 0.91 per cent relative to the similar prior year period. In the opinion of the Commission, the decline might well have been due at least in part to the fact that CCCL supplemented its production with 4,397 MT of imported cement in February 2002.

The Commission has observed an interesting pattern in relation to sales in the Jamaican market that is noteworthy. Historically, there has always been a shortfall between domestic production and market demand which has for at least the last three years been supplemented by imports. In 1999 CCCL's imported cement covered the shortfall. In the two subsequent years, Mainland's imports from Thailand and Indonesia respectively replaced CCCL's imports.

## **2) OUTPUT**

The analysis of output looks at the effect of the dumped imports on local production of the like product. Of the three calendar years and five months examined, production levels in 2001 and 2002 were higher, as a result of CCCL's concerted effort to increase local production to meet the market demand. Note, however, that the increased production levels in 2001 and 2002, were not enough to fully meet the market demands.

The production level in the period September 2001 to May 2002 (which coincides with the period that the dumped imports were in the market) decreased by 1.71 per cent relative to the similar prior year period. However, the Commission is not convinced that the dumped cement in the volumes imported was the cause of the domestic industry's decrease in output relative to the previous year, as the imported cement had the effect of filling the gap between local production levels and the market demand, and CCCL sold almost 100 per cent of its production of cement as well as its own imports.

## **3) INVENTORY**

CCCL's average monthly inventory levels since June 2000 have increased above the levels maintained in 1999. The inventory levels during the period that the dumped imports were in the market (September 2001 to May 2002) were consistent with those levels maintained prior to the introduction of dumped imports, with the exception of the spike in inventory levels experienced in September 2001 that was reflective of high production levels in August 2001.

## **4) MARKET SHARE**

Since May 1999 when Mainland entered the domestic cement market, CCCL has experienced a gradual decline in market share. Sales of the dumped Indonesian cement for the period September 2001 to May 2002 represent 13.69 per cent of the total market consumption. However, Mainland's market share in the period when the dumped Indonesian cement was in the market was almost the same percentage as the prior year period when Mainland was selling cement imported from Thailand.

## 5) PROFITABILITY

Profitability speaks to an excess of revenues generated over the cost of generating those revenues. This is usually taken to be the normative indicator of injury, as it reflects the viability of a going concern.

The maintenance of CCCL's market share in the period September 2001 to May 2002, did not reflect a similar loss for CCCL for that period as it had in September 2000 to May 2001. This was due principally to the fact that the price increases in June 2001 and February 2002 resulted in a 15.88 per cent increase in sales revenue. During the same period, CCCL maintained its unit cost of sales.<sup>9</sup> However, the increases in selling price led to a recovery in 2001/2002 of the gross profit margin lost in 2000/2001. From the gross profit figure, operating and indirect (finance, exchange and exceptional) expenses were subtracted. Net operating profits in 2001/2002 improved to 12.96 per cent of sales relative to a 1.45 per cent loss for the period 2000/2001. This result is contrary to the Complainant's claim of a decrease in profitability.

Return on investment (ROI) and cash flow are affected by profits, new investments, capital expenditure or financing activities. A review of CCCL's financial statements over the period of indicates that the movement in ROI and cash flow mirrored the upward movement in profitability because of the lack of new investment and financing activities.

With little variation in the volume sold between September 2001 and May 2002 and the prior year period, the increase in profitability in 2001/2002 can almost exclusively be attributed to the following factors: CCCL's price increases; and a change in CCCL's marketing strategy and the importation of clinker which resulted in savings to the Complainant. Except for these adjustments CCCL would have shown a loss in the period under investigation, similar to the loss experienced in the prior year period. CCCL took these adjustments (especially as it relates to the June 2001 price increase) to prevent the continuation of the losses suffered in 2000/2001 caused by the presence of Thai cement in the market as well as an increase in its cost of production. These adjustments have allowed CCCL to show marked improvement in profitability in 2001/2002 even with the presence of dumped cement in the market.

## 6) 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 are also an indication of the amount of capital that a company can raise in the market at that particular point in time.

---

<sup>9</sup> At the Preliminary Determination, the Commission stated that CCCL's financial statement for 2001 reflected large variances in the cost of sales per unit from month to month, and that the reasons for the variances were not readily apparent. However, the Commission indicated that such information presented on a short-term basis (monthly, quarterly, etc) will tend to be skewed when comparing one period with another. At the Final Determination with four additional months of data and a better understanding of CCCL's practices concerning inventory valuation, the Commission is satisfied that CCCL maintained a consistent average unit cost of sales for the period that the dumped imports were in the market.

The Commission observed that between September 2001 (when the dumped cement entered the market) and December 2001 share prices fell to a low of J\$1.80 per unit; lowering the market's valuation of the company and consequently, reducing the level of additional capital that could have been raised subsequent to the date of entry of the dumped imports into Jamaica. During the period January through May 2002, the share price moved back to the price seen in early 2001, that is approximately J\$3 per unit. In the view of the Commission, the presence of the dumped imports may have exerted some negative influences on CCCL's share prices and net worth with their introduction. However, other factors, including CCCL's own reports of its strong financial performance as well as the news of the initiation of this anti-dumping case, may have caused a turn around in market perception since January 2002.

#### **7) OTHER FACTORS**

Productivity, employment, wages have not been addressed as the Complainant has not furnished information which would allow the Commission to analyse these indicators.

#### **8) CONCLUSION**

The Commission has found evidence of import penetration by the dumped imports of 14.71 per cent and that the only price effect evident from the analysis was a degree of price undercutting. The price effect observed was, in the opinion of the Commission, due to the Importer's pricing strategy.

With regard to the economic impact of the dumped imports, the Commission's analysis revealed that there were no significant adverse effects on the domestic industry's sales, production, or inventory levels, due to the volume of the imports, which were just enough to satisfy the domestic industry's production shortfall. In fact, over the period that the dumped imports were in the market, there was a very slight increase in sales of domestically produced cement to the market, significant increases in sales revenues, a slight decrease in production and consistency in inventory levels within the average range. The domestic industry maintained its market share during the period that the dumped imports were in the market relative to the prior year comparable period. Furthermore, as a result of CCCL's pricing strategy, to pass on costs and maintain a particular margin of profit, CCCL's operating results show improvements in sales revenues and consequently, a significant increase in profitability. The domestic industry was able to maintain its utilisation of industrial capacity. While initially (between September and December 2001) there was some negative effect on the domestic industry's ability to raise capital as measured by movements in share price, since January 2002 there has been an increase in CCCL's stock prices and, as at May 2002, share prices were at levels previously seen in early 2001.

Section 2 of the Act defines material injury in relation to the production in Jamaica of like goods. Consequently, to constitute material injury pursuant to the Act, the effect of the dumped imports must be as it relates to production and not to imports by the domestic industry. In the instant case the dumped imports had the effect of displacing imports and not domestic production. Against this background and based on all the foregoing, the Commission concludes that the facts do not support a finding that the domestic industry has suffered or is suffering material injury.

### **XIII. THREAT OF MATERIAL INJURY**

In accordance with Regulation 13 of the Act, a determination of threat of injury may only be made where a particular situation is likely to develop into material injury and is clearly foreseen and imminent.

The factors that should be taken into consideration in determining threat of injury, based on Regulation 13, can be divided into three categories. The first category includes those factors that relate directly to the Exporter's and Importer's ability to potentially increase the supply of dumped imports into the Jamaican market such as: the significant rate of increase of dumped imports into the domestic market which indicates the likelihood of substantially increased imports of the dumped goods into Jamaica; the existing capacity in the country of export or origin and the likelihood that Jamaica may be a target market of the resulting exports, taking into account the availability of other export markets to absorb any increase; the potential for product shifting where production facilities that can be used to produce the subject goods are currently being used to produce other goods; and inventories of the product being investigated.

The second category includes those factors that relate to the Exporter's and Importer's abilities to affect the local industry's ability to supply its product to the Jamaican market and still remain competitive. These factors, such as: whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; actual and potential negative effects on existing development and production efforts, including efforts to produce a more advanced or derivative version of the like goods; and the magnitude of the margin of dumping in respect of dumped goods, would also impact on the future performance of an industry.

The third category includes any other factors that may be deemed relevant in the circumstances, whether specific to the firm's operations or economy wide.

#### **A. EXPORTER'S AND IMPORTER'S ABILITY TO POTENTIALLY INCREASE THE SUPPLY OF DUMPED IMPORTS INTO THE JAMAICAN MARKET**

Mainland has been importing two shipments of approximately the same volume of cement per annum since 2000; this pattern and volume of importation must be viewed in light of the fact that Mainland has been involved in consecutive anti-dumping investigations over the period 2000 – 2002, and therefore this pattern may not be representative. On the basis of the facts before it, the Commission concludes that there has not been a significant rate of increase in the dumped imports. However, the Commission is convinced that there is a likelihood of substantially increased importation of dumped cement into Jamaica due to the fact that Mainland has indicated that selling large quantities of cement is critical to the success of its business and that it has expanded its capacity to store and move much larger volumes of cement than its average imports over the past 2 ½ years.

The production capacity at Cibinong's Cilicap plant, from which the shipments of cement to Jamaica have been exported, is 4.6 million MT per annum; production at the Cilicap plant represents approximately 38 per cent of capacity. To determine if there is a likelihood that this capacity may be channelled to Jamaica, the Commission examined those pressures on the Exporter to find

alternative export markets. For the years 2000 and 2001, Cibinong has made losses, thus to improve its performance in 2002, it has stated its intention to expand export markets, and not just export to available markets, so that as long as Jamaica represents a source of additional revenue and there is demand whether from Mainland or otherwise exports may be channelled here. In addition as evidence of Cibinong's aggressive export strategy it projects that production at its Cilicap operations is to increase over its 2001 levels by 51.25 per cent in 2002, and exports are to increase by 97 per cent. One criterion to assess the potential for exports to be channelled to Jamaica is limitation on markets elsewhere to accept Indonesian exports of cement. In this light, the Commission examined barriers to trade in other countries. The Commission is not aware of the imposition of barriers to Indonesian cement by any other country except the Philippines, which has since December 2001 imposed measures on Indonesian cement in the amount of one U.S. cent per bag of Indonesian cement. In summary, Cibinong<sup>10</sup> enjoys significant export capacity and has plans for an aggressive export-oriented policy aimed at improving its financial performance, which indicates that it will pursue markets as they become available.

There is also potential for product shifting due to the fact that Cibinong whose main business is cement production, currently produces a number of different types of cement and could shift its resources to the production of cement for export, as necessary.

Cibinong's inventory levels at the end of 2001 were significantly lower than they were in 2000, and inventory levels for 2002 are projected to be about the same as 2001. Mainland's monthly inventory levels in 2001 have been lower than its 2000 levels and since the importation of cement in February 2002 its inventory levels have been steadily decreasing. The Commission concludes that there has not been a rapid build up in inventories of cement by either Cibinong or Mainland. This however would not prevent large quantities from being exported to Jamaica as Jamaica's total annual consumption is only 12 ½ percent of Cilicap's annual production.

Based on the foregoing, Cibinong has the ability to potentially increase the supply of dumped imports into the Jamaican market, due to its capacity, its export-oriented policies and its potential for product shifting. Cibinong's low inventory levels do not take away from its ability to direct a large volume of exports to Jamaica, because of its capacity to produce and the relative size of the Jamaican market. In addition, Mainland's considerable expansion of its capacity to move and store cement, supports the view that there is a likelihood of substantially increased dumped imports from Indonesia to the Jamaican market.

**B. EXPORTER'S AND IMPORTER'S ABILITY TO INDIRECTLY AFFECT THE LOCAL INDUSTRY'S ABILITY TO SUPPLY ITS PRODUCT TO THE JAMAICAN MARKET AND REMAIN COMPETITIVE**

The record evidence does not indicate that there has been any significant price depression or suppression emanating from the presence of the dumped cement on the local market. The evidence does reveal a small amount of price undercutting which the Commission attributes to the Importer's pricing strategy. It is the view of those who sell cement that it is a product for which a small differential in price can be very significant. Thus, the strategy allows the Importer to maximise its

---

<sup>10</sup> Cibinong is the third largest cement producer in Indonesia. Total cement production capacity for Indonesia is approximately 47 million MT of which 37 per cent remains idle.

margins while still ensuring that it moves its entire cement inventory. The Commission foresees that if the Importer were to maintain this pricing strategy, it would likely increase demand for further imports. If additional dumped imports cause the total supply of goods in the market to be increased relative to normal levels of demand then this will exert some pressure on prices (supply pressures) which will in turn have some negative impact on profits, unless there is some offsetting influence on the volumes produced or demanded and could result in suppression or depression of the domestic industry's prices.

The magnitude of the dumping margin may be an indication of the possible extent of the price undercutting that the goods under consideration could have on the domestic industry. To the extent that significant price undercutting usually translates into a decline in sales revenue and profitability, it could negatively impact on the development of the industry and its ability to expand production. To date, the margin of dumping has not been a significant factor in determining the extent of the price undercutting due to the Importer's pricing strategy. However, with an increase in the volume of dumped imports and maintenance of (or an increase in) production levels by the domestic industry, the Importer will have to compete more aggressively on price and may take advantage of the margin of dumping to increase its price undercutting in order to move larger volumes of its product.

While the Commission is aware of the Complainant's efforts to develop a derivative product, there has been no evidence to show that there has been a negative impact on its ability to develop this produce because of the dumped imports.

The actions on the part of the Exporter and the Importer in exporting and selling dumped Indonesian cement to the Jamaican market, over the past nine months, have not resulted in a noticeable direct or indirect impact on the domestic industry's ability to supply the market as the volume of imports has merely supplemented the shortfall in domestic production. It is the view of the Commission that a substantial increase in imports of dumped cement will cause the total supply of cement to be greater than the normal levels of demand, and that this will affect the domestic industry's ability to supply its product to the market and remain competitive.

### **C. OTHER FACTORS**

The Importer expects demand conditions to improve significantly in 2002, a point stressed throughout its submissions, and this speaks to the likelihood of a substantial increase in imports in the near future. This is supported by an anticipated boost in demand for cement contingent on government infrastructural development. This is a significant factor when one considers that to date Mainland has been the primary beneficiary of the growth in local market demand.

In addition, the Commission has taken into consideration the fact that Mainland has switched from one source of dumped cement to another. In 2001, the Commission ruled that cement imported by Mainland from Thailand was dumped. Subsequently, Mainland began importing cement from Indonesia which has also been found to be a source of dumped cement. The practice where an Importer switches to a new source, subsequently determined to be a dumped source, after anti-dumping measures have been applied against its previous source, is a practice commonly termed as "source switching" and is not regarded in a positive light by this Commission.

#### **D. CONCLUSION**

The totality of the circumstances supports a finding of threat of material injury to the domestic industry from the importation of dumped cement from Indonesia. The Commission concludes that there is a likelihood of substantially increased dumped imports from Indonesia to the Jamaican market in the near future and that this will affect the domestic industry's ability to supply its product to the market and consequently its viability. The Commission concludes that further dumped imports in substantially increased quantities are imminent and that unless action is taken material injury is clearly foreseen.

#### **XIV. CAUSAL LINK**

Where the Commission finds dumping and material injury or threat of material injury, the evidence before it must demonstrate that the injury to the domestic industry is attributable to the effects of the dumping, before duties may be imposed. In its analysis of the causal connection between dumping and injury, the Commission is required, pursuant to Regulation 12 (6) and (7), to examine any known factors, other than the dumped imports, which at the same time are injuring the domestic industry. The injury caused by the "other" factors must not be attributed to the dumped imports.

In relation to a determination of threat of material injury many of the factors examined are directly related to dumping. In this regard, there is an obvious relationship between dumping and threat of material injury. The Commission examined the possibility that factors other than the dumped imports might have an impact on the industry in future. Given the absence of any such factors as well as the relationship between the criteria used for the establishment of threat of material injury and dumping, then a causal relationship between dumping and threat of injury can be established.

While it is difficult to quantitatively separate the impact on the domestic industry of the dumped imports from any other factors, the relative influence of the dumped imports can be assessed so as to establish whether or not they are, in fact, exerting an influence on the domestic industry.

The Commission examined all factors other than the dumped imports, which at the same time could be negatively affecting the domestic industry, under the following broad headings: macroeconomic influences, discretionary policy changes affecting the importation of cement, technological developments, contraction in demand or changes in the pattern of consumption, export performance and productivity of the industry and anti-competitive behaviour by industry players. For the period September 2001 to May 2002, the Commission found that adverse weather conditions and devaluations of the exchange rate could have had a negative impact on the domestic cement industry. While weather may have hampered and may continue to hamper the growth of cement consumption, it has not caused CCCL's performance to decline, as evidenced by increased domestic sales volumes, relative to September 2000 to May 2001. In addition, while devaluations had an impact on CCCL's costs, its ability to pass these costs on to the consumer enabled it to preserve its margin and in fact allowed it to grow relative to the similar period of 2000/2001. It is always possible that factors such as these may have an impact on the domestic industry in the future.

The Commission is of the view that because the dumped imports compete directly with the Complainant's product, they are the primary source from which injury will be caused to the

domestic industry. The existence of competition from unfair imports represents a direct effect on the domestic industry and the impact of those imports will be greater than factors that may have an indirect impact. It is the Commission's view that when Mainland's imports from Indonesia amount to greater than the domestic industry's production shortfall, this will be the cause of material injury to the domestic industry. Thus, it concludes that the dumped imports are likely to cause material injury to the domestic industry.

## **XV. DEFINITIVE ANTI-DUMPING DUTIES/LESSER DUTY ANALYSIS**

Lesser duty is a provision in anti-dumping legislation that allows for an amount less than the margin of dumping to be collected as the anti-dumping duty; that lesser amount is the amount that is considered adequate compensation for the injury to the domestic industry. The Commission adopts the view that duties provide highly visible, concentrated benefits for a small group of people, while imposing widely dispersed costs that are often difficult to identify on the general citizenry,<sup>11</sup> and that therefore it may be desirable, where appropriate, to reduce any distortions caused by an anti-dumping duty by applying a lesser amount. In addition, the purpose of antidumping law is not to limit competition but to encourage fair competition within and across borders, and the lesser duty provision is one way to ensure that competition is not stifled.

An antidumping duty is a special duty imposed to offset the effect of dumping that has either materially injured, or threatened material injury to, domestic producers. An immediate effect of an antidumping duty may be to raise the price paid by consumers and down stream users, and this is the issue that causes the most debate. In essence, the result will be the transference of income away from consumers and those producers that use the goods under consideration as inputs to production (e.g. construction industry), to the domestic producers of the domestic like good. However, experience suggests that the benefits of dumping, namely the potential of significantly lower prices to the consumer, often remain concentrated in the hands of the importers in the form of larger profit margins and are not passed on to the consumer, even in the absence of an anti-dumping duty.

Section 11 of the Act addresses the application of lesser duties. It states in pertinent part that:

Duties shall be imposed, in accordance with sub-section (2), on all dumped or subsidized goods imported into Jamaica in respect of which, before the release of the goods, the Commission has made a finding that the dumping or subsidizing of such goods has caused, is causing or is likely to cause material injury . . . in an amount equal to the margin of dumping . . . or, as the case may require, such lesser amount as is considered adequate compensation for the injury.

The language of the statute "as the case may require" gives the Commission discretionary power to impose or not to impose a lesser duty.

The lesser duty analysis requires an assessment of whether a lesser duty should be applied and a determination as to the level of duty, based on the injury margin. To determine whether a lesser duty should be analysed it is necessary to evaluate all the arguments for or against the duties on the

---

<sup>11</sup> Sobel, Stroup, Gwartney, *Economics Public and Private Choice*, (2000) pg. 465



particular product under investigation. Neither the Act nor the Regulations gives guidance as to how a lesser duty is to be calculated. However the Commission has sought guidance from the practice of other jurisdictions, principally the European Union and Canada, in formulating its own practice. The lesser duty rule calls for the restriction of the level of duty to the actual injury suffered. In practice, this entails an assessment of the extent of injury and its subsequent quantification, the result of which is an “injury margin.”

The injury margin is calculated on the basis of a “non-injurious price” (NIP), the weighted average cost of production for the domestic industry, and a reasonable amount for profit. After the non-injurious price has been determined, it is compared with the price at which the dumped imports would have entered the market, “the importer’s sale price” (ISP). The ISP would include all those cost elements incurred upon importation, such as freight, insurance, movement costs, broker’s fees and any other costs. The injury margin is the difference between the NIP and the ISP. The percentage margin of injury is usually expressed as a percentage of the export price used in the calculation of the amount of dumping margin. If the injury margin calculated is less than the dumping margin, then a lesser duty may be considered. If the injury margin is greater than the margin of dumping then the margin of dumping is the basis for the definitive anti-dumping duty.

In the current case, there are concerns about the efficiency of the domestic industry particularly in the context of the absence of strong signals from the market that would work to prevent CCCL from passing on its costs to consumers and raising its prices arbitrarily. Whether or not dumped imports are in the market, unless the domestic producer can improve its efficiency, it will not be viable. As was mentioned previously, competition would be less discouraged with the application of a lesser duty. Continued exposure of the domestic industry to world market price signals will encourage the domestic industry to pursue efficiency gains, and push them towards global competitiveness. Imports may provide competitive discipline that will discourage the abuse of market power. These factors would suggest that the application of lesser duties might therefore be more beneficial to the Complainant, as well as the consumer, in the long run.

The Commission’s calculation resulted in an injury margin which is greater than the margin of dumping. Section 11 of the Act requires the Commission to impose the lesser of the dumping margin or the injury margin and thus the definitive anti-dumping duty will be imposed in the amount of 9.98 per cent.

## **XVI. RETROACTIVE IMPOSITION OF ANTI-DUMPING DUTIES**

Section 13 of the Customs Duties (Dumping and Subsidies) Act and Article 10.6 of the WTO Anti-Dumping Agreement set forth a two-pronged test for the imposition of duties on goods that were released during the period of ninety days preceding the day on which the Commission makes a Preliminary Determination. This is known as the retroactive imposition of duties. Both the WTO Agreement and the Act require the finding of: a history of injurious dumping in relation to the goods that are like the ones that are the subject of the investigation or that the importer knew or should have known that the exporter practices dumping that would cause injury. Either of the foregoing represents the first prong. The second prong states that significant importation, which causes material injury, and in order to prevent recurrence of the injury it appears necessary to the Commission that duty be assessed on the imported goods. And pursuant to section 10.6 of the WTO Anti-Dumping Agreement: a finding that injury is caused by massive dumped imports in a relatively

short period of time which in light of the timing and the volume of the dumped imports is likely to seriously undermine the remedial effect of the definitive antidumping duty which might be applied.

With regard to whether material injury has been caused by reason of the fact that the imported goods constitute significant importation, the Commission has not found material injury based on the facts of the present case, however even if material injury were evident this prong would still not be met because, in the view of the Commission, the goods do not constitute a significant importation. The relevant comparison period employed by the Commission in this investigation was five months pre- and post- the date of initiation. During these periods there were two shipments of cement, one occurring pre-initiation, the other occurring post-initiation. The volume of the shipment post-initiation was only four percent more than the pre-initiation shipment. Sales of the dumped cement accounted for approximately 12.38 per cent of the total consumption for the period September to December 2001 (pre-initiation) and 9.33 per cent for the period January through May 2002 (post-initiation).

Additionally, Mainland's importation of cement from Indonesia in September was followed by a negotiation in October, before the Commission had received CCCL's complaint, wherein Mainland contracted for an additional shipment of cement for February 2002. The information provided by the Importer indicated that there was no attempt on its part to avoid the imposition of the duty by stockpiling inventory following the initiation of the Commission's investigation on January 3, 2002, in view of the fact that arrangements for the second shipment of the goods under consideration (February 2002) began before the filing of the complaint.

Based on the foregoing, the Commission concludes that the imports post-initiation do not constitute "significant importation into Jamaica; or form a part of a series of importations into Jamaica, which are significant in the aggregate and have occurred within a relatively short period of time." Because the Commission has not found significant imports or material injury, it does not need to consider whether there has been a history of injurious dumping in relation to the goods that are like the ones that are the subject of the investigation or that the importer knew or should have known that the exporter practices dumping that would cause injury.

The Commission finds that the facts of the instant case do not support an affirmative Final Determination in relation to the imposition of retroactive duties.

## **XVII. DECISION**

Pursuant to section 30 of the Customs Duties (Dumping and Subsidies) Act, the Commission has made an affirmative Final Determination in respect of the dumping in Jamaica of Ordinary Portland Grey Cement originating in, or exported from Indonesia, and finds that the goods under consideration have been dumped and the dumping of the goods under consideration is likely to cause material injury to the domestic industry, that is, there is a threat of material injury to the domestic industry. The threat of material injury is evidenced by Cibinong's and Mainland's ability to increase the supply of dumped imports into the Jamaican market and to affect the domestic industry's ability to supply its product to the market and remain competitive. The Commission highlights the following factors as the basis for its conclusions: Cibinong's capacity, its export-oriented policies and its potential for product shifting; Mainland's considerable expansion of its capacity to move and

store cement; the magnitude of the margin of dumping, as that indicates the potential for price undercutting; and the effect that larger volumes of dumped imports and consequent price competition would have on the viability of the domestic industry.

Pursuant to section 11 of the Act, the Commission has decided to impose a definitive anti-dumping duty, in the amount equal to the margin of dumping of 9.98 per cent on goods which are the same description as those to which the Final Determination applies, effective July 2, 2002.

Additionally, the Commission found that the facts of the case did not support an affirmative Final Determination in relation to the imposition of retroactive duties between the dates of Initiation and Preliminary Determination as provided for in section 13 of the Act.

### **Commissioners Sitting:**

---

Mrs Beverley Morgan

Chairman

Partial Dissent in relation to the Dumping Margin  
and, therefore, the amount of the Definitive Anti-Dumping Duty

---

Mr. Lloyd Goodleigh

Commissioner

---

Dr. Cecil Goodridge

Commissioner

Partial Dissent in relation to Threat of Material Injury  
And, therefore, the imposition of a Definitive Anti-Dumping Duty

---

Ms. Sandra Shirley

Commissioner

### **DISSENTING OPINION OF CHAIRMAN BEVERLEY MORGAN**

I, respectfully, place a construction on the data that is before the Commission that differs, in part, from my colleagues' position. The major source of difference is in the area of the dumping margin. The evidence before the Commission does not persuade me that the dumping margin agreed on by the majority of Commissioners at the stage of the Preliminary Determination should be revised downward.

At the Preliminary Determination, the majority of Commissioners determined that there was an estimated dumping margin in the amount of 56.21 per cent. The margin was based on the comparison of the normal value with an estimated exporter's sale price derived from the Exporter's Annual Report of 1999. The Commission relied on the derived exporter's sale price because it did not receive information from the Exporter to substantiate the higher Exporter's sale price claimed by the Importer. According to section 19 of the Act, the export price is an amount equal to the lesser of the Importer's purchase price and the Exporter's sale price. The derived Exporter's sale price proved to be the lesser of the two.

After the Preliminary Determination the Commission sought clarification from the Exporter and those companies said to be the logistics companies and which acted as intermediaries to the transactions, in order to determine the Exporter's sale price for each shipment. The Exporter did not respond to the Commission's requests for information. The responses from the other companies to the transaction failed to address and clarify the issue of export price.

The majority position in relation to the level of dumping relies on an invoice provided by the Importer that indicates that the Exporter's sale price is equivalent to the Importer's purchase price. To rely solely on this invoice would lead to the conclusion that the Importer and the intermediaries to this transaction would have chosen to pay a price higher than that for which the goods are commonly traded with other parts of the world by the Exporter. It is unclear why a rational buyer, with the experience of sourcing a wide range of goods from all over the world, and with the particular experience of importing the subject goods, would be unaware of the prices at which the Exporter sells the particular commodity into other markets. It is unclear why the Importer would have elected to pay a significantly higher price for the subject goods. In the instant case, the evidence on record suggests that the Importer of the cement into the Jamaican market elected to pay approximately 25 percent more than the highest price paid when the commodity is sold to other countries by the Exporter.

There is guidance for decision – makers in circumstances such as this. Section 19 of the Act states that “ the export price of the goods sold to an importer in Jamaica, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of the exporter's sale price and the importer's purchase price”. The Exporter's lack of participation, and the lack of clarity on the part of the other parties to the transaction when responding to requests for information from the Commission in relation to the exporter's sale price make it seem reasonable to rely on the exporter's sale price as derived from the Exporter's 1999 Annual Report as was done at the Preliminary Determination. This results in a dumping margin of 56.21 per cent.

With a finding of dumping by all Commissioners, and a finding by the majority that there is a likelihood that the dumping will cause material injury, what remains to be determined is the quantum of the dumping duties that should be imposed.

It is my conviction that the purpose of the antidumping legislation is not to limit competition but to encourage fair competition within and across borders, and that the lesser duty provision is one way to minimise the risks to competitive activity. This is particularly important in circumstances where the domestic industry is a monopoly producer. For these reasons it seems appropriate to rely on the lesser duty analysis as the foundation for the computation of the duty to be applied. The lesser duty based, on a dumping margin of 56.21 per cent results, results in an injury margin of 30.14 per cent. This is clearly less than the dumping margin. It is my recommendation that this is the amount of anti-dumping duty that should be imposed on imports of dumped cement from Indonesia, namely 30.14 per cent.

---

Mrs Beverley Morgan  
Chairman

**DISSENTING OPINION OF COMMISSIONER DR. CECIL GOODRIDGE**

I disagree with my colleagues' decision in relation to the finding that the dumped imports are likely to cause material injury to the domestic industry. My analysis of the facts does not support the view that the situation in which the domestic industry finds itself at present is likely to develop into material injury and is clearly foreseen and imminent, which is the threshold set forth in section 13 of the Customs Duties Dumping and Subsidies Regulations.<sup>12</sup>

It is clear that Cibinong has excess capacity. However, I am not convinced that Cibinong's excess capacity will be directed to Jamaica, in view of the fact that Cibinong did not actively seek sales in Jamaica but rather were approached by Mainland, and Mainland claims that it has no future plans to import from Indonesia.

The record evidence does not indicate that there has been any significant price depression or suppression emanating from the presence of the dumped cement on the local market. The Importer's pricing strategy would suggest that even in the event of an increase in the supply of dumped imports to the market the domestic industry's prices would not be depressed or suppressed by the dumped imports.

The magnitude of the dumping margin may be an indication of the possible extent of the price undercutting that the goods under consideration could have on the domestic industry, to the extent that significant price undercutting usually translates into a decline in sales revenue and profitability, which could impact on the development of the industry and its ability to expand production. However, to date, the margin of dumping has not been a significant factor in determining the extent of the price undercutting due to the Importer's pricing strategy. If the Importer maintains that strategy then it would mitigate against the Importer taking full advantage of the margin of dumping.

It is significant that actions on the part of the Exporter and the Importer have not resulted in a noticeable direct or indirect impact on the domestic industry's ability to supply the market over the previous nine months, with the presence of the dumped imports in the market, as the volume of imports has merely supplemented the shortfall in domestic production.

---

<sup>12</sup> The relevant article of the WTO Anti-Dumping Agreement is Article 3.7 and it is instructive. It states in pertinent part that:

A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination, regarding the existence of a threat of injury, the authorities should consider, inter alia, such factors as:

1. a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
2. sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing member's market, taking into account the availability of other export markets to absorb additional exports.
3. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
4. inventories of the product being investigated.

None of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped imports are imminent and that unless protective action is taken, material injury would occur.

Mainland has indicated that it has made provisions in terms of expanding its capacity to store and move larger volumes of cement than its average imports over the past two and one half years. However, Mainland's plans for expansion were made clear to the Commission in its previous case which ended in June 2001, since that time and for a year and one half prior to that, Mainland has maintained a particular pattern and volume of imports. Additionally as expressed by the majority, there has been no significant build-up in Mainland's or CCCL's inventories. These factors, in particular, persuade me that even if the threat of material injury to the domestic industry was foreseeable, which I argue that it is not, that threat could not be imminent because there is no evidence to support the view that Mainland intends on replenishing its inventories with cement from Indonesia in the near future. In the absence of specific evidence on the record to the contrary it is my view that the facts before the Commission do not indicate that an increase in the volume of dumped imports from Indonesia is imminent.

Whilst I am aware that Cibinong has significant export capacity, I am not convinced that that capacity will be directed to Jamaica, nor am I convinced that the Importer plans to increase its imports of dumped cement from Indonesia in the near future. It is significant that to date the Commission has not observed any noticeable impact on the domestic industry's performance as a result of the dumped imports. It is this impact that would have formed the basis for the particular situation that would have been likely to develop into material injury. Consequently, I have no choice but to conclude that the possibility of material injury to the domestic industry as a result of the dumped imports is not "clearly foreseen and imminent."

---

Dr. Cecil Goodridge  
Commissioner

### **FUTURE ACTION**

Imports of the goods in respect of which the Commission has made a finding of dumping which caused injury or are likely to cause injury, which are released from Customs' possession as of the date of the Commission's Final Determination will be subject to the definitive anti-dumping duty.

An anti-dumping duty shall remain in force as long as it is necessary to counteract dumping which has caused, is causing or is likely to cause material injury. Any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the Commission determines in a review initiated before that date that the expiry of the duty will lead to continuation or recurrence of the dumping and injury

### **INFORMATION**

The Notice of Final Determination in this investigation is being published in the Jamaica Gazette and in a daily newspaper. This Statement of Reasons along with the Notice of Final Determination

of this investigation has been provided to parties interested in these proceedings. A copy may be obtained for a nominal fee upon request. For this, and for any 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