



ANTIDUMPING & SUBSIDIES COMMISSION

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STATEMENT OF REASONS

KINGSTON, JAMAICA
November 5, 2001

REF. No. AD-01-2001

IN THE MATTER OF a complaint, pursuant to sections 22 and 23 of the Customs Duties (Dumping and Subsidies) Act, 1999, submitted by Antilles Chemical Company LLC, to the Anti-Dumping and Subsidies Commission.

AND IN THE MATTER OF the Initiation of a case by the Antidumping and Subsidies Commission, pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act, 1999

RESPECTING the dumping in Jamaica of certain Inorganic Fertilisers, originating in or exported from the Dominican Republic.

I. SUMMARY

On May 3, 2001 a complaint was filed by Antilles Chemical Company alleging the injurious dumping and subsidising into Jamaica of finished bagged fertiliser, originating in or exported from the Dominican Republic. Further submissions were filed by the same party on July 11, September 12, and October 5, 2001.

The complaint has provided sufficient evidence to suggest that these products have been dumped. Further, the evidence discloses a reasonable indication that the dumping of the goods has caused, is causing and is likely to cause injury to the Jamaican industry producing like goods. As a result the Commission has today initiated an investigation into the dumping in Jamaica of certain inorganic fertilisers, originating in or exported from the Dominican Republic pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act, 1999 (hereinafter referred to as "the Act").

II. THE PARTIES TO THE INVESTIGATION

The Complainant is Antilles Chemical Company LLC, hereinafter referred to as “ACC” or “the Complainant” with offices located at 96 Marcus Garvey Drive, Kingston. ACC is a wholly owned subsidiary of CFG Ltd., a Delaware Corporation located in the U.S.A. Antilles Chemical Company Limited is the sole producer of the like goods in Jamaica.

The Importers are Agri-Chemical (Jamaica) Limited, hereinafter referred to as “the Importer” with offices located at 9 Marescaux Road, Kingston 5 and other possible importers of the goods under consideration.

The Exporters are Premium Fertiliser Limited (Dominican Republic), hereinafter referred to as “the Exporter,” with address at Suite 4A Avenue Abraham Lincoln. ESQ. Jose Amado Soler, Santo Domingo, Dominican Republic and mailing address at 247 S.W. 8th Street, Box 212 Miami, Florida 33130, U.S.A, and other possible exporters of the goods under consideration.

The Producers are Fertilizantes Santo Domingo C por A (FERSAN), hereinafter referred to as “the Producer,” with offices located at Avenue John F. Kennedy. ESQ. Central Edificio FERSAN Santo Domingo, Dominican Republic, and other possible producers of the goods under consideration.

Other Parties are Premium Fertiliser (Jamaica) Limited hereinafter referred to as “PREMIUM (JA)” with offices at 2 1/4 Windward Road, Kingston 16 and All Island Jamaica Cane Farmers Association, hereinafter referred to as “AIJCFA,” with offices at 4 North Avenue, Kingston 4.

III. BACKGROUND

On May 3, 2001 the Complainant, ACC, submitted an affidavit alleging that finished bagged fertiliser originating in the Dominican Republic was dumped, subsidised or both. The affidavit also claimed that the alleged dumping or subsidising of the good has caused, is causing and/or is likely to cause material injury to the domestic industry. The affidavit did not set forth in detail the facts that supported the allegations. Thus, the Commission in a letter dated May 21, 2001 informed ACC of this deficiency and sought to have it rectified. On July 16th, 2001 ACC delivered responses (dated July 11, 2001) to the Commission’s questionnaire, which consisted of narrative responses to the questions and supporting documentation. In this submission, it alleged that the goods under consideration were inorganic fertiliser blends, Urea and Sulphate of Ammonia made from various combinations of Nitrogen, Phosphate and Potash. ACC’s July 11 submission required further clarification and thus on August 13, 2001 the Commission requested additional information. This information was received in two parts on September 12, 2001 and on October 5, 2001.

The Commission was unable to find sufficient evidence either in the complaint or through its own investigations, to support ACC’s allegation that the producer of the imported good was receiving the benefit of a subsidy. Thus, the Commission was unable to initiate an investigation into subsidisation in relation to the goods under consideration, despite the fact that subsidisation

was alleged in the complaint. Therefore, this investigation relates only to injurious dumping of goods in Jamaica.

By letter dated October 19, 2001 the Commission informed Antilles Chemical Company LLC and the government of the Dominican Republic that the complaint was properly documented.

IV. SCOPE OF THE INVESTIGATION

The Commission defines the scope of the investigation as:

Inorganic Fertiliser made from various combinations of the fertilising elements: Nitrogen (N), Phosphorus (P) and Potassium (K), originating in or exported from the Dominican Republic.¹

The tariff classification codes (HS codes) that represent the goods that fall within the scope of the investigation are the following:

- 3105.2000.0 Mineral or chemical fertiliser containing the three fertilising elements: nitrogen, phosphorus and potassium
- 3105.5000.0 Other mineral or chemical fertilisers containing the two fertilising elements: nitrogen and phosphorus
- 3105.6000.0 Mineral or chemical fertilisers containing the two fertilising elements phosphorus and potassium
- 3105.9000.0 Other

Please note that in some instances these represent the title of the subheading and the Commission intends that the scope of investigation will include all goods that fall within each subheading unless otherwise specified.

A. GOODS UNDER CONSIDERATION

The scope of the investigation includes the goods under consideration defined by the Complainant; the Commission finds support for the above classifications for finished bagged inorganic fertiliser imported from the Dominican Republic from the relevant Customs C-78 entry forms.

The imported goods appear to have been manufactured specifically for the export market and are identical to the blends normally sold by the Complainant in Jamaica.

B. PHYSICAL CHARACTERISTICS AND USE

Inorganic fertilisers are made from raw materials containing nutrients that have normally been transformed into a more plant-available form by industrial processing. They supplement the

¹ Please note that ACC describes, the subject of the application, as “Inorganic fertiliser blends...made from various combinations of Nitrogen, Phosphate and Potash”.

existing nutrients within the soil, in order to provide the balanced supply of essential nutrients that plants need to grow well. The industry recommends that fertiliser applications should be calculated on a “site specific” basis using soil analysis, and taking into account not only the specific plants and expected yield but also the type of soil in which the plants are grown (including their nutrient status) and previous planting history.

The blends of fertiliser that have been imported correspond to the particular needs of Jamaican farmers in light of crops they grow and other uses made of their land. Consequently, the goods under consideration, Inorganic (NPK) Fertilisers, are used to provide plant nutrients for the growth of, among other things, sugar cane, vegetable and root crops, coffee, banana, coconut, citrus, pineapple and pasture.

The goods are transported and shipped, packaged in 50kg bags.

C. THE PRODUCTION PROCESS

The goods under consideration are produced by physically blending various combinations of the raw materials required for inorganic fertiliser made from Nitrogen, Phosphorous and Potassium (NPK). The usual sources of N or nitrogen are from Urea, Sulphate of Ammonia (SOA) and Diammonium Phosphate (DAP). In the case of low analyses² Nitrogen (N) fertilisers, for example, 14.28.14 and 11.22.22, the N source is SOA and DAP. However, for analysis higher than 14% N, in most cases urea forms part of the mix. Some examples of inorganic NPK fertiliser blends are: 17.017; 18.9.18; 16.9.18; 17.9.23; 17.0.20; 22.0.22; 16.5.19; 15.5.35, 46.0.0, 21.0.0. In each case the numbers represent the percentage of each nutrient in the blend. The first number represents nitrogen, the second, phosphates, and the third, potash. These are the macronutrients. In essence, the fertiliser inputs are identical; it is the ratio of raw material that differs.

Once blended, the fertiliser is then bagged in fifty-kilogram (50kgs) polypropylene bags. Jamaican law requires that each bag be labelled with the producer’s name and address, the analysis of the product in terms of the percentage of each nutrient that the fertiliser contains, the NPK grade of the product in the bag and its weight.

V. LIKE GOODS

Like goods, in relation to any other goods, are goods which are identical in all respects with those other goods, or in the absence of identical goods as aforesaid, goods of which the uses and other characteristics closely resemble those of the other goods.

² The fertiliser’s analysis refers to the percentage of each nutrient in a bag of fertiliser.

The Inorganic Fertilisers produced by the domestic industry made from various combinations of the following elements: Nitrogen, Phosphate and Potash competes with, can be substituted for, and has the same manufacturing process, distribution methods, end-use, quality and performance characteristics as the goods under consideration.

Therefore, the Commission has concluded that the Inorganic Fertilisers produced by the Jamaican industry are “like” the goods under consideration previously defined in the section on scope.

VI. PERIODS OF INVESTIGATION

The period of investigation (POI) is the timeframe selected for which imports into Jamaica will be assessed to determine the degree to which importations from the named countries have been dumped.

The POI for dumping commences one year prior to the date of initiation, that is November 1, 2000 through October 31, 2001 and includes all importation of the goods under consideration from the Dominican Republic made during this period.

The POI for the injury analysis commences three years prior to the date of initiation, that is November 1, 1998 through October 31, 2001.

VII. THE DOMESTIC INDUSTRY

The Complainant is the sole producer of Inorganic Fertiliser in Jamaica and thus its production accounts for 100 per cent of the like goods produced in Jamaica.

Accordingly, the Commission is satisfied that the complainant represents more than 25 percent of the total Jamaican production of the like goods and the complaint has been made by or on behalf of the domestic producers of like goods because the complaint is supported by a domestic producer whose collective output constitutes of more than 50 per cent of the total production of like goods. Thus, the complaint submitted by ACC has met the threshold for standing set forth in section 22 (2)-(4) of the Act.

VIII. THE JAMAICAN MARKET

ACC is the sole producer of Inorganic Fertiliser in Jamaica, and therefore forms the Jamaican inorganic fertiliser industry. The industry is classified by the Planning Institute of Jamaica (PIOJ) within the manufacturing sector and falls under the sub-sector: chemical and non-metallic products. According to Chapter 3 of the *Economic, Social Survey of Jamaica*, this sub-sector accounted for approximately 12.9 per cent of the Gross Domestic Product (GDP) of the manufacturing sector in 2000.

The Complainant alleges that production had been relatively flat, between fifty and fifty five thousand metric tons per annum in 1997 through 2000. On average the Complainant's production accounts for 99% of total domestic consumption for the same period.

The Complainant also claims that a significant portion of its sales is to the sugar cane industry. This implies that factors that affect the industry (eg. seasonal) would have an impact on the pattern of fertiliser sales. The Commission's research reveals that fertiliser sales do exhibit a similar seasonal variation to that of sugar cane production. The Complainant claims that it has 15 distributors in its distribution network along with over 300 retailers. The Complainant sells to its distributors who then sell to the retailers and then the retailers sell to the end users. End users can, however, buy directly from the distributors or the Complainant in special cases.

IX. EVIDENCE OF SUBSIDIES

Section 2 of the Act defines a subsidy in relation to goods that are exported to Jamaica as "a financial contribution that is made in connection with the production, manufacture, or export of those goods for the purpose of conferring a benefit in relation to those goods, by . . . a government of the country of origin of those goods; . . . by means of a foregoing or non-collection of revenue, other than allowable exemption or remission, due to that government or body by that enterprise."

The Complainant alleged that there were subsidies operating in relation to the goods under consideration. It identified two export subsidy programmes in the Dominican Republic that may have been relevant to the manufacture of the goods under consideration. In order to determine whether there was sufficient evidence to initiate a case on the basis of subsidisation, the Commission through its own investigation garnered additional information in relation to the subsidy programmes identified. However, all the information to which there was access did not make out a case concerning the subsidy programmes identified by ACC, because the Commission found that in both instances the alleged benefit comes in the form of duty or tax exemptions that are considered to be allowable exemptions in accordance with the Act.

The Commission determined that the programmes identified did not fall within the definition of a subsidy prescribed by the Act and therefore there was no basis on which the Commission could initiate an investigation into subsidies.

X. EVIDENCE OF DUMPING

Dumping occurs when the normal value of the goods exceeds the export price of the goods shipped to Jamaica. The Complainant alleges the injurious dumping and subsidizing into Jamaica of certain Inorganic Fertilisers, originating in or exported from the Dominican Republic.

The normal value of the goods is the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country. The export price of goods shipped to Jamaica is generally the transaction price to the importer in Jamaica. Both prices are adjusted for

any costs, charges and expenses that would affect price comparability, as these become available. Estimates of the normal value and export price are discussed below.

A. NORMAL VALUE

The Complainant alleges that normal values for the goods under consideration were unavailable because the blends sold in the Dominican Republic market for domestic consumption are not identical to the blends produced for export to Jamaica. Thus, the Complainant estimated constructed normal values based on estimated cost of production, with reasonable amounts for administrative expenses, selling expenses and profit.

The Commission utilized information provided by the Complainant as well as that of independent research to assess the Complainant's estimates and determined that they were reasonable.

B. EXPORT PRICE

The Complainant submitted export prices for the goods under consideration and these prices are substantiated by Jamaica Customs C-78 entry forms and supporting invoices.

C. ESTIMATED MARGINS OF DUMPING

The margin of dumping refers to the differential between the normal value and the export price expressed as a percentage of the export price. The margin of dumping was estimated by comparing the Complainant's estimated constructed normal values to the export prices. The dumping margins of the various blends ranged from 7.67% to 25.87%, this gives a weighted average dumping margin of 16.61% for the goods under consideration.

XI. EVIDENCE OF INJURY

The Complainant has alleged that the goods under consideration have been and are being dumped and that such dumping has caused, is causing and/or is likely to cause material injury to the Complainant. In support of its allegations, the Complainant provided evidence of price depression, price undercutting and price suppression, loss of market share, increase in raw material inventory, and a decline in: profit and return on investment, productivity and wages, and capacity utilisation

A. PRICE DEPRESSION

Price depression is the reduction in the domestic industry's selling price(s) and can be assessed on the basis of the percentage changes of prices before and during the period of injury. The rate of change of these prices would give an indication of the severity of the impact of the dumping, as it relates to price.

The information submitted does not enable a comparison of ACC prices before the period of injury. However, the Complainant provided customer-specific price lists, letters and sales activity reports that indicate, that prices declined when the first shipment of the imports from the Dominican Republic entered the market. The evidence therefore indicates that there was some amount of price depression.\

B. PRICE UNDERCUTTING

Price undercutting refers to instances where the goods under consideration sell at prices below that of the domestic like good. The Complainant has submitted published price lists from the supplier of the goods under consideration, PREMIUM (JA), as well as its own customer-specific price lists and other in-house data, a comparison of which indicates that price undercutting took place, notwithstanding the fact that the Complainant reduced its prices.

C. PRICE SUPPRESSION

Price suppression is experienced when the domestic industry's margin between unit cost of production and selling price cannot be maintained. The Complainant has submitted data and supporting documentation on sales, cost of sales and selling price that indicate that it was prevented by the existence of low priced dumped imports from increasing its selling prices to completely offset the effect of an increase in raw material prices relative to the previous year. The Complainant was thus unable to maintain its margin between cost of production and selling price.

D. LOSS IN MARKET SHARE

The Complainant presented evidence in the form of sales activity reports that documented the orders and sales quantities lost to the allegedly dumped goods. The loss in market share was easy to reflect because the Complainant is the sole producer of the product in Jamaica, having an average of approximately 99% of the total domestic market for NPK fertilisers between 1995 – 2000.

E. INCREASE IN RAW MATERIAL INVENTORY

The Complainant alleges that there has been a build up in its raw material inventory and a slowing rate of disposal which is attributable to the alleged dumping of the goods under consideration. The documentary evidence submitted by the Complainant shows that inventories increased significantly between January to May 2001 as compared to the levels maintained for the previous years.

F. PROFIT EFFECTS AND RETURN ON INVESTMENT

The Complainant alleges that there has been a decline in profit, production and return on investment attributable to the alleged dumping of the goods under consideration, and provided

support for those statements in the form of its audited financial statements for the period 1998 to 2000 as well as monthly accounts for the period October 2000 - May 2001. The documentary evidence shows that profitability for the period October to May 2001, as it compares with the same period in the previous year, has declined. Sales in US\$ terms are down in an amount proportional to the decline in volume of production. The return on investment has also declined in 2001 relative to 2000.

G. PRODUCTIVITY AND WAGES

Productivity refers to the number of units of output produced per unit of the resources employed in their production. In other words, it is the total output relative to the number of resources employed. The Complainant indicates that it has not recalled any of its casual workers as is usually required in the peak season but has maintained its ordinary work force, on an 8 hour single shift basis. Notwithstanding, this the average product per worker has declined for the period October 2000 – May 2001 as compared with the similar period in the previous year, thereby representing a significant decline in productivity. Wages have fallen with production as the number of hours worked have declined.

H. CAPACITY UTILISATION

Capacity is defined as the maximum level of production that an establishment can reasonably expect to attain under normal operating conditions, including normal levels of downtime and the number of shifts of hours of plant operation relative to that attained in the past five years. The Complainant claims and provides documentary evidence to show that capacity utilisation has declined at a time that coincides with alleged dumping of the goods under consideration.

XII. CAUSAL LINK

Section 22 of the Act provides that the Commission must be satisfied that the evidence discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury. It is crucial therefore that it be demonstrated that the downturn in or injury to the industry is through the effects of dumping. The Commission examined all known factors other than the dumped imports, which at the same time could be injuring the domestic industry. The factors identified are: a decline in agriculture and the devaluation of the Jamaican dollar. These were found to have had a negative impact on the industry, between 1997 and 2000, and is still affecting the industry in the current financial year. However, these factors have been ruled out as the cause for the sharp declines in the performance of the domestic industry during the current financial year. Thus, the evidence discloses a reasonable indication that the dumped imports are the single most important factor that has resulted in the declines in the performance of the domestic industry.

XIII. THREAT OF MATERIAL INJURY

In accordance with Regulation 13 of the Act, a determination of threat of injury shall only be made where a particular market situation is likely to develop into material injury, and is clearly foreseen and imminent.

In the present scenario, there is evidence of injury (the effect) to the domestic industry and there is evidence to show that it is the direct result (cause) of the dumped imports. Given the evidence of these factors here present, threat of material injury, has to do with the likelihood that the allegedly dumped imports will continue in the future. The Complainant submitted information on the Producer of the product, and the Commission's research into the Dominican Republic fertiliser market provides support for the view that there is a likelihood of substantially increased imports of the allegedly dumped goods into Jamaica, that the producer enjoys excess capacity and that in the Dominican Republic there is the potential for product shifting where production facilities that can be used to produce the goods under consideration are currently being used to produce other good. Therefore, from the documentary evidence, there is a reasonable indication that allegedly dumped imports are imminent and that unless action is taken, material injury would occur.

XIV. CONCLUSION

The Commission has decided to initiate an investigation on the basis of the complaint filed by Antilles Chemical Company LLC, pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act. The Commission is satisfied that the complaint is properly documented, that there is evidence that the goods have been dumped, and that the evidence discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury.

XV. FUTURE ACTION

The Anti-Dumping and Subsidies Commission will make a Preliminary Determination in this matter within 90 days from the date of initiation of this investigation. Where circumstances warrant, this period may be extended to 135 days.

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

Imports of the goods under consideration released by Jamaica Customs on and after the date of an affirmative Preliminary Determination may be subject to a provisional duty equal to the

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

XVI. RETROACTIVE DUTY

Under certain circumstances, an antidumping duty can be imposed retroactively on goods under consideration imported into Jamaica in the period starting on the day the investigation was initiated.

XVII. INFORMATION

Interested parties are invited to file written submissions presenting facts, arguments and evidence that they feel are relevant to the alleged dumping or injury. 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 30 days of the date of initiation of the investigation.

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

This Statement of Reasons along with the Notice of Initiation of this investigation has been provided to interested parties of these proceedings. For further information, please contact the Commission as follows:

Mail: Anti-Dumping and Subsidies Commission
24 Trafalgar Road, Kingston 10 or
P.O. Box 494, Kingston 5.

Attention: Sara-Ruth Allen, General Manager

Telephone: (876) 920 7006 or (876) 968 7970

Beverley Morgan (Mrs)
ACTING CHAIRMAN