



**ANTI-DUMPING AND SUBSIDIES COMMISSION**  
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## STATEMENT OF REASONS

**KINGSTON, JAMAICA**  
**June 11, 2001**

**REF. NO.-AD-01-2000**

***IN THE MATTER OF*** a complaint, under Sections 22 and 23 of the Customs Duties (Dumping and Subsidies) Act of 1999, made by the Caribbean Cement Company, Ltd., to the Anti-Dumping and Subsidies Commission;

***AND IN THE MATTER OF*** a Final Determination by the Anti-Dumping and Subsidies Commission under Section 30 of the Customs Duties (Dumping and Subsidies) Act of 1999;

***RESPECTING*** the dumping in Jamaica of Ordinary Portland Grey Cement, Harmonized Tariff System heading 2523.29, originating in, or exported from, the Kingdom of Thailand.

Commissioners sitting: Ms. Deika Morrison, Chairman  
Dr. Cecil Goodridge, Commissioner  
Ms. Beverley Morgan, “  
Ms. Sandra Shirley, “

### **I. SUMMARY**

On December 7, 2000, the Anti-Dumping and Subsidies Commission (hereinafter the “Commission”) caused an investigation to be initiated in respect of the alleged dumping of Ordinary Portland Grey Cement (“OPC”) originating in or exported from the Kingdom of Thailand (the “subject imports”). The investigation was initiated in response to a properly documented complaint filed by the Caribbean Cement Company Ltd. (“CCCL”).

As a result of its investigation, the Commission has determined that of a total volume of 84,562 MT of cement imported into Jamaica from the Kingdom of Thailand, only approximately 11,260 MT<sup>1</sup> of cement shipped via Trinidad was dumped (indirect shipment). The remaining volume of cement shipped directly to Jamaica was not dumped (the direct shipment). The volume of dumped imports is not “negligible” within the meaning of Section 30(2) of the Customs Duties (Dumping and Subsidies) Act of 1999 (the “Act”). However, given that the volume of dumped imports is negligible relative to domestic production and or consumption, the Commission has determined that these imports have not caused and are not causing material injury to the domestic industry. The Commission is of the view that the totality of the record supports a finding of threat of material injury within the meaning of Section 13 of the Regulations.

## II. INTERESTED PARTIES

### A. The Complainants

The complaint was filed by CCCL, the sole domestic producer of the “like goods”<sup>2</sup> in Jamaica, with registered offices at Rockfort, Kingston, Jamaica (hereinafter the “Complainant”).

The Complainant contends that:

- 10,900 metric tonnes (“MT”) of OPC exported from SCPC were transshipped in four separate shipments to Jamaica through a third country (Trinidad) during June-October 1999.
- 34,000 MT of OPC originating in (or exported from) the Kingdom of Thailand by Siam Cement Industry Company, Ltd (“SCIC”) were imported into Jamaica on or about June 1, 2000 and August 21, 2000.
- OPC from each of the above shipments was sold at an export price to Jamaica that is less than the price or cost of production of OPC in the Kingdom of Thailand.
- The dumped OPC from the Kingdom of Thailand has caused material injury and is likely to cause or threaten to cause further material injury to the domestic industry and workers in Jamaica producing the like goods.

The Complainant further alleges that the dumping of OPC in Jamaica has injured the domestic industry in the following ways: price depression; price suppression; lost sales;

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<sup>1</sup> Commissioner Goodridge used 10,900MT – Source: Public Hearing Exhibits 12 and 15.

<sup>2</sup> Act, § 2(1). See description of “like goods” in Section V, below.

lost market share; lost cement production; reduced capacity utilization; lost revenues; and, reduced profitability.

## **B. The Exporters**

### **1. Siam Cement Public Company, Ltd. ("SCPC").**

SCPC is the parent company and a 100% shareholder of SCIC (the manufacturer of the subject imports) and several other subsidiaries with registered offices at 1 Cement Road, Bangsue, Bangkok 10800, Kingdom of Thailand.

In its response, SCPC states that its "main marketing policy for both domestic and export sales is to sell [its] product at prices equal to cost plus a reasonable profit margin." SCPC further states that the subject goods were sold to Jamaica "on a FOB basis with good profit margins," and that the customer in Jamaica bought the subject goods at "satisfactory CIF prices through the freight arrangement by the freight consolidator [Harricrete Ltd.]."

### **2. Harricrete Ltd. ("Harricrete").**

Harricrete has registered offices at Las Lomas No.2, Republic of Trinidad & Tobago W.I.

Harricrete states that it served as the "freight consolidator" for the direct and indirect shipments to Jamaica. Harricrete maintains that the OPC from SCPC was not dumped. Harricrete further states that it has one OPC customer in Jamaica, Mainland International Ltd.

## **C. The Importers**

Mainland International, Ltd. ("Mainland"), with registered offices at 8 March Pen Road, Spanish Town, St. Catherine, Jamaica, is the successor to Mainland Trading Ltd., with registered offices at 62A Mannings Hill Road, Kingston 19, Jamaica.

In response to the complaint, Mainland states that at no time did it import dumped cement into Jamaica. Mainland further states that there is no evidence of a causal relationship between the subject imports and the alleged injury suffered by the Complainant. Mainland further points to factors independent of the subject imports and intrinsic to the Complainant's operations as the cause of any injury experienced by the Complainant. These intrinsic factors include the breakdown of equipment for extended periods and low worker morale.

### **III. BACKGROUND**

The Complainant filed a complaint on September 4, 2000. The Commission notified the Complainant on October 19, 2000 that the complaint was properly documented, in accordance with Section 23 of the Act. By Note Verbale dated November 3, 2000, the Government of Thailand was notified that a complaint was filed alleging possible dumping of OPC originating in or exported from the Kingdom of Thailand.

On December 7, 2000, the Commission initiated the present investigation into the alleged dumping of OPC. By Note Verbale dated December 11, 2000, the Government of the Kingdom of Thailand was notified of the Commission's determination pursuant to Section 25 of the Act. On March 14, 2001, the Commission preliminarily determined that the subject OPC is being dumped and that the dumped imports are causing or threatening to cause material injury to the domestic industry in Jamaica. As a result of the Commission's Preliminary Determination, a provisional duty was imposed against the subject imports. The period covered by the investigation ("POI") of dumping is January 1, 1999-November 30, 2000. The Commission collected information pertinent to the assessment of injury and causal link for the period January 1, 1998-December 31, 2000.

Case briefs were submitted by both the Complainant and Mainland on April 6, 2001. None of the parties submitted rebuttal briefs.

Finally, a public hearing was held in Kingston from April 30, 2001 to May 4, 2001.

### **IV. THE PRODUCT UNDER INVESTIGATION**

#### **A. Product Definition**

For the purpose of this investigation, the subject imports are defined as OPC used for building and construction purposes.

#### **B. Classification Of Imports**

OPC is currently classifiable under the Harmonized Tariff System ("HTS") heading 2523.29 and used for building and construction purposes, regardless of type or quality.

#### **C. Product Description**

OPC is a hydraulic cement consisting mainly of compounds of lime, calcium, aluminum, 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.

#### **D. Production Process**

The raw materials are blended and fed into the back end of a kiln. At temperatures of 1482°C (2700F), chemical reactions of dehydration and calcination occur to produce a new substance called “clinker.” Gypsum is added to the clinker to control the setting time. When ground to specification, the final product is called “cement.”

#### **V. THE LIKE GOODS**

Section 2 of the Act defines the “like goods” as either goods that are identical to the subject imports or goods for which the uses and other characteristics closely resemble those of the subject imports.

The Commission concludes that the locally produced goods are not physically identical to the subject imports. However, the locally produced goods are similar to the subject imports in that they share similar physical and chemical characteristics and end-uses, and are all classified as OPC.

#### **VI. THE DOMESTIC INDUSTRY**

The Complainant is the sole Jamaican producer of the like goods. In 1999, TCL (Nevis) Limited acquired majority shareholdings in the Complainant.

The Complainant employs more than 300 people at its plant in Rockfort, Jamaica.

#### **VII. THE JAMAICAN MARKET**

The Jamaican OPC market is composed of one producer and a distribution network. The distribution network includes retailers, distributors, ready-mix operators, and end users. OPC is an intermediate good whose demand is derived entirely from the demand for concrete, which in turn is derived from the demand for construction. There are no substitutes for cement in the production of concrete.

Based on evidence contained in the record, the Commission has determined that total domestic consumption of OPC during 1998-2000 was between 557,729 and 672,053 MT per annum.

#### **VIII. EVIDENCE OF DUMPING**

The purpose of the Act is to remedy injurious dumping. Dumping is generally defined as selling a product in an export market for a price (i.e., the “export price”) that is lower than the price at which the product is sold in the exporter’s home country (i.e., the “normal value”).

The Act requires that a fair comparison be made between the export price and the normal value. Thus, the comparison is made, to the extent possible, at the same level of trade, normally at the ex-factory level, and on sales that are as contemporaneous as possible. In making this comparison, Section 19 of the Act directs the Commission to make adjustments to the selling price in each market to account for differences in the transactions that affect price comparability, such as differences in conditions and terms of sale, taxation, quantities, and the physical characteristics of the products.

In the instant case, the assertion is that SCPC made two sales of OPC to Harricrete in 2000 (the “direct shipments”) and multiple sales of OPC to Harricrete in 1999 (the “indirect shipments”). Harricrete, which states that it is not affiliated with SCPC, re-sold the OPC to Mainland.

In its Preliminary Determination, the Commission calculated separate dumping margins for the direct and indirect shipments. For purposes of this Final Determination, the Commission has maintained this approach. Further information placed on the record after the Preliminary Determination justified the use of a different methodology from that followed in the Preliminary Determination, in accordance with the WTO AD Agreement and Jamaican law.

#### **A. The Direct Shipments In 2000**

##### **1. Export price**

In the Preliminary Determination, the Commission had reservations about the information placed on the record by SCPC, Harricrete, and Mainland (the “Respondents”) regarding the calculation of an export price for the direct shipments, because it appeared incomplete and inconsistent with other information contained in the record, as well as independently verifiable sources. In lieu of the Respondents’ information, the Commission used, as facts available, information on SCPC’s average price to all countries for the year 2000.

Section 10 of the Act limits the use of facts available to instances where a Respondent “refuses access to information”, “fails to provide necessary information within a reasonable period of time”, or “significantly impedes the [Commission’s] investigation.” After a thorough review of the record evidence, including information placed on the record after the Preliminary Determination, the Commission has determined that these criteria are satisfied in connection with certain charges, including, but not limited to, trucking, port/stevoring charges, bank and other charges, and facilitation fees used in calculating export price; no inland freight bills or agreements, substantiating the charges to the port of export, were submitted, despite numerous requests.

Thus, for the starting price, the Commission relied on the price between SCPC and Harricrete. This value is reported in SCPC's export sales data set. This value serves as the starting price because the record reflects that (a) SCPC knew the destination of the exports at the time of sale, and (b) SCPC sold the cement (on an FOB-Thai-port basis) to Harricrete, not Mainland. The total quantity of all such direct shipments during the POI was 73,302 MT.

From the starting price, adjustments were made for foreign inland freight, port/stevedoring charges, trucking, bank and other charges, and facilitation fees, in order to obtain a weighted-average ex-factory price.

Because the sales were made prior to importation into Jamaica, the prices were treated as export price sales (as opposed to constructed export price sales). Thus, adjustments for differences in selling expenses (i.e., packing and imputed credit) were made to the normal-value.

## **2. Normal value**

For the Preliminary Determination, the Commission based the determination of normal value upon facts available. In particular, the Commission relied on documents obtained from the Siam CPC Analyst Conference of February 1, 2001.

The Commission's use of facts available was deemed appropriate because of perceived reporting errors and the short amount of time between the receipt of certain information and the Preliminary Determination. For purposes of the Final Determination, however, the Commission has before it a fuller record, including information obtained after the Preliminary Determination. Therefore, the Commission has limited the use of facts available to the starting price for sales made on a delivered basis and the adjustment for credit expenses.

For the starting price, SCPC reported its gross unit price (less certain discounts and rebates) in its sales-specific data sets. These amounts are reported on an ex-factory basis. This would appear to be incorrect since it is clear from home market invoices placed on the record that freight is sometimes charged to the customer.

The Commission deducted "other" direct selling expenses reported in SCPC's monthly sales data sets submitted in its January 14, 2001 response, at Section B. SCPC did not report home market packing expenses in its sales-specific data sets. It did, however, report such expenses in its monthly sales data set reported in its January 14, 2001, Section B response. While it is preferable to report these on a sales-specific basis, the Commission does not see how these amounts can be ignored. Thus, the Commission has entered these monthly amounts in the sales-specific data sets. These amounts are deducted from the gross price.

Finally, the Commission has calculated amounts for imputed credit expenses using the methodology discussed above with respect to export price sales. These amounts are deducted from the gross price.

In sum, the Commission deducted direct selling expenses, home market packing expenses, and home market imputed credit expenses from the gross prices to determine net home market prices prior to adjustments for export packing and differences in circumstances-of-sale adjustments.

The Commission notes that SCPC reported average monthly expenses for advertising and indirect selling expenses. The Commission regards all such expenses to be indirect as SCPC made no attempt to tie these to sales as direct expenses. Since SCPC's export sales were made FOB Thai port (*i.e.*, made prior to importation into Jamaica), an export price methodology is warranted. Despite numerous requests, the Commission received no documentary evidence and thus had no basis upon which to impute charges for indirect selling expenses and thus they have had to be ignored in this calculation. SCPC made no other arguments for additional deductions or for a level of trade adjustment.

Lastly, the Commission applied the average exchange rate prevailing for the six-month period (corresponding to the sale-specific data set provided by SCPC) to the weighted-average net foreign market value described above, to convert the value to US\$/MT values. These values were adjusted by adding the weighted-average imputed credit for export sales and export packing values determined from SCPC's export sales data set.

## **B. The Indirect Shipments In 1999**

In the Preliminary Determination, the Commission determined a separate dumping margin for the indirect shipments. The Commission based export price on the prices shown on invoices from Harricrete to Mainland. Adjustments were made for ocean freight, handling charges, warehousing costs in Trinidad, foreign inland freight, and onloading charges in the Kingdom of Thailand. Stated differently, the Commission calculated export price "back to the factory gate" in the Kingdom of Thailand.

For the normal value of the indirect shipments, the Commission used, as facts available, publicly available net price data for cement sold in the Kingdom of Thailand by SCPC. The Commission expressly considered and rejected using sales in Trinidad to calculate normal value because the original sale to the intermediate country was allegedly dumped.

After a thorough review of the record evidence, including information placed on the record after the Preliminary Determination, the Commission does not believe this



methodology should be carried over to the Final Determination. From the information on the record post-Preliminary Determination, SCPC claims to have no knowledge at the time of its sale to Harricrete that its cement would eventually be sold to Mainland. According to the record, the cement was not merely transshipped through Trinidad. On the contrary, the cement entered Trinidad in February of 1999. It cleared Trinidad Customs and sat in Harricrete's warehouse for, in some cases, over seven months before being shipped to Jamaica.

Where the subject merchandise enters the commerce of an intermediate country, normal value should be based upon the exporter's sales of (or costs to produce) the like product in the intermediate country, and export price should be based upon the exporter's sales to Jamaica. In other words, for the purpose of the calculation of the dumping margin, the country of export was determined to be Trinidad and the exporter, Harricrete, not SCPC. Harricrete is the potential price discriminator for these sales, not SCPC.

This approach comports with the requirements of the WTO AD Agreement and Jamaican law. Article 2.5 of the AD Agreement states:

In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

None of the stated exceptions apply to the instant investigation. As noted above, the cement was not "merely transshipped" through Trinidad. The record also indicates that cement is produced in Trinidad and that Harricrete sells cement in Trinidad at market prices.

The Act does not contain a provision that tracks Article 2.5. Section 3 of the Commission's regulations, however, does contain a comparable provision that addresses the calculation of normal value under these circumstances. It states, in part:

. . . the fair market price of goods shall be determined by reference to --

\* \* \*

(5) . . . sales made by the exporter under the following circumstances --

\* \* \*

(f) in the country of export if the goods have not been shipped directly to Jamaica . . . however that this sub-paragraph shall not apply if --

(i) the goods were transshipped to Jamaica, through the country of export;

(ii) the goods are not produced in the country of export; or

(iii) there is no comparable price in that country in relation to those goods.

Again, none of the stated exceptions apply in the instant case. Thus, the Commission has calculated a separate dumping margin for the indirect shipments in accordance with the following methodology.

#### **1. Export price**

For the starting price, the Commission relied on the FOB Trinidad price that appears on CARICOM invoices supplied by SCPC. To this price, adjustments were made for handling charges in Trinidad and duty drawback. These calculations produced a weighted-average net export price.

Harricrete did not report packing expenses in either its export or comparison market sales data sets since it buys the cement from SCPC already packaged. The Commission compared bagged and "Big-Bag" pricing in both the Trinidad comparison market and Jamaican export market sales data sets and found no differences in price attributable to type of packaging. No adjustment for packing was made.

Harricrete did not report imputed credit expenses for either its export or comparison market sales. These amounts, however, can be calculated from evidence on the record as supplemented with publicly available information.

Harricrete reported both date of sale (invoice date) and payment date in its export sales and comparison market sales data sets. Imputed credit expenses are normally calculated on a sales-specific basis by determining the number of days between invoicing and payment, dividing these days where payment is outstanding by 365 days, and multiplying this amount by the weighted-average short-term borrowing rate available to the respondent for the currency in which the sales were denominated. This factor is then applied to the gross unit price to determine the credit expense.

Harricrete's sales to Jamaica were denominated in US\$ and its sales to Trinidad in TT\$. It is unknown from the record whether Harricrete had any borrowings in US\$ and

TT\$ during the POI. Nevertheless, since US\$ borrowing rates were lower than those for TT\$ during the POI, we have applied, as facts available, the average U.S. lending rate available for the year 1999 (i.e., 7.99 percent) for the sales to Jamaica, and the average Trinidad lending rate available for the year 1999 (i.e., 17.04 percent) for the sales to Trinidad.

## 2. Normal value

Harricrete reported its comparison home market sales in its Section B data set. All such sales were made on an ex-factory basis; therefore, no freight charges were reported. Harricrete made no other claims for adjustments to its comparison home market data set. Since any claim for an expense in the comparison market would result in lower antidumping margins, Harricrete's sales reporting is conservative to the extent that it may have incurred expenses which it did not report.

Harricrete reported its quantities in terms of bags, either in 94 lb. poly-paper bags or 1.5 MT "Big-Bags." The Commission converted these values to metric tons by dividing the bag quantities by the following factors:

94 lb. bags -  $(2,204.6 \text{ lbs./MT}/94 \text{ lbs/bag}) = 23.45319$

1.5 MT Big Bags -  $(1 \text{ bag}/1.5 \text{ MT}) = 0.66666$

The Commission subtracted the comparison market imputed credit expense from the gross unit price yielding a net price per bag. The Commission converted these per bag values to per metric ton values. The net price per metric ton was multiplied by the number of metric tons shipped to determine the net sales value per sale. These values were converted to U.S. dollar values using the date of sale and the U.S. Department of Commerce's exchange rates. Finally, these amounts were weight averaged and the per metric ton export imputed credit expense was added.

These calculations result in a weighted-average normal value based on Trinidad as the comparison market.

### C. Calculation Of Dumping Margins

For the direct shipment, the deduction of export price from normal value results in a negative dumping margin for SCPC. For indirect shipments, the weighted-average export price is subtracted from the weighted-average normal value to arrive at a dumping margin of 87.91 percent ad valorem for the indirect shipments.

## IX. EVIDENCE OF INJURY

The evidence needed to support a Final Determination is greater than the evidence needed to support a Preliminary Determination. In order to support a Preliminary Determination, there need only be a "reasonable indication" that the dumped imports have caused or is likely to cause material injury to the domestic industry.<sup>3</sup> To support a Final Determination, the Commission must be satisfied that "the relevant evidence demonstrates that the effects of dumping is causing injury to the domestic industry."<sup>4</sup>

The Commission's injury analysis examined the period from 1998 to 2000.

### A. Volume Of Dumped Imports

Section 30(2) of the Act provides that the Commission shall make a Final Determination upon being satisfied that, *inter alia*, the "volume of dumped ... goods is [not] negligible." The Act defines "negligible" as "normally ... less than three per cent of imports of the like product in Jamaica."<sup>5</sup>

The record of the instant investigation establishes that dumped imports accounted for approximately four percent of total imports of the like goods during 1998-2000. The Commission considers this amount not negligible.

### B. Material Injury

The Commission examined the injury factors set out in Section 12 of the Customs Duties (Dumping and Subsidies) Regulations (the "Regulations").<sup>6</sup> Pursuant to Section 12(7) of the Regulations, the Commission also considered factors other than the dumped imports, which at the same time are injuring the domestic industry.

The Commission's review of the instant record does not disclose a basis upon which to conclude that the "dumping is causing injury to the domestic industry." The principal reasons for this conclusion are as follows:

With respect to total production over the period of investigation, the volume of dumped imports is negligible.

With respect to total consumption over the period of investigation, the volume of dumped imports is negligible.

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<sup>3</sup> Act, § 26(1)(b).

<sup>4</sup> Regulations, § 12(6).

<sup>5</sup> *Id.*, § 26(3)(b).

<sup>6</sup> Appendix B

With respect to the injury factors cited in Section 12(1) and (2) of the Regulations, the Commission found substantiation only of the allegation of a decline in the percentage of market share.

### C. Threat Of Material Injury

In order to find that imports threaten material injury to a domestic industry, the Commission must determine that “a particular situation is likely to develop into material injury, and is clearly foreseen and imminent.”<sup>7</sup>

The totality of the record and sequence of events relative to this investigation support the proposition that the existing situation pertaining to the importation of cement originating in or exported from the Kingdom of Thailand to Jamaica “is likely to develop into material injury”.

The Commission notes the following:

- Imports from the Kingdom of Thailand and the importers have been under the scrutiny of the Commission since July 1999.
- The Commission has found that the indirect shipments of cement, exported by Harricrete and imported by Mainland during 1999 were dumped by a margin of 87.91%.
- The record reflects a significant increase in the export price of cement in 2000, post the commencement of the Commission’s investigation. It is worth noting that the price charged to the consumer by the importer did not reflect the aforementioned increase.
- The Commission did not find evidence of dumping in relation to the direct imports in 2000.

Although the Commission did not find documentary evidence to support dumping in relation to the direct imports in 2000, the Commission draws attention to the fact that the documentary evidence, which forms the basis for the Commission’s determination that there was no dumping of the direct shipments, is inconsistent and questionable. According to the record, the export price to Jamaica of the direct shipments is approximately ninety one percent (91%) higher than the average export price for SCPC exports to all other countries during the relevant period. The import documentation reveals that the direct shipments reflect a dollar value per MT, i.e. export price, which is approximately two

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<sup>7</sup> Regulations, § 13.

hundred and fifty two percent (252%) higher than the lowest price reported for the indirect shipments. Evidence before the Commission reveals that SCPC has been found to have been dumped cement in other jurisdictions. However, in the face of these facts, where the parties have provided information, the Act limits the scope of the Commission's consideration to specific invoice prices and other information presented by the parties, whether or not the Commission is convinced that said information is reliable.

A significant threat factor is excess capacity in the Kingdom of Thailand, where demand for cement is much below the level of production and inventories of cement remain high. Further, the record shows that SCPC is responsible for 43% of the Thai production. Despite its excess capacity, SCPC has recently entered into an arrangement which will add potentially another 600,000 MT to their capacity, which suggests an aggressive stance with respect to increasing its share of the global cement market.

It is clear from the evidence presented that the importer, Mainland, intends to import future supplies from the Kingdom of Thailand. In fact, over the POI, imports increased significantly although from the record the increased imports were not found to have been dumped. The record indicates that approximately 120,000MT of cement is expected to be imported from the SCPC per annum and this represents an increase of >1000% of the total volume of dumped imports and approximately 20% of local domestic production in the year 2000.

Section 13 (i) of the Regulations empowers the Commission to give consideration to "any other factors that are relevant in the circumstances." The Commission is of the view that the following factors were significant to its Final Determination:

- Mainland has made extensive capital investment in Jamaica in hardware merchandising and has stated that the sale of cement is an integral part of its overall business strategy.
- The fact that the Exporter has been associated with charges of dumping in other jurisdictions, and the business relationship between the Importer and the Exporter continues.
- Despite several requests for information, in most cases, the SCPC has not been responsive and, where information has been provided in many cases it has been found to be inconsistent.

The Commission is concerned about the export potential of SCPC, the dumping practices in other jurisdictions and, in particular, about the positive finding of dumping in this investigation with regard to the indirect shipments by the exporter's freight consolidator who remains and will, according to the record, remain a party to future transactions. The Commission is persuaded that the export prices for the direct shipments were influenced by this anti-dumping investigation. Based on the totality of the record and the posture of the parties during the period of investigation, it is the Commission's view,

that it is necessary to provide a disincentive to cause the parties not to engage in dumping practices which are likely to cause injury to the domestic market.

The Commission would like to underscore the significance of the role of Harricrete in introducing the subject goods into Jamaica's domestic market. The documentary evidence points to the existence of an exclusive arrangement for the regional distribution of SCPC's cement by Harricrete.<sup>8</sup>

Section 13 (h) of the Regulations empowers the Commission to give consideration to the "magnitude of the margin of dumping". The Commission considers that the dumping margin of the indirect shipments of 87.91% is of such magnitude to be of significance to the analysis of the threat of material injury. The magnitude of the dumping margin and the fact that Mainland has not reflected, in the price charged to the consumer, the significant increase in the export price (of cement imported directly from the Kingdom of Thailand in the year 2000) persuades the Commission that, in the absence of anti-dumping duties, the domestic industry is threatened by lost sales, lost market share, price undercutting among other things, from dumped imports.

The foregoing considerations, particularly SCPC's huge production and planned expanded capacity, its strong export orientation, and its propensity to dump are all potential risks that must be considered, in this case, when evaluating the threat of injury. Taking all these considerations into account, the Commission is persuaded that these injurious pressures are clearly foreseen and imminent.

## **X. EVIDENCE OF CAUSAL LINK**

Pursuant to Section 12(6) of its Regulations, the Commission examined whether "dumping is causing injury to the domestic industry." In particular, the law provides that the Commission must not attribute injuries caused by other factors to the dumped imports. In the instant case, the record evidence does not support the conclusion that the domestic industry has experienced material injury.

## **XI. CONCLUSION**

The Commission has determined that Harricrete has dumped OPC, originating in the Kingdom of Thailand and exported from Trinidad to Jamaica at a margin of 87.91%. The Commission has determined that the volume of dumped imports is not "negligible" within the meaning of Section 30(2) of the Act but is negligible with respect to domestic production and or consumption of like goods and has not caused and is not causing injury to the domestic industry. The totality of the record, in light of the provisions of Section 13 of

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<sup>8</sup> See Public hearing exhibit 5 (the cement bag) and RFI by Mainland dated April 4, 2001.

the Regulations, has persuaded the Commission that the particular situation is likely to threaten material injury to the domestic industry in Jamaica and is clearly foreseen and imminent.

Pursuant to Section 11 of the Act, the Commission concludes that the imposition of Antidumping Duties is necessary, in view of the clearly foreseeable and imminent threat of material injury. Pursuant to section 16 (1) of the Act, the Anti-Dumping Duties of 87.91% shall be imposed in respect of the subject goods originating in the Kingdom of Thailand and imported by Mainland International from Harricrete Limited as regional distributor/freight consolidator.

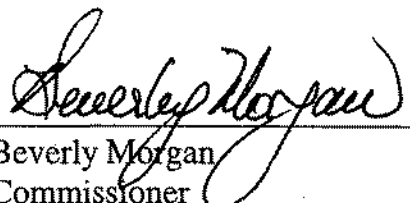
The Anti-Dumping Duty of 87.91% shall apply for a period not exceeding five years, commencing as of June 11, 2001. Imposition of these duties may be reviewed by the Commission before the expiration of five years, should circumstances warrant.

**COMMISSIONERS SITTING:**



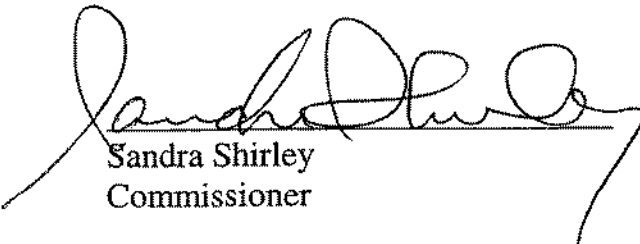
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Deika Morrison  
Chairman




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Beverly Morgan  
Commissioner



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Sandra Shirley  
Commissioner



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Cecil Goodridge  
Commissioner  
*Dissenting on the issue of Threat of  
Material Injury*



## **PUBLICATION**

Notice of the Final Determination of this investigation is published in the Jamaica Gazette and a daily newspaper pursuant to section 25(1)(b) of the Act.

This Statement of Reasons has been provided to persons directly involved and interested in this proceeding. A copy may be obtained for a nominal fee upon request by contacting the Commission at:

Tel: (876) 920-1490 / 7006  
(876) 929-7937  
Fax: (876) 926-4622  
E-Mail - [antidump@cwjamaica.com](mailto:antidump@cwjamaica.com)

Or by writing to the following address:

Anti-Dumping and Subsidies  
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24 Trafalgar Road  
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OR

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**Partial Dissenting Opinion  
of  
Commissioner Dr. Cecil Goodridge  
concerning  
Threat of Material Injury**

While I agree with my colleagues' decision in part, I do not agree with their conclusion on Threat of Material Injury and consequent imposition of Anti-Dumping Duties. In the instant case, the record evidence does not support the conclusion that the domestic industry is threatened with material injury which is clearly foreseen and imminent.

In order to find that imports threaten material injury to a domestic industry, the Commission must determine that “a particular situation is likely to develop into material injury, and is clearly foreseen and imminent”<sup>1</sup> Section 13 of the Regulations to the Customs Duties (Dumping and Subsidies) Act instructs the Commission in determining dumping to “take into consideration such factors as –

(b) the significant rate of increase of dumped imports into the domestic market which indicates the likelihood of substantially increased imports of the dumped or subsidized goods into Jamaica;<sup>2</sup>

(c) capacity in the country of export or origin already in existence or which will be operational in the foreseeable future, and the likelihood

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<sup>1</sup> Regulations, § 13. The WTO counterparts to each of these factors can be found in Article 3.7 of the WTO AD Agreement

<sup>2</sup> Id.

that the resulting exports will be to Jamaica, taking into account the availability of other export markets to absorb any increase;

(d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;

(e) inventories of the product being investigated;

(f) 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;

(g) actual and potential negative effect on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;

(h) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; and

(i) any other factors that are relevant in the circumstances.”

Again the Commission should consider each of these factors.<sup>3</sup> It is also important that the Commission consider, as part of its threat analysis, the “consequent impact”<sup>4</sup> of the imports in accordance with section 12 of the Regulations. As the WTO panel in Mexico -- Corn Syrup explained:

The[se]...factors relate specifically to the questions of the likelihood of increased imports (based on the rate of increase of imports, the capacity of exporters to increase exports, and the availability of other export

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<sup>3</sup> The WTO panel's admonition in Mexico—Corn Syrup that consideration of each factor “be apparent in the final determination of the investigating authority” is as applicable to the analysis under section 13 of the Commission's Regulations as it is to the analysis of present injury under section 12 of the Regulations. Vide WT/DS 132/R paragraph 7.128

<sup>4</sup> “Consequential impact” is the term used in article 3.1 of the WTO AD Agreement to describe the focus of the analysis performed under Article 3.4 of the Agreement and its counter part the Commission's Regulations, section 12 (6)

markets), the effects of imports on future prices and likely future demand for imports and inventories. They are not, in themselves, relevant to a decision concerning what the 'consequent impact' of continued dumped imports on the domestic industry is likely to be. However, it is precisely this latter question – whether the 'consequent impact' of continued

dumped imports is likely to be material injury to the domestic industry – which must be answered in a threat of material injury analysis.

Thus we conclude that an analysis of the consequent impact of imports is required in a threat of material injury determination.<sup>5</sup>

Regulation 12(3) enjoins the Commission in the following language:

“nothing in this Regulation shall be construed as binding the Commission to give priority to any of the factors mentioned...in the making of its decision.”

The US International Trade Commission in its Final Determination in Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago and Venezuela stated as follows:

“in assessing whether a domestic industry is materially injured or threatened with material injury by reason of dumped imports, we consider all relevant economic factors that bear on the state of the industry... These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered within the context of the business cycle ...and conditions of competition that are distinctive to the affected industry....”<sup>6</sup>

<sup>5</sup> *ibid* paragraph 7.126 (italics supplied)

<sup>6</sup> Investigation Nos 731-TA-763-766 [Final] Pub. No 3087, 1998 March at 6

In the instant case the only threat factor, which supports the Complainant's allegation, is excess capacity in Thailand where the demand for cement remains well below the levels experienced before the Asian financial crisis. It is clear from the evidence presented that Mainland intends to import further supplies from Thailand. Of the two sales SCPC made to Jamaica during 2000 neither was dumped. In face of the fact that Trinidad has imposed an antidumping duty of 152.84 per cent on cement imports from Thailand it seems unlikely that Harricrete would import cement into Trinidad for reshipment to Jamaica by reason of the necessity to pay the duty levy.

To sustain an argument of foreseeable or imminent threat it will be necessary to show that there is likely to be a foreseeable and imminent increase in volume or that prices would reduce further or a combination of those factors.

On the face of the record there is reasonable indication that the dumping of cement into Jamaica has been isolated and not repeated since 1999.

In respect of the cement imports there is no evidence that the import prices will decrease below those which have been observed to date. Export prices have been stable from the supplier throughout 2000 and with the improvement with the Asian economies it is likely that prices will rise as demand increases.

The record shows an initial series of importations – 10,900 tons in 1999<sup>7</sup> followed by quarterly interval shipments of 34000 tons in June 2000 and 40000 tons in August 2000 with an announced intention to import 39300 tons in February 2001. There has been no evidence submitted of any plans to increase volumes of imports by Mainland beyond those currently being experienced and advised.

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<sup>7</sup> Closing submission – CCCL – Page 4 Paragraph 17 Public Hearing Exhibit XII, 2001 May 4.  
Closing Submission – Mainland Page 14 line 13. Public Hearing Exhibit XV, 2001 May 4.

The WTO points to the requirement that any threat must identify the change in circumstances which would create a situation where dumping cause material injury. Further, any finding or threat must be decided with special care.

A Panel Report from the GATT Committee on Anti-Dumping Practices states:

“it follows from the text of Article 3.6 (now 3.7) that a proper examination of whether a threat of material injury was caused by dumped imports necessitated a prospective analysis of a present situation with a view to determining whether a ‘change in circumstances was clearly foreseen and imminent.’”<sup>8</sup>

The record indicates that the dumping of cement into Jamaica has been isolated and not repeated since 1999. The threat of material injury consequently cannot be said to be ‘clearly foreseen and imminent’.

### **Conclusion**

In sum, I conclude that the dumped imports are not causing threatening to cause, nor likely to cause material injury to the domestic industry in Jamaica. Accordingly, I do not support the conclusion of the majority opinion presented by my colleagues in relation to the imposition of duties.



Dr. Cecil Goodridge, Commissioner

2001, June 11

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<sup>8</sup> GATT Committee on Anti-Dumping Practices, Report of the Panel 1993 – Korea Anti-Dumping Duties on imports of Polyacetal Resins from the US.