

# ANTI-DUMPING AND SUBSIDIES COMMISSION

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## STATEMENT OF REASONS FINAL DETERMINATION

**KINGSTON, JAMAICA**

**CASE. NO. AD-01-2009**

**Issued: July 16, 2010**

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

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

**IN RESPECT OF** the dumping in Jamaica of Ordinary Portland Grey Cement and a Portland Blast Furnace Slag Cement originating in or exported from the United States of America.

### **I. SUMMARY**

**Initiation of Investigation.** On November 26, 2009 the Anti-dumping and Subsidies Commission (“the Commission”) commenced an investigation in accordance with Section 22 of the Customs Duties (Dumping and Subsidies) Act 1999, (“the Act”) into the allegation of dumping of Ordinary Portland Grey Cement and Portland Blast Furnace Slag Cement originating in or exported from the United States of America (“U.S.A.”).

**Preliminary Determination.** In accordance with Section 27 of the Act, the Commission made a Preliminary Determination on April 8, 2010, and estimated the margin of dumping to be at least fifteen point one three per cent (15.13%) for Portland Blast Furnace Slag cement. The Commission found that the dumped imports threatened to cause material injury to the domestic industry. The imposition of provisional measures was not necessary to prevent material injury being caused during the investigation.

The Commission invited comments from interested parties on the Statement of Reasons (“SOR”) for the Preliminary Determination to be submitted within thirty (30) days from the date of receipt of the SOR. A joint submission was filed by the Respondents on May 12, 2010 and CCCL filed submissions in response to the SOR on May 13, 2010.

The Commission requested additional information from the Importer, the Exporter and the Producer, and the Domestic Industry and other entities such as the Ministry of Industry, Investment and Commerce and the Ministry of Finance and the Public Service. Responses to these requests were received from the Respondents on May 21, 2010 and from the Domestic Industry (CCCL) on June 3, 2010. A revised response from CCCL was submitted on June 4, 2010. On June 14, 2010, CCCL filed a rebuttal submission in response to the joint submission of Respondents which had been received by the Commission on May 21, 2010.

**Verification of the Exporter and the Producer.** A verification exercise of the Exporter and Producer, Vulcan Materials Company, Florida Rock Division, Cement Group was conducted by the Commission on June 9 – 10, 2010. The consent of the Exporter and Producer were obtained in a letter dated May 18, 2010 and the government of the exporting country, the United States of America was notified in correspondence dated May 26, 2010.

The Verifiers for the Commission visited the Florida Cement Inc. Tampa Plant and the Florida Rock Industries, Thomas S. Baker Plant. Representatives from the Florida Rock Division including Florida Cement Inc. provided the Commission with documentation which included the company's product listing, manufacturing and production process, methods of accounting, costs of production and export markets. Additional information from the Exporter and Producer, as requested by the Commission at verification were submitted first via email on June 18, 2010, June 25, 2010 and July 1, 2010, and subsequently by hard copy.

**Statement of Essential Facts (SEF).** The Commission in accordance with Article 6.9 of the Anti-dumping Agreement provided interested parties with the Statement of Essential Facts ("SEF") on July 1, 2010. Comments on the SEF were received from the Respondents on July 5, 2010 and July 7, 2010 and from the Domestic Industry on July 7, 2010.

The record of this investigation consists of all documents submitted to the Commission by the parties, including all that relate to the Commission's decision to initiate the investigation, the Notice and Statement of Reasons for Initiation, the Preliminary Determination and the Confidential and Non-Confidential versions of submissions received from Interested Parties. In requesting information and data from the known Interested Parties, the Commission advised and repeatedly reminded them that failure to offer sufficient and accurate responses throughout the investigation could lead to use by the Commission of facts available, pursuant to Sections 4(6) and 10 of the Act. The Commission utilised facts available to reach the Preliminary Determination but ultimately found that it was provided with information from the parties to reach the Final Determination.

**Final Determination.** The Commission was statutorily mandated to make a Final Determination in the matter within ninety (90) days of making the Preliminary Determination by July 9, 2010. The Act does not provide for an extension of the time for making a Final Determination. The parties to the investigation were notified of the Final Determination on the evening of July 8, 2010. Notice of the Negative Final Determination was sent via fax to the Domestic Industry and to the Respondents and hard copies delivered by bearer and courier. The said Notice was also published in the Jamaica Gleaner dated July 9, 2010 thereby informing the public of the Final Determination. This Statement of Reasons, issued on July 16, 2010 concludes the investigation.

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

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

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

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

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

**The Domestic Industry.** Caribbean Cement Company Limited, hereinafter referred to as “CCCL” or “the Complainant” or “the Domestic Industry” with registered offices at Rockfort, Kingston 2 and mailing address as P.O. Box 448, Kingston 2. Telephone: 876-928-6231, Fax: 876-928-7381. CCCL is a limited liability company incorporated under the laws of Jamaica in 1947. It is a seventy four per cent (74%) owned subsidiary of Trinidad Cement Limited (TCL)<sup>1</sup> a company incorporated under the laws of Trinidad and Tobago. The Complainant began commercial production of cement in Jamaica in 1952 and is in the business of manufacturing and selling bagged and bulk Ordinary Portland cement and Portland-Pozzolan cement branded as “Carib Plus” on the Jamaican market. CCCL also has the following subsidiaries: Jamaica Gypsum and Quarries Limited, Caribbean Gypsum Company Limited, Rockfort Mineral Bath Complex Limited.

CCCL is the sole producer of cement in Jamaica. CCCL meets the standing requirement specified in Section 22(2) – (4) of the Act and Article 5.4 of the ADA because its production accounts for one hundred per cent (100%) of the goods produced in Jamaica which are like goods to the imported goods which are the subject of the investigation.

The Commission has considered and concludes, as there is no information on record to the contrary, that CCCL is not related to any of the Respondents, nor has it imported the allegedly dumped product during the period of investigation (“POI”).

**The Importer.** Tank-Weld Metals, hereinafter referred to as “Tank-Weld” or “the Importer”, with registered offices located at 27 Seaward Drive, Kingston 11. Telephone: 876-923-8800, Fax: 876-923-0317. Tank-Weld Metals is a part of the Tank-Weld Group which also includes Tank-Weld Special Projects, Tank-Weld Steel Fabricators and Tank-Weld Equipment Rentals. Tank-Weld is a conglomerate of companies in Jamaica, with subsidiaries catering to niches in the construction industry such as steel, lumber, cement, distribution, steel fabrication, civil engineering and contracting, heavy duty haulage and equipment rental<sup>2</sup>. Tank-Weld has a contract with Vulcan Materials Company for cement which it distributes in the Jamaican market.

The Importer is defined by section 2 of the CDDSA as having the same meaning accorded to it in section 2 of the Customs Act, 1941. An importer includes the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer.

The Managing Director of Tank-Weld signed the C-87 Forms for the importation of the goods under consideration and Tank-Weld is the owner beneficially interested in the goods.

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<sup>1</sup> TCL Group Booklet (2009) provides the breakdown of CCCL’s shareholders: TCL (74.08%), Other Shareholders (15.31%), Cemex-Scancem International (St. Lucia) Limited (4.96%), Financial Institutions (3.46%), Government (1.19%) and Pension Plans (1%). Retrieved from <http://www.tclgroup.com/>.

TCL purchased the majority share in the company from the Government of Jamaica.

<sup>2</sup> Tank-Weld Group, (no date). Retrieved from <http://www.tankweld.com/index1.htm>

**The Exporter.** Vulcan Materials Company, hereinafter referred to as “Vulcan” or “the Exporter” with registered offices located at 1200 Urban Centre Drive, Birmingham, Alabama 35242. Telephone: 205-298-3000, Fax: 205-298-291. Vulcan, together with its subsidiaries, engages in the production and sale of materials for construction.

The single Exporter to Jamaica of Portland Blast Furnace Slag cement from the United States is Vulcan. Vulcan, based in Birmingham, Alabama, is one of the largest producers of construction aggregates and a major producer of other construction materials in the United States. Vulcan produces aggregates, primarily crushed stone, sand and gravel for use in all types of construction; in particular, large quantities of aggregates for roads and non-residential properties.

In 2007, Vulcan acquired Florida Rock Industries Inc., a producer of construction aggregates, cement, concrete and concrete products in the Southeast and Mid-Atlantic United States. From its perspective, Vulcan’s strategic position and long-term growth opportunities were significantly enhanced by its expanded presence in attractive Florida markets and in other high-growth Southeast and Mid-Atlantic states. The combined company boasts reserves of aggregates totaling approximately 13.9 billion tons, an increase of more than 20% over Vulcan’s stand-alone aggregates reserves. The company’s website indicates that in 2006, its *pro forma* shipments of aggregates amounted to 300 million tons, an increase of approximately 18% compared to Vulcan’s stand-alone shipments<sup>3</sup>. Vulcan is a leading producer of cement in Florida. Vulcan employs approximately 11,000 persons company-wide<sup>4</sup>. The Cement segment provides Portland, masonry and blended cement in bulk form and bags to the concrete products industry. It also mines, produces, and sells calcium products for the animal feed, paint, plastics, and joint compound industries. In addition, this segment imports cement, clinker, and slag to resell, as well as to blend, bag, or reprocess into specialty cements<sup>5</sup>.

At the Verification, the Commission sought clarification as to the organizational structure and operations of Vulcan, in particular, as it relates to the manufacture, production, blending and packaging of cement. The Commission found that the Florida Rock Division of Vulcan comprises three cement plants: the Thomas S. Baker Plant (Newberry Plant), the Tampa Plant and the Port Manatee Plant. Florida Cement Inc. owns and operates the Tampa and Port Manatee Plants. Florida Rock Industries, Inc. owns and operates the Newberry Plant.

**The Producer.** Vulcan Materials Company also referred to as “the Producer”. Vulcan is producing and exporting cement to Jamaica from its Florida base of operations. Vulcan’s Florida base of operations encompasses the three cement plants noted above and the two subsidiaries noted in the Affiliated Company below.

**Affiliated Company.** Florida Cement Inc., also referred to as the “Affiliated Party” is affiliated with the Exporter and Producer, and collectively referred to with Vulcan as the Exporter and Producer. Florida Cement Inc. is a wholly owned subsidiary of Florida Rock Industries which is a wholly owned subsidiary of Vulcan with corporate offices at 1200 Urban Centre Drive, Birmingham, Alabama 35242, and an address for service at 155 E. 21<sup>st</sup> Street, Jacksonville, Florida 32206. Telephone: 904-355-1781, Fax: 904-355-0469.

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<sup>3</sup> <http://www.vulcanmaterials.com/press.asp?content=detail&NewsID=277>

<sup>4</sup> <http://www.vulcanmaterials.com/about.asp>

<sup>5</sup> <http://finance.yahoo.com/q/pr?s=VMC>

An associated or affiliated company is defined as (1) individuals related by blood, marriage or adoption, (2) an officer or director of an organisation and that organisation, (3) each individual who is an officer or director of the same two corporations, associations, partnerships or other organisations, (4) partners, (5) employers and their employees, (6) individuals who directly or indirectly control or are controlled by the same person, and (7) an individual who directly or indirectly controls or is controlled by another person. "Control" exists where one person or organisation is legally or operationally in a position to influence decisions concerning production, pricing, or cost of the subject goods or foreign like good.

**The Respondents.** The term Respondents refers collectively to the Importer, the Exporter, and the Producer. This may also include the Affiliated Company. These parties have filed some Joint Submissions in the investigation and they have the same legal representation.

### **III. STANDARD FOR THE MAKING OF A FINAL DETERMINATION**

Section 30 of the Act sets forth the standard for making a Final Determination. It provides that the Commission shall make a Final Determination within ninety (90) days after the making of a Preliminary Determination when satisfied that the goods have been or are being dumped, that the margin of dumping is not *de minimis* and the volume of dumped goods is not negligible. It is noted that although section 30 makes no express reference to a requirement for a finding of injury, the Act and the WTO Antidumping Agreement require an assessment of whether the dumping has caused, is causing or is likely to cause injury to the domestic industry for the Commission's determination.

### **IV. PERIOD OF INVESTIGATION**

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

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

Based on the date of initiation, the Commission collected and examined information and data for dumping for the period November 26, 2008 to November 25, 2009 and for injury for the period November 26, 2006 to November 25, 2009.

For the purposes of making the Final Determination, the Commission considered and examined the most recent data which was relevant and available in the post initiation determination period, after November 2009, in relation to its analysis of material injury and threat of material injury.

## V. USE OF FACTS AVAILABLE

The Commission is guided by the Act and the Antidumping Agreement, which provide for circumstances in which Interested Parties fail to fully cooperate by providing the Investigating Authority access to information and data required to make an assessment of dumping and injury. The use of facts available allows the Commission to complete the investigation and make determinations based upon reliable information even where the interested parties fail to cooperate.

The relevant provisions are sections 4 (6) and 10 of the Act and Article 6.8 and Annex II of the Agreement.

## VI. SCOPE OF THE INVESTIGATION

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

**ORDINARY PORTLAND GREY CEMENT AND PORTLAND BLENDED  
HYDRAULIC CEMENT USED FOR BUILDING OR CONSTRUCTION  
PURPOSES ORIGINATING IN OR EXPORTED FROM THE UNITED  
STATES OF AMERICA**

The narrative definition is covered under different sub-headings of the Harmonised Tariff Schedule<sup>6</sup> (HTS) and represents the scope of the investigation, notwithstanding the HTS Codes below which are indicative and are provided for the purposes of the Jamaica Customs Department (“Customs”):

2523.2900	Other
2523.2910	Building Cement (Grey)
2523.2990	Other
2523.9000	Other hydraulic cements

The Commission determined the scope of the investigation by an examination of the goods under consideration. The different sub-headings of the HTS Codes for the imports were not used to define the scope, as imports may be classified under different HTS Codes based on their description and yet have the same or similar characteristics and end uses to the locally produced goods within the domestic market. The Commission has identified the HTS Codes as it is mindful that they assist the Customs authorities in the application of anti-dumping measures where they are imposed.

The Commission has defined the scope of the investigation broadly to include goods as described above, regardless of the type or quality, whether sold or imported per metric tonne or in bulk, 1.0 or 1.5 metric tonne bags or 42.5 kg sacks or packaged in any other form and for distribution or sale on the local market in any form. This has been done in order to avoid circumvention of duties, where applied, which may result from product substitution or interchangeability.

The Respondents have contended that the Commission’s broad definition of the scope to be “regardless of type, quality or packaging” is incorrect. The basis of this contention is that the

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<sup>6</sup> The Jamaica Gazette Supplement, (2007) the Customs Act: The Customs Tariff (Revision) (Amendment) Resolution, 2007, Vol. CXXX, No. 17.

scope “ignores the unique technical characteristics of the imported cement. Furthermore, to disregard the quality of cement as a defining differing characteristic is to ignore the needs of the market.”<sup>7</sup>

The Commission has examined the goods under consideration and is not persuaded by these arguments for reasons that are addressed in more detail in the sections of this SOR on the Goods under consideration and Like Goods.

The Commission observed that the importer, Tank-Weld Metals also imported White Portland Cement in very small quantities during the POI. White Portland Cement is a specialty type of cement which is generally used for aesthetic and decorative purposes. White cement is not included in the scope.

## **VII. GOODS UNDER CONSIDERATION**

The goods under consideration also referred to as the “subject goods”, and “investigated products” are Ordinary Portland Grey OPC Type I/II cement and Portland Blast Furnace Slag Cement Blend or Type I-S cement exported to Jamaica from the United States of America (U.S.A). The Commission obtained information from the Jamaica Customs and Fiscal Services Limited which provided the description, tariff classification and the relevant international and local standards of the goods under consideration. The goods under consideration for the period of investigation for dumping are defined and described below.

### **Ordinary Portland Grey Cement**

During the POI, Tank-Weld imported from the U.S.A a small quantity of Ordinary Portland Grey cement Type I/II (pure or unblended OPC) under the HTS Code for building cement (grey) 2523.2910.00. The import documentation indicated that the imported OPC complies with the Bureau of Standards Product Specification JS 32 Type I/II Portland Cement.

In the Joint Submission of Florida Cement Inc., Vulcan Materials Company and T W Metals Limited<sup>8</sup>Tank-Weld indicated that the OPC was not re-sold on the Jamaica market. It was entirely used in Tank-Weld’s own construction business. Documentation was provided in support of this assertion in the form of Affidavits, sales data which contained no sales of the imported OPC and a letter from a customer indicating that Tank-Weld provided them with samples of the imported OPC. No evidence to the contrary was placed on the record.

The exclusion of the OPC from the dumping and injury analysis of the investigation has not been challenged by the Parties to the investigation.

The Commission turned its consideration to the quantity of the Portland Blast Furnace Slag cement or Type I-S cement, referred to as Super Cement in the Jamaican market. The dumping and injury analysis conducted by the Commission pertain only to Type I-S cement.

### **Portland Blast Furnace Slag Cement**

Tank-Weld imported Portland Blast Furnace Slag cement or Type I-S cement branded as “Super Cement” for the Jamaican market. During the POI, the goods under consideration were imported under HTS Code for building cement (grey) 2523.2910.00 and packaged in 42.5kg (94lb) bags and 1.5 metric tonne jumbo bags. Post POI, the goods have been imported

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<sup>7</sup> Joint Submission received by the Commission on January 26, 2010, page 8.

<sup>8</sup> Ibid

under a different HTS Code for other hydraulic cements 2523.9000. Inquiries were made as to the reason for the change in the HTS Codes. The Commission was informed that the goods had been incorrectly classified under the HTS Code for building cement (grey), as slag cement is normally classified under the HTS Code for other hydraulic cements.

The goods under consideration, Type I-S is a blend of Portland cement from the U.S.A that complies with the American Society for Testing and Materials (ASTM) technical standards ASTM C 150 for Type I and II and a ground granulated blast-furnace slag cement (GGBFS) that meets the technical standard of ASTM C 989 for a Grade 120 slag cement. The Type I-S cement conforms to the industry standard of ASTM C 595 for Blended Hydraulic Cement. The import documentation from the Jamaica Customs identified that the goods comply with the Product Specifications for Blended Hydraulic cement JS 301 Type PS (25). Copies of the Physical and Chemical Tests reports were also received from the BSJ which confirmed that the goods comply with the local technical standards for blended hydraulic cement.

The Commission obtained detailed information on the manufacturing and production process for the goods under consideration from the Exporter and Producer. Specific and uniform quantities of Portland Cement OPC Type II (75%) and GGBFS (25%) are blended at the Florida Cement Inc. Tampa plant to produce the Type I-S cement. The Portland Cement OPC Type II is produced at the Thomas S Baker Plant using the dry process (which is addressed in more detail in the Like Goods analysis section) and trucked to the Tampa plant. The GGBFS is purchased from a foreign company.

Vulcan has indicated that Type I-S cement can be used in soil cement, pavements, sidewalks, reinforced concrete buildings, bridges, railway structures, tanks and reservoirs, culverts, water pipes, prestress, precast, ready mix, stucco, shotcrete, gunite and masonry units.

## **VIII. LIKE GOODS**

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

Like goods, in relation to any other goods means –

- (a) goods which are identical in all respects with those other goods, or
- (b) in the absence of identical goods as aforesaid, goods of which the uses and other characteristics closely resemble those of the other goods,

The Commission followed its usual practice, which is in keeping with the practice of other investigating authorities, to determine whether the goods produced locally and the goods under consideration are “like goods” as defined by the Act. Factors such as the physical and chemical characteristics, manufacturing and production processes, functions and end uses, channels of distribution and marketing, substitutability and competition and customer and producer perception were examined.

The Commission concluded on examination of these factors that the locally produced goods are like goods to the goods under consideration. It was found that the goods are not identical, however, the uses and characteristics of the locally produced goods closely resemble those of the investigated products and therefore are like goods within the meaning of the Act. The reasons for the Commission’s finding are addressed under the respective factors below.

**Physical and Chemical Characteristics.** The locally produced OPC Type I, branded as Carib Cement, is a fine powdery grey substance used to make concrete. It is a closely controlled chemical combination of calcium, silicon, aluminium, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete. Lime and silica make up about 85% of the mass. Common among materials used in its manufacture are limestone, shells, and chalk or marl combined with shale, clay, slate or blast furnace slag, silica sand, and iron ore.<sup>9</sup> It is considered to be a hydraulic cement since it chemically reacts when mixed with water by hardening to form concrete.

The second type of cement that is produced locally is a Portland Pozzolan cement blend, branded as Carib Plus. It is also a grey powdery substance that when mixed with water also chemically reacts and hardens to form concrete. The goods under consideration were described under that section. Vulcan's Type I-S cement appears to be a lighter grey powdery substance which results from mixing the grey powder of OPC with the white GGBFS. These goods are referred to as blended hydraulic cements which are produced by a process of inter-grinding or blending of Portland cement with other materials such as pozzolan and GGBFS that have cementitious properties. The goods are not considered to be identical because of the percentage replacements of the OPC Type I/II with pozzolan and GGBFS that have different cementitious properties in order to make the cement blends. For the goods the OPC Type I/II accounts for the major component in the cement blends. The goods under consideration comprise 75% OPC and 25% GGBFS and CCCL's portland pozzolan comprises between 15 and 40% pozzolan and between 60 and 85% OPC.

**Manufacturing and Production Process.** Cement producers worldwide utilize either the "wet" or "dry" process to produce cement. All manufacturing processes for OPC include the four basic steps which are mining of the raw material of the desired composition, preparation of the raw material by crushing, grinding and blending to the desired chemistry; dehydration, calcinations and sintering (or clinkerization) of the raw material using heat; and grinding of the resultant clinker with gypsum and other additives to produce cement.

There are two manufacturing processes used to produce OPC referred to as the "dry" and "wet" processes. The primary difference between the processes is that the dry process involves the principal raw material, rock being mined from a quarry and crushed in two stages, and then stored with other raw materials to be further processed. After analysis, the raw materials are proportioned, ground to a fine powder and blended.<sup>10</sup> In the wet process, the raw materials in their proper proportions are ground with water and fed into the kiln as slurry (there is enough water to make it fluid). This process is used where the limestone, shale and clay are soft. The additional energy is then used later in the process 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. The production process becomes similar at this stage despite the method being used. The raw material obtained from either the wet or dry process is then heated to about 2,700 degrees F in huge cylindrical steel rotary kilns lined with special firebrick. Kilns are frequently as large as 12 feet in diameter and are mounted with the axis inclined slightly from the horizontal. The finely ground raw material or the slurry is fed into the higher end. At the lower end is a roaring blast of flame, produced by precisely controlled burning of powdered coal, oil or gas under forced draft.<sup>11</sup> As the material moves through the kiln, certain elements are driven off

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<sup>9</sup> Extract from the Portland Cement Association, "How Cement is Made" at [www.cement.org/basics/howmade.asp](http://www.cement.org/basics/howmade.asp)

<sup>10</sup> Ibid

<sup>11</sup> Ibid

in the form of gases. The remaining elements unite to form a new substance with new physical and chemical characteristics. The new substance, called clinker, is formed in pieces about the size of marbles. Clinker is discharged red-hot from the lower end of the kiln and generally is brought down to handling temperature in various types of coolers. The heated air from the coolers is returned to the kilns, a process that saves fuel and increases burning efficiency. The clinker is cooled and the nodules are then ground with a small amount of gypsum (the amount of gypsum will control the setting times) and a fine powder is produced. The Vulcan TS Baker plant uses the dry process to produce the OPC Type I/II that is used to make Type I-S cement. It is our understanding that both manufacturing processes are employed by CCCL. In order to produce the blended cements of Vulcan's Type I-S and CCCL's OPC pozzolan blend, GGBFS and pozzolan are respectively interground or blended with the OPC Type I/II.

**Technical Industry Standards and Performance.** The Bureau of Standards, Jamaica has established minimum standards for cement being sold in the Jamaican market. The Jamaican Standard Specification for Portland Cement (Ordinary and Rapid-hardening (JS 32:2008) and the Standard Specification for Blended Hydraulic cement (JS 301: 2008). The Commission requested and received information regarding the physical and chemical tests conducted for the Vulcan Type I-S cement and the CCCL OPC Type I and Type IP cements. The tests indicated that the goods conform to the relevant physical and chemical requirements of the industry technical standards.

**Functions and End Uses.** Cement is used predominantly in the production of concrete. Cement is the binding agent in concrete and is consumed almost wholly by the construction industry regardless of the type of cement. The chief end uses are, highway construction using ready-mix concrete, building construction using ready-mix concrete, concrete blocks, pre-cast concrete units and individual smaller units. Evidence reveals that the domestic product and the investigated product are both used for similar purposes. An examination of the sales data for Tank-Weld and CCCL revealed that Super Cement, Carib Cement and Carib Plus are sold to the same categories of customers which indicates that the goods are used for the same purposes and are interchangeable.

**Distribution Methods.** The domestically produced cement is sold in 3 categories: bulk, 42.5 kg sacks and 1.5 metric tonne jumbo sacks, while the cement imported by Tank-Weld is sold in 42.5 kg (94lb) bags, and in 1.5 metric tonne jumbo bags. The goods under consideration are not sold in bulk (unbagged cement).

The locally produced goods and the subject goods are sold directly to retail suppliers or distributors who then market the product to the ultimate consumer. The ultimate consumer includes: contractors, government departments responsible for construction, block makers and private individuals. All sales in Jamaica either originate from the local factory or the importer's warehouse, and distribution is through retailers, traders/wholesalers, and other distributors before the product is utilised or purchased by the end-user.<sup>12</sup>

**Substitutability, Competition and Performance.** CCCL contends that the domestic product and the investigated product are directly substitutable and compete with each other,<sup>13</sup> while Vulcan contends that super cement, being Slag Cement, is not a like good to the

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<sup>12</sup> CCCL's November 1, 2001 submission, page 8

<sup>13</sup> CCCL's November 1, 2001 submission, page 8-paragraph 3.1.4, and Mainland's February 8, 2002 response to the Commission's First RFI, page 6-paragraph 2.3 (c).

Complainant's products (OPC and Carib Plus),<sup>14</sup> as the materially superior characteristics of Tank-Weld's Super Cement have been recognised by the end users comprising the market segment targeted by Tank-Weld...<sup>15</sup> Vulcan also goes on to state and provide supporting materials that leading end-users operating in Jamaica have specifically required the use of Tank-Weld's *Super Cement* for their respective construction projects.

Despite these contending views, if the products are seen as readily substitutable for each other, there is support for considering them to be like goods. This can be supported by a comparison of the uses and characteristics of the products. Because all cement regardless of type is the binding agent in concrete, there are no distinguishing characteristics for the consumer unless the cement was required for a specific and special purpose.

The Commission's assessment based on sales data and the market for cement in Jamaica is that the goods under consideration may be used for all jobs that the domestically produced cement is used for and vice versa. Of importance, is that Tank-Weld's *Super Cement* is not only sold to *leading end-users*, as has been submitted by the Respondents, but significant quantities of *Super Cement* have been sold to customers which include hardware stores, government agencies, construction companies (both large and small), block factories, retailers and cash customers, which suggests a high level of substitutability with the locally produced goods.

**Customer Perception.** Customer Perception can be inferred from the end uses of the products which were developed using sales data from Tank-Weld and CCCL. The same types of customers in the form of hardware stores and blockmakers purchase and use Vulcan's Type I-S cement and CCCL's OPC Type I and Portland pozzolan cement.

## IX. MARKET FOR CEMENT IN JAMAICA

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

The Complainant submits that historically, approximately eighty per cent (80%) of the cement produced by CCCL was sold to suppliers who distribute cement to the ultimate consumer in 42.5 kilogram (kg) sacks<sup>16</sup>. The balance of the amount produced locally was sold in bulk or jumbo bags to consumers to complete larger projects.

In 1999, cement was initially being imported into the Jamaican market by one importer and this expanded subsequently to include other importers. In the latter part of 2005 through to the first quarter of 2006, the domestic industry produced cement of a sub-standard quality which resulted in production shortages. In response to the quality issues and the resulting shortages in production that were affecting the domestic industry, the Jamaican government temporarily reduced the CET bound rate from forty per cent (40%) to fifteen per cent (15%), which resulted in an increase in imports to satisfy the excess demand in the market. During

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<sup>14</sup> Joint Submission of Florida Cement Inc., Vulcan Materials Company & Tank-Weld Metals Limited, Page 9.

<sup>15</sup> Ibid, Page 21, Paragraph 41

<sup>16</sup> Ibid, at page 13

this period, the domestic industry also increased its importation of cement. By 2006, the Complainant became a major importer of cement, accounting for more than fifty per cent (50%) of total imports. This profile changed in 2007 as other importers increased cement imports into the market. In 2009, cement is being imported into Jamaica from different sources by a few importers for distribution on the market.

#### **JAMAICAN MARKET CONSUMPTION OF CEMENT 2005-2009<sup>17</sup>**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Domestic Production Cement	844,843	760,815	773,019	724,528	736,560
Imports by CCCL	0	119,032	25,988	46,062	0
Other Imports	2,000	69,658	156,250	148,605	146,250
<b>Total Consumption</b>	<b>866,400</b>	<b>912,953</b>	<b>963,734</b>	<b>868,865</b>	<b>798,902</b>
CCCL Exports	2,762	0	5,964	28,463	88,912

The demand and consumption of cement is highly dependent on the construction sector as all cement is consumed in construction activities. Jamaica's construction sector has historically been an essential contributor to the Jamaican economy, primarily due to its contribution to the country's physical infrastructure, but also due to the linkages it has with other sectors. However, the sector has been experiencing marginal growth over time. The total value added by the construction industry in 2008 was only one point eight per cent (1.8%) higher than the total value added by the industry in 1992.<sup>18</sup>

In 2009, the Planning Institute of Jamaica indicated in the first quarter of the year that real value added in the construction industry decreased by seven per cent (7%). This continued in the April to June quarter with a further decline of three point eight per cent (3.8%). In the July to September quarter, construction again declined by five point eight per cent (5.8%) and in the October to December quarter by a further three point five per cent (3.5%). The decline in the December quarter represented the ninth consecutive quarterly decline for the industry. Consequently, the industry, which uses cement as one of its main inputs experienced an overall contraction in 2009. The sector also continues to be adversely affected by the general downturn in the economy, which has resulted in the suspension or delay in some construction projects. The Commission notes that the decrease in demand for cement is reflected in the decreased cement consumption for the relevant period. More recently, the Planning Institute of Jamaica reported that for the first quarter of 2010 (January – March) the construction industry contracted by a further three per cent (3%).

The contraction in the Jamaican economy and in particular the construction sector has also impacted on the domestic market for cement. In 2006, a release by the then Ministry of Industry, Technology, Energy and Commerce (now Ministry of Industry, Investment and Commerce) noted that production and imports up to November 19, 2006 totaled 915,000 MT compared with approximately 850,000 MT for the full year 2005. The report further stated

<sup>17</sup> Information in Table obtained from Annual Reports of CCCL, Jamaica Customs and Fiscal Services Limited

<sup>18</sup> Construction Task Force, (2009). *Vision 2030, Jamaica. Construction: Sector Plan 2009 – 2030*.

that Jamaica's consumption of cement increased by approximately seven per cent (7%) in 2005, based on figures up to November.<sup>19</sup> In 2007, the total market demand increased an estimated six per cent (6%) more over 2006. However, this increase was short lived as the market contracted by approximately ten per cent (10%) in 2008. This continued in 2009 with contraction of the market by approximately eight per cent (8%) compared to the previous year.

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

The Jamaican market for cement has been contracting since 2007. The impact of the market contraction on the Domestic Industry and the presence of imports other than the goods under consideration are factors that are examined in the causation section of the SOR.

## **X. EVIDENCE OF DUMPING**

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

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

The Commission found that the Portland Blast Furnace Slag cement which is the subject of this investigation is being sold at dumped prices from the U.S.A. to Tank-Weld in Jamaica by the Exporter and Producer, Vulcan and Affiliated Party, Florida Cement Inc.

At the Preliminary Determination, the Commission indicated that it found that the margin of dumping was *at least* fifteen point one three per cent (15.13%). At Final Determination, the Commission now finds that the margin of dumping is fifty nine point seven two per cent (59.72%). The dumping margin was calculated by fair comparison of the ex-factory Constructed Normal Value, using the cost of production methodology; with the ex-factory export price.

The difference in the dumping margins calculated at the Preliminary Determination and the Final Determination is attributable to three factors. At Preliminary Determination, the Commission articulated the lowest margin of the range which it had in fact found to be the margin of dumping, hence, as noted, the margin was given as being "at least" point one three per cent (15.13%). More importantly, since the Preliminary Determination, the Commission

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<sup>19</sup> Ministry of Industry, Technology, Energy and Commerce, (2006). *Cement Update #8: November 20, 2006*. Retrieved from [www.mct.gov.jm/Cement%20Update\\_november\\_20.pdf](http://www.mct.gov.jm/Cement%20Update_november_20.pdf)

received and was able to verify additional information on the costs of production and pricing policy used by the Exporter and Producer. This enabled the Commission to construct a more precise normal value. In doing so, it was able to apply the mark-up for profit that was derived from the actual pricing policy generally applied by the Exporter and Producer to its products. This mark-up is actually higher than the profit margin range used earlier. The Commission also used the average selling prices for the Type I-S cement minus adjustments to arrive at a lower ex-factory export price than was used at the Preliminary Determination.

### **A. Normal Value**

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

The precise blend of OPC Type I/II and GGBFS which forms the Type I-S cement under investigation is not sold by the Exporter and Producer in its home market. The Complainant had submitted three estimates for the Normal Value. These included an ex-factory Normal Value for Type I-S cement ranging from US\$98.04/MT to US\$113.48/MT; the cost of production of the blended product of US\$116.01/MT or the normal selling price of the Exporter's similar products in its home market, which is US\$109.07<sup>20</sup>. The Commission sought to obtain a more precise Normal Value for the goods under consideration. Therefore, as noted, the Commission constructed the normal value in order to arrive at the price that the Exporter and Producer would sell the product for in its home market, as provided for in Regulation 3(b) below.

#### Regulation 3

- (1) Subject to regulation 4, the fair market price of goods shall be determined by reference to:
  - (a) the price at which like goods are sold in the ordinary course of business<sup>21</sup> for domestic consumption in the exporting country; or
  - (b) the cost of production of those goods in the exporting country including any subsidy provided in relation to such production
- (2) The Commission shall determine fair market price on the basis of the price in the exporting country if the Commission is satisfied that sales in that country are of sufficient quantity to consider it a viable export market and to form the basis of the fair market price.
- (3) In paragraph (2) "sufficient quantity" means that the aggregate quantity or aggregate value of the foreign like product sold by the exporter or producer in the country of export is five per cent or more of the aggregate quantity or value of the sales of the goods to Jamaica
- (4) The fair market price may be calculated on the basis of the cost of production value in cases where sales in the domestic market are inappropriate on the following grounds-
  - (a) such sales are-
    - (i) not viable
    - (ii) below the cost of production and are made within an extended period of time, in substantial quantities and at price which do not permit recovery of cost within a reasonable period of time

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<sup>20</sup> CCCL Rebuttal Submission in Response to Submissions by the Foreign Exporters and Domestic Importers, received on February 12, 2010, Public Version.

<sup>21</sup> Ordinary Course of business also referred to as the ordinary course of trade is not defined in the ADA or the CDDS Regulations, however two circumstances have been identified in practice as sales that may not be in the ordinary course of trade: some or all domestic transactions are sold below cost, or where the domestic sales are made to related parties.

- (iii) outside the ordinary course of trade on account of market conditions
- (iv) not representative
- (b) no contemporaneous sales of comparable merchandise exist.

For the Preliminary Determination, the Commission used the cost of production information submitted by the Exporter and Producer as the starting point for constructing the Normal Value. Information on the record submitted by the independent market consultant for the Complainant, which included standard industry costs, was examined and found to be reasonable. Upward adjustments were therefore made for transportation and movement expenses, packaging costs and profits from information on record with the Commission.

For the Final Determination, in order to construct the Normal Value, the Commission derived the pricing policy and methodology used by the Exporter and Producer for all its products for the home market from a careful examination of the company's records for the Cement Group's sales. The company's consistent practice is to establish the prices for its products based on variable costs consideration. Absorption of fixed costs is not included in setting the prices for the products, but instead allocated in full in the profit and loss account.

In determining the Exporter and Producer's pricing policy the Commission examined firstly the company's total net sales against their total variable costs as presented in the Income Statement extract for 2009. The Commission also identified and examined three cement products manufactured by Vulcan Florida Rock Division: OPC Type I, SUPERCEM and a custom blend of OPC Type I/II and GGBFS which was manufactured for a special project. This custom blend is different from the Type I-S blend in that it contains a higher content ratio of GGBFS to OPC Type I/II. Other products such as the masonry cement blends, mortar mix, stucco, roof tile cement, white cement and those composed of materials such as fly ash, were excluded from the Commission's analysis due to notable differences in the composition and use when compared to the Type I-S blend.

The schedule of the variable costs incurred to produce the various cement types produced by the Vulcan Florida Rock division was used. The costs listed in the schedule were PRM (purchase raw materials), fuel, variable cost, bags, pallets<sup>22</sup> and electricity. The information provided by Florida Cement Inc. on the costs was used to verify and obtain all costs relating to production and sale, including those in the production cost breakdown for the Type I-S cement which was previously provided to the Commission, as well as the costs incurred to produce and sell the three other cement products referred to above. The Commission found that these costs reasonably reflect the costs associated with the production and would be sale of the Type I-S cement in the home market of the Exporter and Producer.

The Commission derived the overall gross profit mark-up based on the comparison of total net sales to total variable costs. The mark-up for: (i) the OPC Type I using the average net selling price for bagged products against the variable cost of producing bagged OPC Type I; (ii) the SUPERCEM (100%) Slag cement sold in bulk (which is not sold in bags) against the variable cost of producing SUPERCEM; and (iii) the special blend against the variable cost of producing the blend were also calculated. For the special blend, the costs incurred in the production of OPC and GGBFS were prorated to reflect the content ratio of GGBFS to OPC Type I/II. This information was used to determine and confirm the pricing policy generally utilised by the Exporter and Producer.

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<sup>22</sup> Pallet costs are only incurred for bagged products.

To construct the Normal Value for the Type I-S cement, the Commission used the average selling prices for the goods under investigation. The price for the first shipment differed from the price for all subsequent shipments. Two dumping margins were calculated to reflect this difference. The variable costs incurred for the production of OPC and GGBFS were also prorated to reflect the composition of the Type I-S cement blend. The Commission calculated the mark-up for the first and subsequent shipments. It was noted that during the POI, Florida Cement Inc. took a higher mark-up on the first shipment than for subsequent shipments. The Commission also found on examination of the variable costs and pricing for the Vulcan Type I-S cement that based on the company's pricing policy, this product was priced at a much lower mark-up when compared to the products sold in the home market.

The Commission constructed Normal Value amounts of US\$120.07 for the first shipment and US\$117.08 for the subsequent shipment for the Type I-S cement.

<b>Table X.1 Constructed Normal Value for Vulcan Type I-S cement</b>		
<b>Details</b>	<b>Amount/ US\$/ST</b>	
	<b>First Shipment May 2009</b>	<b>Subsequent Shipments June – September 2009</b>
Total Variable Costs	[ ]	[ ]
Mark-up Applied [79.00%]	[ ]	[ ]
<b>Normal Value</b>	<b>120.07</b>	<b>117.08</b>

## **Export Price**

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

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

The average selling prices<sup>23</sup> for the first and subsequent shipments respectively were used as the starting points to derive the Export Price. Gross Export Prices or in this instance, average selling prices typically “include the cost of the merchandise purchased by the buyer, and the cost of any services received by the buyer which are bundled with the merchandise, for instance, freight, insurance, credit, or even post sale services, such as repairs and

<sup>23</sup> The Exporter and Producer submitted to the Commission its sales for the period January 2009 to April 2010.

maintenance.”<sup>24</sup> Consequently, “the cost of any bundled services and the amount of any rebates should therefore be deducted from the price invoiced in order to arrive at the price the buyer effectively paid for the merchandise alone.”

In order to arrive at the ex-factory Export Price adjustments were made for all export/shipping related costs from the average selling prices, specifically the cost to move the material to the dock and to load the vessel. No additional deductions were made since the costs of freight, shipping, marine insurance, unloading and other port charges were borne by the Importer, Tank-Weld<sup>25</sup>. The ex-factory Export Prices derived were US\$82.53 and US\$73.30 respectively for the first and subsequent shipments.

The Commission found margins of dumping of 45.48% for the first shipment and 59.72% for subsequent shipments respectively, using the constructed Normal Values and ex-factory Export Prices as noted in Table X.2 below. The Commission concluded that margins of dumping are not *de minimis* and that the volume of the actual dumped imports is not negligible. Further that the higher margin of 59.72% calculated for the majority of the shipments of the dumped goods during the POI was used by the Commission as it represents a more accurate finding.

<b>Table X.2 Margin of Dumping for Type I-S cement</b>		
<b>Details</b>	<b>Amount/ US\$/ST</b>	
	First Shipment May 2009	Subsequent Shipments June – September 2009
Normal Value	120.07	117.08
Export Price	82.53	73.30
Dumping	37.54	43.78
<b>Dumping Margin</b>	<b>45.48%</b>	<b>59.72%</b>

## **XI. ECONOMIC CONDITION OF DOMESTIC INDUSTRY: 2005 – March 2010**

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

In 2006, the Domestic Industry was unable to supply a growing domestic market for cement. As a result of its own production difficulties with an aging and somewhat outdated plant, it suffered a major setback in 2006 when substandard cement was produced and sold to the market. It had to engage in negotiations with its customers and had to compensate purchasers who were harmed by the faulty cement. CCCL itself became a major importer as well as

<sup>24</sup> A Handbook on Antidumping Investigations, Judith Czako, Johann Human and Jorge Miranda

<sup>25</sup> Joint Reply of Respondents, received on February 22, 2010, page 5, Footnote 4.

producer to fill its significant production gap as it tried to recover. The GOJ intervened to ensure a reliable supply of cement to meet the market demand, which at the time was still robust, by considering and implementing waivers and negotiating the importation of sufficient quantities of cement. In 2007, the local market for cement expanded and quantities of imports increased. By now, CCCL had decreased its import quantities, but there were other commercial players importing to sell in the market for cement. The market began to contract a little while thereafter. In 2009, the contraction in the market accelerated, resulting in a reduction in the Domestic Industry's production gap.

The published financial statements for CCCL when analysed annually show that revenue increased by sixteen point four two per cent (16.42%) between 2006 and 2007 and by eleven point nine three per cent (11.93%) in 2008. This increase in revenue in 2008 was lower than the level of increase experienced over the 2006 to 2007 period. For 2009 growth in revenue was less than one per cent (1%), with reduced operating profits due mainly to the increased costs of production and operating lease payments.

**TABLE XI.1 FINANCIAL OVERVIEW OF DOMESTIC INDUSTRY - 2005 – 2009  
(INFORMATION FROM AUDITED ANNUAL REPORTS OF CCCL)**

<b>Description</b>	<b>2005 J\$'000</b>	<b>2006 J\$'000</b>	<b>2007 J\$'000</b>	<b>2008 J\$'000</b>	<b>2009 J\$'000</b>
Revenue/Sales	5,765,114	6,632,008	7,721,003	8,642,729	8,695,025
Operating Profit	108,191	132,558	651,057	861,008	26,410

**TABLE XI.2 PRODUCTION AND SALES OF DOMESTIC INDUSTRY 2005 – 2009**

<b>Description</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Production by CCCL	844,843	760,815	773,019	724,528	736,560
Imports by CCCL	0	119,032	25,988	46,062	0
Sales (CCCL) Domestic	862,400	843,295	807,484	720,260	652,651
Sales (CCCL) – Export	2,762	0	5,964	28,463	88,912

In 2005 CCCL supplied almost one hundred per cent (100%) of the market. However, in 2006 domestic production was reduced by ten per cent (10%), creating the need for imports to fill the gap. In the same year CCCL accounted for the majority of imports into Jamaica, approximately sixty three per cent (63%). The dynamics changed in 2007 and onwards when imported cement supplied by other players in the market, surpassed CCCL's imports, which stopped in 2009. The market has been contracting since 2008 and the level of imports into the market has been sustained.

In the changing cement landscape CCCL has significantly increased exports which grew to a high of 88,912MT in 2009 and continued to grow into 2010 as the first quarter results indicated with 39,004MT exported for the quarter.

Between 2005 and 2009, CCCL invested more than US\$177,000,000.00 in order to upgrade and repair its facility as well as to increase its production capacity. The company notes that the expansion of its capacity was undertaken as part of its commitment in accordance with the TCL Group's contract with the Government of Jamaica (GOJ) to make CCCL a world class cement producer able to compete globally, increase plant efficiencies and reduce production costs. Ultimately, this would not only earn foreign exchange, but also reduce the price of cement sold in the Jamaican market. The capital programme was deemed critical by CCCL to ensure its ability to supply the entire Jamaican market while exporting excess production to earn and generate hard currency.

CCCL has reported that its financials for the first quarter of 2010 depicts a "disappointing financial performance"<sup>26</sup> when compared with its performance in the corresponding quarter in 2009.

The company's cement production in the first quarter of 2010 amounted to a nine point one four per cent increase (9.14%) over the quarter ending March 2009, and a one point zero six per cent (1.06%) increase over the preceding quarter ending December 2009.

Local cement sales for the first quarter of 2010 totaled 157,649 MT, which represents a decline of 20,000 MT or eleven per cent (11%) when compared to the quarter ending March 2009, in which 177,689 MT of cement was sold. When compared to the preceding October to December 2009 quarter, local sales increased by 1,649 MT or one point zero five per cent (1.05%).

Cement exports by CCCL totaled 39,004 MT in the January to March 2010 quarter, which represents a significant increase over the first quarter of 2009 when 13,169 MT was exported. When compared to the October to December quarter, exports for the March 2010 quarter increased by 9804 MT or thirty three point five seven per cent (33.57%). The increase in exports in 2010 continues the trend that started in 2009.

## **XII. INJURY ANALYSIS**

The WTO Agreement<sup>27</sup> identifies three types of injury that can be found to be "material" in an anti-dumping investigation; material injury to a domestic industry; threat of material injury to a domestic industry; or material retardation of the establishment of a domestic industry.

Injury in the form of material retardation of the establishment of a domestic industry is not being considered in this investigation. This injury type applies to cases where there is no existing domestic industry producing the like good and the establishment of such an industry has been materially hindered by dumped imports. In the present matter, the domestic industry producing the like good is already established and has the majority share in the domestic market.

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<sup>26</sup> CCCL, (2010). *Consolidated Unaudited Interim Financial Report for the three months ended March 31, 2010*. Retrieved from [http://www.caribcement.com/files/cms/CCCL\\_Financials\\_1st\\_Qtr\\_2010.pdf](http://www.caribcement.com/files/cms/CCCL_Financials_1st_Qtr_2010.pdf)

<sup>27</sup> WTO Antidumping Agreement (ADA), Article 3, Footnote 9; Paragraph 1 of Article VI of the GATT 1946

## A. MATERIAL INJURY

The Commission examined the Complainant's claim that the dumping of the goods has caused and is causing material injury to the industry.<sup>28</sup> Regulation 12 provides the relevant framework for the analysis. The relevant economic indicators were analysed under the following headings:

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

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

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

The Commission examined the factors referred to above and other relevant economic factors to determine if the Domestic Industry has suffered or is suffering material injury. The Commission considered all factors to determine the overall effect and not the individual effect of each factor. Further, the Commission was guided by Regulation 12(3) which provides that nothing in the regulation shall be construed as binding the Commission to give priority to any of the factors.

Data over the POI was examined to ascertain trends in the various indicators of injury in the periods before and during the presence of the dumped goods in the Jamaican market. The Commission's analysis benefits from more recent data than it had at the Preliminary Determination stage. At the Preliminary Determination, the Commission examined the economic indicators for when the dumped goods were present in the Jamaican market from May through September 2009. At the Final Determination the Commission included in its consideration a longer period when the dumped goods were present in the market through April 2010.

For the period during the POI to the most recent relevant information available when the dumped cement was present in the Jamaican market, the Commission observed no negative price effects, no adverse effect on cement production volumes (output) and capacity utilisation, no negative effect on cement inventories, a decline in sales which however converted into an increase in market share as the market consumption continued to show a significant rate decline. An assessment of the economic impact on the Domestic Industry revealed an increase in revenue, loss of profits due to increased costs of production and of the operating lease, resulting in adverse effects on return on investments, cash flow because of the increase investment in the plant and the servicing of those debts. There were no adverse effects on the Domestic Industry's ability to raise capital. These are addressed in more detail below.

### a) PRICE EFFECTS

Price Effects refer to changes in the level of prices in absolute and relative terms that are the direct result of dumped imports into the Jamaican market. This assessment involves an examination of (i) the prices at which the imported cement is sold in relation to the selling

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<sup>28</sup> CCCL's September 2, 2009 submission, Vol. 1, page 75.

prices of locally produced cement (price undercutting); (ii) the selling prices of the locally produced cement to ascertain any changes relative to previous price levels (price depression); and (iii) the ability of the domestic industry to adjust its prices to recover increases in its unit cost of production (price suppression).

The analysis on price effects was carried out using CCCL's detailed monthly list prices and periodic adjustments discounts and price increases and comparing these with the average monthly selling prices for Tank-Weld that were provided in their submissions. CCCL's bulk prices were not used because Tank-Weld did not import bulk cement. Therefore, the comparative analysis was done only for the 42.5kg bags and jumbo bags.

The Commission notes the effect of transportation costs when added to prices in some areas of the country but chose to exclude it so as to compare ex-warehouse prices for both companies.

The Commission found no price undercutting, no price suppression and no price depression during the period when the dumped goods were in the market.

**Price Undercutting.** The Commission examined the sales and price information submitted by CCCL and Tank-Weld prior to and after the preliminary determination.

For the period May 2009 to August 2009, Tank-Weld had higher selling prices than CCCL. On September 1, 2009, Tank-Weld announced a three per cent (3%) price increase which increased its cash price and credit price per 42.5kg bag and per jumbo bag. This coincided with a price reduction announcement by the Domestic Industry. With these adjustments Tank-Weld's prices continued to be higher than that of CCCL up to December 2009.

For the five month period from December 2009 to April 2010 the Commission observed that both CCCL and Tank-Weld increased their prices. Tank-Weld increased their average monthly selling prices incrementally each month, leading to an overall ten per cent (10%) increase by April 2010 for the 42.5kg bagged cement. The prices for the jumbo bags were also increased but by a lower margin of four per cent (4%). In comparison, CCCL had two price adjustments during the same five month period. The first was a rolling back of the September 1, 2009 price reductions and the second on February 1, 2010, an increase of seven point eight per cent (7.8%) for the Carib Plus 42.5kg bagged cement and eight per cent (8%) for the jumbo bags. Note also that at the time of writing CCCL announced a 3.2% price increase, the details of which were not ascertained.

CCCL alleged that Tank-Weld offers undercompensated delivery and referred to the Importer's island-wide price for delivery. The Commission observed that Tank-Weld sold its cement at between three per cent (3%) and four per cent (4%) below CCCL's prices in the parishes of Trelawny, St. James, Hanover and Westmoreland when the transportation cost was factored in. The Commission based its price comparisons on ex-warehouse prices rather than include the effect of transportation as this offers some advantage each company depending on the location of their customers.

The Commission therefore does not find evidence of price undercutting.

**Price Depression.** The Complainant alleged that it suffered price depression because it has been forced to offer discounts and rebates, during different periods in 2009, in an effort to curb mounting inventories and to compete with the unfairly traded imports.

An assessment of the pricing information of the Domestic Industry shows that certain specific price reductions were offered during that period. From July 7, 2009 to July 14, 2009, the Domestic Industry offered market wide discounts on all 42.5kg sacks, 1.5 MT jumbo bags and bulk cement. The Complainant attributed this discount to the need to reduce mounting inventories resulting from the presence of cement imports from the U.S.A. in the market. An examination of the inventories for the period showed average inventory levels remained consistent for the period.

In September 2009, the Domestic Industry offered a reduction in prices to its bulk customers and block makers using jumbo bags. The Commission notes that a reduction in prices by the domestic industry would normally be an indicator of price depression. In a letter dated September 18, 2009, CCCL indicated that these reductions were the result of improved efficiency from the commissioning of Mill #5 which the company wished after three weeks to share those gains with their customers. However, the Commission is guided by the statement of CCCL that the price reduction was due to improved efficiency as a result of the commissioning of its new mill. No price depression was found.

Also, by letter dated October 23, 2009, CCCL offered a special “while stocks last” over stocking per bag price reduction, citing excess inventory levels and the need to make way for new production. Inventory levels for CCCL observed by the Commission do not support the claim.

The Commission also observed that CCCL had a price increase on December 21, 2009 and then February 1, 2010. Also at the time of writing CCCL also announced through a press release dated June 14, 2010, a further price increase which will result in a three point two per cent (3.2%) increase in the current prices.

The Commission concludes that the periodic discounts and special offers were insignificant when compared to the periodic price increases taken by CCCL and therefore finds no price depression.

**Price Suppression.** The inability of the domestic industry to make reasonable price increases in order to recover increases in costs is referred to as price suppression.

The Commission’s examination of CCCL’s selling price adjustments and the related increases in the cost of production indicate that the unit cost to produce cement in 2009 increased by six point seven per cent (6.7%) over 2008 and seven point eight per cent (7.8%) over 2007. In February 2009, CCCL increased their prices to rationalize the 2008 increase in unit cost.

CCCL’s price adjustments in December 2009 and February 2010 were done against the background of the recovery of increased production and operating costs. Therefore price increases of between seven point eight per cent (7.8%) and eight per cent (8%) in February 2010 was well in line with the recovery of the 7.8% in production costs in 2009.

At the time of writing CCCL announced a three point two per cent (3.2%) price increase citing increases in operational costs; mounting stockpiles of cement and clinker; a significant reduction in overall market demand and consequently reduced revenue as reasons for the price increase.

The information before the Commission indicates that the Domestic Industry was able to increase its selling prices at different times during the period to recover increases in costs of production and therefore the Commission finds no evidence of price suppression.

## **b) VOLUME EFFECTS**

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

**Production.** The Commission considered the allegation by CCCL that the presence of the dumped imports has forced it to curtail production<sup>29</sup>.

The Commission commenced its assessment of the economic impact by analysing the production trends of the Domestic Industry from the pivotal year 2006. Production fell by ten per cent (10%) from 844,840 MT in 2005 to 760,815 MT in 2006 and to a low of 724,528 MT in 2008 with a marginal increase in 2009 of one point six per cent (1.6%) to 736,560 MT. A further examination of the monthly production data for 2009 indicated that production levels were consistent with the average production levels maintained for normal supply of between 60,000 to 65,000 MT per month.

The Commission also examined production data for the first quarter of 2010 and observed that the data showed growth in production. For that quarter, 189,769 MT of cement was produced which is one per cent (1%) above the last quarter of 2009, three per cent (3%) above the 2009 average per quarter and nine per cent (9%) above the first quarter of 2009.

The Commission therefore found no negative effect on production.

**Capacity Utilization.** Capacity utilization refers to the extent to which a firm utilizes its productive capacity. It is expressed as total production as a percentage of the total capacity. Capacity is appropriately re-defined based on an average of actual production utilised over the last three to five years.

The Domestic Industry has indicated total production capacity of approximately one (1) million MT per year for some time. An examination of CCCL's production in past years indicates that the company has produced an average of 750,000 MT, even in years when the market required up to 1 million MT. The Commission has observed therefore that the utilisation rates of CCCL are substantially below the capacity claimed.

**Inventory.** The Commission examined the monthly production and inventory levels for the POI and found the inventory levels to be consistent with the industry's normal average daily carrying inventory of two weeks' sales. This is further supported by the analysis of production data which indicated that there was no change in the average production volumes.

The inventory quantities in the first quarter of 2010 averaged lower than the 2009 monthly average levels.

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<sup>29</sup> CCCL Submission in Response to Notice of Preliminary Determination and Statement of Reasons by the Anti-dumping and Subsidies Commission received on May 13, 2010.

The Commission noted the increase in the production of clinker, the elimination of imported clinker and the build up of clinker inventories to levels larger than carried in periods prior to 2009. However, the Commission notes that the build-up is due to the fact that sufficient clinker is nor being produced locally.

**Sales and Market Share.** The Commission reviewed the sales data for the period 2006 to 2009 which revealed that overall sales for the Domestic Industry have consistently declined. CCCL lost approximately nine per cent (9%) of its overall sales in 2009 when compared to 2008 (the shortened period of May to November showed the same results), after an eleven per cent (11%) drop in 2008 over 2007. The Commission noted that the nine per cent (9%) loss of overall sales factored in sales of imported cement in 2008. A more accurate assessment of loss of sales of domestic production reveals a three per cent (3%) reduction in sales in 2009 over 2008. Imported cement accounted for six per cent (6%) of sales for the Domestic Industry in 2008.

In 2006, the market grew by five per cent (5%) while CCCL's production fell by ten per cent (10%). This fifteen per cent (15%) gap was initially filled by the importation of cement by the Domestic Industry and then by other Importers. In 2007, the market grew by another 6 per cent (6%), CCCL's sales reduced by four per cent (4%) while the other importers increased their imports significantly.

An examination of the market share for 2007 to 2009 showed that CCCL lost one per cent (1%), per year, while the entire market shrunk by ten per cent (10%) in 2008 and eight per cent (8%) in 2009. The one per cent (1%) loss of market share of absolute total sales included market share gained by CCCL from sales of their imported cement. Removing imports from total sales would actually point to a four per cent (4%) increase in market share of sales of domestically produced cement.

For the first quarter of 2010, consumption and market share reflected the same level and percentages as the last quarter of 2009.

The Commission's assessment is that the presence of dumped cement has not negatively impacted CCCL's market share since they were able to gain four per cent (4%) market share<sup>30</sup> in a contracting market.

### c) ECONOMIC IMPACT

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

**Revenue.** The Complainant submits that it was forced to accelerate its export programme and prematurely commence exporting from Jamaica as a result of domestic sales lost to dumped imports. This acceleration, it argues, resulted in loss of revenue to CCCL since the revenue generated from export sales is less than that generated by domestic sales.

Revenue from domestic sales declined by six per cent (6%) for the POI when compared to the prior three months and by thirteen per cent (13%) when compared to the previous year.

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<sup>30</sup> Updated Exhibit 3 in CCCL's submission.

This decline is attributable to the reduction in volumes sold plus the special one week sales promotion in July 2009.

The slight increase in volume sold, the increase in prices which took effect on December 21, 2009 as well as the increase in export sales in the first quarter of 2010 showed a ten per cent (10%) growth in revenue over the last quarter of 2009. In addition, there continues to be significant growth in export sales. For the first quarter of 2010 CCCL exported about forty-four per cent (44%) of the entire 2009 export quantities. This has contributed to the increase in revenue even though its contribution to profit is lower than had a similar quantity been sold in the Jamaican market because of a lower average price.

The information and data examined by the Commission show that the Domestic Industry significantly increased exports in 2009 over the previous year. The Commission will accept that the revenue earned from exports could be lower than the revenue that would have been earned if the cement was sold in the local market. The Commission notes that the acceleration of the export programme can be attributed to good business strategy in a shrinking local market.

The Commission observed no negative effect on revenue.

**Profitability.** Profitability refers to an excess of revenues over the cost of generating those revenues. The Complainant claims that the Domestic Industry has suffered substantial material injury by reason of the less than fair value imports through revenue and profit impairment coupled with increases in the unit cost of production.

The Commission examined the consolidated audited financial report of the Domestic Industry for 2009, an extract of which is set out below.

**Extracted from CCCL's Consolidated Financial Statement for Y/E December 2009**

J\$'000	AUDITED Year Jan to Dec	AUDITED Year Jan to Dec
	2009	2008
Sales (Cement Tonnes)-Local	652,651	720,260
Sales (Cement Tonnes)-Export	88,912	28,463
Sales (Clinker Tonnes)-Export	88,254	-
<b>Revenue</b>	<b>8,869,260</b>	<b>8,805,293</b>
Operating profit	222,030	948,573
Interest income	4,834	10,503
Interest expense	(173,498)	(93,716)
Loss on currency exchange	(294,394)	(293,428)
<b>(Loss)/Profit before Taxation</b>	<b>(241,028)</b>	<b>571,932</b>
Taxation credit/(charge)	96,516	(155,494)
<b>(Loss)/Profit after Taxation</b>	<b>(144,512)</b>	<b>416,438</b>
<b>Total Comprehensive (loss)/income</b>	<b>(144,512)</b>	<b>416,438</b>
Earnings per ordinary stock unit cents - Basic & Diluted	(17)	49
Operating Profit/Revenue Ratio	3%	11%

The extract reveals that CCCL's gross revenue increased marginally in 2009 over 2008. The marginal increase in revenue is due mainly to the price increase in February taken because of the devaluation in the Jamaican Dollar in the months prior to. Therefore, in U.S Dollar terms, the revenue would have declined by thirteen per cent (13%) in 2009 over 2008 which would match the approximately nine per cent (9%) reduction in sales value. The increase in exports did contribute to the relative stability in revenue however that contribution was not as significant because they were sold at prices lower than if they were sold in the domestic market.

CCCL's operating profit showed a significant decline in 2009 from \$948,573,000.00 to \$222,030,000.00, a seventy seven per cent (77%) reduction. This was due to significant monthly cost of sales adjustments made for the period April 2009 to December 2009.

The \$726 million reduction in operating profit in 2009 appears to be attributable to increases in the costs of production which are due mainly to increases in the energy costs and the cost of the operating lease because of the new mill. The increase in cost of production is not an indication of injury by itself but a contributor to the analysis on price suppression. It was already noted that there was no price suppression as any such result was eliminated by the price increases in 2009 and February 2010.

**Return on Investment.** Return on Investment (ROI) measures the level of profits in relation to the level of investments or capital employed in generating those profits. The Complainant does not make a claim that there is yet an actual decline in its ROI. However, CCCL contends that it is likely to decline. The Commission assessed the potential impact of the allegedly dumped goods on the domestic industry's ROI. The "Expansion and Modernisation Programme" engaged in by the Industry increased significantly the amount of capital employed by the company. ROI moves in the direction of profits.

CCCL's return on investment has been significantly affected by the reduction in profits as a result of the increased cost of production due to capital employed because of the investment in the new facility. The negative impact is a short term effect. Long term recovery will come from the increase in prices, from the fact that the investment eliminates the need to import clinker and from overall continued or improved efficiency.

**Cash Flow and Ability to Raise Capital.** Share prices reflect the market's valuation of a company, as well as investors' confidence in the ability of an organization to maintain a certain level of stability and profitability. CCCL's share prices fell from \$9.64 in 2006 and 2007 to \$3.95 in 2008. CCCL's annual share price increased marginally to close at J\$4.00 at the end of 2009. The 2009 year end share price presents a lower valuation for the company, when compared with the value of CCCL's shares in 2006. The lower valuation would be expected to affect the company's ability to raise the level of capital it was able to accomplish previously from external sources if the need arose. Increased finance charges have now come into effect arising from CCCL's investment in the new kiln. In addition, the Company has had to raise substantial capital of \$663 million from its parent company, TCL in 2010.

**Employment & Productivity.** The Commission observed no significant changes in the level of employment or productivity.

## **d) OTHER FACTORS**

### **Finance Costs**

The Commission's assessment of the Domestic Industry's operating results for 2009 shows a significant increase in the finance charges. There were no specific indications as to the basis of the increase. It is reasonable to conclude that this increase is related to the capital investments made in the new mill. The Commission, while aware of the effect on the final operating profits, considers that this does not affect the production operating costs. Increased interest payments will have an impact on a company's cash flow.

### **Devaluation and Foreign Exchange Losses**

The Jamaican currency has been devalued over the POI. This has affected the financial results for the Domestic Industry, which show foreign exchange losses of \$294 million in 2009 and \$293 million in 2008. This is significantly up from \$80 million in 2007 and \$49 million in 2006. These figures are significant and their effects must not be attributed to the dumped imports

On assessing all of the economic factors addressed in more detail below, the Commission observed no significant negative effects that would indicate that the Domestic Industry has or is suffering material injury during and post the POI when the dumped goods were present in the market.

## **XIII. THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY**

Having ascertained that the goods are dumped and that the dumped imports have not and are not causing material injury to the domestic industry, the Commission is required to consider the other category of injury, i.e. whether there is a threat of material injury to the domestic industry posed by the dumped goods.

The Complaint alleges that the Domestic Industry is and continues to be threatened with material injury caused by the dumped imports of cement from the U.S.A.<sup>31</sup> The Respondents contend that the Complainant has failed to establish that there is actual or threatened injury resulting from the alleged dumping.<sup>32</sup>

The Commission is guided by the relevant Regulations to the Act and the provisions in the Antidumping Agreement in carrying out its analysis on whether the dumped imports pose an imminent threat of material injury to the domestic industry and whether the threat would require the implementation of measures.

Guided by Regulation 13 and Article 3.7 of the Antidumping Agreement, the Commission first examined the relevant factors. These factors relate not only to the ability of the exporters of the dumped goods to supply the Jamaican market, but also the factors that underlie the demand by importers for the dumped cement. Further, they test the likelihood that the dumped goods will in fact be exported to Jamaica.

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<sup>31</sup> CCCL's September 2, 2009 submission, Vol. I, page 69

<sup>32</sup> Joint Submission, page 32

Regulation 13 provides in relevant part that:

A determination of threat of material injury may only be made where a particular situation is likely to develop into material injury, **and is clearly foreseen and imminent**, and in making such determination, the Commission shall take into consideration such factors as - ...

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

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

A determination of a threat of material injury shall be based on facts and not merely an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- i. significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- ii. sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb additional exports;
- iii. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
- iv. inventories of the product being investigated

None of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

The second element of the Commission's analysis of a threat of material injury involved anticipating the consequent impact of future importation of the dumped imports on the domestic industry, i.e. the particular situation that is likely to develop into material injury and

whether this development is clearly foreseen and imminent. To do this, the Commission examined the economic factors listed in Article 3.4 of the Antidumping Agreement and reflected in Regulation 12. This was done to establish a background against which to evaluate what the condition of the domestic industry is likely to be in the near future if the dumped imports continue to be present in the market.

## **A. The Likelihood of Substantially Increased Importation of the Dumped Imports**

### **i. Rate of Increase of Dumped Imports**

The Commission examined whether there was a significant rate of increase of dumped imports into the domestic market and assessed whether this factor indicates the likelihood of substantially increased importation.

During the POI, imports of the dumped goods first entered the Jamaican market in May 2009 followed by monthly shipments of similar quantities in June, July, August and September 2009. The rate of increase in absolute terms of the dumped imports in 2009 when compared to 2008 is significant since there were no imports of the dumped goods on the market in 2008. The Commission observed that the average volume of the monthly shipments were consistent

In relative terms, the dumped cement since entering the Jamaican market in May of 2009 accounted for approximately three per cent (3%) of the domestic market, five per cent (5%) of domestic production and four per cent (4%) of domestic sales from domestic production for the period May to September 2009.

In November and December 2009, respectively, the Importer obtained waivers to import the cement which is the subject of this investigation from the U.S.A. In their Joint Submission, the Respondents provided the Commission with a letter from the Ministry of Finance and the Public Service which granted Tank-Weld a waiver of the CET to import 5,000 MT of Vulcan cement on behalf of Bouygues Travaux Publics for use by them on a road project at Mount Rosser, St. Ann. A second letter granted another waiver of CET for 60,000 MT of the investigated product for one year, which will expire in December 2010. The Commission is therefore aware that 65,000 MT of the dumped goods are likely to be imported in 2010, some of which has already been imported and factored into our injury analysis.

For the post POI period January to April 2010, there have been four shipments of the subject dumped goods into Jamaica, one in January, March and two shipments in April. The Commission noted that the average volume per monthly shipment is consistent with the average volume per monthly shipment in 2009.

Based upon the full amount of imports for which the waiver was effective, 65,000 MT (of which over thirty per cent has already been imported), the Commission considered the rate of increase of the dumped imports for the period 2010 when compared with 2009. In absolute terms it would appear to be significant. However, the Commission notes that this by itself is not dispositive.

In relative terms, the Commission found that dumped imports for 2009 represented about four per cent (4%) of CCCL's annual sales and production. Volumes of the dumped goods over the five month period in 2009, annualized, would represent about nine per cent (9%) of annual sales and six per cent (8%) of annual production. For 2010, using the average of the

Domestic Industry's sales and production figures for the period January to March 2010, and projecting conservatively annual 2010 volumes for both sales and production, the importation of the full 65,000 MT would represent an increase of one per cent (1%) to about ten per cent (10%) of the domestic industry's annual sales and to about nine per cent (9%) of production when compared with 2009. The Commission did not find this to be a significant rate of increase.

The Commission observed consistency in the average monthly volume for 2009 and 2010. That the monthly shipments are within the contracted waiver amount 65,000 MT and there is no indication that the dumped goods will surpass this volume to support a finding of substantial increase in importation.

The Commission also considered the original Agreement between Tank-Weld and Vulcan which provided for importation of a substantial volume of Type I-S cement per annum. This volume referenced was later significantly reduced in the Supplemental Agreement. The contracting parties attributed the reduction in volume to the CET waiver amount that was approved by the Government. The Respondents contend that the CET waiver for 60,000 MT effectively limits the amount it may actually import to that amount over the twelve month period. The Importer asserts that it is not commercially feasible for Tank-Weld to import under a 15% CET regime.<sup>33</sup> The Commission noted that Tank-Weld has only imported the dumped goods under CET waivers. Further, on the expiry of the waiver for 2010, another waiver would have to be obtained for subsequent periods. A waiver of the CET is not automatic and would require approval either by CARICOM's Council for Trade and Economic Development or in the case of the most recent waiver by the Government of Jamaica.

The Commission is therefore not persuaded of the likelihood of substantially increased importation of the dumped goods.

**ii. Capacity in the Country of Export (Current and Foreseeable):  
The United States of America (U.S.A or United States)**

The Commission examined the current capacity in the country of export and likely future production capacity, i.e. capacity which will be operational in the foreseeable future to produce Type I-S cement. The production capacity for OPC and GGBFS which are required to produce the Type I-S cement were examined. The Commission found based upon all the facts it examined regarding the cement industry in the U.S.A., that there is current and foreseeable capacity in the country of export to produce the Type I-S dumped goods.

The United States has substantial capacity to produce cement, and is the third largest producer of cement in the World behind China and India. The past capacity for the years 2006 of 99.4 million MT and 2009 of 101 million MT, estimated capacity for 2010 to be 107 million MT, projected capacity for the years 2013 to be 121 million MT and for 2020 119.9 million MT.<sup>34</sup>

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<sup>33</sup> Joint Submission of Respondents for Final Determination, Received May 12, 2010

<sup>34</sup> Source: Portland Cement Association, (2009). *Impact of Potential Mercury Emissions on Domestic Cement Capacity*. Retrieved from <http://www.cement.org/econ/pdf/Cement%20Consumption%20Outlook-mercuryfinal.pdf>

Actual production volumes or output of the U.S.A. cement industry also indicate that there is significant capacity to produce cement. The industry produced 99,319,000 MT of cement in 2005. Production fell from 98,167,000 MT in 2006 to 86,310,000 in 2008. See Table XIII.1 below. This represents a twelve point zero eight per cent (12.08%) decline over the period due to the decline in the domestic demand for cement. In 2009, about 70,000,000 MT of Portland cement and 2,000,000 MT of masonry cement were produced at one hundred and seven (107) plants in thirty seven (37) states<sup>35</sup> of the U.S.A. This represented a further decline in overall cement production compared with 2008. By the end of the year, the total number of plants was reduced from one hundred and seven (107) to one hundred and one (101), due to plant closures.<sup>36</sup> It would appear that the U.S.A. cement industry is in the midst of a large, if not the largest volume downturn in its history.

Table XIII.1

U.S.A CEMENT STATISTICS					
Values in Metric Tonnes					
Year	Production <sup>37</sup>	Apparent Consumption <sup>38</sup>	Imports <sup>39</sup>	Exports <sup>40</sup>	Exports % Of Production
2002	89,732,000	110,020,000	22,198,000	834,000	0.93
2003	92,843,000	114,090,000	21,015,000	837,000	0.90
2004	97,434,000	121,980,000	25,396,000	749,000	0.77
2005	99,319,000	128,260,000	30,403,000	766,000	0.77
2006	98,167,000	127,660,000	32,141,000	723,000	0.74
2007	95,464,000	116,564,000	21,496,000	886,000	0.93
2008	86,310,000	96,797,000	10,744,000	858,000	0.99
2009	71,800,000	73,800,000	6,400,000	800,000	1.11

Source: US Geological Survey, November 2009

Although the Producer and Exporter in this matter, Vulcan imports its slag from a foreign country, the Commission noted that the U.S.A also produces slag cement. Output for slag cement has declined due to decreased production in steel plants during that year,<sup>41</sup> by an estimated nearly one-half to between 8 and 12 million tons in 2009.

<sup>35</sup> U.S. Geological Survey (2010). *Mineral Commodity Summaries*. Retrieved from <http://minerals.usgs.gov/minerals/pubs/commodity/cement/index.html#mcs>

<sup>36</sup> Ibid

<sup>37</sup> Data in this column represents the production of Portland and Masonry Cement

<sup>38</sup> Apparent consumption figures in the table represent: Production of cement (including from imported clinker) + imports (excluding clinker) – exports + adjustments for stock changes.

<sup>39</sup> Refers to imports of Hydraulic Cement

<sup>40</sup> Refers to exports of Hydraulic cement and clinker.

<sup>41</sup> US Geological Survey, Mineral Commodity Summaries, January 2010, Iron and Steel Slag

**iii. Capacity of the Exporter and Producer: Vulcan Materials Company, Florida Rock Division, Florida Cement Inc.**

The Commission found based on the facts set out below that the Exporter and Producer has substantial current and foreseeable capacity.

In 2007, Vulcan substantially increased cement capacity in the form of ready mix cement, cement block production and also the production of Portland and specialty cement with its acquisition of Florida Rock Industries. The U.S. Department of Justice Antitrust Division filed a civil lawsuit to block purchase of Florida Rock Industries by Vulcan on the ground that the acquisition would substantially lessen competition in coarse aggregates in several states. The companies were required to sell eight quarries in Georgia, Tennessee and Virginia and one distribution yard in Virginia, in accordance with a consent decree, in order to complete the acquisition.

In 2009, Vulcan completed a project to expand its Newberry cement facility to double its production capacity to 1.6 million tons per year. This facility supplies OPC Type I/II to the Tampa plant. Limestone is mined there and the limestone reserves total 193.9 million tons. The company stated that new capacity is expected to become fully operational in 2010.<sup>42</sup> This information was confirmed at verification and is therefore an indicator of an imminent substantial increase in capacity of the Exporter. The Tampa plant has a yearly production capacity of approximately 800,000 million tons. The Commission observed that the TS Baker and Tampa cement plants utilise technology and machinery to increase efficiency in production. The companies have a third cement plant located at Port Manatee which also produces OPC. It is our understanding that this plant is currently closed as a result of the decrease in demand for cement.

The Commission considers that while the Exporter does not hold inventories there is still a degree of responsiveness to supply in terms of their capability to produce and package the cement expediently using automated equipment such as a rotary packer which packages a significantly large amount of bags per hour and an automatic palletizer.

**iv. Potential to Shift Production from other Goods**

An Exporter's ability to engage in product shifting indicates the availability of facilities to shift production factors to produce the dumped goods with no or minimal additional costs or time outlay is important to the assessment of the availability of supply of the dumped product. The ability to product shift makes the supply more responsive to a demand for the dumped goods.

The Exporter in the current matter does have ready ability and facility to shift its production from other goods to the Type I-S cement if there is the demand. Vulcan's supply of both OPC and GGBFS, the required raw materials and the fact that the process is highly automated and requires minimal programme changes to produce the required blend of cement denotes the potential to shift production from any other products to produce the Type I-S blend. Therefore, the Exporter and Producer, Vulcan, is able to increase supply of cement to Jamaica if there were additional demand for it. The Commission was not persuaded however, that this ability to shift production is a sufficient basis on which to find that the product is likely to be shipped to Jamaica.

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<sup>42</sup> Vulcan Materials Company, (2010). *Form 10-K*. Retrieved from [http://www.faqs.org/sec-filings/100226/Vulcan-Materials-CO\\_10-K/](http://www.faqs.org/sec-filings/100226/Vulcan-Materials-CO_10-K/)

## **v. Inventories of the Product Being Investigated**

The Commission examined the state of inventories of the dumped goods in the Jamaican market. At the Preliminary Determination, the Commission had no information on inventories of the dumped products held by the importer in 2009. Prior to the Final Determination the Commission was provided with information which showed that Tank-Weld has held monthly inventories of the dumped product for the first quarter of 2010. The inventory held was not considered significant upon analysis. The Exporter/Producer does not hold inventories of the investigated product; which the Commission notes is due to the facilities at its supplying plant which allows for a quick turnaround time to produce and package cement products.

## **vi. Likelihood of Capacity Resulting in Exports to Jamaica**

WTO jurisprudence indicates that it is not sufficient to show that the capacity to produce the cement exists, but also that it is likely to result in further imports to Jamaica. The Commission assessed the likelihood that this capacity or any portion thereof would be exported to Jamaica. Factors such as the decline in demand and consumption for cement in the U.S.A. market, the demand for the dumped cement by importers and the availability of other export markets to absorb the capacity were examined.

**Declining demand in the U.S.A. market.** The Commission observed that there is excess capacity available in the U.S.A. supply in light of the decline in the U.S.A. domestic market for cement. Construction is in decline in all major markets in the U.S.A and as a natural corollary, there is a decline in the demand for cement. There was a slight decline in apparent consumption for the year 2006. The decline was more significant in subsequent years, however gains are in fact expected in cement consumption in the U.S.A. for next year, though it is expected that current harsh conditions will continue to face the industry through 2010.

The downturn in construction activities has affected U.S.A. companies involved in construction aggregates and cement production. Vulcan's consolidated Earnings Statement for 2009 (condensed and unaudited) shows a more than 25% decrease in total revenue. Vulcan also reduced its production of construction materials in 2009.

The Commission concluded that the effect of the global recession will continue to be, in the foreseeable future, declining demand for cement worldwide, and build up of inventories for large capacity industry players. Indeed, an overall examination of the data therefore shows that domestic demand for U.S.A. cement is in decline. Producers of cement have responded by consistently reducing production levels since 2006, and have also been increasing exports since 2007. While the increases in exports have been incremental, the Commission notes that the volumes are significant. The Commission considered the reduced demand in the U.S.A market in assessing whether cement producers such as Vulcan are likely to seek export markets, in particular Jamaica, in order to maintain capacity utilization. Vulcan has the third largest production capacity for cement in Florida and is proximate to the Jamaican market relative to other export markets.

**Trends in U.S.A. exports for cement.** The Commission examined trends in U.S.A exports. The data shows that while there have been fluctuations as it relates to increases and decreases in exports, the actual value of exports have remained in a similar range over the period, accounting for just below 1 per cent (1%) of domestic production for the years 2000 – 2008 and exports as a percentage of production moved to about one per cent for 2009. A 2010

report on U.S.A Exports and Imports of Portland Cement, Aluminous Cement and Slag Cement,<sup>43</sup> which projects that exports will increase significantly between 2010 and 2013 on an annual basis.

Jamaica's relative proximity and established trade links with the United States and Vulcan's capacity point to some likelihood that Jamaica would be a target market for the product at dumped prices. The capacity of Vulcan's Florida cement operations capacity in particular is clear. Nevertheless, the Commission was constrained to assess other factors which would indicate whether the cement that can be generated by the Vulcan's capacity would likely result in increased shipments to Jamaica.

**Availability of Export Markets to Absorb the Capacity.** The Commission examined export markets other than Jamaica that are available to the Exporter and Producer that can absorb the capacity outlined above. The Commission requested and was provided with information on the Producer and Exporter's export markets, which was verified on examination of the production and packaging areas of the plants where bags identified to respective export markets were observed by the Commission's verifiers. Florida Cement Inc. has export obligations to at least four other countries for OPC and blended cements including the Type I-S blend. In addition, it is currently in negotiations with three other countries for exports. The Commission noted that there are other export markets available in addition to Jamaica and that the Exporter is seeking a range of export markets and not only or primarily Jamaica to absorb the capacity.

The Commission also considered whether the other export markets have in place import restrictions such as the Common External Tariff (CET) in Jamaica. The Commission found that not all other export markets have import restrictions, such as the CET.

#### **The Common External Tariff**

The Respondents offered to provide the Commission with an undertaking that they will limit their imports to the amount of the CET waiver quota.<sup>44</sup> In it, the Respondents indicated that they undertake to "not respectively export to or import into Jamaica Slag cement in excess of the aggregate quantity of 65,000 metric tonnes. In the event the GOJ grants a Custom Duty (CET) waiver to Tank-Weld which comes into effect on or after 7<sup>th</sup> December 2010, during the period that such waiver remains in effect Florida Cement and Tank-Weld shall not respectively export to or import into Jamaica Slag cement in excess of the aggregate quantity comprised in such waiver."<sup>45</sup> The undertaking being offered would be binding for the period of twenty-four months commencing on the 8<sup>th</sup> December 2009. The Act and the Antidumping Agreement do not provide for the acceptance of this type of undertaking and therefore the Commission cannot accept it as such.

The Act and the Agreement provide for price undertakings by an Exporter to revise its prices or to cease exports to the importing country at dumped prices. Under the regime, acceptance of a price undertaking sufficiently early in proceedings, requiring appropriate conditionalities is a matter for the Commission's discretion.

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<sup>43</sup> Projections were done based on a market survey conducted by Merchant Research and Consulting Limited.

<sup>44</sup> Ibid

<sup>45</sup> Letter to the Commission from Hart Muirhead Fatta dated July 5, 2010

## **B. Threat of Material Injury – Economic Factors**

The Commission examined the potential effects of the presence of the dumped goods in the market on factors which would indicate injury to the Domestic Industry. These included prices, production, inventories, sales and market share, revenue, return on investment, cash flow and ability to raise capital, employment and productivity and capacity utilisation. The Commission assessed these economic indicators using the most recent information available to ascertain the likely condition of the domestic industry in the very near future based on the most recent past.

**Price Effects.** The Commission considered whether the dumped imports have been entering at prices that will have a significant depressing or suppressing effect on domestic prices, and thus, would likely increase demand for the said imports. As noted in the section discussing these factors above, the Commission assessed price effects and found that during the POI, prices of the dumped imports were not having a significant depressing or suppressing effect on prices of the product produced by the Domestic Industry. This assessment is further supported by the action of the Domestic Industry taken and publicised by way of a press release dated June 14, 2010 increasing its prices. Therefore in the absence of such price effects, the Commission does not find support for any proposition that there is likely to be an appreciable increase in the demand for the imports, even at dumped prices.

### **Economic Impact Factors**

**Return on Investment.** The capital investment in the new mill has significantly increased the total capital employed. This was done with the expectation that the improved facility and capacity will increase production and consequently sales and revenue. The continued presence of the dumped imports will have some correlation with the domestic industry's ability to utilise the increased capacity to address that portion of the market supplied by the imports and this will result in diminished returns on investment. However, the Commission does not regard this diminished return as being caused by the dumped imports as the cause is the contraction of demand in the market.

**Cash Flow and Ability to Raise Capital.** The inevitable impact of the increase in finance costs which the Domestic Industry has incurred as a result of the capital investment will become a significant factor if the domestic industry is unable to increase its production and sales in order to recover these increased costs. There will be a negative effect on cash flow. Again, the Commission does not regard this constricted cash flow as being caused by the dumped imports, as the cause is the contraction in demand and the investment made by the Domestic Industry.

**Capacity Utilisation.** The continued presence of dumped imports will have a correlation with and continue to curtail the ability of the Domestic Industry to utilise its increased production capacity. The Commission does not regard this capacity utilisation challenge as being caused by the dumped imports, as the cause is the contraction of demand.

**Employment and Productivity.** The Complainant asserts that decreased production will lead to reduced number of man hours required to sustain its level of production. Therefore, this will reduce the number of employees required resulting in Commission cuts and loss of productivity. The Commission credited the assertion regarding employment as being reasonable but noted that the potential for decreased employment was not caused by the dumped imports, as the cause is the contraction in demand. The Commission did not find

any evidence on the record that supported the claim of lost or potential loss of productivity during the period when the dumped goods were present in the market.

**Magnitude of The Margin of Dumping.** The magnitude of the margin of dumping is an indication of the extent to which injury can be attributed to the dumped goods. The magnitude of the estimated margin of dumping is 59.72%. Consideration of this factor by itself could indicate that the domestic industry will be threatened in the future, however an assessment of all factors does not support that conclusion.

The Commission's assessment of the factors does not support a finding that the Domestic Industry is currently being materially injured by the dumped goods, nor that the dumped goods will exacerbate these circumstances in the future.

#### **XIV. CAUSATION**

The Commission must, where there is material injury or an apparent threat thereof, establish a causal link to the dumping in order to remedy the dumping. In accordance with Article 3.5 of the WTO Anti-dumping Agreement and Section 22 (2) and (4) of the Act, the Commission must find that the evidence before it shows that the dumping of the goods has caused, is causing or is likely to cause material injury. It must be demonstrated that the dumped imports are, *through the effects of dumping*, causing material injury or threat thereof within the meaning of the Agreement. The demonstration of a causal relationship between the dumped imports and the injury or threat to the Domestic Industry shall be based on an examination of all relevant evidence before the Commission. The Commission found that there was no causal link to any injurious pressures on the Domestic Industry.

#### **Non-Attribution Analysis**

Article 3.5 of the WTO Anti-dumping Agreement expressly requires the Commission to examine any **known factors other than the dumped imports** which at the same time (as the dumped goods are present in the commerce of the importing Member) are injuring the Domestic Industry. Injury caused by any other factors must not be attributed to the dumped imports.

#### **Legislative Provision**

Regulation 12(7) makes reference to Regulation 13 which encompasses the requirement for a non-attribution analysis. This makes explicit the fact that in the examination, any injurious effects which are deemed to be likely to impact on the Domestic Industry from known factors (or causes) are not attributed to the dumped cement being investigated in the particular case. The Regulation provides in relevant part that:

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

- (a) the volume and price of imports which are not dumped...;
- (b) contraction in demand or changes in the patterns of consumption;
- (c) trade restrictive practices of and competition between the foreign and domestic producers;
- (d) developments in technology and export performance and productivity of the domestic industry,

which individually or in combination, also adversely affect the domestic industry.

As required, the Commission examined all the other relevant factors brought to its attention or deemed reasonably appropriate in addition to factors identified in Regulation 13 of the Act.

### **Impact of the Global Recession on the Construction Sector and the Wider Economy**

The Jamaican economy and the particular sector which accounts for the majority of the consumption of cement were examined. Like the global economy, Jamaica has been experiencing a downturn in its economy over the period, which includes the POI. In particular, the construction sector which had been robust when the Domestic Industry undertook its sizeable investment in new and renovated plant, had declined significantly.

The Planning Institute of Jamaica (PIOJ) reported that for the first quarter of 2010, the Jamaica economy continued to contract due to weak domestic and global demand for Jamaican goods and services. This it attributed to the impact of the global recession. Real Gross Domestic Product (“GDP”) declined by one point four per cent (1.4%), when compared with the first quarter of 2009. Goods producing industry in Jamaica declined by five point seven per cent (5.7%) and the construction industry, of special note as cement is primarily consumed in that sector, contracted by three per cent (3%) in the first quarter alone. This follows contraction in the industry in 2009 over the year before. The Commission notes the difficulties being experienced by the Domestic Industry, but notes that it is not persuaded that they are not attributable to the impact of the global recession, the contraction in the Jamaican economy in general and the steep decline in the construction sector.

### **Other Imports**

The Commission notes that it has initiated an investigation into imports of cement from the Dominican Republic. The Commission notes also that the quantity of imports from the Dominican Republic over the relevant period is greater than that from the U.S.A. Therefore, the quantity of goods from the other sources as well as the prices of such goods are definitely a factor in the marketplace and any impact from those other imports cannot be attributed to the dumped goods under investigation in this case.

### **The Value of the Jamaican Currency**

The Commission considered the status and impact on the industry of the value of the Jamaican currency, which suffered some devaluation followed by a period of revaluation.

Volatility in the price of fuel costs which represent a significant component of the Domestic Industry’s production cost is affected by the value of Jamaican currency. There was devaluation of the Jamaican dollar (JMD) over a period in 2009. However, the Jamaican currency has experienced a revaluation in recent months relative to major trading currencies, including in particular, the US dollar (USD), Canadian dollar (CAD), and the British pound (GBP). The JMD has appreciated by four point three per cent (4.3%) against the USD, one point two six per cent (1.26%) against the CAD and one point seven per cent (1.7%) against the GBP. Revaluation means it is cheaper for Jamaican companies to import and should have a partial recovery effect on the Domestic Industry as far as the cost of fuel is concerned. However, where CCCL has begun to eke out earnings from exports, re-valued currency will also have a negative effect on the company’s export earnings from a loss in the value of its export sales. A stronger Jamaican dollar makes the currency, and consequently Jamaican products, more expensive to purchasers overseas. The impact of the changes in foreign currency costs to the Domestic Industry and hence on its earnings, cannot be ignored.

The Commission examined all other relevant factors in assessing material injury and threat of material injury. The Commission in assessing these factors did not find that they support a

finding of material injury and threat of material injury. Further, that the dumping has not caused, is not causing and is not likely to cause material injury to the Domestic Industry.

## **XV. DECISION**

The Commission's analysis of whether the dumped imports pose a threat to the Domestic Industry necessarily focused on the issue of whether the factors considered above indicate that circumstances will progress such that the dumping will begin to materially injure the Domestic Industry. The change in circumstances resulting in such a situation must be clearly foreseen and imminent. The use in the law of the phrase "clearly foreseen and imminent" relates to the timing of the materialisation of the injury to the domestic industry in the future. Footnote 10 of Article 3.7 states that one example of this, "is that there is convincing reason to believe that there will be in the near future, substantially increased importation of the product at dumped prices".

WTO jurisprudence indicates that an assessment of threat of material injury involves an examination of "the likely state of the domestic industry in the very near future can best be gauged from the data from the most recent past."<sup>46</sup> Further, "what is critical...is that it be clear from the determination that the investigating authority has evaluated how the future will be different from the immediate past, such that the situation of no present material injury will change in the imminent future to a situation of material injury, in the absence of measures. The jurisprudence also provides that "A finding of threat of material injury to the domestic industry must not be based on mere conjecture or remote possibility." The threat of injury analysis requires an examination of future events and so does involve making assumptions. Therefore, the WTO has indicated that the exercise should not be one of "mere conjecture". However, some amount of conjecture that is based on reasonable conclusions drawn from facts clearly outlined has to be carried out as regards the future events and their likely outcome.

The Commission's exhaustive examination of information and data on economic indicators from the most recent past up to and including April 2010, has found that the Domestic Industry has suffered no material injury, with the presence and even the increase of the dumped goods in the market. Therefore the assessment of the likely state of the Domestic Industry based on the most recent past does not establish that the dumped goods will pose a threat to the Domestic Industry that is clearly foreseen and imminent.

## **NEGATIVE FINAL DETERMINATION**

The Commission has examined the facts in this case and based upon all the evidence before it, finds that there is in fact dumping of the subject goods into Jamaica. However, the necessary condition that the dumping be a cause of material injury or threat of material injury to the Domestic Industry, which is clearly foreseen and imminent has not been met. Therefore, the Commission issues a negative determination in this matter and finds that no measures are appropriate.

The Commission finds that the dumping has not caused, is not causing and is not likely to cause material injury to the Domestic Industry that is clearly foreseen and imminent.

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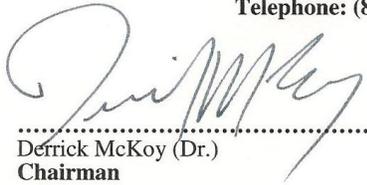
<sup>46</sup> AB Report US – Lamb, para. 137

**INFORMATION**

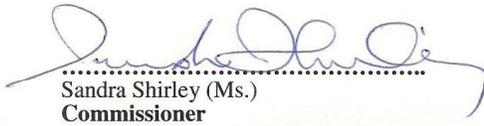
The Notice of Final Determination and Statement of Reasons for Final Determination in this investigation are provided to Interested Parties in these proceedings and posted to the Commission's website at [www.jadsc.gov.jm](http://www.jadsc.gov.jm). For further information you may contact the Commission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

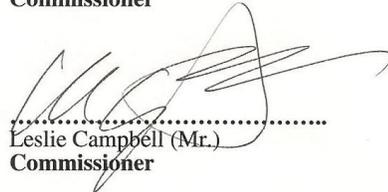
**The Anti-dumping and Subsidies Commission  
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