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STATEMENT OF REASONS

KINGSTON, JAMAICA

REF. No. AD-01-2003

March 15, 2004

IN THE MATTER OF an investigation, pursuant to section 4 of the Customs Duties (Dumping and Subsidies) Act, 1999, on the initiative of the Anti-Dumping and Subsidies Commission on behalf of the Jamaican cement industry.

AND IN THE MATTER OF the **Preliminary Determination** by the Anti-Dumping and Subsidies Commission, pursuant to section 27 of the Customs Duties (Dumping and Subsidies) Act, 1999.

IN RESPECT OF the dumping in Jamaica of Ordinary Portland Grey Cement, originating in or exported from the People's Republic of China, classified under Harmonized Tariff Schedule ("HS") Codes: 2523.29 and 2523.291.

I. BACKGROUND

On December 16, 2003, the Commission self-initiated an investigation pursuant to sections 4, 22(2), (3), (4) and 23 of the Customs Duties (Dumping and Subsidies) Act, 1999¹ (hereinafter referred to as "the Act"), and in accordance with Article 5² of the World Trade Organisation

¹ The Commission is empowered under section 4-(1)(a) to carry out investigations in relation to the dumping of goods on its own initiative.

² Pursuant to Article 5.6 of the WTO Antidumping Agreement, an Investigating Authority may, in special circumstances, initiate an investigation without having received a written application by or on behalf of a domestic

(“WTO”) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Antidumping Agreement), into the alleged injurious dumping into Jamaica of Ordinary Portland Grey Cement originating in or exported from the People’s Republic of China (“China” or the “PRC”).

The investigation was initiated following a determination by the Commission that where, during the course of an investigation³ or otherwise⁴, it receives information regarding the dumping of goods that are like goods produced by the domestic industry, and where an investigation concerning such dumping cannot be examined or adequately addressed in the context of that investigation or in the circumstances in which the information was received, that this would constitute “special circumstances” for self-initiation. The Commission received information from China and the Importer in the prior Safeguard Investigation which it considered sufficient evidence of dumping, injury and causation in accordance with Article 5.6 of the Antidumping Agreement. Accordingly, the current investigation was initiated to provide an opportunity for interested parties to present their views on the Commission’s initial determination of sufficient evidence of dumping, injury and causation.

On December 16, 2003, the Commission issued a notice pursuant to section 25 of the Act advising interested parties that it had commenced an investigation pursuant to sections 4, 22, and 23 of the Act with respect to imports of cement from China and invited interested parties to file written submissions presenting facts, arguments, and evidence relevant to the investigation.

Section 5 of the Act provides that the Commission shall seek to obtain all information that it considers necessary to assist it in its investigation. Immediately following the initiation on December 16, 2003, further information was sought from Mainland, Longkou, Shandong and the Domestic Industry, in the form of Requests for Information (RFIs), to acquire information to enable the assessment of China as a non – market economy for the purposes of determining

industry for the initiation of such investigation, if there is sufficient evidence of dumping, injury and a causal link to justify the initiation of an investigation.

³ On October 16, 2003, the Commission initiated an investigation pursuant to sections 4, 6 and 8 of the Safeguard Act in respect of the increase in imports into Jamaica of OPC originating in or exported from Argentina, China, Egypt and Russia. The Commission was of the view that the information it received during the course of the Safeguard Investigation provided sufficient evidence of dumping, causation, and injury, with respect to imports of cement from China, to justify its self-initiation of the current investigation.

⁴ The Commission is of the view that the exercise of its discretion to self-initiate is not limited to information it receives during the course of an investigation, but may result from information received from its own research, irrespective of whether there is an ongoing investigation.

appropriate price comparisons. The RFI's were also requested to allow the parties to comment on the Commission's choice of Indonesia as a surrogate for the purpose of the investigation and obtain more current information for the Commission's records. The responses from the parties contained no objection to the categorisation of China as a non-market economy nor did these responses oppose the use of Indonesia as the appropriate surrogate country.

Responses to the RFIs were initially to be submitted no later than Thursday January 22, 2004 and then no later than Tuesday January 27, 2004, with an extension. An application for an extension of the January 22, 2004 deadline was received from both Mainland and the Domestic Industry. In both instances the extension was granted to January 27, 2004.

On January 27, 2004, the Commission received the Domestic Industry's responses to the RFIs, and, on January 6, 2004, the submissions from Longkou and Shandong respectively. Mainland indicated its intention to cooperate to the best of its resources in a letter to the Commission dated January 5, 2004. However, to date no responses to the RFI's have been received from Mainland. In a letter dated March 5, 2004, Mainland was directed to complete its filing and informed that in the absence of its responses, the Commission will, pursuant to section 4(6) of the Act, resort to the use of the facts available to it at the time of making the preliminary determination.

The record of this investigation consists of all documents that relate to the Commission's decision to initiate the investigation, the Statement of Reasons for the initiation, and the confidential and non-confidential versions of the submissions received. All non – confidential submissions were made available to the parties.

II. STANDARDS FOR THE MAKING OF A PRELIMINARY DETERMINATION

Section 26 of the Act sets out the standard to be met for the termination of an investigation where the Commission decides to terminate an investigation before a preliminary determination is made. The standard is that there is insufficient evidence of dumping to justify proceeding with the investigation; the margin of dumping is *de minimis*; the volume of dumped imports (actual or potential) is negligible; or the injury or the threat of injury is negligible, and that the evidence does not disclose a reasonable indication that the dumping has caused or is likely to cause material injury. Implicit in this standard is the standard to be met for an affirmative preliminary determination; that is, there is sufficient evidence of dumping that is more than *de minimis*, that

the volume of imports is not negligible, or that injury (actual or threatened) is not negligible, and that the evidence discloses a reasonable indication that dumping has caused or is likely to cause material injury.

Section 27 (2) of the Act requires that the Commission, prior to the making of its preliminary determination, and on the basis of the information available, estimate the margin of dumping, specify the goods to which the preliminary determination applies, and specify the name of the person whom the Commission believes to be the importer of the goods in Jamaica.

As a result of its preliminary investigation, the Commission is satisfied that the goods under consideration have been dumped, that the estimated margin of dumping is not de minimis, that the volume of dumped goods is not negligible and that the dumping of the said goods has caused and is likely to cause material injury to the domestic industry. Accordingly, the Commission has made an affirmative Preliminary Determination, pursuant to section 27 of the Act and has decided to impose provisional duties in the amount of 96.27 per cent, effective March 29, 2004.

Based on the information available to the Commission as compiled from the submission of the parties, and its own research, the Commission now set out its estimated margin of dumping, the specific goods for which it recommends the imposition of provisional duties, and the name of the subject Importer.

III. PARTIES TO THE INVESTIGATION

The Domestic Industry is represented by Caribbean Cement Company Limited, also referred to as "the Domestic Industry" or "CCCL", with registered offices located at Rockfort, Kingston. The Domestic Industry, also referred to as the Domestic Producer, is a limited liability company incorporated under the laws of Jamaica and is in the business of manufacturing and selling bagged, bulk and ready-mix cement. The company is also an importer of cement. The Domestic Industry is the sole producer of OPC in Jamaica. Therefore, the Commission having obtained the Domestic Industry's support for self-initiation is satisfied that the threshold for standing in sections 22(2)-(4) of the Act has been met.

The Importer refers to Mainland International Limited, hereinafter referred to as "Mainland", with registered offices located at 8 March Pen Road, Spanish Town, St. Catherine.

Suppliers is a term used to refer collectively to both the Domestic Industry and the commercial Importers, including Mainland.

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

The Producer is Longkou Fanlin Cement Company Limited, Zhu You Guan Town, Longkou, Shandong, China, Tel:0535-856-1336, fax: 0535-856-1337; also referred to as “Longkou” or the foreign producer.

Other Parties are Blue Atlantic Investments Limited, hereinafter referred to as “Blue Atlantic,” with offices at The Courtyard, 12 Hill Street, St. Helier Jersey JE2 4UB. Blue Atlantic is an intermediary in the transaction and is in the business of providing logistic support. In its December 17, 2003 RFI to Mainland, the Commission requested the names and addresses of all logistic entities involved in the purchase and shipping of cement originating in or exported from China. The Importer has failed to present information on the logistics entities and as a result, the Commission, in reliance on the facts available to it, finds support for the inclusion of Blue Atlantic for the purposes of determining payments received for its participation in the transaction.

IV. SCOPE OF THE INVESTIGATION

The Commission defines the scope of the investigation as follows:

*ORDINARY PORTLAND GREY CEMENT USED FOR BUILDING OR CONSTRUCTION PURPOSES
ORIGINATING IN OR EXPORTED FROM THE PEOPLE’S REPUBLIC OF CHINA.*

The scope of the investigation has been defined narrowly and specifically excludes oil-well cement (2523.292), as it is a specialised product with unique properties unlikely to be imported into Jamaica as a substitute for OPC. The Commission also maintains that despite some similarities between the investigated product and White Portland Cement, white cement is not within the scope of the investigation.

A. GOODS UNDER CONSIDERATION

For the purposes of this investigation the Commission determined the scope as including the goods under consideration that fall under the above tariff classifications (and also typically under tariff heading 2523.29) for OPC imported from China, and finds support for its determination from the relevant Customs C-78 entry forms. Owing to the fact that in the Jamaican market all cement types are substitutable and thus a single fungible product, the Commission maintains its position that the scope of the investigation should encompass all cement types imported under the Harmonized System (“HS”) Codes 2523.20, 2523.291 and 2523.29 that are used for any building or construction purposes, regardless of type or quality, whether sold or imported per metric ton or in bulk, 1.0 or 1.5 MT O.P. Big (or Jumbo) Bags, 42.5 kg sacks or 50 kg sacks, or packaged in any other form, and for distribution or sale on the local market in any form⁵.

B. PHYSICAL CHARACTERISTICS AND USE

The goods under consideration have been labelled and imported as OPC Type I or ordinary building grey cement. The Commission is of the view that both the domestic and the imported goods conform to technical industry standards accepted worldwide and developed by the American Society for Testing and Materials (ASTM), specifically ASTM C-150.

Ordinary Portland Cement is a hydraulic cement consisting mainly of compounds of lime, alumina, calcium, silica and iron oxide which, when mixed with water and aggregate chemically, react to form concrete, the most widely used construction material in the world. Cement is used predominantly in the production of concrete and it is the binding agent in concrete and is used almost wholly by the construction industry. The chief end uses are: highway construction, using ready-mix concrete; building construction, using ready-mix concrete; concrete blocks; pre-cast concrete units; and individual smaller units. There are eight types of Portland cement, which are classified as Types I through V. In addition, a number of special - purpose hydraulic cements are manufactured, including White Portland Cement. The setting properties and strengths of White Portland Cement are similar to Grey Portland Cement and its uses may be similar, despite the

⁵ The narrative definition is covered under separate sub-headings of the Tariff Schedule and represents the scope of the investigation, notwithstanding the tariff classifications below, which are provided for Customs' purposes.

2523.20	Portland Cement
2523.2910.0	Building Cement (grey)
2523.29	Other

differences in colour between. However, white cement may be preferred to grey cement for architectural and aesthetic purposes. In the Jamaican market, white cement is not substitutable for grey cement because of its significantly higher cost, and was not imported into Jamaica over the Period of Investigation (the "POI").

C. PRODUCTION PROCESS

Portland Cement, the basic ingredient of concrete, is a closely controlled combination of calcium, silica, aluminium, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Common among the materials used in the manufacture are limestone, shell, and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand and iron ore. There are mainly two different processes, dry and wet, used in the manufacture of Portland cement.

Rock mined from a quarry, is crushed and then stored with other raw materials to be further processed. After analysis, the raw materials are proportioned, ground to fine powder and blended. In the wet process, the raw materials are ground with water and fed into a kiln as slurry. This process is used where the limestone, shale and clay are soft. Later in the process, additional energy is used to remove the excess water. In the dry process, the raw materials are ground, mixed and fed to the kiln in a dry state. This process is used when the limestone, shale and clay need to be ground. In other respects, the two processes are alike. As the raw materials move through the kiln, they are dehydrated and calcinated. The material is then transformed to clinker from which cement is produced.

V. LIKE GOODS

The Customs Duties (Dumping and Subsidies) Act, 1999 section 2 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 concludes that the OPC produced by the Jamaican industry is “like” the goods under consideration because they share substantially the same physical and chemical characteristics, production process, end-uses and channels of distribution as the goods under consideration. The Importer has not presented information on the quality and performance characteristics of the goods under consideration, and there is no information on record to suggest that consumers perceive that either the domestically produced product or the goods under consideration is different from the other.

VI. PERIOD OF INVESTIGATION

The period of investigation (POI) is the period selected for which imports into Jamaica will be assessed to determine whether the imports from the named country have been dumped and, if so, the effect of the dumping.

The POI for dumping commences **one year** prior to the date of initiation, that is December 15, 2002 through December 16, 2003. The goods under consideration were first imported in August 2002, then in December 2002, and more recently in March 2003.

The POI for the injury analysis commences **three years** prior to the date of initiation, that is, December 15, 2000, through December 16, 2003, in addition to the post initiation period for which data is available.

VII. THE JAMAICAN MARKET

The Jamaican cement market was supplied by the Domestic Industry from its own production and from sales of imported cement until 1999, when there was the addition of one more commercial supplier of imported cement, Mainland. Subsequently, more commercial suppliers of imported cement entered the market, the most recent addition being ARC in 2002. The total supply of cement in the Jamaican market is currently determined by the relative availability of the cement from these three sources. The responsiveness of cement supply in Jamaica is largely dependent on the level of Domestic Industry capacity, the ability of the Domestic Industry to utilise its capacity, and the availability of imports from alternate markets and inventories of the product.

The demand for cement⁶ is a derived demand and can be assessed on the basis of activities in the Construction Sector, in particular activities in non-residential construction. Historical trends suggest that the slowing of activities in the construction and installation sectors have resulted in a lower level of demand for cement. However, while construction activity is to a large extent driven by Income, it is also influenced by autonomous factors such as government projects⁷. Cement is a required input into construction and because the construction sector in Jamaica relies heavily on block and steel technology,⁸ as opposed to other less suitable substitutes⁹, the demand for cement as an input into construction is relatively inelastic. In addition, the availability of cement impacts on the demand for other inputs into construction.

However, while the demand for cement is generally inelastic, the demand for individual suppliers' cement is becoming more responsive to price, based on the availability of substitutes and the effective channels of distribution of each supplier. Given that cement is a product that is usually bought in large quantities, the Commission is of the view that small differences in price can have a significant impact on the demand for individual suppliers of cement.

With regard to consumption¹⁰, this has grown by approximately 8 per cent in 2003 over its 2002 levels. In 2003 domestic consumption, estimated at approximately 760,492 MT, was approximately 15.53 per cent above the 1999 consumption levels. On the other hand, the domestic industry's market share has declined consistently since 2000, while that of the competitors has either remained stable or increased. For example, ARC's market share increased significantly after its entry to the market in late in 2002 to reach, approximately, 12.47 per cent in 2003, and Mainland's market share has remained on average between 10 and 11 per cent over the period of investigation.

⁶ The demand for cement is a derived demand, that is, it is not demanded for itself but for the use to which it can be put.

⁷ The major projects driving activity in the sector are, the resumption of work on the Northern Coastal Highway as well as the continuation of construction work on Highway 2000.

⁸ Estimates from the Survey of Living Conditions indicate that this represents 63.3 per cent (2001) of the housing market for outer walls. CCCL's February 27, 2004 submission in SG-01-2003.

⁹ Substitute materials in constructions include, wood, stone, brick, concrete nog, wattle and daub.

¹⁰ Consumption estimates are based on the actual sales data of Mainland and CCCL, as well as estimates based on market intelligence for ARC sales.

VIII. ECONOMIC CONDITION OF THE DOMESTIC INDUSTRY 1997-2002

The analysis of the economic condition of the Domestic Industry, in particular for the 1997-2002 period, is a historical look at the development, growth and stability of operations of Caribbean Cement Company from a financial perspective.

For the three year 1997 to 1999, the Domestic Industry reported significant operating losses while showing a steady growth in revenues. In an attempt to reverse this negative trend, the Domestic Industry embarked on a strategic process of reengineering in 1999 involving significant capital investment, repairs and retooling of its production facility, refinancing of its debt portfolio and changes in management and marketing strategies. The success of the restructuring was immediately manifested in 2000, when the Domestic Industry reported net operating profits and growth in all its major indices. This growth continued to the extent that by the end of 2002, the Domestic Industry was reporting record- breaking levels in performance. To quote the Chairman in his statement to Shareholders in its 2002 Annual Report, “we achieved record performances in every business centre. The highest ever performance, in the history of this Company, was recorded in the areas of clinker production, cement production, cement sales and profits”.¹¹

The restructuring exercise in 1999, while successful, was not achieved without a price. With the closing down of some areas of the production facility to facilitate major repairs and retooling, the Domestic Industry was not able to adequately supply the demands for cement in the market which was showing steady growth, and had to resort to covering the shortfall by importing significant quantities of cement in 1999 and 2000. This period of shortages, opened the market for the introduction of a major importer, Mainland International, since 1999.

In its deliberations on the injury suffered by the domestic industry, the Commission considered the historical performance of the Domestic Industry before and during the periods when dumped imported cement threatened injury up to 2002, and the 2003 period where actual injury is observed. The findings on the level and materiality of this injury are presented below in Section XII.

¹¹ Caribbean Cement Company Limited, Annual Report 2002, p.5

IX. USE OF FACTS AVAILABLE

In section 4(6) and 10 of the Act, the Commission is given the discretion to use facts available in making its finding.

Section 4(6) of the Act states that:

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

Section 4(6) gives broad discretion to the Commission for making a finding on the basis of the facts available. The Commission's invocation of section 4(6) is triggered where information is not provided to the Commission's satisfaction.

Unlike section 10 of the Act, section 4(6) does not direct the Commission to have regard to Annex II of the WTO Anti-dumping Agreement¹² in making its determination on the basis of facts available. Consequently, how the available facts should be used, pursuant to section 4(6), is not expressly confined to the manner outlined in Annex II of the Anti-Dumping Agreement.

Section 10 of the Customs Duties (Dumping and Subsidies) Act states that:

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

Section 10 concerns parties that are uncooperative throughout the investigation process, and the Commission's discretion for use of facts available is exercised in accordance with Annex II.

¹² The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement) provides the international framework of rules and obligations concerning the conduct of dumping investigations on which Jamaican legislation is based.

X. NON-MARKET ECONOMY (NME COUNTRY) STATUS

In accordance with section 4(2) of the Customs Duties (Dumping and Subsidies) (Determination of Fair Market Price, Material Injury and Margin of Dumping) Regulations, 2000 (the Regulations) and section 15(a) (11) of the WTO Accession of the People's Republic of China, the Commission considers that the information received from interested parties to this investigation supports the decision that China continue to be treated as a NME¹³ because of the presence of government controls on various aspects of its economy.

Section 4 (2) of the Regulations defines a non-market economy as one where:

- “(a) goods sold to an importer in Jamaica are shipped directly from a country the government of which has a monopoly or substantial monopoly on its export trade;
- (b) domestic prices are determined by that government; and
- (c) there is reason to believe that the prices are not based upon a competitive market.”

The Commission is of the view that the criteria in Section 4(2) refer to characteristics of the economy in general and not specifically to what is happening in the particular sector that produces the product at issue. However, section 15(a) (11) of the WTO Accession of the People's Republic of China, recognising a distinction between market and non-market conditions in an industry, provides that an “importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.”

Information provided by the foreign producer and exporter indicates that approximately 79 per cent of the industry has state involvement. Additionally, other sources have found that “China has not made active use of exchange rate policy in the past. Nor has there been significant movement toward trade reform. In addition, despite the privatisation that has been carried out so far, most capital still remains in the public sector.”¹⁴ Moreover, the practice of other jurisdictions is to treat

¹³ A non-market economy is one where market principles of cost and pricing structures do not operate. That is, one where there is significant government control over the allocation of resources and price and output decisions (essentially a command economy). See section V11, page 7 of the Statement of Reasons regarding Initiation, dated December 16, 2003, where the Commission concludes that a surrogate country should be used.

¹⁴ IMF Staff Papers, Vol.50, No.3, page 460.

China as a non-market economy due to the high degree of state involvement, and no party to this investigation has requested a revocation of the NME status or presented information that would suggest otherwise. Accordingly, the Commission determines the margin of dumping will be determined by a comparison of the export price of the cement from China with the domestic price of a surrogate country, and not a comparison of China's domestic price and the export price of the subject goods.

XI. EVIDENCE OF DUMPING

The margin of dumping refers to the differential between the *normal value* and the *export price* expressed as a percentage of the export price.

A. NORMAL VALUE

Under the Act and the Regulations, normal value is determined by reference to the price at which like goods are sold in the ordinary course of trade for domestic consumption in the exporting country.

1) SURROGATE¹⁵ ANALYSIS

On the basis that China has been determined to be a non-market economy, the Commission is permitted under Section 4 of the Regulations to use:

- a) the price of like goods sold by a producer in any designated country, or
- b) if sufficient information is not available, on the basis of the price of like goods that are produced in any designated country or the country from which the goods were shipped directly to Jamaica.

The Commissions' practice is to choose a surrogate country or countries on the basis of a similar level of development (GNI per capita¹⁶), and the extent to which the country is a significant producer of the product. China, as classified by the World Bank, falls into the category of a

¹⁵ The surrogate country can also be referred to the designated country or the reference country.

¹⁶ According to the World Bank (1996), the main criterion for classification of countries and distinguishing different stages of economic development is the Gross National Income (GNI) per capita. It is recognized however that this is not a comprehensive measure of development. The World Bank currently uses the term Gross National Income (GNI) per capita in place of GNP per capita.

developing country¹⁷ and is also a significant producer of cement. Post initiation, the Commission requested parties to indicate market economy developing countries that, in their opinion, matched these criteria. Longkou and Shandong indicated five countries, Indonesia, Thailand, India, Philippines and Malaysia, which in their opinion matched these criteria, but indicated no preference.

On the basis of the criteria outlined above, the Commission preliminarily determines that Indonesia continues to be the most suitable primary surrogate, of the alternatives suggested. The Domestic Industry has also indicated that it concurs with the Commission's choice in respect of primary surrogate. The Commission considers, however, that because it is not limited in the number of countries it relies on for price information, Thailand is named as a secondary surrogate.

2) NORMAL VALUE CONSIDERATIONS

Post initiation, parties to the investigation submitted information on normal values in Indonesia. The information submitted by the producer and exporter gives prices higher than the prices used at initiation, but fall within the same range. The difference in price between this average price and the regional price used by the Commission is to be expected. This difference is attributable to the fact that the post initiation prices submitted by the producer and exporter represent an average price for cement in 2003 and does not account for differences in price between bagged and bulk cement as well as regional variations. At initiation, the Commission relied on 2001 estimates of bagged cement prices in the Central Java region at the manufacturer to distributor level of trade. In addition, there are regional variations in the price of cement within Indonesia that would not be captured in this price, as well as differences in levels of trade and taxation.

The price data submitted by the Domestic Industry was more detailed than that supplied by the producer and exporter. This enabled the Commission to identify prices in the Central Java region, pre-tax prices and prices at the manufacturer to distributor level of trade¹⁸ for bagged cement. This price was also higher than that used at initiation, but also falls in the same range as that supplied by the Chinese producer and exporter and obtained from independent sources. Therefore,

¹⁷ In general discussions in World Bank reports, the term "developing country" has been used to denote the set of low and middle-income economies. Notably, some anomalies have been observed in that countries previously classified in the low income group were subsequently included in the middle income group, and depending on which statistics are used the classification can change. The Commission therefore takes developing countries to mean low and middle-income countries in accordance with the World Bank definition.

¹⁸ The same level of trade as that between the Chinese producer and Mainland.

the Commission continues to rely on the price of bagged cement in the Central Java region from PT Semen Cibinong TBK¹⁹, the company and region from which cement was exported to Jamaica in the past, using this up-dated estimate. It is important to note also, that the Central Java region is the most heavily populated and economically advanced region and has the most significant concentration of cement producers²⁰. Accordingly, the Commission determines that the prices in this region and from this producer can be regarded as representative and in the ordinary course of trade, and are used as the base price for normal value calculations.

B. EXPORT PRICE

Section 19 of the Act addresses the determination of the export price of the goods under consideration. It states in pertinent 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 –

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

A permissible interpretation of this provision would contemplate a situation where the “exporter’s sale price” and the “price at which the importer has purchased the goods” is not the same. Usually where there are two parties to a transaction, exporter and importer, there is only one transaction price in relation to the purchase of the goods. In this situation, the exporter’s sale price and the importer’s purchase price would be the same and making the same adjustments to the two would yield the same result. In such a case, the application of the provision concerning the use of “the lesser of” the two export prices would be superfluous.

In the instant case, there are more than two parties in the transaction, Exporter – Shandong, Buyer – Blue Atlantic and Importer – Mainland. The Commission is of the view that this is the precise scenario in which the guidelines set out in section 19 of the Act for export price determination, is

¹⁹ PT Semen Cibinong TBK is one of the largest cement producers in China.

²⁰ CCCL's November 1, 2001 submission in case AD-01-2002, exhibit 6, page 11.

particularly applicable. In the instant case, the “exporter’s sale price” would be the price between Shandong and Blue Atlantic and the importer’s purchase price would be the transaction price between Blue Atlantic and Mainland. The Act contemplates that the two prices, with appropriate export price adjustments such as freight and insurance, will be compared and the lesser of the two will be the resulting export price. The Commission found, based on invoices supplied by the exporter and the importer, that the lower price is that between the exporter and the buyer. Accordingly, the Commission uses this price as the appropriate export price to be used as the base price for export price calculations.

C. ISSUES OF PRICE COMPARABILITY

To ensure price comparability, adjustments are made to base prices to account for differences that may arise between countries, due to variations in quantities, levels of trade, physical characteristics, and any other differences that are demonstrated to affect price comparability, including differences that arise from different selling conditions in different markets. Parties were asked to submit information pointing to instances where price comparability issues arise, as well as to provide the necessary data to permit these adjustments. The Domestic Industry has provided up to date information on prices and costs with which to update the analysis²¹. The Chinese producer/ exporter indicated that they did not have this information on other markets²². Throughout the investigation, parties are responsible for claiming and supporting adjustments. In the instant case, adjustments are based on any differences that are deemed to exist between cement sold in the designated (surrogate/reference) country on their local market and that sold for export. The adjustments discussed below are made to the base (starting) prices to arrive at the net ex-factory prices to be used for dumping margin calculations.

1) NORMAL VALUE ADJUSTMENTS

Discounts or Rebates - The information on the record indicates no discounts or rebates are given to distributors in Indonesia. Therefore no adjustment has been made at this time.

Packing – The evidence on record indicates that there was a difference between the bags used for export and that used on the domestic market in China. From the data available, the Commission relied on those costs associated with Indonesian cement manufactures and independent bag

²¹ CCCL’s February 19, 2003 submission in case AD-01-2003.

²² Longkou and Shandong’s January 23, 2004 submission in case AD-01-2003.

producers production of bags. This was further adjusted to account for the fact that the producer in Java is not charged tax. Export packing costs were added to the base price and domestic packing costs were subtracted.

Difference in Quantities Sold in Indonesia - Indonesian cement is sold in 40 kg or 50 kg bags and those sold for export to Jamaica are in 42.5kg bags. It is noteworthy that cement sold on the Chinese market is also sold in 50 KG bags. However, the Commission considers that this adjustment was not warranted because of the conversion to MT throughout the analysis.

Movement Expenses – The Commission found that some Indonesian producers include the cost of domestic transportation in selling prices; an adjustment is therefore made for this.

Physical Characteristics – Longkou has indicated that there is no difference between the cement produced for export and that sold on its local market. Preliminary indications are that there is no difference between the cement produced for sale on the Indonesian market and that exported to Jamaica from either China or Indonesia. Therefore, the Commission makes no adjustment for differences in physical characteristics.

2) EXPORT PRICE ADJUSTMENTS

Transportation – The Commission has found that producers in Indonesia include the cost of transportation in their prices. This is, therefore, deducted from the base price. The Commission relied on those estimates of the longest distance to estimate the adjustment that should be made. In as much as the data on transportation for the individual producers was not sufficiently detailed, the Commission relied on the costs of transportation pre-tax related to independent providers. This price is significantly higher than that used at Initiation, based on the fact that fuel prices increased significantly over 2001 levels²³.

Freight - No adjustment was deemed necessary because the base prices are Free on Board (FOB).

Additional Export Packing - The Commission found that slings were used in the packaging of the goods exported to Jamaica. The Commission has, therefore, deducted the cost of packaging in slings from the base price.

Loading Costs – The Commission found that costs for loading were included in transportation costs already accounted for.

²³ CCCL's February 19, 2004 submission in case AD-01-2003, page 3.

D. MARGIN OF DUMPING

The margin of dumping refers to the differential between the net ex-factory normal value and net ex-factory export price, expressed as a percentage of the export price. The Commission, after considering all the alternatives, has decided that the net ex-factory price is the most suitable alternative for translating the amount of dumping to the percentage margin of dumping. The resulting margin of dumping is therefore preliminarily estimated to be 96.27 per cent.

XII. EVIDENCE OF MATERIAL INJURY

A. LEGAL FRAMEWORK

In order to determine whether the Domestic Industry has suffered or is suffering material injury, the Commission analyses the actual or potential volume of the dumped goods and the consequent impact of the dumped goods as set out under Section 12 of the Regulations to the Act.

Section 12- (1) states in pertinent part-

“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 imports as assessed in absolute terms or relative to the production or consumption of like goods in Jamaica; as well as (b) the consequent impact of the dumped imports on the domestic industry 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.”

These factors as set out as set out under Section 12-(1), subsection (b) i –ii and Section 12-(2), subsection a-b, include the following:

- **Volume effects** – referring to whether there is a decline or negative effects on output (production), sales, market share and inventories;
- **Price effects** – referring to whether there has been a significant price undercutting, or depression in price, or whether there has been to a significant degree of prevention of price increases which would otherwise have occurred (price suppression);
- **Economic Impact on the domestic industry** – referring to whether there is a decline or negative effects on profits, productivity, return on investments, utilisation of industrial capacity, cash flow, employment, wages, growth or ability to raise capital.

The Commission analysed the factors above to determine if the Domestic Industry has suffered or is suffering material injury.

Material injury, as defined by the Act, means in respect of the dumping of any goods, material injury to the production in Jamaica of like goods. The Commission is of the view that materiality is an accounting convention which refers to the relative importance of a transaction, item or event, depending on the size and effect of the particular transaction, item or event on a business. That is, materiality cannot be determined by a specific value, but is the qualitative consideration of expressing the effects of that value. Against this background, the Commission's analysis of the injury factors did not only take into consideration the size of the declines or negative effects, but also the importance of the effects of these qualitative values relative to the respective sizes. Further, the Commission considers that injury is measured not only by the decline or reversal of a trend, but also the significance of the negative effects of retardation or the prevention of normal growth and development.

The Commission is cognizant of the fact that some factors will show negative impacts while others may not, and considers all the factors against the background of their overall effect, and not necessarily the individual effect of each factor. Further, the Commission is guided by Section 12(3) which states that "*nothing in this regulation shall be construed as binding the Commission to give priority to any of the factors mentioned ...in the making of its decision.*"

B. INTRODUCTION AND ANALYTICAL FRAMEWORK

The period of investigation referred to in Section VI above allows the Commission up to three years to December 16, 2003 during which to analyse the effects of the dumped imports on the Domestic Industry. However, the Commission's analysis of material injury examined the fourteen month-period of August 2002 to September 2003, which is the period when the injury to the Domestic Industry can be attributed to the presence of dumped cement from China. The shipment of Chinese cement arrived in Jamaica on July 31, 2002 and, based on Mainland's sales volumes and assuming a first in first out basis, the Commission concludes that Chinese cement was active in the market to September 2003, when the last of it is presumed to have been sold, even though the Importer switched to cement from Argentina in July 2003.

As the Chinese cement was in the market for a finite period, the Commission examined the effects of the imports over that period, and compared them to the prior similar period when there was no Chinese cement in the market. To avoid any overlap, the Commission compared the information in this period against the immediate preceding fourteen - month-period of June 2001 to July 2002. The Commission considers that this period is long enough to cover small variations in cost allocation, if any, or any possible seasonal effects on sales.

Over the period of investigation, the Commission observed that the volume of cement imported from China was of significant levels to exert injurious effects on the Domestic Industry when viewed in absolute terms as well as relative to production and consumption.

For the period when Chinese cement was present in the Jamaican market, the Commission observed, price undercutting, a short period of price depression, but no price suppression. In addition, the Commission found a decline in the volumes of production, negative effects on inventory, and a decline in sales and market share. The analysis of the consequent economic impact on the Domestic Industry shows that while profits increased in absolute Jamaican dollar terms, there was a small decline in real United States Dollar terms, and negative effects based on retarded return on Investment. No adverse effect on cash flows, capacity utilisation, productivity, employment, wages and the company's ability to raise capital was observed in the analyses.

The Commission measured the combined effects of the slowing down of the Domestic Industry's production caused by the decline in through put to sales and market share and determined that these reductions, a reduction in real profits and a retarded return on investment in a market showing significant growth, are evidence of material injury.

The Commission is mindful that while cement imported from other countries was in the market at the same time and having an impact on the Domestic Industry, the presence of significant quantities of cement imported from China unmistakably contributed to the injury suffered by the Domestic industry during the period it was in the market.

C. IMPORT VOLUMES

Cement imported from China represented 40 per cent of all imports of cement over the period. When analysed in relative terms, the Chinese imports represented 16 per cent of domestic

production and 11 per cent of cement available for consumption in the market over the fourteen month-period. Therefore, the Commission determined that the amount of Chinese cement imported was not *negligible* and represented sufficiently significant quantities, to exert negative effects on the Domestic Industry.

D. 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. The effects on prices on the Domestic Industry were assessed in relation to changes in selling prices of the locally produced cement relative to previous price levels (price depression), the comparative prices of the imported cement in relation to the Domestic Industry's selling prices (price undercutting), and the Domestic Industry's ability to maintain the margin between its unit selling price and unit cost of production, or price suppression.

1) PRICE DEPRESSION

Price depression is the reduction in the Domestic Industry's selling prices, usually as a result of downward pressure due to increased supply in the market or deliberate lowering of prices by the Domestic Industry in order to remain competitive.

The Commission's examination of the record reveals the Domestic Industry's strategic changes to its listed selling prices at different times during the period of investigation based on inflation and changes in exchange rates. The Commission noted price increases on May 20, 2003 of 8 per cent over the previous adjustment on February 10, 2003. The prices were reduced two days later, because of the revaluation in the Jamaican Dollar. On July 4, 2003 the prices were further reduced by 8 per cent, which rolled prices back to the levels that existed prior to the May 20, 2003 levels.

The Commission is of the view that although specific list price adjustments show the listed selling prices for a particular product, it is the net selling price that expresses the true price of the product to the customer. The net selling price takes account of discounts and rebates and value their effects on the overall revenue from the sale of the product. The Commission examined the information before it for price depression, and found that a 3 per cent price depression was experienced in August and September 2003, both in terms of local currency and United States dollars and at a time when cement from China was present in the market.

The Commission determined that the reduction in July 2003 resulted from exchange rate price reduction discussed above and that the further reduction in August 2003 was the result of price depression. The Commission also notes that net selling price for September 2003 showed some improvement over August 2003, but still remained below its June and July 2003 net selling prices.

2) PRICE UNDERCUTTING

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

The Domestic Industry experienced the effects of undercutting by the importer of Chinese cement, both in its ex-factory and retail prices. The Commission found that the Domestic Industry's ex-factory prices were undercut in the period by the Importer in the amount of 7 percent, and retail prices were undercut by 6 percent.

3) PRICE SUPPRESSION

Price suppression is experienced when the Domestic Industry's margin between average unit net selling price and average unit cost of production cannot be maintained.

The Commission's analysis for the period August 2002 to September 2003, compared to the previous fourteen months, June 2001 to July 2002, did not demonstrate price suppression. While the Domestic Industry's selling prices trended marginally downwards in United States Dollar terms for the period, due to price depression, its margin over the period has shown a gradual increase of 2 per cent, because of a reduction in unit cost of production.

The Commission is satisfied after an examination of the information on the record that price suppression did not occur as a result of the introduction of Chinese cement onto the market.

E. VOLUME EFFECTS

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

1) PRODUCTION

For the specific fourteen month period ending September 2003, the production level by the local industry was 1 per cent lower than the immediate preceding fourteen month period ending July 2002. Unlike the earlier years of 1999 and 2000 when production was hampered by mill downtime for major repairs to the facility, the Domestic Industry had no significant mill downtime during the period under review and therefore the reduction was not due to any internal problems with the Domestic Industry. This is discerned in the 13 per cent increase in clinker production during the fourteen months of August 2002 to September 2003 over the immediately preceding fourteen months.

The Commission is of the view that the Domestic Industry's increase in clinker production is an indicator of the necessary adjustments made by the local industry in 2002 to 2003 to meet the demand for cement in the Jamaican market. However, with the presence of the imports in the market having negative impact on its sales, the Domestic Industry was unable to convert more clinker into cement, resulting in the reduction in cement production and a large increase in clinker inventory.

The Commission considers that in absolute terms, a 1 per cent reduction in cement production would not ordinarily be considered material. However, when examined against the background of the increased clinker production in order to supply the market, the reduction in cement production did have significant negative effects on the Domestic Industry. Therefore, the Commission determined that the presence of dumped Chinese cement has had a negative impact on the Domestic industry's production of OPC.

2) INVENTORY

The Commission agrees with the claim of the Domestic Industry that the carrying levels of both cement and clinker inventories have quality and logistics limits and can be inventoried for limited periods of time. For this reason, the Domestic Industry (or any cement producer) coordinates

clinker production with cement production and limits the length of time that clinker or cement remains in inventory. The Domestic Industry has two cement silos that hold specific metric tons of bulk (unpackaged) product, and when these silos reach capacity, cement production must cease. The Commission considers that the storing of the bagged product is not a viable alternative, because bagged cement is hygroscopic, that is it has a natural tendency to soak up moisture and humidity from the atmosphere, thereby limiting the effective shelf life of bagged product to just two to three months, which includes the distributors' and consumers' storage time.

During the period under review the average monthly inventory level of cement fell by 3 per cent, remaining close to the carrying capacity for cement maintained by the Domestic Industry. Clinker inventory on the other hand, as a result of curtailed reduction in actual cement production, saw an average monthly level increase of 73 per cent. At the end of September 2003, the level of clinker inventory held by the Domestic Industry represented more than twice the amount of clinker required for the subsequent cement production.

The Commission determined that while there has been no increase in the levels of cement inventory, the resulting impact on clinker levels, against the background of its perish ability and off take into cement production, had injurious effects on the Domestic Industry over the period under review.

3) SALES AND MARKET SHARE

The analysis of sales and market share looked at the changes in volumes of sales of locally produced cement in the Jamaican market along the dynamics to the changes in the market and the Domestic Industry's share of the market.

The sale of locally produced cement fell by 5 per cent for the fourteen month-period of August 2002 to September 2003, when compared to the immediate preceding fourteen month period of June 2001 to July 2002. This is against the background that sales volume in the market grew by 9 per cent from 798,979 MT to 870,922MT.

Unlike 1999 and 2000 where the Domestic Industry's imports constituted a significant portion of total imports to cover the period of repairs to the mills and kilns, there was less than 1 per cent of the market supplied by its imports during this fourteen month-period.

The Commission considers that in absolute terms the decline in the sales volume by the Domestic Industry is significant in itself. This decline is augmented when viewed relative to the fact that the local market had significant growth during the same period. In addition, this reduction in sales volume in a growing market converted into a significant drop in the market share of local cement.

With regard to impact on market share, the Domestic Industry's share of the domestic market fell by 11 percentage points down to 77 per cent of the market compared to 88 per cent for the previous fourteen-month period. The Commission is of the view that this significant drop in market share expresses the importance it has placed on looking not only on the absolute 5 per cent reduction, but the greater cumulative effect of that loss when viewed in relation to a market that has grown by 9 per cent.

F. ECONOMIC IMPACT ON THE DOMESTIC INDUSTRY

1) PROFITS AND PROFITABILITY

a) Revenue and Operating Profit

Against the background of losing sales volume and market share the Domestic Industry was able during the period under review to improve its local dollar sales revenue by 8 percent over the immediately preceding fourteen months, by hedging its pricing policy against the devaluation of the Jamaican dollar and the maintenance of its gross profit margin. After the input of increased export revenue and the absorption of increased cost, the Domestic Industry was able to improve its local dollar net profit before exceptional expenses by 10 per cent.

While revenues and profit in absolute Jamaican dollar terms have increased, the profit as a percentage of that revenue, shows no growth, and remains flat at 12 per cent.

In order to measure the level of real growth relating to the increase in Jamaican dollar profits, the Commission expressed the profits in United States dollar terms to remove the expressed gains relating to the devaluation of the Jamaican dollar. When expressed in United States dollar terms, profits for the period under review fell by 1 percent when compared to the immediately preceding fourteen-month period.

The Commission is of the view that while an increase in local dollar profit may be viewed as positive, the fact that there is a reduction when the effects of devaluation are eliminated, shows a marginal reduction in profits by the Domestic Industry.

b) Return On Investment (ROI)

The true measurement of a business's viability is the measure of its profitability, that is, the value of the profits earned when viewed in terms of the level of the investment made to achieve those profits.

Return on investments is the expression of the annual returns of a business expressed as a percentage of the investment in the business. The annual return is the net profit before exceptional items and taxes, while the investment is represented by the capital employed or total fixed assets. The Commission considers that capital employed is the best denominator in a trading non-capital intensive business, while the asset basis is the best denominator in capital intensive businesses. The Commission considers that the Domestic Industry is a capital intensive business with extensive investment in long term fixed assets, and therefore, its return on investment is measured as the annual value of net profits before exceptional expenses expressed as a percentage of total fixed assets.

For the period August 2002 to September 2003, the Return on Investments has shown no improvement over the preceding fourteen-month period, remaining at 17 per cent. The Commission considers that while profits increased in absolute terms, when viewed in relation to the value of the assets employed to achieve these results, the Domestic Industry did not improve its position.

The Commission used a "but for analysis" in outlining what would be the worst-case position of the Domestic Industry if it had maintained its percentage of the growing market over the period under review. This includes increasing operating expenses to the ratio of increased notional sales and cost of sales, which under normal operations would not increase to the same extent. The Commission notes that had it not been for the losses in sales volume and market share the Domestic Industry's notional profits in United States dollar terms would have grown by 35

percent and notional return on investment would have been 24 percent instead of the actual 17 percent recorded for the period.

The Commission determined that there are injurious effects to the Domestic Industry in terms of profits and profitability because of the reduction in its comparative United States dollar profits and its profitability being flat during the period, when viewed against the growth of the market.

2) CASH FLOW

The Commission's analysis showed a gradual improvement in the Domestic Industry's cash flow position to the end of 2002. The current ratio, which expresses the company's ability to meet short-term financial requirements, continues to show improvement in 2003, improving marginally from 83% at the end of 2002 to almost 1 to 1 at 93% at the end of September 2003.

The Commission concludes that the Domestic Industry did not suffer any adverse effect on its cash flow or access to short term funds.

3) ABILITY TO RAISE CAPITAL

The growth in revenue, profit and improved cash flow position along with the long-term stability of its asset and equity base are good indicators for the Domestic Industry's ability to raise capital. Even with the reduced market share, the Domestic Industry will still post revenues of close to \$4 billion for 2003, and with 77 per cent of the market, the Domestic Industry remains a viable business and attractive to investors from the equity or debt markets. Additionally, the Domestic Industry's share price listed on the Jamaican Stock Exchange has maintained a reasonably constant price since 2001.

Therefore, the Commission does not find evidence to conclude that the presence of Chinese cement in the market over the period had any adverse effect on the share price or the Domestic Industry's ability to raise capital from other sources.

4) PRODUCTIVITY, EMPLOYMENT AND WAGES

For the period August 2002 to September 2003, productivity has shown a marginal decline due to the combined effects of factors, which included an increase in the number of employees and ten

percent in capital investment. This has not had any significant effect on the Domestic Industry's operation, as the Domestic Industry continues to produce adequate quantities of clinker to increase its outflow of cement as required.

Therefore, the Commission concludes that there were no adverse effects on productivity, employment and wages.

5) UTILISATION OF CAPACITY

The Domestic Industry's utilisation of its industrial capacity has remained at an average of 55 per cent over the last three years. Additionally, the major repairs done in 1999 and 2000 have allowed the Domestic Industry to gradually increase its output of clinker, even though its through put to cement is hampered by the presence of Chinese and other imported cement in the market.

The Commission does not find any adverse effects on the utilisation of the Domestic Industry's capacity during the period when Chinese cement was in the Jamaican market.

F. OTHER FACTORS

1) Egyptian Cement

The above analyses looked at the injurious effects to the local industry during the period when Chinese cement was in the market. During the period, there were also significant imports of cement from Egypt and the introduction of cement from Argentina.

The Commission is of the view that while imports of cement from China were not the only imports in the market and consequently not the only contributor to the injurious effects to the Domestic Industry outlined above, the amounts of cement from China were of significantly large quantities to be a major contributor to the injury suffered by the Domestic Industry.

G. CONCLUSION

The Commission notes that Material Injury is the qualitative measurement of the size of the injury factors, taken in light of the value of their effect rather than merely the size of the decline or

negative effects, and that injury is measured not only in downward movement in the injury factors but also in negative effects shown in flat, retarded or, even upward movement in the injury factors when viewed relative to normalcy in a growing industry.

In light of the above, the Commission concludes that the Domestic Industry has evidenced material injury caused by the presence of dumped cement from China in the Jamaican market.

XIII. THREAT OF MATERIAL INJURY

The Commission's analysis below is conducted to evaluate the factors that would point to a threat of material injury to the domestic industry as a result of dumped Chinese cement. The WTO jurisprudence suggests that the threat of injury analysis has two elements. The first element that must be examined relates to the likelihood of increased imports from the dumped source²⁴. The factors that are to be taken into consideration in determining this likelihood are given in Section 13 of the Regulations, which tracks Article 3.7 of the WTO Antidumping Agreement, and are a necessary element of the threat of injury determination. The factors listed cover issues relating not only to the ability of dumpers to supply the Jamaican market, but also the factors that underlie the demand by importers for dumped cement. These factors indicate the likelihood that dumped imports will be exported to Jamaica.

The second element of an analysis required for a threat of injury determination, goes beyond the factors given in Article 3.7. This part of the analysis concerns the consequent impact on the Domestic Industry (the particular situation that is likely to develop into material injury or the change in circumstances) and whether this is likely to be material injury that is clearly foreseen and imminent. The Panel in *Mexico- Corn Syrup* has indicated that this is precisely the question that a threat of injury analysis must address. An examination of the Article 3.7 factors and the section 13 factors alone, is not sufficient for a threat of injury determination because, "they are not in themselves, relevant to a decision concerning what the 'consequent impact' of dumped imports is likely to be"²⁵. Rather, consideration of the consequent impact of the domestic industry rests on factors other than those set out in Article 3.7, such as those that indicate what the impact of the dumped imports on the domestic industry will likely be pursuant to Article 3.4 and stipulated in section 12 of the Regulations. Consideration of these factors in addition to other relevant factors is

²⁴ Panel Report, Mexico-Corn Syrup.

²⁵ Panel Report, Mexico-Corn Syrup.

necessary to establish a background against which to evaluate what the likely state of the domestic industry will be in the near future. While the analysis required is prospective in nature, the Appellate Body has indicated that, “The likely state of the domestic industry in the very near future can best be gauged from data from the most recent past.”²⁶ The use of the phrase “clearly foreseen and imminent” relates to the timing of the materialization 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”.

A finding of the likelihood of increased imports and the consequent impact on the domestic industry are required for a threat of injury determination. This must not be based on, mere conjecture or remote possibility. However, because the threat of injury analysis requires an examination of future events it involves making assumptions. In particular, the Appellate Body has indicated the following:

“the “establishment” of facts by investigating authorities includes both affirmative findings of events that took place during the period of investigation as well as the assumptions relating to such events made by those authorities in the course of their analyses. In determining the existence of a *threat* of material injury, the investigating authorities will necessarily make assumptions relating to “the “occurrence of future events” since such future events “can never be definitively proven by facts”. Notwithstanding this intrinsic uncertainty, a “proper establishment” of facts in a determination of threat of material injury must be based on events that, although they have not yet occurred, must be clearly foreseen and imminent”.²⁷

A. LIKLIHOOD OF INCREASED IMPORTS

I) RATE OF INCREASE OF DUMPED IMPORTS

The Commission notes an increase in the number of dumped import sources over the period 1999 to present when the importer Mainland first entered the Jamaican market. Of the four countries from which the importer Mainland has sourced cement over the period of investigation, two have been found to be at dumped prices and a third is currently under investigation.

²⁶ AB Report US-Lamb, para. 137.

²⁷ AB Report Mexico- HFCS, para.85.

As at December 2002, the imports from dumped sources (Indonesia and China) have shown a significant increase over 2001, increasing by approximately 49 per cent. Imports from China first entered the market through Mainland around the end of July 2002, and subsequently there were two more shipments. These imports have been present on the market since their entry up through September 2003. Until the end of 2001 the practice of the importer was to import two shipments of around 36,000 MT, per annum. However, in 2002 the importer started to import three shipments of around the same volume, so that the total annual volume imported increased. However, because the importer imports around the same volume per shipment the increments would not show an increase when looked at on a shipment-by-shipment or source-by-source basis. Hence, imports from China increased from zero in 2001, to approximately two thirds of Mainland's annual imports in 2002. However, the volume of dumped Chinese cement imported in 2003 fell in absolute terms to by 46 per cent, when the importer switched to importing from Argentina. The first entry of Chinese cement to the Jamaican market in 2002 accounted for 12 and 14 per cent of annual domestic production and annual domestic sales, respectively, from the Domestic Industry's own production. This fell in 2003 to 6 percent and 7 per cent of annual domestic production and annual domestic sales, respectively, from Domestic Industry's own production.

The Commission considers, therefore, that notwithstanding the trends in the last year of the period of investigation, the rate of increase of dumped Chinese cement within the period of investigation is significant both in absolute and relative terms. In addition, the Commission has no information suggesting that the pattern of importing around the same volume at least three times for the year is not likely to continue, irrespective of source.

2) EXPORT CAPACITY (CURRENT AND FORSEEABLE) AND THE LIKLIHOOD OF IT BEING CHANELLED TO JAMAICA , GIVEN THE AVAILABILITY OF OTHER EXPORT MARKETS.

To analyze this factor the Commission examines both the capacity in China (current and foreseeable) as well as a set of factors that would be indicative of this capacity being channelled to Jamaica. The existence and extent of this capacity is used to show the ability of Chinese producers

to increase the supply of exports to Jamaica. The second set of factors cover demand and market availability issues, including trade-diverting influences

a. EXPORT CAPACITY (CURRENT AND FORESEEABLE)

Since 1985 China has been the world's leading producer of cement, and today produces over one third of total global output²⁸. The importance and magnitude of Chinese cement operations is seen from the fact that the next three largest producers, USA, India, and Japan, produce less than 20 per cent of the world's cement. The Chinese Cement industry is fragmented and consists of between 8,000 to 9,300 cement plants, of varying sizes. Capacity also varies and it is estimated that of the total number of producers, about 570 have production capacities above 275,000 tonnes per year²⁹. There are currently approximately 40 enterprises in China that have annual capacities of over 1 million tonnes. This compares with the one million metric tons capacity that the Domestic Industry currently holds. Additionally, China is the second leading exporter of cement in the world, accounting for about 17 per cent of total world cement trade³⁰.

The Commission determines that with the move to modernize the Chinese Cement industry,³¹ there will be significant excess capacity to channel into overseas markets in light of projected increased domestic demand. It is projected that with the changes coming on stream, cement output will increase by 3.4 per cent annually during the 2001 to 2005 five year plan and 2.9 per cent annually during the 2006 to 2010 five year plan³². Chinese planners anticipate producing 660 million tonnes by 2005, 750 million tonnes by 2010 and 800 million tonnes by 2015. To underscore these developments it is projected that China will be the largest market for cement machinery at least until 2010³³.

²⁸ Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study commissioned by the World Business Council for Sustainable Development, p. v.

²⁹ Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study commissioned by the World Business Council for Sustainable Development, p. 16.

³⁰ China's largest customer is the United States (42 % of all exports). The other major markets for Chinese cement are Taiwan (37.64 % of all exports), and Hong Kong (1.38 % of all exports).

³¹ CCCL September 1, 2003 Submission, Volume I of I, Appendix D in case SG-01-2003), and Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study commissioned by the World Business Council for Sustainable Development.

³² Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study commissioned by the World Business Council for Sustainable Development, p.9.

³³ Toward a Sustainable Cement Industry, Trends Challenges, and Opportunities in China's Cement Industry (March 2002) an independent study Commissioned by the World Business Council for Sustainable Development, p.x.

The developments in the Chinese cement market and industry, including the significant excess capacity and low prices, in addition to its selling arrangements, makes China an attractive source for those wishing to source cement overseas. Additionally, even outside of any arrangements being in place, Shandong projects that it will export cement to Jamaica annually, at least for the next three years (2004 to 2006)³⁴. Shandong indicates that this will be achieved because of the quality of their cargo, packing and service. Additionally, Longkou anticipates an increase in global demand and intends to position itself to take advantage of this in order to increase imports³⁵.

The Commission considers that there is significant capacity in China, and Longkou, that constitutes a readily available source of supply of dumped cement. This is particularly significant when one considers that just one of the larger producers in China would be able to supply the entire Jamaican market.

B. LIKELIHOOD OF CAPACITY RESULTING IN EXPORTS TO JAMAICA

The Commission at this time uses three (3) factors to analyse the likelihood of capacity in the Chinese cement industry resulting in exports to Jamaica. The first examines the incentives that exist for importers to demand dumped cement. The second looks at trends and developments in third country markets, to assess their availability. The third looks at the incentive to expand into export markets.

1) Demand for Dumped Cement by Importers

The fact that Shandong's plans exports to Jamaica, even outside of actual orders being placed, is indicative of an aggressive export strategy on the part of cement exporters and producers. Outside of this, however, there are factors that would lead to increased demand for Chinese imports. Chief among these is the significant margins that can be obtained from the sale of dumped Chinese cement. Mainland earned the highest margin on Chinese cement of all its import sources as well those of other importers during the period of investigation. In fact, China was Mainland's lowest priced import source. The Commission has no evidence to suggest that Mainland will discontinue this strategy. Accordingly, the Commission concludes that the above factors highlight the

³⁴ Longkou's December 4, 2003 Submission, response to question 4.4 in case SG-01-2003

³⁵ Longkou's December 4, 2003 submission in case SG-01-2003.

attractiveness of dumped Chinese imports and are a strong indication that Mainland would continue to demand dumped Chinese cement.

2) AVAILABILITY OF OTHER EXPORT MARKETS

2.1 Declining demand in the US market – The US is China’s largest customer, as sales to the US represent 42 per cent of Chinese exports. The US is also the world’s top importing country, as was evident at the end of 2002³⁶. However, information on record ³⁷ shows that Portland cement consumption during 2003 has registered declines. In addition, to declining rates of consumption, imports have also fallen off. Given the importance of the US market to Chinese producers of cement, this increases the likelihood that they will be searching for alternate markets, or to increase exports to existing markets in which they have a foothold. In fact, Longkou and Shandong have pointed to developments in the US market as a significant factor as far as sales are concerned. The Commission is of the view that while different types of cement are exported to different markets, and OPC Type 1 may be exported to Jamaica and not to other markets, it is likely that a switch to the type of cement demanded by a growing will be made by Chinese exporters given their ability to product shift.

2.2 Trade Restrictive Measures of Other Countries- The availability of export markets is limited by the imposition by other countries of barriers to trade. The existence of barriers points to the possibility of trade diversion taking place and further imports to Jamaica. China currently has no antidumping, countervailing or safeguard measures imposed on it by any other WTO Member. However, as indicated above, the possibility of Chinese exporters searching for an alternative market is also influenced by developments in the markets, including but not limited to trade measures.

2.3 Incentives to expand into export markets

An important factor to consider in the drive to expand export markets is the regional dominance of certain cement operations and the fierce nature of competition between them to break into each other’s market. In as much as cement is a capital-intensive industry,³⁸ greater economies of sale can be obtained by expanding into new markets. This provides an incentive to expand into export

³⁶ www.cemnet.co.uk/globalsummary.htm

³⁷ CCCL’s November 17, 2003 submission, page 21 and Exhibit C, in case SG-01-2003.

³⁸ It is estimated that a capital-intensive industry such as cement has a gestation period of three years.

markets. Additionally, there is the incentive of earning foreign exchange from being able to export to other countries.

2.4 Summary

The Commission considers that in the absence of trade remedies against China by any other WTO Member, there are markets available globally to absorb Chinese cement, to the extent that other tariff and non-tariff barriers do not exist. However, the declining demand in the US market, the aggressive export strategy of Chinese exporters, and the demand for low priced cement in the Jamaican market, constitute strong evidence that Jamaica remains a lucrative market for importers and exporters of cement from China, notwithstanding the availability of other export markets.

3) POTENTIAL FOR PRODUCT SHIFTING TO ADDITIONAL PRODUCTION FACILITIES

The concept of product shifting means that the availability of additional goods is facilitated with no additional costs or time being incurred in moving the goods under consideration into production. The ability to product shift therefore makes supply more responsive. Longkou has indicated that it does not produce other types of cement on the same equipment and machinery used to produce OPC type 1³⁹. However, Longkou has indicated that it is not difficult to use the same equipment and machinery that produces one type of cement to produce another type of cement⁴⁰. They also indicate that this does not take a significant amount of time.

The Commission considers that the ability to product shift, whether or not actually practiced by Chinese producers, makes the supply of Chinese cement more responsive and gives Chinese producers the ability to increase the supply of cement to Jamaica as circumstances dictate.

4) INVENTORY OF THE INVESTIGATED PRODUCT

The existence of inventories of the dumped products points to the degree of responsiveness of supply on the part of foreign producers and importers. This points to the possibility for further import penetration and reductions in the domestic industry's market share. Mainland's last shipment of Chinese cement to date entered the island in March 2003, and based on their

³⁹ Longkou's December 4, 2003 Submission, response to question 3.4 in case SG-01-2003.

⁴⁰ Longkou's December 4, 2003 Submission, response to question 2.8 in case SG-01-2003.

inventory and sales data as at September 2003, they are not holding significant inventories of the product⁴¹. However, it is estimated that there are significant inventories of cement in China.

Therefore, the Commission considers that while Mainland is not holding inventories of Chinese cement in Jamaica, inventories of cement in China are significant, and to this extent is still relevant to the determination of threat of injury, as they represent a high degree of responsiveness of Chinese cement supply.

5) PRICES AT WHICH IMPORTS ARE ENTERING THE MARKET

This factor is examined to determine the possible extent of price effects that the dumped imports could have on the domestic industry, as well as the likelihood that they may lead to demand for further imports. Chinese cement is the lowest priced of all the significant market economy producers of cement that are at a comparable level of development to China (India, Thailand, Malaysia, Philippines, Indonesia) and also those countries that currently export to Jamaica (Egypt, and Argentina). Currently the importer is undercutting the Domestic Industry by a deliberate margin. They have allowed the domestic industry to set prices and have adjusted their prices to undercut them.

Therefore, the Commission considers that the low price of dumped Chinese cement allows for the absorption of additional import costs while still allowing the importer to profitably offer the goods under consideration for sale at prices below that of the Domestic Industry.

6) ACTUAL AND POTENTIAL NEGATIVE EFFECTS ON EXISTING DEVELOPMENTS AND PRODCUTION EFFORTS

The Domestic Industry has indicated its plans to develop a derivative product. To date the Domestic Industry has introduced a new product (rapid hardening cement) to the market and countries intend to pursue further product differentiation in 2004. Further, the Domestic Industry has demonstrated in its adjustment plan that the significant investment (J\$6 BN) that it wants to make is prevented by the presence of unfairly priced cement on the Jamaican market.

⁴¹ Assuming FIFO.

6) MAGNITUDE OF THE MARGIN OF DUMPING

The magnitude of the margin of dumping is an indication of the extent of negative price effects that the goods under consideration can have on the Domestic Industry. As indicated previously, the margin of dumping is preliminarily estimated at 96.27 per cent.

The Commission considers that given the current level of Domestic Industry prices, the selling price of cement from China can potentially translate into significant price undercutting.

7) OTHER FACTORS

a) Domestic Policy Developments- Developments with respect to the level of duties or other taxes imposed can affect importers ability to import dumped cement. In particular, if additional taxes are imposed, importers who wish to continue importing will want to find the cheapest available source of imports in order to offset the duties and preserve their margins. The Commission considers that because China is one such source there is the possibility that importers, Mainland in particular, will look to China for future imports. In addition, China has supplied the Jamaican market in the past.

b) Source Switching- Importers have demonstrated the ability to switch sources of supply so that a lack of additional orders from China currently does not remove the possibility that they could revert to it in the future. In addition, it is easier to resume a relationship with an established supplier than to seek out new suppliers because of the amount of preparation time and cost involved.

The Commission notes that the behaviour of importers in the context of an investigation is not a reliable basis on which to make inferences about future behaviour. The Commission, therefore, considers that the importers source switching behaviour is an indication that they would likely revert to dumped Chinese cement.

c) The amount of time and resources involved in seeking and obtaining alternate sources of supply - As indicated by the Importer in previous submissions, it takes a considerable amount of time and resources to find a suitable source, even as long as a year.

The Commission considers that the given the time and resources involved in seeking out new sources of imports, it is far more practical for the Importer to use familiar sources of supply, such as China, given that Chinese export prices allow for the adsorption of additional duties, and other import costs.

C. CONSEQUENT IMPACT (CHANGE IN CIRCUMSTANCES THAT IS CLEARLY IMMINENT)

The Commission utilizes the following factors to assess the issue of the consequent impact of increased dumped Chinese imports on the domestic industry and whether this is clearly imminent:

- 1) the injurious pressures currently being exerted on the domestic industry , and
- 2) the ability of the dumped imports to exacerbate these circumstances in the future.

1) Injurious pressures currently being exerted on the domestic industry

Currently the domestic industry has suffered a decline in its sales from its own production, loss in market share, a build up in clinker inventories, declines in production and negative price effects (price undercutting and price depression) as a result of low priced imports.

2) The ability of dumped imports to exacerbate these circumstances

As indicated by the Commission, the increase in the volume of unfairly priced imported cement will exacerbate the injurious pressures currently being faced by the domestic industry given the changes in the market. The demand for the Domestic Industry's cement has become more elastic with the introduction of substitutes (Chinese cement is a similar product to the domestic industry's product) and any price differentials will cause the demand for the domestic industry's cement to decline, as consumers will likely switch to the lower priced alternative.

The Commission considers that the likely price and volume effect of future dumped Chinese cement will be more pronounced given that the dumping margin is an indication of the extent to which Chinese imports can undercut the Domestic Industry's prices, and cement is a product for which small differentials in price can have a significant impact on sales.

D. CONCLUSION

The Commission, therefore, considers that on the basis of the factors considered above, there is likely to be in the near future substantially increased importation of cement from China at dumped prices, and a threat of injury to the Domestic Industry.

XIV CAUSAL LINK

A. FRAMEWORK

It must be demonstrated that the dumped imports are through the effects of dumping causing injury. The Commission considered whether a causal relationship exists between the dumped imports and the injury being suffered by the domestic industry, identifying and distinguishing factors other than the dumped imports that may also have had an impact on the domestic industry during the period of dumping. The Commission is mindful of the fact that though factors other than dumping may be causing injury to the Domestic Industry at the same time that dumping may be causing injury this does not remove the possibility for there to be a causal relationship between dumping and injury.

While it is nearly impossible to quantitatively separate the impact on the domestic industry of the dumped imports from any other factors, the extent of the dumped imports relative influence can be assessed to establish whether or not it is in fact exerting an influence on the domestic industry. In this regard correlations, in particular contemporaneous correlations become important. The Panel in *Wheat Gluten* indicated that, “a coincidence in the movement in imports and the movement in injury factors would ordinarily tend to support a finding of causation”.

B. FACTORS OTHER THAN THE DUMPED IMPORTS WHICH MAY BE CAUSING INJURY

1) Macroeconomic Influences- Factors such as changes in the exchange rate and increases in fuel prices have historically, impacted negatively on the Domestic Industry. These factors affected the industry primarily through its cost of production. Also, adverse weather conditions during the period had an impact on the Domestic Industry. These factors also have an impact on importers given that the majority of its costs, like the domestic industry, are also incurred in US dollars.

The Commission considers that because depreciation impacts negatively on the Domestic Industry and the Importer, it cannot be considered to have had more of an impact on the Domestic Industry than the dumped Chinese imports during the period for which they were in the market.

2) Discretionary Policy Changes affecting Importation of cement – In 2004 provisional safeguard duties were imposed on all cement imports. However, for the period that dumped Chinese imports were in the market there was no provisional safeguard measure in place.

The Commission therefore considers that such discretionary policy changes affecting the importation of cement did not have a negative impact on the domestic industry.

3) Developments in Technology - Cement is not a high technology industry, but rather capital intensive. The Commission is not aware of any evidence to suggest that the Domestic Industry has been adversely impacted by technological changes that have not been instituted. The Commission notes that the Domestic Industry has instituted changes that has allowed them to develop new products for the market. It is arguable that the lack of investment (J\$6 billion) which the Domestic Industry indicates that it needs to improve its plant and achieve greater efficiencies (because of the presence of imported cement) can be seen as a level of risk averseness that has hindered its own development during the period for which dumped imports were in the market. However, the Commission considers that such caution is reasonable due to the significant price advantage of unfairly priced Chinese cement. The Commission, therefore, considers that the lack of technological improvements has not been a factor that has impacted negatively on the domestic industry,

4) Contraction in demand or changes in the pattern of consumption - Currently total cement consumption has been increasing over the period of investigation, hindered in some periods by weather conditions over the period of investigation. However during the August 2002 to September 2003 period, when dumped Chinese cement was on the market weather was not a factor having a negative impact on the Domestic Industry. Additionally, there is no evidence to suggest that consumption patterns have changed, block and steel technology being the primary method of building in Jamaica. Cement consumers continue to demand cement at the best possible prices irrespective of source.

5) Volume and prices of non-dumped imports (other imports)- Over the period of investigation there have been imports (both the Domestic Industry and third party importers⁴²) from a number of sources that are not currently the subject of dumping investigations. To the extent that the Domestic Industry's imports were meant to supplement their sales (and are sold at the same price as locally produced cement), then these imports were not negatively affecting the Domestic Industry. However to the extent that imports by other commercial importers have increased significantly and are sold at prices below that of the Domestic Industry's, the Domestic Industry has been negatively affected. However, Chinese imports have represented the largest share of total imports from all sources over the period August 2002 through September 2003.

6) Production Difficulties – In the past the Domestic Industry has experienced operational problems. The Domestic Industry's production in the 1999 to 2000 period was limited by equipment failures and the need for upgrades. Subsequently the Domestic Industry instituted changes that reduced its unit cost of production and allowed it to expand production. There were also problems with kiln #3 and kiln #4 during the August 2002 to September 2003 period. The data on record indicates that in 2003, in particular, the period in which the majority of Chinese imports were in the market, clinker inventory levels were far in excess of Domestic Industry's requirements. This coincides with no imports of clinker by the Domestic Industry and fewer episodes of mill downtime. The Commission is of the view, therefore, that these downtime episodes are not significant enough to explain all of the increase levels of clinker inventories over the period for which Chinese cement was in the market.

7) Export Performance and Productivity of the Domestic Industry – The Domestic Industry has exported some of its production in the more recent period of the POI, and the Commission considers that this is not a factor impacting negatively on the domestic industry.

8) Limitations on the ability to produce or import clinker- The Domestic Industry's ability to supply the Jamaican market with all its requirements is to some extent limited by its ability to produce clinker locally. Given that there is currently no apparent limitation on the Domestic Industry's ability to import clinker to supplement any shortfall, clinker supply is likely to be relatively responsive. Additionally, the availability of raw materials locally makes clinker

supply more responsive to cement production requirements. Therefore, the Commission considers that during the period for which dumped Chinese imports were in the market this was not a factor impacting negatively on the Domestic Industry.

9) The effect of any anti-competitive behaviour of the domestic industry or the foreign producer – At this time the Commission is not aware of any anti-competitive behaviour on the part of the Domestic Industry. The foreign producer’s practice of selling to Jamaica below normal value, while constituting an unfair trade practice, is not viewed in the context of normal business practice as anti-competitive, unless there is a predatory intent. The Commission does not now have enough information before it to determine if there is a predatory intent on the part of the Chinese producer.

C. THE EXISTENCE OF A CAUSAL LINK

In establishing the existence of a causal link, the Commission considers that it is not necessary to show that increased imports alone, on their own, must be the cause of material injury or threat thereof⁴³. In this regard to “determine whether there is ‘a genuine and substantial relationship of cause and effect’ between serious injury and threat there of”, the Commission evaluated the correlations between variables, over the period for which Chinese imports were in the market, that is, August 2002 to September 2003.

The Commission looked at variables chosen on the premise that the combined impact of negative price and volume effects will be evidenced in a decline in the economic indicators. The Commission observes that the level of price undercutting by Mainland was the highest during the period for which Chinese imports were in the market. Owing to the significant impact on volumes sold resulting from this price differential, the Commission used Mainland’s actual sales to represent the combined impact of price and volume of dumped Chinese cement.

The Commission used indicators of injury such as sales volumes, production, cement inventory and clinker inventory. The Commission’s view is that because of the existence of price undercutting the negative impact on these volume indicators points to a combined negative impact on the Domestic Industry. It is important to note that the correlations examined between these

⁴² Those importers other than the Domestic Industry, including Mainland.

⁴³ ABR, US-Line Pipe, para.208.

variables, that is, Mainland sales, Domestic Industry's sales from its own production, Domestic Industry's production, Domestic Industry's clinker inventory and cement inventory, are intended to demonstrate the existence of a causal relationship between the variables, and is not a ranking exercise.

The Commission made adjustments to reflect the extent that factors (mill downtime, other import sales⁴⁴) other than sales of dumped Chinese cement are at the same time impacting on the Domestic Industry during the period for which they were in the market. These adjustments enable the relationship between Mainland's sales (the proxy for the price and volume impact) of dumped Chinese cement and the injury factors identified to be clearly delineated. The adjustment is made by regressing each injury factor on the other identifiable factors (mill downtime, other import sales and a time trend⁴⁵) that could have been exerting a negative impact on the domestic industry. This approach is adopted because of the two observed elements in the available data, that is, a deterministic element (pattern) and a stochastic (unpredictable) element. The Commission delineated the portion of the deterministic element that can be explained by the factors identified as other causes of injury. The remaining components include deterministic elements not accounted for by these other factors and an unpredictable component (residuals). The Commission is of the view that the remaining deterministic component can partially be explained by sales of Chinese cement.

To this extent, the Commission tested this proposition by calculating the correlations of these residuals with sales of Chinese cement. The correlations between these residuals and Mainland's sales are then calculated to determine if a relationship exists in the absence of these other factors. The Commission is of the view that the injury factors used are highly correlated with Mainland's sales of dumped Chinese cement, even after the effects of other factors have been delineated.

XV. CONCLUSION

The Commission considers that other imports (dumped and non-dumped), and macroeconomic factors also exert a negative influence on the domestic industry. However, the presence of dumped imports from China, being a source of direct and unfair competition, is a significant cause of injury. This is evidenced in the degree of correlation observed with the majority of injury factors

⁴⁴ All sales of other imports, excluding Chinese import and including CCCL imports. This variable is a proxy for the price and volume impact of other imports.

⁴⁵ This factor captures the natural tendency of variables to trend over time.

assessed. Further, the dumped imports need not be the sole cause or the principal cause of injury to the domestic industry for a finding of causation.

XVI. IMPOSITION OF PROVISIONAL DUTIES


Section 15 of the Act provides that provisional duties may be imposed where the Commission makes a Preliminary Determination of dumping in respect of imported goods. In addition, article 7 of the WTO Anti-Dumping Agreement provides that provisional duties may be applied following an affirmative determination of dumping and consequent injury to a domestic industry when an Investigating Authority determine that such measures are necessary to prevent injury being caused during the investigation.

Based on its foregoing analysis, the Commission concludes that Ordinary Portland Grey Cement (OPC) originating in or exported from China has been dumped and that such dumping has caused material injury and threat thereof to the domestic industry. Pursuant to section 15 of the Act, the Commission deems it necessary to impose provisional duties at the Preliminary Determination in order to prevent injury being caused to the domestic industry during the remainder of the investigation.

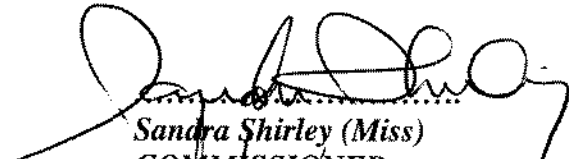
The Commission has determined that provisional duties in the amount of 96.27 per cent shall be imposed on dumped goods that are the same description as any goods to which the Preliminary Determination applies. Duties shall take effect on **March 29, 2004** and shall remain in effect for a period not exceeding four (4) months, or at the request of exporters representing a significant percentage of trade concerned, a period not exceeding six (6) months, terminating on the day on which the Commission does any of the following: accepts an undertaking, suspends or terminates the investigation or makes a Final Determination. The Importer shall pay provisional duties on all goods released on the effective date of the provisional duty. Payment may take the form of actual payment or the posting of a security, in the form prescribed by Jamaica Customs, in an amount or to a value not greater than the estimated margin of dumping.

Pursuant to section 27 of the Customs Duties (Dumping and Subsidies) Act, the Commission has made an affirmative Preliminary Determination in respect of the dumping in Jamaica of Ordinary Portland Grey Cement originating in, or exported from China and finds that the goods under consideration have been dumped and the dumping of the goods under consideration is likely to cause material injury to the domestic industry.


Pursuant to Section 15 of the Customs Duties (Dumping and Subsidies) Act, the Commission has decided to impose a provisional duty in the amount of 96.27 per cent on all goods that are of the same description as those to which the Preliminary Determination applies, effective **March 29, 2004** and terminating on the date the Commission accepts an undertaking, suspends or terminates the investigation or makes a Final Determination. At the Commission's request Jamaica Customs is to collect a provisional duty on all goods imported into Jamaica that are of the same description as those to which the Preliminary Determination applies, and which are released after **March 29, 2004**.



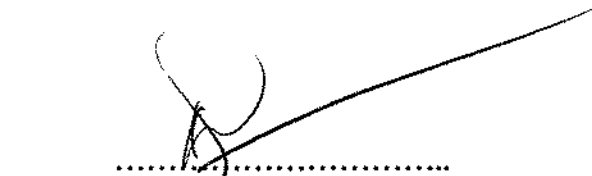
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Sandra Shirley (Miss)
COMMISSIONER



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Lloyd Goodleigh (Mr.)
COMMISSIONER



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Cecil Goodridge (Dr.)
COMMISSIONER
*Dissenting on margin of dumping
injury and threat of Injury*