ANTI-DUMPING AND SUBSIDIES COMMISSION

JAMPRO Trade & Invest (JTI) Bldg. ~ 18 Trafalgar Road ~ Kingston 10 ~ JAMAICA
Telephone: 927-8665, 978-1800 ~ Fax: 978-1093
Email: antidump@jadsc.gov.jm Website: www.jadsc.gov.jm

STATEMENT OF REASONS
FINAL DETERMINATION

KINGSTON, JAMAICA **CASE. NO. AD-01-2010**
December 9, 2010

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

AND IN THE MATTER OF the Final Determination by the Anti-dumping and Subsidies Commission, pursuant to Section 30 of the Customs Duties (Dumping and Subsidies) Act 1999.

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

I. SUMMARY

The Anti-Dumping and Subsidies Commission ("the Commission") is the body responsible for investigating and making determinations in cases of dumping and subsidizing of goods under the *Customs Duties (Dumping and Subsidies) Act 1999*, ("the Act") and the *Customs Duties (Dumping and Subsidies)(Determination of Fair Market Price, Material Injury and Margin of Dumping) Regulations, 2000* ("the Regulations"). The Act and the Regulations implement the multilateral obligations under the World Trade Organisation Anti-dumping Agreement ("the ADA or the Agreement"), to which Jamaica is a signatory.

Initiation of Investigation. On February 15, 2010, Particulars of Complaint were submitted to the Commission on behalf of Caribbean Cement Company Limited ("CCCL") alleging that the dumped imports of Ordinary Portland (Grey) cement ("OPC") from the Dominican Republic have materially injured and threaten to materially injure the Domestic Industry. On April 30, 2010, the Commission in accordance with the requirements set out in Section 22 of the Act, initiated an investigation. The Commission was satisfied to the standard of initiation that the Complaint filed was properly documented, that there was evidence of dumping and, by a majority only, that the evidence disclosed a reasonable indication that the dumping was likely to cause material injury to the Domestic Industry. The Notice of Initiation of the investigation was given to the Minister of Industry, Investment and Commerce ("the Minister"), the Government of the Dominican Republic, the known parties to the investigation and other entities as provided under Section 25 of the Act and by publication in the Jamaica Gazette Volume CXXXIII No. 17E and a daily newspaper, the Gleaner dated April 30, 2010.

The Commission invited comments from interested parties on the Statement of Reasons ("SOR") for Initiation to be submitted within thirty (30) days from the date of receipt of the SOR. Questionnaires and Requests for Information (RFIs) were also sent to the relevant parties. The Commission also sought and received information from government bodies including the Jamaica Customs Department, Fiscal Services Limited, the Bureau of Standards Jamaica, the Statistical Institute of Jamaica ("STATIN") and the Ministry of Industry, Investment and Commerce ("MIIC").

Preliminary Determination. On July 28, 2010, the Commission extended the time for making the Preliminary Determination as provided for in Section 29 of the Act from Ninety (90) days to One Hundred and Thirty-five (135) days due to the difficulty in obtaining satisfactory evidence and other administrative and procedural challenges. Notice of the Extension of the Preliminary Determination was given to the Minister, Interested Parties and other government agencies, and published in the daily newspaper the Jamaica Gleaner dated July 28, 2010. The Commission made a Preliminary Determination on September 9, 2010 and estimated the margin of dumping of OPC imported by Buying House Cement Limited from the Dominican Republic to be eighty-four point six nine per cent (84.69%). By a majority only, the Commission found that the Domestic Industry has experienced some injury from the presence of the dumped imports on the Jamaican market. In addition, the Commission's majority determination was inconclusive as to whether the injury was "material". The Commission also found by majority only that the dumped imports pose a threat of material injury to the Domestic Industry. The Commission was not persuaded that the imposition of provisional measures was necessary to prevent material injury being caused during the investigation and declined to impose a provisional duty on the goods under consideration.

Site Verification of the Domestic Industry. A site verification of the Domestic Industry, Caribbean Cement Company Limited was conducted by the Commission on November 9, 2010. The consent of the Domestic Industry was obtained in a letter dated October 31, 2010.

The Verifiers for the Commission visited the Caribbean Cement Company Limited production plant and offices. Additional information from the Domestic Industry, as requested by the Commission at verification was submitted on November 23, 2010.

Public Hearing. Pursuant to Section 4(3) of the Act, the Complainant and the Respondents requested that the Commission hold a non-evidentiary public hearing and provided reasons for the requests. The Commission granted the requests and indicated in guidelines for the hearing that no new or confidential evidence should be submitted at the hearing. Notice was given to the parties via the Jamaica Gazette and the Gleaner on November 8, 2010 of the intention of the Commission to hold a public hearing in respect of the issues in this investigation. The hearing was held on November 19, 2010.

Statement of Essential Facts. The Commission in accordance with Article 6.9 of the Anti-dumping Agreement provided interested parties with the Statement of Essential Facts ("SEF") on November 26, 2010. Comments on the SEF were required and received from the Respondents and from the Domestic Industry on December 3, 2010.

The record of this investigation consists of all documents submitted by the parties including Confidential and Non-Confidential submissions received from interested and other parties to the Commission by December 3, 2010, including all that relate to the Commission's decision to initiate the investigation, the Notice and Statement of Reasons for Initiation, the Notice and Statement of Reasons for the Preliminary Determination.

Final Determination. The Commission makes the Final Determination on December 9, 2010 which is within ninety (90) days of making the Preliminary Determination.

II. PARTIES TO THE INVESTIGATION

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

(a) engaged in the production, purchase, sale, export or import of any goods that are the subject of an investigation;

(b) engaged in the production, purchase or sale of any goods produced in Jamaica that are like goods in relation to goods that are the subject of an investigation;

(c) acting on behalf of any person referred to in paragraph (a) or (b); and who is a user of any goods that are like goods in relation to any goods that are the subject of an investigation.

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

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

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

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

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

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

The Respondents is the term used to refer collectively to the Importer, the Exporter and Producer and the Traders. These parties have filed some Joint Submissions in the investigation and they have the same legal representation. The Commission has considered the nature of the relationship between the Respondents. BHC disclosed that its principal owners are Domicem and a company identified as South Quay LLC, each with shareholdings of fifty per cent (50%). The Commission found that South Quay LLC is located at 710 NE 3rd Ave Delray Beach, FL 33444 incorporated in 2009 in the State of Florida. The registered agent for this company is Mr. Mark Warren. Buying House Company Limited manages the day to day operations of BHC and is a shareholder in South Quay LLC. The Act, Regulations and the Antidumping Agreement which form the framework for the dumping analysis recognise that where entities are associated, this relationship could cause records of transactions between the entities to be regarded as unreliable information. The Commission requested and was provided with additional information on the nature of the relationship between the Respondents. There is no evidence before the Commission of any form of collusion between the Respondents.

III. PERIOD OF INVESTIGATION

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

The POI for dumping is normally one (1) year or a minimum of six (6) months immediately prior to the date of initiation. The goods under consideration were first imported in May 2009. The POI for injury should be three (3) years immediately prior to the date of initiation, in addition to the post initiation period for which data is available, and should include the period covered by the dumping data.

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

IV. USE OF FACTS AVAILABLE

The Commission is guided by the Sections 4 (6) and 10 of the Act and Article 6.8 and Annex II of the Antidumping Agreement, which allow the Commission to complete an investigation based upon available information where Interested Parties fail to fully cooperate by providing information and data. Throughout the investigation, the Commission indicated to the Parties that a failure to provide appropriate responses and disclosure of information within the time allotted could lead to use by the Commission of facts available.

V. SCOPE OF THE INVESTIGATION

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

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

The 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 ("MT") or in bulk, 1.0 or 1.5 MT bags or 42.5 kg sacks or packaged in any other form and for distribution or sale on the local market in any form.

The goods that fall within the scope of this investigation are normally though not exclusively imported under the following Harmonised Tariff Schedule (HTS) Code: 2523.291 for Building Cement (Grey).

The scope of the investigation is determined by the narrative above and not by HTS Codes for cement which include the following HTS Codes HTS 2523.20, HTS 2523.291 or HTS 2523.90 due to the substitutability of all cement types in the Jamaican market, with the exception of specialty types of cement such as oilwell cement and white cement. The Commission recognizes that HTS Codes assist the Customs authorities in the application of anti-dumping measures where they are imposed.

VI. GOODS UNDER CONSIDERATION

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

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

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

The Importer contends that it imports OPC and a type of Blended Hydraulic cement which complies with the Bureau of Standards specifications for Blended Hydraulic cement JS 301:2008. The Commission reviewed the Bureau of Standards Test reports for the period cement was imported by Buying House.

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

Technical Regulation Reglamentos Tecnicos Dominicanos RTD 178:2009 “Hydraulic Cement, Portland Cement Specifications and Classifications.

VII. VOLUME OF THE SUBJECT GOODS

Section 26 of the Act requires the Commission to address the threshold question of whether the volume of the subject goods being imported into Jamaica is negligible as defined in the ADA, Article 5.8. The Commission examined information from the Importer and Exporter[1], Fiscal Services Limited and Jamaica Customs on the volume of the subject goods imported from the Dominican Republic during the POI. If the amount of the imports were found to be less than three per cent of the total imports into Jamaica of the like good (explained below), the amount must be deemed negligible and the rules require that the investigation would have to be terminated by the Commission.

The Commission found that the volume of goods under consideration, i.e. the imports from the Dominican Republic into Jamaica over the period being examined (the POI) accounted for 59.71 per cent of total imports for the POI. This amount exceeded the statutory minimum negligibility threshold of three per cent and therefore the investigation proceeded.

VIII. LIKE GOODS

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

> Like goods, in relation to any other goods means –
> (a) goods which are identical in all respects with those other goods, or
>
> (b) in the absence of identical goods as aforesaid, goods of which the uses and other characteristics closely resemble those of the other goods.

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

The Commission followed its usual practice, which is in keeping with the practice of other investigating authorities, to determine whether the goods produced locally and the goods under consideration are “like goods” as defined by the Act. Factors such as the physical and chemical characteristics, manufacturing and production processes, functions and end-uses, channels of distribution and marketing, substitutability and competition and customer and producer perception were examined. The Commission concluded on examination of these factors that the locally produced goods are like goods to the goods under consideration. This was not contested by the Importer who indicated in its Questionnaire response that they are like goods.

[1] Joint Rebuttal, Exhibit 17, Exporter Questionnaire, page 19

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 manufacturing processes. 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.

Physical and Chemical Characteristics. An examination of the physical and chemical characteristics revealed that the domestically produced goods appear to be identical to or closely resembling the investigated products based on the technical industry standards, composition and physical characteristics. Portland cement is a fine powder substance which is the basic ingredient of concrete. OPC is a closely controlled chemical combination of calcium, silicon, aluminium, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Lime and silica make up about eighty five per cent (85%) of the mass. Common among materials used in its manufacture are limestone, shells, and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand, and iron ore.[2] 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)[3].

Manufacturing and Production Process. Cement producers worldwide utilize either the "wet" or "dry" processes to manufacture Portland cement, with the dry process being considered to be the more modern process. The dry process involves the principal raw material, rock being mined from a quarry and crushed in two stages, and then stored with other raw materials to be further processed. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used where the limestone, shale and clay are soft and additional energy is used to remove the excess water. The raw materials are proportioned, ground to fine powder and blended.[4] 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.[5] The Commission found that the domestic goods and the goods under consideration are produced in a similar manner. The Commission further investigated and found that both also use common manufacturing practices and skilled production employees consistent with industry practices. CCCL and the Producer of the goods under consideration, Domicem,[6] utilize the dry process to produce cement.

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

[3] CCCL's September 2, 2009 Submission, Vol. I, page 7

[4] Ibid

[5] Ibid

[6] International Finance Corporation Summary of Project Information on Domicem Plant, retrieved from http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/570F563094DA0CC4852576BA000E26F0; and The Exporter/Producer Questionnaire Response.

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

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

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

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

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

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

IX. MARKET FOR CEMENT IN JAMAICA

Jamaica's cement market is supplied by one domestic producer and several importers, all of which distribute cement to the consumer through retailers, distributors and ready-mix operators. Additionally, others import for their own use. The Complainant is the sole operating manufacturer of cement in Jamaica. Prior to 1999, the Complainant was the sole supplier of cement to the Jamaican market, and imported on occasion to meet the demand of the domestic market.

In the latter part of 2005 through to the first quarter of 2006, the Domestic Industry experienced production shortages, stemming from the production over a short period of cement of a sub-standard quality. In an attempt to address the difficulties being experienced by the Domestic Industry and the excess demand in the market, the Jamaican government temporarily reduced the Common External Tariff ("CET") bound rate of 40 per cent to 15 per cent. This led to an increase in imports by the Domestic Industry and other importers. By 2006, over 50 per cent of total cement imports into Jamaica was imported by CCCL (the Domestic Industry).

In 2007, the demographics of the market changed as other importers increased their cement imports. Total imports[7] decreased by 3.4 per cent in 2007 and by 6.8 per cent in 2008. In 2009 imports decreased further by an estimated 25 per cent. Data for the period January to September 2010 shows an increase of approximately 7.14 per cent over the same period in 2009.

TABLE IX. JAMAICAN MARKET FOR CEMENT 2005 – SEPTEMBER 2010[8]

Market for Cement 2005 to September 2010							
	2005	**2006**	**2007**	**2008**	**2009**	**January – September 2009**	**January - September 2010**
Sales	863,760	843,913	806,891	720,257	652,656	496,189	409,969
Imports by CCCL	0	119,032	25,988	46,062	0	0	0
Other Imports	2,000	69,658	156,250	148,605	146,250	129,742.76	139,076[9]
Total Consumption[10]	865,760	1,032,603	989,129	914,924	798,906	625,931.76	549,045
CCCL Exports	2,762	0	5,964	28,463	88,912	59,716	132,805

The major importers to the Jamaican market over the period 2007 to 2010, other than CCCL (the Domestic Industry), have been Mainland International Limited, Greenwich, Arc Systems Limited ("Arc Systems") and Buying House.

Buying House commenced importation of cement from the Dominican Republic in November 2007. Another Importer, Arc Systems is currently importing from CEMEX Dominicana ("CEMEX") in the Dominican Republic. The Domestic Industry alleges that Arc Systems, an additional importer is selling dumped cement imported from the Dominican Republic.[11] The record revealed that Arc Systems did not import cement from CEMEX Dominicana in the Dominican Republic during the one year period of investigation for dumping. CEMEX is a principal cement producer in the Dominican Republic. Cement imports by Arc Systems from CEMEX commenced in May 2010, after initiation of this investigation and so are not included in the volume and dumping analyses. However, they have been taken into consideration in the material injury, threat of material injury and causation analyses of the investigation, as requested by CCCL[12] and against the wishes of the Respondents.[13]

Jamaica's cement market is primarily driven by the construction industry as all cement is consumed in construction activities. Through its contribution to the country's physical

[7] Imports by CCCL and other Importers
[8] Information in Table obtained from Annual Reports of CCCL, Jamaica Customs and Fiscal Services Limited
[9] Commerce Division MIIC, (2010). Status of Cement Supplies –September/October 2010.
[10] Consumption is calculated by summing CCCL's sales from domestic production, CCCL's imports (where applicable) and imports by other players in the market.
[11] CCCL Supplemental Submission
[12] CCCL's Submission in response to the Preliminary Determination, page 2.
[13] Part II of Respondents Joint Submission in Response to the Commission's Affirmative Preliminary Determination, page 11.

infrastructure and linkages with other sectors, the construction sector has historically been an essential contributor to the Jamaican economy. However, the sector has been experiencing marginal growth over time. The total value added by the construction industry in 2008 was only 1.8 per cent higher than the total value added by the industry in 1992.[14] Since 2009, the decline in the construction sector has been continuous. In the first quarter of that year, real value added by the construction industry decreased by seven per cent. In the second quarter April to June, the sector declined by a further 3.8 per cent, followed by a further decline of 5.8 per cent in the third quarter, July to September. In October to December, the fourth quarter, the sector continued to decline by a further 3.5 per cent. This represented the ninth consecutive quarterly decline for the industry. This declining trend continued in 2010. The Planning Institute of Jamaica reported for the first quarter of 2010 (January – March) that the construction industry contracted by a further three per cent, and by another 1.5 per cent in the April to June quarter. The construction industry experienced a further decline of one per cent in the July to September 2010 quarter.

Table IX shows that in 2007 total market demand decreased by 4.1 per cent compared to 2006. In 2008, the market contracted by a further 7.5 per cent. The trend continued in 2009 with the market contracting by 12.7 per cent. For the period January to September 2010, total consumption was 12 per cent less than consumption in the corresponding period in 2009. The sector continued to experience adverse effects from the general downturn in the economy, which has resulted in the suspension or delay in some construction projects and reduced the domestic demand for cement. Against this background of a contracted market for cement in Jamaica and its investment in modernisation and capacity, the Domestic Industry submitted its application to the Commission.

X. EVIDENCE OF DUMPING

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

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

A. Normal Value

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

Regulation 3

(1) Subject to regulation 4, the fair market price of goods shall be determined by reference to:

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

(a) the price at which like goods are sold in the ordinary course of business[15] for domestic consumption in the exporting country; or
(b) the cost of production of those goods in the exporting country including any subsidy provided in relation to such production

(2) The Commission shall determine fair market price on the basis of the price in the exporting country if the Commission is satisfied that sales in that country are of sufficient quantity to consider it a viable export market and to form the basis of the fair market price.

(3) In paragraph (2) "sufficient quantity" means that the aggregate quantity or aggregate value of the foreign like product sold by the exporter or producer in the country of export is five per cent or more of the aggregate quantity or value of the sales of the goods to Jamaica

(4) The fair market price may be calculated on the basis of the cost of production value in cases where sales in the domestic market are inappropriate on the following grounds-
(a) such sales are-
(i) not viable
(ii) below the cost of production and are made within an extended period of time, in substantial quantities and at price which do not permit recovery of cost within a reasonable period of time
(iii) outside the ordinary course of trade on account of market conditions
(iv) not representative
(b) no contemporaneous sales of comparable merchandise exist.

At the Preliminary Determination, the Commission derived the Normal Value from information submitted by the Exporter in response to Section 5 of the Exporter and Producer Questionnaire[16]. Information on sales of cement by DOMICEM in the Dominican Republic for the period May 5, 2009 to May 7, 2010 was provided. The data included the following information: Date of sale, rate of exchange, product description, selling expenses, discounts to customers, freight charges and the ex-factory selling price. Gross prices ranged from [ ]/MT to [ ]/MT. Gross prices were fairly consistent during the period. A single Normal Value could be calculated for all shipments since there were insignificant variances in the prices. To derive a single Ex-Factory Normal Value for all home sales by DOMICEM within the POI, the total revenue earned was divided by the total quantity to find the weighted average gross Normal Value [ ]/MT at which OPC was sold to its customers during the POI.

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

The Commission reviewed the Normal Value calculations for the Final Determination and noted that the contribution of discounts to the overall invoice price was understated by US2.14 at Preliminary Determination. Thus, the ex-factory weighted average Normal Value was revised downward to US$[ ]/MT.

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

[16] Exhibit 3, Final Domicem Sales to the Dominican Republic

B. Export Price

Section 19 of the Act prescribes how the Export Price for the goods under consideration is to be determined. It states in part that:

> The Export Price of the goods sold to an Importer in Jamaica, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of:
>
> (a) the exporter's sale price for the goods adjusted by deducting therefore –
> (i) the costs, charges and expenses incurred on sales of like goods for use in the country of export;
> (ii) any duty or tax imposed on the goods by or pursuant to a law of Jamaica to the extent that the duty or tax is paid by or on behalf or at the request of, the exporter; and
> (iii) all other costs, charges and expenses resulting from the exportation of the goods, or arising from their shipment, from the country of origin or country of export, as the case may be; and
>
> (b) the price at which the Importer has purchased or agreed to purchase the goods, adjusted therefore all costs, expenses, duties, taxes as described in paragraph (a).

At the Preliminary Determination the Commission derived the Export Price from information submitted by the Exporter on its sales to Jamaica during the period May 2009 to April 2010. The data provided included: Invoice number and date, customer code and name, terms of delivery and terms of payment, product description, invoice price, quantity and value, freight within the Dominican Republic, port loading expenses and the ex-factory price. The data was used to calculate the weighted average Export Price, from the invoice prices which represented free on board (FOB) and free alongside (FAS) prices. Domestic freight and port loading expenses were deducted, to arrive at the ex-factory Export Price. The weighted average ex-factory Export Price of US$[ ]/MT for all shipments was derived by dividing the total invoice value by the total quantity exported by Domicem over the POI.

After the Preliminary Determination, additional import documentation was received from Jamaica Customs, C-87 Forms and Supporting Invoices, which were used to verify the import quantities. The Commission adjusted the import quantities which resulted in a slight upward revision of the weighted average ex-factory Export Price by US$0.27 per MT.

Dumping Margin Calculation

Using the weighted average Normal Value of US$[ ] price per MT and the weighted average Export Price of US$[ ] per MT, both representing prices at the ex-factory level, dumping of US$52.17/MT and a dumping margin of eighty one per cent (81%) was calculated for all shipments exported to Jamaica during the POI.

Section 26 of the Act requires the Commission to address also as a threshold question, whether the dumping margin is *de minimis,* as defined in the ADA, Article 5.8. If the margin of dumping were found to be less than two per cent, it must be deemed negligible and the rules require that the investigation would have to be terminated by the Commission. The margin of dumping is not *de minimis.*

Dumping Margin Calculation	
Normal Value	US$[ ]/MT
Export Price	US$[ ]/MT
Dumping	**US$**52.17/MT
Dumping Margin	**81.00%**

XI. ECONOMIC CONDITION OF DOMESTIC INDUSTRY: 2005 – 2010

The Commission examined the economic condition of the Domestic Industry. This involved a historical look at the development, growth and stability of the operations of CCCL from a financial perspective. The Commission found it useful to start its overview of the economic condition in 2005, as it provides a useful reference point for changes in future years, with 2005 being the last year that the domestic producer supplied the entire market from domestic production.

Between the years 2005 to 2009, CCCL embarked on an expansion programme investing more than US$177,000,000.00 to upgrade and repair its facility and to increase its production capacity. The company notes that the expansion of its capacity was influenced by its commitment in connection with the TCL Group's contract with the Government of Jamaica (GOJ) to make CCCL a world class cement producer able to compete globally, increase plant efficiencies and reduce production costs. This would not only result in gains for the company, foreign exchange would be earned and the price of cement sold in the Jamaican market reduced. The capital programme was deemed critical by CCCL to ensure its ability to supply the entire Jamaican market while exporting excess production to earn and generate hard currency.

The published financial statements for CCCL extracted in Table XI.1 show that annual revenue increased by 11.93 per cent between 2007 and 2008. This was lower than the level of increase experienced over the 2006 to 2007 period. In 2009, growth in revenue was less than one per cent. The company had reduced operating profits, due mainly to increased costs of production and operating lease payments. For the period January to September 2010, revenue declined by approximately 11 per cent when compared to the corresponding period in 2009. There was a 17 per cent reduction in domestic sales, which was buffered somewhat by a significant increase in exports.

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

Description	2005 Annual J$'000	2006 Annual J$'000	2007 Annual J$'000	2008 Annual J$'000	2009 Annual J$'000	2009[17] January to September	2010[18] January to September
Revenue/Sales	5,765,114	6,632,008	7,721,003	8,642,729	8,695,025	6,908,293	6,134,928
Operating Profit	108,191	132,558	651,057	861,008	26,410	238,594	(1,552,887)

[17] CCCL, Consolidated Unaudited Interim Financial Report for the nine months ended September 30, 2010
[18] Ibid

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

Description	2005 MT	2006 MT	2007 MT	2008 MT	2009 MT	2009 January to September MT	2010 January to September MT
Production	844,843	760,815	773,019	724,528	736,560	548,796	526,090
Imports	0	119,032	25,988	46,062	0	0	0
Domestic Sales	862,400	843,295	807,484	720,260	652,651	496,183[19]	410,007
Export Sales	2,762	0	5,964	28,463	88,912	59,716	132,805

CCCL significantly increased its exports, which grew to a high of 88,912 MT in 2009 and continued to grow into 2010 as CCCL's first and second quarter results indicate that export sales for January to June 2010 (89,083 MT) have surpassed total exports for 2009.

Cement production by CCCL in the first quarter of 2010 amounted to a 9.14 per cent increase over the quarter ending March 2009, and increased further by just over one per cent over the preceding quarter which ended December 2009. The company's half year data for January to June 2010 shows that the company produced 369,405 MT of cement. This constitutes a decline of about 6.2 per cent compared with the same period in 2009.

Local cement sales by CCCL for the first quarter of 2010 totalled 157,649 MT. This represented a decline of 20,000 MT or 11 per cent compared to the quarter ending March 2009, in which the company sold 177,689 MT of cement. When compared to the preceding October to December 2009 quarter, local sales by the company increased by 1,649 MT or just over one per cent. Domestic sales were 292,876 MT for the January to June 2010 period, representing a reduction of 14.8 per cent over the corresponding 2009 period.

Cement exports by CCCL totalled 39,004 MT in the January to March 2010 quarter. This represented a significant increase over the first quarter of 2009, when 13,169 MT was exported. Exports for the March 2010 quarter, when compared with the preceding quarter, increased by 9,804 MT or 33.57 per cent. Export sales continued to improve in 2010, with the period of January to September showing an increase of more than 100 per cent when compared with the corresponding period in 2009.

XII. INJURY ANALYSIS

The ADA[20] identifies three types of injury that can be found to be "material" in an anti-dumping investigation; material injury to a Domestic Industry; threat of material injury to a Domestic Industry; or material retardation of the establishment of a Domestic Industry.

Injury in the form of material retardation of the establishment of a Domestic Industry is not being considered in this investigation. This injury type applies to cases where there is no existing Domestic Industry producing the like good and the establishment of such an industry

[19] Domestic and Export Sales for January to September 2009 and 2010 were extracted from CCCL, Consolidated Unaudited Interim Financial Report for the nine months ended September 30, 2010

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

has been materially hindered by dumped imports. In the present matter, the Domestic Industry producing the like good is already established and has the majority share in the domestic market.

A. MATERIAL INJURY

The Commission examined the Complainant's claim that the dumping of the goods has caused and is causing material injury to the industry.[21] Material injury is defined in Section 2 of the Act as material injury to the production in Jamaica of like goods. The Commission examined the economic indicators and indices as provided for in Regulation 12 to determine the actual volume of the dumped goods and the consequent impact of the dumped goods on the Domestic Industry.

Regulation 12 provides in pertinent part:

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

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

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

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

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

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

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

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

These have been categorised as follows for the purposes of this Statement of Reasons:

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

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

[21] CCCL's September 2, 2009 submission, Vol. 1, page 75.

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

The Commission considered all factors to determine the overall effect, not necessarily the individual effect, of each factor. The Commission is guided by Regulation 12(3) which provides that "nothing in this regulation shall be construed as binding the Commission to give priority to any of the factors [referred to above] ...in the making of its decision."

(i) PRICE EFFECTS

Price Effects refer to changes in the level of prices in absolute and relative terms that are the direct result of the introduction of dumped imports into the Jamaican market. This assessment involved an examination of (i) the prices at which the imported cement is sold in relation to the selling prices of locally produced cement (price undercutting); (ii) the selling prices of the locally produced cement to ascertain any changes relative to previous price levels before and during the period of dumping (price depression); and (iii) the ability of the Domestic Industry to adjust its prices to recover increases in its unit cost of production (price suppression). The Commission found no price effects.

Price Undercutting. The Domestic Industry has submitted that there is price undercutting due to favourable credit and delivery terms offered by the Importer, Buying House to its customers. The Respondents contend that CCCL is the price leader during the POI, setting the prices in the market, and also that it too offers favourable credit terms to its customers.

At Preliminary Determination, the Commission's finding on price undercutting was inconclusive due to the absence of information on the Importer's selling prices for the period 2007 to 2009. At that time the Commission assessed prices for the period 2009 to 2010 which showed that the Importer's selling prices were marginally higher than the Domestic Industry's prices.

Since the Preliminary Determination, the Commission examined the most recent sales data before it, which was for the period 2007 to September 2010. A comparison of ex-factory and ex-warehouse prices of both 42.5kg bags and the jumbo bags revealed the same pattern noted at the Preliminary Determination in regard to the 2009 to 2010 prices. The Importer, Buying House, appears for the most part to establish its prices marginally above those of the Domestic Industry at every price adjustment. A departure from the trend was observed for the four-month period, June to September 2010 when CCCL increased its prices for 42.5kg bags by 3.2 per cent. Buying House also increased its prices for 42.5 kg bags but its prices on this occasion, remained below that of the Domestic Industry.

Upon overall examination of the price movements by all the parties throughout the POI, the Commission determined that there was insufficient evidence and found no price undercutting.

Price Depression. Price depression is assessed on the basis of percentage changes in the prices of the Domestic Industry or trends in the levels of its prices before and during the period when the dumped goods are in the market.

The Complainant submits that it has been forced to offer discounts and rebates thereby reducing their prices during different periods in 2009, in an effort to curb mounting inventories and to compete with the unfairly traded imports which has resulted in price depression. The Respondents contend that the discounts offered by CCCL to the market on 1.5 MT jumbo bags, 42.5kg bags and bulk cement were not influenced by the imports from the Dominican Republic and were the result of efficiency gains from CCCL's new mill as substantiated by CCCL[22].

The Commission examined the pricing information submitted by the Domestic Industry and observed the following price reductions. In February 2009 CCCL reduced prices to obtain the product in its rural depots to match its ex-factory prices in Kingston. According to the producer, this action was taken even though there was a 23 per cent devaluation of the Jamaican dollar, because the Domestic Industry was passing on the savings from the "efficiencies realized through the completion of phase 1 of the expansion and modernization programme".

From July 7, 2009 to July 14, 2009, the Domestic Industry offered market wide discounts on all 42.5 kg sacks, 1.5 MT jumbo bags and bulk cement. The Complainant attributed this discount to the need to reduce mounting inventories resulting from the presence of cement imports from the Dominican Republic in the market. An examination of the cement inventories for the period showed average inventory levels remained consistent.

In September 2009, the Domestic Industry offered a reduction in prices to its bulk customers and block makers using jumbo bags. In a letter dated September 18, 2009, CCCL indicated that these reductions were the result of improved efficiency from the commissioning of Mill 5, the gains from which the company wished after three weeks to share with its customers. The company's own statement that the price reduction was due to improved efficiency as a result of the commissioning of its new mill was accepted by the Commission as an accurate characterization of the rationale for the price reduction.

CCCL also offered a special "while stocks last" over stocking per bag price reduction by letter on October 23, 2009, citing excess inventory levels and the need to make way for new production. Then followed price increases on December 21, 2009 and February 1, 2010.

The Commission also examined two further price adjustments taken by CCCL. In June 2010, CCCL increased prices by 3.2 per cent and then lowered the price of the 42.5 kg bags in October by 7.5 per cent. This brought prices below that of the Importer and below CCCL's own pre June 2010 prices.

The Commission observed that the periodic discounts and special offers were insignificant when compared to the periodic price increases taken by CCCL. The Commission finds that there has been no price depression based on these short term discounts and sales.

Price Suppression. The inability of the Domestic Industry to make reasonable price increases in order to recover increases in costs is referred to as price suppression. The methodology used by the Commission to determine price suppression is to assess the margin levels between the net selling prices and the cost of production. The Commission then evaluates whether the Domestic Industry has been prevented from taking price adjustments in light of increased costs and its ability to recover the costs.

The Commission examined the percentage price increases and decreases in all three categories of packaging, 42.5 kg, jumbo and bulk sold by the Domestic Industry as well as the increases in the annual costs of production.

CCCL's selling price adjustments and the related increases in the cost of production indicate that the unit cost to produce cement in 2009 increased by 6.7 per cent over 2008 and in 2008,

[22] Joint Rebuttal Submission on behalf of Respondents received June 18, 2010, at page 13

by 7.8 per cent over 2007. In February 2009, CCCL increased its prices to rationalize the 2008 increase in unit cost.

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

CCCL's further price increase of 3.2 per cent in June 2010 was taken against the background of the recovery of increased cost. The price reduction in October 2010 is some indication that the pressures of the marketplace prevented the Domestic Industry from taking that reasonable price increase to cover its cost. However, while the last price reduction by CCCL arguably points in the direction of price suppression, the Commission found that the Domestic Industry was usually able to increase its selling prices at different times to recover increases in its costs of production. The Commission took stock of its overall position and therefore, finds no price suppression.

(ii) <u>VOLUME EFFECTS</u>

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

Production. The Commission examined the production levels of cement and clinker a mid process derivative of cement for the period 2007 to September 2010, the most recent information available.
The volumes of clinker produced by the domestic producer in 2007 and 2008 were not adequate to support the cement production requirement. CCCL imported clinker in those years. In 2008, there was an increase in clinker production of 11 per cent which was not sufficient to produce the amount of cement required. In 2009, when the new Kiln 5 and Mill 5 became fully operational, production of clinker increased by 28 per cent, resulting in an increase in cement production of two per cent.

At the Preliminary Determination, the Commission noted a build-up in clinker inventory. To utilise this excess clinker stored, the Domestic Industry cut back its clinker production significantly during the third quarter of 2010. Thus, the clinker produced in 2010 was 20 per cent lower than in 2009 so that the company could use the excess clinker that was produced by the upgraded facility.

In 2010, the levels of clinker production as well as the cement produced declined by four per cent following a downturn in sales. Domestic cement production from 2008 into the first half of 2010 showed declines from its 2007 position, as indicated. Cement and clinker production levels continued to decline to their lowest monthly production levels in September 2010. The [ ] MT of cement produced in September 2010 was the lowest monthly production by CCCL in the last decade.

Capacity Utilization. Capacity utilization refers to the extent to which a firm utilizes its installed productive capacity. It requires an assessment of the actual output that is produced with the installed capacity and the potential output which could be produced if maximum capacity is used. The Complainant submits that its capacity under-utilization is a direct result of the dumped imports.[23] The Respondents postulate that the record does reflect a decline in

[23] Post-Hearing Submission of the Domestic Industry received on November 23, 2010

capacity utilisation and that this decline was projected by CCCL and therefore an expected result of the capacity expansion.[24]

The Commission determined that the installed capacity of a production facility, that is, the maximum available capacity based on plant size and operations at maximum efficiency must be viewed in light of the actual performance of the plant using historical levels of production.

The Domestic Industry had indicated total production capacity of approximately [ ][25] MT per annum in 2007 and 2008 prior to undertaking the Plant Expansion and Modernisation Programme. Actual production for that period was consistently below 800,000 MT per year. With the commissioning of the new Kiln 5 and Cement Mill 5 in August 2009, CCCL has indicated that the combined production capacity of the current Kiln 4 and Kiln 5 could reach [ ] MT, however the combined current installed capacity of Mills 3, 4 and 5 is [ ] MT thus limiting the actual capacity.

In situations where the production facility is unable to utilise its installed capacity, its capacity is appropriately re-defined based on an average of actual production utilised over the last three to five years to arrive at its actual capacity. At the verification visit, the Commission observed the plant equipment, the new Kiln 5 and Mill 5 which utilizes a more efficient vertical milling technology. Based on installed capacity Kiln 5 and the other operational but idle Kiln 4, along with the output of Mills 3, 4 and 5, the Commission notes that the company has installed capacity in excess of [ ] million MT. The demonstration of the amount of clinker produced in 2009 and into 2010 with only Kiln 5 in operation, indicates that with the plant upgrades, the actual rated Domestic Industry capacity is approaching the levels of its installed capacity. With the cement production levels of 2009 and 2010, the Domestic Industry experienced lower capacity utilization.

The Commission also considered and noted that with the new investment in capacity, CCCL would have in the absence of the dumped imports, still experienced low capacity utilization rates, since the market demand is substantially below CCCL's expanded capacity. In circumstances where the market was to return to its highest levels of consumption, CCCL would still have excess capacity.

Inventory. The Commission examined the monthly cement production and inventory levels for the POI. Inventory levels were found to be consistent with the industry's normal average daily carrying inventory of two weeks' sales. This conclusion is further supported by close observation of industry production data, which indicated that there was no change in the average production volumes. The cement inventory levels in the first quarter of 2010 averaged lower than the 2009 monthly average levels, but appeared to be fairly consistent.

The Commission observed an increase in clinker inventory levels which reached a high in July 2010. This was followed by the industry curtailing clinker production in order to utilise the excess clinker as the company would eventually face a challenge for storage of clinker.

Sales and Market Share. The Commission reviewed the sales data for the period 2007 to 2009, which revealed that overall sales for the Domestic Industry consistently declined. A review of CCCL's sales for the period 2007/2008 to 2009/2010 showed that the Domestic Industry's sales from domestic production also consistently declined. Sales data for CCCL showed that in 2008/2009 sales declined by about six per cent when compared to 2007/2008. For the period January to September 2010, domestic sales were 17 per cent below the corresponding nine month period in 2009 and 27 per cent below the 2008 levels. Sales for

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[24] Hearing Brief of the Respondents received on November 21, 2010

[25] Particulars of Complaint, Cement from the Dominican Republic (Confidential Version), received on February 12, 2010, page 12

the third quarter of 2010 showed the lowest sales volumes for a quarter by the Domestic Industry in the last decade.

The Commission also examined the movements in market share and changes in consumption for the period 2007 to 2009.

For the period 2007, CCCL's share of the market based on domestic production and excluding imports stood at [ ] per cent [26] with Mainland imports from China at [ ] per cent, Arc Systems imports at [ ] per cent and Buying House imports at [ ] per cent.

In 2008, the Jamaican market contracted by 10 per cent over 2007, CCCL lost three per cent market share excluding imports moving to [ ] per cent, another importer Greenwich captured market share of [ ] per cent, Arc Systems maintained its market share and Buying House increased its market share by two per cent to [ ] per cent.

In 2009, the market contracted by a further eight per cent. CCCL's market share increased by three per cent to [ ] per cent, Tank Weld imports entered the market from the United States gaining market share of [ ] per cent, Arc Systems' market share declined by four per cent to [ ] and Buying House increased market share by four per cent to [ ] per cent.

For the period January to September 2010, the market contracted by a further 17 per cent. For the period January to June 2010, CCCL's market share increased by four per cent to [ ] per cent over 2009. Buying House's market share declined by two per cent to [ ] per cent, Arc Systems re-entered the market with [ ] per cent market share, and Tank Weld increased market share by one per cent to [ ] per cent.

In the third quarter of 2010 (July to September), CCCL's market share decreased by eight per cent to [ ] per cent, Buying House's market share declined by a further two per cent to [ ] per cent, Arc Systems' market share increased by seven per cent to [ ] per cent and Tank Weld increased market share by three per cent to [ ] per cent.

The third quarter of 2010 has seen another shift in the dynamics of the market taking another shift with Arc Systems re-emerging. Arc Systems has purchased cement from CEMEX Dominicana, an Exporter in the Dominican Republic, Buying House has continued to import at more or less consistent quantities from the Dominican Republic, and there have been increased imports from the United States by Tank Weld.

(iii) ECONOMIC IMPACT

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

Revenue. The Domestic Industry's revenue grew by 16 per cent in 2007 over 2006, by 12 per cent in 2008 over 2007 and by one per cent in 2009 over 2008. For the first nine months of 2010, revenue was 11 per cent lower than the corresponding period in 2009.

Revenue declined for the period examined.

Profitability. The Commission examined the published Audited Financial Statements of the Domestic Industry for the period 2007 to 2009 and the first half results of 2010.

[26] The market share represents sales from domestic production for CCCL as all sales of imports by CCCL were removed from the analysis.

CCCL's operating profit for 2009 of J$222 million declined by 77 per cent when compared with operating profits of J$949 million made by the company in 2008.

For the first half of 2010, domestic sales volumes were 292,876 MT declining from 343,868 MT for the corresponding period in 2009. While CCCL's cement exports increased from 38,552 MT to 89,083 MT in this period, the revenue recorded by the Domestic Industry fell from $4.9 billion in the first half of 2009 to $4.3 billion. As a result of the reduction in revenue CCCL reported a half year operating loss of $260 million when compared to an operating profit of $610 million in 2009, which represents an $870 million reduction in profits. To ensure a proper comparison, the Commission removed the finance related effect of the operating lease payment for the six month period of 2010 which revealed an operating loss of $160 million.

The examination revealed a declining trend in the Domestic Industry's profits.

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. For the purpose of this analysis the basis on which the ROI was established was the Fixed Asset of installed commissioned plant and equipment. This basis was chosen because the Capital Employed basis would give a distorted figure as there is not much variation, as the plant upgrade was financed mainly by debt and intercompany financing which is adjusted against the assets to show the Capital Employed. Even though the balance sheet will not show increased capital employed there has been significant investment in the facility and thus the Fixed Asset basis gives the correct indication of the returns on those assets.

The Fixed Asset basis was further adjusted to remove the value of capital work in progress for each year to ensure that the only the value of the investment commissioned into production is used to determine the appropriate investment to determine the ROI. The Commission examined Note 11 of the Audited Financial Statement for 2009, which shows a reducing trend in ROI from 35 per cent in 2007 to 24 per cent in 2008, to 7 per cent in 2009 and 2010 due to the losses sustained.

A reducing trend in ROI was found.

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

The Commission examined the Domestic Industry's financial profile as indicated from the published Consolidated Audited Financial Statements. The Financial Statements for 2009 at Note 14 revealed negligible liquidity available from receivables and cash equivalent held by the company. Additionally, Note 34 on Financial Risk management objectives and policies and Note 30 on the Operating lease commitments show that the company is heavily levered. The increasing demand for the servicing of its loans, intercompany debts and its trade payables shows that the company has been and will continue to be affected by a reduction in sales, the contraction in the market and the decline in the construction sector. The financing requirement at the end of 2009 was $5.4 billion compared to $4.5 billion at the end of 2008.[27]

[27] Footnote 34, CCCL Financial Audited Statements 2009

The debt to equity swap for a portion of the loan with its parent company Trinidad Cement Limited referred to at Note 31 has eased some of the pressure on the Domestic Industry however this represented only a small amount.

Ability to Raise Capital. Since CCCL does not have a history of raising capital in the markets, the company is not demonstrably adversely affected in its ability to raise capital. Apart from arrangements with IFC and a local financial entity, its plant development funding came via intercompany sources, which reports its holdings in CCCL as viable and not dependent on the price listed on the stock market.

Employment, Productivity and Wages. The Commission received information from the Domestic Industry upon requesting additional information at the Verification visit. Information on manpower (labour) for the period January 2009 to October 2010, overtime costs the period January to December 2009, and training expenditure for the period February 2009 to September 2010[28] was submitted. The manpower data showed that the total number of employees at October 2010 was 52 less than the total number of employees at the end of January 2009. CCCL did not provide a breakdown of temporary, permanent, contract or other categories of workers in the data provided. A reduction in overtime and training expenditure was also noted in the period. In relation to productivity, CCCL submitted that there was a reduction of [ ] per cent in average cement production per employee in 2010 when compared with 2007 figures.

The Commission was not persuaded by the information provided as it lacked sufficient detail and correlation information for a determination of whether the dumped imports had the claimed effects on employment and productivity.

(iv) OTHER ECONOMIC FACTORS

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

Finance Costs Related to CCCL's Expansion and Modernization Programme

CCCL's expansion and modernization programme was funded by the TCL Group, CCCL and the International Finance Corporation (IFC). Costs incurred by CCCL were used to purchase fixed assets which will be depreciated over the useful life of the asset. Costs incurred by TCL are charged through an operating lease and is payable by CCCL on a semi-annual basis in United States currency. The Commission noted that the repayment schedule of the lease is front-loaded and consequentially onerous. The Commission also considered CCCL's external loan repayment schedule and found that given the current conditions in the domestic market, CCCL has been constrained by its financial obligations, which is evidenced by the negative effects on the company's profits, cash flow and overall financial performance up to September 2010.

Devaluation and Foreign Exchange Losses

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

[28] Exhibits 5, 6 and 7 respectively of CCCL's November 23, 2010 submission to the Commission

Summary

On examination of the all the economic factors the Commission found no price undercutting, price depression or suppression, declining cement and clinker production levels, low capacity utilisation, consistent cement inventory levels and a build-up in clinker inventory levels, a decline in sales, maintained and increased market share and a decline in revenue, profits and return on investment. The Commission also examined other factors such as the heavy finance costs as a result of loan repayments and devaluation and foreign exchange losses.

XIII. THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY

The Commission turned to the question of whether the dumped imports pose a threat of material injury to the Domestic Industry.

The Complaint alleges that the Domestic Industry is and continues to be threatened with material injury caused by the dumped imports of cement from the Dominican Republic. The Respondents submit that the Commission should find that record evidence does not substantiate a finding of threat of material injury.[29]

The Commission was guided by the statutory guidelines set forth in Regulation 13 and Article 3.7 of the Anti-dumping Agreement. These factors relate to the ability of the exporters of the dumped goods to supply the Jamaican market, the demand by importers in Jamaica for the dumped cement, and the likelihood that dumped cement from the Dominican Republic will in fact be exported to Jamaica.

> Regulation 13 provides in relevant part that:
>
> A determination of threat of material injury may only be made where a particular situation is likely to develop into material injury, and is clearly foreseen and imminent, and in making such determination, the Commission shall take into consideration such factors as - …
>
> (a) The significant rate of increase of dumped imports into the domestic market which indicates the likelihood of substantially increased imports of the [dumped] goods into Jamaica;
> (b) capacity in the country of export or origin already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to Jamaica, taking into account the availability of other export markets to absorb any increase;
> (c) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
> (d) inventories of the product being investigated;
> (e) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
> (f) actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
> (g) the magnitude of the margin of dumping …[i]n respect of the dumped goods; and
> (h) any other factors that are relevant in the circumstances.

[29] Joint Rebuttal Submission, pages 27 - 41

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

> A determination of a threat of material injury shall be based on facts and not merely an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:
>
> i. significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
> ii. sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb additional exports;
> iii. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
> iv. inventories of the product being investigated

The Agreement further states that, no one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports to Jamaica from the Dominican Republic are imminent and that, unless protective action is taken, material injury would occur. The Commission examined the factors set forth in Regulation 13 as well as in the Agreement.

A. The Rate of Increase of Dumped Imports

The imports by Buying House of dumped cement from the Dominican Republic have increased over the POI. The Commission examined imports in both absolute terms and relative to the Domestic Industry's production as well as the total domestic market. The assessment was done for the calendar years, and for the POI years beginning in April 2007 and ending in April 2010.

In late 2007, Buying House began importing cement from the Dominican Republic into Jamaica, there were two shipments, one in November and the other in December. Relative to domestic consumption, the goods under consideration for the POI year April 30, 2007 to April 30, 2008 accounted for six per cent of the domestic market, and eight per cent of domestic production.

In 2008, imports from the dumped source began to enter the market on a consistent basis. Imports for the POI year April 30, 2008 to April 29, 2009 were markedly higher when compared with the previous period. The rate of increase was 35 per cent. The goods under consideration represented 10 per cent of consumption and 11 per cent of domestic production.

In 2009, annual imports from the dumped source declined marginally. For the period April 30, 2009 to April 29, 2010 imports from the dumped source increased by 3.2 per cent over the previous year. Imports in this period accounted for approximately 10 per cent of domestic production and nine per cent of consumption.

For May to September 2010, imports by Buying House represented eleven point one two per cent (11.12%) of consumption. The Commission noted that there was a significant increase in imports from the dumped source in 2008. Post 2008, the rate of increase has been marginal. The Commission based on the marginal rate of increase does not find a likelihood of substantial increase in the importation of the dumped product.

Imports from the Dumped Source by Arc Systems Limited

Arc Systems began importing OPC from the Dominican Republic for the period May to September 2010. Arc Systems' imports for the period May to September accounted for approximately eleven per cent (11%) of the entire market for the period. This trend of imports by Arc Systems is expected to continue at least up to early next year, as the company has indicated that it has a contractual arrangement with Cemex Dominicana for a specified amount. Imports by Arc Systems have been within the amount specified in the contract and there is no indication that the dumped goods will surpass this volume, to support a finding of a substantial increase in importation from the dumped source.

B. Capacity in the Country of Export

In accordance with the Regulations, the Commission is required to examine the capacity in the country of export. The Dominican Republic is a major producer of cement in the Latin American and Caribbean region. A 2009 paper[30] on the importance of the cement industry to the Dominican Republic economy indicated that cement production has grown by an average rate of six per cent per annum for the past thirty years. Annual production has moved from 866,000 MT in 1978 to about six million MT of installed capacity in 2008. The industry produces in excess of the domestic demand. There are currently six cement producers in the Dominican Republic: CEMEX, Domicem, Cibao, Colon, Cementos Santo Domingo and Cemento Andino.

The Respondents submitted that the Commission's finding at Preliminary Determination of annual capacity in the Dominican Republic of six million MT is inaccurate and indicated that in 2009, actual production for the year was 3,200,000 MT, therefore an actual capacity of 4 million is more accurate based on production figures for the period 2006 to 2009. The Commission examined actual production figures and took actual capacity of four million into consideration.

C. Capacity of the Exporter/Producer

In describing its production facilities Domicem claims that the plant has an annual production of 900,000 tons of clinker and 1.2 million tons of cement. Domicem reports average annual production capacity of 765,000 MT of OPC.[31] In 2009, it produced 696,834 MT. Sixty-three per cent of the OPC produced by Domicem was sold in the Dominican Republic and the remaining 37 per cent was exported. The Commission has no information on any current plans by the Exporter to expand its production capacity.

Domicem provided information of a joint venture between itself and GB Group, an industrial group within Haiti, to establish a warehouse which will be supplied with an annual volume of at least 180,000 MT of OPC between the period 2011 to 2013. The supply of cement will come from Domicem's OPC production in the Dominican Republic.[32] Although the Commission was not supplied with the agreement, the Staff located information on another entity's website spoke to the conclusion of the joint venture agreement between Domicem

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[30] Macrofinancial (2009). *The Cement Industry in the Dominican Republic and its Importance to the Economy.* http://www.adocem.org/images/stories/pdf/impacto.pdf

[31] Domicem's Response to the Exporter/Producer Questionnaire, Section 3

[32] Exhibit 4, Domicem's Response to the Commission's September 24 Request for Information, received by the Commission on October 29, 2010.

and the GB group to supply cement to Haiti[33]. An obligation to supply Haiti, should decrease Domicem's freely disposable capacity.

D. Potential to Shift Production from other Goods

Product shifting refers to the Exporter's ability to use the company's available facilities to shift production factors from other products to produce the dumped goods with no or minimal additional costs or time outlay. The ability to product shift makes the supply more responsive to a demand for the dumped goods.

Domicem's "production process is dry, automated and controlled from a central room which manages thousands of digital and analog signals."[34] Sub processes such as the grinding of raw materials, sampling, clinker production and coal grinding are all automated. The packing facilities are also automated, including palletizers and bagging machines. Cement is also extracted automatically from the silos and through air ducts and fluidized elevator feed hoppers in order to control dust.[35]

The Exporter produces clinker and two types of cement using essentially the same equipment and facilities. The Commission finds that the Exporter has the potential for shifting its production from its other products to produce the subject goods as the production process is highly automated and would only require minimal programme changes to do so. The Exporter can respond to a demand for the dumped goods by shifting its usage of its production facilities.

E. Inventories of the Product Being Investigated

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

i. Inventories Held by Buying House

Inventories of OPC held by Buying House up to April 2010 were not found to be significant. Since then, inventories have fluctuated. Inventories for the May to September 2010 period were higher than inventories for the months of January to April 2010 when Buying House maintained relatively low closing inventory levels. This could be explained by the continued decline in the size of the market, and by the heavy rains in the third quarter to a lesser extent.

ii. Inventory of the Exporter/Producer - Domicem

Domicem's closing inventory of the investigated product at the end of 2009 was 30 per cent lower than the closing inventory held at the end of 2008. The examination of Domicem's most recent closing inventory levels showed that its inventory of OPC has been consistent with historical inventory levels.

Inventory levels of both Buying House and Domicem were not indicative of a threat of material injury to the Domestic Industry.

[33] http://www.sirci.it/Index.aspx?idnews=485&idsottosito=39
[34] Domicem's Response to the Exporter/Producer questionnaire, pg 27.
[35] Ibid, pg. 36

F. Likelihood of Capacity Resulting in Exports to Jamaica

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

i. Demand in the Dominican Republic market and excess capacity.

Domestic consumption in the Dominican Republic fell during the period May 2009 to April 2010. The Dominican Daily newspaper reported in 2010 that "...there was a fall in demand of around 12.9% in May, June and July, compared with the first months this year."[36] Additionally, ADOCEM, the country's Portland Cement Association noted that "...from May to July, the daily average consumption was 10,500 tons, far from the 12,000 ton daily demanded from January to April."[37] The initial increase and ensuing reduction in consumption has been attributed to the "…electoral period during which increased public spending in infrastructure works is common, but tend to fall and return to the usual rate of spending after the process."[38] Cement makers have stated that "...the cement industry is partially compensating these months of fewer construction activity in the country with an increase in exports. In that manner, during this first half the sector has sold in third countries, essentially in the Caribbean area, around 600,000 metric tons of Portland Cement."[39]

In 2009, cement production in the Dominican Republic was 3,200,000 MT while domestic consumption was 2.8 million MT. Using 2009 production and consumption figures and given actual capacity of 4 million MT, as the Respondents suggest, the Dominican Republic would have excess capacity of 800,000 and freely disposable capacity of 1,200,000.

ii. Exports trends in the Dominican Republic

Dominican Republic's Portland Cement Producers Association (ADOCEM) 2009 report noted that "...production capacity in the last eight years has grown well above the local demand for cement, a situation that has led the industry in search of exports and new markets." In particular, the preliminary Report of the Central Bank for 2008 emphasized an increase in the country's exports of cement of 55 per cent during 2008. The report also stated that the principal export markets for cement are Haiti and Jamaica.

The Respondents provided the Commission with information on the total exports of the Dominican Republic for the period 2008 to 2010[40], accompanied by a verification letter from the Dominican Republic Portland Association Inc. (ADOCEM).[41] The data received provided information on all exports for the period 2007 to 2010, and showed that Jamaica is currently

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

[37] Ibid

[38] Ibid

[39] Ibid

[40] Exhibit 10, Part II of Respondents Joint Submission in Response to the Affirmative Preliminary Determination

[41] Ibid. The letter from ADOCEM indicated that the information submitted by the respondents should be considered accurate on the basis that it was provided by the Dominican Republic Export and Investment Center (CEI-RD), the institution officially responsible for the country's exporting statistics.

the Dominican Republic's third largest export market; the Dominican Republic's principal export market at present is Haiti.

iii. Availability of other Export Markets to absorb Excess Capacity

Domicem exports cement to several countries in the Caribbean region, and has focused on these export markets due to their proximity to the Dominican Republic. At the Preliminary Determination, an examination of Domicem's data on its export markets suggested that Jamaica was the company's largest export market. While the company exports to other markets, the data showed that Domicem had consistently exported approximately 30 per cent of total exports to Jamaica, the largest amount sent to any one country. The other export markets, with the exception of Haiti, were substantially smaller than the Jamaican market and would not be able to absorb excess capacity. In relation to Haiti, the data on export volumes submitted by Domicem indicated that for the period May 2009 to April 2010, exports to Haiti accounted for less than exports to Jamaica.

Domicem submitted additional export data for the period May 2010 to September 2010 which showed that Domicem's exports to Haiti represented 32 per cent of total exports, while exports to Jamaica accounted for 29 per cent of total exports, indicating a change in the trend observed during the POI. Domicem also indicated, as discussed previously, that approximately 180,000 MT of cement per annum from domestic OPC production will be sent to Haiti for the period 2011-2013, which represents approximately 26 per cent of annual production.

While Jamaica is a market of interest for Domicem, there is an availability of other markets, Haiti in particular, to absorb its excess capacity.

In January 2010, an earthquake measuring 7.0 on the Richter scale hit Haiti. Using pre and post satellite disaster satellite imagery as well as in-field missions, the European Commission's Joint Research Centre and other international agencies compiled an atlas of all damage caused by the earthquake which shows that almost 60,000 buildings were either destroyed or heavily damaged.[42] A post disaster needs assessment conducted under the direction of the Haitian Government and with the technical support of the United Nations, the Inter –American Development Bank, the Economic Commission for Latin America and the Caribbean, the World Bank and the European Commission, has stated that "Some 105,000 homes have been completely destroyed and more than 208,000 damaged. Over 1,300 educational establishments, and over 50 hospitals and health centres, have collapsed or are unusable."[43]

To drive the rebuilding efforts, the Interim Haiti Recovery Commission (IHRC) and the Haiti Reconstruction Fund (HRF) were established. The trustee report of the HRF as at September 2010, prepared by the World Bank showed that the net funding availability in the HRF as of September 30, 2010 was US$68 million.[44]

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[42] The European Commission Joint Research Centre, (2010). *The European Commission's Joint Research Centre, United Nations and the World Bank Issue a comprehensive building damage atlas for Haiti.* Retrieved from http://ec.europa.eu/dgs/jrc/downloads/jrc_20100317_newsrelease_haiti_atlas.pdf

[43] *Haiti Earthquake PDNA: Assessment of damage, losses, general and sectoral needs. Annex to the Action Plan for National Recovery*. Retrieved from http://www.cirh.ht/sites/ihrc/en/haiti%20recovery%20plan/Pages/default.aspx

[44] Haiti Reconstruction Fund Steering Committee, (2010). *Trustee Report on the Financial Status of the Haiti Reconstruction Fund (HRF).* Retrieved from http://www.haitireconstructionfund.org/hrf/sites/haitireconstructionfund.org/files/HRF%20Trustee%20Report%202009-30-2010.pdf

In September, Haiti's reconstruction commission approved a $17 million United Nations Development Program plan to clean up six neighbourhoods.[45] The first debris removal contract was awarded to the Haiti Recovery Group[46] (a company Formed by a US Investor AshBritt and GB Group[47]). While the reconstruction process has been moving at a slow pace, the demand for cement by Haiti is expected to be of principal interest to the Exporter in the near future.

iv. The Common External Tariff

The Respondents contend that BHC's average monthly imports have decreased since the expiration of the CET waiver. Prior to October 2009, Buying House was granted waivers of the CET on cement imported under the HTS tariff code 2523.291 and paid no duties. This waiver expired on October 31, 2009. Since the expiration of the waiver, Buying House has paid the CET at a rate of 15 per cent on all its imports of cement.

An examination of the period prior to and after the removal of the CET showed a decline of 25 per cent in Buying House's imports.

B. Threat of Material Injury – Economic Factors

The Commission examined the economic factors listed in Article 3.4 of the ADA and reflected in Regulation 12.

Price Depressing or Suppressing Effects and Likelihood of an Increase in Demand for the Goods under Consideration

Buying House's imports were not found to have any price depressing or suppressing effects on the Domestic Industry's prices within the POI. There is no basis to suggest that future imports of the investigated product will have adverse effects on the Domestic Industry's prices.

Return on Investment. The capital investment in the new mill has significantly increased the total capital employed. In addition, the company has had declines in sales, revenue and profits in the most recent period for which data was available. Return on investment will continue to be affected as suggested by declines in these areas which have occurred due to the continued contraction in the construction industry and the burdensome loan repayment schedule.

Cash Flow and Ability to Raise Capital. The Commission examined CCCL's cash flow and observed that it has been adversely affected due to increased finance charges and lease payments related to the expansion and modernization programme. CCCL's cash flow will continue to be constrained by their financial commitments, particularly based on the "front loading" evident in the loan repayment schedule.

Capacity Utilisation. The Commission observed that the Domestic Industry shows low capacity utilisation rates. Consumption in the domestic market continues to decline which is

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[45] IHRC, (2010) Interim *Haiti Recovery Commission Announces Over $1. 6 Billion in New Project Proposals, Outlines Priorities*. Retrieved from http://www.cirh.ht/sites/ihrc/en/News%20and%20Events/News/Pages/ProjectProposals.aspx

[46] The New York Times, (2010). *Weary of Debris, Haiti Finally Sees Some Vanish.* http://www.nytimes.com/2010/10/18/world/americas/18haiti.html?_r=1&pagewanted=2

[47] GB Group is the same entity with which Domicem has indicated a partnership to establish a warehouse in Haiti.

directly linked to the decline in the construction industry. CCCL' ability to utilize its expanded capacity will continue to be affected given prevailing market conditions.

Employment and Productivity. The Commission found no basis on which to determine that the dumped imports have had or will have any effects on employment, productivity and wages.

Actual and Potential Negative Effects on existing development efforts. No new investments in plant efficiency or other development efforts are expected, due to the difficulties being experienced with cash flow, as well as the reduction in sales and profits. Loan repayment requirements and their scheduling will further constrain CCCL's abilities to engage in such efforts.

Magnitude of the margin of dumping. The margin of dumping is 81 per cent, which is significantly above the *de minimis* margin of two per cent. The Commission considered that the magnitude of the margin of dumping is sometimes used as an indicator of the extent to which injury is attributable to the dumping. The Commission is however required to consider all factors in totality and found that they did not substantiate a causal link between the injury and the dumped goods.

The Commission's assessment of whether the dumped imports pose a threat to the Domestic Industry necessarily focused on the issue of whether the factors considered above indicate that circumstances will progress such that the dumping will begin to materially injure the Domestic Industry.

Imminent and Clearly Foreseen

The change in circumstances resulting in such a situation must be clearly foreseen and imminent. The use in the law of the phrase "clearly foreseen and imminent" relates to the timing of the materialisation of the injury to the Domestic Industry in the future. Footnote 10 of Article 3.7 states that one example of this, "...is that there is convincing reason to believe that there will be in the near future, substantially increased importation of the product at dumped prices." However, it is recognized that this cannot be a deciding factor by and of itself.

WTO jurisprudence indicates that an assessment of threat of material injury involves an examination of "...the likely state of the Domestic Industry in the very near future can best be gauged from the data from the most recent past."[48] Further, "...what is critical...is that it be clear from the determination that the investigating authority has evaluated how the future will be different from the immediate past, such that the situation of no present material injury will change in the imminent future to a situation of material injury, in the absence of measures."

The jurisprudence also provides that "A finding of threat of material injury to the Domestic Industry must not be based on mere conjecture or remote possibility." The threat of injury analysis requires an examination of future events and so does involve making assumptions. Therefore, the WTO has indicated that the exercise should not be one of "mere conjecture." However, some amount of forecasting that is based on reasonable conclusions drawn from facts clearly outlined has to be carried out as regards the future events and their likely outcome.

The Commission's examined of information and data on economic indicators using the most recent information available up to and including September 2010 and has found that the

[48] AB Report US – Lamb, para. 137

Domestic Industry has suffered no material injury, with the presence of the dumped goods in the market.

In assessing the threat of material injury to the Domestic Industry, the Commission examined the record as to whether there is evidence of a change in circumstances that is imminent and clearly foreseen and that would create a situation in which injury will occur. The Commission did not find that there is a significant rate of increase of the dumped imports indicating a likelihood of substantially increased imports. The Commission found that the country of export, the Dominican Republic and the Exporter Domicem have capacity but no plans for expansion although there is potential for product shifting. However, with the availability of other export markets, in particular Haiti, the Commission was not persuaded of the likelihood that capacity in the Dominican Republic would result in exports to Jamaica. The Commission evaluated the information during the POI and the most recent information available on the Article 3.4 economic factors. The evidence does not support a finding that the dumped goods pose a threat of material injury to the Domestic Industry that is clearly foreseen and imminent.

The Commission noted that some factors indicated that the Domestic Industry could experience adverse effects in the future; but did not find that such injury would occur due to the continued presence of the goods under consideration. Rather, the Commission found that other factors such as CCCL's loan repayment schedule to its parent company, the contraction in the economy and in the construction industry and the resulting decline in domestic consumption will cause the adverse effects expected to be experienced by the Domestic Industry.

XIV. CAUSATION

In order to discipline dumping of goods into Jamaica, the Commission is required, in accordance with Article 3.5 of the ADA and Section 22 (2) and (4) of the Act, to find that the dumping of the goods has caused, is causing or is likely to cause material injury to the Domestic Industry. It must be demonstrated that the dumped imports are, through the effects of the dumping, causing material injury or the threat thereof within the meaning of the Act (and the Agreement).

The Commission must examine whether a causal relationship exists between the dumped imports and the injury being suffered by the Domestic Industry, that is, whether the injury experienced is caused by the dumped imports, through the effects of the dumping. In order to assess whether a causal link between the dumping and the injury exists, the Commission examined any known factors other than the dumped imports which at the same time are injuring the Domestic Industry, and the injuries caused by these factors must not be attributed to the dumped imports. The ADA does not require that the dumping be the only or principal cause of injury, but it must be a cause of the injury to the Domestic Industry.

The Commission examined the contemporaneous movements in the injury indicators and the dumped imports as well as the correlations. The Commission notes that correlations do not necessarily imply causation. The WTO Appellate Body has expressed the view that a coincidence between increased imports and injury should normally exist if causation is present. Though the precise methodology for this has not been prescribed, the Commission found it useful to examine not only the coincidence in time between the dumped imports and injury but also the partial correlation coefficients from regressions estimated. The Commission acknowledges that while correlation is not causation, the analysis is required and is useful in unearthing the relationship between the different variables and objectively assessing the influences that may be working in the market.

Aside from the overall contraction of the economy the Commission looked specifically at correlation of the presence of dumped imports with the difficulties being experienced by the domestic industry. The Commission found that while there was correlation with the dumped imports and the effects on the domestic industry, the results were not statistically significant for the dumped imports.

Non-Attribution Analysis

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

Legislative Provision

Regulation 12 (7) provides in relevant part that:

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

(a) the volume and price of imports which are not dumped…;
(b) contraction in demand or changes in the patters of consumption;
(c) trade restrictive practices of and competition between the foreign and domestic producers;
(d) developments in technology and export performance and productivity of the Domestic Industry, which individually or in combination, also adversely affect the Domestic Industry.

Volumes and Prices of Imports which are not Dumped

Imports by Arc Systems Limited are the only non investigated imports currently on the domestic market. Imports by Arc Systems declined between the years 2008 and 2009, followed by a period of absence from the market. Arc Systems' imports resumed in May 2010. Potential injury from Arc Systems imports cannot be ascribed to the goods under consideration in the instant case.

Contraction in the Construction Industry

The construction industry has been contracting since 2008. Results for 2010 have showed a similar trend. Results for the July to September quarter show the tenth consecutive decline in the industry. The continued decline in the construction industry has a direct effect on the demand for cement and other inputs used in the construction process. The protracted negative performance of the industry has and will continue to affect the Domestic Industry's performance.

<u>Table XIV. Real Value Added Growth in the Construction Industry</u>

Real Value Added Growth in the Construction Industry (%)											
Oct.- Dec. 2007	Jan.- Mar. 2008	Apr.- Jun. 2008	July- Sep. 2008	Oct- Dec. 2008	Jan.- Mar. 2009	Apr.- June 2009	July- Sep. 2009	Oct.- Dec. 2009	Jan- March 2010	Apr.- June 2010	July- Sep. 2010
7.9	2.4	(2.2)	(9.1)	(14.1)	(5.3)	(6.3)	(3.1)	(4.0)	(3.0)	(1.5)	(1.0)

Extracted from the Planning Institute of Jamaica's Quarterly Review of Economic Performance and quarterly News Releases posted on the PIOJ's website.

Contraction in demand & Changes in Patterns of Consumption
Domestic consumption of cement has also been declining since 2007. In 2007 total domestic consumption declined by 4.1 per cent over 2006. In 2008, consumption fell by a further 7.5 per cent, and again declined in 2009 by 12.7 per cent. Consumption for the January to September 2010 period was 12 per cent less than consumption in the corresponding period in 2009.The continued decline in the construction industry and domestic consumption will directly affect the Domestic Industry's ability to increase sales volumes.

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

Export performance of the Domestic Industry (in like goods)
The export performance of the domestic like goods does not give any indication of threat of material injury to the Domestic Industry. The Domestic Industry's exports have been increasing exponentially since 2008. CCCL has suggested that the sharp increase in exports is an indication that the company is being affected by the presence of dumped imports on the domestic market, as less average revenue per MT is earned from cement exports. CCCL stated that the company lost a significant amount of revenue from cement exports for the period January to June 2010. Given the decline in the domestic market however, the Commission does not consider the increase in exports as an indicator of injury to the Domestic Industry.

Imports by Tank-Weld
At the time of the Final Determination in Case-AD-01-2009 which investigated dumped cement imports from the United States of America, the Respondents, Tank-Weld held three per cent of the domestic market. Tank Weld's imports for the period January to September 2010, accounted for approximately nine per cent of the entire market. With the continued decrease in domestic demand for cement, the increase in the importation of dumped goods and market share by Tank-Weld are likely to exacerbate the circumstances currently facing the Domestic Industry.

Conclusion

When CCCL embarked on the Modernisation and Expansion programme, the company had no difficulty in obtaining external financing from different sources. There were delays experienced by CCCL in the completion of the expansion programme. During that time unforecasted changes in market consumption resulted in a decline in the demand for cement. With the downturn in the economy and contraction in the construction industry and cement market, CCCL's financial obligations in terms of loan repayments are now more burdensome, particularly its ability to make its short term obligations. The Commission finds that this combination of factors is evidenced by the negative effects on the company's profits, cash flow and overall financial performance up to September 2010. The injury caused by these other factors cannot be attributed to the dumped imports. CCCL was unable to demonstrate to the Commission's satisfaction a causal link between the dumped imports and the injury being experienced by the Domestic Industry. Even if the dumped cement were not in the market, CCCL would still have been experiencing the adverse effects.

XV. NEGATIVE FINAL DETERMINATION

Pursuant to Section 30 of the Act, the Commission makes a Negative Final Determination within ninety days after completing the Preliminary Determination, in respect of the dumping in Jamaica of Ordinary Portland Grey Cement originating in, or exported from the Dominican Republic.

The Commission determines that the goods under consideration have been dumped; that the margin of dumping is eighty one per cent; that it is not *de minimis*; and that the volume of dumped goods is not negligible.

The Commission examined the evidence offered on the record of material injury to the Domestic Industry and assessed the potential for material injury to the Domestic Industry. The Commission found that the dumping has not caused, is not causing and is not likely to cause material injury that is clearly foreseen and imminent to the Domestic Industry, within the meaning of the Act. Accordingly, the Commission makes a negative determination in the matter and closes the investigation.

INFORMATION

The Notice of Final Determination and Statement of Reasons for the 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 . For further information you may contact the Commission as follows:

The Anti-dumping and Subsidies Commission
The JAMPRO Trade and Invest Building
18 Trafalgar Road, Kingston 10
Telephone: (876) 9278665 or (876) 9781800
Email: antidump@jadsc.gov.jm

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Derrick McKoy (Dr.)
CHAIRMAN

....
Leslie Campbell (Mr.)
COMMISSIONER

....
Sandra Shirley (Miss)
COMMISSIONER

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