

ANTI-DUMPING AND SUBSIDIES COMMISSION

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STATEMENT OF REASONS PRELIMINARY DETERMINATION

KINGSTON, JAMAICA
Issued: September 13, 2010

CASE. NO. AD-01-2010

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

AND IN THE MATTER OF the Preliminary Determination by the Anti-dumping and Subsidies Commission, pursuant to section 27 of the Customs Duties (Dumping and Subsidies) Act 1999.

IN RESPECT OF the dumping in Jamaica of Ordinary Portland (Grey) Cement originating in or exported from the Dominican Republic.

I. SUMMARY

Initiation of Investigation. On February 15, 2010, Particulars of Complaint were submitted to the Anti-dumping and Subsidies Commission (“the Commission”) on behalf of Caribbean Cement Company Limited (“CCCL”) alleging that the dumped imports of Ordinary Portland (Grey) cement (“OPC”) from the Dominican Republic (“D.R.”) have materially injured and threatens to materially injure the domestic industry. The Commission is the body responsible for investigating and making determinations in relation to cases of dumping and subsidizing of goods under the *Customs Duties (Dumping and Subsidies) Act 1999*, (“the Act”) and the *Customs Duties (Dumping and Subsidies)(Determination of Fair Market Price, Material Injury and Margin of Dumping) Regulations, 2000* (“the Regulations”). The Act and the Regulations implement the multilateral obligations under the World Trade Organisation Anti-dumping Agreement (“the ADA”), to which Jamaica is a signatory.

On April 30, 2010, the Commission in accordance with the requirements set out in Section 22 of the Act initiated an investigation. The Commission was satisfied to the standard of initiation that the Complaint filed is properly documented, that there is evidence of dumping and that the evidence discloses a reasonable indication that the dumping is likely to cause material injury to the domestic industry. Notice of Initiation of the investigation was given to the Minister of Industry, Investment and Commerce (“the Minister”), the Government of the Exporting country, the known parties to the investigation and other entities as provided under Section 25 of the Act and by publication in the Jamaica Gazette Volume CXXXIII No. 17E and a daily newspaper the Jamaica Gleaner dated April 30, 2010.

The Commission invited comments from interested parties on the Statement of Reasons (“SOR”) for Initiation to be submitted within thirty (30) days from the date of receipt of the SOR. Questionnaires and Requests for Information (RFIs) were sent to the relevant parties. The Commission also sought and received information from Government of Jamaica (“GOJ”) bodies including the Jamaica Customs Department, Fiscal Services Limited and the Bureau of Standards Jamaica.

The record of this investigation consists of all documents submitted to the Commission up to August 9, 2010, including all Confidential and Non-Confidential submissions received by interested parties and all that relate to the Commission's decision to initiate the investigation, the Notice and Statement of Reasons for Initiation.

Preliminary Determination. The Commission is required to make a Preliminary Determination within ninety (90) days after the commencement of an investigation unless extended. On July 28, 2010, the Commission extended the time for making the Preliminary Determination as provided for in Section 29 of the Act from Ninety (90) days to One Hundred and Thirty-five (135) days due to the difficulty in obtaining satisfactory evidence and other administrative and procedural challenges. Notice of the Extension of the Preliminary Determination was given to the Minister, Interested Parties and other government agencies, and published in the daily newspaper the Jamaica Gleaner dated July 28, 2010.

The standard for making a Preliminary Determination as set forth in Section 27 of the Act requires the Commission to preliminarily find whether the goods under consideration are being dumped and to estimate the margin of dumping for each importer, using information available on record at the time. The Commission makes a Preliminary Determination on September 9, 2010 and estimates the margin of dumping of OPC imported by Buying House from the Dominican Republic to be eighty-four point six nine per cent (84.69%). The Commission finds that the Domestic Industry has experienced some injury from the presence of the dumped imports on the Jamaican market. However, the Commission's majority determination is inconclusive as to whether the injury is "material". The Commission also finds by majority that the dumped imports pose a threat of material injury to the domestic industry.

Provisional Duties. The Commission is not persuaded that the imposition of provisional measures is necessary to prevent material injury being caused during the investigation and declines to impose a provisional duty on the goods under consideration.

Final Determination. The Commission is statutorily mandated to make a Final Determination in the matter within ninety (90) days of making the Preliminary Determination. The Act does not provide for an extension of time for the Final Determination.

II. PARTIES TO THE INVESTIGATION

The Commission was guided by section 2 of the Act in identifying the "Interested Parties" to the investigation. It defines an Interested Party as a person:

- (a) engaged in the production, purchase, sale, export or import of any goods that are the subject of an investigation;
- (b) engaged in the production, purchase or sale of any goods produced in Jamaica that are like goods in relation to goods that are the subject of an investigation;
- (c) acting on behalf of any person referred to in paragraph (a) or (b); and who is a user of any goods that are like goods in relation to any goods that are the subject of an investigation.

The Commission examined all the facts on the record and identified the known Interested Parties also referred to as "Parties" below:

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

The Importer is Buying House Cement Limited, hereinafter referred to as “Buying House”, “BHC” or “the Importer”, with registered offices located at 6 Wellington Place, Wellington Glades, Kingston 6. Tel: 876-749-6193. Buying House is a limited liability company incorporated under the laws of Jamaica. Buying House is an importer, wholesaler and retailer of building materials and other products.

The Exporter is Domicem SA, hereinafter referred to as “Domicem”, or “the Exporter. Domicem is incorporated in, and doing business in the Dominican Republic and is a producer, wholesaler and exporter of cement. The registered office of Domicem is located at Av. Abraham Lincoln 295 casi esquina Av. José Contreras Edf. Caribalico 2do. piso, Santo Domingo, Dominican Republic. Telephone: 809-508-3223, Fax: 809-533-1602, Website: www.Domicem.com. Domicem is a subsidiary of Colacem which is the third largest Italian manufacturer of cement. Colacem is part of the Financo Group of companies. Financo’s core business is the production and commercialization of cement and concrete.

The Producer is the Exporter, Domicem, who is producing and exporting cement to Jamaica from the Dominican Republic.

Other Parties are Blue Atlantic Investments Limited, hereinafter referred to as “Blue Atlantic” with offices at Nautilus House, La Cour de Casernas, St. Helier, Jersey, Channel Islands, United Kingdom; and International Materials Incorporated, hereinafter referred to as “IMI” with offices at 993 Old Eagle School Road, Suite 416, Wayne, Pennsylvania 19087, United States of America (“United States”) Telephone: 610-520-1980, Fax: 610-520-1982. The Commission has included these entities as Other Parties to the investigations because they are Traders on behalf of the Importer. Their names appear on the Jamaica Customs C-87 forms and supporting documents. The Importer has indicated that they facilitate transactions and provide logistical support from the point of shipment.

The Respondents is the term used to refer collectively to the Importer, the Exporter and Producer and the Other Parties. These parties have filed some Joint Submissions in the investigation and they have the same legal representation. The Commission has considered the nature of the relationship between the Respondents. BHC disclosed that its principal owners are Domicem and a company referred to as South Quay LLC each with shareholdings of fifty per cent (50%). The Commission found that South Quay LLC is located at 710 NE 3rd Ave Delray Beach, FL 33444 incorporated in 2009 in the State of Florida. The registered agent for this company is Mr. Mark Warren. The Importer also submitted that Buying House Company Limited manages the day to day operations of BHC and is a shareholder in South Quay LLC. The Act, Regulations and the ADA which form the framework for the dumping analysis recognise that where entities are associated, this relationship could cause information provided on transactions between the entities to be regarded as unreliable. The nature of the relationship between the Respondents will be explored further by the Commission.

CEMEX Dominicana SA (“CEMEX”) is an exporter and producer of cement. CEMEX Dominicana is a principal producer in the Dominican Republic located at Torre Acròpolis Piso 20, Av. Winston Churchill 67, Ensanche Piantini, Santo Domingo, Dominican Republic, Tel: 809-683-4901 and Fax: 809-683-4949. CEMEX Dominicana is part of CEMEX Worldwide that was founded in Mexico in 1906 and is a major cement producer with over 50

subsidiary companies in countries around the world. The Commission requested information from CEMEX on whether it has exported cement to Jamaica. CEMEX indicated that it has not exported cement to Jamaica during the period under investigation. The Importer has however indicated that it has imported cement from CEMEX. The Commission examined the C-87 Forms from the Jamaica Customs and found the corresponding shipment which was reported on April 30, 2009 and observed that it was shipped from a different port than the shipments from DOMICEM. The Commission considered the quantity of exports from this source and found it to be negligible. The Commission has therefore not included this exporter as an interested party to this investigation.

ARC SYSTEMS LIMITED (“ARC SYSTEMS”). The Domestic Industry has alleged that Arc Systems, an additional importer is selling dumped cement imported from the Dominican Republic.¹ The Commission has no information on record that Arc Systems has imported cement from the Dominican Republic during the period under investigation. According to information from Fiscal Services Limited, imports by Arc Systems from the Dominican Republic commenced in May 2010. Arc Systems is not deemed an importer for the purposes of this investigation.

III. PERIOD OF INVESTIGATION

The period of investigation (“POI”) is the timeframe selected for which information and data on imports into Jamaica are collected and assessed to determine whether the imports are being dumped, and if there is dumping, the effect of the dumping. It is therefore the timeframe for which information and data substantiating allegations of dumping and injury were requested from parties.

The POI for dumping is normally one (1) year or a minimum of six (6) months immediately prior to the date of initiation. The POI for injury should be three (3) years immediately prior to the date of initiation, in addition to the post initiation period for which data is available, and should include the period covered by the dumping data.

Based on the date of initiation, the Commission collected and examined information and data for dumping for the period April 30, 2009 to April 29, 2010 and for injury, for the period April 30, 2007 to April 29, 2010. The Commission also considered and examined the most recent data which was relevant and available post-initiation in relation to the material injury and threat of material injury analysis.

IV. USE OF FACTS AVAILABLE

The Commission is guided by the sections 4 (6) and 10 of the Act and Article 6.8 and Annex II of the ADA, which allow the Commission to complete an investigation based upon reliable information where Interested Parties fail to fully cooperate by providing information and data. In requesting information from known interested parties, the Commission indicated that a failure to provide within the time allotted, appropriate responses and disclosure of information throughout the investigation could lead to use by the Commission of facts available.

¹ CCCL Supplemental Submission

V. SCOPE OF THE INVESTIGATION

The Commission has defined the scope of the investigation as follows:

ORDINARY PORTLAND GREY CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES ORIGINATING IN OR EXPORTED FROM THE DOMINICAN REPUBLIC

The goods that fall within the scope of this investigation are usually imported under the following Harmonised Tariff Schedule (HTS) Code: 2523.291 for Building Cement (Grey).

The scope of the investigation is determined by the narrative above and not by HTS Codes. The Commission however, recognizes that HTS Codes assist the Customs authorities in the application of anti-dumping measures where they are imposed. The Commission has defined the scope broadly to include goods as described above, imported for building and general construction purposes, regardless of the type or quality, whether sold or imported per metric tonne or in bulk, 1.0 or 1.5 metric tonne bags or 42.5 kg sacks or packaged in any other form and for distribution or sale on the local market in any form.

VI. GOODS UNDER CONSIDERATION

The goods under consideration also referred to as the “subject goods”, and “investigated products” are Ordinary Portland Grey (“OPC”) cement exported to Jamaica from the Dominican Republic. The Commission examined information from the Jamaica Customs, Fiscal Services Limited, Bureau of Standards Jamaica and the Exporter and Importer Questionnaires which provided the description, tariff classification and the relevant international and local standards of the goods under consideration.

The investigated products are classified under tariff item and statistical key 2523.291 (Building Cement (Grey)) and imported in 42.5kg bags and 1.5 tonne jumbo bags. The goods under consideration are being imported under two brands, “Domicem” and “Anchor”. A physical examination of the Anchor brand cement sacks on the Jamaican market confirmed that it is manufactured by Domicem.

The Exporter and Producer Domicem, has submitted that it exports two types of cement to Jamaica referred to as CPC 27 5R and CPN 35 0R. The CPC 27 5R is described as a Portland cement with limestone, composed of clinker, gypsum and limestone, and the CPN 35 0R is referred to as a Special Portland Cement, made up of clinker and gypsum. The CPC 27 5R type of cement is packaged in three layer bags of 42.5kg and jumbo bags of 1.5 tonnes and the CPN 35 0R type is packaged in jumbo bags of 1.5 tonnes only.

The Importer contends that it imports OPC and a type of Blended Hydraulic cement which complies with the Bureau of Standards specifications for Blended Hydraulic cement JS 301:2008. The Commission reviewed the Bureau of Standards Test reports for the period cement was imported by Buying House and found that the cement is classified as OPC in accordance with the standard specification for Portland Cement JS32 Type I/II Portland Cement.

The subject goods comply with the following local and international technical standards: Bureau of Standards Jamaica Specification for Portland Cement (ordinary and rapid-hardening) JS32 Type I/II Portland Cement; The American Society for Testing and Materials (ASTM) C1157 – 03, Standard Performance for Hydraulic Cement; and Dominican Technical Regulation RTD 178:2009 “Hydraulic Cement, Portland Cement. Specifications and Classifications”.

Volume of Subject Goods. The Commission examined information from the Importer and Exporter² on the volume of subject goods imported from the Dominican Republic during the POI. It was found that the volume of goods under consideration imported from the Dominican Republic accounted for about sixty-five point five seven per cent (65.57%) of total imports for the POI, thereby exceeding the statutory minimum negligibility threshold of three per cent (3%).

The Commission also noted that the Importer was granted a waiver of the Common External Tariff ('CET') which expired in September 2009. The Importer has paid the CET of fifteen per cent (15%) on all shipments of the subject goods from October 2009 to April 2010.

VII. LIKE GOODS

Section 2 of the Act in accordance with Article 2.6 of the ADA, defines "like goods" in the following manner:

Like goods, in relation to any other goods means –

- (a) goods which are identical in all respects with those other goods, or
- (b) in the absence of identical goods as aforesaid, goods of which the uses and other characteristics closely resemble those of the other goods.

The Commission examined the goods produced in Jamaica by the industry claiming injury in order to determine whether the goods are "like goods", that is, whether they are identical in all respects or have uses and characteristics closely resembling the goods under consideration (the imports). The locally produced goods are Ordinary Portland Grey Cement (OPC Type I) and a blended OPC containing Pozzolan (OPC Type IP), referred to as Carib Plus. The goods under consideration exported from the Dominican Republic are Ordinary Portland Grey Cement.

The Commission considered factors such as the physical and chemical characteristics, manufacturing and production processes, functions and end uses, channels of distribution and marketing, substitutability and competition and customer and producer perception to determine whether the goods produced locally and the goods under consideration are "like goods" as defined by the Act. The Commission found that the locally produced goods are like goods to the goods under consideration. This was not contested by the Importer who indicated in its Questionnaire response that they are like goods. The Exporter also submitted that there is no difference in quality between the cement produced for the local market in the Dominican Republic and those exported to the market in Jamaica³. These factors are addressed in more detail below.

Physical and Chemical Characteristics. An examination of the physical and chemical characteristics revealed that the domestically produced goods appear to be identical to or closely resembling the investigated products based on the technical industry standards, composition and physical characteristics. Portland cement is a fine powder substance which is the basic ingredient of concrete. OPC is a closely controlled chemical combination of calcium, silicon, aluminium, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Lime and silica make up about eighty five per cent (85%) of the mass. Common among materials used in its manufacture are limestone, shells, and chalk or marl combined with shale, clay, slate or

² Joint Rebuttal, Exhibit 17, Exporter Questionnaire, page 19

³ Exporter Questionnaire, page 10, Section 2.2

blast furnace slag, silica sand, and iron ore.⁴ Blended hydraulic cement refers to a cement type that is produced by inter-grinding or blending Portland cement with other materials that have cementitious properties, or by a combination of inter-grinding and blending. The Complainant's locally produced blended hydraulic cement referred to as Carib Plus is a blend of Portland cement and pozzolan (fly ash)⁵.

Manufacturing and Production Process. Cement producers worldwide utilize either the “wet” or “dry” processes to manufacture Portland cement, with the dry process being considered to be the more modern process. The dry process involves the principal raw material, rock being mined from a quarry and crushed in two stages, and then stored with other raw materials to be further processed. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used where the limestone, shale and clay are soft and additional energy is used to remove the excess water. The raw materials are proportioned, ground to fine powder and blended.⁶ In the wet process, the raw materials in their proper proportions are ground with water and fed into the kiln as slurry (there is enough water to make it fluid). This process is used when the limestone, shale and clay need to be ground. In other respects, the two processes are alike.⁷ The Commission found that the domestic goods and the goods under consideration are produced in a similar manner. The Commission further investigated and found that both also use common manufacturing practices and skilled production employees consistent with industry practices. CCCL employs both processes to manufacture its cement. The Producer of the goods under consideration Domicem utilises the dry process⁸ to produce OPC Type I.

Technical Industry Standards and Performance. The locally produced goods and the subject goods conform to similar local technical industry standards for Ordinary Portland Cement and Blended Hydraulic Cement:

The Bureau of Standards Jamaica
JS 32: 2008 – Jamaica Standard Specification for Portland Cement (ordinary and rapid-hardening)
JS 301: 2008 – Jamaica Standard Specification for Blended Hydraulic Cements

The locally produced OPC Type I and the investigated product which is also OPC Type I conform to the standard specifications for Portland cement (Ordinary and Rapid-Hardening). The Carib Plus conforms to the standard specifications for Blended Hydraulic Cements. These technical industry standards specify the requirements for chemical properties, physical properties, temperature, sampling, labelling and delivery.

Functions and End Uses. In terms of the functions and end uses of the domestically produced cement and the investigated products, the Commission found them to be the same. Cement is used predominantly in the production of concrete and concrete products. Cement, regardless of type, is the binding agent in concrete and is consumed almost wholly by the construction industry. The chief end uses are building and road construction, concrete blocks, pre-cast concrete units and individual smaller units and repairs.

⁴ Portland Cement Association (2010), “How Cement is Made” Retrieved from www.cement.org/basics/howmade.asp.

⁵ CCCL's September 2, 2009 Submission, Vol. I, page 7

⁶ Ibid 4

⁷ Ibid

⁸ International Finance Corporation Summary of Project Information on Domicem Plant, retrieved from <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/570F563094DA0CC4852576BA000E26F0>; and Exporter Questionnaire, page 14, section 2.8.

Distribution Methods. The domestically produced cement is sold in three (3) categories of quantities: bulk, 42.5kg sacks (or bags) and 1.5 metric tonne jumbo sacks. The subject goods imported by Buying House are sold in 42.5 kg bags, and 1.5 tonne jumbo bags. All sales in Jamaica either originate from the local factory or the importer's warehouse. Distribution is through retailers, traders/wholesalers, and other distributors before the product reaches the end-user. The Commission in light of the distribution methods for the Jamaican market is of the view that the distribution methods for both goods are similar. The domestic product and the investigated product are sold directly to retail suppliers or distributors, who then market the product to the ultimate consumer, including contractors, government departments responsible for construction, block makers and individuals.

Substitutability, Competition and Customer Perception. The Commission observed that the products are substitutable. Customer Perception can be inferred from the types of customers that purchase the domestically produced goods and the subject goods. The Commission has no information to verify that customers prefer the domestically produced goods over the goods under consideration or vice versa.

VIII. MARKET FOR CEMENT IN JAMAICA

Jamaica's cement market is supplied by one domestic producer and several importers, all of which distribute cement to the consumer through retailers, distributors and ready-mix operators. The Complainant is the sole producer of cement in Jamaica.

Prior to 1999, the Complainant was the sole supplier of cement to the Jamaican market, and imported on occasion to meet the demand of the domestic market. Subsequently, the domestic market expanded to include other importers. In the latter part of 2005 through to the first quarter of 2006, the domestic industry experienced production shortages, stemming from the production of cement of a sub-standard quality. In an attempt to address the difficulties being experienced by the domestic industry and the excess demand in the market, the Jamaican government temporarily reduced the CET bound rate of forty per cent (40%) to fifteen per cent (15%). This led to an increase in imports by the domestic industry and other importers. By 2006, over fifty per cent (50%) of total cement imports into Jamaica was imported by the domestic industry. In 2007, the demographics of the market changed as other importers increased their cement imports. At present, imported cement is being sourced from different countries by a few importers for distribution on the domestic market. Imports increased by two point six per cent (2.6%) in 2007 and by six point eight per cent (6.8%) in 2008. However, in 2009 imports decreased by an estimated twenty five per cent (25%). Half year data for 2010 has also shown a decline of about thirty three per cent (33%) in cement imports.

Jamaica's cement market is primarily driven by the construction industry as all cement is consumed in construction activities. Through its contribution to the country's physical infrastructure and linkages with other sectors, the construction sector has historically been an essential contributor to the Jamaican economy. However, the sector has been experiencing marginal growth over time. The total value added by the construction industry in 2008 was only one point eight per cent (1.8%) higher than the total value added by the industry in 1992.⁹

⁹ Construction Task Force, (2009). *Vision 2030, Jamaica. Construction: Sector Plan 2009 – 2030.*

TABLE VIII. JAMAICAN MARKET CONSUMPTION OF CEMENT 2005 - 2010¹⁰

	2005 Annual	2006 Annual	2007 Annual	2008 Annual	2009 Annual	2009 January to June	2010 January to June
Domestic Production Cement	844,843	760,815	773,019	724,528	736,560	394,165	369,405
Imports by CCCL	0	119,032	25,988	46,062	0	0	0
Other Imports	2,000	69,658	156,250	148,605	146,250	92,167.90 ¹¹	61,283.12
Total Consumption	866,400	912,953	963,734	868,865	798,902	486,332.90	430,688
CCCL Exports	2,762	0	5,964	28,463	88,912	38,552	89,083

Since 2009, the decline in the construction sector has been continuous. In the first quarter of that year, real value added in the construction industry decreased by 7%, in the April to June quarter the sector declined by a further three point eight per cent (3.8%). In the July to September quarter, construction again declined by five point eight per cent (5.8%) and in the October to December quarter by a further three point five per cent (3.5%). The decline in the December quarter represented the ninth consecutive quarterly decline for the industry.

The contraction in the Jamaican economy and in particular the construction sector has also impacted on the domestic market for cement. In 2007, the total market demand increased an estimated six per cent (6%) more over 2006. However, this increase was short lived as the market contracted by approximately ten per cent (10%) in 2008. This continued in 2009 with the market contracting by approximately eight per cent (8%) compared to the previous year. The sector continues to experience adverse effects from the general downturn in the economy, which has resulted in the suspension or delay in some construction projects. Table VIII. above shows that for the period January to June 2009 domestic consumption was 486,332.90 MT, while for the same period in 2010, consumption fell by about eleven per cent (11%) or 55,644.90 MT to 430,688 MT. Additionally, the Planning Institute of Jamaica reported that for the first quarter of 2010 (January – March) the construction industry contracted by a further three per cent (3%), and by another one point five per cent (1.5%) in the April to June quarter.

IX. EVIDENCE OF DUMPING

Dumping occurs when the Exporter and Producer sells the product under investigation to the Importer in Jamaica at a price (Export Price) which is lower than the price at which it sells the same product when it is destined for consumption in its home market (Normal Value). Dumping is where the Normal Value is higher than the Export Price of the goods shipped to the country of import. The Margin of Dumping (or Dumping Margin) is the differential between the Normal Value and the Export price. The margin is expressed as a percentage of the Export Price.

¹⁰ Information in Table obtained from Annual Reports of CCCL, Jamaica Customs and Fiscal Services Limited

¹¹ MIIC, (2010). Cement Datasheet.

A fair comparison of the Normal Value and Export Price is required by the Act and Regulations whereby adjustments are made for costs, charges and expenses that would affect price comparability. Relevant adjustments were made where necessary in order to remove those factors that may distort the comparability of the prices in order to bring the Export Price and the Normal Value to the same level of trade.

A. Normal Value

The Commission determined the Normal Value, also referred to as the fair market price in accordance with the Act and Regulations. The Normal Value is the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country.

Regulation 3

- (1) Subject to regulation 4, the fair market price of goods shall be determined by reference to:
 - (a) the price at which like goods are sold in the ordinary course of business¹² for domestic consumption in the exporting country; or
 - (b) the cost of production of those goods in the exporting country including any subsidy provided in relation to such production
- (2) The Commission shall determine fair market price on the basis of the price in the exporting country if the Commission is satisfied that sales in that country are of sufficient quantity to consider it a viable export market and to form the basis of the fair market price.
- (3) In paragraph (2) “sufficient quantity” means that the aggregate quantity or aggregate value of the foreign like product sold by the exporter or producer in the country of export is five per cent or more of the aggregate quantity or value of the sales of the goods to Jamaica
- (4) The fair market price may be calculated on the basis of the cost of production value in cases where sales in the domestic market are inappropriate on the following grounds-
 - (a) such sales are-
 - (i) not viable
 - (ii) below the cost of production and are made within an extended period of time, in substantial quantities and at price which do not permit recovery of cost within a reasonable period of time
 - (iii) outside the ordinary course of trade on account of market conditions
 - (iv) not representative
 - (b) no contemporaneous sales of comparable merchandise exist.

At Initiation, the Commission used retail prices obtained through independent research and made reasonable adjustments to arrive at a Normal Value of US\$111.47 for sacked cement. Post-initiation, the Commission requested home sales data from the Exporter/Producer Domicem for the period May 5, 2009 to May 7, 2010. The home sales data provided included the date of sale, rate of exchange, product description, selling expenses, discounts to customers, freight charges, the ex-factory selling price.

Gross prices ranged from US\$[]/MT to US\$[]/MT. The Commission examined the home sales data provided by the Exporter and Producer within the Dominican Republic for the POI and noted that gross prices were fairly consistent during the period. It was therefore determined that a single Normal Value could be calculated for all shipments since the prices did not vary greatly. To derive a single Ex-Factory Normal Value for all home sales by DOMICEM within the POI, the total revenue earned was divided by the total quantity to find

¹² Ordinary Course of business also referred to as the ordinary course of trade is not defined in the ADA or the CDDS Regulations, however two circumstances have been identified in practice as sales that may not be in the ordinary course of trade: some or all domestic transactions are sold below cost, or where the domestic sales are made to related parties.

the weighted average Normal Value (gross) per metric tonne of US\$ [] at which OPC was sold to customers during the POI.

Normal Value Adjustments

The weighted average Gross Normal Value calculated above included inland freight costs, incurred by the Exporter and Producer on behalf of select customers. The Commission noted that the net price per metric tonne for OPC provided by the Domicem's home sales data did not represent ex-factory prices, because a post production cost, inland freight was included. Inland freight costs were therefore extracted from the gross Normal Value to arrive at the ex-factory Normal Value price of US\$[]/MT.

B. Export Price

Section 19 of the Act prescribes how the Export Price for the goods under consideration is to be determined. It states in 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 therefore –
 - (i) the costs, charges and expenses incurred on sales of like goods for use in the country of export;
 - (ii) any duty or tax imposed on the goods by or pursuant to a law of Jamaica to the extent that the duty or tax is paid by or on behalf or at the request of, the exporter; and
 - (iii) all other costs, charges and expenses resulting from the exportation of the goods, or arising from their shipment, from the country of origin or country of export, as the case may be; and
- (b) the price at which the Importer has purchased or agreed to purchase the goods, adjusted therefore all costs, expenses, duties, taxes as described in paragraph (a).

At Initiation, the Commission derived the ex-factory Export Price of US\$73.87, by deducting reasonable adjustments from the Cost Insurance and Freight (CIF) prices obtained from the Jamaica Customs.

Post-initiation, the Commission requested information from the Exporter on its sales to Jamaica during the period May 2009 to April 2010. The data provided included the following information: Invoice number and date, customer code and name, terms of delivery and terms of payment, product description, invoice price, quantity and value, freight within the Dominican Republic, port loading expenses and the ex-factory price. The data submitted showed that sales were made to Blue Atlantic Investments, acting as trader on behalf of Buying House for the period May to August 2009. For the period September 2009 to April 2010, sales were made to Buying House. The Importer indicated that IMI provided logistical support for the shipments.

The Commission considered the relationship between the exporter and the importer. Regulation 11(2) and Article 2.3 of the Anti-dumping Agreement provide for the construction of an Export Price where it appears to the authorities concerned that the Export Price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the Export Price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

The Commission compared the price of goods sold to Blue Atlantic with the price of goods sold to BHC. It was noted that there was a difference in the prices per metric tonne paid by both buyers when prices were compared at the CIF level, however, when prices were compared at the same level of trade (i.e. the ex-factory level) the variations in the prices were minimal. The Commission deemed it appropriate to calculate a single weighted average ex-factory Export Price. FOB Export Prices were used as the starting point for the adjustments. The Commission will however explore the association between the Respondents further to determine whether it affects the Commission's Export Price methodology and calculations.

Export Price Adjustments

Domestic freight and port loading expenses were deducted from FOB prices, to arrive at the ex-factory Export Price for each shipment. To determine the weighted average ex-factory Export Price for all shipments exported to Jamaica during the POI, the quantities imported were multiplied by the ex-factory Export Price to determine the revenue obtained by Domicem for each shipment. This was then used to determine the total quantity exported by Domicem, and individual invoice values summed to determine the total invoice value for the POI. The weighted average ex-factory Export Price of US\$[]/MT for all shipments was derived by dividing the total invoice value by the total quantity exported by Domicem over the POI.

Dumping Margin Calculation

Using the weighted average Normal Value of US\$[]/MT and the weighted average Export Price of US\$[]/MT, both representing prices at the ex-factory level, dumping of US\$54.44/MT and a dumping margin of 84.69% was calculated for all shipments exported to Jamaica during the POI. The margin of dumping is not *de minimis*.

Dumping Margin Calculation	
Normal Value	US\$[]/MT
Export Price	US\$[]/MT
Dumping	US\$54.44/MT
Dumping Margin	84.69%

X. ECONOMIC CONDITION OF DOMESTIC INDUSTRY: 2005 – 2010

The Commission examined the economic condition of the Domestic Industry. This examination involved a historical look at the development, growth and stability of the operations of CCCL from a financial perspective. As the sole producer of cement in Jamaica, CCCL mines limestone and shale from quarry lands it owns in Jamaica and processes it into cement. Cement manufactured by CCCL is sold primarily on the domestic market, and with the exception of a few shipments imported for sale, CCCL was also the sole supplier to the domestic market prior to 2005. With 2005 being the last year that the domestic producer supplied the entire market from domestic production, the Commission found it useful to start its analysis in 2005 and provides an overview of the economic condition of the Domestic Industry for the period 2005–June 2010.

Between the years 2005 to 2009, CCCL embarked on an expansion programme investing more than US\$177,000,000.00 to upgrade and repair its facility and to increase its production capacity. The capital programme was deemed critical by CCCL to ensure its ability to supply the entire Jamaican market while exporting excess production to earn and generate hard currency.

The published financial statements for CCCL show that annual revenue increased by eleven point nine three per cent (11.93%) between 2007 and 2008 which was lower than the level of increase experienced over the 2006 to 2007 period. In 2009 growth in revenue was less than one per cent (1%), with reduced operating profits due mainly to the increased costs of production and operating lease payments. For the period January to June 2010, revenue declined by twelve point nine one per cent (12.91%).

**TABLE X.1 FINANCIAL OVERVIEW OF DOMESTIC INDUSTRY - 2005 – 2010
(INFORMATION FROM AUDITED ANNUAL REPORTS OF CCCL)**

Description	2005 Annual J\$'000	2006 Annual J\$'000	2007 Annual J\$'000	2008 Annual J\$'000	2009 Annual J\$'000	2009 January to June	2010 January to June
Revenue/Sales	5,765,114	6,632,008	7,721,003	8,642,729	8,695,025	4,917,735	4,283,000
Operating Profit	108,191	132,558	651,057	861,008	26,410	610,530	(259,878)

TABLE X.2 PRODUCTION AND SALES OF DOMESTIC INDUSTRY 2005 – 2010

Description	2005 MT	2006 MT	2007 MT	2008 MT	2009 MT	2009 January to June MT	2010 January to June MT
Production by CCCL	844,843	760,815	773,019	724,528	736,560	394,165	369,405
Imports by CCCL	0	119,032	25,988	46,062	0		0
Sales (CCCL) Domestic	862,400	843,295	807,484	720,260	652,651	343,863	292,876
Sales (CCCL) – Export	2,762	0	5,964	28,463	88,912	38,552	89,083

CCCL significantly increased its exports, which grew to a high of 88,912 MT in 2009 and continued to grow into 2010 as CCCL's first and second quarter results indicate that export sales for January to June 2010 (89,083 MT) have surpassed total exports for 2009. CCCL's exports totalled 39,004 MT in the January to March 2010 quarter, which represents a significant increase over the first quarter of 2009 when 13,169 MT was exported. Exports for the March 2010 quarter, when compared with the previous quarter increased by 9804 MT or thirty three point five seven per cent (33.57%). Export sales continued to do well for the January to June period increasing by more than one hundred percent from 38,552 MT for the same period in 2009 to 89,083 MT in 2010. The increase in exports in 2010 continues the trend that started in 2009.

CCCL's cement production in the first quarter of 2010 amounted to a nine point one four per cent increase (9.14%) over the quarter ending March 2009, and a one point zero six per cent (1.06%) increase over the preceding quarter ending December 2009. CCCL's half year data

from January to June 2010 shows that the company produced 369,405 MT, of cement. This constitutes a decline of about 6.2% when compared with the same period in 2009.

Local cement sales for the first quarter of 2010 totalled 157,649 MT, which represents a decline of 20,000 MT or eleven per cent (11%) when compared to the quarter ending March 2009, in which 177,689 MT of cement was sold. When compared to the preceding October to December 2009 quarter, local sales increased by 1,649 MT or one point zero five per cent (1.05%). Domestic sales were 292,876 MT for the January to June 2010 period, representing a reduction of 14.8% over the corresponding 2009 period.

Operating loss for CCCL in the first quarter of 2010 was (J\$344,585) million, a decline over the corresponding period in 2009 in which there was operating profit of J\$191,937 million was made. For the January to June quarter, Operating profit declined significantly from a profit of J\$610,530 million in 2009 to a loss of (J\$259,878) million for 2010. Overall profit also declined from the January to June period moving from a profit of J\$216,135 million in 2009 to a loss of (J\$213,397) million in 2010.

XI. INJURY ANALYSIS

The WTO Agreement¹³ identifies three types of injury that can be found to be “material” in an anti-dumping investigation; material injury to a domestic industry; threat of material injury to a domestic industry; or material retardation of the establishment of a domestic industry.

Injury in the form of material retardation of the establishment of a domestic industry is not being considered in this investigation. This injury type applies to cases where there is no existing domestic industry producing the like good and the establishment of such an industry has been materially hindered by dumped imports. In the present matter, the domestic industry producing the like good is already established and has the majority share in the domestic market.

A. MATERIAL INJURY

The Commission examined the Complainant’s claim that the dumping of the goods has caused and is causing material injury to the industry.¹⁴ Material injury is defined in Section 2 of the Act as material injury to the production in Jamaica of like goods. The Commission considered the economic indicators and indices as provided for in Regulation 12 for an assessment of material injury. These have been addressed as follows:

Price effects - referring to whether there has been significant price undercutting, price depression or price suppression.

Volume effects – referring to whether there is a decline or negative effect on output (production), utilization of production capacity, inventories, sales and market share.

Economic Impact on the Domestic Industry – referring to whether there is a decline or negative effect on growth, profits, and return on investment, cash flow, and ability to raise capital, employment, wages and productivity.

The Commission considered all factors to determine the overall effect, not necessarily the individual effect, of each factor. The Commission is guided by Regulation 12(3) which

¹³ WTO Antidumping Agreement (ADA), Article 3, Footnote 9; Paragraph 1 of Article VI of the GATT 1946

¹⁴ CCCL’s September 2, 2009 submission, Vol. 1, page 75.

provides that “nothing in this regulation shall be construed as binding the Commission to give priority to any of the factors [referred to above] ...in the making of its decision.

a) **PRICE EFFECTS**

Price Effects refer to changes in the level of prices in absolute and relative terms that are the direct result of dumped imports in the Jamaican market. This assessment involves an examination of (i) the prices at which the imported cement is sold in relation to the selling prices of locally produced cement (price undercutting); (ii) the selling prices of the locally produced cement to ascertain any changes relative to previous price levels (price depression); and (iii) the ability of the domestic industry to adjust its prices to recover increases in its unit cost of production (price suppression).

The Commission examined the movements in prices of the goods produced by the domestic industry and the dumped imports in the Jamaican market. The domestic industry provided information on detailed monthly list prices, periodic adjustments, discounts and price increases of the domestic industry. Buying House submitted data of actual sales prices¹⁵ for the period April 30, 2009 to April 29, 2010. No pricing information was submitted for the two years prior.

The Commission did not arrive at a conclusive assessment regarding price undercutting as additional information is required. The Commission found no price suppression and no price depression during the period when the dumped goods were in the Jamaican market.

Price Undercutting. The domestic industry contends that the purchase of Domicem cement by Buying House customers is due to more favourable credit and delivery terms that are offered to them. The Respondents argue that CCCL is the downward price leader during the POI, thereby setting the prices in the market.

The Commission observed based on the pricing information before it at this time that Buying House appears to establish its prices just above those of the domestic industry at every price adjustment. Further that Buying House ships its cement directly to Montego Bay and sells primarily in the Western parishes, thereby resulting in lower prices than CCCL in these parishes due to its transportation costs. The Commission could not arrive at a conclusive assessment regarding price undercutting because the information supplied by BHC did not include selling prices for the two (2) years prior to April 2009. This was required for the complete assessment of injury. The Commission will request the additional information from BHC.

Price Depression. The Complainant alleged that it suffered price depression because it has been forced to offer discounts and rebates, during different periods in 2009, in an effort to curb mounting inventories and to compete with the unfairly traded imports.

The assessment of the pricing information of the Domestic Industry shows that certain specific price reductions were offered during that period. From July 7, 2009 to July 14, 2009, the Domestic Industry offered market wide discounts on all 42.5kg sacks, 1.5 MT jumbo bags and bulk cement. The Complainant attributed this discount to the need to reduce mounting inventories resulting from the presence of cement imports from the U.S.A. in the market. An examination of the inventories for the period showed that average inventory levels remained consistent for the period.

¹⁵ Joint Submission, Exhibit 5, BHC

In September 2009, the Domestic Industry offered a reduction in prices to its bulk customers and block makers using jumbo bags. The Commission notes that a reduction in prices by the domestic industry would normally be an indicator of price depression. In a letter to its customers dated September 18, 2009, CCCL indicated that these reductions were the result of gains from improved efficiency from the commissioning of Mill #5, which the company wished after three weeks, to share with its customers. The Commission is therefore guided by the statement of CCCL that the price reduction was due to improved efficiency as a result of the commissioning of its new mill. No price depression was found.

The Commission also observed that CCCL had a price increase on December 21, 2009 and then on February 1, 2010. CCCL also announced through a press release dated June 14, 2010, a further price increase which resulted in a three point two per cent (3.2%) increase in its prices.

The Commission concludes that the periodic discounts and special offers were not significant when compared to the price increases taken by CCCL and therefore finds no price depression.

Price Suppression. The inability of the domestic industry to make reasonable price increases in order to recover increases in costs is referred to as price suppression.

The Commission's examination of CCCL's selling price adjustments and the related increases in the cost of production indicate that the unit cost to produce cement in 2009 increased by six point seven per cent (6.7%) over 2008 and seven point eight per cent (7.8%) over 2007. In February 2009, CCCL increased their prices to rationalize the 2008 increase in unit cost.

CCCL's price adjustments in December 2009 and February 2010 were done against the background of the recovery of increased production and operating costs. Therefore price increases of between seven point eight per cent (7.8%) and eight per cent (8%) in February 2010 was well in line with the recovery of the 7.8% increase in production costs in 2009.

The information before the Commission indicates that the Domestic Industry was able to increase its selling prices at different times during the period to recover increases in costs of production and therefore the Commission finds no evidence of price suppression.

b) VOLUME EFFECTS

Volume effects refer to changes in those aspects of the operation of the local industry, which are measurable by variations in factors such as production, capacity utilization, inventory, sales and market share.

Production. The Commission considered the allegation by CCCL that the presence of the dumped imports has forced it to curtail production. The Commission observed that the Domestic Industry was maintaining market share and the production levels were consistent with the average production level maintained for normal monthly supply. The Commission noted that domestic production from 2008 into the first half of 2010 has shown declines from its 2007 position as indicated above, while imports by BHC have increased.

Capacity Utilization. Capacity utilization refers to the extent to which a firm utilizes its productive capacity. Capacity is appropriately re-defined based on an average of actual production utilised over the last three to five years.

The Domestic Industry has indicated total production capacity of approximately one (1) million MT per year for some time. An examination of CCCL's production in past years indicates that the company has produced an average of 750,000 MT, and less than 800,000 MT, even in years when the market required up to 1 million MT. Therefore, the Commission observed that the utilisation rates of CCCL are substantially and consistently below the capacity claimed.

Inventory. The Commission examined the monthly cement production and inventory levels for the POI and found the inventory levels to be consistent with the industry's normal average daily carrying inventory of two weeks' sales. This is further supported by the analysis of production data which indicated that there was no change in the average production volumes.

The inventory quantities in the first quarter of 2010 averaged lower than the 2009 monthly average levels.

The Commission observed an increase in clinker inventory levels. CCCL ceased its importation of clinker and began producing 100% of the clinker for its own use. This has led to the build-up of clinker inventories to levels higher than carried in periods prior to 2009. The clinker inventory levels and the conversion of clinker to cement will be analysed further for the final determination.

Sales and Market Share. The Commission reviewed CCCL's sales for the period 2007/08 to 2009/10 which showed that sales from domestic production have consistently declined. Sales data for CCCL showed that in 2008/09 sales declined by about 6% when compared to 2007/08. In 2009/10 the company lost another ten per cent (10%) of sales from its domestic production in 2008/09. The domestic industry lost market share while BHC gained market share. The Commission noted that the overall market consumption is declining, that the Domestic Industry's sales combined with all other importers is also declining, while BHC is gaining market share. In a shrinking domestic market the only supplier gaining in both actual sales and market share is the Buying House.

c) ECONOMIC IMPACT

The Commission examined the economic impact of the dumped goods on the Domestic Industry.

Revenue. The Commission observed negative effects on revenue. The Complainant submits that it was forced to accelerate its export programme and prematurely commence exporting from Jamaica as a result of domestic sales lost to dumped imports. This acceleration, it argues, resulted in loss of revenue to CCCL since the revenue generated from export sales is less than that generated by domestic sales. Revenue from domestic sales declined by six per cent (6%) for the period under investigation when compared to the prior three months and by thirteen per cent (13%) when compared to the previous year. This decline is attributable to the reduction in volumes sold plus the special one week sales promotion in July 2009.

The slight increase in volume sold, the price increases which took effect on December 21, 2009 as well as the increase in export sales in the first quarter of 2010 showed a ten per cent (10%) growth in revenue over the last quarter of 2009. In addition, there continues to be significant growth in export sales as indicated by Exhibit No. 4. For the first quarter of 2010 CCCL exported [39,004] MT of cement representing forty-four per cent (44%) of the entire quantity it exported in 2009. This has contributed to CCCL's revenue even though its contribution to profit is lower than if a similar quantity was sold in the Jamaican market because of a lower average price.

Profitability. The Complainant claims that the Domestic Industry has suffered substantial material injury by reason of the less than fair value imports through revenue and profit impairment coupled with increases in the unit cost of production.

The Commission examined the consolidated audited financial reports of the Domestic Industry for 2007 to 2009 and the first quarter results of CCCL and highlights the following: Marginal increase in gross revenue for 2009 over 2008, as a result of the price increases. The conversion of CCCL's revenue to hard currency US\$ dollar revealed that revenue declined by thirteen per cent (13%) in 2009 over 2008, which would correspond with the approximately nine per cent (9%) reduction in sales value.

CCCL's operating profit for 2009 (J\$222 million) declined by seventy seven per cent (77%) when compared with operating profits of J\$949 million made by the company in 2008. Documentation was provided which showed that J\$726 million reduction which the company experienced in operating profit was due mainly to increases in the cost of energy and costs associated with the operating lease of the new mill and savings of J\$610 million. CCCL earned revenues of J\$2.16 billion for the first quarter of 2010, compared to J\$2.6 billion in the first quarter of 2009. This represents a sixteen point nine per cent (16.9%) decline. Operating profit of J\$84.7 million was made in the first quarter of 2010, which represents approximately one fifth of the J\$418.6 million made on operations in the corresponding quarter in 2009.

Consideration was also given to the impact on the Domestic Industry of other factors such as increases in the unit cost of production, sales of imported cement at prices lower than domestic market prices; the substantial cost of operating lease payments for the plant improvements as well as the effects of the global recession.

Return on Investment. Return on Investment (ROI) measures the level of profits in relation to the level of investments or capital employed in generating those profits. The Complainant does not make a claim that there is yet an actual decline in its ROI. However, CCCL contends that it is likely to decline. The Commission assessed the potential impact of the allegedly dumped goods on the domestic industry's ROI. The "Expansion and Modernisation Programme" engaged in by the Industry increased significantly the amount of capital employed by the company. ROI moves in the direction of profits.

CCCL's return on investment has been significantly affected, due to the company's increased cost of production combined with the increased capital employed as a result of investment in the new facility.

Cash Flow and Ability to Raise Capital. The Commission observed that CCCL's cash flow has been adversely affected because of its reduced profits and the increasing demand for the servicing of its intercompany and financial responsibilities surrounding cost of the plant expansion. Some of this pressure was eased by a debt to equity swap for a portion of the loan with its parent company however the operating lease financing does affect the level of cash outflow relating to these payments.

While the current price of its shares on the Jamaica Stock Exchange hovers around the \$4.00 mark compared to the high of \$9.60 in 2006, the company is not demonstrably adversely affected in its ability to raise capital as most of its plant development funding came via intercompany sources which continues to see its holdings in CCCL as viable regardless of the price listed on the stock market.

Employment & Productivity. The Commission observed no significant changes in the level of employment or productivity.

d) OTHER ECONOMIC FACTORS

The Commission also considered other economic factors that could have affected the Domestic Industry.

Finance Costs

The Commission's assessment of the Domestic Industry's operating results for 2009 shows a significant increase in the finance charges. It is reasonable to conclude that this increase is related to the capital investments made in the new mill. The Commission, while aware of the effect on the final operating profits, considers that this does not affect the production operating costs. Increased interest payments will also have a negative impact on a company's cash flow.

Devaluation and Foreign Exchange Losses

The Commission considered the impact on the industry of the value of the Jamaican currency. The Jamaican currency has been devalued followed by a short period of revaluation during the POI. The overall devaluation of the Jamaican dollar has had a negative impact on the profitability of the Domestic Industry resulting in foreign exchange losses.

SUMMARY

The Commission found on examination of all the economic factors, that the Domestic Industry has experienced some injury when the dumped imports were present in the Jamaican market. For the period during the POI, the Commission observed no price depression and price suppression. In terms of volume effects, the Commission noted a decline in sales and market share and production. Finally, in terms of the economic impact on the Domestic Industry, the Commission observed a decline in revenue, profits and adverse effects on return on investment and cash flow.

The Commission considered the injury being experienced by the Domestic Industry while the dumped goods were in the Jamaican market and found by majority that it was unable to make a conclusive determination on whether the injury is material as required by the Act. The assessment of materiality requires that the Commission not only take into consideration the size of the declines, but also the importance of the effects of these qualitative values relative to respective sizes. The Commission will be conducting additional analysis in the final stage of the investigation in order to determine whether the injury being experienced meets the materiality standard.

XII. THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY

The Commission turned to the question of whether the presence of the dumped imports would in the foreseeable future result in material injury to the Domestic Industry, the question of the threat posed by the dumped imports.

The Complaint alleges that the Domestic Industry is and continues to be threatened with material injury caused by the dumped imports of cement from the Dominican Republic. The Respondents submit that the Commission should find that the threat of material injury is unlikely and make a negative determination of threat of material injury.¹⁶

¹⁶ Joint Rebuttal Submission, pages 27 - 41

The Commission examined the question of whether the dumped imports pose a threat of material injury to the domestic industry in accordance with the statutory guidelines set forth in Regulation 13 and Article 3.7 of the Anti-dumping Agreement. These factors relate not only to the ability of the exporters of the dumped goods to supply the Jamaican market, but also the factors that underlie the demand by importers for the dumped cement. Further, they test the likelihood that the dumped goods will in fact be exported to Jamaica.

Regulation 13 provides in relevant part that:

A determination of threat of material injury may only be made where a particular situation is likely to develop into material injury, **and is clearly foreseen and imminent**, and in making such determination, the Commission shall take into consideration such factors as - ...

- (a) The significant rate of increase of dumped imports into the domestic market which indicates the likelihood of substantially increased imports of the [dumped] goods into Jamaica;
- (b) capacity in the country of export or origin already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to Jamaica, taking into account the availability of other export markets to absorb any increase;
- (c) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
- (d) inventories of the product being investigated;
- (e) 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;
- (f) actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
- (g) the magnitude of the margin of dumping ...[i]n respect of the dumped goods; and
- (h) any other factors that are relevant in the circumstances.

The factors in the Regulations incorporate the provisions in the ADA and WTO jurisprudence regarding the required analysis for finding threat of material injury. We note that Article 3.7 provides:

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

- i. significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- ii. sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb additional exports;
- iii. 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;
- iv. inventories of the product being investigated

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

The Commission has examined the factors set forth in the Regulations and the ADA, the findings of which are addressed below.

A. The Likelihood of Substantially Increased Importation of the Dumped Imports

i. Rate of Increase of Dumped Imports

The Commission examined whether there was a significant rate of increase of dumped imports into the domestic market and assessed whether this factor indicates the likelihood of substantially increased importation.

Buying House is the only importer of cement from the Dominican Republic for the period 2007 to April 2010. In 2007, [] MT of cement was exported to Jamaica from the Dominican Republic. In 2008, imports from the dumped source increased significantly to [] MT. In 2009, [] MT of dumped cement was imported. This volume was consistent with the volume imported in 2008. For the period January to April 2010, [] MT of cement has been imported by Buying House, which if annualized would amount to a volume consistent with previous years.

The Commission also observed that for the period April 30, 2007 to April 29, 2008 imports of OPC from the Dominican Republic were [] MT. Imports for the corresponding period in 2008/2009 were [] MT and for the same period in 2009/2010 were [] MT. The rate of increase of OPC imports from the Dominican Republic was 35% for the period April 30, 2008 to April 29, 2009 when compared with the previous period in 2007/2008. This increased by 2% for the comparable in 2009/2010 when compared with the period in 2008/2009 indicating consistency in the absolute volume of imports. The Commission also compared the volume of goods imported by Buying House from the Dominican Republic during the POI to the quantity produced by the domestic industry and consumption in the domestic market. In relative terms, for the period 2007/2008, Buying House's imports represented eight point one seven per cent (8.17%) of CCCL's domestic production, eleven point three nine per cent (11.39%) in 2008/2009 and fourteen point nine three per cent (14.93%) in 2009/2010. Relative to consumption, for the period 2007/2008 Buying House's imports accounted for six point four per cent (6.4%) of the entire market, ten per cent (10%) in 2008/2009 and eleven per cent (11%) of the entire market in 2009/2010.

The Commission observed a consistent supply of imports of OPC from the Dominican Republic since 2008. Further it is noted that the expiry of the CET waiver has not diminished the cement imports. The rate of increase in absolute terms does not indicate that there will be substantially increased importation, rather it indicates that importation will likely continue at a consistent rate in similar volumes. The Commission's examination suggests that Buying House's imports will continue to increase relative to the domestic industry's production and total market consumption.

The Commission further notes, that another distributor of cement to the Jamaican market, Arc Systems, imported [] MT of cement from the Dominican Republic post-POI, for the period May to June 2010. The Commission intends to examine the volume of goods being imported by Arc Systems as this has implications for the likelihood of substantially increased imports from the Dominican Republic.

**ii. Capacity of the Exporter and the Exporting Country
(Current and Foreseeable):**

The Commission examined the current capacity, the likely future production capacity, i.e. capacity which will be operational in the foreseeable future to produce OPC and capacity utilization rates for the exporter and the exporting country. The Commission noted that the exporter and exporting country have considerable capacity that constitutes a readily available source of supply of the goods at dumped prices.

The country of export, the Dominican Republic has substantial current capacity for cement production. It is a major producer of cement in the Latin American and Caribbean region. A study on the cement industry in Dominican Republic revealed that cement production has grown an average rate of six per cent (6%) per annum for the past thirty years, with annual production moving from 866 thousand metric tonnes in 1978 to about 6 million metric tonnes in 2008. The current installed capacity for the cement industry in the Dominican Republic is about 6 million metric tons.

Substantial investments have been made in Dominican Republic's cement industry in recent years in order to make the country's housing industry more viable. In addition, there has been a sustained increase in demand and production, which has resulted in the entrance of new producers in the market, such as CEMEX Dominicana, Domicem, Cemento Andino and Cementos Santo Domingo. There are currently six cement producers of cement in the Dominican Republic: CEMEX, Domicem, Cibao, Colon, Cementos Santo Domingo and Cemento Andino.

The Commission received a submission from CEMEX confirming that it has substantial production capacity and indicating that it has standing commitments for export markets in the region other than Jamaica and anticipates a market for its cement in Haiti for reconstruction. Information was also offered on the likelihood of other cement producers in the Dominican Republic exporting to Jamaica. The Commission will be requesting additional information to verify the submission, such as CEMEX's actual export markets in the region other than Jamaica and their respective export volumes.

The Exporter and Producer, Domicem has substantial current capacity. Domicem has an average production capacity of [] MT. Of the cement produced by Domicem in 2009, sixty-three per cent (63%) was accounted for by home market sales and thirty-seven per cent (37%) for exports. In terms of foreseeable capacity, the Commission has no information on any current plans by the Exporter to expand its production capacity.

The Commission finds that the Dominican Republic has significant capacity that constitutes a readily available source of supply of the goods at dumped prices. The Commission considered this factor in light of the domestic market for cement in the Dominican Republic, the size of the Jamaican market and the likelihood of that capacity being channeled to Jamaica which pointed to the likelihood that the available product in the Dominican Republic would be sold to Jamaica at dumped prices.

iii. Potential to Shift Production from other Goods

Product shifting refers to an Exporter's ability to use the company's available facilities to shift production factors to produce the dumped goods with no or minimal additional costs or time outlay. This is important to the assessment of the availability of supply of the dumped product. The ability to product shift makes the supply more responsive to a demand for the dumped goods.

The Exporter in the current matter does have the potential for shifting its production from other goods to produce the subject goods. The Exporter produces clinker and two types of cement using essentially the same equipment and facilities. The Exporter could respond to a demand for the dumped goods by producing more of it by shifting its usage of its production facilities. However, the Commission required further indication than the mere ability of the Exporter to shift the use of production facilities to respond to the increased demand for the product in Jamaica.

iv. Inventories of the Product Being Investigated

The Commission examined the state of inventories of the dumped goods in the Jamaican market. The existence of inventories of the dumped goods can indicate the possibility of further market penetration and reductions in the market share of the Domestic Industry.

An examination of the monthly inventory levels held by Buying House for the period April 2009 to April 2010 reveal that the level of inventory held has fluctuated over that period. Since January 2010 Buying House has maintained low closing inventory levels. The Exporter also had [] MT of the investigated product at the end 2009 which was about thirty per cent (30%) lower than the closing inventory held at the end of 2008.

The Commission did not regard these inventory levels as significant in its assessment of the threat to the Domestic Industry.

v. Likelihood of Capacity Resulting in Exports to Jamaica

The Commission assessed the likelihood that this capacity or any portion thereof would be exported to Jamaica. Factors such as the domestic demand for OPC in the Dominican Republic, the excess capacity of the Dominican Republic cement industry, the demand for the dumped cement by importers, the availability of other export markets to absorb the capacity and the existing relationship between the Importer and the Exporter/Producer were examined.

Demand in the Dominican Republic market and excess capacity. The Commission observed that there is excess capacity available in the Dominican Republic as the cement industry produces in excess of the domestic demand. The installed capacity in the country's cement industry is 6.0 million metric tons, while demand in 2009 topped 2.8 million metric tons, creating an excess of 3.2 million metric tons. Domestic consumption in the Dominican Republic has fallen during the period May to April 2010. The Dominican Daily newspaper reported that "there was a fall in demand of around 12.9% in May, June and July, compared with the first months this year."¹⁷ Additionally, ADOCEM, the country's Portland Cement Association noted that "from May to July, the daily average consumption was 10, 500 tons, far from the 12,000 ton daily demanded from January to April."¹⁸ The initial increase and ensuing reduction in consumption has been attributed to "the recent electoral period during which increased public spending in infrastructure works is common, but tend to fall and return to the usual rate of spending after the process."¹⁹ In responding to the decline in domestic consumption the cement makers have stated that "the cement industry is partially compensating these months of fewer construction activity in the country with an increase in

¹⁷ Dominican Today, (2010). Consumption decline surprises Dominican Republic cement makers. Retrieved from <http://www.dominicantoday.com/dr/economy/2010/8/10/36603/Consumption-decline-surprises-Dominican-Republic-cement-makers>

¹⁸ Ibid

¹⁹ Ibid

exports. In that manner, during this first half the sector has sold in third countries, essentially in the Caribbean area, around 600,000 metric tons of Portland Cement.”²⁰

The decline in domestic consumption in the Dominican Republic indicates that the Dominican Republic has excess capacity and points to the likelihood that the excess will be sent to the Caribbean of which Jamaica is a primary export market.

Availability of other export markets to absorb the excess capacity. Dominican Republic’s Portland Cement Producers Association (ADOCEM) 2009 report noted that “production capacity in the last eight years has grown well above the local demand for cement, a situation that has led the industry in search of exports and new markets”. In particular, the preliminary Report of the Central Bank for 2008 emphasized an increase in the country’s exports of cement of 54.8 % during 2008. The report also states that the principal export markets for cement are Haiti and Jamaica.

The Exporter/Producer Domicem exports cement to ten countries in the region. The Commission observes that Domicem has focused on these export markets due to their proximity to the Dominican Republic. The Commission examined Domicem’s data on its export markets which revealed that Jamaica is currently Domicem’s largest export market. While the company exports to other markets, the data shows that Domicem has been consistently exporting approximately thirty per cent (30%) of total exports to Jamaica, the largest amount sent to any one country. The other export markets with the exception of Haiti are substantially smaller than the Jamaican market and would not be able to absorb the excess capacity. In relation to Haiti, the Commission considered the data on export volumes submitted by Domicem. It indicated that for the period May 2009 to April 2010, exports to Haiti accounted for less than exports to Jamaica. The Commission has no information before it that this export trend will change significantly or that the market in Haiti will be able to absorb the excess capacity. There is therefore a likelihood that excess capacity will continue to be exported to Jamaica.

Relationship between the Respondents. Consideration was also given to Domicem’s relationship with the Importer which can be an indication of the Exporter’s interest in and commitment to this market. Domicem has invested in a Jamaican distributor, the Importer BHC. This suggests that the Exporter is interested in more than a mere passing presence in the Jamaican market. Further, according to Domicem’s website, BHC has signed a commercial agreement with Domicem to distribute and sell exclusively Domicem cement and “With this important business transaction Domicem not only strengthens its position as the leading distributor within the borders of the Dominican Republic, but also as an exporting company in the large market in the Caribbean.” It is likely that Domicem will continue to distribute to the Jamaican market.

B. Threat of Material Injury – Economic Factors

The Commission is also required as part of the threat of injury analysis to examine the economic factors listed in Article 3.4 of the ADA and reflected in Regulation 12. This was done to establish a background against which to evaluate what the condition of the domestic industry is likely to be in the near future if the dumped imports continue to be present in the market.

Price Depressing or Suppressing Effects and Likelihood of an Increase in Demand for the Goods under Consideration. Buying House Cement Ltd. provided the Commission with sales data for the period April 30, 2009 to April 2010. The Commission’s examination

²⁰ Ibid

of the data showed that within the POI, Buying House's prices were always marginally higher than that of CCCL's. In relation to price undercutting the analysis in relation to material injury is still inconclusive and this will have implications for the threat of injury analysis.

Return on Investment. CCCL's return on investment has been significantly affected. The company has suffered reduction in profits and increased production costs.

Cash Flow and Ability to Raise Capital. CCCL's cash flow has been adversely affected due to increased finance charges and lease payments related to the modernization project. It is likely that CCCL's cash flow will continue to be affected in the near future. The Commission has not found any adverse effects on the Domestic Industry's ability to raise capital and has no evidence at this time that this is likely to change in the near future.

Capacity Utilisation. The domestic industry shows utilisation rates that are substantially below the installed capacity. In a market that continues to shrink, CCCL's ability to utilize its capacity will continue to be curtailed. The continued importation of dumped imports from the Dominican Republic by Buying House which consistently gained market share within the POI will also impact negatively the Domestic Industry's ability to utilise its installed capacity.

Employment and Productivity. The Commission found no evidence that employment and productivity were affected during the POI.

Actual and Potential Negative Effects on existing development efforts. The presence of dumped imports from the Dominican Republic in the market are likely to have negative effects on development efforts in which the Domestic Industry has invested. As CCCL seeks to make a profitable return on its Expansion and Modernization, competition with unfairly traded imports from the Dominican Republic will impede its efforts.

Magnitude of the margin of dumping. The Commission notes that the magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when compared to the level of price undercutting. The margin of dumping calculated is 84.69%, which is significantly above the *de minimis* margin of 2%. The significance of a high margin of dumping is that, if the volume of dumped imports continues or increases, the likelihood is greater that the Domestic Industry will suffer material injury in the future.

SUMMARY

The Commission examined all the factors pertaining to the threat of injury analysis to determine whether the dumped imports threaten to materially injure the Domestic Industry. The Commission is guided by the standard required for a finding of threat of material injury, which requires that "a determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent."²¹ The term "clearly foreseen" relates to the likelihood that the material injury will occur and "imminent" pertains to the moment in time when the threat is likely to materialise.

²¹ Article 3.7 ADA

The Commission found that the Domestic Industry experienced injurious pressures when the dumped cement was in the market including a decline in sales, market share, production, revenue, profits and adverse effects on return on investment and cash flow. The Commission was also persuaded based on the information and analysis on record that there are circumstances that would exacerbate the current situation of the Domestic Industry. The Commission noted the rate of increase in dumped imports relative to domestic production and market consumption, the excess capacity of the Dominican Republic producers in particular Domicem and the decline in domestic demand for cement in the Dominican Republic. The Commission also found that it is likely that the dumped imports will continue to be exported to Jamaica. The data examined above showed that imports from the Dominican Republic represent the largest share of imports from any one country into Jamaica. The export markets for the Dominican Republic are primarily in the Caribbean region due to the proximity of these countries. These countries have significantly smaller markets for cement than Jamaica therefore it is very unlikely that they will be able to absorb the excess capacity. The Commission also considered the relationship between the Exporter and the Importer and the fact that a new Importer has started to source cement from the Dominican Republic.

The Commission finds by majority that the dumped imports from the Dominican Republic pose a threat to the domestic industry that is clearly imminent and foreseen.

XIII. CAUSATION

The Commission is required in accordance with Article 3.5 of ADA and Section 22 (2) and (4) of the Act, to find that the evidence before it shows that the dumping of the goods has caused, is causing or is likely to cause material injury. It must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury or threat thereof within the meaning of the Agreement. The Commission examined whether a causal relationship exists between the dumped imports and the injury being suffered by the domestic industry by identifying and distinguishing known factors other than the dumped imports that may have also had an impact on the domestic industry during the period of dumping. The assessment of whether the dumped imports have caused injury to the Domestic Industry does not require a finding that the dumped imports are the “only” cause or “principal” cause of injury. It requires that the Commission find the dumped imports to be “a cause” of the injury.

Non-Attribution Analysis

The Commission pursuant to Article 3.5 of the ADA and Regulation 12 (7) is required to examine any known factors other than the dumped imports which at the same time (as the dumped goods are present in the commerce of the importing Member) are injuring the Domestic Industry. Injury caused by any other factors must not be attributed to the dumped.

Regulation 12 (7) provides in relevant part that:

For the purposes of this Regulation and Regulation 13, there shall not be attributed to the dumped [imports], injuries caused by factors other than the dumped imports which at the same time are injuring the domestic industry, including –

- (a) the volume and price of imports which are not dumped...;
- (b) contraction in demand or changes in the patterns of consumption;
- (c) trade restrictive practices of and competition between the foreign and domestic producers;
- (d) developments in technology and export performance and productivity of the domestic industry,

which individually or in combination, also adversely affect the domestic industry.

The Commission recognized the existence of factors other than the dumped imports which at the same time could be negatively affecting the Domestic Industry. The Commission did not attribute the negative effects of these factors to the dumped imports.

Volumes and prices of like non-dumped and non-subsidized (non-subject) imports. Imports by Tank-Weld from the United States account for approximately three per cent (3%) of the total market. Imports by Tank-Weld do not pose a threat of material injury to the domestic industry, as found in the Final Determination in case AD-01-2009.

Contraction in Demand. The Domestic cement market contracted by eight per cent (8%) in 2009 suggesting a decrease in the demand for cement. The PIOJ reported for the first quarter of 2010 that the construction industry contracted by a further three per cent (3%). PIOJ's second quarter results showed a decline of one point five per cent (1.5%) in the construction industry which indicates an improvement as the decline in the previous quarter was twice as higher.

Changes in Cement Consumption Patterns. Domestic consumption of cement has been declining since 2007. In 2007 domestic consumption was 963,734 MT, which declined to 868,865 MT in 2007 and further to 798,902 MT in 2009. In light of the global recession, it is likely that the continued reduction in consumption will also negatively impact the domestic industry. Domestic consumption for the period January to June 2010 has declined by a further eleven per cent (11%) relative to the same period in 2009.

Trade-restrictive practices of and between foreign and domestic producers. No evidence or information was offered to the Commission which points to the use of trade restrictive practices between the Exporter and Producer and the Importer.

Export performance of the domestic industry (in like goods). The export performance of the domestic like goods does not give any indication of threat of material injury to the Domestic Industry. The domestic industry's exports have been increasing since 2007. In 2007 the volume of exports was 5,964 MT which increased to 28,463 MT in 2008 and then a further increase to 88,912 MT in 2009. For the period January to June 2010, CCCL exported 89,083 MT of cement to Montserrat, St. Kitts and Nevis, Belize, St. Maarten, Curacao, Guyana, Dominican Republic, Turks and Caicos and Grand Cayman and Haiti, surpassing export sales made for the entire year of 2009. Additional information will be requested on volumes of exports to these markets.

Macroeconomic Influences. The continued decline in the Jamaican economy poses a threat of material injury to the domestic industry. The Planning Institute of Jamaica reported that for the first quarter of 2010, the Jamaican economy continued to contract due to weak domestic and global demand for Jamaican goods and services, attributed to the impact of the global recession. Real GDP declined by 1.4% (compared with Jan – March 2009), goods producing industry declined by 5.7%; construction contracted by 3% in the first quarter. In the May to June quarter the goods producing industries declined by one point six per cent (1.6%), services declined by zero point nine per cent (0.9%) and construction declined by one point five per cent (1.5%).

XIV. APPLICATION OF PROVISIONAL MEASURES

The Commission may by virtue of section 15 of the Act and Article 7 of the ADA impose provisional duties upon an Affirmative determination of dumping and injury, where such provisional measures are necessary to prevent material injury being caused during the investigation. The Commission found that the dumped goods from the Dominican Republic are likely to cause injury to the Domestic Industry and is therefore not satisfied that the imposition of a provisional duty is necessary to prevent material injury being caused during the investigation.

XV. AFFIRMATIVE PRELIMINARY DETERMINATION

The Commission makes an affirmative Preliminary Determination pursuant to Section 27 of the Act, in respect of the dumping in Jamaica of Ordinary Portland (Grey) cement originating in or exported from the Dominican Republic. The Commission finds that the subject goods have been dumped at an estimated margin of dumping of eighty four point six nine per cent (84.69%) and that the dumping is likely to cause material injury to the Domestic Industry, i.e. the continued and increased importation of the goods under consideration at dumped prices poses a threat of material injury to the Domestic Industry that is clearly foreseen and imminent. The Commission does not find that that the imposition of provisional measures is necessary to prevent material injury being caused to the Domestic Industry and therefore declines to impose a provisional duty.

ADDITIONAL GENERAL INFORMATION

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

Written submissions should be forwarded to the attention of the officer identified below. To be given consideration in this phase of the investigation, all information should be received by the Commission within thirty (30) days of the date of this Preliminary Determination.

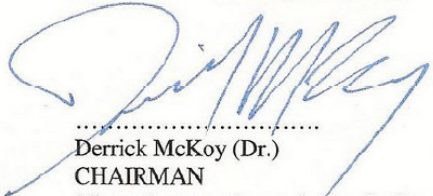
Parties are asked to note that any information submitted to the Commission by interested parties concerning this investigation is deemed to be Public information, unless clearly marked Confidential. Where an interested party makes a submission which it claims to be Business Confidential information,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

This Statement of Reasons along with the Notice of Affirmative Preliminary Determination of this investigation has been provided to persons directly interested in these proceedings and a copy may be obtained by contacting the Commission or from the Commission's website at www.jadsc.gov.jm. For further information, please contact the Commission as follows:

Mail or Deliver To:

Ms. Andrea Marie Brown
Executive Director
The Anti-dumping and Subsidies Commission
JAMPRO Trade & Invest (JTI) Bldg
18 Trafalgar Road
Kingston 10, Jamaica
Attention: Ms. Kibret Beckford, General Manager

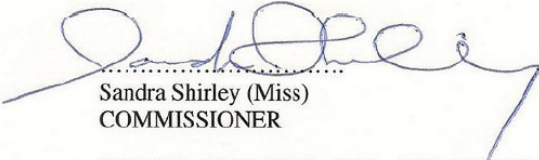
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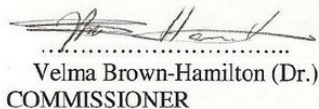
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Derrick McKoy (Dr.)
CHAIRMAN
(dissenting as to inconclusive finding of material injury,
no finding of material injury)
(dissenting as to threat of material injury)



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Leslie Campbell (Mr.)
COMMISSIONER



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Sandra Shirley (Miss)
COMMISSIONER



.....
Velma Brown-Hamilton (Dr.)
COMMISSIONER

CASE NO. AD-01-2010 – SOR – PRELIMINARY DETERMINATION – SEPTEMBER 2010