



ANTIDUMPING & SUBSIDIES COMMISSION

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STATEMENT OF REASONS

KINGSTON, JAMAICA

April 3, 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 **Preliminary Determination** by the Anti-Dumping and Subsidies Commission, pursuant to section 27 of the Customs Duties (Dumping and Subsidies) Act, 1999

RESPECTING 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, in which the claim was made that the alleged dumping of the goods has caused, is causing and/or is likely to cause material injury to the Complainant.

As a result of the preliminary investigation, the Commission is satisfied that the goods under consideration have been dumped, that the estimated margin of dumping is not *de minimis*, that the volume of dumped goods is not negligible and that the dumping of the said goods is likely to cause material injury to the domestic industry. Accordingly, the Commission has made an affirmative Preliminary Determination, pursuant to section 27 of the Act and has decided to impose provisional duties in the amount of 56.21 per cent, effective April 3, 2002.

II. PARTIES TO THE INVESTIGATION

The Complainant is Caribbean Cement Company Limited, hereinafter referred to as “CCCL” or “the Complainant” 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, hereinafter referred to as “Mainland” or “the Importer”, with registered offices located at 8 March Pen Road, Spanish Town, and St. Catherine. Mainland is in the business of importation of 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, hereinafter referred to as “Cibinong” or “the Exporter”, with registered offices located at Bidakara Building, 10th 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.¹ 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.

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 November 22, 2001 the Commission advised the Complainant that upon reviewing its complaint, the Commission determined that there was information which was outstanding and which had to be received before the complaint could be considered “properly documented.” This information consisted primarily of the detailed financial data for the period of investigation. The Commission exchanged correspondence with the Complainant regarding this request and on December 6, 2001 the Commission received the requested response.

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

¹ In the Commission’s Statement of Reasons (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. The Complainant has made reference to Harricrete as an interested party; the Commission is still attempting to verify their connection to the subject transactions.

Cibinong and Mainland as well as Indocement Tungal and PT Semen Gresik (Indonesian cement producers).² All parties were required to provide responses within a thirty-seven day period, which expired on February 8, 2002.

Cibinong did not acknowledge receipt of the Commission's questionnaire, until a facsimile of January 29, 2002, when it requested an extension of the February 8 deadline. The Commission granted an extension on specific sections of the Commission's questionnaire to February 20 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; 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 was forced to assume 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 the review of the responses submitted, the Commission forwarded supplemental questions on March 6, 2002 to all parties and advised them 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. To date the Commission has received responses to the supplemental questions from Mainland, CCCL, Cibinong and Blue Atlantic. The Commission's questions to IMI have to date gone unanswered. The Commission's questions to IMI were directed at determining its role and function in the purchase and importation of the goods under consideration that arrived in Jamaica on September 5, 2001, as well as any payments received due to its participation in the transaction.

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.)

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 remains dispositive as to 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.

² While neither PT Semen Gresik nor Indocement Tungal 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 and the Commission has received a response from Gresik on March 25, 2002 indicating their intention to respond and requesting an extension.

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:

Table 2.1

HS CODE	PRODUCT DESCRIPTION	DUTY APPLICABLE
25.23	Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinkers.	15%
2523.10	Cement clinkers	Free
2523.20	Portland cement:	
2523.21	White cement	Free
2523.29	Other:	
2523.291	Building cement (grey)	15%
2523.292	Oilwell cement	Free
2523.299	Other	Free
2523.30	Aluminous cement	Free
2523.90	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 Table I 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”. The Commission is pursuing further investigations to determine whether the comparable product in Indonesia is a TYPE I or a TYPE III, as this could affect its normal value calculations.

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.

The OPC produced by the domestic industry shares 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, as previously mentioned, the goods under consideration meet Jamaican standards for “rapid hardening” cement. The domestically produced goods do not have this feature, however this difference is not so significant as to make 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 of both the goods under consideration and the

domestically produced product. Mainland and CCCL agree that the domestically produced goods and the goods under consideration are directly substitutable for and compete with each other.³

Therefore, the Commission has concluded that the OPC produced by the domestic industry is a “like good” to the goods under consideration previously defined in the section on scope.

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, to what degree.

The POI for dumping commences one year prior to the date of initiation, that is January 4, 2001 through January 3, 2002.

The POI for the injury analysis commences three years prior to the date of initiation, that is January 4, 1999 through January 3, 2002.

VII. THE DOMESTIC INDUSTRY

The Complainant 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 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 the cement from these two sources. In the period September to December 2001, cement from Indonesia entered the market.

Market indicators show that in the period September to December 2001, there was a slowing of activities in the construction and instillation sectors⁴ which resulted in a lower level of demand for

³ CCCL’s November 1, 2001 submission, page, paragraph 3.1.4, and Mainland’s February 8, 2002 response to the Commission’s First RFI, page 6, paragraph 2.3 (c).

⁴ In fact PIOJ reports that the construction and instillation sector recorded the slowest quarter on quarter growth for 2001 in this period. The high degree of correlation between these two factors indicates some amount of causation.

cement. The containment of capital expenditures by the Government, which resulted in a number of projects being set back, and the decline in global economic performance precipitated by the events of September 11, 2001, have all contributed to a slowing of activities weakening the demand for cement.

However, for the full calendar year of 2001 consumption⁵ actually grew by approximately 4.51 per cent over its 2000 levels. Given the decline in demand in the last three months of 2001, it is reasonable to assume that growth would have been more positive for the full calendar year.

The Commission is of the view that, in 2002, it is possible that there will be a boost in the demand for cement emanating from remedial work that would have to be carried out as a result of the flood rains, as well as the resumption of those projects that were set back as a result of expenditure cuts towards the end of 2001.

IX. ECONOMIC CONDITIONS OF THE DOMESTIC INDUSTRY

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.

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, as volumes actually declined relative to 2000. CCCL's production has fallen short of market requirements in previous years, however at the beginning of 2001 there seemed to be a marked reversal of this trend. In fact the production in 2001 represented the highest level since 1997.

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 efficiency⁶.

⁵ Consumption figures are based on sales data from both Mainland and CCCL.

⁶ Ibid. See also the General Manager's Statement for the same period.

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 as to facts 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 Agreement⁷ 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 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. 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 Authority should take into account and a simple procedure that it should follow before making its determination on the basis of facts available. Specifically, the Authority 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. Annex II sets forth rights and responsibilities on the part of both the Authority and the parties, which effectively injects additional elements of transparency and fairness in the investigation process.

⁷ 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.

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, as these become available. Estimates of the normal value and export price are discussed below.

A. NORMAL VALUE

The Commission is satisfied with using 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 Complainant has furnished information on Indonesian prices at various levels of trade upon which it alleges normal value calculations should be based. Specifically, the Complainant provided evidence of manufacturer to distributor prices in Indonesia; this is the same level of trade at which the exports to Jamaica are sold. The submissions from the Exporter confirm this price, and thus it is the price that the Commission used as the starting price for the normal value calculations.

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.

In its complaint, CCCL alleged that the export price of the goods under consideration to Jamaica is less than the importer's sale price as evidenced by Customs documentation, that this is as a result of collusion between the other interested parties and that the actual selling price may be much lower. The supporting documentation furnished by the Complainant which includes, among other things, published annual reports from the Producer/Exporter, supports an exporter's sale price that is much lower than that quoted on the Customs documentation. The Importer has denied the Complainant's allegations of collusion.

The Commission requested information from the Exporter and IMI in order to ascertain the exporter's sale price. The Commission was not satisfied with the response received from the Exporter, because the information provided was not verifiable due to a lack of supporting documentation. To date IMI has not responded to the Commission's questionnaires. In light of the aforementioned, the Commission used facts available on the record to deduce the exporter's sale price. The exporter's sale price used is an average export price derived from the Exporter's Annual Report 1999 and the Commission is satisfied that the estimate derived therefrom is the best approximation of the export price, at this time, based on the facts on the record.

C. ISSUES OF PRICE COMPARABILITY

To ensure price comparability, the Commission makes adjustments, where appropriate, to the starting prices for normal value and export price, to account for differences that may arise between countries, due to variations in quantities, levels of trade, physical characteristics, and any other differences demonstrated to affect price comparability. The Commission uses verifiable information provided by the parties in their submissions to determine the nature and amount of these adjustments.

1) NORMAL VALUE ADJUSTMENTS

Discounts or Rebates - The information provided by the Complainant indicated that no discounts or rebates were given to distributors; therefore no adjustment should be made on the basis of this information for discounts or rebates.⁸ 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.

⁸ Ordinarily discounts or rebates would be included as they form part of the net price to the purchaser and net prices are what form the basis for normal value calculations.

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.

Adjustment for 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, the Commission did not have to make an adjustment for this difference.

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 does 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 Commission has yet to ascertain whether the cement sold as OPC Type I to Jamaica and that sold on the Indonesian market have the same physical characteristics and whether there is a price differential between the types sold on the Indonesian market. Once this information is provided, the Commission may make an adjustment.

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 starting price. Submissions received from the Exporter did not address questions related to this issue.

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

Additional export packing - The Complainant claimed that the goods were packaged in slings, that this was included in the export price and claimed that an adjustment should be made. 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 starting 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 represents, 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 claimed that it made the payment for its shipment of cement to a buyer, IMI in September. The Commission is of the view that there must be a charge associated with the services provided by the buyer and has attempted to ascertain the charge. The Commission is awaiting responses in this regard and will make the necessary adjustment once the information is received. If at the final stage of this investigation, the Commission has not received responses to its queries, it will determine a price using facts available on the record, and will deduct this charge from the starting price.

Pursuant to section 19 of the Act, which requires the Commission to use the lesser of the importer's purchase price and the exporter's sale price after adjustments, the Commission relied on the exporter's sale price including adjustments, as the export price for purposes of calculating the dumping margin.

D. ESTIMATED 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 was estimated by comparing the normal value, provided by the Complainant and corroborated by information submitted by Cibinong, with the exporter's sale price; each adjusted to account for costs, charges and expenses that would affect price comparability. The resulting estimated margin of dumping is 56.21 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 support of the Complainant's allegations, the Commission has found evidence of a negative impact on ability to raise capital, a decline in the growth of sales, negative volume effects as a result of the dumped imports, that has translated into a decline in the domestic industry's market share and consequent decline in profitability relative to comparable periods.

In conducting the analysis of injury, the following factors have to be taken into consideration: the relatively short period of time being analysed, the fact that the dumped imports were only in the market for a period of two months prior to the initiation of the investigation; the increase in unit prices by the Complainant two months prior to the time that the dumped imports entered the market; the method of cost allocation employed by the Complainant; the Complainant's new marketing strategy; and the existence of fair competition in the market prior to the entry of the dumped imports. In view of the multiplicity of factors, a dynamic⁹ approach was taken to the injury analysis. At the outset, each year has been divided into three four-month periods, in an effort to analyse the growth

⁹ A dynamic instead of static analysis. A dynamic analysis looks at the evolution of a variable over time taking into account the influences of other factors, in the move towards adjustment. A static analysis looks at a variable at a point in time, without taking into account the influences of other factors on the outcomes.

trend¹⁰ over a period comparable to that of the period for which the dumped imports were in the market (September to December). 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.

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 prior to September 2001. In fact the Commission is satisfied that there were no other imports of cement for the period September to December 2001. The volume of imports are not negligible.¹¹ The imports as a percentage of domestic production for the period September to December 2001 represent 18.76 per cent of total domestic production, and 15.99 per cent of total consumption. Almost all goods imported over the period September to December 2001 have been consumed and this has translated into 15.43 per cent of the market.

The total market supply for the period September to December 2001, as measured by local production, imports of cement in that period plus opening inventories of the Importer and the domestic producer, was in excess of total market demand, as measured by total consumption. The excess supply in the market would constitute a downward pressure on prices. However, at this time it has not translated into a reduction of market price.

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.

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. This is usually done to enable a comparison of prices in a market affected by dumping and a market unaffected by dumping.

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 changed in light of the competition. In fact, CCCL had indicated

¹⁰ A trend captures the underlying movement in a series and can be used to forecast long-term performance, in the absence of any adverse shocks.

¹¹ For a definition of the term negligible see section 26 of the Act.

that because of rising costs it increased its prices in June 2001. 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.

CCCL continues to allege that there have been price effects as a result of the dumped imports, including price undercutting. In the interest of price comparability, CCCL's prices (ex-factory) were compared to Mainland's prices to wholesalers (ex-importer's store). The Commission found that price undercutting throughout the period September to December 2001 was marginal and does not constitute a significant price effect.

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.

In fact, an examination of the period September to December 2001 reveals that, relative to the same period in 2000, the margin between unit cost of production and prices actually widened. CCCL's attempts to preserve this margin through the reduction in cost and an increase in unit price have overshadowed any suppressing effects the imports may have had on prices. The Commission is not satisfied that price suppression has occurred as a result of the introduction of Indonesian cement on the market.

C. ECONOMIC IMPACT ON THE DOMESTIC INDUSTRY

1) SALES

Indonesian cement entered the Jamaican market in September 2001, and this represented the only shipment in 2001. CCCL sales volumes in the period September to December 2001 represented the lowest level of sales over the period January 1999 to December 2001. A full year comparison of consumption revealed that the total consumption of cement grew by 4.24 per cent in 2001 relative to 2000. In 2001 as compared with the prior year, Mainland's sales volumes increased significantly however, CCCL experienced a small downturn in sales volumes. In essence, the data indicates that CCCL has not benefited from the growth in total consumption.

2) OUTPUT

Of the three calendar years examined 1999 - 2001, the Commission found that production for 2001 was the highest, following upon CCCL's concerted effort to increase local production to meet the

demand. However, for the period September to December 2001, production has reverted to the levels maintained prior to 2001. In addition, output in this period relative to September to December 2000 actually declined.

The Commission was unable to make conclusive findings concerning the Complainant's allegations of a decline in capacity utilisation and productivity at this time, based on the evidence before it.

3) INVENTORY

A comparison of CCCL's monthly inventory levels year over year between 1999 – 2001 reflects an increase. In particular, the increase in inventories in September 2001 is reflective of high production levels at the end of August 2001, and the resulting loss in sales to imported cement from Indonesia. It is notable that inventory levels in September and October (when the dumped imports were in the market) were the highest for the calendar year, a monthly pattern not replicated in any other year.

4) MARKET SHARE

Since May 1999 when Mainland entered the domestic cement market, CCCL has experienced a gradual decline in market share. However, since August 2001, CCCL had recovered some of the market, which was again reduced in the period September to December 2001.

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 reduction of market share, due to the presence of the cement imported from Indonesia in the period September to December 2001, did not reflect a reduction in net operating profits as reported in the actual financial statements for CCCL in the period September to December 2001 relative to the previous comparable periods. Even in the face of an 11.74 per cent downturn in its sales revenue. This was due largely to the method of cost allocation incorporated by CCCL, which caused large and frequent fluctuations in the cost of sales.

The cost of sales as a percentage of sales, as presented in the financial statement for September through December 2001, shows a marked reduction over all the prior periods. CCCL's financial statement for 2001 reflects large variances in the cost of sales per unit from month to month. It is difficult to determine the reasons for these variances, however, it is clear that such information presented on a short-term basis (monthly, quarterly, etc) will tend to be skewed when comparing one period with another. As such the Commission sought to determine the average annual unit cost of sales, in order to eliminate the inaccuracies that are evident in short-periods analyses.

For similar reasons, the Commission determined expenses that were not directly related to CCCL's operations and which might vary significantly from period to period, for reasons unrelated to direct operations. These indirect expenses normally include finance charges, exchange loss or gain, goodwill amortizations, deferred gain or loss and exceptional expenses.

To aid in its analysis the Commission restated CCCL's financial highlights using the average cost of sales for the complete years and excluding expenses not directly related to operations. The restated financials clearly show the link between the variances in sales revenues and the variances in profits, specifically, the restatement indicates that the profits for September to December 2001 decreased by 34.59 per cent, relative to the period May to August 2001. This establishes a direct link between the reduction in profits and the reduction in sales relative to the prior periods. This bears out CCCL's allegation of a decrease in profitability.

In addition, there are other factors affecting the comparability of the profitability from period to period. Strategic changes occurred in or around June 2001 and include: CCCL's price increase, a change in CCCL's marketing strategy which resulted in savings to the company and the reduction in average unit cost of sales. The Commission is satisfied that the profits for the period September – December 2001, can almost exclusively be attributed to these factors, the absence of which would have led to a more pronounced decline in profitability relative to the previous period.

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. The Commission found that relative to the date that the dumped imports entered the market CCCL's share prices fell significantly, 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. While this may not be wholly attributable to the dumped imports it is still a significant correlation, in light of the company's reported improvements in its fundamentals during the period September to December 2001.

7) CONCLUSION

The Commission has carried out a dynamic analysis of the industry, which means that it has looked at trends in performance over time, rather than on a static basis relative to some absolute standard of performance. This has been done specifically because such an analysis can show injury whether static performance indicators are going up or down, which is critical because of the tendency to rule that, if an industry is healthy on the basis of static criteria (such as certain percentage return on sales), the industry is not being materially injured. This dynamic analysis entails abstracting from static criteria, that would show an industry to be healthy and seeing whether or not they would have been better off, "but for" the dumping. It looks at material injury as a comparative concept.

The Commission observed the following effects on the domestic industry: a negative impact on ability to raise capital, a decline in the growth of sales, negative volume effects as a result of the dumped imports, that have translated into a decline in the domestic industry's market share and consequent decline in profitability relative to comparable periods. On this basis the Commission is satisfied that there is a reasonable indication that the domestic industry is suffering injury, however the Commission is not satisfied at this time that the injury suffered is material.

XIII. CAUSAL LINK

It is crucial that it be demonstrated that the negative impact on or the injury to the industry is as a result of the effects of dumping. One way to determine that the dumped imports have caused material injury is by an examination of the effects of the exogenous factors in the past and at present, thereby ensuring that any injury which the domestic industry may be experiencing cannot be attributed wholly to these factors.

The Commission examined all known factors other than the dumped imports (exogenous factors), which at the same time could be negatively affecting the domestic industry. The factors identified were: rising fuel prices, utility costs, a devaluation of the exchange rate and the decline in domestic demand due to flood rains. The analysis revealed that these factors did not adversely affect the Complainant during the relevant period. In addition, there seemed to be factors internal to the domestic industry that may be masking the true relationship between the injury currently being evidence and the dumped imports. The Commission will examine this causal relationship further in the final stage of its investigation.

XIV. THREAT OF MATERIAL INJURY

In accordance with Regulation 13 of the Act, a determination of threat of injury shall 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 Regulations 12 and 13, can be divided into three categories: those factors that relate directly to the dumper's ability to potentially increase the supply of dumped imports into the Jamaican market; those that relate to the dumper's ability to indirectly affect the local industry's ability to supply its product to the Jamaican market and remain competitive (these factors would also impact on the future performance of an industry); and any other factors that may be deemed relevant in the circumstances (whether specific to the firm's operations or economy wide). If after the examination of all relevant factors, the Commission is able to rule out "any other factors" that would threaten to cause injury to the domestic industry, then it can make a finding of causation on the basis of the threat factors. In the present scenario, there is evidence of injury (the effect) to the domestic industry and there is evidence to show that the injury is a direct result (cause) of the dumped imports. Given the evidence of these factors presented below, threat of material injury, has to do with the likelihood that the allegedly dumped imports will continue in future.

The documentary evidence supports the view that Cibinong has the ability to potentially increase the supply of dumped imports into the Jamaican market. Cibinong enjoys significant export capacity and has stated its intent to increase its export markets. In addition there is a potential for product shifting due to the fact that Cibinong whose main business is cement production, currently produces a number of different types for export and could shift its resources to the production of cement for export as necessary.

With reference to the Complainant's ability to supply its product to the Jamaican market, while there are no significant price effects resulting from the presence of dumped imports, continued presence of

the dumped cement on the market could cause the domestic industry to react in a number of ways, depressing price or decreasing production to try to bring equilibrium to the market. Further, reduced profitability would jeopardize the Complainant's ability to continue with its research and the development of a derivative product. Additionally, the estimated preliminary margin of dumping of approximately 56 per cent is an indication of the significance of a possible price effect that the goods under consideration could have on the local market.

One other factor that the Commission has taken into consideration is that there is strong incentive for Mainland to continue importing cement in order to build its customer base. In this respect Mainland has been an aggressive player in the cement market. In addition the possibility of increased imports in the future stems from the fact that the Importer expects demand conditions to improve significantly in 2002, a point stressed throughout its submissions.

In summary, the availability of dumped cement from Indonesia constitutes a threat to the viability of the domestic industry. The negative impact of the dumped imports on the local industry could only be further exacerbated by their continued importation. Given factors that would point to the potential for increased imports: namely the capacity of the foreign producer and the potential for product shifting; and the Complainant's diminished ability to supply its product to the Jamaican market, the possibility exists for a greater decline in CCCL's market share than currently being experienced. In the absence of factors that would mitigate these influences, then the threat of material injury to the domestic industry is "clearly foreseen and imminent."

XV. IMPOSITION OF PROVISIONAL DUTIES

As a consequence of the foregoing, the Commission deems it necessary to impose provisional duties as of the date of the Preliminary Determination in order to prevent injury being caused to the domestic industry during the remainder of the investigation.

Pursuant to section 15 of the Act, provisional duties in the amount of 56.21 per cent shall be imposed on dumped goods that are the same description as any goods to which the Preliminary Determination applies. Duties shall take effect on April 3, 2002 and shall remain in effect for a period not exceeding four (4) months, or at the request of exporters representing a significant percentage of trade concerned, a period not exceeding six (6) months, terminating on the day on which the Commission does any of the following: accepts an undertaking, suspends or terminates the investigation or makes a Final Determination. The Importer shall pay provisional duties on all goods released between the effective dates of the provisional duty. Payment may take the form of actual payment or the posting of a security, in the form prescribed by Jamaica Customs, in an amount or to a value not greater than the estimated margin of dumping.

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 sets 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 above finding must be coupled with the second prong. Pursuant to section 13 of the Act: 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.

The data currently before the Commission does not support a finding of a significant increase in imports and the information provided by the Importer indicates that there was no attempt on its part to avoid the imposition of the duty (in view of the fact that arrangements for the second shipment began before the initiation of the investigation). It is the view of the Commission that it is unable to make an affirmative Preliminary Determination concerning this matter at this time. However, the Commission will consider this issue further at the Final Determination and therefore invites submissions from all concerned parties on the issue of the application of retroactive measures.

XVII. DECISION

Pursuant to section 27 of the Customs Duties (Dumping and Subsidies) Act, the Commission has made an affirmative Preliminary 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 the potential for an increase in dumped imports due to the capacity of the foreign producer and the potential for product shifting; and the Complainant's diminished ability to supply its product to the Jamaican market and remain competitive. All of which constitute a threat to the viability of the domestic industry as the negative impact of the dumped imports on the local industry could only be further exacerbated by continued dumped imports.

Pursuant to Section 15 of the Customs Duties (Dumping and Subsidies) Act, the Commission has decided to impose a provisional duty in the amount of 56.21 per cent on all goods that are the same description as those to which the Preliminary Determination applies, effective April 3, 2002 and terminating on the date the Commission, accepts an undertaking, suspends or terminates the investigation or makes a Final Determination. At the Commission's request Jamaica Customs will collect a provisional duty on all goods imported into Jamaica that are the same description as those to which the Preliminary Determination applies, which are released after April 3, 2002.

Mrs Beverley Morgan
Chairman

Ms. Sandra Shirley
Commissioner

Mr. Lloyd Goodleigh
Commissioner

Dr. Cecil Goodridge
Commissioner (Dissenting)

FUTURE ACTION

The Anti-Dumping and Subsidies Commission will make a Final Determination in this matter within 90 days from the date of the Preliminary Determination in this investigation which will be July 3, 2002.

Where at anytime before the making of a Final Determination in an investigation relating to the dumping or subsidising of goods, the Commission is satisfied in respect of some or all of those goods that there is insufficient evidence of dumping to justify proceeding with the investigation in relation thereto; or the margin of dumping is *de minimis* or that the volume of dumped imports, actual or potential, or the injury is negligible; or that the evidence does not disclose a reasonable indication that the dumping or subsidising thereof has caused, or is likely to cause material injury; the Commission shall cause the investigation to be terminated with respect to those goods. The Commission shall cause notice of such a termination to be published in the Jamaica Gazette and a daily newspaper.

In the event of a Final Determination of dumping and injury by the Commission, the goods under consideration would be subject to an anti-dumping duty which may be equal to the margin of dumping, or, as the case may require such lesser amount as is considered adequate compensation for the injury.

RETROACTIVE DUTY

At the Final Determination, if the Commission makes a finding of material injury, an antidumping duty may be imposed retroactively on goods under consideration that were imported into Jamaica in the period starting on the day the investigation was initiated.

INFORMATION

Interested parties are invited to file written submissions presenting facts, arguments and evidence that they feel are relevant in support of or in opposition to the Commission's findings in this preliminary determination, specifically in relation to the Commission's finding of dumping and injury. Written submissions should be forwarded to the attention of the officer identified below. To be given consideration in this phase of the investigation, the Commission should receive all information within 30 days of the date of the Preliminary Determination.

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

This Statement of Reasons along with the Notice of Preliminary Determination of this investigation has been provided to interested parties of 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