

## SUMMARY

On 2000 December, 7, the Anti-Dumping and Subsidies Commission, hereinafter referred to as **the Commission** caused an investigation to be initiated respecting the alleged dumping of Ordinary Portland Grey Cement (hereinafter referred to as '**OPC**' and '**the subject goods**'<sup>1</sup>) originating in or exported from Thailand. The investigation was initiated in response to a complaint filed by the Caribbean Cement Company Limited (CCCL).

As a result of the investigation **the Commission** is satisfied that the subject goods have been dumped and the margin of dumping is not *de minimis*<sup>2</sup> and the volume of dumped goods is not *negligible*<sup>3</sup>. Furthermore **the Commission** has determined that there is evidence, which discloses a reasonable indication that the dumping has caused material injury to the Jamaican industry. Accordingly, **the Commission** has made a Preliminary Determination in accordance with Section 27 of the Customs Duties (Dumping and Subsidies) Act<sup>4</sup> (hereinafter referred to as '**the Act**') into the alleged injurious dumping of **OPC** originating in and or exported directly from Thailand to Jamaica and indirectly from Thailand via Trinidad.

## I. INTERESTED PARTIES

### THE COMPLAINANTS

The complaint was filed by the **CCCL**,

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<sup>1</sup> Appendix A

<sup>2</sup> Appendix A

<sup>3</sup> Appendix A

<sup>4</sup> Appendix B

which is the sole domestic producer of the *like goods*<sup>5</sup> in Jamaica, with registered offices at Rockfort, Kingston, Jamaica, hereinafter referred to as '**the Complainant**'.

### **The Complainant's submission**

The complainant states that they have relied on evidence and information concerning the product, import statistics, industry support and sales at less than fair value that is reasonably available to them to establish with certainty that dumping is occurring and that it has caused and is likely to cause material injury to the domestic production of cement.

The complainant contends that: -

- ◆ 34,000 MT of cement originating in or exported from Thailand by Siam Cement Industry Company Limited were imported into Jamaica on or about June 1, 2000 and August 21, 2000.
- ◆ 10,900 MT of cement was exported from Thailand was transshipped in four separate shipments to Jamaica through a third country (Trinidad) during the period June through October 1999
- ◆ Cement from each of the above shipments was sold at an export price either at less than fair value (LTFV) prices or below the cost of production in Thailand resulting in the dumping of the Thailand, cement on the local market.

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<sup>5</sup> Appendix A

- ◆ The dumped Thailand cement has caused material injury and is likely to cause or threaten to cause further material injury to the domestic production / industry and workers in Jamaica producing the like goods.

The complainant (CCCL) alleges that the dumping of OPC has harmed the domestic industry by: -

- Price undercutting in the local market
- Lost sales
- Lost market share
- Lost cement production
- Lost revenues and profitability

### THE EXPORTERS

1. Siam Cement Public Company Limited ('**SCPC**'), the parent company and a 100% shareholder of Siam Cement Industry Company Limited (the manufacturer of the **subject goods**), and several other subsidiaries with registered offices at 1 Cement Road, Bangsue, Bangkok 10800, hereinafter referred to as '**the SCPC**'.

#### **The Exporter's response**

The **SCPC** in its response simply stated that their main marketing policy for both domestic and export sales is to sell their product at prices equal to cost, plus a reasonable profit margin.

**SCPC** further stated that the **subject good** was sold to Jamaica on a **FOB**<sup>6</sup> basis with a good profit margin, and that the customer in Jamaica bought the subject good at its satisfactory **CIF**<sup>7</sup>

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<sup>6</sup> Appendix A

<sup>7</sup> Appendix A

prices through a freight arrangement by the freight consolidator, Harricrete Limited and International Materials, Inc.

2. Harricrete Limited of Trinidad with registered offices at Las Lomas No.2, Republic of Trinidad & Tobago W.I., hereinafter referred to as '**Harricrete**'.

#### **Harricrete's response**

Harricrete Limited (the freight consolidator) and **Mainland** (the distributors), concludes that the **OPC** cement from Thailand was not dumped.

### THE IMPORTERS

1. Mainland Trading Limited with registered offices at 62A Mannings Hill Road, Kingston 19, Jamaica, hereinafter referred to as '**Mainland**'.

2. Mainland International Limited with registered offices at 8 March Pen Road Spanish Town, St. Catherine, Jamaica, hereinafter referred to as '**Mainland**'.

#### **The Importer's response**

**Mainland** in response to **CCCL's** claim states specifically that at no time did the importer pay less than fair value for imports of the **subject goods**. The first four shipments imported from Thailand were imported above market prices in Thailand and were more expensive than the fifth shipment.

**Mainland** further states that there is no evidence of the imports being the casual reason for injury suffered by **CCCL**. **Mainland** further pointed to factors independent of the imports and intrinsic to **CCCL's** operations, as the cause of injury where it existed.

These intrinsic factors include:

- ◆ Inability of CCCL to satisfy the domestic market.
- ◆ The breakdown of plant for an extended period.
- ◆ High cost of debt service.
- ◆ Low work morale; and
- ◆ Further internal inefficiencies.

## II. BACKGROUND

The Complainant filed a complaint on 2000, September 4. The Commission notified the Complainant on 2000, October 19 that the complaint was properly documented pursuant to Section 23 of the Act<sup>8</sup>. The Government of Thailand was also notified pursuant to Section 25 of the Act<sup>9</sup>.

As the CCCL is the only producer in Jamaica of OPC, the Commission is satisfied that the Complainant represents the requisite level of production to satisfy the requirements found in Section 22 of the Act<sup>10</sup>.

On 2000 December 7, the Commission initiated an investigation into the alleged dumping of OPC. The Commission nominated *the period of investigation (POI<sup>11</sup>)* as 1999 January 1 through 2000, November 30.

On 2001 March 6, the Commission extended the time period for the Preliminary Determination by seven

days pursuant to Section 29 of the Act<sup>12</sup>

## III. PRODUCT

### Product Definition

For the purpose of this investigation the **subject goods** are defined as Ordinary Portland Grey Cement used for building or construction purposes.

### Classification of Imports

*“Ordinary Portland Grey Cement currently classifiable under Harmonized Tariff System number 2523.29 that are used for building or construction purposes, regardless of type or quality”.*

### 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.

### Production Process

The raw materials are blended and transported to the top of a kiln tower, where it is fed into the back end of the kiln. As the materials move through the kiln, chemicals are added. At temperatures of 2700 degrees Fahrenheit 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 and only when ground to specification then is it called cement.

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<sup>8</sup> Appendix B

<sup>9</sup> Appendix B

<sup>10</sup> Appendix B

<sup>11</sup> Appendix A

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<sup>12</sup> Appendix B

## LIKE GOODS

Section 2 of the Act<sup>13</sup> defines **like goods** as either identical or similar.

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

## IV. JAMAICAN INDUSTRY

The CCCL has been the sole Jamaican producer of OPC since 1947. In 1999 TCL (Nevis) Limited acquired majority shareholdings in CCCL.

The CCCL employs approximately 500 persons in the production of cement.

## JAMAICAN MARKET

The Jamaican cement market is composed of one producer and a distribution network, which include retailers, distributors, ready-mix operators and end users. The demand for cement is directly linked to the activities within the construction sector, and this demand influences the levels of production or importation.

The Commission estimates that the total Jamaican Market for cement during the POI was approximately 612,000-650,000 MT per annum.

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<sup>13</sup> Appendix B

## V. EVIDENCE OF DUMPING<sup>14</sup>

The Commission requested that the identified exporters and importers provide sales and cost information necessary to determine the *normal values*<sup>15</sup> and *export prices*<sup>16</sup> of the **subject goods**. The investigation covered all **subject goods** imported into Jamaica during the POI by both CCCL and Mainland.

The exports to Jamaica involved several shipments during the POI. In 1999 there were four *indirect shipments* via Trinidad and Tobago and in 2000 two *direct shipments* from Thailand.

The indirect shipments came about as a result of a direct shipment of the **subject goods** from SCPC in Thailand to Harricrete in Trinidad. The direct route of exports from Thailand to Trinidad was terminated because of an Antidumping Order<sup>17</sup> in Trinidad imposed against the **subject goods**. Thereafter the **subject goods** were re-exported from Trinidad to Jamaica. Two subsequent shipments have been exported directly to Jamaica during the POI.

The Complainant has alleged that in respect of the indirect exports to Jamaica the **subject goods** were dumped on the Trinidad market and re-exported at less than fair value on the Jamaican market and dumped on the Jamaican market.

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<sup>14</sup> Appendix A

<sup>15</sup> Appendix A

<sup>16</sup> Appendix A

<sup>17</sup> Final Determination was made by the Minister of Trade and Industry on 2000, March 15 against Portland Grey Cement originating in Thailand, an Antidumping Duty of 152.84% was imposed against the importer.

Based on the insufficient data submitted in the responses by the relevant parties to the Commission's Requests for Information of 2000, December 8, **the Commission** used data obtained from published sources together with information gained from the responses submitted by all of the parties.

This procedure is available to **the Commission** pursuant to Section 10 of **the Act**<sup>18</sup> and is referred to as the '*best information available/facts available*'.

The Normal Values and Export Prices have been calculated to ensure price comparability.

### **Siam Cement Public Company Limited**

#### **(a) Normal Value (NV)**

**The Commission** established the Normal Values for cement sold in Thailand during the **POI** for both the indirect and direct shipments based on a weighted average from the following sources:

- Published data; and
- SCPC submission.

#### **(b) Export Price (EP)**

##### **(i) Indirect Shipment (from Thailand)**

The Export Prices used by **the Commission** were determined in accordance with Section 2 (country of export), and Section 21 (export price) of **the Act**<sup>19</sup>.

The **subject goods** were sold to the

importer on an **FOB** basis.

To arrive at the Export Price **FOB** to the Jamaican Importer **the Commission** deducted charges for freight, handling and warehousing. These being the charges per metric tonne incurred in transporting the indirect shipment of the **subject good** from Trinidad to Jamaica. To arrive at the Export Price at the *ex-factory*<sup>20</sup> level, the Commission deducted charges for inland freight, *ocean freight, insurance and loading costs*.

##### **(ii) Direct Shipment (from Trinidad)**

The Export Prices used by **the Commission** are representative of the average export price for **the SCPC's OPC** obtained from its published data for the four quarters of 2000.

### **Margin of Dumping**<sup>21</sup>

When the Export Price is less than the Normal Value, the difference is the margin of dumping.

During the **POI**, 100% of the **subject goods** exported to Jamaica were dumped.

The estimated margins of dumping are 169% for the direct shipments and 178% for the indirect shipments.

### **Volume of Dumped Imports**

**The Commission** is satisfied that the volume of dumped imports is not *negligible* and the margin of dumping is not *de minimis*.

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<sup>18</sup> Appendix B

<sup>19</sup> Appendix B

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<sup>20</sup> Appendix A

<sup>21</sup> Appendix A

## VI. EVIDENCE OF INJURY

Before making a Preliminary Determination pursuant to Section 27 of **the Act**, **the Commission** is required to consider whether the evidence discloses a reasonable indication that the dumping has caused, is causing or is likely to cause material injury to the domestic producer of **like goods**.

This means that the material injury must be caused or threatened by reason of the dumping of the **subject goods**.

The injury factors which **the Commission** must examine are set out in Section 12 of the Customs Duties (Dumping and Subsidies) Regulations<sup>22</sup>, hereinafter referred to as the '**the Regulations**'.

The injury therefore has been considered in the context of the volume of the dumped goods, its impact on the industry and its effect on prices.

Pursuant to Section 12(7) of **the Regulations**,<sup>23</sup> **the Commission** must also consider factors other than the dumping that may be injuring the industry. These factors include: Other Imports (Imports of OPC from other countries, Imports by the industry); Excess Capacity; Export Performance of the Domestic Producer; Restrictive Internal and External Trade Practices.

### (i) IMPACT ON THE INDUSTRY

#### Profit Effects

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<sup>22</sup> Appendix B

<sup>23</sup> Appendix B

**The Commission** analysed from the CCCL's audited financial statements the annual losses before interest and taxes for the year 1998 -1999 and concluded that the loss in the year 1999 had been decreased significantly and the financial position of the company had improved. These improvements are due to the following:

- (i) restructured workforce and management
- (ii) retirement of debt
- (iii) significant capital expansion and upgrading of the physical plant
- (iv) increased efficiencies in production facilities.

Further, these efforts mitigated the extent of the potential injury.

#### Return On Investment (ROI)

It is a generally accepted principle that for capital-intensive industries to remain viable, it is necessary for the industry to realise a return on investment to enable capital re-investment for modernisation and expansion in capacity.

For the **POI** the **Commission** has determined that **the Complainant's** ROI though improving remained negative.

#### Capacity Utilization

The utilisation of production capacity reflects the changes in the level of production. A decline in the utilisation of production capacity will lead to an increase in the unit cost of production and a consequent loss in profit.

The data revealed that during the **POI** **the Complainant** rarely operated at

optimum capacity. **The complainant** claimed that during the **POI** the presence of the dumped imports in the market has forced the company to reduce the level of production resulting in the reduction in capacity utilisation.

It is the view of **the Commission** that **the Complainant's** efforts of increased utilisation of capacity and production efficiency will be thwarted if increased volumes of dumped imports persist.

### Volume Effects

**The Commission** has examined the local cement industry's sales volume and the volume of dumped imports to determine whether the domestic producer has lost sales and market share.

*(Loss of Significant Accounts)*

#### (a) Lost Sales (Loss of Sales)

**The Commission** concludes that the trend in sales for **the Complainant** in the context of normal market activities does not point to a general loss of sales to the dumped imports. *This is due to efforts to mitigate the extent of the potential injury. However, the financial analysis points to the fact that the Complainant has lost sales from domestic production to their own imports and imports by Mainland. The loss cannot be attributed solely to the dumped imports.*

**Mr. Hall:** This is evidenced from a comparison of aggregate sales for 2000 relative to 1999. The data indicates that **CCCL** sales from domestic production increased by 11.4% in 2000 relative to 1999, while aggregate sales including imports increased by 8% in 1999 relative to 1998. The general trend in sales for

the period 1998 – 2000 is an increasing one.

**Mr. Johnston:** *The Commission concludes that CCCL (local production) has lost sales volume.*

#### (b) Market Share (Loss of Market Share)

The analysis of market share must take account of changes in the growth of the market as a whole.

The Commission concludes **CCCL** has lost market share in absolute terms from its domestic production however, the loss cannot be attributed totally to the dumped imports.

Based on an estimate of the volume of the subject goods to be imported and sold on the domestic market, **CCCL** asserts that its market share is being and will be significantly eroded. The consumption figures submitted by **CCCL** indicate that the total market for cement has remained relatively constant over the period 1996 through the first half of 2000.

### **(ii) PRICE EFFECTS**

#### Price Suppression

Price suppression is experienced when the Jamaican Industry's margin between costs of production and selling price is reduced.

The analysis revealed that since the acquisition of the cement plant by **TCL (Nevis) Limited**, the margin between the selling price per tonne and the cost of production has increased.

**The Commission** concludes there has been no price suppression during the POI.

### **Price Depression**

Price depression is where the presence of dumped goods has the effect of depressing prices for the domestic **like goods**.

The analysis of price movement during the POI does not exhibit any indication of a reduction in the price.

**The Commission** concludes that the data does not support the claim of price depression.

### **Price Undercutting**

Price undercutting occurs when the dumped product is sold at a price below the price of the domestic **like goods**.

**The Commission** concludes that the trend in prices for **the Complainant and Mainland** in the context of normal market activities does not depict a general policy of price undercutting. Except for the period January to May 2000, when CCCL's prices were slightly above those quoted by **Mainland**.

There is therefore no consistent trend during the POI where **Mainland's** prices are lower than that of CCCL.

## **VII. CAUSAL CONNECTION**

### **(i) BETWEEN DUMPING AND INJURY**

Having found that the domestic industry has suffered injury in the form

of: price undercutting; lost sales; and lost market share.

**The Commission** considered whether there was a causal link between the injury and the dumped imports.

**The Commission** concludes that the injury suffered by the domestic industry was caused by the low prices at which large volumes of dumped imported cement were being sold on the Jamaican market

### **(ii) OTHER CAUSES OF INJURY**

Section 12(7) of **the Regulations**<sup>24</sup> provides that **the Commission** shall have regard to factors other than the dumped imports, which have caused injury, or are likely to cause injury to the domestic industry.

**The Commission** notes that **Mainland** argues that there were factors other than dumping that caused the injury suffered by **the Complainant**. At this point in time **the Commission** is not convinced that there is an immediate direct relationship between the other factors and the injury, if any.

## **VIII. MATERIALITY OF INJURY**

**The Commission** will now examine the lost sales, lost market share and price undercutting by the importer to determine whether these contributed to the alleged decline in financial performance of the domestic industry during the POI.

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<sup>24</sup> Appendix B

*The Commission concludes that the injury caused by the dumped imports is material*

OR

*The Commission concludes that the injury caused by the dumped imports IS NOT material*

## IX. THREAT OF MATERIAL INJURY

The Commission will examine whether dumped imports are threatening to cause material injury to the domestic industry pursuant to Section 13 of the Regulations.<sup>25</sup> The Commission will determine if there is a causal link between the dumping of the **subject goods** and the threat of material injury and ensure that injury caused by other factors is not attributed to the dumped imports. Finally, the Commission is required in making a finding of threat of material injury to the domestic industry, pursuant to the aforementioned section, that the circumstances in which the dumping of the **subject goods** would cause injury must be clearly foreseen and imminent.

- **A significant rate of increase of dumped imports**
- **Sufficient freely disposable capacity**
- **Substantial increase in the capacity of the exporter**

The Commission found all three factors above relevant to this investigation, and that the change in circumstances, which would create a situation in which the dumping would cause injury, is clearly

foreseen and imminent.

There is convincing evidence that there will be in the near future a substantial increase in the importation of the **subject goods** at dumped prices.

## CONCLUSION

On the basis of the best information and facts available the Commission determined that, pursuant to Section 27 of the Act, the **subject goods** have been dumped and the evidence discloses a reasonable indication that the **subject goods** originating in or exported from Thailand to Jamaica directly or indirectly from Thailand to Jamaica via Trinidad and Tobago is likely to cause material injury to the Jamaican industry.

As a result of the insufficiency of the information available and the evidence requested actual material injury during the POI remains inconclusive.

Pursuant to Section 15 of the Act the Commission concludes that the imposition of a **Provisional Duty**<sup>26</sup> is necessary to prevent injury, in view of the expectation of continuing imports at injurious price levels for the remainder of the investigation. Therefore, the Provisional Duty will apply to the **subject goods** released from Jamaica Customs Department during the period commencing on this day and ending on the earlier of the days on which the Commission accepts an Undertaking or makes a Final Determination.

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<sup>26</sup> The duty to be collected during the remainder of the investigation is based on the margin of dumping as previously indicated.

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<sup>25</sup> Appendix B

The importers of record of the goods subject to **Provisional Duties** must pay the duties in cash or by certified cheque or post security equal to the duties payable.

Payment of such duties is hereby demanded.

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Chairman Deika Morrison

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Commissioner – Cecil Goodridge

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Commissioner – Beverley Morgan

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Commissioner – Sandra Shirley

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Commissioner – David Wildish

## UNDERTAKINGS

Exporters may submit written undertakings to revise their selling prices to Jamaica so that the margin of dumping or the injury caused by the dumping is eliminated.

If undertakings were accepted, the required payment of Provisional Duties would be suspended.

Undertakings will not be considered by the Commission after 60 days of the making of the Preliminary Determination.

The Commission shall issue its Final Determination no later than 90 days from the making of the Preliminary Determination, 2001, June 11. However, where circumstances warrant, this period may be extended to 137 days.

## PUBLIC HEARINGS

To be held the week of April 30 – May 4 2001

## PUBLICATION

Notice of the Preliminary Determination of this investigation is being 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 these proceedings. A free copy may be obtained upon request by contacting the Commission at

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(876) 929-7937**

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