

ANTI-DUMPING AND SUBSIDIES COMMISSION

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STATEMENT OF REASONS PRELIMINARY DETERMINATION

KINGSTON, JAMAICA
April 8, 2010

CASE NO. AD-01-2009

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 and Portland Blast Furnace Slag Cement originating in or exported from the United States of America.

I. SUMMARY

Initiation of Investigation. On November 26, 2009 the Anti-dumping and Subsidies Commission (“the Commission”) commenced an investigation in accordance with Section 22 of the Customs Duties (Dumping and Subsidies) Act 1999, (“the Act”) into the allegation of dumping of Ordinary Portland Grey Cement and Portland Blast Furnace Slag Cement originating in or exported from the United States of America (“U.S.A.”). The Act implements the multilateral obligations under the World Trade Organisation Anti-dumping Agreement (“the ADA”), to which Jamaica is a signatory. Notice of the Initiation of the investigation was given by the Commission to the Minister of Industry, Investment and Commerce (“the Minister”), the Exporter, the Producer, the Importer, the Complainant, the Government of the Exporting country and other entities as provided under Section 25 of the Act. A copy of the Notice of Initiation was also published in the Jamaica Gazette Volume CXXXII and a daily newspaper, the Jamaica Observer dated November 26, 2009.

The investigation was initiated pursuant to a Complaint filed by the Caribbean Cement Company Limited (“CCCL”), alleging that Ordinary Portland Grey Cement and Portland Blast Furnace Slag Cement originating in or exported from the U.S.A. was and is being imported at dumped prices which has caused, is causing and is likely to cause material injury to the domestic industry, CCCL.

As set out in the Statement of Reasons for Initiation, the Commission commenced the investigation upon being satisfied to the standard of initiation that the Complaint filed is properly documented, that there is evidence that the goods are being dumped and that the evidence discloses a reasonable indication of dumping, causing at least threat of material injury to the domestic industry that produces the like goods.

The Commission sought to obtain relevant information from the Importer, the Exporter and the Producer. On December 2, 2009, the Commission sent correspondence to the Importer, the Exporter and the Producer (“the Respondents”) requesting that Questionnaires be completed in accordance with guidelines provided. The Respondents returned individual Questionnaire responses, and a Joint Submission to the Commission on January 26, 2010. On February 16, 2010 the Commission communicated to the Exporter and the Producer that the Questionnaires were not completed satisfactorily and requested that the responses be re-visited and re-submitted to the Commission. To date, the Questionnaire responses have not been re-submitted to the Commission by the Respondents.

The Commission requested additional information from the Domestic Industry on December 24, 2009, which it submitted on January 28, 2010. All Parties in the investigation were invited to file Rebuttals on February 3, 2010. After communication regarding difficulties and extension, all parties submitted Rebuttals, the Domestic Industry on February 12, 2010 and the Respondents on February 22, 2010.

The Parties filed supplementary and additional submissions as recently as March 24, 2010 which, though outside the scheduled deadlines for submission of information for the Preliminary Determination, were considered by the Commission in making the Preliminary Determination.

The record of this investigation consists of all documents submitted to the Commission by the parties, including all that relate to the Commission’s decision to initiate the investigation, the Notice and Statement of Reasons for Initiation and the Confidential and Non-Confidential versions of submissions received from Interested Parties. In requesting information and data from the known Interested Parties, the Commission advised and repeatedly reminded them that failure to offer appropriate responses throughout the investigation could lead to use by the Commission of facts available, pursuant to Sections 4(6) and 10 of the Act.

Preliminary Determination. The Commission is required to make a Preliminary Determination or terminate the investigation before making a Preliminary Determination as provided for in Sections 26 and 27 of the Act. The Commission is satisfied that there is sufficient evidence of dumping of the investigated product to justify proceeding with the investigation, that the margin of dumping is not *de minimis* and that the volume of imports actual or potential, or the magnitude of the threat of injury is not negligible.

The Commission must make the Preliminary Determination within Ninety (90) days after the date of Initiation, unless extended. On February 23, 2010, in accordance with Section 29 of the Act, the Commission decided that an extension of time from Ninety (90) days to One Hundred and Thirty-Five (135) days after initiation was necessary to make the Preliminary Determination. The decision to extend was made due to the difficulty of obtaining satisfactory evidence and other administrative and procedural challenges which made it unusually difficult for the Commission to decide within Ninety (90) days. The Commission provided written Notice of the Extension of the Preliminary Determination to the Minister, the known Interested Parties, the Government of the country of export and other entities. Notice was published, as required by the Act, in a daily newspaper, the Gleaner on Wednesday, February 24, 2010 and in the Jamaica Gazette. The Commission indicated in the Notice that in light of the extension, the Preliminary Determination would be made by April 9, 2010.

In accordance with Section 27 of the Act, the Commission makes a Preliminary Determination on April 8, 2010, and estimates the margin of dumping to be at least fifteen point one three per cent (15.13%) for Portland Blast Furnace Slag cement. The cement referred to as Portland Blast Furnace Slag cement is a blended cement with OPC and slag. This is imported by Tank-Weld.

Provisional Duties. The Commission finds that provisional measures are not necessary to prevent material injury being caused during the investigation.

Final Determination. The Commission is statutorily mandated to make a Final Determination in the matter within ninety (90) days of making this Preliminary Determination.

II. PARTIES TO THE INVESTIGATION

Section 2 of the Act defines “Interested Parties” to the investigation 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 is Caribbean Cement Company Limited, hereinafter referred to as “CCCL” or “the Complainant” or “the Domestic Industry” with registered offices at Rockfort, Kingston 2 and mailing address as P.O. Box 448, Kingston 2. Telephone: 876-928-6231, Fax: 876-928-7381. CCCL is a limited liability company incorporated under the laws of Jamaica in 1947. It is a seventy four per cent (74 %) owned subsidiary of Trinidad Cement Limited (TCL)¹ a company incorporated under the laws of Trinidad and Tobago. The company began commercial production of cement in Jamaica in 1952 and is in the business of manufacturing and selling bagged and bulk Ordinary Portland cement and Portland-Pozzolan cement referred as “Carib Plus” on the Jamaican market. CCCL also has the following subsidiaries: Jamaica Gypsum and Quarries Limited, Caribbean Gypsum Company Limited, Rockfort Mineral Bath Complex Limited.

The Commission has considered the matter and concludes that CCCL is not related to any of the Respondents, nor has it imported the allegedly dumped product during the period of investigation (“POI”) and therefore would not be excluded as the Domestic Industry on such grounds.

¹ TCL Group Booklet (2009) provides the breakdown of CCCL’s shareholders: TCL (74.08%), Other Shareholders (15.31%), Cemex-Scancem International (St. Lucia) Limited (4.96%), Financial Institutions (3.46%), Government (1.19%) and Pension Plans (1%). Retrieved from <http://www.tclgroup.com/>.

TCL purchased the majority share in the company from the Government of Jamaica.

Standing. CCCL is the sole producer of cement in Jamaica. CCCL meets the standing requirement specified in Section 22(2) – (4) of the Act and Article 5.4 of the ADA because its production accounts for one hundred per cent (100%) of the like goods to the goods under consideration, produced in Jamaica.

The Importer is Tank-Weld Metals, hereinafter referred to as “Tank-Weld” or “the Importer”, with registered offices located at 27 Seaward Drive, Kingston 11. Telephone: 876-923-8800, Fax: 876-923-0317. Tank-Weld Metals is a part of the Tank-Weld Group which also includes Tank-Weld Special Projects, Tank-Weld Steel Fabricators and Tank-Weld Equipment Rentals. Tank-Weld is a conglomerate of companies in Jamaica, with subsidiaries catering to niches in the construction industry such as steel, lumber, cement, distribution, steel fabrication, civil engineering and contracting, heavy duty haulage and equipment rental². Tank-Weld has a contract with Vulcan for cement it distributes in the Jamaican market.

Section 2 of the Act defines the Importer in accordance with Section 2 of the Customs Act, 1941 as including the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer.

The Commission identified Tank-Weld as the Importer since it is the owner who is beneficially interested in the goods under consideration.

The Exporter is Vulcan Materials Company, hereinafter referred to as “Vulcan” or “the Exporter” with registered offices located at 1200 Urban Centre Drive, Birmingham, Alabama 35242. Telephone: 205-298-3000, Fax: 205-298-291. Vulcan, together with its subsidiaries, engages in the production and sale of materials for construction. The company operates in three segments: Aggregates, Asphalt mix and Concrete and Cement.

The Producer is the exporter, Vulcan Materials Company also referred to as “the Producer”. Vulcan is producing and exporting cement to Jamaica from its Florida base of operations.

Affiliated Company to the Exporter and the Producer in the investigation is Florida Cement Inc., referred to as the “Affiliated Party” and collectively referred to with Vulcan as the Exporter and Producer. Florida Cement Inc. is a wholly owned subsidiary of Vulcan with corporate offices at 1200 Urban Centre Drive, Birmingham, Alabama 35242, and an address for service at 155 E. 21st Street, Jacksonville, Florida 32206. Telephone: 904-355-1781, Fax: 904-355-0469.

The Respondents refers collectively to the Importer, the Exporter, and the Producer. This may also include the Affiliated Company. These parties have filed some Joint Submissions in the investigation and they have the same legal representation.

² Tank-Weld Group, (no date). Retrieved from <http://www.tankweld.com/index1.htm>

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. Therefore, it is the timeframe to which information and data substantiating allegations of dumping and injury should refer to.

The POI for dumping is normally one (1) year or a minimum of six (6) months immediately prior to the date of initiation. The goods under consideration were first imported in May 2009.

The POI for injury should be at least 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 November 26, 2008 to November 25, 2009 and for injury, collected and assessed data and information for the period November 26, 2006 to November 25, 2009. For the purposes of the Preliminary Determination, in the post initiation period, after November 2009, data which was relevant and available was also examined.

IV. USE OF FACTS AVAILABLE

The Commission is guided by the Act and the ADA, which provide for circumstances in which Interested Parties fail to fully cooperate and provide the Investigating Authority (the Commission) access to information and data required to make an assessment of dumping and injury. The use of facts available allows the Commission to complete the investigation and make determinations on reliable information even where the interested parties fail to cooperate.

The relevant sections of the Act and the Anti-dumping Agreement are:

Section 4(6) of the Act

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

Section 10 of the Act

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

Section 4(6) can be distinguished from Section 10 of the Act, as Section 4(6) does not require that the use of facts available by the Commission be done in accordance with Annex II, whereas Section 10 requires the Commission to be guided by Annex II.

Article 6.8 of the Agreement

In cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative may be made on the basis of facts available. The provisions of Annex II shall be observed in the application of this paragraph.

Annex II of the Agreement

Annex II provides guidance to authorities in the use of facts available. The Annex requires Investigating Authorities to specify in detail the information required from any interested party and the manner in which the interested party in its response should structure the information. The Investigating Authorities should also make sure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of facts available, including those contained in the application for the initiation of the investigation by the domestic industry (Paragraph 1).

The Investigating Authorities may also request that an interested party provide its response in a particular medium or computer language and should consider that ability of the party to respond in that format and should not request that the party use a computer system other than that used by the party. Further the authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble (Paragraph 2).

Authorities are required to take into account all information in their determinations which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and where applicable, which is supplied in a medium or computer language requested by the authorities. If a response by a Party is not given in the preferred medium, but the authorities find that the circumstances referred to in paragraph 2 have been satisfied then the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation (Paragraph 3).

The Annex provides that authorities are not justified in disregarding information, even though the information provided might not be ideal in all respects, where the party has acted to the best of its ability (Paragraph 5).

Where the authorities do not accept evidence or information provided by a party, it should inform the party of the reasons and provide the party with an opportunity to provide further explanations within a reasonable period with due account being taken of the time-limits of the investigation. Further, where authorities have to base their findings, including those with respect to normal value on information from a secondary source, including information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from information obtained from other interested parties during the investigation. It is clear that if an interested party does not cooperate and relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate (Paragraph 7).

The Commission has indicated in the respective sections of this Statement of Reasons where facts available have been used.

V. SCOPE OF THE INVESTIGATION

The Commission defines the scope of the investigation as follows:

ORDINARY PORTLAND GREY CEMENT AND PORTLAND BLENDED HYDRAULIC CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA

Notwithstanding the following Harmonised Tariff Schedule³ (HTS) Codes which are primarily used for the purposes of the Jamaica Customs Department (“Customs”):

2523.2900	Other
2523.2910	Building Cement (Grey)
2523.2990	Other
2523.90.00	Other hydraulic cements

The Complainant contends that the scope of the investigation include all cement imported under HTS Codes 2523.20 (Portland Cement), 2523.290 (Building Cement (Grey)) and 2523.90 (Other Hydraulic Cements). The assertion is based on the argument that there is a need for the scope to be sufficiently broad in light of the likelihood of product substitution or interchangeability for import, sale and use in the local market and to guard against circumvention of a duty that may result from the investigation.

The scope of the investigation is not determined by HTS Codes for the imports. The scope is determined by factors such as the end uses of the imported and locally produced goods within the Jamaican market. However, the Commission recognizes that HTS Codes assist the Customs authorities in the application of anti-dumping measures where they are imposed. Imports may be classified under different HTS Codes based on their description and have the same end uses to the domestically produced goods within the domestic market. To avoid circumvention of duties, where applied, which may result from product substitution or interchangeability, 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, notwithstanding the referenced HTS Codes for cement.

The Commission, in assessing threat of material injury, observed that after the POI (January 2010) the goods under investigation are being imported under a different HTS Code 2523.90.00 for other hydraulic cements. The change in tariff classification may be attributable to the

³ The Jamaica Gazette Supplement, (2007) the Customs Act: The Customs Tariff (Revision) (Amendment) Resolution, 2007, Vol. CXXX, No. 17.

Common External Tariff (“CET”) waiver granted by the Government of Jamaica (“GOJ”) post initiation to the importer for 65,000 metric tonnes (MT) of cement, mainly for road construction. The identification or limitation of its use for primarily road construction may have resulted in it being classified under the HTS Code for other hydraulic cements and not building cement. However, the Commission notes that it is the same product that was imported and that is the subject of this investigation.

The Commission observed that the importer, Tank-Weld Metals also imported White Portland Cement in very small quantities during the POI. This cement type has not been included in the scope of the investigation as White Portland Cement is a specialty type of cement not used for general construction purposes.

A. Goods Under Consideration

The goods under consideration are the imports that the Complaint alleges are being dumped, also referred to as “subject goods” and “investigated products”. The Complaint identifies the allegedly dumped imports as a type of Ordinary Portland Cement (“OPC”) Type I and a cement blend of OPC and slag referred to as OPC Type IS originating in or exported from the U.S.A. The Complainant submits that the imported goods are used for building and construction purposes and conform to local and international standards.

The Commission obtained information from the Jamaica Customs and Fiscal Services Limited which provided the description, tariff classification and the relevant international and local standards of the goods under consideration. The goods under consideration for the period of investigation for dumping are defined and described in accordance with HTS Codes, the Bureau of Standards Jamaica product specifications and the type of packaging as follows:

- (1) Ordinary Portland Grey Cement (pure or unblended OPC) - JS 32 Type I/II Portland Cement; imported under HS Code for building cement 2523.2910.00; packaged in jumbo bags.
- (2) Portland Blast Furnace Slag Cement (cement blend of OPC and slag) – JS 301 Type PS (25); imported under HS Code for building cement 2523.2910.00; packaged in 94lb bags and jumbo bags.

The goods under investigation have been imported from May 2009 – September 2009, during the period of investigation for dumping and generally attract a rate of duty based on the tariff item of forty per cent (40%).⁴

The Commission noted that the unblended OPC was imported by Tank-Weld in small quantities which have not reached the Jamaican market. The Commission requested that documentation be provided by Tank-Weld on the disposition of the unblended OPC. An Affidavit was provided to the Commission to support the assertion that the imported OPC was not re-sold on the Jamaican market. The Commission has accepted at this time, the information that the unblended OPC was retained by Tank-Weld for its own uses and was not resold to a third party. Sales data submitted to the Commission did not contain sales of the unblended OPC.

⁴ The duty rate of 40% has been, from time to time since 2006, the subject of suspension by the Government via application to the COTED for suspension of the CET. The Importer was granted CET waivers in May 2009, which expired in September 2009 and November 2009 respectively.

The Commission has therefore turned its consideration to the quantity of the cement blend of OPC and slag, referred to as Super Cement in the market.

VI. LIKE GOODS

The Commission is required to identify the like good in order to ascertain the domestic industry which produces it. That industry is then to be examined for injury.

The Respondents contend that there is no “like good” to the Super Cement produced locally and that it is a specialty type of cement due to the quality of the cement whereby “it is manufactured specifically to have the strength characteristics which make it far better suited for sophisticated applications.”⁵ The Complainant submits that their locally produced goods and the goods under consideration are “like goods” for the purposes of this investigation.

The Commission examined the goods produced by the Domestic Industry in order to determine whether they fall within the definition of “like goods” under the Act to the subject goods.

Section 2 of the Act defines the term “like goods” as follows:

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 conducted a comparative examination of the locally produced goods and the subject goods to assess similarities and differences using internationally accepted criteria, namely: Technical Industry Standards, Physical and Chemical Characteristics; Manufacturing and Production Processes; Functions and End Uses; Channels of Distribution and Marketing; Substitutability and Competition; Customer and Producer Perception.

The Commission found similarities between the goods in nearly all of the criteria examined. The subject goods and the locally produced goods both conform to the same or similar technical industry standards, they have similar physical and chemical characteristics and utilize similar manufacturing processes as there are only two processes employed to manufacture cement. Both goods have the same chief end uses which include the manufacture of concrete and concrete products for building and highway or road construction. The goods have the same channels of distribution to the same types of customers which include hardware stores, block makers and contractors. Differences were found in the chemical composition of the blended cements, in terms of the OPC replacements of granulated blast furnace slag and pozzolan, and in the performance (compressive strength) of the goods. However, minor differences and variations between the goods are not sufficient to find that the goods are not “like products.” The Commission therefore found the locally produced OPC and Carib Plus cement and the subject goods, Portland Blast Furnace Slag cement to be like goods in accordance with the Act.

⁵ Joint Submission of Florida Cement Inc., Vulcan Materials Company and Tank-Weld Metals Limited (Joint Submission), page 12

The locally produced goods and the subject goods conform to the same local and international technical industry standards for Ordinary Portland Cement and Blended Hydraulic Cement:

- i. The American Society for Testing and Materials (ASTM):
 - ASTM C150 – 07, Standard Specification for Portland Cement⁶
 - ASTM C545 – 08, Standard Specification for Blended Hydraulic Cement
- ii 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 conforms to the standard specifications for Portland cement (Ordinary and Rapid-Hardening). The Carib Plus and Super Cement conform 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.

An examination of the physical and chemical characteristics revealed that the domestically produced goods closely resemble the investigated products based on the technical industry standards, composition and physical characteristics.

Portland cement is a standard type of cement, which can be blended with other materials to produce blended cements. It 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 blast furnace slag, silica sand, and iron ore.⁷

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)⁸ and Vulcan produces a blend of Portland cement and granulated blast furnace slag (GBFS) referred to as Super Cement. The Commission notes that according to the *United States Export and Import of Portland Cement, Aluminous Cement and Slag Cement Report* "slag cement is no longer considered a specialty product and is instead a commonly used, cementitious material".⁹

There are two processes for the manufacture of Portland cement, referred to as the dry and wet processes. The dry process involves the principal raw material, rock being mined from a quarry

⁶ ASTM – C150 – 09 - The cement covered by this specification shall only contain the following ingredients: Portland cement clinker; water or calcium sulfate, or both; limestone; processing additions; and air-entraining addition for air-entraining Portland Cement. www.astm.org

⁷ Portland Cement Association, (2010). "How Cement is Made" Retrieved from www.cement.org/basics/howmade.asp

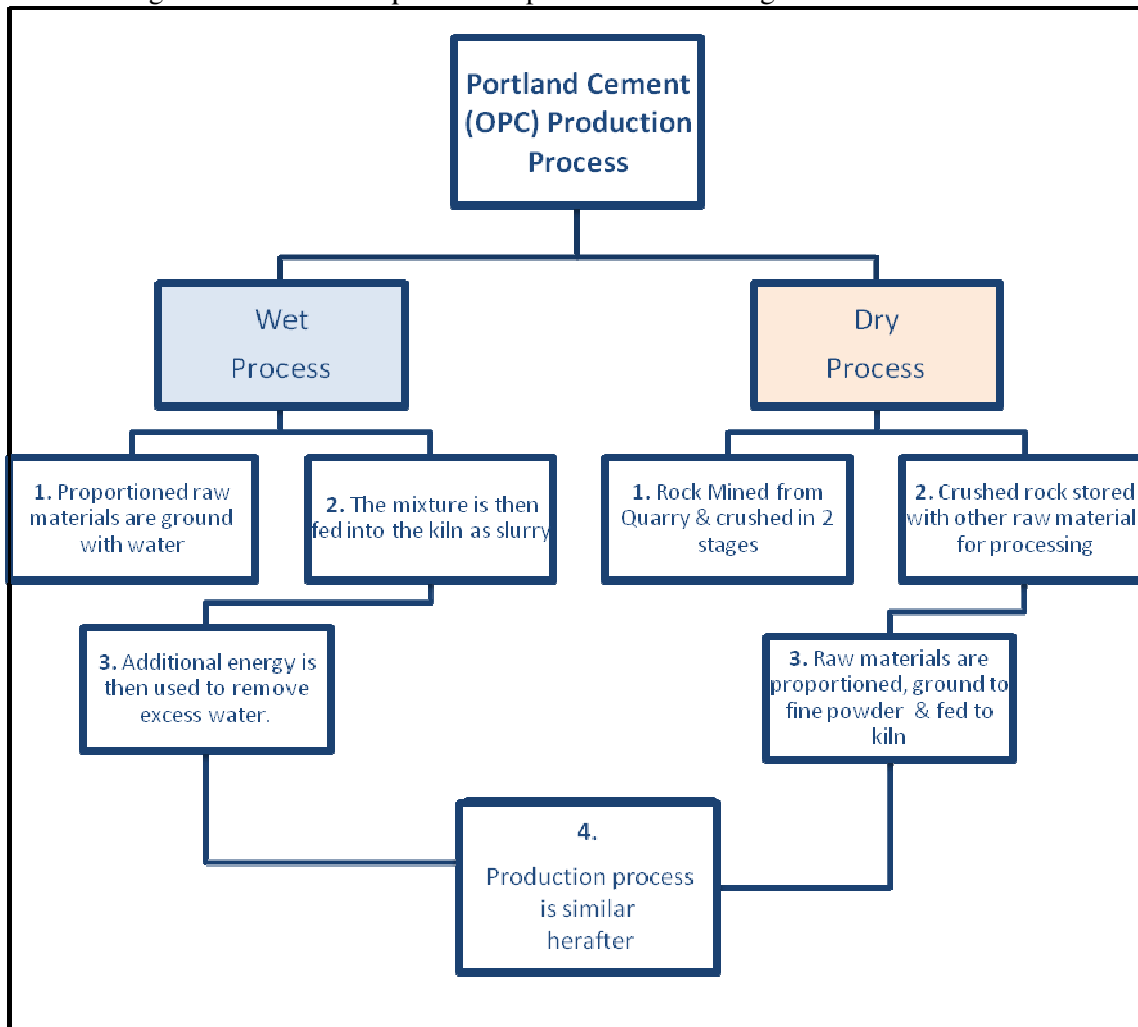
⁸ CCCL's September 2, 2009 Submission, Vol. I, page 7

⁹ Business Analytic Center (BAC), 2010. *United States Export and Import of Portland Cement, Aluminous Cement, Slag Cement*, page 8

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.¹⁰ 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.¹¹

MANUFACTURING AND PRODUCTION PROCESS FOR CEMENT

The diagram shows that the production process is similar regardless of the method used.



Cement producers worldwide utilize either the “wet” or “dry” processes to produce cement, with the dry process being more used in the United States, due to its contribution to production efficiency. Both processes are employed by CCCL. The Producer of the goods under consideration uses the dry process.

¹⁰ Ibid

¹¹ Ibid

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.

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 cement imported by Tank-Weld is sold in 94lb (42.5 kg) bags, and in bulk (per tonne/lb). The Commission found 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. 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.¹²

The Functions and End Uses of the products were found to be similar. 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, highway construction using ready-mix concrete, building construction using ready-mix concrete, concrete blocks, pre-cast concrete units and individual smaller units and repairs.

The Commission examined sales data received in response to its requests from the Importer and the Domestic Industry and noted the types of customers and respective proportions for the purchasers of the goods under consideration and the domestic goods. The Commission found that the same types of customers purchased both goods. This enabled the Commission to identify the end uses for the goods. As noted, these included concrete makers, hardware stores, distributors, retailers, quarries, construction companies, and cash customers.

Based on the sales data, the Commission was not persuaded that the cement blend of OPC and slag referred to as Super Cement is a special purpose or specialty cement. The Commission concluded that Respondents' argument that the imported product is a specialty cement was not confirmed by sales data, as the majority of sales was not to customers purchasing the cement for a special purpose.

The Commission concluded that the products are substitutable. CCCL contends that the domestic product and the investigated product are directly substitutable and compete with each other,¹³ while Vulcan contends that Super Cement, being slag cement, is not a like good to the Complainant's products (OPC and Carib Plus).¹⁴ Tank-Weld claims that the materially superior characteristics of its Super Cement have been recognised by the end users comprising the market segment targeted by Tank-Weld.¹⁵ Tank-Weld asserts that leading end-users operating in Jamaica have specifically required the use of the imported Super Cement for their respective construction projects. In support of its assertion, Tank-Weld provided letters from said end-users. However, the Commission found that Tank-Weld's sales data does not reflect that it actually accomplished sales to all the end-users used in support of its assertion. Tank-Weld's *Super Cement* was not only, nor even primarily, sold to "leading end-users," as it claimed.

¹² CCCL's September 2, 2009 submission, Vol. 1, page 11

¹³ CCCL's September 2, 2009 submission, Vol. 1, page 9

¹⁴ Joint Submission, Page 9.

¹⁵ Ibid, Page 21, Paragraph 41

Rather, significant quantities of *Super Cement* have been sold to the same customers as noted above; including hardware stores, government agencies, construction companies (both large and small), block factories, retailers and cash customers. This suggests a high level of substitutability with the Complainant's product.

Despite the contending views of the Parties to the case, if products are seen to be readily substitutable for each other, slight distinctions used to market the products notwithstanding, there is an inclination to consider them like goods. The Commission compared many characteristics of the products. Given that all cement, regardless of type, is the binding agent in concrete, and the uses in the Jamaican market, and no substantiation of the claim that the imports were required for a specific purpose, and thus a special type of cement, the products are substitutable. The investigated product may be used for all jobs that the domestically produced cement is used for and vice versa, leading to the conclusion that they are indeed substitutable.

Customer Perception can be inferred from the types of customers that purchase the domestically produced goods and the subject goods. The Commission finds that the sales data revealed that the same types of customers purchased both types of cements. The Respondents submitted a letter from a customer which indicated a preference for the Super Cement. However, the sales data provided more compelling evidence that the same category of customers purchase the locally produced cement and the subject goods.

The Commission finds, based on the Bureau of Standards Physical and Chemical Test Reports for the domestic goods and the goods under consideration, that both goods conform to the minimum performance standards in accordance with the standard specifications. Performance by itself does not distinguish the goods for purposes of determining whether they are like goods. The thrust of the Respondents' argument is that the superior performance of the Super Cement is what differentiates the goods under consideration from the domestic product. However, the Commission found that even if the investigated products are of superior performance to the domestic goods, this factor by itself is not sufficient for them to not be considered "like goods", in light of the market for cement in Jamaica, the functions and end uses and other characteristics addressed herein.

VII. THE JAMAICAN MARKET

The cement market in Jamaica is supplied by one domestic producer and importers, all of which distribute cement to the consumer through retailers, distributors and ready-mix operators. Others import for their own use. The Complainant, CCCL has been producing cement since 1952 and is the sole operating manufacturer of cement in Jamaica. Before 1999, the Complainant was the sole supplier of cement to the Jamaican market, sometimes itself importing to supply the market. Thereafter, the market changed significantly to include other suppliers of imported cement.

The Complaint submits that historically, approximately eighty per cent (80%) of the cement produced by CCCL was sold to suppliers who distribute cement to the ultimate consumer in 42.5 kilogram (kg) sacks¹⁶. The balance of the amount produced locally was sold in bulk or jumbo bags to consumers to complete larger projects.

¹⁶ Ibid, at page 13

In 1999, cement was initially being imported into the Jamaican market by one importer and this expanded subsequently to include other importers. In 2006, the market also saw an increase in imports due to a shortage in production by Domestic Industry. The level of importation was further heightened by a period in which the quality of cement produced by CCCL was diminished. At this time in 2006, the Complainant was itself a major importer of cement, accounting for more than fifty per cent (50%) of total imports. This profile changed in 2007 as other importers increased cement imports into the market. In 2009, cement is being imported into Jamaica from different sources by a few importers for distribution on the market.

JAMAICAN MARKET CONSUMPTION OF CEMENT 2005-2009¹⁷

	2005	2006	2007	2008	2009
Domestic Production Cement	844,843	760,815	773,019	724,528	736,560
Imports by CCCL	0	119,032	25,988	46,062	0
Other Imports	2,000	69,658	156,250	148,605	146,250
Total Consumption	866,400	912,953	963,734	868,865	798,902
CCCL Exports	2,762	0	5,964	28,463	88,912

The demand and consumption of cement is highly dependent on the construction sector as all cement is consumed in construction activities. Jamaica's construction sector has historically been an essential contributor to the Jamaican economy, primarily due to its contribution to the country's physical infrastructure, but also due to linkages it has with other sectors. However, the sector has been experiencing marginal growth over time. The total value added by the construction industry in 2008 was only 1.8 per cent (1.8%) higher than the total value added by the industry in 1992.¹⁸

In 2009, the Planning Institute of Jamaica indicated in the first quarter of the year that real value added in the construction industry decreased by 7 per cent (7%). This continued in the April to June quarter with a further decline of 3.8 per cent (3.8%). In the July to September quarter, construction again declined by 5.8 per cent (5.8%) and in the October to December quarter by a further 3.5 per cent (3.5%). The decline in the December quarter represented the ninth consecutive quarterly decline for the industry. Consequently, the industry, which uses cement as one of its main inputs experienced an overall contraction in 2009. The sector also continues to be adversely affected by the general downturn in the economy, which has resulted in the suspension or delay in some construction projects. The Commission notes that the decrease in demand for cement is reflected in the decreased cement consumption for the relevant period.

The contraction in the Jamaican economy and in particular the construction sector has also impacted on the domestic market for cement. In 2006, a release by the then Ministry of Industry, Technology, Energy and Commerce (now Ministry of Industry, Investment and Commerce)

¹⁷ Information in Table obtained from Annual Reports of CCCL, Jamaica Customs and Fiscal Services Limited

¹⁸ Construction Task Force, (2009). *Vision 2030, Jamaica. Construction: Sector Plan 2009 – 2030.*

noted that production and imports up to November 19, 2006 totalled 915,000 MT compared with approximately 850,000 MT for the full year 2005. The report further stated that Jamaica's consumption of cement increased by approximately seven per cent (7%) in 2005, based on figures up to November.¹⁹ 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 contraction of the market by approximately eight per cent (8%) compared to the previous year.

In relation to imports, over a hundred thousand (100,000) MT of cement was imported in 2006. Imports increased by 2.6 per cent (2.6%) in 2007 and by 6.8 per cent (6.8%) in 2008. However, in 2009, imports decreased by an estimated twenty five per cent (25%).

COMPETITION IN THE MARKET

The Respondents' seek to address what it deems to be competition issues inherent in the Domestic Industry's allegation of dumping, injury and its request for an anti-dumping measure. In their submission, the Respondents raised the contention that CCCL is a monopoly and that competition in the Jamaican cement market is important. In addition, Tank-Weld placed at least one advertisement in the Daily Gleaner²⁰, opining that the claims made by the Domestic Industry are a means by which it hopes to regain monopoly status in the Jamaican market.²¹ It has also been suggested to the Commission and to the public that the policy of competition of imports with the products sold by Carib Cement was found to have saved consumers significantly over the March 2006 to 2009 period.²²

Anti-dumping does not prevent fairly traded imports from competing in the market nor protect an industry from competing against fairly traded imports. Discipline, if found to be appropriate in an anti-dumping case defends a domestic producer from the effects of *unfairly traded or dumped exports* from a trading partner, only. Issues of competition appropriately lie within the mandate of another GOJ Commission. Circumscribing competition, disciplining monopolies if they exist are within that agency's purview and do not preclude the defence using the multilateral trade rules of the domestic producer from injury posed by goods deemed to be unfairly traded in the form of dumped products. Competition from fairly traded imports do not fall within the Commission's mandate.

Competition issues in an anti-dumping investigation may only be considered where the Commission reaches an affirmative Final Determination and is examining the appropriateness of a duty lower than the margin of dumping that might be in the public interest.

VIII. EVIDENCE OF DUMPING

Dumping occurs when the Normal Value exceeds the Export Price of the goods shipped to the country of import. The Margin of dumping refers to the differential between the normal value

¹⁹ Ministry of Industry, Technology, Energy and Commerce, (2006). *Cement Update #8: November 20, 2006*. Retrieved from www.mct.gov.jm/Cement%20Update_november_20.pdf

²⁰ Daily Gleaner, Monday March 15, 2010

²¹ Radio Jamaica, (2010). *Resisting Monopoly, Tank-Weld hits back at Carib Cement*. Retrieved from http://www.radiojamaica.com/index2.php?option=com_content&do_pdf=1&id=25817

²² Ibid

and the export price expressed as a percentage of the export price. In making a Preliminary Determination, the Commission is required to estimate the margin of dumping as part of the investigatory process, using information available to it for the goods under investigation.

The Commission has found that Portland Blast Furnace Slag cement, the blended cement with OPC and slag is sold at dumped prices to Jamaica by the identified Producer and Exporter in the U.S.A. The Commission has calculated an estimated margin of dumping of at least fifteen point one three per cent (15.13%) based on the information before it at this time.

A. NORMAL VALUE

The Act specifies that the normal value be determined by reference to the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country. Simply defined, it is the price at which the cement blend of OPC and slag is being sold in the U.S.A. market with adjustments for price comparability.

The Commission is guided by Regulation 3 of the Customs Duties (Dumping and Subsidies) (Determination of Fair Market Price, Material Injury and Margin of Dumping) Regulations 2000 (“Regulation”), which prescribes how the normal value referred to as the “fair market price” is to be determined:

- (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 business for domestic consumption in the exporting country
 - b. The cost of production of those goods in the exporting country including any subsidy provided in relation to such production
 - c. 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.
 - d. 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.

Regulation 3 also provides that the Commission may arrive at a constructed normal value using the cost of production as noted in paragraph (4):

- (4) The fair market value 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 made within an extended period of time,

- iii. in substantial quantities and at a price which do not permit recovery of cost within a reasonable period of time;
 - iv. outside the ordinary course of trade on account of market conditions;
 - v. not representative.
- b) no contemporaneous sales of comparable merchandise exist.

At Initiation, the Commission noted in the Statement of Reasons that it derived the normal value from the retail price of unblended OPC as sold in large, well-known hardware store chains, Lowes and Home Depot in the U.S.A., in the absence of information on these prices from the Exporter and Producer of the goods under consideration.

For the Preliminary Determination, the Commission requested information from the Exporter and Producer, Vulcan, and from the Affiliated Party, Florida Cement Inc., the subsidiary that Vulcan identified as being the exporter of the goods in order to calculate the normal value for the goods under consideration. The information sought included prices for the cement blend of OPC and slag, as well as prices for all other cement products sold by the Producer and Exporter in the U.S.A market and information affecting price comparability such as transportation, packaging and other such costs. The Exporter and Producer indicated that the Affiliated Party does not sell the cement blend of OPC and slag in the U.S.A or any like product to that type of cement. The Producer and Exporter therefore, did not provide a home market price for the goods under consideration nor information and prices for other types of cement it sold in the U.S.A. market. Florida Cement Inc. submitted to the Commission information on the costs it incurred to produce the cement blend of OPC and slag that it sells to Tank-Weld.

The Domestic Industry in the Complaint and in its Rebuttal submitted that the cement blend of OPC and slag are sold in the U.S.A market and provided a range of normal values and adjustments for price comparability based on its independent market research.

The Commission noted that the cost of production information was not complete. After failed efforts to obtain additional and more accurate information to complete the information that it would need to construct the normal value, the Commission resorted to best facts available to derive the normal value.

Adjustments To Normal Value. The Exporter and Producer provided the costs of production for the cement blend of OPC and slag sold to Tank-Weld. Costs of production submitted by the Exporter and Producer were used as the starting point in deriving normal value. The Commission noted that no costs incurred in relation to the sale of the investigated products were provided such as selling, administrative and general costs. Information on the record submitted by the independent Market Consultant for the Complainant which included standard industry costs, was examined. The Commission determined that they were reasonable and used them to account for those costs that were not provided by the Respondents.

As required by the Act, adjustments were made to derive the Normal Value as follows:

Transportation or Movement Expenses – The Commission found that generally, Florida cement producers incurred a cost for domestic transportation. An upward adjustment was made for this cost. The adjustment was done based on information obtained from a Matrix of Inland Transportation for Florida.

Packaging Costs – Packaging costs added to the base costs as an upward adjustment.

Profits – A reasonable adjustment for profits was also made. The Respondents did not provide this information therefore, the Commission used a conservative profit margin from information on record. Again, the Commission notes that the information therein was deemed reasonable and therefore usable.

B. EXPORT PRICE

The determination of the export price of the goods under consideration is addressed in Section 19 of the Act. 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 –

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

The Complainant submitted a constructed export price. The constructed export price method uses the selling price of the goods under consideration in Jamaica and adjusts for reasonable margins (profits) and cost, in an attempt to derive a reasonable ex-factory export price for the imports. The Constructed Export Price is only used where other information is either unavailable or unreliable, for example where the export sales were made to related parties, such as distributors.

In Questionnaire responses the Exporter and Producer submitted to the Commission the price at which the cement blend of OPC and slag was sold to the Importer in Jamaica. The Commission relied on the shipping invoices received from the Jamaica Customs, which verified the export price of the subject goods.

Adjustments To Export Price. No adjustments were made to the export price obtained from the invoices, since they represent ex-factory prices.

C. MARGIN OF DUMPING

In determining the margin of dumping, the Commission calculated the differential between the constructed Normal Value and the Export Price expressed as a percentage of the Export Price. The estimated margin of dumping is at least fifteen point one three per cent (15.13%).

IX. ECONOMIC CONDITION OF THE DOMESTIC INDUSTRY 2005 – 2009

The Complainant, CCCL is the sole producer of cement in Jamaica. CCCL mines limestone and shale from quarry lands it owns in Jamaica and processes it into cement. It sells the cement manufactured in Jamaica primarily on the local market. Aside from a few shipments imported for sale prior to 2005, it was also the sole supplier to the market. The last year that the domestic producer supplied the entire market from domestic production was 2005. Since then a few importers have entered the market as suppliers. 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 2005–2009. This assessment involves a historical look at the development, growth and stability of the operations of CCCL from a financial perspective.

In 2006, the Domestic Industry was unable to supply a growing domestic market for cement. As a result of its own production difficulties with an aging and somewhat outdated plant, it suffered a major setback in 2006 when substandard cement was produced and sold to the market. It had to engage in negotiations with its customers and had to compensate purchasers who were harmed by the faulty cement. CCCL itself became a major importer as well as producer to fill its significant production gap as it tried to recover. At the same time, CCCL sought to make a sizeable financial investment in expanding its production capacity, estimated in public documents at one billion dollars. The GOJ intervened to ensure a reliable supply of cement to meet the market demand, which at the time was still robust, by considering and implementing waivers and negotiating the importation of sufficient quantities of cement. In 2007, the local market for cement expanded and quantities of imports increased. By now, CCCL had decreased its import quantities, but there were other commercial players importing to sell in the market for cement. The market began to contract a little while thereafter. In 2009, the contraction in the market accelerated, resulting in a reduction in the Domestic Industry's production gap. CCCL has now completed the capital outlay. It has not been able to produce at the capacity it asserts. It does not have the market for the capacity that it claims as a result of the contracting market and an increased number of players in the market. At the same time, Tank-Weld has entered the market, sourcing imports from the U.S.A.

**TABLE IX. FINANCIAL OVERVIEW OF DOMESTIC INDUSTRY - 2005 – 2009
(INFORMATION FROM AUDITED ANNUAL REPORTS OF CCCL)**

Description	2005	2006	2007	2008	2009
	J\$'000	J\$'000	J\$'000	J\$'000	J\$'000
Revenue/Sales	5,999,295	6,730,968	7,847,307	8,805,293	8,869,260
Operating Profit	245,293	117,676	797,713	948,573	222,030

TABLE IX(A) PRODUCTION AND SALES OF DOMESTIC INDUSTRY 2005 - 2009

Description	2005	2006	2007	2008	2009
Production by CCCL	844,843	760,815	773,019	724,528	736,560
Imports by CCCL	0	119,032	25,988	46,062	0
Sales (CCCL)					
Export from Domestic Production	652,651 88,912	720,260 28,463	807,484 5,964	843,295 0	862,400 2,762

The published financial statements for CCCL since 2006 show an average annual increase in revenue of fourteen per cent (14%) to 2008 or, when viewed yearly, revenue increased by sixteen point five nine per cent (16.59%) between 2006 and 2007 and by twelve point two one per cent (12.21%) in 2008. This increase in revenue in 2008 was however lower than the level of increase experienced over the 2006 to 2007 period. For 2009 however, this growth was less than 1 per cent. This led to a loss position for the first time since 1999. In 2006, CCCL experienced a drop in sales due to a reduction in production as well as the release of faulty cement in the domestic market. The release of faulty cement resulted in claim settlements of JS\$304,539,000, being paid out by CCCL. In 2009, the reduction in operating profits was due to an approximately J\$700 million cost of sales adjustment, which the Commission could not attribute to increases in the cost of production. The Commission has not been provided with information which provides details on the reduction in profits; therefore further requests will be made to obtain information in this regard. (See Table IX).

In 2005 CCCL supplied almost one hundred per cent (100%) of the market. However, in 2006 while the market was experiencing a five per cent (5%) growth over 2005, domestic production was reduced by ten per cent (10%), creating the need for imports to fill the gap. In the same year CCCL accounted for the bulk of imports into the country, approximately sixty three per cent (63%). The dynamics changed in 2007 and onwards when imported cement continued to increase from other players in the market, surpassing CCCL's imports, which stopped in 2009.

In the changing cement landscape CCCL has significantly increased exports which grew to a high of 88,912MT in 2009 when there was none in 2006.

Between 2005 and 2009, CCCL made a capital investment amounting to more than US\$177,000,000.00 to increase both production capacity and capacity utilization. The company notes that this expansion of its capacity was undertaken as part of its commitment in accordance with the TCL Group's contract with the Government of Jamaica (GOJ) to make CCCL a world class cement producer able to compete globally, increase plant efficiencies and reduce production costs. Ultimately, this would not only earn foreign exchange, but also reduce the price of cement sold in the Jamaican market. 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. Cement consumption in Jamaica has been contracting since 2008. The dynamics of the Jamaican market continue to change amidst increasing importers and an overall decline in demand. Any increased production has to be

viewed against the background of contracting demand for cement in the local market and indeed, globally in light of the global recession. This new capacity however is still to be tested as the reduction on the market plus the presence of about 150,000 MT of “zero tariff” imports has not allowed for the expanded capacity to be utilised.

X. INJURY TO THE DOMESTIC INDUSTRY

The WTO Agreement²³ 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.²⁴ The Respondents in their Joint Submission²⁵ contend that “Even if there is dumping and Super Cement is a like good to the Complainant’s products, then such dumping has not caused the Complainant any material injury.” The Parties submitted arguments and documents in support.

Regulation 12 provides the relevant framework for the analysis.

(1) Where a complaint of material injury is made, the Commission shall examine such facts as it considers relevant under the circumstances, and shall give due consideration to-

(a) the volume of the dumped or subsidized imports as assessed in absolute terms or relative to the production or consumption of like goods in Jamaica;

(b) the consequent impact of the dumped or subsidized imports on the industry which produces like goods as assessed by reference to all relevant economic factors and indices having a bearing on the state of the domestic industry, including actual or potential-

(i) decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity; or

(ii) negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

²³ WTO Antidumping Agreement (ADA), Article 3, Footnote 9; Paragraph 1 of Article VI of the GATT 1946

²⁴ CCCL’s September 2, 2009 submission, Vol. 1, page 75.

²⁵ Joint Submission, page 26

(2) The effect of the dumped or subsidized imports on prices shall be assessed by reference to-

(a) whether there has been a significant price undercutting or depression in price of like goods produced in Jamaica; or

(b) whether there has been to a significant degree, a prevention of price increases which would otherwise have occurred in the price of like goods produced in Jamaica.

(3) Nothing in this Regulation shall be construed as binding the Commission to give priority to any of the factors mentioned in paragraphs (1) and (2) in the making of its decision.

The Commission firstly assessed the volume of imports in absolute and relative terms to the production and consumption of like goods in Jamaica. The volume of imports by Tank-Weld over the POI represented 5.27 per cent of the production quantities of the Domestic Industry. The Commission analyzed the consequent impact of the dumped cement on the Domestic Industry over the POI. This involved the identification of trends over time in relation to the all fifteen (15) economic indicators set out in Regulation 12 which are addressed under the following headings:

Price effects - referring to whether there has been significant price undercutting, or depression in price, or whether there has been to a significant degree the prevention of price increases which would otherwise have occurred (price suppression).

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

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

The determination of materiality must be based on positive evidence of the relevant economic indicators. Materiality must be based on the overall effect of the empirical data taken separately or together or parts of a whole, the effect of which cannot be ignored as inconsequential. The Commission is guided by Regulation 12(3).

For the period when the dumped cement was present in the Jamaican market, the Commission observed minimal price effects, no decline or change in the average cement production volumes (output) and productivity, no negative effect on inventories, a decline in sales and in overall market share based on absolute total sales which includes imports. However, the Domestic Industry's market share in terms of sales from domestically produced cement increased. An assessment of the economic impact on the Domestic Industry revealed a decline in revenue from domestic sales of cement, loss of profits in absolute Jamaican currency terms resulting in adverse effects on return on investments, cash flow and on the Domestic Industry's ability to raise capital. The Commission gave consideration to CCCL's expansion in capacity, however the Commission cannot speak to the new capacity of CCCL or whether in light of the new capacity there is under-utilisation as CCCL has not shown that it has been able to utilise it.

The Domestic Industry is operating in a contracted market and with the global recession, it is demonstrating some adverse effects therefrom. The Commission analyzed the overall effect of the economic factors and is not satisfied at this time that there is material injury to the Domestic Industry caused by the presence of the dumped imports on the market.

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 into the Jamaican market. This assessment involves an examination of (i) the prices of imported cement 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 maintain the margin between its unit cost of production and unit selling price (price suppression.) These are discussed below.

Price Undercutting. The Complaint indicates that Tank-Weld offers higher list prices than CCCL. However, the Complainant alleges that there is price undercutting through the provision of “atypical credit terms”, “likely discounts for other products” and “drastically under-compensated delivery” of the goods to customers by Tank-Weld which CCCL argues has effectively reduced the prices being offered by Tank-Weld to their customers. The Respondents contend that “contrary to the Complainant’s allegation, there are no atypical credit terms, or drastically under-compensated delivery, likely discount for other products.”²⁶ The sales data submitted by Tank-Weld did not provide information in relation to the alleged discounts being offered for other products sold by it.

The Commission examined the price information submitted by the Complainant and the Importer and noted that for the period May 2009 to August 2009, Tank-Weld had higher list prices than CCCL. On September 1, 2009, Tank-Weld announced a three per cent (3%) price increase which increased their cash price and credit price per 42.5kg bag and the price for jumbo bags. This coincided with a price reduction announcement by the Domestic industry. The Commission therefore does not find evidence of price undercutting.

Price Depression. The Complainant alleges that it has suffered price depression because it has been forced to offer discounts and rebates in an effort to curb mounting inventories to compete with the unfairly traded imports. The Respondents submit that CCCL’s reduction of prices is attributable to its own internal efficiencies.²⁷

An assessment of the pricing information of the Domestic Industry, when the dumped cement was in the market revealed that the Domestic Industry offered price reductions 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 does not support this allegation, as average inventory levels remained consistent for the period, showing no spike or mounting volumes as alleged.

²⁶ Joint Submission, page 27

²⁷ Joint Submission, page 33

In September 2009, the Domestic Industry offered a reduction in prices to its bulk customers and block makers using jumbo bags. The Commission notes a reduction in prices by the domestic industry would normally be an indicator of price depression. In a letter dated September 18, 2009, CCCL indicated that these reductions were the result of improved efficiency from the commissioning of Mill #5 which the company wished after three weeks to share those gains with their customers. However, the Commission is 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.

Also, by letter dated October 23, 2009, CCCL offered a special “while stocks last” over stocking per bag price reduction, citing excess inventory levels and the need to make way for new production. Inventory levels for CCCL observed by the Commission did not support the claim.

Price Suppression. The inability of the domestic industry to make reasonable price increases in order to recover any increase in cost is generally indicated by the shrinking of the margin between unit cost and selling price or price suppression. The Commission’s examination of selling prices and the related adjustments in the cost of production indicates that the unit cost to produce cement in 2009 increased by 4% over 2008. In February 2009, CCCL increased their prices to rationalise the 2008 increase in unit cost. There has been no indication of a need for price increases since that time. The Commission notes that the Domestic Industry announced a price reduction in September 2009, but CCCL attributed the reduction to increased efficiency and therefore, no price suppression is inferred by the Commission.

b) VOLUME EFFECTS

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

Production. The Commission assessed the Complainant’s allegation that the dumped imports from the U.S.A. have resulted in significant reductions in output.

The Commission commenced its assessment of the economic impact by analysing the production trends of the Domestic Industry from the pivotal year 2006. Production fell by ten per cent (10%) from 844,840 MT in 2005 to 760,815 MT in 2006 which fell to a low of 724,528 MT in 2008 with a marginal increase in 2009 of 3 per cent (3%) to 736,560 MT. A further examination of the monthly production data for 2009 indicated that production levels were consistent with the average production level maintained for normal supply of between 60,000 to 65,000 MT per month. The Commission observed no adverse effect on production quantities during the period when the dumped cement was in the market.

Inventory. The Commission considered the Complainant’s submission that it has offered market-wide discounts in an effort to reduce mounting inventories.

The Commission examined the monthly production and inventory levels for the POI and found that the inventory levels are consistent with the industry’s normal average daily carrying inventory of two weeks’ sales. This is further supported by the analysis of production data whereby there was no change in the average production volumes which would have been reflected in the inventory levels.

Sales and Market Share. The Commission reviewed the sales data for the period 2006 to 2009 which revealed that overall sales for the Domestic Industry have consistently declined. CCCL lost approximately nine per cent (9%) of its overall sales in 2009 when compared to 2008 (the shortened period of May to November showed the same results), after an eleven per cent (11%) drop in 2008 over 2007. The Commission noted that the nine per cent (9%) loss of overall sales factored in sales of imported cement in 2008. A more accurate assessment of loss of sales of domestic production reveals a three per cent (3%) reduction in sales in 2009 over 2008. Imported cement accounted for six per cent (6%) of sales for the Domestic Industry in 2008.

In analysing market share, it is critical to examine the situation in 2006, as this was a critical year for the cement market in Jamaica. In 2006, the market grew by five per cent (5%) while CCCL's production fell by ten per cent (10%). This fifteen per cent (15%) gap was initially filled by the importation of cement by the Domestic Industry and then by other Importers. In 2007, the market grew by another 6 per cent (6%), CCCL's sales reduced by four per cent (4%) while the other importers increased their imports significantly.

An examination of the market share for 2007 to 2009 showed that CCCL lost one per cent (1%), per year, while the entire market shrunk by ten per cent (10%) in 2008 and eight per cent (8%) in 2009. The one per cent (1%) loss of market share of absolute total sales included market share gained by CCCL from sales of their imports. A removal of imports from total sales would actually point to a four per cent (4%) increase in market share of sales of domestically produced cement.

The Commission's assessment based on the information before it at this time is that the presence of dumped cement from the U.S.A has affected the dynamics and players in the market but had no impact on the domestic industry which gained four per cent (4%) market share in a contracting market.

c) ECONOMIC IMPACT

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

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.

The information and data examined by the Commission show that the Domestic Industry significantly increased exports in 2009 over the previous year. The Commission will accept that the revenue earned from exports could be lower than the revenue that would have been earned if the cement was sold in the local market. However, the Commission notes that the acceleration of the export programme could also be attributed to good business strategy in a shrinking local market. Further, that it is not persuaded that additional costs were incurred in the export of cement, as it is usually the buyer who would incur the freight and the Commission has no information regarding the costs that would have been absorbed by CCCL in exporting cement.

The Commission analysed the information and data submitted by the Complainant on domestic and export sales, which revealed that the overall revenue of the Domestic Industry increased due to export 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.

Profitability. Profitability refers to an excess of revenues over the cost of generating those revenues. 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 report of the Domestic Industry for 2009, an extract of which is set out below.

Extracted from Consolidated Financial Statement for Y/E December 2009 for CCCL

J\$'000	AUDITED Year Jan to Dec	AUDITED Year Jan to Dec
	2009	2008
Sales (Cement Tonnes)-Local	652,651	720,260
Sales (Cement Tonnes)-Export	88,912	28,463
Sales (Clinker Tonnes)-Export	88,254	-
Revenue	8,869,260	8,805,293
Operating profit	222,030	948,573
Interest income	4,834	10,503
Interest expense	(173,498)	(93,716)
Loss on currency exchange	(294,394)	(293,428)
(Loss)/Profit before Taxation	(241,028)	571,932
Taxation credit/(charge)	96,516	(155,494)
(Loss)/Profit after Taxation	(144,512)	416,438
Total Comprehensive (loss)/income	(144,512)	416,438
Earnings per ordinary stock unit cents - Basic & Diluted	(17)	49
Operating Profit/Revenue Ratio	3%	11%

The extract reveals that CCCL's gross revenue increased marginally in 2009 over 2008. The marginal increase in revenue is due mainly to the price increase in February taken because of the devaluation in the Jamaican Dollar in the months prior to. Therefore, in U.S Dollar terms, the revenue would have declined by thirteen per cent (13%) in 2009 over 2008 which would match the approximately nine per cent (9%) reduction in sales value. The increase in exports did contribute to the relative stability in revenue however that contribution was not as significant because they were sold at prices lower than if they were sold in the domestic market.

CCCL's operating profit showed a significant decline in 2009 from \$948,573,000.00 to \$222,030,000.00, a seventy seven per cent (77%) reduction. This was due to significant monthly cost of sales adjustments made for the period April 2009 to December 2009. The Commission found that the cost of sales adjustments were not consistent with the monthly unit cost of production data supplied by CCCL. The Complainant's submission did not provide sufficient information for the basis of the adjustments made. Therefore, as the Commission could not link the cost of sales adjustments to the cost of production, it is unable to associate the cost of sales adjustments to injury because of the dumped imports. The Commission will request clarification and additional information of the Complainant.

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. It contends that there is a threat of such decline in ROI. 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. It is therefore reasonable to accept that the Industry experienced a reduction in ROI. However, because the Commission was unable to come to a conclusive position with respect to profits as noted in the discussion on profits above, its impact on the ROI also remains inconclusive at this time. Potential reduction in the company's ROI, has to be considered further in our analysis of threat of injury to the industry.

Cash Flow and Ability to Raise Capital. Share prices reflect the market's valuation of a company, as well as investor's confidence in the ability of an organization to maintain a certain level of stability and profitability. CCCL's share prices fell from \$9.64 in 2006 and 2007 to \$3.95 in 2008. The current share price presents a lower valuation for the company and will affect their ability to raise the level of capital they had earlier, if the need arose. The Complaint does not allege any impact on the domestic industry's cash flow or ability to raise capital by the allegedly dumped imports. The Commission would, prior to Final Determination, seek to assess further the cash flow or ability to raise capital in light of profits.

Employment & Productivity. The Commission found no significant changes in the level of employment or productivity and therefore no indication of injury relating to these factors.

Capacity Utilization. Capacity utilization refers to the extent to which a firm utilizes its productive capacity. It is expressed as total production as a percentage of the total 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 claimed total production capacity of 1,108,800 MT per year up to September 2009²⁸. The industry shows utilisation rates substantially below the capacity claimed. The Commission is therefore not persuaded of the capacity claimed, as the historical production data does not support this.

The Complainant has invested in new plant capacity which was commissioned in August 2009. The Domestic Industry has not had the opportunity to prove this new capacity.

d) OTHER FACTORS

Finance Costs. The Commission's assessment of the Domestic Industry's operating results for 2009 shows a significant increase in the finance charges. There were no specific indications as to the basis of the increase. 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 does not consider it significant to the injury analysis as this does not significantly affect the production operating costs. Increased interest payments will have an impact on a company's cash flow.

²⁸ CCCL, (2009). *Expansion and Modernisation*. Retrieved from <http://www.jamstockex.com/read.php?ContentID=11503>

Devaluation and Foreign Exchange Losses. The Jamaican economy has experienced significant devaluation in currency over the POI. This has affected the financial results for the Domestic Industry, which show foreign exchange losses of \$294 million in 2009 and \$293 million in 2008. This is significantly up from \$80 million in 2007 and \$49 million in 2007. These figures are significant and their effects must not be attributed to the dumped imports.

B. THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY

Having determined that there has not been actual injury to the domestic industry caused by the dumped imports, the Commission is required to consider whether there is a threat of material injury to the domestic industry posed by the dumped goods, i.e. whether the dumped goods may cause material injury to the domestic industry in the foreseeable future.

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 U.S.A.²⁹ The Respondents contend that the Complainant has failed to establish that there is actual or threatened injury resulting from the alleged dumping.³⁰

Regulation 13 outlines the factors to be analysed for a determination of threat of material injury to the domestic industry. It provides in relevant part that:

13. 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 - ...
- (b) 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;
 - (c) 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;
 - (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
 - (e) inventories of the product being investigated;
 - (f) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
 - (g) actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
 - (h) the magnitude of the margin of dumping ...[i]n respect of the dumped goods; and
 - (i) any other factors that are relevant in the circumstances.

²⁹ CCCL's September 2, 2009 submission, Vol. I, page 69

³⁰ Joint Submission, page 32

The factors in the Regulations incorporate much WTO jurisprudence regarding the required analysis for finding threat of material injury. In accordance with the Regulations and the jurisprudence, the Commission examined the required evidence in the following categories:

- (i) factors that relate to the ability and capacity³¹ of the Exporter to potentially increase the supply of dumped imports into the Jamaican market;
- (ii) factors that relate to the Exporter's ability to indirectly affect the local industry's ability to supply its product to the Jamaican market and remain competitive³²; and
- (iii) other factors relevant in the circumstances (both those specific to the industry's operations and those that relate to the wider economy).

Regulation 12(7) also makes reference to Regulation 13 which encompasses the requirement for a non-attribution analysis. This ensures that any likely injurious effects to the Domestic Industry from known factors/causes are not attributable to the dumped U.S.A cement. The Regulation provides in relevant part that:

(7) 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 finds that the dumped imports under investigation in this case pose a threat of material injury to the Domestic Industry for the reasons outlined below. The Commission finds that the evidence supports a conclusion that the exporter and the exporting country have demonstrated an intent to continue to supply to the Jamaican market the dumped goods and have the potential to increase the supply at a dumped price at a time when the market for the goods in Jamaica, in the exporting country and in many other places worldwide, is contracting.

The circumstances leading to the Domestic Industry's challenges, including effects of the global recession and heightened or sustained energy costs would be exacerbated by the continuing and increasing imports of the dumped product in the domestic market. The threat of material injury is imminent and clearly foreseen if the investigated product continues to be imported at the dumped prices. In fact, one Commissioner ventured the opinion that the threat was so close that it could result in actual injury that materialises as early as 2010.³³

³¹ Capacity that is sufficient, freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the Jamaican market, taking into account the availability of other export markets to absorb any additional exports, WTO Handbook on Anti-dumping Investigations.

³² These may include price suppressing or depressing effects, such as whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase the demand for further imports, WTO Handbook on Anti-dumping Investigations.

³³ The waiver of the Common External Tariff (CET) for one year discussed herein granted for imports of the product is deemed by the Commission to intensify the imminence of the threat.

The factors considered appear below.

Potential to Increase Supply to the Jamaican Market. Several factors point to the potential for an increase of supply of the dumped goods to the Jamaican market. These include the rate of increase of the dumped imports, the capacity of the exporter and the exporting country, the likelihood that the goods will be exported to Jamaica taking into account the availability of other export markets, the potential for product shifting by the exporter and the inventories held by the Importer in Jamaica.

Rate of Increase of Dumped Imports. The Commission considered the rate of increase of the dumped imports. Imports of the dumped goods first entered the Jamaican market in May 2009 followed by monthly shipments of similar quantities in June, July, August and September 2009. This means that imports of the dumped goods showed a significant increase in 2009 when compared with 2008. Since entering the Jamaican market in May of 2009 the dumped cement has accounted for five per cent (5%) of domestic production and four per cent (4%) of domestic sales from domestic production of the Domestic industry. In 2010, imports of the dumped goods continued with two shipments in January and March. These shipments were higher quantities than the earlier shipments in 2009.

The Commission considers that the rate of increase of dumped U.S.A cement within the POI is significant both in absolute and relative terms.

Export Capacity of the Exporter and Exporting Country. The Commission examined the current and likely future production capacity and capacity utilisation rates for cement of the exporting country and the exporter.

The country of export and origin of the dumped goods has substantial capacity to produce cement. It is the third largest producer of cement in the world behind China and India. The U.S.A. Portland cement industry has an estimated domestic capacity to produce 101,000,000 MT of cement.³⁴ It is reported that increased clinker capacity of nearly 3,000,000 MT came on-line in 2008 and an additional 9,700,000 MT is projected for 2009 and 23,400,000 MT by the end of 2013.³⁵ U.S.A. cement production capacity is therefore expected to increase from an estimated 99,400,000 MT in 2006 to 107,000,000 MT in 2010 and 121,000,000 MT in 2013³⁶. It is noted that there have been reports of delays in planned expansions accompanied by efforts to increase efficiencies and reduce imports in order for the U.S.A. cement industry to cope with excess capacity due to the decline in U.S.A. domestic market.³⁷ However, even with delays in planned expansions the capacity of the U.S.A. industry is still substantial.

³⁴ Portland Cement Association, (2009) *Impact of Potential Mercury Emission Changes on Domestic Cement Capacity*. Retrieved from <http://www.cement.org/econ/pdf/Cement%20Consumption%20Outlook-mercuryfinal.pdf>. This figure cited includes estimated clinker capacity of nearly 96,000,000 MT and gypsum capacity of 5,000,000 which are used to produce Portland cement.

³⁵ Ibid

³⁶ Ibid, The Portland Cement Association (PCA) reports that “these estimates reflect planned expansions. PCA assumes no new capacity is added beyond these announced plans. Capacity estimates also include recently announced closures (permanent and temporary) as well as assumptions regarding the continued retirement of older wet kilns.

³⁷ Grancher, R. (2009). “US Cement: Facing Difficult Times” Retrieved from <http://cementamericas.com/mag/us-cement-industry-declining-20090901/>

The Commission also examined actual production volumes or output of the U.S.A. cement industry. As set out in Table 1.2.1 below, the industry produced 99,319,000 MT of cement in 2005. Production fell from 98,167,000 MT in 2006 to 86,310,000 in 2008. This represents a twelve point zero eight per cent (12.08%) decline over the period due to the decline in the domestic demand for cement. In 2009, about 70,000,000 MT of Portland cement and 2,000,000 MT of masonry cement were produced at one hundred and seven (107) plants in thirty seven (37) states,³⁸ representing a further decline in overall cement production when compared with 2008. By the end of the year, the total number of plants was reduced from one hundred and seven (107) to one hundred and one (101), due to plant closures.³⁹ It would appear that the U.S.A. cement industry is in the midst of a large, if not the largest volume downturn in history.⁴⁰

Table 1.2.1

U.S.A CEMENT STATISTICS					
Values in Metric Tonnes					
Year	Production⁴¹	Apparent Consumption⁴²	Imports⁴³	Exports⁴⁴	Exports % Of Production
2002	89,732,000	110,020,000	22,198,000	834,000	0.93
2003	92,843,000	114,090,000	21,015,000	837,000	0.90
2004	97,434,000	121,980,000	25,396,000	749,000	0.77
2005	99,319,000	128,260,000	30,403,000	766,000	0.77
2006	98,167,000	127,660,000	32,141,000	723,000	0.74
2007	95,464,000	116,564,000	21,496,000	886,000	0.93
2008	86,310,000	96,797,000	10,744,000	858,000	0.99
2009	71,800,000	73,800,000	6,400,000	800,000	1.11

Source: US Geological Survey, November 2009

The Exporter and Producer, Vulcan is the largest producer of construction aggregates in the United States and has over three hundred (300) facilities for the production and distribution. In 2007, Vulcan substantially increased cement capacity in the form of ready mix cement, cement

³⁸ U.S. Geological Survey (2010). *Mineral Commodity Summaries*. Retrieved from <http://minerals.usgs.gov/minerals/pubs/commodity/cement/index.html#mcs>

³⁹ Ibid

⁴⁰ Sullivan, E. (2009). *Future of United States Cement Industry*. Cement Americas, November 1, 2009. Retrieved from <http://cementamericas.com/mag/us-cement-industry-20091101/> The article noted that “the downturn comes at a time when many cement companies are engaged in the most aggressive capacity-expansion programs in history, with 25 million metric tons of new capacity expected to come on line in 2013.” It went on to note that the two contending situations have resulted in imbalances which have manifested in the form of plant shutdowns, lowered utilization rates, import reductions and build-up of inventory.

⁴¹Data in this column represents the production of Portland and Masonry Cement

⁴² Apparent consumption figures in the table represent: Production of cement (including from imported clinker) + imports (excluding clinker) – exports + adjustments for stock changes.

⁴³ Refers to imports of Hydraulic Cement

⁴⁴ Refers to exports of Hydraulic cement and clinker.

block production and also the production of portland and specialty cement in the acquisition of Florida Rock Industries. The U.S. Department of Justice Antitrust Division filed a civil lawsuit to block acquisition of Florida Rock Industries by Vulcan on the ground that the acquisition would substantially lessen competition in coarse aggregates in several states. The companies were required to sell eight quarries in Georgia, Tennessee and Virginia and one distribution yard in Virginia, in accordance with a consent decree, in order to complete the acquisition.

In 2009, Vulcan completed a project to expand its Newberry cement facility to double its production capacity to 1.6 million tons per year. This facility supplies the Florida plant. Limestone is mined there and the limestone reserves total 193.9 million tons. The company stated that new capacity is expected to become fully operational in 2010.⁴⁵ Vulcan demonstrates by its recent acquisition of Florida Rock Industries and by its expansion of the Newberry plant, its ability and motivation to increase production and supply.

The Commission finds that the exporting country, U.S.A. and the exporter have significant capacity that constitutes a readily available source of supply of dumped cement. This is particularly significant in light of the factors indicating the likelihood that the capacity will be channelled to Jamaica.

Likelihood of Exports to Jamaica. In assessing the likelihood that this excess capacity or any portion thereof would be exported to Jamaica, the Commission considered several factors including the decline in demand and consumption for cement in the U.S.A. market, the demand for the dumped cement by importers and the availability of other export markets to absorb the capacity.

The Commission in assessing the likelihood that this capacity or any portion thereof would be exported to Jamaica, considered the decision to export already demonstrated by Vulcan in the multi-year contract and supplemental agreement signed with Tank-Weld. The Commission is of the view that the Agreement demonstrates the intention and capacity of Vulcan to export a substantial volume of cement relative to the size of the Jamaican cement market.

Tank-Weld has a multi-year Agreement and Supplemental Agreement with Vulcan and Florida Cement Inc. The Commission notes that the nature of this contractual arrangement suggests that importing patterns for a specified amount of cement (which is substantially less than the amount in the original contract) may change, depending on government policy.

The Commission reviewed the Agreement and the Supplemental Agreement between the Respondents. Though the supplemental agreement appears to modify the prior obligation of Tank-Weld to purchase a substantially higher quantity of cement, the Commission is not convinced that it in fact limits the potential for total sales of cement by the U.S.A. supplier to the importer to the smaller quantity referenced in the Supplemental Agreement, as has been suggested by the Respondents.

Availability of Other Export Markets - Declining demand in the USA market. Construction is in decline in all major markets in the U.S.A and as a natural corollary, there is a decline in the demand for cement. In terms of consumption, there was a slight decline of point four six per

⁴⁵ Vulcan Materials Company, (2010). *Form 10-K*. Retrieved from http://www.faq.s.org/sec-filings/100226/Vulcan-Materials-CO_10-K/

cent (0.46%) in apparent consumption for the year 2006. However, the decline has become more significant in subsequent years with decreases of eight point six nine per cent (8.69%), sixteen point nine six per cent (16.96%) and twenty three point seven six per cent (23.76%) per cent in 2007, 2008 and 2009 respectively. The gains in cement consumption expected for next year are expected to be meager which implies that current harsh conditions facing the industry will persist through 2010 and beyond.

The downturn in construction has continued to affect the Florida cement market in 2009. The Exporter and Producer supplies cement to the Importer from its Florida plant location. It was reported that Florida’s housing market was expected to reach its lowest point in 2009 and not return to its pre-slump level until 2011.⁴⁶ In fact, housing starts in Florida fell to 50,000 in 2008 from 264,000 in 2005. In 2007-2008 the Florida Economic Outlook noted that “the growing inventory of unsold houses coupled with the spreading credit crisis dampened residential construction activity throughout the entire year”, and it was projected that non-residential construction would fall by about thirteen per cent (13%) in 2009.⁴⁷ The downturn in construction led to arrangements by at least one South Florida company to export due to overproduction.⁴⁸

The downturn in construction activities has affected U.S.A companies primarily involved in construction aggregates and cement production. Vulcan’s consolidated Earnings Statement for 2009 (condensed and unaudited) shows a 26.32% decrease in total revenue, moving from US\$3,651,438,000 in 2008 to US\$2,690,490,000 in 2009. Revenues of US\$37,312,000, earned from net sales in 2009, represented a decline of twenty-eight per cent (28%) when compared with 2008, when the company earned US\$51,387,000 from cement sales. There was also a 40.52% decline in Vulcan’s gross profit, which moved from US\$749,712,000 in 2008 to US\$445,962,000 in 2009. This decline may have been the result of decreases in the average unit sales price (including internal sales) of three categories of construction materials (asphalt mix, ready mixed concrete and cement) sold by Vulcan declined in 2009.

The Table below shows the differences between average unit sales prices for 2008 and 2008.

Comparison of Average Unit Sales Price for Construction Materials Sold by Vulcan (USD)		
	2008	2009
Aggregates (freight adjusted)	9.98	10.30
Asphalt mix	55.16	52.66
Ready mixed concrete	97.75	96.53
Cement	96.75	95.70

Vulcan also reduced its production of construction materials in 2009. In speaking to the efforts made by the company’s employees to address the protracted decline in demand for construction materials, Vulcan’s Chairman and Chief Executive Officer, Don James noted that “In 2009, their efforts further rationalized production and reduced operating hours, thereby offsetting some of

⁴⁶ Ivry, B. (2009). *Florida’s Housing Market Won’t Recover Until 2011, Study Says*. Retrieved from <http://www.bloomberg.com/apps/news?pid=20601103&sid=aVLaQuo4f3b4&refer=us>

⁴⁷ Florida Economic Outlook, (2008). Retrieved from http://edr.state.fl.us/conferences/fleconomic/FEEC0807_execsumm.pdf

⁴⁸ Cement China, (2009). *South Florida Cement Maker Starts Export Push*, (2009). Retrieved from <http://www.cementchina.net/news/shownews.asp?id=6600>

the cost impact related to lower volumes.”⁴⁹ The company’s shipment of 572,433.57 MT of cement in 2009 also represented 39.27% decrease when compared with cement shipments of 942,564.94 MT in 2008.

An overall examination of the data therefore shows that domestic demand for U.S.A. cement is in decline. Producers of cement have therefore responded by consistently reducing production levels since 2006, and have also been increasing exports since 2007. While the increases in exports have been incremental, the Commission notes that the volumes are significant. In 2009 exports by the U.S.A were just about equivalent to the total amount demanded by Jamaica’s domestic market for 2009. The Commission is of the view that with the reduced demand in the U.S.A market, cement producers such as Vulcan are likely to seek export markets in order to maintain capacity utilization. This view would garner support from the fact that Vulcan has the third largest production capacity for cement in Florida at its Florida Rock Industries Inc. coupled with the proximity of the Jamaican market to Florida relative to other export markets.

The Commission also examined trends in U.S.A exports. The data shows that while there have been fluctuations as it relates to increases and decreases in exports, the actual value of exports have remained in a similar range over the period, accounting for just below 1 per cent (1%) of domestic production for the years 2000 – 2008. However, exports as a percentage of production moved to about one per cent for 2009. The Commission notes that this increase has occurred in spite of the steady decline in production since 2006, and that suggests that there may be a thrust towards expanding export markets. This assessment is also in keeping with a 2010 report on U.S.A Exports and Imports of Portland Cement, Aluminous Cement and Slag Cement,⁵⁰ which projects that exports will increase significantly between 2010 and 2013 on an annual basis.

Further, in terms of current export markets, the U.S.A Portland Cement Association noted in a 2010 report that nearly all cement are exported to the neighbouring Canadian and Caribbean markets.⁵¹ The U.S.A. cement export data for 2008 was examined and confirms that the main export markets for cement produced in the United States are Canada and the Caribbean.

The Commission concluded that the effect of the global recession will continue to be, in the foreseeable future, declining demand for cement worldwide, and build up of inventories for large capacity industry players. Jamaica’s relative proximity and established trade links with the United States and the other related factors increase the likelihood that Jamaica would be a target market for the product at dumped prices. The relative small size of the Jamaican market would mean that a small percentage of the capacity if exported to Jamaica could have a devastating effect on the domestic producer.

Existing Inventory and Increase in Inventory Levels of the Goods. The existence of inventories of the dumped goods can indicate the possibility of further import penetration and reductions in the market share of the domestic industry. The Commission sought to assess inventories held by the exporter, but such information has not yet been provided. The Commission is persuaded at this time based on capacity and market conditions that inventories are being held.

⁴⁹ Vulcan Materials Company, (2010). *Vulcan announces fourth quarter results*.

http://www.vulcanmaterials.com/creditapps/Press_Releases/4Q2009PressRelease.pdf

⁵⁰ Projections were done based on a market survey conducted by Merchant Research and Consulting Limited.

⁵¹ Portland Cement Association (2009). *Overview of the Cement Industry : Economics of the US Cement Industry*. Retrieved from <http://www.cement.org/basics/cementindustry.asp>

Threat of Material Injury Factors

Price Effects. The Commission's observation of trends in the cement market indicates that the cement market is price elastic and that changes in the price of cement are likely to result in comparable changes in the level of demand.

There is a sufficient indication that the goods under consideration could have some price effects on the domestic market prices in the immediate future. The domestic industry is currently the price setter in the market and as such even the import which is marketed as being of better "quality" is priced nominally higher. This could potentially result in significant price suppressing effects as the Domestic Industry would unlikely be able to increase its prices to recover the increased cost.

Economic Impact Factors

Return on Investment. The capital investment in the new mill has significantly increased the total capital employed. This was done with the expectation that the improved facility and production capacity will increase production and consequently sales and revenue. The continued presence of the dumped imports will curtail the domestic industry's ability to utilise the increased capacity which would result diminished returns on its investment.

Cash Flow and Ability to Raise Capital. The inevitable impact of the increase in finance costs on your cash flow due to the capital investment will become a significant factor if the domestic industry is unable to increase its production and sales in order to recover these increased costs. This is a factor indicating threat.

Capacity Utilisation. The continued presence of dumped imports will curtail and continue to curtail the ability of the Domestic Industry to utilise its increased production capacity.

Employment and Productivity. The Complainant asserts that decreased production will lead to reduced number of man hours required to sustain its level of production. Therefore, this will reduce the number of employees required resulting in staff cuts and loss of productivity. This assertion is reasonable.

Magnitude of The Margin of Dumping. The magnitude of the margin of dumping is an indication of the extent to which injury can be attributed to the dumped goods. The magnitude of the estimated margin of dumping is at least 15.13%. This margin of dumping is sufficient to create a threat to the Domestic Industry.

Other Factors. In addition to the factors itemised in Regulation 13 of the Act, all other relevant factors brought to the attention of the Commission or which the Commission reasonably deemed appropriate were examined as part of the analysis, as required by the regulation. These follow:

Ability of the Dumped Imports to Exacerbate the Circumstances. In light of the Commission's finding that the goods under consideration and the locally produced goods are "like goods", the Commission's assessment of sales data from Tank-Weld and CCCL which indicate that both companies are selling to the same category of customers, the Commission is of the view that continued imports could cause injury to the Domestic Industry.

Impact of the Global Recession on the Construction Sector & the Wider Economy. The Jamaican economy and the construction industry have been suffering from the effects of the global recession. A press release by the PIOJ on February 16, 2010 noted that the Jamaican economy showed no sign of recovery during the period October to December 2009, which was attributed to “the global recession, a fall-off in external demand for Jamaican goods and services, and a deterioration of the fiscal deficit.”⁵² In addition, the construction sector in the October to December quarter declined by a further 3.5 per cent, following declines of 7, 3.8 and 5.8 per cent in the first, second and third quarters respectively. The Commission therefore notes that some of the difficulties being experienced by the domestic industry may be due to the effects of the global recession and particularly from the decline in the construction sector which uses cement as one of its main inputs.

Other Imports not under Investigation. Imports from other sources have been in the Jamaican market since 2006, and initially entered the market due to the supply shortage and quality issues which affected the domestic industry in that year. In light of the eight per cent (8%) contraction in the demand for cement in 2009, the continued presence of imported cement on the domestic market, whether dumped or otherwise could have adverse effects on the domestic industry.

Common External Tariff . The Government of Jamaica granted a CET waiver, post initiation, to the importer of the good under consideration, to import 65,000 tonnes of cement mainly for road construction. In a news release by the Ministry of Industry, Investment and Commerce the Honourable Minister Karl Samuda “emphasized that his Ministry has not recommended restricted use or distribution of slag cement, and supports Tank-Weld’s request for duty free imports of a limited amount of 60,000 tonnes per annum.”⁵³ The Commission notes that the imposition of the CET encourages all imports, some of which from the Commission’s investigation includes cement which is currently being dumped on the Jamaican market.

Devaluation and Foreign Exchange Losses. The effect of the continued devaluation of the Jamaican currency cannot be ignored and will continue to have an adverse effect on the domestic industry. Especially as it relates to the volatility in the price of fuel costs which represents a significant component of its production costs.

On consideration of all the factors examined, the Commission finds that there is a threat of material injury to the domestic industry posed by imports of the dumped cement.

XI. CAUSATION

A. Causal Link

In accordance with Article 3.5 of the WTO Anti-dumping Agreement and Section 22 (2) and (4) of the Act, the Commission must 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 demonstration of a causal relationship between the

⁵²PIOJ, (2010). *Economy shows no sign of recovery during October to December 2009*. Retrieved from <http://www.pioj.gov.jm/NewsDetail/tabid/86/Default.aspx?news=462>

⁵³MIIC, (2010). *Industry Minister Defends Slag Cement Imports*. Retrieved from http://www.miic.gov.jm/News/news_samuda_defends_slag_cement.php

dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Commission.

The Commission concluded that the information and facts on the record thus far disclose sufficient evidence that the dumping is likely to cause material injury.

B. Non-Attribution Analysis

Article 3.5 of the WTO Anti-dumping Agreement also requires the Commission to examine any **known factors other than the dumped imports** which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. It has been recognized that Investigating Authorities are not required to scientifically separate by quantitative means such as econometrics the impact of other factors on injury that is observed in respect of the domestic industry. As long as one cause of injury is the dumped product, causation may be deemed to exist.

The Commission recognized the existence of factors other than the dumped imports, which at the same time could be negatively affecting the domestic industry under the broad headings: macroeconomic influences, discretionary governmental policy changes affecting the importation of cement, contraction in demand or changes in the pattern of consumption for cement, production capacity, export performance and productivity of the industry and imports other than the goods under consideration to the Jamaican market. The negative effects of these other factors were not attributed to the dumped imports.

XII. APPLICATION OF PROVISIONAL MEASURES

Section 15 of the Act provides for provisional duties where the Commission makes a Preliminary Determination of dumping in respect of imported goods. In addition, Article 7 of the Anti-dumping Agreement provides that provisional duties be applied where the Investigating Authority determines that such measures are necessary to prevent material injury being caused during the investigation. The Commission is not satisfied that provisional measures are necessary to prevent injury being caused during the remainder of the investigation.

XIII. DECISION

The Commission has made an affirmative Preliminary Determination pursuant to Section 27 of the Act, in respect of the dumping in Jamaica of Portland Blast Furnace Slag Blended Cement originating in or exported from the U.S.A. The Commission finds that the goods under consideration have been dumped. The estimated margin of dumping is at least fifteen point one three per cent (15.13%). The dumping is likely to cause material injury to the Domestic Industry i.e. 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.

Pursuant to Section 15 of the Act, the Commission does not find that the imposition of provisional measures is necessary to prevent injury being caused to the domestic industry during the investigation. The Commission therefore declines to impose a provisional duty on the goods under consideration.

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
The Roswind, 25 Windsor Avenue
Kingston 5, Jamaica
Attention: Ms. Kibret Beckford, General Manager

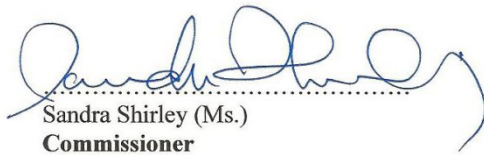
Telephone: (876) 927-8665 or (876) 978-1800


Fax: (876) 978-1093

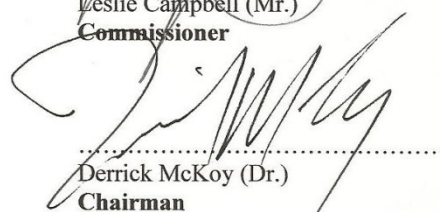
Email: antidump@jadsc.gov.jm

Website: www.jadsc.gov.jm


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Velma Brown-Hamilton (Dr.)
Commissioner


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Sandra Shirley (Ms.)
Commissioner


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Leslie Campbell (Mr.)
Commissioner


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Derrick McKoy (Dr.)
Chairman
Dissenting as to the Threat of
Material Injury

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