

# **ANTIDUMPING & SUBSIDIES COMMISSION**

24 Trafalgar Road ~ Kingston 10 ~ Jamaica  
Phone: 968-7970, 920-1493/7006, 929-7973 ~ Fax: 926-4622  
Email: [antidump@cwjamaica.com](mailto:antidump@cwjamaica.com)



## **STATEMENT OF REASONS (FINAL DETERMINATION OF THE COMMISSION)**

**KINGSTON, JAMAICA  
July 16, 2004**

**REF. NO. SG-01-2003**

**IN THE MATTER OF** an application, pursuant to Section 6 of the Safeguard Act, 2001, submitted by Caribbean Cement Company Limited to the Anti-Dumping and Subsidies Commission;

**AND IN THE MATTER OF** the Final Determination of a Safeguard investigation by the Anti-Dumping and Subsidies Commission pursuant to Sections 5, 15, 21 & 23 of the Safeguard Act, 2001;

**IN RESPECT OF** an increase in imports into Jamaica of Ordinary Portland Grey Cement ("OPC"), originating in or exported from the following countries: Argentina, China, Egypt and Russia classified under Harmonised Tariff Schedule Codes: 2523.20, 2523.29 and 2523.291 (excluding Oil-Well Cement).

### **I. SUMMARY**

On October 16, 2003, the Commission initiated an investigation pursuant to sections 4, 6 and 8 of the Safeguard Act of 2001 (hereinafter, "the Act") into the alleged increase in imports into Jamaica of OPC originating in or exported from Argentina, China, Egypt and Russia. The investigation was initiated in response to a Complaint filed by Caribbean Cement Company Limited of Kingston, Jamaica.

On December 15, 2003 the Commission made an affirmative Preliminary Determination pursuant to section 17 of the Act that there had been an increase in imports of Ordinary Portland Grey Cement into Jamaica, causing some level of injury and a threat of serious injury to the domestic industry. Pursuant to section 20 of the Act, the Commission made a recommendation to the Minister of Commerce, Science and Technology that a provisional safeguard measure be imposed in the amount of 25.83 percent on all goods imported that are of the same description as those within the scope of the investigation, regardless of the importer or the country of origin.

As a result of the investigation, the evidence revealed and the Commission is satisfied that the goods under consideration were imported during the period examined in such increased volumes, and as a result of unforeseen developments, as to cause a level of injury and a threat of serious injury to the viability of the domestic industry. Accordingly, the Commission has made an Affirmative Final Determination in accordance with section 23 of the Act and has made a recommendation to the Minister that a definitive Safeguard measure be imposed in the form of a tariff of 25.83 percent, the same rate as that of the provisional measure, on goods which are of the same description as those to which the Final Determination applies.

Pursuant to Section 23 of the Act, the Commission recommends to the Minister of Commerce, Science and Technology that a definitive safeguard measure be imposed in the amount of 25.83 percent for four (4) years on all goods that are of the same description as those to which this Affirmative Final Determination applies. The Commission reserves the right to recommend that the safeguard measure be liberalised no earlier than the end of the second year of application. In such event, the percentage by which the measure would be liberalised would be no more than two percent (2%) at the end of the second year and three percent (3%) at the end of the third year. This amount may be increased in the event that the domestic industry raises its price in U.S. dollar terms during the twelve-month period immediately preceding the period in which any further liberalisation might take effect.

The rate of a safeguard measure is applied in addition to the pre-existing duty regime, which at this time is fifteen percent (15%).

## **II. PARTIES TO THE INVESTIGATION**

**The Applicant** is Caribbean Cement Company Limited, also referred to as “the Applicant” or “the domestic industry,” with registered offices located at Rockfort, Kingston.<sup>1</sup> The Applicant is a limited liability company incorporated under the laws of Jamaica and is in the business of manufacturing and selling bagged, bulk and ready-mix cement. The Applicant is also an importer of cement.

**Third Party Importers** (also referred to as “Importers”) are:

- (i) Mainland International Limited, also referred to as “Mainland”, with registered offices located at 8 March Pen Road, Spanish Town, St. Catherine;
- (ii) ARC Systems Limited also referred to as “ARC”, with registered offices located at 7 Ashenheim Road, Kingston 11;
- (iii) Bolide International Jamaica Limited, with offices located at 27 Shannon Drive, Kingston Free Zone, Kingston, Jamaica.

**The Exporter/Foreign Producers** are:

- (i) Shandong Metals & Minerals I/E Corp., 9 Tangyi Road, Qingdao, China 266011, Tel: 86-532-575-5583, Fax: 86-532-575-5615; (Exporter), also referred to as “Shandong.”

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<sup>1</sup> The Applicant is sometimes also referred to as “CCCL.”

- (ii) Longkou Fanlin Cement Co., Ltd. Zhu You Guan Town, Longkou, Shandong, China. Tel 0535 856-1336, Fax: 0531 856 1337; (Producer), also referred to as "Longkou;"
- (iii) PT Semen Cibinong, Bidakara Building, 9th - 10th - 11th floors, Jl. Jendral Gatot, Subroto Kav. 71 – 73, Pancoran, Jakarta 12870, Indonesia, Tel: 62 21 83793220, Fax: 62 21 83793221; also referred to as "Cibinong;"
- (iv) The Siam Cement Public Company Limited, 1 Siam Cement Road, Bangsue, Bangkok 10800, Thailand, Tel: (066) 2586-3333, 2586-4444, Fax: (066) 2587-2199; also referred to as "Siam;"
- (v) Sinai Cement, 187 El Haram Street – Giza, Egypt, Tel: 202-386-8208, Fax: 202-386-6519; also referred to as "Sinai;"
- (vi) Novoros Cement, Tel: 86172 53518, Fax: 86172 57720; also referred to as "Novoros;"
- (vii) Loma Negra CIASA, Bouchard 680 C1106ABJ – Ciudad, Autonoma de Buenos Aires, Tel: 54 4319 3000, Fax: 54 4319 3001 also referred to as "Loma Negra."

The Commission also found that there were several other importers over the period examined, but these did not appear to qualify as commercial importers for resale and so are listed as "Other Importers."

<u>Other Importers of Cement and Sources:</u>		<u>Consignor Country</u>	<u>Origin Country</u>
(i)	Food for the Poor	USA	USA
(ii)	Petrojam Limited	N/A	N/A
(iii)	A.E. Parnell & Company	JAMAICA	RUSSIA
(iv)	Esso Standard Oil	USA	
(v)	B.D. Dadlani (JA) Ltd.	USA	N/A
(vi)	Three Rivers Management Limited	INVALID	N/A
(vii)	E. Phill & Sons A/S	DENMARK	
(viii)	Costco Trading	USA	N/A
(ix)	Advanced Farm Technologies	N/A	N/A
(x)	Rose Hall* <sup>2</sup>	USA	
(xi)	General Windows and Doors	USA	USA
(xii)	Rugby Jamaica	USA	USA
(xiii)	Caribbean Producers/Ritz Carlton	USA	USA
(xiv)	Granite Homes	CANADA	CANADA
(xv)	Jose Cartellone Construccione	USA	USA
(xvi)	Mount Royal Development	USA	USA
(xvii)	Small Individual Importers	Includes USA/CANADA	USA/ CANADA

### **III. BACKGROUND**

In its application for a safeguard measure to be applied to cement, the Applicant claimed that the volumes of the imported product caused, among other consequences, a negative impact on its production, and asserted that workers were seriously injured through declines in production, capacity utilisation, market share, industry sales volume and value, employment and wages, price levels, and return on investment.

<sup>2</sup> \*Only one of nine shipments were shown as the USA all others were listed as n/a

The Applicant also claimed that the increased imports had negatively affected the profitability of the domestic industry, and had resulted in an increase in inventories held by it. Further, the Applicant asserted that as a result of the substantial gap between domestic cement consumption and production capacities in the countries that have exported to Jamaica, there is a high likelihood that these countries will continue to increase their exports to Jamaica.<sup>3</sup>

On September 30, 2003 the Commission informed the Applicant of its intention to extend the date for initiation of the investigation from October 1, 2003 to October 16, 2003, pursuant to section 8(3) of the Act, which states in pertinent part:

Where [the Investigating Authority receives a request and]

- (a) the request involves complex issues; or
- (b) the Investigating Authority has obtained additional information

the period specified in subsection (2) may be extended for such longer period as the Investigating Authority may determine.

On October 16, 2003, the Commission initiated an investigation pursuant to sections 4, 6 and 8 of the Act into the alleged increase in imports into Jamaica of OPC originating in or exported from Argentina, China, Egypt and Russia. All parties to the investigation were notified of the decision to initiate directly or through the Ministry of Foreign Affairs and Foreign Trade (hereafter "MFAFT") and the Jamaican Mission in Geneva.<sup>4</sup> Copies of the Notice of Initiation and Statement of Reasons were provided, along with the timelines for the conduct of the investigation.

The Commission requested further information from the Applicant and forwarded questionnaires to Mainland, ARC Systems, Shandong Metals & Minerals I/E Corp, PT Semen Cibinong, Siam Cement Public Company Limited, Sinai Cement, Novoros Cement and Loma Negra CLASA.<sup>5</sup> Pursuant to section 10(3) of the Act all parties were notified of deadlines for the duration of the investigation and were required to provide their responses within a twenty-two day period ending November 7, 2003.<sup>6</sup> Each party was afforded the maximum amount of time that could reasonably be allowed for initial responses, pursuant to section 10(4) of the Act. The Commission confirmed that (except for parties associated with the Russian exports) the documents were delivered on October 20 and 22, 2003. The Commission noted that Russia is not a WTO Member, but sought in good faith to obtain its participation in the investigation.

Parties were notified that a request for extension of the deadline would be considered if received on or before November 4, 2003. Requests for extensions of the deadline were received from: Shandong via the People's Republic of China Embassy in Kingston, Jamaica, along with their intention to

<sup>3</sup> Applicant's written submission of September 1, 2003, page 7

<sup>4</sup> Confirmation letter from MFAFT was received on October 31, 2003 indicating that, "The Notice of Commencement, Statement of Reason, and Timelines, have been submitted to Argentina, China, Egypt, Indonesia and Thailand through our Permanent Mission in Geneva. Copies have also been sent to the Embassies of the People's Republic of China and Argentina here in Kingston. The Russian Federation, which is not yet a Member of the WTO was informed of the Investigation."

<sup>5</sup> Importer Questionnaires were also sent to the largest of the "Other Importers of Cement" namely, Caribbean Producers/Ritz Carlton, A.E. Parnell & Company, Rose Hall and Food for the Poor. The Commission received communication from Caribbean Producers/Ritz Carlton and Rose Hall stating that they were not in the business of importing cement, the former being strictly a food and beverage distributor and the latter indicating that the importing company at the time of the construction of the Ritz Carlton had completed the contract and left. The remaining two did not file a response.

<sup>6</sup> Under the Safeguard Act, the period immediately following the initiation of an investigation is 60 days and the Act specifies that a provisional measure must be determined no later than the 60-day period.

participate in the investigation (October 31, 2003); Sinai Cement (November 3, 2003); and Loma Negra (November 4, 2003). The Commission re-designed the timeline to allow for the provision of data in phases, and divided the questionnaire into two sections, in order to prevent undue delay in the flow of the investigation.<sup>7</sup> A further period was allowed for the parties to submit responses.

On November 15, 2003, Counsel's Notice of Appearance was filed on behalf of the Producer and Exporter from China. The Commission received responses from the Applicant, the Chinese exporter and producer as well as Mainland<sup>8</sup>. Loma Negra did not respond despite the extension. On November 24, 2003 Sinai requested a further extension of three weeks. The Commission notified Sinai that its submissions would be accepted but would not be sufficiently timely to be considered in the Preliminary Determination. On November 28, the Commission requested that the Counsel for the Chinese Exporter and Producer provide the Commission with submissions, which the Exporter and Producer referred to as having been made previously, but which had not been received by the Commission.

On November 7, 2003, ARC Systems submitted its Notice of Intention not to participate any further in the Safeguard investigation. The Commission decided that though it is empowered under the Act<sup>9</sup> to move the Courts to compel ARC to respond to its inquiries, the analysis required under the law in the case could be conducted, notwithstanding ARC's failure to cooperate. The parties who submitted information in the investigation include Shandong, Longkou, Mainland and the Applicant. The Commission informed parties that it would rely and, pursuant to section 13 of the Act and the Agreement, relied on facts available in the absence of necessary information not provided to it by parties within a reasonable period.

After reviewing responses from Mainland and Shandong, a Request for Information (RFI) was forwarded to both parties on November 26, 2003. The Commission requested from Mainland specific information on the future plans of the company regarding other products, the production of cement, comparative costs of shipping, provision of evidence in support of some of the responses; and clarification of information supplied. The Commission's questions to Shandong were specific as to projections of future shipments, the provision of original invoices, and information regarding other producers of cement with which Shandong conducted business. All responses to RFIs were due on December 1, 2003 and parties were advised that it was important to meet the deadline in order to be assured that the information would be considered in reaching the Preliminary Determination.

On November 17, 2003 the Commission received supplemental information from the Applicant in support of its application for provisional measures. In this submission, the Applicant alleged that the Company continued to operate under critical circumstances and that any delay would result in further injury. The Applicant relied on detailed economic analysis to support its claim that the result of an application of provisional measures would have "a significant positive economic effect" on the industry. Further, the Applicant maintained that the imports had increased significantly during the period of investigation and that in 2003 the levels of imports exceeded those of any year since 1999.<sup>10</sup>

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<sup>7</sup> The Questionnaire was divided into two sections those questions: one which required basic company data and the other which required evidentiary support, the compilation of which could reasonably be considered to be "time-consuming."

<sup>8</sup> Based on the re-designed timeline.

<sup>9</sup> Safeguard Act, 2001 section 11.

<sup>10</sup> Applicant's Supplemental submission dated November 17, 2003 page 5

The Applicant advanced the argument for critical circumstances resulting from increased imports on the basis that the industry had already suffered serious injury and had been unable to implement its Adjustment Plan and that without provisional measures the industry would be unable to implement its Adjustment Plan for an additional four and one half months.<sup>11</sup> Additionally, the Applicant argued that a provisional duty was necessary to allow it to decrease its substantial excess inventories of cement and clinker thereby increasing lost sales volumes, and recapturing market share and revenue lost to imports during the investigation; to allow the industry to implement its Adjustment Plan; and to prevent further damage to the industry which would be difficult or impossible to repair.

Mainland opposed the application for a provisional measure, arguing that it is not simply any increase in imports that justifies the imposition of a provisional measure.<sup>12</sup> The Importer also argued that the Applicant's analysis of the level of sales of imported cement should be disregarded in determining whether there was in fact an increase in imports.

With regard to the Applicant's submission on "unforeseen developments," Mainland contended that there was no logical connection between macroeconomic factors, such as global excess capacity, the Asian economic crisis, the Latin American economic crisis and the collapse of the Soviet Union and the level of cement imports into Jamaica.<sup>13</sup>

Mainland's counter arguments to the threat of serious injury suggested that the Applicant's financial condition was strong, that production and sales were high and rising, and that the Applicant is operating at relatively high-capacity utilisation. Mainland referred to Applicant's 2002 Annual Report, which stated that the Applicant achieved the highest ever performance, in the history of {the} Company...recorded in the areas of clinker production, cement production, cement sales, revenues and profits.<sup>14</sup> Mainland also submitted that the causal link had not been established between the imports and any decline in the statutory injury factors because at the time of the imports in the first nine months of 2003, the Applicant's overall condition was not adversely affected.<sup>15</sup>

In regard to the non-attribution factors, Mainland referred to the Applicant's statements in the Application and annual reports that inflation and exchange rate trends suppressed prices, increased general, administrative and financial costs in 2001, increased energy costs in 2002, and dramatically increased variable costs in 2002 and 2003. Mainland argued that if the Applicant were experiencing serious injury, this resulted from inefficiencies in its own production process and mechanical failures. Mainland also argued that the tariff amount of 87.91% requested by the Applicant would be more than necessary to remedy or prevent injury to the domestic industry, and would serve as a punitive measure to importers such as Mainland.<sup>16</sup>

At the commencement of the investigation the Commission sought to obtain data from the Statistical Institute ("STATIN"), FISCAL Services, Jamaica Customs and the Planning Institute of Jamaica ("PIOJ"), the government repositories of statistical data on imports, in order to verify statements made by the Applicant. The data received was cross-referenced with other sources, including invoices and bills of lading provided by Mainland, to ensure the accuracy of the data which the Commission

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<sup>11</sup> Ibid, page 27

<sup>12</sup> Mainland November 21, 2003 submission page 2

<sup>13</sup> Ibid, page 5

<sup>14</sup> Ibid., page 9

<sup>15</sup> Ibid, page 11

<sup>16</sup> Ibid, page 15

ultimately relied on. Through this exercise, the number of shipments, volumes and the dates of the shipments were confirmed.

On December 15, 2003 the Commission made an affirmative Preliminary Determination pursuant to section 17 of the Act in respect of an increase in imports of Ordinary Portland Grey Cement into Jamaica. Pursuant to section 20 of the Act, the Commission made a recommendation to the Minister of Commerce, Science and Technology that a provisional safeguard measure be imposed in the amount of 25.83 percent on all goods that are of the same description as described in the Notice and released after 16<sup>th</sup> December 2003, regardless of the importer or the country of origin. This decision was communicated to all parties to the investigation directly and through MFAFT and the Jamaican Mission in Geneva.

Pursuant to section 15 of the Act, the Commission informed parties and the public of its intention to hold a Public Hearing on the 3<sup>rd</sup> March 2004 to allow interested parties the opportunity to verbally present facts and evidence to the Commission. Parties were required to register their intention to participate and to file written submissions presenting facts, arguments and evidence relevant to the support of or opposition to the Commission's findings at the Preliminary Determination or Final Determination. On March 3, 2004 the Commission convened the Public Hearing and participants included the Applicant, Mainland, representatives of the Government of Egypt, Sinai Cement, representatives of the public which included cement distributors, share holders, delegates of the National Workers Union, the Consumer Affairs Commission, and the Jamaica Manufacturers' Association. Additionally, counsel for the parties from China gave some indication that the parties from China endorsed the position being put forward at the hearing by Mainland. Parties participating in the hearing were required to supplement previous filings with written copies of oral submissions. Mindful of its obligations to maintain transparency in its proceedings, the Commission made arrangements for and informed the parties and interested members of the public that a transcript of the Hearing would be made available. The Commission placed the transcript of the proceedings on the public file at the offices of the Commission.

The Applicant filed a post hearing brief before the Commission in support of its prior submissions and provided additional supporting responses and evidence relating to issues of public interest raised during the Public Hearing.

On March 18, 2004, the Commission requested further information from Shandong, Longkou, Loma Negra, Mainland, the Applicant and Novoros. These responses were due on March 25, 2004.<sup>17</sup> The Commission experienced difficulties obtaining the participation of Loma Negra in the investigation and sought the assistance of the Embassy of Argentina in delivering the relevant RFIs. Despite this attempt, the Commission did not receive any response to the RFI from Loma Negra. A similar route was pursued through the Embassy of Russia in an attempt to obtain information from the Russian Exporter/Producer. There was no response from Novoros or the Government of Russia to the RFIs. Thereafter, the Commission, in an attempt to keep all the affected Governments informed, relayed all procedures and requests for information by Diplomatic cover via MFAFT.

Further, the Commission sent out a supplemental RFI on April 5, 2004 to Shandong and Longkou, and as a courtesy copied it to the Embassy of the People's Republic of China.

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<sup>17</sup> Responses were received from Shandong, Longkou and Applicant on the 25<sup>th</sup> March 2004.

In an effort to meet the obligations under the WTO Agreement on Safeguards, the Commission in accordance with sections 10(1) and 10(4) of the Safeguard Act 2001, determined that the deadline for the making of its final determination be extended for a period not exceeding three months. The Notice of Extension was provided to all interested parties, governments and the WTO Committee on Safeguards on March 25, 2004. In keeping with the provisions of the Agreement, the Government of Jamaica offered the opportunity for consultations with all interested parties to facilitate the exchange of views on the proposed measures, and to reach an understanding regarding the maintenance of substantially equivalent levels of concessions and obligations with affected Members.

The Government of Jamaica's consultation team comprised representatives from ("MFAFT"), the Ministry of Finance and Planning (MOFP), the Ministry of Commerce, Science and Technology (MCST), along with the technical staff of the Commission and the Attorney General's Chambers.

Requests for Consultations were notified to the Committee on Safeguards of the World Trade Organisation (WTO). Initially, the People's Republic of China, Egypt, Indonesia and Russia indicated acceptance of the opportunity for consultations. Argentina also initially indicated an interest but did not submit a formal request or acceptance, and did not attempt to participate any further in the consultation process. Indonesia requested that a meeting be held in Geneva. In an exchange of communication, the team via MFAFT and the Mission in Geneva, made a suggestion to conduct the consultation via written correspondence. Thereafter, no further communication was received from Indonesia with respect to that proposal.

Consultation meetings were held at the offices of the Ministry of Foreign Affairs and Foreign Trade, Kingston, Jamaica over the four days from April 26 through 29, 2004, the details of which were reported to the Commissioners. Further submissions were received by the Commission after consultation meetings were convened, and all submissions before the Commission were considered.

#### **IV. STANDARD FOR MAKING OF A FINAL DETERMINATION AND IMPOSITION OF A FINAL MEASURE**

The Act sets forth the requirements for the making of a Final Determination in sections 21, 23 and requires that the standards of sections 5 and 15 be met.

These sections of the Act, which are consistent with Article 2 of the WTO Agreement on Safeguards, establish that the imposition of a definitive safeguard measure requires a finding that there is (1) an increase in imports under qualifying conditions, (2) the increased imports resulted in serious injury or threatens to cause serious injury to the domestic industry and (3) the application of a safeguard measure is in the public interest.

#### **V. THE PERIOD OF INVESTIGATION**

The Commission examined all data available to it for the period, January 1999 to December 2003.

#### **VI. SCOPE OF THE INVESTIGATION**

The Commission defines the scope of the investigation as follows:

*ORDINARY PORTLAND GREY CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES, EXCEPT WHITE CEMENT USED FOR DECORATIVE PURPOSES AND OILWELL CEMENT,*



**ORIGINATING IN OR EXPORTED FROM ALL SOURCES. WHERE THE INVESTIGATED PRODUCT FALLS UNDER SEPARATE SUB-HEADINGS OF THE HARMONISED TARIFF SCHEDULE (HS) CODES, THE CHARACTERISTICS AND PURPOSE OF THE GOODS SHALL BE THE CONTROLLING GUIDE.**

The Commission finds support for the tariff classifications used from Customs C-78 forms. The narrative definition above is covered under separate sub headings of the Tariff schedule. The narrative definition represents the scope of the investigation, notwithstanding the tariff classifications set out below, which are provided for Customs' reference only. All ordinary building cement types are included in the scope because in the Jamaican market, all are substitutable, and thus a single fungible commodity.

The particular good produced by the Applicant in Jamaica is Ordinary Portland Grey Cement (OPC), typically classified under the tariff heading, HS 2523.29 and HS Code 2523.291.

**Table 1**

HS CODE	PRODUCT DESCRIPTION	DUTY APPLICABLE
25.23	Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinkers.	15%
2523.20	Portland cement:	
2523.21	White cement	Free
2523.29	Other:	
2523.291	Building cement (grey)	15%

The Applicant contended that the scope of the investigation should encompass all cement types imported under the Harmonised System ("HS") Codes 2523.20 and 2523.29 that are used for any building or construction purposes, excluding oil-well cement (2523.292), regardless of type or quality, whether sold or imported per metric ton in bulk, 1.0 or 1.5 MT O.P. Big (or Jumbo) Bags, 42.5 kg sacks or 50 kg sacks, or packaged in any other form, and for distribution or sale on the local market in any form.<sup>18</sup> The Commission found that, on the Customs Entry (C-78) documents, the investigated product (OPC) is categorised under the general Tariff Heading 2523.29, which is listed as "other" (see Table I above). The Commission's review of the Tariff Schedule revealed that the goods could be classified under the more specific heading, 2523.291 – "Building cement (grey)." On these bases, the Commission determined that the scope of the investigation encompasses goods imported into Jamaica under HS codes 2523.20, 2523.29 and 2523.291, the general and the more specific tariff headings.

To the extent that goods may be classified under more than one HS code heading or can be deemed to fit more than one category, such as blended and also building cement (grey), the determination applies regardless of the labelling of the goods imported. The Commission notes

<sup>18</sup>Applicant's written submission, September 1, 2003, pages 8-9

that inappropriate or misleading labelling does not remove goods from the scope, and notes that this is an issue of enforcement.

## **VII. LIKE OR DIRECTLY COMPETITIVE PRODUCT**

Article 2 of the Agreement on Safeguards requires that the investigated product against which a safeguard measure is sought be like or directly competitive with the domestically produced product. Section 2 of the Act defines a “like or directly competitive product” as a locally produced product that is identical or similar to or directly competitive with an investigated product. In order to establish whether domestically produced goods are like imported goods, the Commission examined a number of characteristics: the physical and chemical characteristics, production process, end use distribution methods, and quality and performance characteristics.

The OPC produced by the Applicant has a similar production process as the goods under consideration. The physical and chemical characteristics of the cement produced by the Applicant and the imported cement are substantially the same, each being Portland Grey cement, conforming to the requisite industry standards accepted worldwide. With regard to quality and performance characteristics, there is no information on record to suggest that consumers perceive either the domestically produced cement or the imported cement as being appreciably better than the other. The distribution methods of the domestically produced cement and the imported cement are the same and there are no major differences in function and use between the imported cement and the domestically produced cement.

The Commission is satisfied that the imported cement and that produced by the Applicant closely resemble each other in uses and other characteristics and are therefore like goods.

The Commission notes that there is no requirement that there be a finding that the goods under consideration and the imported goods are directly competitive products, if there is already a finding that the goods are like good i.e. the Act and the Agreement do not require that the product be found to be “like” and “directly competitive.” Rather, either the imports must be identical or similar to the domestic product, or where the products are not identical or similar to the domestic product, they must be found to directly compete with them, in order to be subject to a safeguard measure. Nevertheless, the Commission examined the question of whether the imported cement and the domestically produced are directly competitive. Directly competitive products are deemed to be, as a matter of fact and commercial common sense, substitutable for the investigated product. A directly competitive analysis is focused on the market within which the products must compete, that is, on conditions of competition in the Jamaican market including price, quality, availability, marketability, marketing, transportation as well as other conditions of purchase or sale. On the basis of these factors the Commission is satisfied that the investigated products are directly competitive to the domestic like good.

On the basis of an examination of the appropriate factors, the Commission concludes that the domestic product is like the investigated product because the domestic product and the imported product have similar physical and chemical characteristics, production processes, end-uses and channels of distribution. The Commission also determines that the goods are also substitutable and compete directly with each other, and there is no evidence to suggest that they differ significantly in quality and performance characteristics.

## VIII. THE JAMAICAN MARKET

Until 1999, the Jamaican cement market was characterised by one supplier, the Applicant. After July 1999, the Applicant encountered competition from Mainland and then other commercial suppliers, the most recent being ARC in 2002. The total supply of cement in the Jamaican market is now determined by the relative availability of the cement from these three sources. The responsiveness of cement supply is largely dependent on the level of the Applicant's capacity, its ability to utilise its unused capacity, the ability to import from alternative markets, and inventories of the product.

The demand for cement is a derived demand and can be assessed on the basis of activities in the construction sector. Construction activity is driven by income, but is also influenced greatly by factors such as specific building projects. This in turn influences the demand for cement. Cement is a required input into construction and because the construction sector in Jamaica relies on block and steel technology<sup>19</sup>, as opposed to other substitutes that are deemed to be less suitable, the demand for cement as an input into construction is relatively inelastic. In addition, the availability of cement has an effect on the demand for other inputs into construction.

The demand for cement in Jamaica is generally inelastic. However, demand for individual suppliers' cement, based on the availability of substitutes and the effective channels of distribution of each supplier, has demonstrated a greater responsiveness to price. Because cement is a product that is generally bought in large quantities, small differences in price can have a significant impact on the demand for individual suppliers' cement.

Consumption<sup>20</sup> grew significantly between 2000 and 2003 and by approximately 8 percent in 2003 over its 2002 levels. The construction sector continues to record year on year growth since 2001,<sup>21</sup> and this trend has continued, with the growth in the sector expected to continue in 2004, given the National Housing Trust's four-year housing plan, the general decline in interest rates, as well as continued work on Highway 2000 and other major projects.<sup>22</sup> Despite temporary short-run fluctuations, the long-term trend in consumption is steadily upward. On the other hand, the Applicant's market share has declined consistently since 2000, while that of its competitors has either remained stable or increased. For example, ARC's market share increased significantly after its entry into the market in 2002 to reach, approximately 12.47 percent in 2003, and Mainland's market share remained on average between 10 and 11 percent over the POI.

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<sup>19</sup> Estimates from the Survey of Living Conditions indicate that this represents 63.3 percent (2001) of the housing market for outer walls. Applicant's February 27, 2004 submission in SG-01-2003.

<sup>20</sup> Consumption estimates are based on actual sales data of Mainland and Applicant's, as well as estimates based on market intelligence for ARC sales.

<sup>21</sup> PIOJ, Economic and Social Survey (ESSJ) 2003.

<sup>22</sup> PIOJ, ESSJ 2003, page 12.6.

## **IX. ECONOMIC CONDITION OF THE DOMESTIC INDUSTRY**

In its deliberations on the injury suffered by the Applicant, the Commission considered the historical performance of the Applicant before and during the periods when imported cement posed a threat of injury up to 2002, and the 2003 period when some actual injury is observed. Prior to 1999, while showing steady growth in revenues, the Applicant reported significant operating losses. In an attempt to reverse this trend the Applicant embarked on a strategic process of reengineering in 1999. This process involved significant capital investment, repairs and retooling of its production facility, refinancing of its debt portfolio as well as changes in management and marketing strategies.

The success of the restructuring was immediately observed in 2000, when the Applicant reported net operating profits and growth in all its major indices. The growth continued to the extent that by the end of 2002, the Applicant was reporting record-breaking levels in performance. The Commission takes note that the Applicant's Chairman in his statement to shareholders in the company's 2002 Annual Report stated that the company "achieved record performances in every business centre," and that the highest ever performance in the history of the Company was recorded in the areas of clinker production, cement production, cement sales and profits in that period.<sup>23</sup>

The Applicant saw steady improvements in growth, stability and profitability over the years leading up to 2002. While the Applicant incurred losses for the years 1997 and 1998, it eliminated its long-term debt and the consequent finance charges in the major restructuring in 1999. The Commission notes that the restructuring exercise, though successful, had some negative impacts on the Applicant's business. With the closing down of some areas of the production facility to facilitate major repairs and retooling, the Applicant was not able to adequately supply the demands for cement in the steadily growing market. It covered the shortfall by importing significant quantities of cement in 1999 and 2000. During this period of shortages, Mainland International entered the market and has remained a major Importer since 1999.

## **X. INCREASE IN IMPORTS**

Article 2 of the Agreement on Safeguards, and section 23 of the Act, require that the Commission find that there is an increase in imports in absolute terms or relative to domestic production as a precondition for the application of a safeguard measure. The Commission must base its determination of serious injury on an analysis of the factors listed in Section 2 of the Regulations. These include the rate and amount of increase in imports in absolute and relative terms; the share of the domestic market taken by increased imports during the POI, price effects on the domestic industry, and the impact of increased imports of the investigated product on the domestic industry with respect to such factors as production, utilisation of productive capacity, changes in inventory levels, its market share, changes in its level of sales, level of employment and wages in the domestic industry, productivity, profit, return on investment and cash flow. The Commission addressed itself to the assessment of all these factors and such other factors as were relevant, as required by the law.

The Appellate Body in *Argentina Footwear*<sup>24</sup> has put forward the following guidance on the type of trend analysis that must be employed to examine the issue of increased imports:

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<sup>23</sup>Caribbean Cement Company Limited, Annual Report 2002, p 5

<sup>24</sup>Argentina- Footwear AB Report, paragraph 131.

“In our view the determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words it is not enough for an investigation to show simply that imports of the product this year were more than last year - or five years ago. Again, it bears repeating, not just *any* increased quantities of imports will suffice. There must be “such increased quantities” as to cause or threaten to cause serious injury to the domestic industry in order to fulfil this requirement for applying a safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury’”.

The Commission’s examination of the increase in imports focused on the rate of increase in absolute terms, in terms relative to production, and in terms of the share of the domestic market taken by the imports for the five-year period 1999 to 2003.

The Commission notes that the Applicant imported significant quantities of cement in 1999 and 2000. As noted, the Applicant did this to supply the market as it experienced lower output in domestic production due to major repairs to its number 4 mill. As noted previously, Mainland entered the cement market as a supplier in 1999 with cement from Thailand, and in 2001, switched to Indonesia as a source, following an investigation into dumping of the Thai cement. Subsequently, in 2002, Mainland obtained cement from China following a dumping investigation against cement from Indonesia. In 2003, Mainland again switched to obtain cement from Argentina citing claims of poor quality packaging of the cement from China. In 2000, Bolide International Jamaica Limited imported cement from Russia. However, this remained the only cement imported by Bolide, or from Russia. In 2002, ARC Systems Limited entered the Jamaican market with significant imports of cement from Egypt.

Except for small quantities of imports in 2002, after the work performed on the number 4 mill in 2000, the Applicant supplied the market by increasing the quantities of locally produced cement. Mainland continued to be a major importer and commencing August 2002, additional amounts were imported by ARC. This heralded a major adjustment in the market where imported cement increased from ten percent (10%) in 2001 to twenty-one percent (21%) in 2003 of the total cement available in the market. When viewed in terms relative to domestic production, imported cement grew from twelve (12%) percent of domestic production in 2001 to thirty percent (30%) of domestic production in 2003. This increase in absolute terms represented a 29 percent increase over 2002 and 249 percent over 2001.

The trend of increase in imported cement continued throughout the POI, except for 2001, when there was a decline in imports relative to 2000 (72,511 MT imported down from 183,303 MT for 2000). Between 2002 and 2003, the trend in increased imports observed for the period 1999 to 2000 (when imports jumped from 131,467 MT in 1999 to 183,303 MT in 2000) continued, imports for this recent period increasing from 140,502 MT to 180,692 MT.

The Commission considers the increase in imports over this recent period to be significant in terms of the percentage increase (an increase of 29 percent) and also because of the quantities of cement available due to the combined effects on the Applicant of the 2003 imports and the carry over of inventories of late 2002 imports. The significance of these effects is seen from the fact that available imported cement represented 38 percent of domestic production and 27 percent of

total cement in the market for 2003, as against 2002 when these figures were 24 percent and 19 percent, respectively.

The Commission observed two distinct surges in cement imports, first in 1999, which resulted from imports by the Applicant to cover shortages due to major repairs and retooling, and then in 2002 to 2003 from imports by other importers. The increase in imports in 2003 represented 30 percent above 2002 and 249 percent above 2001, the years when the Applicant did not carry out major repairs.

Therefore, the Commission concluded, on the basis of the evidence available to it, that there was an increase in imports over the POI and that within the most recent period, which increase was sudden, sharp and significant.

## **XI. SERIOUS INJURY ANALYSIS**

In accordance with Article 2 of the Agreement on Safeguards and section 23 of the Act, the Commission is required to determine whether an increase in imports has caused or is causing serious injury to a domestic industry. In examining this issue, the Commission determined the impact to the Applicant with respect to the factors set out in section 2 of the Safeguard Regulations, which include:

- Production; and notes that declines in production affects workers,
- capacity utilisation,
- market share,
- industry sales volume and value,
- employment and wages,
- price levels, and
- return on investment.

The serious injury analysis focussed mainly on the most recent completed three (3) years, 2001 to 2003. This was appropriate to satisfy the requirement under the Agreement that the increase in imports be sudden enough, sharp enough and significant enough and cause the requisite injury to the domestic industry.

The Commission observed from the data on record, loss in market share, price undercutting, a period of price depression subsequently corrected by price increases, but price depression in \$US dollar terms, and price suppression for a particular period. In addition, the Commission found that the significant increases in imported cement had a negative effect on the domestic industry's volumes of production, sales (from its own production), market share, and clinker inventory. In its assessment of the question of serious injury, the Commission measured injury not only in quantitative terms, but analysed the importance of the effects of the quantitative values. In addition, the Commission notes that injury is a concept that is measured not only by reduction or reversal of a trend, but also in the retardation or prevention of growth and development.

### **A. PRICE EFFECTS**

Section 2.1(c) of the Act requires the analysis of price effects on the domestic product. Price effects refer to changes in the level of prices of the domestically produced product in absolute and relative terms that are the direct result of increased quantities of imported product into the Jamaican market. Price effects can be evaluated based on changes relative to previous price levels, the competition's price or the domestic industry's unit costs of production. The

Commission considered price effects by analysing price depression, price undercutting and price suppression.

#### 1) PRICE DEPRESSION

Price depression is usually the result of downward pressure on prices as a result of increased supply in the market or a deliberate lowering of prices to retain market share. This can be assessed on the basis of percentage changes in prices or trends in the levels of prices before and during the period when imports increased in the market. In this regard, the Commission has looked at the net selling prices of the Applicant over the POI to take account of discounts, rebates and credit charges offered by the Applicant. The Commission notes that the Applicant maintains that its gross selling prices are set independently of market forces such as the increase in supply or the need to maintain its market share. The Applicant maintains that its prices are set on the basis of increases in the cost of production and changes in exchange rates.

There were increases in price by the domestic industry that appeared unrelated to the imports specifically, but rather seemed tied to inflation and changes in the exchange rate. The data on record showed a significant price increase on May 20, 2003, which was reduced two days later. On July 4, 2003, the price was reduced by 8 percent, eliminating the May 20, 2003 price increase and returning the price to its previous level. The Applicant attributed and the Commission accepted that these price adjustments were due to fluctuations in the exchange rate.

The Commission took into account the effect of inflation and exchange rate changes by examining the issue of price depression in \$US dollar terms. The Commission looked at prices limited to bagged cement for the period commencing the end of 1997 to the last price adjustment in July, 2003, based on the exchange rate at the time of the adjustments. The price increase of November 16, 1998 was set as the base price because it is the last price adjustment before significant importation began.

The Commission found that, except for the May 20, 2003 five percent (5%) price increase which was rolled back two days later, the Applicant's prices in \$US terms were lower than those at the November 16, 1998 adjustment. There were downward adjustments to price in US dollar terms in January 2000, June 2001, February 2002, June 2002, May 2003. In July 2003 there was a downward adjustment of nine percent (9%), this last examined price in US dollars being the lowest in the period. Therefore, while there was no price depression in Jamaican dollar terms, there was significant price depression in \$US terms.

The Commission also looked at the net selling prices of the Applicant. The net selling price takes account of discounts, rebates, and trades and values and their effect on the overall revenue from the sale of a product. Using the Applicant's monthly average net selling prices for the period 2000 to 2003, the Commission found price depression of up to six percent (6%) in the first six (6) months of 2001 leading to a price adjustment by the Applicant in June 2001. The Commission also observed marginal reductions over the period following 2001 but no other significant period of price depression except for August 2003.



## 2) PRICE UNDERCUTTING

Price undercutting refers to instances where the goods under consideration are sold for prices below the domestic like good. In order to assess the extent of any price undercutting, the prices of the imported product and the domestic product must be compared at the same level of trade.

The Applicant alleged that there have been price effects as a result of the increased imports, including price undercutting. Information provided in its September 1, 2003 submission showed a trend where the importers maintain retail prices in a particular range below those of the Applicant.

At the preliminary determination, the Commission found, on a comparison of the ex-factory warehouse prices of the Applicant, Mainland and ARC Systems for 2003, price undercutting by Mainland of seven percent (7%) and five percent (5%) by ARC Systems. The Commission also found that a comparison of average retail prices also showed price undercutting by Mainland and ARC of six (6) percent (6%) and four percent (4%) respectively. The Commission subsequently revised the calculations using both list price data and average net selling prices and compared those to the actual data presented by Mainland. The analysis using ex-factory/warehouse list bag price showed Mainland undercutting the Applicant by eight percent (8%) in 2003, five percent (5%) in 2002, up from two percent (2%) percent in 2001. Available data for ARC showed undercutting of five percent (5%) percent in 2003. A further review using average net selling prices, which is the actual price after discounts, rebates and trades (free goods) showed the price undercutting percentages by Mainland to be seven percent (7%) in 2003, six percent (6%) in 2002 and three percent (3%) in 2001.

## 3) PRICE SUPPRESSION

Price suppression is experienced when the domestic industry's margin between unit cost and selling price cannot be maintained. This may be the result of price depression against stable or increasing costs or the inability to increase prices against the background of increased costs.

The Commission's review of the Applicant's comparative selling prices and direct cost sales data on an annual average basis showed price depression in early 2001, where the percentage contribution margin was reduced between 2000 and 2001, which it then maintained in 2002 but this was increased in 2003. The Commission also looked at the monthly contribution margins over the period to determine if there were variations on a linear basis at different shorter periods, as was true with respect to price depression. This was done by comparing the actual monthly net selling prices against the monthly direct cost of sales along with the linear trend of that comparison.

Notwithstanding the volatility noted in the measurement of the Applicant's monthly variable costs, the Commission's analysis of the data showed price suppression in the late 2000 to early 2001 period of price depression. However, the Commission found no price suppression in the relevant period, the latter half of 2003. In the early period (2000 to 2001) there was no reduction in direct cost of sales while the selling prices were depressed. In the late 2003 period there was an even greater corresponding reduction in direct cost of sales while the net selling prices were reduced and thus, the Commission observed no price suppression, but an appreciation in the contribution margin in late 2003.



The analysis used was predicated on the assumption that once a business is able to maintain its gross profit contribution margin, the consequent dollar value of gross profit is likely to cover fixed operating costs which are normally included in price setting unless there are significant changes in the cost structure. In order to ensure that the possible effects of significant changes in fixed operating costs were not ignored, the Commission looked further at the annual breakeven requirements. The Commission's assessment of the breakeven and actual profits above breakeven is to ensure that while the Applicant is not currently experiencing price suppression on its contribution margin, it is not absorbing increased fixed operating costs that would require an increased contribution margin to cover those costs.

The Commission found, on the basis of this assessment, that the Applicant achieved increasing percentages above its breakeven level and consequently growth in the profit percentages for the period 2000 to 2003. The Commission also found that in spite of the price suppression in late 2000 into 2001, the Applicant experienced increased margins in 2003 and has also been able to cover its operating costs and show growth in its profits over its breakeven requirements.

## **B. VOLUME EFFECTS**

Volume effects refer to changes in the pattern of imports of the investigated product and its absolute and relative effect on the domestic industry.

### **1) PRODUCTION**

With the introduction of imported cement into the Jamaican market place in 1999, the Applicant's production levels declined relative to its 1998 production levels, and it was not until 2001 that production surpassed the 1998 levels. The Applicant's 2002 production levels showed a three percent (3%) growth over the 2001 period, but 2003 production levels showed a one percent (1%) reduction over the 2002 production levels. This is to be considered against the background of a four percent (4%) growth projected by the Applicant.

### **2) UTILISATION OF CAPACITY**

Based on rated cement capacity of 1.1million MT per annum, the Applicant recorded production utilisation of just over one half in 2001, increased this in 2002 and reduced same in 2003 due to reduction in production quantities. The Applicant increased its utilisation of capacity for clinker production, from eighty-four (84) percent in 2001 steadily to almost fully utilising its capacity in 2003. In addition, the Applicant's utilisation of real cement production capacity based on the limits to its clinker production capacity increased from eighty-four (84) percent in 2001 to ninety-three (93) percent in 2003,<sup>25</sup> demonstrating an increase in the Applicant's utilisation of clinker capacity.

### **3) INVENTORY**

The Applicant alleged that its inventory levels have risen as a result of the imports. The evidence provided by the Applicant showed that indeed its inventory levels of clinker in the first half of 2003 increased by an average of fifty percent (50%) percent of inventory levels for the entire

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<sup>25</sup> Real cement production capacity means the level of cement production when the use of domestically produced clinker is maximised. Without the Applicant increasing clinker production its rated clinker capacity it will not be able to produce the required quantities of cement for the market without importing clinker.

2001 period. In addition, the Applicant's carrying clinker inventory for July 2003 represented a 107 percent increase over its average monthly inventory levels for the 2001 period.

Cement and clinker can only be held in inventory in limited quantities and for limited periods of time.<sup>26</sup> For this reason the Applicant coordinates clinker production with cement production and limits the length of time that clinker remains in inventory. The Applicant usually held clinker in inventory to produce one month of cement. In 2003, clinker inventory increased so that quantities amounted to two and one half months of cement production. The Commission is of the view that it has been sufficiently demonstrated in its examination of the facts that increased imports have resulted in the Applicant not being able to dispose of the level of cement it had expected to, resulting in the holding of large quantities of clinker.

#### **4) SALES FROM DOMESTIC PRODUCTION AND MARKET SHARE**

The Commission also looked at the effect of the increased importation of cement on the Applicant's sales volume and market share. The data on record showed that the Applicant's sales volume from its domestic production grew by two percent (2%) in 2002 but declined by three percent (3%) in 2003 when compared to 2001. This is against the background of growth in the market: a two percent (2%) growth in 2002 and an eleven percent (11%) growth in 2003.

With regard to market share, the Applicant maintained eighty-six percent (86%) of the market while imports maintained the remaining share of fourteen percent (14%) (In which years, up to 2002?). In 2003, the reduction in sales volume of domestic production in a growing market saw the Applicant's market share reduced to seventy-five percent (75%). On the other hand, Mainland's combined sales of cement from Indonesia, China, and Argentina grew by thirteen percent (13%), while ARC'S sale of cement from Egypt grew from one percent (1%) in 2002 to twelve percent (12%) in 2003.

### **C. ECONOMIC IMPACT**

#### **(1) PROFITS**

The Commission looked at the profits recorded by the Applicant and the effects of the increased imports on the amount, level and improvements in those profits. The measurement of profits focused on net profits before exceptional items and before taxes. This is to ensure that only profits related to normal operations are considered and that any contributions or deductions caused by other circumstances are excluded. The Commission paid particular attention to the operating results of the Applicant for the comparative years of 2001 to 2003. To ensure that it considered only the results relating to sales in the Jamaican market, the Commission removed all contributions from the sale of imported cement by the Applicant in the Jamaican market as well as contribution or losses relating to all export transactions.

Against the background of a three percent (3%) reduction in sales volume of domestically produced cement, the Applicant, by hedging its pricing policy against the devaluation of the Jamaica dollar and the maintenance of its contribution margin, was able to improve its local sales revenue by six percent (6%), up to \$3.89 billion from \$3.66 billion in 2002. Net profits before exceptional expenses on

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<sup>26</sup> Applicant's August 29, 2003 submission

domestic cement grew by twenty–six percent (26%) in 2003 in actual Jamaican dollar terms. However when viewed in US dollar terms and the contributions from sales of imported and exported cement are removed, the net profit before exceptional expenses grew by four percent (4%). Additionally when the net profit before exceptional expenses is expressed as a percentage of sales, the growth is a constant two percent (2%); thirteen percent (13%) in 2003, up from eleven percent (11%) in 2002 and nine percent (9%) in 2001. Based on these results in absolute terms, the Commission observed no negative impacts on the domestic industry’s profits.

Although the Applicant showed improvements in its profits in the face of declining sales volumes and loss of market share, the Commission considered the economic impact relative to the growth of the Jamaican market. The Applicant kept pace with the growth in the market in 2002. However, in 2003, while the market was growing by eleven percent (11%), the Applicant lost three percent (3%), which converted into eleven percent (11%) in market share. To quantify the effect of these losses, the Commission looked beyond the actual absolute results to a measurement relative to what would be reasonable returns based on the size growth and returns of the market. With the growth in the market, if the domestic industry were not hindered in maintaining pace in 2003, as it did in 2002, it would have gained the improved returns that now accrued to the imported cement because of the increased portion of the market now supplied by imported cement. The Commission is of the view that in a growing market, where some members of the industry are showing growth, which is linked mainly to the growth of the market, and only one is showing decline, without any exceptional circumstances, this retardation should be viewed as injurious to its business.

The Commission in attempting to provide a notional look at what would have been the results if the domestic industry did not suffer the volume effects discussed above utilised a “But For Analysis” outlining the likely position of the Applicant if it had been allowed to maintain its percentage of the growing market in 2003.

This analysis showed that the Applicant would have improved its revenue by \$580 million, its net profits by \$213 million and its net profit as a percentage of sales to sixteen percent (16%) instead of the thirteen percent (13%) recorded.

## 2) RETURN ON INVESTMENT

One of the main measurements of a business’s viability is the measure of its profitability, which is the value of the profits earned when viewed in terms of the level of the investments made to achieve those profits. Profitability is measured mainly by analysing the Return on Investments (ROI) achieved by the business. ROI is the expression of the returns of a business, normally represented by net profits before exceptional items and taxes as a percentage of investments, normally represented by the capital employed or total fixed assets. Capital employed is generally used in businesses that are heavily geared and are not capital intensive. The Commission noted that total fixed assets normally were the best indicator of the level of investments in a capital-intensive business with long-term fixed assets, such as the Applicant’s. Therefore, the ROI method used is the annual value of net profits before exceptional expenses, expressed as a percentage of total fixed assets.

For 2003, the ROI improved from eighteen percent (18%) in 2002 to twenty percent (20%). While profits increased in absolute terms by twenty–six (26) percent. When viewed, however, in

relation to the value of the assets employed to achieve these results, the Applicant's profitability as expressed by its ROI improved by only two (2) percentage points.

Based on the notional results in the "But for Analysis", the Commission found that but for the presence of the increased imports in the market, the ROI would have been 28 percent.

### 3) CASH FLOW

The Commission also looked at the impact of changes in profits on the liquidity and cash reserve position of the domestic industry.

#### a) LIQUIDITY

Liquidity measures the company's ability to meet short-term financial requirements (current liabilities) from its short-term resources (current assets). This is normally measured by the expression of its current liabilities as a percentage of its current assets. The data on record for the Applicant with respect to the comparative monthly current liabilities and the corresponding current assets for 2002 to 2003 shows a gradual increase in the current assets level to a point at the end of 2003 where the current liabilities were adequately covered. In addition, the current ratio shows improvement to ninety (90) percent during 2003, up from eighty-three (83) percent in 2002, and sixty-two (62) percent in 2001.

#### b) CASH RESERVES

The net cash position for 2001 to 2003. In 2002, the industry was in a positive net cash position. However, there was a reversal which resulted in the use of overdraft facilities at the end of 2003. The Commission attributed this reversal to the effects of capital investments made in 2003, rather than to operating cash outflows.

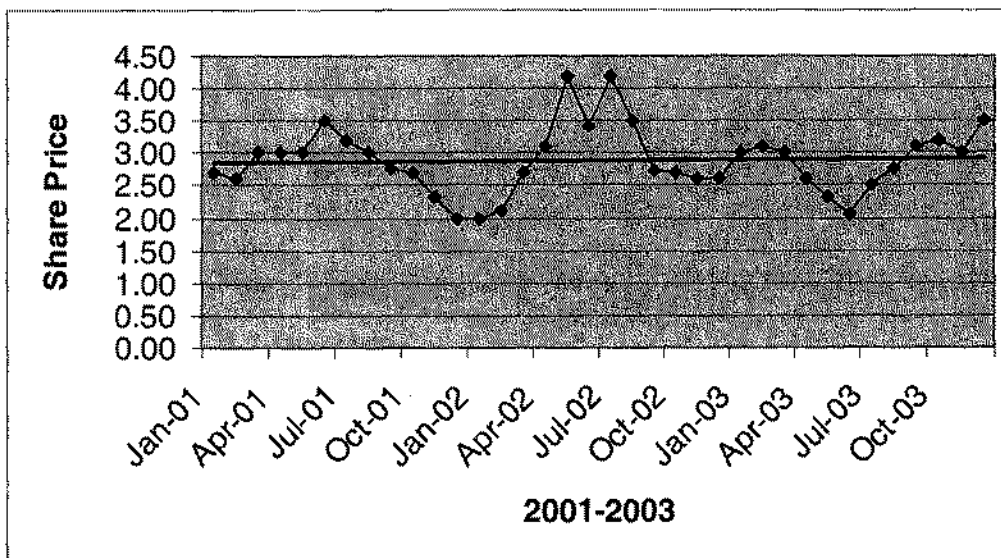
### 4) ABILITY TO RAISE CAPITAL

The Commission also looked at the impact of the increased imports and their effects on the operating results discussed above on the Applicant's ability to raise capital. This included an examination of the share price on the equities market by the sale of shares, as well as making an assessment of the strength of the company's ability to raise funds from the capital market through long-term borrowing.

#### a) SHARE PRICE

Share prices reflect the market's valuation of a company, and are an indicator of investors' confidence in the ability of an organisation to maintain a certain level of stability and profitability. Chart 1 shows the movement in Applicant's share price for 2001 to 2003.

**Chart 1**



For the period under consideration the share price trended slightly upwards with an average price of just under \$3.00. There were periods in 2002 and 2003 when the price fell below \$2.50 but in both cases, it recovered to above the average. The second half of 2003 showed a growth trend and closed December 2003 at \$3.50. This would indicate that the Applicant's shares remained an equity item in which the public is generally willing to invest. This suggests that it would still be possible for the Applicant to raise capital from the equities market. However, the Commission notes that only a small percentage of the Applicant's stock is publicly traded, the balance being in the hands of majority shareholders. Therefore, the Commission concluded that the stability of the share price was not in this case a good indicator of the company's ability to raise substantial amounts of capital on the equities market.

**b) LONG TERM BORROWING**

The company's ability to raise funds from the capital market through long-term borrowing was examined and the Commission is of the view that there were negative effects of increased imports on the operating results of the domestic industry and on its ability to engage in long-term borrowing. While the company's share price on the listed market can be used to show how investors view the strength of the company it is not a sufficient tool to determine the company's ability to raise capital. This is against the background that only approximately 10 per cent of the company's shares are listed and that it is likely that the company would seek to raise funds on a long-term basis either from the majority shareholders or a financial institution, or from some combination of the two.

During the POI the domestic industry did not require the use of long-term debt in its operation and all short-term borrowings were adequately provided for from its operating overdraft facilities. The requirement for access to significant long-term borrowing does appear to be negatively affected by the increasing amounts of imports in the market.

The Applicant argued that the approval of the long-term financing arrangement which it is seeking internationally requires the projected profits and cash flows that will not be achievable if imports continue to grow at the current rate. The Commission is of the view that the increased imports in the market have altered the Applicant's attractiveness to lenders. Therefore, the

Commission finds that there were adverse effects on the domestic industry's ability to engage in long-term borrowing.

5) **INVENTORY**

The Commission's review of the injurious effects relating to the holding of excessive levels of inventory focused not only on the inventory levels of cement but also on the inventory levels of clinker and the combined effects on the performance of the Applicant. While the average monthly carrying levels of cement have declined, average monthly levels of clinker inventory increased significantly over the period.

The individual linear analysis of cement and clinker depicted in the Chart above shows that while the Applicant maintains a constant level of cement inventory, there has been a significant growth in the carrying levels of clinker inventory.

The Applicant indicated that cement and clinker can only be held in inventory in limited quantities and for limited periods of time.<sup>27</sup> For this reason, the Applicant coordinates clinker production with cement production and limits the length of time that clinker remains in inventory. Historically, the Applicant held clinker inventory to ensure it is able to produce one extra month of cement requirement; however in 2003 the growth in the levels of clinker inventory allowed for closer to two and a half months of cement production. Inventories of finished cement likewise have a logical limit.

The Commission is of the view that the unusual carrying inventory level of clinker indicates that that the imports have affected the Applicant's production of cement.

6) **PRODUCTIVITY, EMPLOYMENT AND WAGES**

The Commission also examined the effects on employment, wages and the productive contribution of those employees as well as the productivity of the Applicant's assets.

a) **PRODUCTIVITY AND EMPLOYMENT**

The data on record showed that the number of employees increased to 318 in 2003 up from 290 in 2002 and 286 in 2001. Productivity per employee, based on cement production, declined by ten percent (10%) in 2003 after a two percent (2%) improvement in 2002. As a result of the fact that the production of cement is dependent on the movement in sales, the Commission also looked at productivity based on clinker production. On the basis of clinker produced, there was a three percent (3%) increase in productivity in 2003, which followed a three percent (3) percent increase in 2002.

The productivity measured by level of capital invested showed similar results to that of employees. Based on the increase in investment in fixed assets and the reduction in cement production, productivity based on cement production fell by ten (10) percent in 2003 after a four (4) percent improvement in 2002.

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<sup>27</sup> Applicant's August 29, 2003 submission in case SG-01-2003, p.24

b) WAGES

Wages paid to production workers<sup>28</sup> in 2003 increased by twenty-one (21) percent over 2002 and hours worked by production workers increased by nine (9) percent. This is primarily as a result of the increase in production of clinker discussed earlier.

**D. SUMMARY OF SERIOUS INJURY/INJURY ANALYSIS**

The Commission found injurious effects in price undercutting and price depression but not in price suppression. The injurious effects on volumes were significant in production but not in the utilisation of capacity. The Commission also found injurious effects in inventory, sales and market share. Negative effects related to the increase of imported cement were also seen in profits and return on investments, but not in cash flows nor in productivity, employment and wages. Though the Commission did not specifically find injury to the ability to raise capital, it found injurious effects on factors having an impact on the ability to raise capital, but credited the argument of the Applicant in this regard as being reasonable and probable. Moreover, the Commission found that the injurious effects of these factors would signal a looming threat to the ability to raise capital.

Further, the Commission found that the injurious effects described demonstrated some level of actual injury to the domestic industry. However, the Commission did not find that the injury suffered by the domestic industry was yet sufficiently deep to meet the standard, "serious."

**XII. THREAT OF INJURY**

In accordance with section 23 of the Act, and Article 2 of the WTO Agreement on Safeguards the Commission is required to determine whether an identified increase in imports threatens to cause serious injury to a domestic industry.

In examining this issue, the WTO Appellate Body has observed that, "[D]ata relating to the most recent past will provide competent authorities with an essential, and, usually, the most reliable, basis for a determination of threat of serious injury. The likely state of the domestic industry in the very near future can best be gauged from data from the most recent past."<sup>29</sup>

In examining the issue of threat of injury, the Commission addressed factors relating not only to the ability of exporters to supply the Jamaican market, but the factors that underlie the demand by importers for imported cement, to assess the likelihood of increased imports. In addition the economic indicators of the present state of the Applicant are examined to see if their situation could potentially worsen.

The Commission, therefore, used a two-pronged analysis: (1) the Commission engaged in an examination of the factors that point to the potential for increased imports, taking into consideration both demand and supply influences and (2) the Commission examined whether and how the potential developments with respect to imports threaten to cause serious injury to the domestic industry, and if that is clearly imminent. Using this approach, the Commission found that the industry is subject to a threat of serious injury.

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<sup>28</sup> Applicant's March 25, 2004 submission

<sup>29</sup> AB Report US-Lamb, para. 137.

### **XIII. EVALUATION OF THREAT OF SERIOUS INJURY**

#### **A. ACTUAL AND POTENTIAL EXPORT CAPACITY AND AVAILABILITY OF OTHER MARKETS TO ABSORB INCREASE**

The countries from which imports entered the Jamaican market to major suppliers other than the Applicant, between 1999 to the present, are Egypt, Russia, Argentina, Thailand, Indonesia, and China.<sup>30</sup> The Commission looked at capacity issues in the named countries as well as market availability issues globally and with respect to major cement exporters' markets.

#### **B. EVALUATION OF CAPACITY**

To examine the actual and potential export capacity of the countries named, the Commission analysed data on actual export performance, changes in inventory, changes in the level of domestic demand in those countries, and the excess of exporters' production over domestic demand. The existence and extent of capacity in the named countries demonstrates the ability to increase the supply of exports to Jamaica to meet whatever demand arises. WTO jurisprudence indicates that it is not sufficient to show that this capacity exists, but the probability that it will be channelled to Jamaica.

#### **China**

The Commission examined the characteristics noted above with respect to China and notes that since 1985, China has been the world's leading producer of cement. China now produces over one third<sup>31</sup> of total global output. The importance and the magnitude of Chinese cement operations can be better understood when one considers that the next three largest producers, the United States ("U.S."), India, and Japan, produce less than 20 percent of the world's cement. The Commission notes also that the cement industry in China is fragmented and consists of between 8,000 and 9,300 cement plants, of varying sizes. There is also variation in capacity. It is estimated that of the total producers in China, about 570 have production capacities above 275,000 tonnes per year.<sup>32</sup> Currently, approximately 40 enterprises in China have annual capacities of over 1 million tonnes. This compares with the one million MT capacity that the Applicant claims.<sup>33</sup> As can be seen from the table below, (Table 2), producers also have significant unused finished cement production capacity ("UFCPC").

China is the second leading exporter of cement in the world, accounting for about seventeen percent (17%) of the total world cement trade.<sup>34</sup> Exports of cement from China significantly exceed imports, and it is expected that this will remain the case. These exports have been growing steadily after declines in 1998 and 1999. With the move to modernise the cement

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<sup>30</sup> Anti-dumping measures were imposed by Jamaica against Thailand, Indonesia and most recently, China. Measures were imposed against China in 2004 and not during the Period of Investigation.

<sup>31</sup> This figure is projected to increase to about 40 percent by 2010.

<sup>32</sup> Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p. 16.

<sup>33</sup> The Daily Gleaner, Jamaica, Article, September 21, 2003.

<sup>34</sup> China's largest customer is the U.S. (42 % of all exports). The other major markets for Chinese cement are Taiwan (37.64 % of all exports), and Hong Kong (1.38 % of all exports).



industry in China,<sup>35</sup> there will be significant excess production to channel into overseas markets, notwithstanding projected increased domestic demand. It is projected that cement output will increase by 3.4 percent annually during China's 2001 to 2005 five year plan and 2.9 percent annually during the 2006 to 2010 five year plan.<sup>36</sup> Planners in China anticipate producing 660 million tons by 2005, and as of 2002, this target has been surpassed, 750 million tons by 2010 and 800 million tons by 2015. It is projected that China will be the largest market for cement machinery at least until 2010.<sup>37</sup> The Commission also notes that OPC Type 1, the type China has supplied to the Jamaican market represents approximately 96.5% of total cement production in China.<sup>38</sup> The Table below also indicates that China's production in every year examined exceeded domestic demand, hence facilitating the exports of cement in subsequent years.

**Table 2<sup>39</sup>**

Mn of MT	1997	1998	1999	2000	2001	2002
China						
UFCPC x 1.08	46.20	52.60	40.50	87.10	75.50	129.60
UFCPC x 1.1	47.06	53.57	41.25	88.71	76.90	132.00
<b>Cement</b>						
Production	515.00	534.40	565.00	586.00	640.00	700.00
Imports	0.20	0.20	0.00	0.00	0.00	0.10
Total Sales	515.10	534.60	564.80	588.80	594.10	703.60
Domestic Sales	501.00	526.00	557.00	583.00	588.00	696.00
Export Sales	14.10	8.60	7.80	5.80	6.10	7.60
Estimated change in inventory (+= addition, - = draw down)	0.10	0.10	0.30	-2.50	43.40	39.90
% change in exports		-39.01%	-9.30%	-25.64%	5.17%	24.59%
Domestic Production less Domestic Demand	14.00	8.40	8.00	3.00	52.00	4.00

Source- CCCL Foreign market Consultant Report and Commission's Calculations -Exhibit A of September 1, 2003 submission.

While the growth figures provided by producer, Longkou, differ slightly from projections from other sources, the Commission observes that all sources indicate significant growth in both capacity and production.

The Commission observes the range of Shandong's export prices per MT FOB from 1999 to the present, and that Jamaica has been reported to have been charged the highest export price out of all the countries that they have exported OPC Type I to in the past. The exporter explains that differences in price arise because of different grades of quality, and packaging. The Commission examined prices to Jamaica and found prices claimed to be of a particular amount per MT on invoices provided, but was satisfied that the price charged was significantly lower, as supported by other information on record.

<sup>35</sup> Applicant's September 1, 2003 Submission, Volume I of I, Appendix D, and Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development.

<sup>36</sup> Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p.9.

<sup>37</sup> Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development.

<sup>38</sup> Shandong's November 21, 2003 Submission in case SG-01-2003, page 14.

<sup>39</sup> The data used for these tables were taken from Applicant's September 1, 2003 Submission in case SG-01-2003 and were checked against third sources and varied slightly but for the most part were similar and exhibited similar trends.

The Commission also observes the developments in the Chinese markets and industry, including the significant excess capacity and low prices as well as its selling arrangements that make it attractive for Jamaican suppliers of cement wishing to identify a source of cement overseas. The Commission took note of the fact that prior to the preliminary determination in this case, an exporter from one of the subject countries had projected that it would export a significant amount of cement to Jamaica during the period covered by the Applicant's adjustment plan. These projections were later revised, and it was thereafter noted that the particular exporter did not project further shipments to Jamaica, indicating that there were no additional orders at the time. The Commission notes however, that in 2002 and 2003, Jamaica was Shandong's principal export market and the market from which it obtained the highest price for its goods.

### **Indonesia**

In examining the cement industry in Indonesia, the Commission found that the Indonesian cement industry consists of nine companies, six of which are government-owned. The industry has historically been dominated by three companies: Indocement, PT Semen Gresik ("Semen Gresik") and PT Semen Cibinong ("Cibinong"), which together control over 90% of domestic production capacity. As of December 31, 2000, total annual production capacity in Indonesia's cement industry consisted of approximately 47.5 million tonnes, over 38% of which was controlled by the government.

The Commission noted that the Indonesian cement industry was previously heavily regulated by the government by such mechanisms as the imposition of local retail guideline prices (HPS), export quotas, and expansion permits. The government also influences the cement industry through the direct ownership of various cement producers. However, as part of the recent IMF reform package, the Commission observed that the Government has moved towards a full market structure and has removed the regional retail guidance prices and export quotas.<sup>40</sup>

The data on record shows that Indonesia's production has exceeded domestic demand in each of the years examined, which has facilitated its exports of cement. Indonesia is a net exporter of cement. Currently, it would appear that imports of cement from Indonesia into Jamaica are not a significant threat against the Applicant. This situation is likely to remain until the expiry of anti-dumping measures currently in place against Indonesia. However, there is a high level of UFCPC which indicates significant pressure to export. In addition, the Commission notes that since the financial crisis in 1997, Indonesian firms have been aggressively pursuing export-oriented strategies, and so has remained a net exporter of cement.

### **Russia**

The Commission found that Russia's cement industry is expanding. It is predicted that growth will increase to double digits in a few years contingent on investment in modernising.<sup>41</sup> Novoros Cement, the company that supplied Bolide, is one of the top five Russian producers.

The data on record shows that Russian cement exports declined dramatically and have not shown any significant growth since 2000. This was largely a result of the imposition by the Ukraine of a special

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<sup>40</sup> [www.indocement.co.id/en/cement-industry.asp](http://www.indocement.co.id/en/cement-industry.asp)

<sup>41</sup> Ernst and Young (May 2003), Eye on Russia.

duty. In addition, Russian companies exported most cement to Kazakhstan, Azerbaijan, Ukraine, and Belarus. Cement exports were less than 0.2 percent of total production as in previous years and had little impact on the Russian market.<sup>42</sup>

Russia, as in the cases of the other countries examined in this report, has production levels in excess of domestic demand. While the data suggest that Russia as at 2002 was not experiencing significant export growth, it is noteworthy that it is giving the world's largest producer China, fierce competition in the United States (U.S.) market.<sup>43</sup> Although Russia has not significantly increased its capacity in recent years and there is significant under-utilisation, the Commission is of the view that the evidence shows that Russia has the potential to be a significant exporter.

### **Thailand**

The Commission's review of Thailand revealed that in 1997, Thailand became a net exporter of cement, as domestic demand fell off due to the financial crisis. Currently, Jamaica and Trinidad and Tobago have anti-dumping measures in place against cement from Thailand. Also, Thailand has in the past been found to be dumping in a number of jurisdictions, and to the extent that the dumping margin is indicative of an ability to offer cement overseas at very low prices, this does not remove the possibility, notwithstanding measures in place against Thailand, that export prices can still be lowered. The Commission was persuaded that this is so because of very aggressive strategies that were evident on the part of the industry to increase exports.

### **Egypt**

The Commission observed that Egypt has experienced significant increase in its capacity in recent times. Coupled with a relatively flat domestic market demand in that country, this points to a significant incentive to export. In fact, with steady increases in its production, Egypt has moved from being a net importer of cement to a net exporter, as of 2002. This is due partly to improvements made, leading to the growth in production exceeding the growth in domestic demand.<sup>44</sup> It is also projected that production of all types of cement will continue to grow because of an effort to increase the rate of capacity utilisation. Specifically, total cement production capacity is expected to be on average approximately 36 million MT in each year up until 2007.<sup>45</sup> It has also been indicated that Egypt has significant export potential because it has access to global trading networks and good available logistics. The devaluation of its currency and low production costs also signal this potential.<sup>46</sup> Due to significant industry developments in Egypt since 2002 and prospective increases in its rate of capacity utilisation, the Commission considers that Egypt will continue to be a significant exporter of cement.

### **Argentina**

The Commission noted that Argentina produces around 7.2 million tonnes of cement,<sup>47</sup> with a clinker production capacity of about 11 million tonnes. Cement producers are Cements Avellaneda, Grupo Minetti, Loma Negra C.I.A. S.A., and Petroquímica Comodoro. Loma Negra

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<sup>42</sup> <http://www.cemnet.co.uk/trading.htm>

<sup>43</sup> Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p. 24.

<sup>44</sup> Sinai's December 23, 2003 submission in case SG-01-2003, Appendix 7, page 8.

<sup>45</sup> Sinai's December 23, 2003 submission in case SG-01-2003, Appendix 7, page 15.

<sup>46</sup> Sinai's December 23, 2003 submission in case SG-01-2003, Appendix 7, "Cement in Egypt- Current Situation and Future Prospects- Ahmad Heshmat".

<sup>47</sup> 2000 estimates.

was the leading producer with about 60% of the country's clinker capacity. This is the producer that has supplied the Jamaican market, and holds a 50% share of Argentina's domestic market.<sup>48</sup> In May 2000, Loma Negra completed the construction of a new distribution centre in Vicente Casares near Buenos Aires at a cost of \$36 million,<sup>49</sup> with a silo capacity of 18,000 tonnes, and a mixer that can produce 250 MT of cement per hour. Additionally, the Commission noted that the mixer at the facility can produce different types of cement and can change from one to another in thirty (30) minutes. Mainland has indicated that it believes that Loma Negra is capable of meeting the demand for different types of cement, due to recent improvements in its plant. In addition, the geographical proximity of Latin America makes it an attractive source of cement imports to the Caribbean especially in a context of rising shipping costs. Although Mainland had indicated it had four orders from Argentina pending, the first to arrive in early 2004, these orders did not materialise. Mainland has, instead, imported cement from Egypt in 2004.

### **C. EVALUATION OF AVAILABILITY OF OTHER MARKETS TO ABSORB AN INCREASE**

Another factor the Commission must consider is whether there are other markets to absorb the likely increase in imports from the above sources. To analyse this factor, the Commission considered developments with respect to demand in major cement importers, as well as globally. Additionally, the Commission considered whether there were any significant barriers to the importation of cement in these markets that could possibly have a trade-diverting influence. The Commission is mindful also that because of the small size of the Jamaican market relative to other markets, the availability of such other markets does not rule out the possibility of increased imports to Jamaica.

#### **1) DECLINING DEMAND IN THE U.S. MARKET**

The Commission's research led it to conclude that the US is the country which imports the largest quantity of cement. Reduced demand in the U.S. market for cement was evident at the end of 2002.<sup>50</sup> Information provided by the Applicant<sup>51</sup> showed that Portland cement consumption during 2003 has registered declines. Given the importance of the U.S. market to many major producers of cement, there is an increased likelihood that alternate markets will be sought by cement exporters.

A major export market for the exporters of cement is the USA, though not for OPC Type I, the kind that is usually exported to Jamaica. However, given that Shandong is only one of a number of cement exporters in China and the ability of producers to change product, the Commission still treated as significant the changes in the United States market.

The Commission concluded after study of the capacity worldwide to supply the Jamaican market, that this factor indicates the presence of conditions likely to manifest a threat of injury to the Applicant.

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<sup>48</sup> International Cement Review, 2001, p. 52-54.

<sup>49</sup> International Cement Review, 2001, p. 52-54

<sup>50</sup> [www.cemnet.co.uk/globalsummary.htm](http://www.cemnet.co.uk/globalsummary.htm)

<sup>51</sup> Applicant's November 17, 2003 submission in case SG-01-2003, page 21 and Exhibit C.

## 2) TRENDS IN GLOBAL CEMENT DEMAND

It is estimated that world production and consumption of cement grew by an estimated two percent (2%) in 2003 over its 2002 levels, a continuation of the year on year growth recorded since 1975.<sup>52</sup> Against this background, there has been large-scale overall import decline in North America, though positive development has been projected with respect to overall global consumption of cement,<sup>53</sup> and an expansion of 33.5 percent.<sup>54</sup>

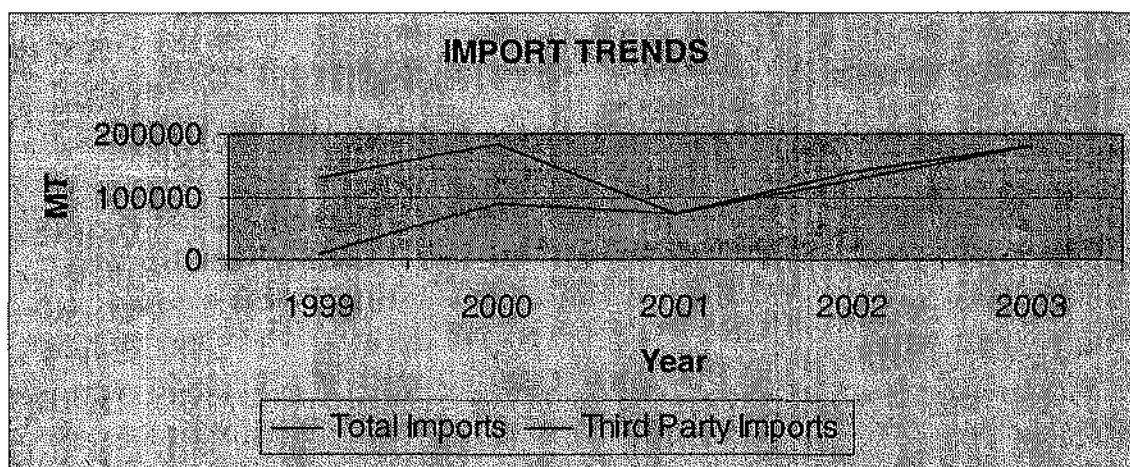
## 3) BARRIERS TO IMPORTATION OF CEMENT IN OTHER COUNTRIES

The Commission has found that there are few tariff restrictions on the importation of cement, globally, as noted below.

## 4) RATE OF INCREASE OF IMPORTS IN ABSOLUTE AND RELATIVE TERMS

As can be seen from the Chart below, total imports<sup>55</sup> of cement into Jamaica after declining in 2001, increased in 2002 and continued to increase in 2003. Third Party imports<sup>56</sup> displayed a similar trend over the period of investigation.

**Chart 2**



Third party imports have been increasing as a percentage of Applicant's production, being most significant in 2003. An examination of total imports including those of the Applicant indicates that 2000 was the year in which imports accounted for the largest share of production. However this is not representative, given that imports in that year were largely be accounted for by Applicant's own imports, used to supplement its production during a time of repairs.

<sup>52</sup> [www.findartciles.com](http://www.findartciles.com), "Internationally traded cement poised to expand, says report".

<sup>53</sup> [www.findartciles.com](http://www.findartciles.com), "Internationally traded cement poised to expand, says report". [www.forestprod.org](http://www.forestprod.org) "General Raw Material Demand Trends"

<sup>54</sup> [www.findartciles.com](http://www.findartciles.com), "Internationally traded cement poised to expand, says report".

<sup>55</sup> Total Imports are imports of Applicant, Mainland, Bolide and ARC.

<sup>56</sup> Imports of Mainland, ARC and Bolide.

5) **BUILD UP OF INVENTORIES (JAMAICA AND EXPORTING COUNTRIES)**

The availability of inventories of the goods under consideration indicates the future extent of market share changes. Generally, when a shipment of cement has been imported the market does not absorb all the goods on the same day or in the same month. The information on record suggests that, by the end of 2003, Mainland was not holding inventories of imported cement. The Commission had no information on record for ARC regarding inventory levels.

Inventory levels in the exporting countries are evaluated using both actual data on inventory as well as unused finished cement production capacity (UFCPC). The UFCPC for all the countries examined is significant. Additionally, the countries examined do not exhibit significant build up in inventory over a long period of time. Rather, the state of inventory in most countries indicates that cement is moved fairly quickly.

Specifically, estimates showed that there were no significant changes in inventory with respect to Thailand and Egypt for the period 1997 to 2002, indicating the strong ability to off load production either locally or overseas. China, with its enormous volumes and capacity, has shown some build up in inventories that can be channelled into overseas markets. The Commission further notes that all the countries examined are net exporters of cement.

6) **EVIDENCE OF POSSIBILITY OF FURTHER INCREASE IN IMPORTS**

To analyse the possibility of a further increase in imports, the Commission looked at factors that would point to additional demand and the potential to increase supply.

**Financial Incentives.** The Commission is of the view that financial incentives exist for the importation of cement into Jamaica based on the low prices available from producers in the exporting countries examined. These incentives are likely to continue and make it likely that there will be new local suppliers trying to break into the market by supplying cheaper imported cement in the future.

Information received from Mainland regarding its costs and margins were verified from the source documents provided. The data suggests that Mainland's margin on the Argentinean shipment was just below 13 percent (13%). The information for China differed slightly, but showed that a margin of between 22% and 27% was made on the Chinese shipment.<sup>57</sup> Information on the record [from the exporter in China], however, suggested that the actual U.S. dollar per MT FOB price to Jamaica was substantially lower than that quoted on Mainland's documents. The Commission recalculated the cost to import the same volume at the same time at this lower FOB price. The recalculation showed that at this lower export price Mainland would have actually made a margin of approximately 32 % on its sale of Chinese cement. The margins that importers make on imported cement are significant and represent not only a strong indication that they will continue to import, but also are an indication of the extent to which they can affect the domestic industry through prices and the extent of import penetration that can take place, given the ability to absorb higher duty levels.

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<sup>57</sup> Mainland appeared to have realised lower margins on the Argentina shipment than on previous product, which are reflective of an increase in shipping costs. See, Mainland's November 10, 2003 Submission in case SG-01-2003 page 33.

**There is the potential for product shifting to additional production facilities.** Where a producer can engage in product shifting, no additional costs or time have to be incurred in moving into production of the goods under consideration, thereby making supply more elastic. This would mean that any producer of cement in the world that has this ability could produce and sell cement to the Jamaican market on demand. As shown from examining this factor for Argentina, the process takes approximately thirty minutes. The Chinese and Egyptian producers<sup>58</sup> have also indicated that it is possible to use the same equipment and machinery to produce different types of cement. The Commission is of the view that the ability to product shift, whether or not actually practised, makes the supply of cement imports more responsive and gives foreign producers the ability to supply to the Jamaican market as circumstances dictate.

**The nature of the global cement industry is fierce competition, high volumes and global networks.** At the end of 2002 it was estimated that the global cement industry included 1, 447 integrated production facilities.<sup>59</sup> This makes it possible for any cement producer in the world to easily move its product from region to region. The incentive to do this is dictated by the need to increase market share and obtain economies of scale required to make cement production profitable.<sup>60</sup> The evidence on record shows that there is sufficient capacity in the countries from which imports have been entering the Jamaican market through third party sources. In addition, as discussed below, there is significant global capacity.

**Global Cement Capacity is also expected to increase significantly**<sup>61</sup> The Commission finds that global Cement Capacity is also expected to increase significantly and outpace consumption. This means that a gap will exist and major producers will take any opportunity to narrow this gap by expanding into markets around the world. At the end of 2002, global capacity was estimated at 1787 million tons. Producers in the Asia/ Pacific Region are projected to remain the dominant cement producers.<sup>62</sup> The significance of examining global capacity is to assess if demand can be met by overseas sources. Given the current capacity in individual countries and globally, and given the volumes required to satisfy local demand, it is possible, and even likely that this capacity would be channelled to Jamaica to the extent that demand exists.

**Jamaican Market Developments** – The Commission finds that consumption in the Jamaican market has been steadily increasing and projections are that this growth will continue towards the end of 2004. As can be seen from the Chart 3 below, the underlying long-term trend of imports and consumption is upward. Further, the correlations between consumption and total import sales and other import sales, respectively, over the period of investigation, are as follows, 0.630 and 0.998, which are positive and strong. Given the strong positive outlook for consumption towards the end of 2004 and the high level of correlation with total imported cement, imports of cements are also expected to increase, in the absence of measures.

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<sup>58</sup> Sinai's December 23, 2003 submission in case SG-01-2003, response to 2.8 and Longkou's December 4, 2003 submission in case SG-01-2003, response to 2.8.

<sup>59</sup> [www.cemnet.co.uk/globalsummary.htm](http://www.cemnet.co.uk/globalsummary.htm)

<sup>60</sup> Applicant's September 1, 2003, Submission in case SG-01-2003, Volume I of I.

<sup>61</sup> Applicant's September 1, 2003, Submission in case SG-01-2003, Volume I of I, P44.

<sup>62</sup> [www.the-inforshop.com/study/fd10872\\_world\\_cement.html](http://www.the-inforshop.com/study/fd10872_world_cement.html)

**Chart 3**

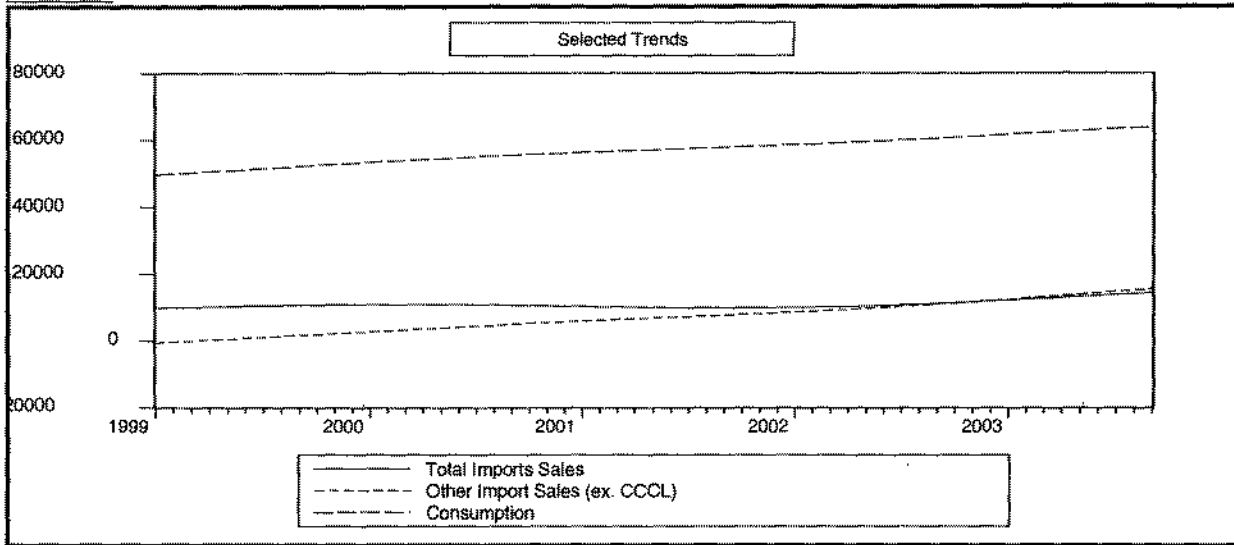
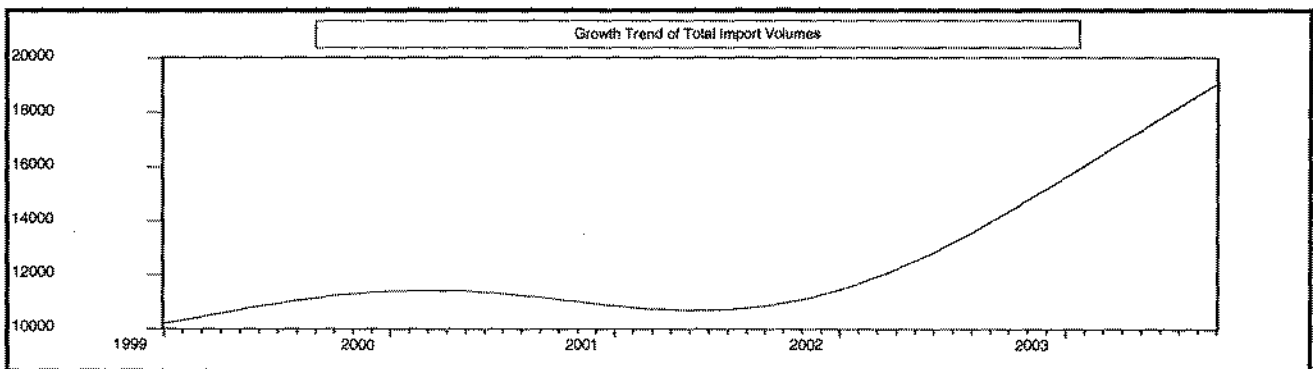


Chart 4 below, shows that the growth in the total volumes imported is also significant, with the growth in imports picking up significantly at the end of 2002 and into 2003. The Commission is of the view that this trend in consumption is likely to hold in 2004. The Commission also notes that even during the period while provisional safeguard duties were promulgated against cement imports, two importers imported cement in 2004 from Egypt.

**Chart 4**



**Export Performance of Exporters to Jamaica**

A country's export growth can signal productivity gains and a policy shift towards an international orientation. In addition, since cement is a capital-intensive industry<sup>63</sup> then greater

<sup>63</sup> It is estimated that a capital-intensive industry such as cement has a gestation period of three years.



economies of sale can be obtained by expanding into new markets, and hence the incentives to expand into export markets.

### Trade Restrictions on Exports to Third Country Markets

This factor is examined to assess the risk of trade diversion which points to a likely increase in imports into the Jamaican market. In assessing this factor, the Commission examined the range of trade remedies that are currently in place against imports of cement. The Commission found that no definitive safeguard measures have been imposed to date on cement by any WTO member.<sup>64</sup>

In respect of anti-dumping and countervailing measures, a review of WTO semi-annual reports reveal that currently seven members have anti-dumping measures on cement against eleven (11) countries, three (3) of which have been named in this investigation. These countries are Thailand, Indonesia and Russia. More recently, Jamaica has imposed anti-dumping duties against imports of cement from China. Lately, importers have sourced cement from Egypt.

**Table 3**

WTO ANTIDUMPING MEASURES ON CEMENT BY COUNTRIES OTHER JAMAICA							
Country Affected	Country Imposing	Date of Initiation	Product	Date of Provisional Measure	Amount	Date of Definitive Measure	Amount
Venezuela	Brazil	27.07.2000	Portland Cement				
Belarus	Latvia	23.01.2001	Portland Cement				
Estonia	Latvia	01.10.2001	Portland Cement	12.12.2002			
Mexico	United States		Grey Portland Cement	10.09.2002	74.78%	14.01.2003	73.74%
						13.02.2003	73.74%
Mexico	United States	25.09.2002	Grey Portland Cement				
			Cement Clinker	13.02.2003	71.77%		
Korea	Chinese Taipei	19.07.2001	Portland Cement			19.07.2002	110.97% - 126.81%
Philippines	Chinese Taipei	19.07.2001	Portland Cement				42% - 104.48%
Indonesia	Trinidad & Tobago	21.08.2001	Portland Grey Cement	24.07.02	48%		
Russia	Lithuania	04.04.2002	Grey Portland Cement	01.10.2002			
Russia		23.05.2003					
Belarus	Lithuania	25.04.2003					
Thailand	Trinidad & Tobago		Grey Portland Cement			02.03.00	

Source: WTO Semi-Annual Reports of various countries 2003.

### 7) POTENTIAL IMPACT OF INCREASED IMPORTS OF ON DOMESTIC INDUSTRY

The Commission examined the factors listed below in order to gauge the likely condition of the Applicant's business in the near future, based on present developments.

#### a) PRODUCTION

As indicated in the previous discussion on serious injury, the Applicant's production exhibited a decline for the first time in 2003, since 1999. This comes against the background of a four percent (4%) growth projected by the Applicant as well as an eight percent (8%) growth in consumption. It is also significant that the rate of growth of production has been declining since the end of 2001. An

<sup>64</sup> G/L/583- This report covers the period October 30, 2001 to October 28, 2002

examination of the long-term trend of monthly production<sup>65</sup> levels shows that it has been declining at an increasing pace. The Commission is of the view that if current conditions continue, it is not unreasonable to assume that production will continue to decline.

#### 8) UTILISATION OF PRODUCTION CAPACITY

The Commission observed that the Applicant's rate of capacity utilisation for cement increased after 2001 in 2002, then declined in 2003. This comes against the background of improvements in the Applicant's operations that allowed it to improve its rate of capacity utilisation in clinker production. If the domestic industry's rate of capacity utilisation continues to decline, this has negative implications for its unit costs of production and ultimately its profitability.

#### 9) CHANGES IN THE LEVELS OF INVENTORY

The Applicant limited cement inventories to approximately two weeks of sales, and there has been no significant build up of inventories of cement, except in 2003, notwithstanding less frequent downtime episodes, in that year. This comes against the background of increased imports in the market and the high level of coincidence between changes in Applicant's market share and importers' market shares. The Commission is of the view that if imports continue to increase there will be a further build up in Applicant's clinker inventory levels. While clinker has a longer shelf life compared to cement, the holding of these inventories will impose a cost on the Applicant.

### XIV. MARKET SHARE

The analysis of market share while examining the relative proportion of the market held by each player has to also take account of the growth in the market as a whole. While there is no entitlement to a particular market share, drastic declines in market share would be reflected in a lower level of sales. If the decline in sales is less than proportionate to the decline in prices, then sales revenue and profitability may be negatively affected.

As can be seen from the causal analysis there is a strong relationship between changes in the Applicant's market share and that of imports. The Commission is of the view that if imports increase, they will continue to erode the domestic industry's market share, given the negative price effects exerted on the domestic industry. The Applicant has projected<sup>66</sup> that if imports continue to grow, by 2005 its market share will fall to approximately 60.5 percent, sales by 28.2 percent and net profits as a percentage of sales will fall to 9.3 percent in 2003 and decline to a loss of 6.8 percent of sales value by 2004.

### XV. CHANGE IN THE LEVEL OF SALE

The Applicant's sales from its own production declined by an estimated three percent (3%) in 2003 over its 2002 levels. This decline is projected to continue if the Applicant continues to lose market share to imported cement.

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<sup>65</sup> The long-term trend is generated using a smoothing method (Hodrick-Prescott Filter) that is widely used among macroeconomists to obtain a smooth estimate of the long-term trend component of a series.

<sup>66</sup> The assumption underlying these assumptions does not appear to be unrealistic.

## **A. PRODUCTIVITY**

As indicated in the discussion regarding evaluation of serious injury, the Applicant's productivity declined by an estimated ten (10) percent in 2003 after having increased in 2002. The productivity of capital invested also shows a similar trend. The Commission is of the view that if imports continue to increase and the domestic industry's production continues to decline the domestic industry will experience a further decline in its productivity.

## **B. PROFIT**

The Applicant has continued to record improvements in its levels of profits. However this must be viewed in a context of a declining rate of growth of its sales revenue and market share that can be directly attributed to the presence of increased imports on the market. The Applicant estimated that it would lose an estimated US\$68,088 in profits for every 1 percent of lost sales.<sup>67</sup>

## **C. RETURN ON INVESTMENT**

The Applicant's ROI improved from eighteen (18) percent in 2002 to twenty (20) percent in 2003. Notwithstanding this improvement, the analysis reveals that, but for the presence of increased imports the domestic industry could have achieved an ROI of twenty-eight (28) percent.

## **D. CASH FLOW**

The data on record reveal that the net cash position of the domestic industry, after having improved in 2002, worsened in 2003. The Commission found that there was a direct relationship between the domestic industry's performance and the presence of imports on the market. Therefore, the Commission found that the net cash position of the domestic industry is likely to worsen if imports continue to increase.

## **E. OTHER FACTORS**

### **1) BUSINESS PLANS OF CEMENT IMPORTERS**

The Commission considered the strong incentive for Mainland to continue importing cement and at competitive prices to establish a customer base, given its publicly stated plans to set up production facilities in Jamaica. Mainland indicated its intention to continue importing to meet the needs of its customers until these operations come on stream in the next few years. The Commission finds it noteworthy that both ARC and Mainland imported cement from Egypt despite provisional safeguard measures. ARC also imported cement from Egypt in 2004.

### **2) CHANGE IN MARKET DYNAMICS**

The Commission noted that the increase in the number of suppliers in the market increases competition among them. Importers will be competing to capture as much market share as possible on the basis of price, since all the cement being sold can be considered a similar product.<sup>68</sup> Even though differences in preference may exist because of the perceived quality of cement from some sources, the like goods analysis indicates that the majority of the market will

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<sup>67</sup> Applicant's June 8, 2004 submission in case SG-01-2003, Appendix A, page 91.

<sup>68</sup> Even though differences in preference may exist because of the quality of cement from some sources, for example China, the majority of the market will be focused on price.

be focused on price. Industry players have indicated that cement is a product for which marginal differences in prices can have a significant impact on sales.<sup>69</sup> Arguably, there is a high elasticity of substitution between imported cement and the domestically produced cement.<sup>70</sup> In this context price differentials will play a more significant role, as consumers will switch to the cheapest commodity available.

### 3) DOMESTIC POLICY DEVELOPMENTS

Currently, there is an anti-dumping duty imposed on cement from China, as well as provisional safeguard duties on cement. The Commission examined the threat of injury to the Applicant in a context where there were no safeguard measures. Arguably, as long as there are anti-dumping duties imposed against Thailand, Indonesia and China the possibility of increased imports is minimised. The threat of injury from these sources is arguably non-existent in the short term. Notwithstanding, these developments there is still a threat of injury to the domestic industry from other sources such as Argentina and Egypt.

#### F. CLEARLY IMMINENT

The Agreement on Safeguards indicates that the threat of injury must be clearly imminent. The Appellate Body<sup>71</sup> has interpreted the use of the term “imminent” to relate to the timing of the materialisation, and implies that the anticipated serious injury must be on the verge of occurring. The use of the term “clearly” indicates that there must be a high degree of likelihood that the threat will materialise very soon.

The Commission examined the factors indicated as they relate to the current situation of the Applicant as evidenced by the various injury indicators. The Commission proceeded on the principle that the most recent past constitutes the strongest evidence from which to draw conclusions about future developments.

To conclude that the threat of injury to the domestic industry is clearly imminent, the Commission assessed the future trend in imports of cement as the likely state of the Applicant in the near future. The Commission’s analysis has shown that there is a likelihood that imports will increase in the near future, given the projected growth in demand and other factors that lead to a strong demand for imports. The long-term trend of imports in the market, in conjunction with the potential of exporters in other countries to significantly increase supply to the Jamaican market, taken in conjunction with the strong causal connection between the injury presently being experienced by the Applicant and increased imports, point to the definite potential for the trend to sharpen.

#### G. SUMMARY OF THREAT OF SERIOUS INJURY ANALYSIS

The factors examined indicate that there is the potential for increased imports into Jamaica both from a demand and a supply perspective. In considering a threat of injury it simply is not sufficient to show that the current level of imports from current sources will continue, but that there is the strong possibility that they could increase in the near future from any source. The pattern of importation over the period of investigation would indicate that this is a distinct

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<sup>69</sup> See Public Hearing Testimonies.

<sup>70</sup> See Public Interest Analysis.

<sup>71</sup> AB Report US-Lamb, para. 125, 137.

possibility, as well as the factors examined. The factors examined show that the threat of increased imports exists and is clearly imminent. While there are currently anti-dumping duties in place against Thailand, Indonesia, and China, in the Commission's view this will not remove the possibility or even the likelihood of future imports into Jamaica from these sources, once the measures expire.

## **XVI. CAUSATION**

### **A. FRAMEWORK**

Section 23 of the Act and Article 2 of the WTO Agreement on Safeguards both indicate that the determination of a threat of serious injury or serious injury requires the demonstration of a causal link between serious injury or threat of serious injury and the increased imports.

The Commission first identified and analysed all factors other than the increased imports that could have been exerting an influence on the Applicant over the period of investigation, and in particular in the period of increased imports to determine whether they exhibited a causally prior relationship. The Commission proceeded under the assumption that if these factors do not exhibit a causally prior relationship, there is no justification for taking them to be significant explanatory sources of injury. The Commission then tested whether there is a causal relationship between increased imports and injury. To do this the Commission utilised a number of techniques (ordinary least squares, correlations and granger causality tests, as well as an examination of long-term trends) which, taken together, along with the a priori relationship between the variables, demonstrate that a causal relationship exists between the increased imports and injury to the domestic industry.

### **B. FACTORS OTHER THAN INCREASED IMPORTS THAT MAY BE CAUSING INJURY**

The Commission examined the other factors that could have had a negative effect on Applicant's performance over the period of investigation to ensure that injury caused by other factors is not attributed to the increased imports. The Commission tested whether other factors exhibited a causally prior relationship with injury, by using Granger Causality tests. The Commission notes that the Granger Causality test is only a necessary condition for specifying a causal relation and does not give any information about the causal relationship in the true sense. The Commission also notes that a statistical relationship, however strong, is not sufficient to establish a causal relationship; rather any determination of causation must come from outside statistics, ultimately from some theory about how one variable should impact on another variable in the particular circumstances. To test the relationship between injury and the respective factor being examined, the Commission used the Applicant's sales revenue on sales from its own production as a proxy for injury. The rationale for this is that it captures both the price and volume effects of increased imports on the Applicant.

**Macroeconomic Influences** - Factors such as changes in the exchange rate and increases in fuel prices have historically had an impact on the Applicant. These factors affected the Applicant primarily through its cost of production, as inputs account for approximately 65 percent of total costs.<sup>72</sup> Also, adverse weather conditions during the period had an impact on the Applicant.

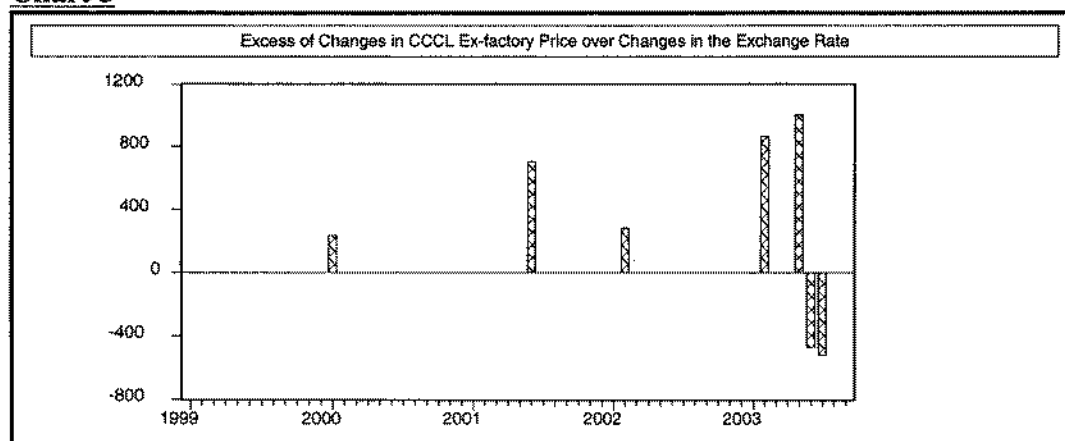
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<sup>72</sup> Applicant's March 25, 2004 submission in case SG-01-2003, page 34.

Certain of these factors, namely changes in the exchange rate and adverse weather conditions, also had an impact on the importers given that the majority of its costs, like the Applicant's, are also incurred in US dollars and they operate in the same market. With respect to the Applicant's strategy of increasing its prices to offset devaluations, other parties to the investigation<sup>73</sup> have indicated that it is these price increases that have negatively affected the Applicant, as they may have been more than necessary to offset movements in the exchange rate. The Applicant indicated that it did not change its prices after every movement in the exchange rate, but rather with a lag<sup>74</sup> (after the depreciation or appreciation has been in place for some time).<sup>75</sup> Therefore, it is this lag that adversely affected its production costs, when the exchange rate depreciated. The Applicant indicated that the change in prices was different from the extent of appreciation or depreciation, because it took the length of time that the price had remained in its unchanged state into consideration. The Commission found that the Applicant changed its prices with a lag and also as the Chart below shows that when the Applicant changed its ex-factory price it has been greater than the change in the exchange rate at that time.

In determining whether any injury to the Applicant resulted from corrective measures taken or resulted from its being prevented from taking corrective measures, the Commission used the Granger test to examine the effect of the difference between the Applicant's excess price changes (that is, Applicant's price changes, less changes in the exchange rate, and Applicant's revenue [the proxy for injury]). The majority of positive price changes, that is, those in excess of changes in the exchange rate, took place prior to 2003. The tests indicate that these changes in Applicant's ex-factory prices did not Granger Cause changes in the Applicant's sales revenue. When the Commission isolated the 2003 period where the greatest downward adjustment in Applicant's prices took place, the results show that the Applicant's excess price adjustments do Granger Cause changes in Applicant's revenue with more than 90 percent confidence. These results indicate that there can be no strong justification for concluding that price increases above changes in the exchange rate caused any injury to the Applicant. Rather, the results indicate that, in the presence of increased imports the adjustment to the exchange rate becomes more significant.

**Chart 5**



<sup>73</sup> The Government of Egypt's submission copied to the Commission, from the permanent representative in Geneva to the Minister of Foreign Affairs and Foreign Trade, 5 February 2004.

<sup>74</sup> Applicant's March 25, 2004 submission in case SG-01-2003, page 34.

<sup>75</sup> Applicant's March 25, 2004 submission in case SG-01-2003, page 35.

**Discretionary Policy Changes Affecting Importation of Cement** – During the period of investigation, that is prior to September 2003, there were no changes in the tariff or other tax rates that would have affected the importation of cement. Subsequent to the initiation of this investigation, there has been the imposition of provisional safeguard duties on cement imports from all sources and the imposition of final anti-dumping duties on cement imports from China. These changes are therefore not developments that would have negated or contributed to the injury suffered by the domestic industry during the period of investigation.

**Developments in Technology** - Cement is not a high technology industry.<sup>76</sup> Additionally, the Commission did not find that this is a factor that has had a negative impact on the domestic industry's performance. The Applicant has alleged that its inability to expand its productive capability is contingent on the extent to which it continues to lose market share to imported cement. The Applicant alleged that it has the capacity to produce enough cement to satisfy the Jamaican market if it were to expand its capacity for producing clinker. However, the investment in this capacity is dependent on its ability to be able to sell all of its production. Also, in the Applicant's Adjustment Plan, the Applicant notes its intention to make technological changes, which should have a positive impact in the future. To the extent that there are any technological changes that the Applicant has not implemented, the Applicant's position that its difficulties caused by the presence of the increased imports on the market have delayed much needed investment is a plausible business assessment. The Commission is of the view, however, that currently there are no developments in technology that have affected the Applicant negatively.

**Contraction in demand or changes in the pattern of consumption**—Total cement consumption has been increasing, hindered in some periods by weather conditions. Estimates of the long-term trend<sup>77</sup> in consumption are upward and developments in the construction sector indicate that growth is expected to continue through 2004.<sup>78</sup> Therefore, contraction in demand is not currently a factor having a negative impact on the Applicant.<sup>79</sup> This demand shift also has a positive impact on prices, domestic supply, and import supply and would not be a factor causing injury to the domestic industry. In the Commission's view this positive shift may be the reason why in some periods the domestic industry's sales levels have remained stable, notwithstanding the presence of increased imports. Negative developments with respect to demand have therefore not been a factor having a negative impact on the domestic industry. Further, there is no indication that consumption patterns for cement generally have changed.

**Production Difficulties** - The Applicant indicated that in the past it has experienced operational problems, in particular production in the 1999 to 2000 period was limited by equipment failures and the need for upgrades<sup>80</sup>. Subsequently, the Applicant instituted changes that reduced its unit cost of production and allowed it to expand production. There were problems with domestic industry's kilns during the period of investigation that affected its clinker inventory levels. The domestic industry indicates, "Since 1999, equipment on the kiln lines that created bottlenecks to increased clinker production was replaced in a programmed manner..."<sup>81</sup>

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<sup>76</sup> See industry brief of March 2002 provided by the Complainant in its May 27, 2002 submission.

<sup>77</sup> The long-term trend was estimated using the Hodrick Prescott filter; this is a smoothing method that is widely used among macroeconomists to obtain a smooth estimate of the long-term trend component of a series.

<sup>78</sup> See Jamaican Market Section.

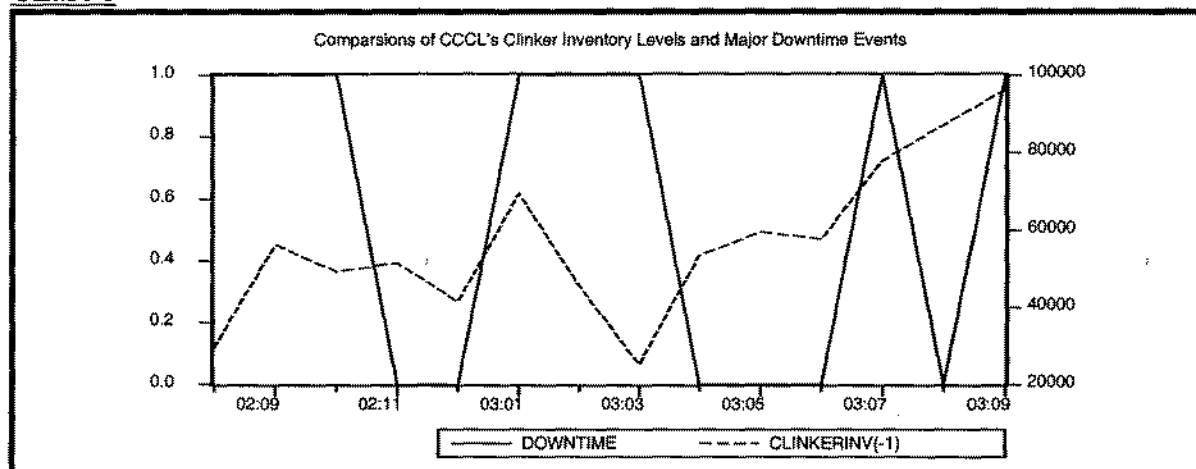
<sup>79</sup> See Appendix 7 for results of Granger Causality tests.

<sup>80</sup> Applicant's September 1, 2003, Volume I of I, Exhibit C, p.38.

<sup>81</sup> Applicant's March 25, 2004 submission in case SG-01-2003, p.2.

In order to see the impact of equipment failures on clinker inventory levels, the Commission compared levels of clinker inventory over the period of investigation to the recorded downtime episodes (planned and unplanned). This is illustrated in Chart 6, where it can be seen that clinker inventory is higher in the month preceding downtime episodes. This result occurs because the majority of the downtime episodes are planned. Notably, in the years 2001 and 2002 there were imports of clinker and more frequent downtime episodes. The downtime events in 2003 seemed to have been less frequent as the Applicant indicated that, "Since 1999, the frequency of unplanned stoppages has decreased as efficiencies have increased."<sup>82</sup> Therefore, the Commission is of the view that the build up in clinker inventory levels in 2003 may be indicative of the fact that clinker inventory levels are influenced by factors other than mill downtime.

**Chart 6**



Further, the results of Granger Causality tests indicate that in the 2003 period, downtime episodes do not Granger Cause changes in Applicant's sales revenue.

**Limitations on the ability to produce or import clinker** - The Applicant has indicated that its ability to supply the Jamaican market with all its requirements is to some extent limited by its ability to produce clinker locally. However, as long as it is able to import clinker to supplement the shortfall it will be able to meet demand. Therefore, given Applicant's ability to import clinker this limitation does not seem to be a factor that has had a negative impact [impacted negatively] on the domestic industry's production. However, hindrances to the importation of clinker, which currently are not apparent, would hamper domestic production irrespective of the imports, if the Applicant's capacity to produce clinker is not improved. Because of the absence of these limitations, the Commission does not treat this factor as having had a negative effect on the Applicant's production of cement. In fact, clinker production in the January to September 2003 period is fourteen (14) percent higher than the similar period of 2002.

### **C. THE EXISTENCE OF A CAUSAL LINK**

In order to establish the existence of causation, the Commission notes that it is not necessary to show that increased imports alone, on their own, must be the sole cause of injury or threat of injury.<sup>83</sup> In the analysis above, the Commission examined each other possible factor that could

<sup>82</sup> Applicant's March 25, 2004 submission in case SG-01-2003, page 6.

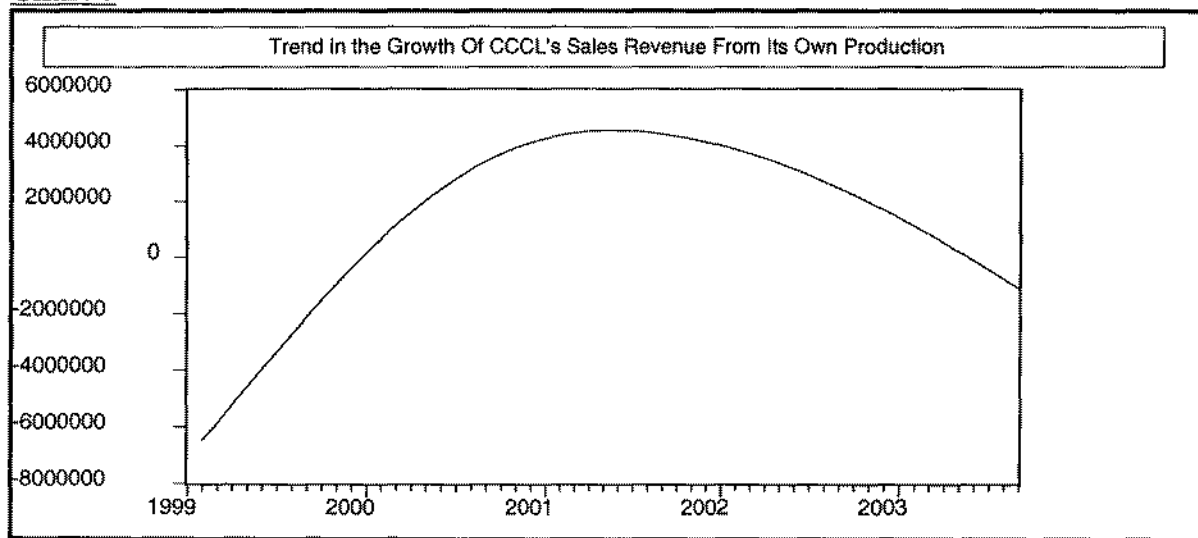
<sup>83</sup> ABR, US-Line Pipe, para.208.



be affecting the Applicant and did not find any other factor as contributing to the level of injury suffered by the Applicant.

In determining the existence of a causal link, the Commission firstly examined the relationship between injury to the Applicant and changes in imports. The Commission used Applicant's sales revenue on sales from its own production as a proxy for injury, and for imports the Commission used import sales, under the assumption that both capture price and volume effects. Firstly, the Commission looked at correlations between the two variables and established that there was a negative correlation of  $-0.397232$  between them over the entire period of investigation. Having established a correlation between the two variables over the entire period of investigation, the Commission examined the correlation between the two variables during the sub-period, August 2002 to September 2003; in this period the correlations became much stronger, being approximately  $-0.5584$ . However, in the January to September 2003 period the correlations were positive. This reflected the strong performance of the construction sector during that period that boosted Applicant's sales volume. A closer look at the trend in the growth of Applicant's revenues,<sup>84</sup> as shown in Chart 7 below, reveals that it reached a turning point in late 2002 and started to decline thereafter, so that while the absolute level of revenues increased it did so at a declining rate. To further examine this result the Commission considered the relationship between import sales and price depression.

**Chart 7**



The Applicant indicated that import growth is a significant cause of price depression to the domestic industry.<sup>85</sup> The Commission also found this same result, even though both analyses differed in some respects.

The results of the Commission's initial estimation of changes in Applicant's net price (price depression) and changes in import sales showed that the Commission had to correct for serial correlation. To do this the lag of the dependent variable was included. The results of the re-estimation showed that there was a significant negative relationship between changes in import sales and changes in Applicant's net price (price depression) in the same period. This is the same result found by the Applicant when it examined the impact of import sales on its ex-factory

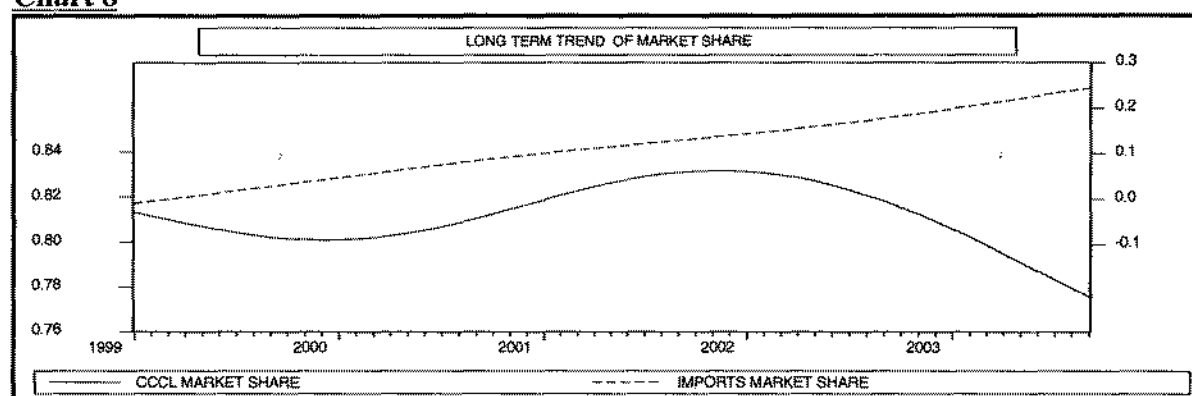
<sup>84</sup> The long-term trend is estimated using the Hodrick Prescott Filter.

<sup>85</sup> Applicant's June 8, 2004 submission in case SG-01-2004, page 37-38.

price. Therefore, notwithstanding the increase in Applicant's sales volume from its own production towards the end of the period of investigation, the depressing effect on its prices as a result of imports, caused a downward trend in the growth of its sales revenues from its own production (the proxy for overall injury).

Further, to abstract from any growth in demand having a positive impact on the absolute volume of the Applicant sales and hence sales revenue, the Commission compared the evolution of the market share of other imports over the period of investigation with the evolution of the Applicant's market share. As the Chart below shows, the market share of the Applicant's sales from its own production started to decline at the end of 2002, a decline that has become more pronounced in the 2003 period, while the market share of imports, other than that of the Applicant's (Thailand, Indonesia, Russia, China, Argentina and Egypt) have continued to grow steadily, with the divergence between the two being most pronounced in the 2003 period.

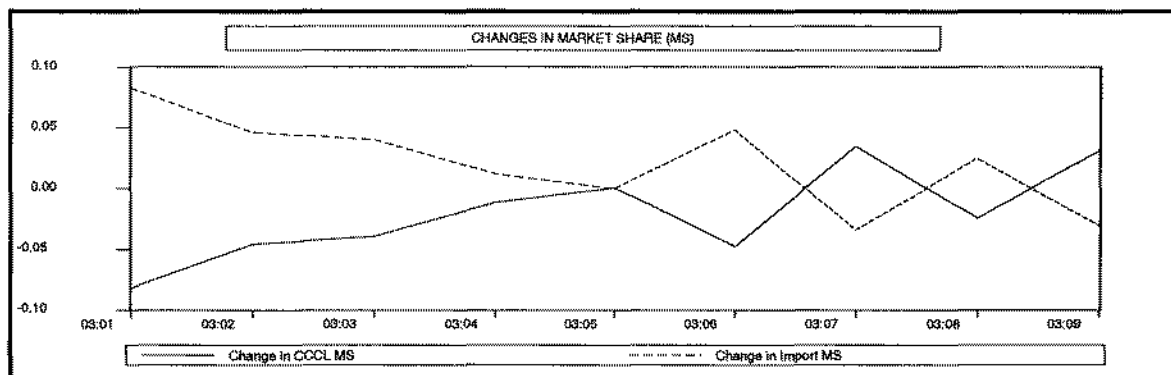
**Chart 8**



The Commission further looked at the correlation between the changes in Applicant's market share and the changes in the import share of other import sales, (China, Argentina, Egypt) during the January to 2003 to September 2003 period, as seen from Chart 9 below, and found that they were perfectly negatively correlated. The Commission notes that the WTO Panel has indicated that the coincidence of a higher level of imports with a lower level of domestic activity usually constitutes sufficient evidence of a causal link.<sup>86</sup> Therefore, the Commission is of the view that this perfectly negative correlation constitutes strong evidence of an explanatory relationship between the two variables.

**Chart 9**

<sup>86</sup> The Panel in Wheat Gluten indicated "a coincidence in the movement in imports and the movement in injury factors would ordinarily tend to support a finding of causation".



With respect to price suppression, which measures changes in the gap between the domestic industry's prices and costs and is also reflective of changes in the domestic industry's profit margin,<sup>87</sup> the Applicant indicated that the only variable that demonstrated a significant causal relationship with it is price depression, which itself was shown to be caused by the presence of imports.<sup>88</sup>

Notwithstanding, the increase in consumption of cement in 2003, import sales have been a significant explanatory factor for the downward growth in sales revenue, price depression and price suppression, in the most recent period.

#### **D. SUMMARY OF FACTORS**

The Commission has found no other factor over the period of investigation, and in particular in the most recent period, that explains the level of injury or threat of serious injury to the Applicant to the same degree as the evolution of imports.

### **XVII. PUBLIC INTEREST**

#### **A. INTRODUCTION**

Section 23 of the Act requires the Commission to make a determination as to whether a proposed definitive safeguard measure is in the public interest. There is no guidance in the Act as to what constitutes the public interest or the factors to be taken into account in determining whether a safeguard measure is in the public interest. The Commission is of the view that the public interest includes both consumer interests and the wider national community interests, and a determination of whether a safeguard measure is in the public interest requires a balancing of these interests.

With regard to consumer interests, a safeguard measure may have a negative effect in terms of a reduction in the range of products available to consumers and the possibility of higher prices for the product than would be the case in the absence of a safeguard measure.

On the other hand, the national interest is likely to benefit from the application of a safeguard measure by permitting a domestic industry to adjust to competition in an increasingly globalised

<sup>87</sup> The domestic industry's profit margin is also an indicator of overall injury to the domestic industry as it also captures the combined impact of price and volume.

<sup>88</sup> Applicant's June 28, 2004 submission in SG-01-2003 along with various amendments.

environment, thereby contributing to the retention or growth of local jobs, growth in national income, and reduction in the outflow of foreign exchange.

In this case, the Commission had regard to the following factors in support of a safeguard measure:

1. The importation of cement has generated some employment particularly for those involved in landing and transporting the imports. Additionally, revenue is generated for the government with the payment of import duties. However, the importation of cement does not generate overall revenue for Jamaica and does not contribute to GDP because of the large outflow of cash to the exporting countries.
2. The sale of imported cement does not generate jobs and revenue for the economy but generates jobs and income to the producers in the respective countries of origin.<sup>89</sup>
3. Improvements in Applicant's production capacity may enable it to become a world-class producer of cement and enable it to become a significant exporter.
4. The expansion of the capacity to produce clinker in Jamaica would lead to an expansion of jobs in the extractive industries that provide raw materials, such as limestone.
5. Six months of inventories of imported cement would be available to meet any shortfall. The Applicant has a milling capacity of 1, 100, 000 MT<sup>90</sup> to assist with this shortfall. These inventories include not only to Applicant's inventory levels but also inventories of the imported cement that the Applicant estimated are currently on hand.

The Commission also had regard to the following factors against the application of a safeguard measure:

1. Competitors prices are typically lower than the Applicant's.<sup>91</sup> In addition, Mainland and ARC have priced their cement below the Applicant's. This has implications for consumers in terms of the affordability of housing.
2. In its September 1, 2003 submission, the Applicant stated that "If not for the growing presence of cement imports, the increase in demand would have allowed the domestic industry to experience large increases in output, capacity utilisation, and shipments, higher prices, and improved profitability."<sup>92</sup> This statement suggests that the price increases would have been greater but for the presence of the imports.
3. In the face of competition, the industry will be forced to continue implementing efficiency measures especially in light of its obligations to the Jamaican government. Continued exposure to world price signals will reduce the likelihood of slackening of the industry's reform efforts and move it closer to global competitiveness.
4. Consumer welfare is enhanced by a greater choice of products.
5. Concern has been expressed that the local industry may not be able to meet the market demand (whether through production difficulties or capacity issues) and so possible shortages could result. Also, the Applicant's current practice is to keep inventories deliberately at about 2 weeks worth of sales, so that if imports were to be suspended there may be a significant shortfall in the interim.

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<sup>89</sup> Applicant's September 1, 2003 Submission, Appendix C, page 5.

<sup>90</sup> Applicant has not been able to produce these volumes in the past.

<sup>91</sup> For example, the Management of Bolide International Jamaica Limited, indicated that it intended to take 30 % of the Jamaican market by pricing its product 10 to 15 % below the Applicant. Applicant's September 1, 2003 Submission, Appendix C, page 2.

<sup>92</sup> Applicant's September 1, 2003 Submission, Appendix C, page 13.

6. Consumers of cement in the Jamaican market have always complained that domestic industry prices are too high. In fact, there have been complaints that the local industry's prices are significantly above those globally. As at July 2003 Applicant's price for 1 MT of Cement was approximately J\$5,666.67<sup>93</sup> (US\$95.92). In 2000 1 MT of Cement from the Applicant cost J\$5,058.824 (US\$110.79) as compared to J\$1,181.60 (US\$20)<sup>94</sup> from China, a difference of over 400%.
7. The movements in cement prices as a result of a safeguard measure will have implications for the availability of affordable housing and mortgage costs.

Having considered the above factors, the Commission is of the view that the application of a safeguard measure is in the public interest because of the underlying benefits to the national interest. These benefits include the preparation of the Applicant to meet global competitiveness, reduction of the outflow of foreign exchange, maintenance and growth of employment in the local cement industry, and the possibility of increased earnings of foreign exchange from exports as the local cement industry re-positions itself to take advantage of the measure to develop its capacity and modernise its production facilities.

Further, the Commission notes that lower prices in the world market do not automatically translate into commensurately lower prices to consumers, since it is the deliberate practice of the importers to set their prices slightly below those of domestic industry and thus to harvest for their own account the differences in the margins between the lowest prices available from exporting countries and the sales price of the Applicant.

Mindful, nevertheless, of the potential impact on consumer interest, the Commission recommends the liberalisation of the safeguard measure over the period of its initial application (that is four years), with liberalisation to be tied to the Applicant's performance in improving its competitiveness and its assurance to keep its price constant in United States dollar terms.

## **XVIII. FORM, LEVEL AND DURATION OF THE MEASURE RECOMMENDED**

### **A. LEVEL OF THE MEASURE**

At the preliminary determination, the Commission used a tariff as the appropriate form of the measure required by the WTO Agreement on Safeguards and the Safeguard Act. The Commission notes that there is no requirement under either the Agreement or the Act for a particular form of definitive safeguard measure, unlike the case with a provisional safeguard measure where the form of the measure permissible is a tariff.

The Commission having considered the alternatives for the application of a definitive safeguard measure, including quotas and tariff rate quotas, recommends the imposition of a tariff as the appropriate form of the safeguard measure due to the lack of an administrative regime to monitor a quota system, and the costs of implementing such a scheme for a single product.

At the preliminary determination, the Commission arrived at the amount of the tariff by using a method that provided a level of duty that brought the importers' costs to import in line with the

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<sup>93</sup> Applicant's September 1, 2003 Submission, Volume I of I, Appendix B, p.1-2.

<sup>94</sup> Estimate of export prices in 2000 (FOB) taken from Trends, Challenges and Opportunities in China's Cement Industry, P.22.

Applicant's ex-factory price. The resulting provisional duty was 25.83 percent and this was associated with prices of imports from the allegedly highest priced source in 2003.<sup>95</sup>

The Commission notes that there is no prescribed formula for the calculation of tariffs. However, a safeguard measure, whatever its form, must be applied only to the extent necessary to remedy or prevent serious injury and to facilitate adjustment of the domestic industry for whose benefit the measure is to be applied. A definitive safeguard measure must be progressively liberalised at regular intervals during the period of application if it is force for more than one year.

The Commission adopts the methodology that it utilised in calculating the provisional duty for the calculation of the final duty. In this method an implied duty rate was calculated that would equate the total costs on importation (given the F.O.B value of the imported goods and other costs associated with importation) to the domestic industry's ex-factory price. The implied duty rate was then compared with the applied rate to determine the additional duty to be imposed. The Commission is of the view that the process of equating the importers' total costs to equate with that of Applicant's ex-factory price minimises the possibility for further negative price effects from the imports and hence prevents further injury.<sup>96</sup> The final duty recommended by the Commission is 25.83 percent.

## **B. LIBERALISATION OF THE MEASURE**

The Agreement on Safeguards provides that any safeguard measure in place for longer than a year must be progressively liberalised (scaled back) at regular intervals. The Commission notes that there is no indication in the Agreement on Safeguards as to what is meant by "progressively" or at "regular intervals." The Commission considers that the measure may be liberalised in a number of ways. However, in order not to defeat the goal of facilitating adjustment, the Commission recommends that the right be reserved for the Commission to recommend that the safeguard measure be liberalised no earlier than the end of the second year of application. In such event, the percentage by which the measure would be liberalised would be no more than two percent (2%) at the end of the second year, and three percent (3%) at the end of the third year. The Commission noted that it reserved the right to recommend that liberalisation should be accelerated should the domestic industry fail to honour its commitment to the public welfare in the following manner: The rate of liberalisation may be increased in the event that the domestic industry raises its price in U.S. dollar terms during the twelve-month period immediately preceding the period in which the further liberalisation will take effect, or fails to implement its Adjustment Plan in a timely manner.

In arriving at this proposed liberalisation mechanism, the Commission took into account the Applicant's projected growth of production during the proposed period of implementation of the Adjustment Plan (2004 to 2007), as well as the projected reduction in costs. These two factors are examined as they represent, in the Commission's view, the most critical elements of the Applicant's efforts to become globally competitive. The first is the ability to supply the market from its own production, as well as the ability to reduce costs and prices to the consumer.

The data from the Adjustment Plan<sup>97</sup> showed that annually, the Applicant projects growth in production<sup>98</sup> in all years, beginning in the first year of the implementation period. The projected

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<sup>95</sup> See Statement of Reasons for the Preliminary Determination in case SG-01-2003.

<sup>96</sup> See Appendix 5 for a comparison of Applicant's ex-factory price and importers total costs to import under various duty rates.

<sup>97</sup> Applicant's February 13, 2004 submission in case SG-01-2003.

<sup>98</sup> Projection for production in 2007 (the final year of implementation) and 2008 were scaled down in the March 25, 2004 submission from the figures provided in the February 13, 2004 submission.

growth does not however, follow a steady path and dips significantly in 2006<sup>99</sup> (the third year of implementation) and 2008 (outside of the implementation period), by about three (3) percent of the average annual growth over the implementation period.

The Applicant's costs are projected to decline an average over the period of implementation by approximately 11.36 percent. The decline in costs is not consistent in every year of the implementation period. In 2006 (the third year of implementation) costs are projected to increase and then be reduced subsequently. With the actual upgrading starting in 2007 then costs would not increase in 2006, but rather in 2007.

Having taken the above into account, the Commission's proposed liberalisation of the measure is also dependent on the Applicant's meeting its commitment to keep prices of cement constant in United States dollars, and the Applicant's improving its competitiveness in accordance with its Adjustment Plan.

## **XIX. UNFORESEEN DEVELOPMENTS**

The Commission notes that there is no express requirement in the Safeguard Act or the Regulations thereto that there be a demonstration that the surge in imports causing or threatening serious injury must result from unforeseen developments. There is also no reference to the relevance of unforeseen developments in the WTO Agreement on Safeguards on which the Safeguard Act is based. However, the WTO Appellate Body's clarification of the Agreement on Safeguards, beginning with the Appellate Body's Report in the *Korea-Dairy* case,<sup>100</sup> establishes that a pre-condition for the application of a safeguard measure under the WTO Agreement on Safeguards is that the measure be consistent with Article XIX: 1(a) of the General Agreement on Tariffs and Trade (GATT) 1994 which provides:

“ If as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.”

In the *United States-Safeguards on Steel Products* case, the Panel, in addressing the issue of the timing of the demonstration of unforeseen developments, reiterated the clarification of the Appellate Body in *Korea-Dairy* that “*the demonstration of unforeseen developments is a prerequisite for the application of a safeguard measure...*”<sup>101</sup> The Panel further pointed out, in reliance on *US-Lamb*, that:

“...although Article XIX provides no express guidance on where and when the demonstration of unforeseen developments is to be made, it is nonetheless a prerequisite,

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<sup>99</sup> In 2006 upgrading of the existing clinker line would have taken place, if the upgrading had started in May a month after the original date of the Final Determination. The Commissioning and construction takes approximately 33 months, so that with the extension of the Final Determination by three months, then assuming that Applicant can obtain the investment and start upgrading as planned this will take place early in 2007.

<sup>100</sup> Definitive Safeguard Measure on Imports of Certain Dairy Products (“Korea-Dairy”), WT/DS98/AB/R, para. 85

<sup>101</sup> *US-Safeguards on Steel Products*, para. 10.52. Emphasis added.

and 'it follows that this demonstration must be made before the safeguard measure is applied.'<sup>102</sup>

### **What Can Constitute An Unforeseen Development?**

The Commission notes that in the *United States Safeguards-Steel* case, the Panel clarified that:

“... an unforeseen development, pursuant to Article XIX:1(a) of GATT 1994, is an unexpected circumstance which has led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to relevant domestic producers.”<sup>103</sup>

The Commission observes, on the basis of the prevailing WTO jurisprudence, that an unforeseen development is one occurring after the concession is made under GATT 1994 with respect to the product for which the safeguard measure is sought, and the time for determining whether or not the development was unforeseen is at the time the concession relating to the particular product was given, that is, at the conclusion of the Uruguay Round that resulted in GATT 1994.<sup>104</sup> Additionally, the development may be one event, a combination of events, or a confluence of events constituting an unforeseen development.<sup>105</sup> This means that it is possible to find a set of events as constituting an unforeseen development, although one event from the set may not have been unexpected.

### **Claims Of The Applicant Regarding Unforeseen Developments**

The Applicant claimed that the unforeseen developments are an extensive global overcapacity and overproduction in cement, the Asian economic crisis, the Latin American Financial crisis, and the collapse of the former Soviet Union and of certain economies in Europe.<sup>106</sup>

In their Supplemental Submission in Support of an Affirmative Final Determination,<sup>107</sup> the Applicant provided some elaboration to their claim that the increase in imported cement into the Jamaican market resulted from unforeseen developments. The crux of Applicant's argument with respect to the Asian Financial Crisis is as follows:

1. the crisis resulted in reduced domestic demand for cement in Asia thereby prompting a search for export markets which generated a rise in anti-dumping petitions against Asian countries;<sup>108</sup>
2. the crisis combined with increased production capacity caused an increase in exports for countries that were previously net importers of cement, such as Indonesia, Thailand and China.

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<sup>102</sup> Id. Para. 10.52. Emphasis added.

<sup>103</sup> *United States Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/R, para 10.40

<sup>104</sup> *United States-Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe From Korea* WT/DS202/AB/R. Appellate Body reiterated statement it made in *Argentina: Safeguard Measures on Imports of Footwear* WT/DS121/AB/R at paras. 93-95; *Korea –Definitive Safeguard Measure on Imports of Certain Dairy Products* WT/DS/98/AB/R paras.86-88; *United States Definitive Safeguard Measure on Imports of Certain Steel Products* ( hereafter *US-Safeguards on Steel Products*), WT/DS248/R, para. 10.74. For countries that acceded to the WTO post-1995, the time for determining whether a particular development was unforeseen would be the date following that country's accession to the treaty.

<sup>105</sup> *US-Safeguards on Steel Products*, para. 10.99.

<sup>106</sup> Volume 1 of 1 of Confidential Safeguard Complaint dated August 29, 2003.

<sup>107</sup> Dated January 30, 2004.

<sup>108</sup> Although, it is not clear from the submissions whether these anti-dumping suits against Asian countries were against cement exports from these Asian countries.



However, the Applicant did not provide the same elaboration on the Latin American crisis as it did for the Asian crisis, but maintained the same argument - essentially that the crisis reduced domestic demand for cement thereby leading to increased exports to other markets. The Applicant also did not provide any elaboration on how the Russian crisis can constitute an unforeseen development or how the various crises identified (i.e. the Latin American crisis, the Russian crisis, and the Asian crisis) constituted a confluence of events leading to unforeseen developments in the context of imports of OPC cement.

The Applicant pointed out that the Appellate Body in the *US-Steel Products* case “did not question that the Russian crisis, the Asian crisis and the continued strength of the US Dollar as well as the confluence of those events-actually amounted to ‘unforeseen developments’ within the meaning of Article XIX:1(a) of GATT 1994.”<sup>109</sup> As stated, this indicates that the Appellate Body regarded as established fact that the above crises amounted to unforeseen developments. However, the Commission is of the view that the context in which the quotation appears in the Appellate Body Report<sup>110</sup> shows that the Appellate Body was specifying the issue on appeal raised by the United States with respect to unforeseen developments and not stating that these crises, necessarily, constituted unforeseen developments. The above quotation of the Appellate Body’s statement, read in the appropriate context, is a statement by the Appellate Body as to what the issue *is not* as raised on appeal by the United States with respect to unforeseen developments, and what the *scope of the issue is*, that is, whether the United States International Trade Commission (USITC) demonstrated through a reasoned and adequate explanation “that unforeseen developments had resulted in increased imports of each of the products on which the United States imposed safeguard measures on 20 March 2002.”<sup>111</sup>

With respect to Egypt, the Applicant attributed the increase in cement imports from this source to the modernisation of Egyptian cement plants between 1996 and 2002 and regarded this as an unforeseen development. The Applicant’s arguments with respect to unforeseen developments, as developed in the Supplemental Submission for an Affirmative Final Determination, are essentially focused on the Asian and Latin American crises.

The Applicant further submitted<sup>112</sup> that the world wide recession caused by the events of September 11, 2001 that exacerbated the financial crisis that began in 1997, and the sale of the Applicant to Trinidad Cement Ltd. (“TCL”) in 1999 were unforeseen developments. The latter event, the privatisation of the Applicant, required updating and upgrading of the cement plant to permit domestic production to meet an expected growth in domestic demand. This upgrading in turn required scheduled mill and kiln downtime to repair, improve, and upgrade the Applicant’s plant and equipment that resulted in reduced cement and clinker production. The Applicant argued that such downtime and scheduled intermittent gaps in production provided an opportunity for importers to “shift excess supplies of low priced foreign cement to the Jamaican market...”<sup>113</sup>, thus constituting an unforeseen development. Another unforeseen development mentioned is the growth in cement consumption and Gross Domestic Product in the Jamaican

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<sup>109</sup> Page 40 of Confidential Supplemental Submission in Support of an Affirmative Final Determination. This same point was also raised on page 6 of Applicant’s July 28, 2004 Submission on Unforeseen Developments.

<sup>110</sup> *United States-Definitive Safeguard Measures on Imports of Certain Steel Products (US-Steel Products)* WT/DS248-259/AB/R para. 269.

<sup>111</sup> *Id.*

<sup>112</sup> Applicant’s July 28, 2004 Submission on Unforeseen Developments

<sup>113</sup> See page 12 of Submission.

market that made the Jamaican market attractive to exporters with excess capacity resulting from the identified crises.

The Commission regards the following crises identified by the Applicant as crises that can constitute unforeseen developments, either individually or as a confluence of events as stated in the *United States-Safeguards on Steel Products* case.<sup>114</sup>

1. the Latin American and Asian economic crisis
2. the dissolution of the Soviet Union and of certain economies of Europe
3. the continued demand in the domestic economy proposing the application of the safeguard measure

In the same vein, the Commission is of the view that the terrorist attacks of September 11, 2001 and the resulting recession *can* constitute an unforeseen event from the standpoint of what Jamaican trade negotiators foresaw or would have foreseen at the time of the conclusion of the Uruguay Round in 1994. With respect to the Latin American and Asian economic crises and the dissolution of the Soviet Union and certain economies of Europe, the Applicant argued that the resulting excess global capacity coupled with reduced domestic demand for cement in these countries caused the increase in imports of cement to Jamaica during the POI.

#### **Framework for Finding of Unforeseen Development**

In determining whether the increase in imports over the period resulted from the identified unforeseen developments, the Commission examined the period of the increase in imports, that is the entire POI and the period of the most recent POI when imports can be said to have been “recent enough, sudden enough, sharp enough, and significant enough.” Nevertheless, the Commission considered it appropriate to seek the assistance of the Ministry of Foreign Affairs and Foreign Trade on whether the developments identified by the Applicant<sup>115</sup> were unforeseen developments for trade negotiators from Jamaica at the time of the conclusion of the Uruguay Round. The Ministry responded in the affirmative.

On the question of whether or not and how the alleged unforeseen developments caused the increase in imports, the Commission observes that in 1999, Mainland imported 10, 300 MT of cement and the Applicant imported 121,167 MT of cement, a total of 131,467 MT. The Applicant argued that the imports of cement during this period were to satisfy domestic demand due to reduced production of cement and clinker resulting from the scheduled mill and kiln downtime arising from its privatisation, as an alleged unforeseen development.

The Commission is of the view that an occurrence within a WTO Member proposing to apply a safeguard measure, as opposed to external occurrences, can constitute an unforeseen development. The Commission notes that there is no requirement under GATT Article XIX: 1(a) that unforeseen developments can only be developments external to the WTO Member proposing to apply a safeguard measure. The Commission finds support for this position in the *United States-Safeguards on Steel Products* case where the Panel treated an internal situation, that is, the

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<sup>114</sup> See Panel decision paras. 10.69-10.99.

<sup>115</sup> That is, an extensive global overcapacity and overproduction of cement, the Asian economic crisis, the Latin American financial crisis and the collapse of the Soviet Union and certain economies of Europe.

strength of the United States economy, as one, which combined with other occurrences, could constitute a confluence of developments forming the basis of unforeseen developments.<sup>116</sup>

Turning to the question of whether the privatisation of the Applicant was an unforeseen development, the Commission notes that the specific sale of the Applicant to Trinidad Cement Ltd. in 1999 may not have been foreseen by the negotiators in 1994. However, the Commission would require additional information as to the state of the Applicant in 1994, and whether it was contemplated during that period that its divestment or privatisation was imminent, and the likely terms and conditions of such divestment, in order to make a conclusive finding on whether reduced production of cement and clinker from the privatisation process was unforeseen. In other words, the Commission could determine from this information whether there was in any contemplated divestment or privatisation a general understanding that plant upgrade would be a likely term of any privatisation agreement. If this were the case, the identity of the purchaser would be irrelevant and it would be expected that a reorganisation of the Applicant likely to affect domestic production would occur. In the absence of such information, the Commission makes no finding on whether the divestment or privatisation amounted to an unforeseen development.

For the year 2000, the volume of imported cement increased to 183,303 MT, the Applicant accounting for 95, 302 MT. The imports of cement in 2000 can also be attributed to this unforeseen development to the extent that the imports were to satisfy domestic demand resulting from the reduced production of local cement brought on by the privatisation exercise.

The scheduled mill and kiln downtime to repair, as a feature of the plant upgrade, lasted from 1999 to mid 2000. This period saw reduced production levels by the Domestic Industry in 1999 and 2000, and an increase in imports to satisfy domestic demand. Therefore, increases in imports beyond this period would be less attributable to scheduled mill and kiln downtime for repair.

In 2001, imports of cement amounted to 72,511 MT. The Applicant did not import cement in this period. In 2002 imports jumped to 140,502, the Applicant accounting for 12,249 MT. In 2003 imports jumped to 180,692 MT. No cement was imported by the Applicant during this period. With respect to the increase in imports for the 2001 – 2003 period, the issue is whether this increase resulted from unforeseen developments. Of the alleged unforeseen developments proffered by the Applicant, the sale of the Applicant to Trinidad Cement Ltd. could be excluded as a possible unforeseen development accounting for the increase in imports during the 2001 – 2003 period. This is because the scheduled mill and kiln downtime to repair, as a feature of the plant upgrade due to Applicant's sale to Trinidad Cement Ltd, lasted from 1999 to mid 2000.

The Applicant argued that the Latin American and Asian economic crises, the dissolution of the Soviet Union and of certain economies in Europe, and the recession resulting from the events of September 11, 2001, contributed to global excess capacity, reduced demand in those countries, and consequent search for export markets to off-load the excess capacity.

In 2001, of the 72,511 of cement MT imported, 38,818 were imported from Thailand, and 33,694 MT from Indonesia. In 2002, 35,236 MT were imported from Indonesia, and in 2003, 39,302 MT were imported from China, 36,533 MT from Argentina and 104,857 MT from Egypt. Having determined that the Asian economic crisis can constitute an unforeseen development, the

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<sup>116</sup> Id. Para. 10.99

Commission is of the view that the excess capacity arising from the Asian economic crisis can explain the imports from Thailand and Indonesia because both countries, as net importers of cement before the crisis began, became net exporters following the crisis. As net importers of cement, both countries would have directed their production of cement primarily towards their domestic economies. In the Commission's view, the ready availability of exports of cement from Thailand in 2000 and Indonesia in 2001, indicated the residual effects of the Asian crisis that transformed these countries into net exporters of cement, thereby constituting unforeseen developments.

The "global overcapacity-arising-from-crises" argument may also be made with respect to the imports from China and Egypt, although to a lesser extent. For China, the Asian economic crisis had less impact within its economy than on Indonesia and Thailand. For the period of the crisis, 1997-1998, China's real GDP increased by 7.8 percent while that of Indonesia and Thailand was reduced by 13.1 percent and 10.5 percent respectively.<sup>117</sup> However, the economic decline in the Asian economies following the crisis meant reduced opportunities for China's exports to those markets, and a readily available supply of exports to other markets, such as Jamaica.

The Commission considers also that China's switch from outdated production methods to more modern and efficient plants, encouraged by joint ventures with Japanese and Korean cement companies, was an unforeseen development that contributed to a significant increase in China's cement capacity.<sup>118</sup> This increase in capacity facilitated the ready availability of cement for export to various countries, including Jamaica.

With regard to Egypt, the Commission is of the view that the privatisation and modernisation of the Egyptian cement industry after 1999 was an unforeseen development from the standpoint of what negotiators foresaw in 1994. This privatisation and modernisation permitted Egypt to develop its cement capacity to becoming a net exporter of cement. For example, while Egypt was a net importer of cement in 1999 with domestic sales at 27.5 million MT, and imports accounting for 4.4 million MT, its domestic production of cement rose to 28.5 million MT in 2002,<sup>119</sup> with Egypt now having excess cement to export. The Commission considers that this unforeseen development contributed to the ready availability of cement for export to the Jamaican market in 2002 and 2003.

### **Rebuttal Of Mainland Regarding The Issue Of Unforeseen Developments**

Mainland responded to some of these identified crises in its Written Comments with respect to the Preliminary Determination dated January 29, 2004. Mainland argued that there was a temporal disconnect between the alleged unforeseen developments and any increase in cement imports that may have occurred; that the specified crises occurred before the POI; and that the most important factor explaining the increase in imports is not global cement production changes or overcapacity but the shortfall between domestic production and market demand in Jamaica.<sup>120</sup>

The Commission notes that there is no provision in the Agreement on Safeguards or the Safeguard Act that deals specifically with the issue of whether it is permissible for an

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<sup>117</sup> World Economic Outlook, September 2003, published by the International Monetary Fund, p. 181

<sup>118</sup> See Foreign Investors Favor Chinese Cement Industry at [www.tdctrade.com/report/indprof/indprof20704.html](http://www.tdctrade.com/report/indprof/indprof20704.html). For example, China's first cement clinker production line in 1997 had a daily output of 5000 tonnes. In 2003 there were five such plants.

<sup>119</sup> *Pyramid Selling*, International Cement Review, 17 January 2003.

<sup>120</sup> See page 3 of Written Comments dated January 29, 2004.

investigating authority to find that an increase in imports results from unforeseen developments notwithstanding a shortfall between domestic production and market demand for the subject product in the WTO Member proposing to apply the safeguard measure. Additionally, the Agreement and the Act have no provisions stipulating that a finding of increased imports resulting from unforeseen developments and a situation where there is an increase in imports to satisfy domestic demand are mutually exclusive. As stated, Mainland's arguments mean that whenever there is a shortfall between domestic production and market demand there can be no finding that increased imports results from unforeseen developments, or that domestic production must equal domestic market demand before an increase in imports can be said to result from unforeseen developments. The Commission notes that it is difficult to determine exact market demand for a product or whether domestic production is equivalent to market demand at any given time, and the Agreement on Safeguards does not require that such a finding be made as a precondition for a finding of whether increased imports results from unforeseen developments.

Regarding the issue of temporal disconnect between the identified crises and the increase in imports over the POI, the Commission notes that the Panel observed in the *US-Steel Products* case that an unforeseen development can result from "well known prior facts," even one that was known before the conclusion of the Uruguay Round in 1994.<sup>121</sup> This the Panel observed in accepting the argument advanced by the U.S. that a distinction can be drawn between a known event such as the dissolution of the Soviet Union and the unforeseen financial difficulties that resulted from the dissolution of the Soviet Union occurring after the conclusion of GATT 1994 which, according to the US, occurred between 1996 and 1999.<sup>122</sup> This clarification by the Panel indicates that a "temporal disconnect" between alleged unforeseen developments and an increase in imports does not foreclose the possibility of a finding that increased imports result from unforeseen developments. The Commission is of the view that the question of whether the alleged "unforeseen developments" occurred before the POI in this investigation is less important than the question of whether those developments were unforeseen, especially if these developments occurred after the conclusion of GATT 1994. For the reasons set forth above, the Commission rejects the arguments posed by Mainland that the increase in imports resulted did not result from unforeseen developments.

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<sup>121</sup> See, in particular, para.10.84 of Panel Report. This clarification was not challenged on appeal before the Appellate Body.

<sup>122</sup> *Id.*

## **DECISION**

The Commission has made an Affirmative Final Determination in accordance with section 23 of the Act. The Commission is satisfied that the goods under consideration were imported during the period examined in such increased volumes and as a result of unforeseen developments, causing some level of injury and a threat of serious injury to the domestic industry.

Based upon the threat of serious injury to the domestic industry, the Commission recommends to the Minister that a definitive Safeguard measure be imposed in the form of a tariff of 25.83 percent, the same rate as that of the provisional measure, on goods which are of the same description as those to which the Final Determination applies. The Commission recommends to the Minister of Commerce, Science and Technology that the definitive safeguard measure be imposed for a period of four (4) years.

Mindful of the need to preserve competition in the marketplace and the fact that the measure should facilitate adjustment of the domestic industry, the Commission reserves the right to recommend that the safeguard measure be liberalised no earlier than the end of the second year of application. In such event, the percentage by which the measure would be liberalised would be no more than two percent (2%) at the end of the second year, and three percent (3%) at the end of the third year. This amount may be increased in the event that the domestic industry raises its price in U.S. dollar terms during the twelve-month period immediately preceding the period in which any further liberalisation is due to take effect.

The rate of a safeguard measure is applied in addition to the pre-existing duty regime, which in this case is 15%.

The Commission further notes that it has determined that in the case where there is a dumping duty and a Safeguard measure applicable at the same time, the higher of the two duties only will apply to the affected country for the period when both measures are in effect.

## APPENDIX A

### **A. CEMENT: FURTHER PARTICULARS [BACKGROUND]**

Although the use of cements (both hydraulic and non-hydraulic) go back many thousands of years, at least to ancient Egyptian times, the first occurrence of "portland cement" came about in the 19<sup>th</sup> century. In 1824, Joseph Aspdin, a Leeds mason took out a patent on a hydraulic cement that he coined "Portland" cement (Mindess and Young, 1981). He named the cement because it produced a concrete that resembled the colour of the natural limestone quarried on the Isle of Portland, a peninsula in the English Channel. Since then, the name "portland cement" has stuck and is recognised as a trade name for a type of material and not a specific reference to Portland, England.

Today, portland cement is the most widely used building material in the world with about 1.56 billion tonnes (1.72 billion tons) produced each year. Annual global production of portland cement concrete hovers around 3.8 million cubic meters (5 billion cubic yards) per year (Cement Association of Canada, 2001). In the United States, rigid pavements are the largest single use of portland cement and portland cement concrete (ACPA, 2002).

Ordinary Portland Cement (OPC) is a hydraulic cement consisting mainly of compounds of lime, alumina, calcium, silica and iron oxide which when mixed with water and aggregate, chemically react to form concrete, the most widely used construction material in the world (over 90% of the cement consumed has no substitute for its use). The Applicant claims that both the domestic and the imported goods conform to technical industry standards accepted worldwide and developed by the American Society for Testing and Materials (ASTM), specifically ASTM C-150.

Portland cement is the chief ingredient in cement paste - the binding agent in portland cement concrete (PCC). It is a hydraulic cement that, when combined with water, hardens into a solid mass. Interspersed in an aggregate matrix it forms PCC. As a material, portland cement has been used for well over 175 years and, from an empirical perspective, its behaviour is well-understood. Chemically, however, portland cement is a complex substance whose mechanisms and interactions have yet to be fully defined. The American Society for Testing and Materials (ASTM), specifically ASTM C-150.

ASTM C 125 and the Portland Cement Association (PCA) provide the following definitions:

- |                         |  |
|-------------------------|--|
| <b>hydraulic cement</b> | An inorganic material or a mixture of inorganic materials that sets and develops strength by chemical reaction with water by formation of hydrates and is capable of doing so under water. |
| <b>portland cement</b>  | A hydraulic cement composed primarily of hydraulic calcium silicates.  |

The Commission examined all the characteristics of Portland Cement, of the goods that have been imported and of the good produced by the domestic industry. The Commission found that the imports have been Portland cement, or building cement (grey), like goods to the goods produced by the domestic industry and have defined the Scope of the Investigation accordingly.

## B. PHYSICAL CHARACTERISTICS AND USE

Portland cements are commonly characterised by their physical properties for quality control purposes. Their physical properties can be used to classify and compare portland cements. The challenge in physical property characterisation is to develop physical tests that can satisfactorily characterise key parameters.<sup>123</sup> Tests to characterise portland cement, such as fineness, soundness, setting time and strength are useful in quality control and specifications. The standard specification values are taken from ASTM C 150, *Standard Specification for Portland Cement*.

### 1) FINENESS

Fineness, or particle size of portland cement affects hydration rate and thus the rate of strength gain. The smaller the particle size, the greater the surface area-to-volume ratio, and thus, the more area available for water-cement interaction per unit volume. The effects of greater fineness on strength are generally seen during the first seven days (PCA, 1988).

### 2) SOUNDNESS

When referring to portland cement, "soundness" refers to the ability of a hardened cement paste to retain its volume after setting without delayed destructive expansion (PCA, 1988). This destructive expansion is caused by excessive amounts of free lime (CaO) or magnesia (MgO). Most portland cement specifications limit magnesia content and expansion. The typical expansion test places a small sample of cement paste into an autoclave (a high pressure steam vessel). The autoclave is slowly brought to 2.03 MPa (295 psi) then kept at that pressure for 3 hours. The autoclave is then slowly brought back to room temperature and atmospheric pressure. The change in specimen length due to its time in the autoclave is measured and reported as a percentage. ASTM C 150, *Standard Specification for Portland Cement* specifies a maximum autoclave expansion of 0.80 percent for all portland cement types.

### 3) SETTING TIME

Cement paste setting time is affected by a number of items including: cement fineness, water-cement ratio, chemical content (especially gypsum content) and admixtures. Setting tests are used to characterise how a particular cement paste sets. Additionally, setting times can give some indication of whether or not a cement is undergoing normal hydration (PCA, 1988). Normally, two setting times are defined. The particular times are just arbitrary points used to characterise cement, they do not have any fundamental chemical significance. Both common setting time tests, the Vicat needle and the Gillmore needle, define initial set and final set based on the time at which a needle of particular size and weight penetrates a cement paste sample to a given depth or fails to penetrate a sample. The Vicat needle test is more common and tends to give shorter times than the Gillmore needle test. Table 2.2 shows specified set times.

**Table 1: ASTM C 150 Specified Set Times by Test Method**

Test Method	Set Type	Time Specification
Vicat	Initial	□ 45 minutes
	Final	□ 375 minutes
Gillmore	Initial	□ 60 minutes
	Final	□ 600 minutes

<sup>123</sup> This section, taken largely from the Portland Cement Association (1988), describes the more common U.S. portland cement physical tests.



#### 4) STRENGTH

Cement paste strength is typically defined in three ways: compressive, tensile and flexural. These strengths can be affected by a number of items including: water-cement ratio, cement-fine aggregate ratio, type and grading of fine aggregate, manner of mixing and molding specimens, curing conditions, size and shape of specimen, moisture content at time of test, loading conditions and age (Mindess and Young, 1981). Since cement gains strength over time, the time at which a strength test is to be conducted must be specified. Typically times are 1 day (for high early strength cement), 3 days, 7 days, 28 days and 90 days (for low heat of hydration cement). When considering cement paste strength tests, there are two items to consider:

- **Cement mortar strength is not directly related to concrete strength.** Cement paste strength is typically used as a quality control measure.
- Strength tests are done on cement mortars (cement + water + sand) and **not** on cement pastes.

##### a) COMPRESSIVE STRENGTH

The most common strength test, compressive strength, is carried out on a 50 mm (2-inch) cement mortar test specimen. The test specimen is subjected to a compressive load (usually from a hydraulic machine) until failure. This loading sequence must take no less than 20 seconds and no more than 80 seconds. Table 2 shows ASTM C 150 compressive strength specifications.

**Table 2: ASTM C 150 Portland Cement Mortar Compressive Strength Specifications**

Curing Time	Portland Cement Type							
	I	IA	II	IIA	III	IIIA	IV	V
1 day	-	-	-	-	12.4 (1800)	10.0 (1450)	-	-
3 days	12.4 (1800)	10.0 (1450)	10.3 (1500)	8.3 (1200)	24.1 (3500)	19.3 (2800)	-	8.3 (1200)
7 days	19.3 (2800)	15.5 (2250)	17.2 (2500)	13.8 (2000)	-	-	6.9 (1000)	15.2 (2200)
28 days	-	-	-	-	-	-	17.2 (2500)	20.7 (3000)

Note: Type II and IIA requirements can be lowered if either an optional heat of hydration or chemical limit on the sum of C<sub>3</sub>S and C<sub>3</sub>A is specified

##### b) TENSILE STRENGTH

Although still specified by ASTM, the direct tension test does not provide any useful insight into the concrete-making properties of cements. It persists as a specified test because it was the most common test in the early years of cement manufacture.

##### c) FLEXURAL STRENGTH

Flexural strength (actually a measure of tensile strength in bending) is carried out on a 40 x 40 x 160 mm (1.57-inch x 1.57-inch x 6.30-inch) cement mortar beam. The beam is then loaded at its centre point until failure.

#### 4) SPECIFIC GRAVITY TEST

Specific gravity is normally used in mixture proportioning calculations. The specific gravity of portland cement is generally around 3.15 while the specific gravity of portland-blast-furnace-slag and portland-pozzolan cements may have specific gravities near 2.90 (PCA, 1988).

#### 5) HEAT OF HYDRATION

The heat of hydration is the heat generated when water and portland cement react. Heat of hydration is most influenced by the proportion of  $C_3S$  and  $C_3A$  in the cement, but is also influenced by water-cement ratio, fineness and curing temperature. As each one of these factors is increased, heat of hydration increases. In large mass concrete structures such as gravity dams, hydration heat is produced significantly faster than it can be dissipated (especially in the centre of large concrete masses), which can create high temperatures in the centre of these large concrete masses that, in turn, may cause undesirable stresses as the concrete cools to ambient temperature. Conversely, the heat of hydration can help maintain favourable curing temperatures during winter (PCA, 1988).

#### 6) LOSS ON IGNITION

Loss on ignition is calculated by heating up a cement sample to 900 - 1000°C (1650 - 1830°F) until a constant weight is obtained. The weight loss of the sample due to heating is then determined. A high loss on ignition can indicate prehydration and carbonation, which may be caused by improper and prolonged storage or adulteration during transport or transfer (PCA, 1988).

### C. PRODUCTION PROCESS

Portland Cement, the basic ingredient of concrete, is a closely controlled combination of calcium, silica, 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 85% of the mass. Common among the materials used in the manufacture are limestone, shell and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand and iron ore. There are mainly two different processes, dry and wet, used in the manufacture of Portland cement.

Rock mined from a quarry is crushed in either one or two stages, and then stored with other raw materials to be further processed. After analysis, the raw materials are proportioned, ground to fine powder and blended. In the wet process, the raw materials are ground with water and fed into the kiln as slurry (there is enough water to make it fluid). This process is used where the limestone, shale and clay are soft. Later on in the process, additional energy is used to remove the excess water. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used when the limestone, shale and clay need to be ground. In other respects, the two processes are alike.

As the raw materials move through the kiln, they are dehydrated (give off water vapour) and calcinated (give off CO<sub>2</sub>). Finally, in the hottest section of the kiln near the tip of the flame, the final chemical reactions occur and the materials fall out of the kiln into a cooler where they are air quenched. The remaining elements unite to form a new substance with new physical and chemical characteristics. The new substance is called clinker.

Clinker is discharged red-hot from the lower end of the kiln and generally is brought down to handling temperature in various types of coolers. Once cooled, the clinker nodules are ground with a small amount of gypsum (the amount of gypsum will control the setting times) and a fine powder is produced. Only then is it called cement. Portland cement can be specified based on its chemical composition and other various physical characteristics that affect its behaviour. ASTM specifies eight basic types of portland cement concrete.

The properties conferred on concrete through the use of blended cements can usually be attained by combining normal portland cement with appropriate levels and types of supplementary cementing materials at the mixer. When cements with special properties are not available, adjustments to the proportions and types of material in concrete mix can usually be made to attain the desired properties using available materials.

#### D. PHYSICAL AND CHEMICAL CHARACTERISTICS

Portland cements can be characterised by their chemical composition it is its chemical properties that determine its physical properties and how it cures. This section briefly describes the basic chemical composition of a typical portland cement and how it hydrates.

##### 1) BASIC COMPOSITION

Table 3 and Figure 1 show the main chemical compound constituents of portland cement.

**Table 3**

**Main Constituents in a Typical Portland Cement (Mindess and Young, 1981)**

Chemical Name	Chemical Formula	Shorthand Notation	Percent by Weight
Tricalcium Silicate	$3\text{CaO} \cdot \text{SiO}_2$	C <sub>3</sub> S	50
Dicalcium Silicate	$2\text{CaO} \cdot \text{SiO}_2$	C <sub>2</sub> S	25
Tricalcium Aluminate	$3\text{CaO} \cdot \text{Al}_2\text{O}_3$	C <sub>3</sub> A	12
Tetracalcium Aluminoferrite	$4\text{CaO} \cdot \text{Al}_2\text{O}_3 \cdot \text{Fe}_2\text{O}_3$	C <sub>4</sub> AF	8
Gypsum	$\text{CaSO}_4 \cdot \text{H}_2\text{O}$	CSH <sub>2</sub>	3.5

##### 2) HYDRATION

When portland cement is mixed with water its chemical compound constituents undergo a series of chemical reactions that cause it to harden (or set). These chemical reactions all involve the addition of water to the basic chemical compounds listed in Table 3.1. This chemical reaction with water is called "hydration". Each one of these reactions occurs at a different time and rate. Together, the results of these reactions determine how portland cement hardens and gains strength. The Commission found that the domestic product has the same physical and chemical characteristics as the investigated product and that they are substantially the same, each being Portland cement conforming to the requisite industry standards accepted worldwide.

The Government of Egypt, in its pre-hearing submission claimed that certain imported cements and the domestically produced cement do not have the same physical characteristics and end use, and further stated that it does not share the Commission's view that all imported types of cement

are substitutable in the Jamaican market. As a result, Egypt opined that the investigated product is not like or directly competitive with the domestic product. In its December 23, 2003 response to the Commission's questionnaire, Sinai stated that the cement it produces meets the European Standard of Specification of EN 197-1-CEM 52.5N.

The Commission determined that the investigated product falls within the following Standard specification for Portland Cement:

- The American Society for Testing and Materials (ASTM) C150-85
- The British Standard Specifications BS 12 1996; and
- The Jamaican Standard Specifications JS 32: Part 1:1999

Concrete producers in England are preparing for a changeover from the British Standards "BS" to the equivalent European Standard "BS EN" to avoid confusion and costs of operating a dual system. The transition has already started and concretes are currently being supplied with cement conforming to BS EN 197-1. Therefore, cements with the British Standard Specifications BS 12, are now equivalent to BS EN 197-1, the new European Standard of Specification.

**Table 4**

<u>PARAMETER</u>	<u>DOMESTIC CEMENT</u> (SPEC)	<u>ASTM</u> (SPEC)
<b>1. CHEMICAL REQUIREMENTS</b>		
Magnesium Oxide (MgO) Max %	5.0	6.0
Loss on ignition Max %		3.0
Insoluble residue Max %	0.75	0.75
Tricalcium Aluminate Max %		No limit

#### **D. OTHER FACTORS**

##### **1) DISTRIBUTION METHODS**

The domestically produced cement is sold in 3 categories: bulk, 42.5 kg sacks and 1.5 tonne jumbo sacks. Both the domestic product and the imported product are sold directly to retail suppliers or distributors who then market the product to the ultimate consumer. The ultimate consumer includes; contractors, government departments responsible for construction, block makers and private individuals. Sales in Jamaica either originate from the local factory or the importers' warehouses, and distribution is through retailers, traders/wholesalers, and other distributors before the product is utilised or purchased by the end-user.<sup>124</sup>

##### **2) END USE**

Cement is used predominantly in the production of concrete. Cement is the binding agent in concrete and is consumed almost wholly by the construction industry regardless of the type of cement. The chief end uses are, highway construction using ready-mix concrete, building

<sup>124</sup> Applicant's November 1, 2001 submission, page 8

construction using ready-mix concrete, concrete blocks, pre-cast concrete units and individual smaller units. Evidence reveals that the domestic product and the investigated product are both used for similar purposes.

3) **SUBSTITUTABILITY AND COMPETITION**

There are no distinguishing characteristics of cement for the ordinary consumer unless the cement was required for a special purpose. Some of the imported cement has a rapid hardening feature that makes it particularly appealing to block makers. However, the Commission has found no rationale to render the goods dissimilar, as the investigated product may be used for all jobs that the domestically produced cement is used for and vice versa.

4) **QUALITY AND PERFORMANCE CHARACTERISTICS**

Where quality differences are a result of perception and material physical differences, it may not be a sufficient factor to distinguish between the goods. There is no information on the record to suggest that consumers perceive that either the domestically produced product or the investigated product is better than the other.

## INFORMATION

The Notice of Final Determination and Statement of Reasons for Final Determination in this investigation are provided to interested parties in these proceedings and posted to the Commission's website at [www.jadsc.gov.jm](http://www.jadsc.gov.jm). For further information, you may contact the Commission as follows:

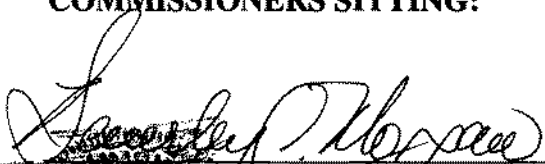
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Kingston 10  
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**Attention: The General Manager**


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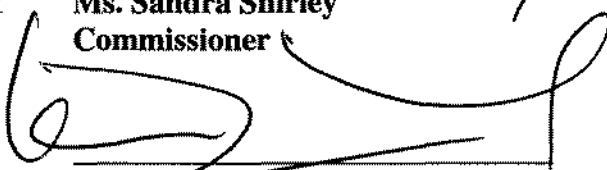
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**(DISSENTING ON THREAT OF SERIOUS  
INJURY)**

Date: July 16, 2004