

# ANTI-DUMPING AND SUBSIDIES COMMISSION

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## STATEMENT OF REASONS INITIATION

**KINGSTON, JAMAICA**  
**April 30, 2010**

**CASE NO. AD-01-2010**

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

**AND IN THE MATTER OF Initiation** of an investigation by the Anti-dumping and Subsidies Commission, pursuant to section 22 of the Customs Duties (Dumping and Subsidies) Act 1999.

**IN RESPECT OF** the dumping in Jamaica of Ordinary Portland Grey Cement originating in or exported from the Dominican Republic, usually classified under Harmonised Tariff Schedule Code 2523.291.

### **I. SUMMARY**

**Complaint Submitted.** On February 15, 2010, Particulars of Complaint In the Matter of an Anti-dumping Investigation Against Ordinary Portland Grey Cement Dumped on the Jamaican Market and Originating in or Exported from the Dominican Republic was submitted to the Anti-dumping and Subsidies Commission (“the Commission”) on behalf of the Jamaican Cement Industry, the Caribbean Cement Company Limited.

The Complaint alleges that Ordinary Portland Grey Cement originating in or exported from the Dominican Republic was and is being imported into Jamaica at dumped prices. Further, the Complaint contends that the dumping has caused, is causing and is likely to cause material injury to CCCL, the Jamaican Producer of like goods. The Complaint requests that an investigation into the alleged dumping be done and anti-dumping duties applied.

The standard for initiation of an investigation once the Commission receives a Complaint is set out in section 22 of the Customs Duties (Dumping and Subsidies) Act 1999 (the “Act”). The Act provides that the Commission shall carry out an investigation into the matter if the Commission is satisfied that –

- (i) the Complaint is properly documented;
- (ii) there is evidence that the goods have been or are being dumped; and
- (iii) the evidence discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury.
- (iv) the Complaint has been made by or on behalf of the domestic producers of like goods.

**Complaint Properly Documented.** Section 2 of the Act identifies the information that a Complaint should contain. The Commission assessed the Complaint to determine whether it was properly documented. The Complaint was found to be properly documented. It specifies facts that are reasonably available to the Complainant that show that the alleged dumping of the goods is occurring and offers evidence that discloses a reasonable indication that the dumping is causing or likely to cause material injury to the domestic producer of goods that are “like goods” to the imports that are being dumped.

The Commission informed CCCL that the Complaint submitted is properly documented on March 19, 2010.

**Legal Standard – Sufficiency; Adequacy and Accuracy.** A Complaint that sufficiently alleges all the necessary elements of dumping, injury and causation, after being checked for adequacy and accuracy of the facts alleged requires that the Commission initiate an investigation. The allegations were verified and found adequate and accurate to the standard of initiation.

**Standing - By Or On Behalf of the Domestic Industry.** The Complaint must be made by or on behalf of the domestic producers of like goods produced in Jamaica. A Complaint is considered to be made by or on behalf the domestic producers if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of total production of the like goods produced by that portion of the domestic industry expressing either support for or opposition to the Complaint. In addition, domestic producers expressly supporting the Complaint must account for more than twenty-five per cent of total production of the domestic like goods. CCCL is the sole producer of the domestic like goods and therefore accounts for one hundred per cent of total production. The Complaint is made on behalf of, and with the support of CCCL. The statutory threshold for standing is met.

**The Decision to Initiate.** On April 30, 2010, as required by the Act, the Commission initiates an investigation into the allegation of dumping in Jamaica of Ordinary Portland Grey Cement originating in or exported from the Dominican Republic.

**Verification or Validation of Information.** The Commission verifies the information alleged in the Complaint to the standard required for initiation,. Information that resides only in the hands of the producer, the exporter and the importer cannot be collected nor taken into account to determine whether to initiate an investigation. Such information will be sought and form part of the record and basis for decisions in the preliminary and final determinations. Therefore, information included in the Statement of Reasons for Initiation or relied upon by the Commission in deciding whether to initiate an investigation is preliminary and cannot be taken as an indication that the Commission has accepted it. A determination of whether or not goods are dumped and causing injury is made only after an investigation is carried out in accordance with the Act.

**Preliminary Determination.** The Commission is required to make a Preliminary Determination within Ninety (90) days after the date of Initiation, unless extended, or terminate the investigation before making a Preliminary Determination, as provided for in Sections 26 and 27 of the Act.

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

The entities or parties interested in the case and its outcome are identified in the Complaint (“Interested Parties” or “Parties”). The Commission sought to verify information contained in the Complaint concerning the Parties involved from sources other than the Complaint, such as the Jamaica Customs, Fiscal Services Limited and available corporate documentation.

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

**The Importer** is Buying House Cement Limited, hereinafter referred to as “Buying House” or “the Importer”, with registered offices located at 6 Wellington Place, Wellington Glades, Kingston 6. Tel: 876-749-6193. Buying House is a limited liability company incorporated under the laws of Jamaica. Buying House is an importer, wholesaler and retailer of building materials and other products. Two other office locations appear to be at Lot P14 15 Pimento Way, Freeport, Montego Bay and Lot 2 Twickenham Park, Spanish Town (The 2010 Business Telephone Directory). The Commission has no factual information that there is any relationship between the importer, the other parties (traders) and the exporter and therefore at this stage the presumption is that there is no relationship between the parties and the purchase of the goods by the importer is at arm’s length.

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

**The Producer** is the exporter, Domicem also referred to as “the Producer”. Domicem is producing and exporting cement to Jamaica from the Dominican Republic.

**Other Parties** are Blue Atlantic Investments Limited, hereinafter referred to as “Blue Atlantic” with offices at Nautilus House, La Cour de Casernas, St. Helier, Jersey, Channel Islands, United Kingdom; and International Materials Incorporated, hereinafter referred to as “IMI” with offices at 993 Old Eagle School Road, Suite 416, Wayne, Pennsylvania 19087, United States of America (“United States”) Telephone: 610-520-1980, Fax: 610-520-1982. Blue Atlantic and IMI appear on the Jamaica Customs C-87 forms and supporting documents as Exporters. The Commission notes however that these parties appear to be traders which facilitate the transactions and provide logistical support from the point of shipment. They are not deemed to be the Exporters but will be included in the investigation.

The Complaint alleges that another company CEMEX Dominicana SA is an exporter and producer of the dumped cement imports. CEMEX Dominicana is a principal producer in the Dominican Republic located at Torre Acròpolis Piso 20, Av. Winston Churchill 67, Ensanche Piantini, Santo Domingo, Dominican Republic, Tel: 809-683-4901 and Fax: 809-683-4949.

CEMEX Dominicana is part of CEMEX Worldwide that was founded in Mexico in 1906 and is one of the world's leading cement producers with over 50 subsidiary companies in several countries around the world. There is no supporting documentation to show that CEMEX Dominicana has exported the product from the Dominican Republic to Jamaica. Therefore, CEMEX Dominicana is not included as a party to this investigation at this time. The Commission however notes that two of the fourteen (14) verified shipments from the Dominican Republic during the relevant period, were from San Pedro de Macoris which is in close proximity to the CEMEX plant; the remaining shipments were from Rio Haina Port which is located near to the Domicem cement plant.

### **III. SCOPE OF THE INVESTIGATION**

The Commission defines the scope of the investigation as follows:

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

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

The scope of the investigation is not determined by HTS Codes for the imports. The scope is determined by factors such as the end uses of the imported and locally produced goods within the Jamaican market. However, the Commission recognizes that HTS Codes assist the Customs authorities in the application of anti-dumping measures where they are imposed. Imports may be classified under different HTS Codes based on their description and have the same end uses to the domestically produced goods within the domestic market. To avoid circumvention of duties, where applied, which may result from product substitution or interchangeability, the Commission has defined the Scope broadly to include goods as described above, imported for building and general construction purposes, regardless of the type or quality, whether sold or imported per metric tonne or in bulk, 1.0 or 1.5 metric tonne bags or 42.5 kg sacks or packaged in any other form and for distribution or sale on the local market in any form, notwithstanding the referenced HTS Codes for cement.

#### **A. Goods Under Consideration**

The goods under consideration are the imports that the Complaint alleges are being dumped, also referred to as "subject goods" and "investigated products." The Complaint identifies the allegedly dumped imports as Ordinary Portland Grey Cement Type 1 ("OPC") originating in or exported from the Dominican Republic. The Complaint submits that the imported goods are used for building and construction purposes and conform to local and international standards.

The Commission obtained information from the Jamaica Customs and Fiscal Services Limited which provided the description, tariff classification and the relevant international and local standards of the goods under consideration. The investigated products have been described as conforming to the Bureau of Standards Jamaica Specification for Portland Cement (ordinary and rapid-hardening) JS32 Type I/II Portland Cement and are classified under tariff item and statistical key 2523.291 (Building Cement (Grey)) imported in 42.5kg bags and 1.5 tonne jumbo bags. The goods under investigation have been imported throughout February 2009 to February

2010 and generally attract a rate of duty based on the tariff item of forty per cent (40%).<sup>1</sup> The goods under consideration are being imported under two brand names, Domicem and Anchor. A physical examination of the Anchor cement sacks revealed that the brand is also manufactured by Domicem.

#### **IV. LIKE GOODS**

The Commission is required by the Act to identify the domestic industry producing the like goods. The Commission must first examine the goods produced in Jamaica by the industry claiming injury in order to determine whether the goods are “like goods”, that is whether they are identical in all respects or have uses and characteristics closely resembling the goods under consideration.

The Complainant produces Ordinary Portland Grey Cement (OPC Type I) and a blended OPC containing Pozzolan OPC Type IP, referred to as Carib Plus. The goods under consideration exported from the Dominican Republic are Ordinary Portland Grey Cement (OPC Type I). The Complaint<sup>2</sup> submits that the domestically produced cement types are like goods to the goods under consideration. They are OPC cement types that have identical or closely resembling physical and chemical characteristics, manufacturing processes, end-uses and methods of distribution in the Jamaican market.

The Commission conducted a comparative examination of the goods produced domestically and the subject goods to assess the degree of similarity using the criteria used in best WTO practice, namely: Technical Industry Standards, Physical and Chemical Characteristics; Manufacturing and Production Processes; Functions and End Uses; Channels of Distribution and Marketing; Substitutability and Competition; Customer and Producer Perception.

The Commission found similarities between the goods in nearly all of the criteria examined. The subject goods and the locally produced goods conform to the same or similar technical industry standards, they have similar physical and chemical characteristics and employ the same processes to manufacture cement. In Jamaica, the goods have the same chief end uses including the manufacture of concrete and concrete products for building and road construction. The goods appear to have the same channels of distribution to the same types of customers which include hardware stores, block makers and contractors. Few differences were identified on comparison of the goods under consideration and the Type IP cement blend of OPC and pozzolan. On assessing all the criteria, the Commission found the domestically produced goods to be like goods to the investigated goods in accordance with the Act. These are addressed in more detail below.

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<sup>1</sup> The duty rate of 40% has been, from time to time since 2006, the subject of suspension by the Government via an application to the COTED. The Importer was granted CET waivers for all shipments examined within the POI for dumping.

<sup>2</sup> Particulars of Complaint, Volume I, page 5.

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

The Bureau of Standards Jamaica

JS 32: 2008 – Jamaica Standard Specification for Portland Cement (ordinary and rapid-hardening)

JS 301: 2008 – Jamaica Standard Specification for Blended Hydraulic Cements

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

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

Portland cement is a fine powder substance which is the basic ingredient of concrete. OPC is a closely controlled chemical combination of calcium, silicon, aluminium, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Lime and silica make up about eighty five per cent (85%) of the mass. Common among materials used in its manufacture are limestone, shells, and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand, and iron ore.<sup>3</sup> Blended hydraulic cement refers to a cement type that is produced by inter-grinding or blending Portland cement with other materials that have cementitious properties, or by a combination of inter-grinding and blending. The Complainant's locally produced blended hydraulic cement referred to as Carib Plus is a blend of Portland cement and pozzolan (fly ash)<sup>4</sup>.

Cement producers worldwide utilize either the “wet” or “dry” processes to manufacture Portland cement, with the dry process being considered to be the more modern process. The dry process involves the principal raw material, rock being mined from a quarry and crushed in two stages, and then stored with other raw materials to be further processed. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used where the limestone, shale and clay are soft and additional energy is used to remove the excess water. The raw materials are proportioned, ground to fine powder and blended.<sup>5</sup> In the wet process, the raw materials in their proper proportions are ground with water and fed into the kiln as slurry (there is enough water to make it fluid). This process is used when the limestone, shale and clay need to be ground. In other respects, the two processes are alike.<sup>6</sup>

The Commission found that the domestic goods and the goods under consideration are produced in a similar manner. The Commission further investigated and found that both also use common manufacturing practices and skilled production employees consistent with industry practices.

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<sup>3</sup> Portland Cement Association (2010), “How Cement is Made” Retrieved from [www.cement.org/basics/howmade.asp](http://www.cement.org/basics/howmade.asp).

<sup>4</sup> CCCL's September 2, 2009 Submission, Vol. I, page 7

<sup>5</sup> Ibid 4

<sup>6</sup> Ibid

CCCL employs both processes to manufacture its cement. The Producer of the goods under consideration Domicem utilises the dry process<sup>7</sup> to produce OPC Type I.

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

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

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

## **V. PERIOD OF INVESTIGATION**

The period of investigation ("POI") is the timeframe selected for which information and data on imports into Jamaica will be collected and assessed to determine whether the imports are being dumped, and if there is dumping, the effect of the dumping. Therefore, it is the timeframe to which information and data substantiating allegations of dumping and injury should refer. The Commission determines the period of investigation based on the date of initiation.

The POI for dumping is normally one (1) year from the date of initiation of an investigation. In this case the POI for dumping is April 30, 2009 to April 29, 2010.

The POI for Injury should be three (3) years immediately prior to the date of initiation and should include the POI for dumping. The POI for injury is April 30, 2007 to April 29, 2010. At initiation the Commission had information available to it up to February 2010.

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<sup>7</sup>International Finance Corporation Summary of Project Information on Domicem Plant, retrieved from <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/570F563094DA0CC4852576BA000E26F0>

## **VI. THE JAMAICAN MARKET**

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

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

All cement is consumed in construction activities. Jamaica's construction sector has historically been an essential contributor to the Jamaican economy, primarily due to its contribution to the country's physical infrastructure, but also due to linkages it has with other sectors. However, the sector has been experiencing marginal growth over time. The total value added by the construction industry in 2008 was only one point eight per cent (1.8%) higher than the total value added by the industry in 1992.<sup>8</sup>

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

The contraction in the Jamaican economy and in particular the construction sector has also impacted on the domestic market for cement. In 2006, a release by the then Ministry of Industry, Technology, Energy and Commerce (now Ministry of Industry, Investment and Commerce) noted that production and imports up to November 19, 2006 totalled 915,000 MT compared with approximately 850,000 MT for the full year 2005. The report further stated that up to November 2005 Jamaica's consumption of cement increased by approximately seven per cent (7%).<sup>9</sup> In 2007, the total market demand increased an estimated six per cent (6%) more over 2006.

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<sup>8</sup> Construction Task Force, (2009). *Vision 2030, Jamaica. Construction: Sector Plan 2009 – 2030*.

<sup>9</sup> Ministry of Industry, Technology, Energy and Commerce, (2006). *Cement Update #8: November 20, 2006*. Retrieved from [www.mct.gov.jm/Cement%20Update\\_november\\_20.pdf](http://www.mct.gov.jm/Cement%20Update_november_20.pdf)



However, this increase was short lived as the market contracted by approximately ten per cent (10%) in 2008. This continued in 2009 with contraction of the market by approximately eight per cent (8%) compared to the previous year.

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

## **VII. IMPORT QUANTITIES OF THE GOODS UNDER CONSIDERATION**

Section 26(2) of the Act provides that where imports of the goods are negligible, the Commission should terminate the investigation. The volume of the dumped imports is considered not negligible where it accounts for at least three per cent (3%) of imports of the like product to the importing country.

The Commission found that the volume of imports is greater than sixty per cent (60%) of total imports and therefore meets the statutory threshold for an investigation.

## **VIII. EVIDENCE OF DUMPING**

The Complaint alleges that there is injurious dumping into Jamaica of Ordinary Portland Grey cement originating in or exported from the Dominican Republic. Dumping occurs where the Normal Value of the goods exceeds the Export Price of the goods.

The normal value of goods imported into Jamaica, also referred to in the Act as the fair market price is the price at which like goods are sold in the ordinary course of business or at the same level of trade for domestic consumption in the exporting country in accordance with Regulation 3. The export price of goods shipped to Jamaica is generally the exporter's sale price or the price at which the importer has purchased or agreed to purchase the goods as provided in section 19 of the Act. A fair comparison of the normal value and export price is required by the Act and Regulations whereby adjustments are made for costs, charges and expenses that would affect price comparability, as these become available to the Commission. The adjustments are necessary in order to obtain the prices of goods at the factory door, referred to as the ex-factory normal value and the ex-factory export price. These are addressed in more detail below.

### **A. NORMAL VALUE**

The Complainant submitted information on the cement market in the Dominican Republic and provided prices from which it derived a normal value. The Complainant submits that the ex-factory normal value to cement customers in the Dominican Republic was US\$146.02 for sacked cement, after making adjustments for movement expenses and packaging costs.

The Commission obtained retail prices for sacked cement sold by Domicem through independent market research. Reasonable adjustments were made for movement expenses in the form of inland transportation in light of the 26 km distance from the factory to the port and also for profit margins. Cement in the Dominican Republic is sold in forty five point two five (45.25) kilograms per sack/bag, which is slightly larger than the forty two point five (42.5) kilogram sacks sold in Jamaica. The Complainant provided the Commission with domestic prices per metric tonne for cement. Therefore, the retail price per metric tonne for cement sold in the

Dominican Republic was determined to ensure that comparisons were done at a similar level. The estimated ex-factory normal value derived by the Commission is US\$111.47 for sacked cement.

## **B. EXPORT PRICE**

A weighted average export price was provided by the Complainant using market information obtained from Exhibit 2 in the Complaint. The Complainant derived an export price of US\$64.41 after making adjustments for transportation costs from the factory to the port of export.

Section 19 of the Act prescribes how the export price is to be determined by the Commission. The Commission calculated the export price using information on record obtained from the Jamaica Customs import documentation and from Fiscal Services for the shipments from the Dominican Republic. These documents would not have been available to the Complainant. The Commission therefore did not rely on the weighted average export price provided in the Complaint. In calculating the export price, the Commission used the Cost Insurance and Freight (CIF) prices and deducted reasonable adjustments in the form of inland transportation, freight and export packaging. The estimated ex-factory export price derived by the Commission from information available at this time is US\$73.87.

## **C. ESTIMATED MARGIN OF DUMPING**

The margin of dumping refers to the differential between the normal value and the export price expressed as a percentage of the export price. It is arrived at by comparing the estimated ex-factory normal values to the ex-factory export prices. The calculation of the margin of dumping establishes the difference in the price that the exporter sells the like good to consumers in its own country market (normal value) and the price at which it exports to Jamaica (export price).

The Commission has found evidence that Ordinary Portland Grey Cement is sold at dumped prices to Jamaica by the identified Producer and Exporter in the Dominican Republic. The Commission has calculated an estimated margin of dumping of about fifty point nine zero per cent (50.90%) based on the information before it at this time. This is significantly greater than the *de minimis* threshold in the Act of two per cent (2%) and is therefore a sufficient indicator of dumping for the purposes of initiating an investigation.

## **IX. ECONOMIC CONDITION OF THE DOMESTIC INDUSTRY 2005 – 2009**

The Complainant, CCCL is the sole producer of cement in Jamaica. CCCL mines limestone and shale from quarry lands it owns in Jamaica and processes it into cement. It sells the cement manufactured in Jamaica primarily on the local market. Aside from shipments imported for sale prior to 2005, it was also the sole supplier to the market. The last year that the domestic producer supplied the entire market from domestic production was 2005. The Commission found it useful to start its analysis in 2005 and provides an overview of the economic condition of the Domestic Industry for the period 2005–2009. This assessment involves a historical look at the development, growth and stability of the operations of CCCL from a financial perspective.

In 2006, CCCL was unable to supply a growing domestic market for cement. As a result of its own production difficulties with a somewhat outdated plant, the company suffered a major

setback in 2006 when substandard cement was produced and sold to the market. The company had to engage in negotiations with its customers and compensate purchasers who were harmed by the faulty cement. CCCL itself became a major importer as well as producer to fill its significant production gap, as it tried to recover. At the same time, the GOJ intervened to ensure a reliable supply of cement to meet the market demand, which at the time was robust, by considering and implementing waivers and negotiating the importation of sufficient quantities of cement. In 2007, the local market for cement expanded and quantities of imports increased. By then, CCCL had decreased its import quantities, but there were other commercial players importing to sell in the market for cement. The market began to contract some time thereafter. In 2009, the contraction in the market accelerated, resulting in a reduction in the Domestic Industry's production gap.

Published financial statements for CCCL since 2006 show annual increases in revenue. In 2007 revenue increased by sixteen point five nine per cent (16.59%) when compared to 2006 and in 2008 by twelve point two one per cent (12.21%) over 2007. However, growth was less than one per cent (1%) in 2009. For the first time since 1999, the industry experienced a loss. In 2006, CCCL experienced a drop in sales. This was due to reduction in production in tandem with its release into the domestic market of cement which was non-conforming. The sales of the non-conforming cement resulted in an amount in excess of J\$300M being paid out by CCCL to settle damage claims. A reduction in operating profits is observed in the record regarding which the Commission will request details in the course of the investigation.

As noted above, since 2005, when CCCL supplied almost one hundred per cent (100%) of the domestic market for cement, the market situation evolved in a manner not favourable to the domestic industry. In 2006, the market grew five per cent (5%) over 2005, but domestic production reduced by ten per cent (10%), resulting in an emergency need for imports to supply the demand gap. In that year CCCL itself imported, becoming the largest importer that year of approximately sixty three per cent (63%) of all imports. From 2007 onwards, imported cement from other participants in the market increased their share, the most notable being The Buying House, currently the largest volume importer.

In the changing commercial landscape CCCL has significantly increased exports to a high of 88,912MT in 2009. There were no exports in 2006.

As publicised by CCCL, the company made a capital investment amounting to more than US\$177,000,000.00 over the period between 2005 and 2009, to increase production capacity and capacity utilization. TCL had purchased the company from the Government of Jamaica (GOJ) and the company notes that the expansion of its capacity was undertaken as part of its commitment in accordance with the contract with the GOJ to make CCCL a world class cement producer able to compete globally, increase plant efficiencies and reduce production costs. Ultimately, this would not only earn needed foreign exchange, but also reduce the price of cement sold in the Jamaican market. The capital programme was deemed critical by CCCL to ensure its ability to supply the entire Jamaican market while exporting excess production to earn and generate hard currency.

Cement consumption in Jamaica has been contracting since 2008. The Jamaican market continues to be dynamic with an increasing number of importers and an overall decline in demand. Any increased production by the domestic industry as it seeks to make use of the capacity which it has created through new investment must be viewed against the background of

contracting demand for cement in the local market, the global recession and imports. The new capacity is still to be tested. The contraction of the market plus the presence of about 150,000MT of imports which do not attract any duties, not even the Common External Tariff (CET) have not allowed for the expanded capacity to be utilised.

## **X. CAUSATION**

### **a. Causal Link**

In accordance with Article 3.5 of the WTO Anti-dumping Agreement and Section 22 paragraphs (2) and (4) of the Act, the Commission must find that the evidence before it discloses a reasonable indication that the dumping of the goods has caused, is causing or is likely to cause material injury. It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of the Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Commission.

### **b. Non-Attribution Analysis**

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

## **XI. EVIDENCE OF INJURY**

In accordance with Regulation 12 and 12(3), an assessment of whether the domestic industry is experiencing material injury involves an examination of the actual or potential volume of the dumped goods; the consequent impact of the dumped goods on market prices and on the domestic industry; identification of trends in relation to economic indicators such as import volumes, market share, prices, output levels, sales, inventories, capacity and capacity utilisation rates and measures of financial performance. The determination of materiality is based on positive evidence and on the overall effect of the empirical data taken separately or together or parts of a whole, the effect of which cannot be ignored as inconsequential.

In support of its allegation that the goods are being dumped and that the dumping has caused and is causing material injury, the Complainant submitted information on price undercutting, price depression and suppression, loss of market share, decline in sales, surplus inventories, reduction in production and capacity utilisation, revenue and profit impairment and increased unit cost of production. The Commission was asked to find that there is a reasonable indication of material injury to the domestic industry.

The Commission analyzed the overall effect of all the economic factors noted above. The Commission has not found a reasonable indication at this time of material injury to the domestic industry caused by the presence of the dumped imports on the market. For the period when the dumped cement has been present in the Jamaican market, the Commission observed price

undercutting, but no price suppression or depression, no decline or significant change in the average cement production volumes (output) and productivity, no negative effect on inventories. A decline in sales and in CCCL's overall market share based on its total sales which includes imports was observed. However, the Domestic Industry's market share in terms of sales from domestically produced cement appeared to have increased. Examination of the relevant indicators revealed a slight increase in revenue and a loss of profits in absolute Jamaican currency terms. This meant that there were observable adverse effects on return on investments, cash flow and on the company's ability to raise capital.

Other Factors which also appeared to be exerting an influence were examined to make certain that any such influence was not attributed to the presence of the dumped imports in the marketplace. The result of the analysis was that the Commission did not find a reasonable indication of material injury to the domestic industry attributable to the dumped imports.

### **A. PRICE EFFECTS**

Price Effects refer to changes in the level of prices in absolute and relative terms that are the direct result of dumped imports into the Jamaican market. This assessment involves an examination of (i) whether the prices of the dumped cement is lower than the selling prices of locally produced cement (price undercutting); (ii) whether the selling prices of the locally produced cement has changed or decreased as a result of downward pressure of the prices of the imports relative to previous price levels (price depression); and (iii) the inability of the domestic industry to maintain the margin between its unit cost of production and unit selling price (price suppression.) These are discussed below.

**Price Undercutting.** The Complaint alleges that the Buying House in buying at dumped prices is able to undercut the domestic industry's prices by providing to its customers "atypical credit terms, drastically under-compensated delivery to the point of distribution and likely discounts for other products".<sup>10</sup>

The Commission examined the price information submitted by the Complainant. It noted that Buying House sells cement primarily in the Western parishes and that for the sacked cement was able to sell at a price of approximately five per cent (5%) to seven point five per cent (7.5%) lower than CCCL. For the jumbo sacks, the Commission was not yet able to verify the allegation of atypical credit terms, under-compensated delivery or discounts. Whereas these factors alleged by the Complainant could point to price undercutting, additional information will be required before the Commission will reach a conclusion regarding this factor.

**Price Depression.** The Complainant alleges that it has suffered price depression because it has been forced to absorb costs and offer drastic discounts and rebates in response to the unfairly traded imports.

The Commission examined the pricing information of the Domestic Industry when the dumped cement was in the market and observed that the Domestic Industry offered price reductions during that period. From July 7, 2009 to July 14, 2009, the Domestic Industry offered market wide discounts on all 42.5kg sacks, 1.5 MT jumbo bags and bulk cement. In September 2009, a

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<sup>10</sup> Particulars of Complaint, Volume I, page 40.

subsequent price reduction was offered to its bulk customers and block makers using jumbo bags. The Commission notes that such a reduction in prices by the domestic industry would normally be an indicator of price depression. However the Commission is guided by the statement of CCCL which indicated that the price reduction is attributable to increased efficiency as a result of the commissioning of its new mill. Price depression was therefore not found.

**Price Suppression.** The inability of the domestic industry to make reasonable price increases in order to recover increased costs is generally indicated by the shrinking of the margin between unit cost and selling price or price suppression.

In examining CCCL's selling prices and the related adjustments in the cost of production the Commission observed that the Domestic Industry was able to make a three per cent (3%) price increase in February 2009, followed by a seven point five per cent (7.5%) price increase in February 2010. The Commission observed no indication of price suppression at this time.

## **B. VOLUME EFFECTS**

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

**Production.** The Commission examined the allegation of the Complainant that it has had to curtail production as a result of loss of sales in the market due to the presence of the dumped imports from the Dominican Republic. The Commission assessed the trend in annual production of the Domestic industry and found that production increased marginally in 2009 over the previous year. In addition, data submitted on average monthly production for the period 2009 indicated that the Domestic Industry maintained an average production level when compared with previous years. The Commission found no negative effect on production during the period the dumped goods were in the market.

**Inventory.** The Complainant submitted that it has been forced to offer market-wide discounts in an effort to reduce mounting inventories. An examination of the monthly inventory levels of the Domestic industry did not point to mounting inventories. The inventory levels in 2009 were found to be consistent with prior years maintaining a level equivalent to approximately two weeks' sales.

**Sales and Market Share.** The Commission reviewed the Complainant's submission that domestic sales and market share have declined consistently as the sales of dumped cement on the market have increased. An examination of the sales data submitted by the Domestic industry revealed that sales from domestic production decreased by three per cent (3%) in 2009 over the period 2008, even though total overall sales declined by nine per cent (9%). This is because 2008 included sales of imports by CCCL. The Commission also observed that the overall market share of CCCL declined by one per cent (1%), however CCCL's market share for domestically produced cement increased by four per cent (4%). CCCL's decline in sales was slower than the decline in overall market consumption. The Commission found a decline in sales however this did not lead to a decline but rather an increase in market share because the overall contraction in the market was greater than CCCL's decline in sales.

## **C. ECONOMIC IMPACT**

The Commission examined the condition of the Domestic Industry indicated by the following factors of revenue, profitability, return on investment, cash flow and ability to raise capital during the period when the dumped goods were in the Jamaica market.

**Revenue and Profits.** Profitability refers to an excess of revenues over the cost of generating those revenues. The Complainant submits that the dumped imports on the Jamaican market have caused a decline in the revenue and profits of the Domestic industry coupled with increases in the unit cost of production.

The Commission examined the consolidated audited financial report of the Domestic Industry for 2009 and found that the Domestic Industry for the most part maintained revenue levels for the period 2009 when compared to the previous year of 2008 as there was a marginal increase in gross revenue. Operating profits of the Complainant declined significantly in 2009 due primarily to cost of sales adjustments. The Commission found that the cost of sales adjustments were not consistent with the monthly unit cost of production data supplied by CCCL. The Complainant's submission did not provide sufficient information for the basis of the adjustments made. Therefore, as the Commission could not link the cost of sales adjustments to the cost of production, it is unable to associate the cost of sales adjustments to injury because of the dumped imports. The Commission will request clarification and additional information from the Complainant.

**Return on Investment.** Return on Investment (ROI) measures the level of profits in relation to the level of investments or capital employed in generating those profits. The Commission was unable to come to a conclusive position with respect to profitability and therefore its impact on the ROI also remains inconclusive at this time. Potential reduction in the company's ROI, has to be considered further in our analysis of threat of injury to the industry.

**Cash Flow and Ability to Raise Capital.** The Complaint does not allege any impact on the domestic industry's cash flow or ability to raise capital by the allegedly dumped imports. The Commission noted that share prices reflect the market's valuation of a company, as well as investor's confidence in the ability of an organization to maintain a certain level of stability and profitability. The share prices of the Domestic industry fell from \$9.64 in 2006 and 2007 to \$3.95 in 2008. The current share price presents a lower valuation for the company and will affect their ability to raise the level of capital they had earlier, if the need arose. The Commission will require additional information to provide an assessment of this factor. In assessing the effect on cash flow the Commission's reviewed the Domestic Industry's operating results for 2009 which show a significant increase in finance charges. There were no specific indications as to the basis of the increase. It is reasonable to conclude that this increase is related to the capital investments made in the new mill. The Commission, is aware of the effect on the final operating profits. However, the Commission does not consider that this significantly affects the production operating costs. Increased interest payments will have an impact on the company's cash flow. The Commission will require additional information to analyze this factor.

**Employment & Productivity.** The Commission found no significant changes in the level of employment or productivity and therefore no indication of injury relating to these factors. The Domestic Industry submitted that sales of dumped cement from the Dominican Republic have the potential to directly impact its employees. A decrease in production will cause a decline in

the man hours required to sustain that level of production. This is addressed in the threat of material injury section of the Report.

**Capacity Utilisation.** Capacity utilisation refers to the extent to which a firm utilizes its productive capacity. It is expressed in terms of total production as a percentage of the total capacity. Capacity is appropriately redefined based on an average of actual production utilised over the last three to five years. The Domestic Industry has claimed total production capacity of 1,108,800 MT per year up to September 2009<sup>11</sup>. The industry shows utilisation rates substantially below the capacity claimed. The Commission is therefore not persuaded of the capacity claimed, as the historical production data does not support this. The Complainant has invested in new plant capacity which was commissioned in August 2009. The Domestic Industry has not had the opportunity to prove this new capacity.

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

**Exports by the Domestic Industry.** The Domestic Industry indicates that the acceleration of its export programme as a result of revenues lost from sales in the Jamaican market due to dumped imports, has caused additional lost revenue. The loss in revenue relating to exports is revenue foregone by exporting instead of selling the same quantity in the Jamaican market. The selling price of the exports is significantly lower than the selling price in the Jamaican market. The Commission is not persuaded that there is an adverse overall impact because of the exports but views it as an opportunity for additional sales in light of the decline in market consumption.

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

## **XII. THREAT OF MATERIAL INJURY**

In accordance with Regulation 13, a determination of threat of material injury may be made where the dumping is likely to cause material injury to develop in the future. This development must be clearly foreseen and imminent.

The Commission in determining whether there is a threat of material injury considered the potential injury on examination of the fifteen economic factors addressed in the material injury section and the factors outlined in Regulation 13 which are set out below:

- (a) The significant rate of increase of dumped imports into the domestic market which indicates the likelihood of substantially increased imports of the [dumped] goods into Jamaica;

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<sup>11</sup> CCCL, (2009) Expansion and Modernisation, Retrieved from <http://www.jamstockex.com/read.php?Content ID ;Particulars of Complaint, Volume I, page 14>



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

The Complainant contends that the threat of material injury to the industry is imminent and clearly foreseeable; and provided information in relation to the factors set out in Regulation 13.

The Commission assessed the factors listed in Regulation 13 and also other factors that point to the potential economic impact on the Domestic Industry. As required, the Commission also examined all other factors that could be deemed to be causing or threatening injury to the Domestic industry during the POI and in order to not attribute any such threat to the presence of dumped imports.

## **1. Potential to Increase Supply to the Jamaican Market**

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

### **1.1 Rate of Increase of Dumped Imports**

The Complainant contends that there is a significant rate of increase in the volume of dumped cement imports from the Dominican Republic from 2007 to 2009.

The Commission examined the rate of increase of the dumped imports based on information available from February 2009 to February 2010. For that period there were fourteen shipments of the dumped goods. The Commission observed an absolute increase in dumped imports of five point zero nine per cent (5.09%) when compared to the previous period of 2008.

The dumped imports also increased relative to domestic production and sales. No information on domestic production and sales was yet available to the Commission for 2010. Information for the period up to and including 2009 was assessed. Imports by Buying House from the Dominican Republic accounted for ten point five two per cent (10.52%) of domestic production and eleven point three one per cent (11.31%) of sales from domestic production. In 2009, these imports accounted for ten point eight eight per cent (10.88%) of domestic production and twelve point two seven per cent (12.27%) of sales from domestic production.

The Commission also examined the rate of increase of the imports from 2006 when Buying House first imported into Jamaica from the Dominican Republic. The imports increased significantly in absolute terms in 2006, compared to 2005, then decreased significantly in 2007. There was again a significant increase in 2008 to the highest level since they first entered. Imports have been increasing since 2007 in absolute terms. In relative terms, imports from the dumped source accounted for less than one per cent of production in 2006 and 2007, increasing to ten point two eight per cent (10.28%) in 2008 and fourteen point one one per cent (14.11%) in 2009. Imports from the source of the dumped goods in this case accounted for less than one per cent of sales in 2006 and 2007, and increased in 2008 and 2009 to account for eight point seven point per cent (8.75%) and thirteen point zero three per cent (13.03%) of consumption respectively.

## 1.2 Export Capacity of Exporter and Exporting Country

The Commission examined the current and likely future production capacity and capacity utilisation rates for cement of the exporter and the exporting country.

The Complaint submits that the cement industry in the Dominican Republic “continues to operate with considerable excess capacity and focuses on increasing exports to maintain capacity utilisation in the face of a declining market.”<sup>12</sup>

The Commission conducted independent research on the cement industry in the Dominican Republic and found that it is a major producer of cement in the Latin American and Caribbean region. Cement production in the Dominican Republic was 4.1 million MT in 2007, which represented a forty-one per cent (41%) increase in two years.<sup>13</sup> The 2008 Mineral Yearbook published by the United States Geological Survey provided cement production figures for the Dominican Republic for the period 2004 to 2008. It reports that in 2006, the Dominican Republic produced 3,776,798 MT of cement and production increased by eight point five per cent (8.5%) in 2007 to 4,100,000 MT and decreased by two point four per cent (2.4%) in 2008 to 4,000,000 MT.<sup>14</sup>

The cement industry in the Dominican Republic comprises six (6) producers of cement. These include Titan and Yaque who produce for CEMEX, Domicem, Cibao, Colon, Cementos Santo Domingo and Cemento Andino. These producers have a high production capacity of about six million metric tonnes annually. It is noted that substantial investments have been made in the cement industry in the Dominican Republic in recent years, in a bid to make the country’s housing industry more viable. In addition, there has been a sustained increase in demand for and production of cement, which has resulted in the entrance of new producers, such as CEMEX Dominicana, Domicem, Cemento Andino and Cementos Santo Domingo. The capacity of the industry has been steadily growing and has experienced annual increases in output. The Asociación Dominicana de Productores de Cemento Portland (“Dominican Portland Cement Producers Association” or “ADOCEM”), the association that represents the cement sector in the

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<sup>12</sup> Particulars of Complaint, Volume I, page 59.

<sup>13</sup> Redwood, S. (2009). *Dominican Republic packs a punch*. Retrieved from <http://www.globestarmining.com/SiteResources/data/MediaArchive/pdfs/articles/mining%20journal%20jan%202009.pdf>

<sup>14</sup> United States Geological Survey, (2010). 2008 Minerals Yearbook: Islands of the Caribbean (Advance Release). Retrieved from <http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-2008-ac-aa-bf-bb-bd-do-dr-gj-jm-mh-nt-sc-vc-td.pdf>

Dominican Republic published a report in 2009 which notes that the average annual growth rate of the sector over the last ten years was eight per cent (8%), reaching record highs of above twenty per cent (20%) in 1999 and 2006.

It is reasonable to note that the cement producers in the Dominican Republic have a vested interest in continuing to increase the use of their capacity based upon the substantial investments made. ADOCEM reports that “the total investment of cement producing companies in the country amounts to about US\$1 billion,” which has moved the domestic industry from being a net importer to a self sufficient industry, exporting approximately thirty per cent (30%) of its production.

The Exporter and Producer Domicem is a subsidiary of Colacem S.p.A, Italy’s third largest cement group, which operates as a construction and building materials company. Domicem has substantial production capacity. In 2005, Domicem embarked on a project overseen by the International Finance Corporation (IFC) to design, construct and operate a greenfield integrated dry process cement plant with 800,000 tons per year clinker capacity and with 900,000 tons per year cement capacity at an estimated cost of \$84 million in the Dominican Republic. The plant which would be part owned by Domicem was expected to be commissioned by May 2005, and the company projected that it would sell ninety per cent (90%) of its production in the domestic market and 10% as exports. In, March 2005, the project was modified and the total project cost revised to US\$113.5 million. The initial project sponsors were Colacem, S.p.A. of Italy forty-nine per cent (49%), SIMEST of Italy two per cent (2%) and a group of local partners in the Dominican Republic who had knowledge of the local building materials industry with forty nine per cent (49%). After its revision, IFC provided Domicem with two loans, totalling US\$7.5 million, which was the additional investment required for the full ownership of the plant.

The Commission is of the view that that the exporting country, the Dominican Republic and the exporter Domicem have significant capacity that constitutes a readily available source of supply of the goods at dumped prices.

### **1.3 Likelihood of Exports to Jamaica**

The Commission assessed the likelihood that the excess capacity in the Dominican Republic or a portion thereof would be exported to Jamaica. The Commission considered several factors including demand for and consumption of cement in the Dominican Republic, the demand for the dumped cement by importers in Jamaica and the availability of other export markets to absorb the excess capacity of the Dominican Republic.

The 2009 ADOCEM report notes that “production capacity in the last eight years has grown well above the local demand for cement, a situation that has led the industry in search of exports and new markets”. This report also states that the two principal markets to which cement is exported are Haiti and Jamaica and the preliminary report of the Central Bank of the Dominican Republic for 2008 emphasized an increase of fifty four point eight per cent (54.8%) in the country’s exports of cement during 2008. This is a strong indication that there is a likelihood that where there is excess, cement from the Dominican Republic will seek to enter the Jamaican market.

The Commission found that in 2007, the Dominican Republic exported 30,059 MT of cement valued at US\$2,737,573 to the United States. In 2008, exports from the Dominican Republic to the United States declined by sixty two point four zero (62.40%) to 11, 303 MT valued at

US\$1,081,750.<sup>15</sup> Additionally, information obtained from the Dominican Republic Center for Export and Investment noted that the third most exported industrial product for the period January to September 2008 was OPC valued at US\$51.06 million. The Center noted that markets to which exports of OPC were allocated included Haiti (US\$16.21 million), Peru (US\$7.12 million) and Jamaica (US\$4.97 million).<sup>16</sup> Although the Dominican Republic has found a market for its cement in the United States, the Commission noted that the decline in consumption in the United States will lessen the likelihood that the excess capacity of the Dominican Republic will be channeled there. It was reported, with regards to imports into the United States that “total purchased tonnage was cut in half from the previous year’s amount, which itself had dropped by more than one-third from the year before.”<sup>17</sup> The Commission concluded that export markets including Jamaica will be important to the Dominican Republic cement industry. Export markets of Haiti, Peru and the United States are considered in more detail below.

## Haiti

Haiti, which is the immediate neighbor of the Dominican Republic on the island of Santo Domingo is identified as being a major importer of Dominican Republic cement.

An examination of the cement market in Haiti revealed that demand and production have consistent. In 1994, Haiti privatized the only cement company, Ciment d’Haiti. Since then, Haiti has had limited production capacity and instead imports most of the cement it uses. The Global Cement Report for 2005 noted that the absence of major civil projects has resulted in a low but stable demand for cement in the country which averages 0.7 to 0.8 million metric tonnes annually. At that time, approximately fifty five per cent (55%) of Haiti’s market was served by CEMEX which operates three cement import terminals with bagging plants. The report noted that the remainder of the market was supplied by Ciementerie Nationale (CINA)<sup>18</sup>, (formerly Ciment d’Haiti) through a clinker grinding plant which has nominal capacity of 0.36 million metric tonnes per annum. It was also noted that “other minor importers include Cementos Cibao of the Dominican Republic.”<sup>19</sup> Imports from this company were reported in 2005 to be only to the North of Haiti.

A more recent report, the 2008 United States Geological Survey indicated that for the period 2004 – 2008, two hundred and ninety thousand (290,000) MT of cement was produced each year in Haiti.<sup>20</sup>

In January 2010, an earthquake measuring 7.3 on the Richter scale and aftershocks that followed decimated the infrastructure of Southern Haiti. Due to the absence of a domestic industry with significant capacity, the immense amount of cement, (relative to the size of the domestic market)

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<sup>15</sup> Business Analytic Centre, (2010). *United States Export and Import of Portland cement, Aluminous cement, Slag Cement*. Merchant Research and Consulting Limited.

<sup>16</sup> Dominican Republic Center for Export and Investment, (2008). *Export Performance. National Products: Non – Traditional*. Retrieved from [http://www.cei-rd.gov.do/estudios\\_economicos/no\\_tradicionales\\_enero-septiembre\\_2008.pdf](http://www.cei-rd.gov.do/estudios_economicos/no_tradicionales_enero-septiembre_2008.pdf)

<sup>17</sup> US Cement: Facing Difficult Time, Cement Americas, September 1, 2009.

<sup>18</sup> CINA is jointly owned by Colcimker, Holcim, and CNC a Haitian distributor of cement.

<sup>19</sup> Hargreaves, D., Bell, P., & Fernandes, J. (Eds.). (2005). *Global Cement Report* (Sixth ed.). International Cement Review.

<sup>20</sup> Wacaster, S. (2008). *The Mineral Industries of the Islands of the Caribbean. USGS Minerals Yearbook: Islands of the Caribbean*. Retrieved from <http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-2008-ac-aa-bf-bb-bd-do-dr-gj-jm-mh-nt-sc-vc-td.pdf>

required to rebuild the infrastructure that was damaged by the earthquake will have to be imported. To date, the Colombian cement company Cementos Argos, which has a plant in Haiti with productive capacity of six hundred thousand (600,000) metric tonnes, has sold half of its 2011 production to the Haitian government to assist with the rebuilding of roads, bridges and houses.<sup>21</sup> The management of Cementos Argos has estimated 1.4 million MT will be required to repair the approximately three hundred and forty thousand (340,000) homes damaged in the earthquake. It appears clear that cement will have to be imported to supply the shortfall.<sup>22</sup> An estimate of the amount of cement that will be required to rebuild roads, bridges and other infrastructure has not yet been obtained by the Commission. The Commission will also seek specific information regarding financial resources being made available to Haiti for building in order to assess the likely demand as a result of the earthquake in the foreseeable period for cement in Haiti.

## Peru

Peru is another major market for cement from the Dominican Republic. However, Peru itself has an active cement industry. In 2009, one hundred and eighty thousand (180,000) metric tonnes of cement was imported into Peru, while seven million, one hundred and sixty six thousand four hundred and forty three metric tonnes (7,166,443 MT) of cement was produced in Peru for the year.<sup>23</sup> Peru's cement imports for 2009 therefore, accounted for approximately two per cent (2%) of its domestic production. Peru has installed capacity of 12,215,000 MT.<sup>24</sup> Investments have also been made in Peru, specifically the construction of one factory and expansion of the productive capacity of two others.

Peru purchases products from the Dominican Republic such as cement, medicines and tools for mining, and intends to begin negotiating a Free Trade Agreement (FTA) with the Dominican Republic and Panama in the latter part of this year. The Dominican Republic regards Peru as one of its main export markets, but developments in the market for cement would factor into the how this import would be treated. The Commission intends to examine information which will allow it to obtain an indication of how cement is likely to be treated in the trade negotiations.

In 2007, Peru experienced a cement shortage. The Peruvian government, in its attempt to rectify the situation eliminated the twelve per cent (12%) import tax on cement to encourage imports into the market. In response to the elimination of the import tax, Peru's largest producer Cementos Lima filed an appeal against the Ministry of Economy and Finance's (MEF) decision to remove the duty.<sup>25</sup>, Peru's constitutional court (*Tribunal Constitucional*) "declared that the

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<sup>21</sup> Cemweek, (2010). *Chile and Haiti seek cement manufacturers bids*. Retrieved from <http://www.cemweek.com/index.php/news/markets-a-competition/5382-chile-and-haiti-seek-cement-manufacturers-bids>

<sup>22</sup> Cemweek, (2010). *Argos ready to help in Haiti reconstruction*. Retrieved from <http://www.cemweek.com/index.php/news/markets-a-competition/4078-argos-ready-to-help-in-haiti-reconstruction>

<sup>23</sup> El Comercio, (2010). *Challenge ruling that tariff on imported cement restores*. Retrieved from <http://elcomercio.pe/noticia/446396/cuestionan-fallo-que-restituye-arancel-al-cemento-importado>

<sup>24</sup> Peru Cement Association (ASOCEM), (2010). *Installed Capacity*. Retrieved from [http://www.asocem.org.pe/SCMRoot/capacidad\\_instalada.htm](http://www.asocem.org.pe/SCMRoot/capacidad_instalada.htm)

<sup>25</sup> Construpages, (2010). *Cement tax ruling "sets dangerous precedent" says business association Confiep*. Retrieved from [http://www.construpages.com/nl/noticia\\_nl.php?language=en&id\\_noticia=1608&PHPSESSID=2ebkis9c5ermktatv5touer9i7](http://www.construpages.com/nl/noticia_nl.php?language=en&id_noticia=1608&PHPSESSID=2ebkis9c5ermktatv5touer9i7)

lawsuit filed by Cementos Lima had grounds and was sustained, and voted for the reestablishment of the twelve per cent (12%) tariff for cement”.<sup>26</sup> The MEF has indicated that it will take legal action against the ruling.<sup>27</sup> Even so, the ruling points to potentially increased duty on imported cement in the Peru market. If there is no comparable challenge in the Jamaican market, it is not unreasonable to anticipate increased exports to other markets such as Jamaica.

## **United States**

Historically, the United States has been the primary export market for Dominican Republic products. However, the United States has experienced a downturn and this decreases the likelihood that the excess capacity of the Dominican Republic cement will be channelled there. The United States Portland Cement Association (PCA) reported that “in 2008, the United States consumed 93.6 million metric tons of Portland cement reflecting a 15.2% decrease over 2007 levels”.<sup>28</sup> As it relates to the United States import market, in 2008, total tonnage of cement imported reduced to half that amount when compared to imports for 2007 and while projections for 2009 indicated that imports would fall a further forty five per cent (45%). In putting forward an approach to address the contraction in the market the Chairman of the PCA noted that “companies have the ability to reduce imports and stabilize the downturn in the domestic supply”.<sup>29</sup> Imports might be further reduced in the near future, as companies in the United States counteract an over supply in the domestic market.

## **Cement Consumption in Dominican Republic**

In 2009, cement consumption in the Dominican Republic was 2.9 million MT, with projected growth of five per cent (5%) in 2010.<sup>30</sup> Consumption figures for 2010 have exceeded the projected growth of 5% thus far as cement consumption jumped from 429,500 tons to 482,664 tons in January and February compared with the same two months a year ago, a twelve point four per cent (12.4%) rise.<sup>31</sup> The increase in consumption for 2010 has been attributed to increased spending by the government on public works projects. Therefore, cement production in the Dominican Republic for 2009 exceeded consumption by 1.1 million MT. There is also a situation of excess capacity because the 6 producers in the Dominican Republic have the capacity to produce 6 million MT of cement per year, while the domestic market demands an average of 3 million MT per year, which suggests that producers will have to seek export markets in order to utilize production at full capacity.

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<sup>26</sup> Living in Peru, (2010). *Peru's Constitutional Court reinstates tariffs on cement imports*. Retrieved from <http://www.livinginperu.com/news/11712>

<sup>27</sup> Construpages, (2010).

<sup>28</sup> Portland Cement Association, (2009). *Overview of the Cement Industry*. Retrieved from <http://www.cement.org/basics/cementindustry.asp>

<sup>29</sup> Cement Americas, (2009). *U.S. Cement Facing Difficult Times*. Retrieved from <http://cementamericas.com/mag/us-cement-industry-declining-20090901/>

<sup>30</sup> Dominican Today, (2010). *Dominican Government work spur 12% growth in cement production*. Retrieved from <http://www.dominicantoday.com/dr/economy/2010/3/16/35114/Dominican-Government-works-spur-12-growth-in-cement-production>

<sup>31</sup> Ibid

## **1.4 Actual and Potential Negative Effects on existing development efforts**

Between 2005 and 2009, CCCL made a capital investment amounting to more than US\$177,000,000.00, to construct a new mill geared towards increasing both production capacity and capacity utilization. The new Mill 5 was completed and commissioned in August 2009 increasing CCCL's potential capacity approximately one million MT per annum, however CCCL has been unable to produce at full capacity to date. The Commission is of the view that the continued presence of dumped imports will curtail and continue to curtail the ability of the Domestic Industry to utilise its increased production capacity.

## **1.5 Increase in Inventory Levels of the Goods under Consideration**

The Complainant contends that there is a significant rate of increase in the volume of dumped cement imports from the Dominican Republic from 2007 to 2009.

The existence of inventories of the dumped goods can indicate the possibility of further import penetration and reductions in the market share of the Domestic Industry. The Commission accepted that an accurate assessment of this factor would require information not available to the Complainant. However, the Commission's initial assessment of market, production and consumption volumes suggests that no substantial inventories of the dumped product are being held in Jamaica at this time.

## **2. Other Threat of Material Injury Factors**

**Price Undercutting.** The Commission is of the view that it is very likely that price undercutting by the dumped imports will continue in the Western parishes with the continued importation of cement from the Dominican Republic at dumped prices.

**Return on Investment.** The Complainant indicated that with the continued presence of the dumped cement in the market, it will experience diminishing marginal returns and investments in its facilities and personnel will be severely curtailed<sup>32</sup>. The Commission assessed the potential impact of the allegedly dumped goods on the domestic industry's ROI. The "Expansion and Modernisation Programme" engaged in by the Industry increased significantly the amount of capital employed by the company. The capital investment in the new mill has significantly increased the total capital employed. This was done with the expectation that the improved facility and production capacity will increase production and consequently sales and revenue. The continued presence of the dumped imports will curtail the domestic industry's ability to utilise the increased capacity, which would result in diminished returns on its investment.

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

**Cash Flow and Ability to Raise Capital.** The inevitable impact of the increase in finance costs on cash flow due to the capital investment will become a significant factor if the domestic

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<sup>32</sup> Particulars of Complaint, Volume I, page 57.

industry is unable to increase its production and sales in order to recover these increased costs. This is a factor indicating a threat to the Domestic Industry.

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

### 3. Magnitude of The Margin of Dumping

The magnitude of the margin of dumping is an indication of the extent to which a threat of material injury can be attributed to the dumped goods. The magnitude of the estimated margin of dumping of about fifty point nine zero per cent (50.90%) is sufficient to provide a reasonable indication of the extent to which the domestic industry can be injured by the dumped goods.

### 4. Other Factors

**Impact of the Global Recession on the Construction Sector & the General Economy.** The Jamaican economy and the construction industry have suffered from the effects of the global recession. A press release by the PIOJ on February 16, 2010 noted that the Jamaican economy showed no sign of recovery during the period October to December 2009, which was attributed to “the global recession, a fall-off in external demand for Jamaican goods and services, and a deterioration of the fiscal deficit.”<sup>33</sup> In addition, the construction sector in the October to December quarter declined by a further three point five per cent (3.5%), following declines of seven per cent (7%), three point eight per cent (3.8%) and five point eight per cent (5.8%) in the first, second and third quarters respectively. The Commission therefore notes that some of the difficulties being experienced by the domestic industry may be due to the effects of the global recession and particularly from the decline in the construction sector which uses cement as one of its main inputs.

**Other Dumped Imports and Imports not under Consideration.** Imports from different sources entered the market due to the supply shortage and quality issues which affected the domestic industry in 2006. In light of the eight per cent (8%) contraction in the demand for cement in 2009, the continued presence of imported cement on the Jamaican market, particularly if dumped but also other imports could have adverse effects on the domestic industry.

**Common External Tariff.** The Government of Jamaica has granted a Common External Tariff waiver, to the Importer. The Commission notes that the imposition of the CET encourages all imports, some of which from the Commission’s investigation includes cement which is currently being dumped on the Jamaican market. The specific impact of the Government policy will be explored further as the investigation progresses.

**Devaluation and Foreign Exchange Losses.** The effect of the continued devaluation of the Jamaican currency will continue to have an adverse effect on the domestic industry. The impact of this factor will be considered, particularly as it relates to the volatility in the price of fuel costs which represents a significant component of production costs.

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<sup>33</sup>PIOJ, (2010). *Economy shows no sign of recovery during October to December 2009*. Retrieved from <http://www.pioj.gov.jm/NewsDetail/tabid/86/Default.aspx?news=462>



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

### **XIII. DECISION**

For all the reasons outlined in this Statement of Reasons, the Anti-dumping and Subsidies Commission finds by a majority that there is sufficient evidence of dumping and a reasonable indication that the dumping is likely to cause material injury to the domestic industry that produces like goods identified herein, and has therefore decided to initiate an investigation in accordance with section 22 of the Act into the alleged dumping of Ordinary Portland Grey cement originating in or exported from the Dominican Republic.

**ADDITIONAL GENERAL INFORMATION**

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

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

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

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

Mail or Deliver To:

Ms. Andrea Marie Brown  
Executive Director  
The Anti-dumping and Subsidies Commission  
The Roswind, 25 Windsor Avenue  
Kingston 5, Jamaica  
Attention: Ms. Kibret Beckford, General Manager

Telephone: (876) 927 8665 or (876) 978 1800  
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Email: [antidump@jadsc.gov.jm](mailto:antidump@jadsc.gov.jm)  
Website: [www.jadsc.gov.jm](http://www.jadsc.gov.jm)

**Signed on behalf of the Board of Commissioners,**



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Dr. Derrick McKoy  
Chairman

**ANTI-DUMPING AND SUBSIDIES COMMISSION**