

**Portland Cement
from
Thailand**

**Non-Confidential
Initiation Report**

**Dumping and Countervailing Duties Act 1988
Dumping Application**

Ministry of Economic Development

June 2003


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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement (the Agreement)	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
Fern	Fern Cement Group New Zealand Ltd
FOB	Free on Board
Golden Bay	Golden Bay Cement, a division of Fletcher Concrete & Infrastructure Limited
HE	High-Early-Strength (Golden Bay)
Holcim	Holcim (New Zealand) Limited
LDC	Less Developed Countries
LLDC	Least Developed Countries
Ministry (the)	Ministry of Economic Development
NZD	New Zealand Dollars
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Co-operation Agreement
Portland cement	General purpose Portland cement
RC	Rapidcem (Holcim)
Siam Cement	Siam Cement Public Company
SCM	Supplementary Cementitious Material
SCT	Siam Cement Trade Co Ltd
THB	Thai Baht

UC	Ultracem (Holcim)
USD	United States Dollars
VFD	Value for Duty
WTO	World Trade Organisation
	Confidential information

1. Proceedings

1.1 Proceedings

1. On 25 February 2003, the Ministry of Economic Development accepted a properly documented application for a dumping investigation from Bell Gully Trade Group on behalf of the New Zealand producers of general purpose Portland cement. The application alleged that imports of general purpose Portland cement from Thailand are being dumped and by reason thereof are threatening to cause material injury to the New Zealand industry.

2. In accordance with section 10 of the Dumping and Countervailing Duties Act 1988 (“the Act”), the Chief Executive of the Ministry of Economic Development (the Chief Executive) may, on receipt of an application from the industry, initiate an investigation to determine both the existence and effect of any alleged dumping of any goods on being satisfied that sufficient evidence has been provided that:

- a. the goods imported or intended to be imported into New Zealand are being dumped; and
- b. by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

3. In considering an application, the Chief Executive is required to be satisfied that there is evidence going beyond mere assertion and of a nature and extent that indicates a likelihood of dumping and resultant material injury, and requiring investigation. The evidence is to be scrutinised with due scepticism, bearing in mind the commercial context, and the Chief Executive is to be satisfied of the sufficiency of the evidence, not of dumping or material injury.

1.2 Basis for the Application

4. The New Zealand Portland cement industry claims that as a result of the alleged dumping, material injury is threatened by:

- an increased volume of the allegedly dumped imports; and
- price undercutting and price depression,

which will result in a:

- decline in output and sales;
- decline in market share;
- decline in profits;
- decline in return on investments;
- decline in utilisation of production capacity; and
- an adverse effect on cash flow.

5. The New Zealand industry claims that the material injury threatened from the importation of allegedly dumped general purpose Portland cement (Portland cement) will commence in the immediate future.

6. It should be noted that the Ministry approaches investigations on the basis that injury and threat of injury are alternatives, i.e. an industry is either injured or threatened with injury, but both cannot apply at the same time.

1.3 Interested Parties

1.3.1 New Zealand Industry

7. The application was submitted by Bell Gully Trade Group on behalf of Golden Bay Cement (Golden Bay), a division of Fletcher Concrete & Infrastructure Limited, and Holcim (New Zealand) Limited (Holcim).

8. Golden Bay and Holcim state that there are no other New Zealand producers of general purpose Portland cement.

1.3.2 Importers and Exporters

9. The applicant industry understands that the Thai exporter is Siam Cement Trade Co Ltd (SCT), which is a subsidiary and the marketing arm of Siam Cement Public Company. The applicant industry believes from the information available to it that the Thai manufacturers of the allegedly dumped cement are also subsidiaries of Siam Cement Public Company and may include:

- Siam Cement Industries Co Ltd (SCI);
- The Siam Cement (Lampang) Co Ltd; and
- The Siam Cement (Ta Luang) Co Ltd.

10. New Zealand Customs Service (Customs) data for the year ended 30 April 2003 indicates that the following firms are suppliers of cement from Thailand:

[REDACTED]

SCT Co Ltd

11. The imports from [REDACTED] are very small and make up less than [REDACTED] percent of imports of cement from Thailand.

12. The applicant industry understands that an importer is Fern Cement Group New Zealand Ltd (Fern). Customs data indicates that importers from Thailand are:

Fern Cement Group New Zealand Ltd

[REDACTED]

[REDACTED]

13. Any investigation will have to establish the extent to which the parties listed are importing the goods subject to this application. Some of the goods were exported from [REDACTED], and any investigation will need to establish whether such goods have any degree of manufacture in the country of export, or whether they are merely transhipped.

1.4 Imported Goods

14. The goods which are the subject of the application, hereinafter referred to as Portland cement or "subject goods", are:

General purpose Portland cement.

15. The New Zealand Customs Department (Customs) has advised that the subject goods are classified under tariff item and statistical key 2523.29.00 00A as set out below:

25.23 Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements, whether or not coloured of in the form of clinkers:

2523.10.00 – *Cement clinkers*

01E . . *Of white Portland cement, that is, containing not more than 0.5% of iron oxide; of cements containing more than 30% of alumina*

09L . . *Other*

- Portland cement

2523.21.00 – – *White cement, whether or not artificially coloured*

01C . . . *Containing not more than 0.5% of iron oxide*

09J . . . *Other*

2523.29.00 00A – – *Other*

16. The subject goods are free of duty from all sources.

17. In this report, unless otherwise stated, years are calendar years and dollar values are NZD. In tables, column totals may differ from individual figures because of rounding.

18. In this report, the period for assessing the sufficiency of evidence relating to dumping is the calendar year 2002, while the consideration of injury involves evaluation of data for the calendar years 1999 to 2002 and forecast for calendar year 2003. These periods relate to reasonably available information provided by the applicant industry.

19. Should an investigation be initiated, the period of investigation for dumping will be the year ended 30 April 2003, being the most recent full year period for which information was available prior to a decision on initiation of an investigation.

20. The applicant industry claims that it will suffer material injury in the imminent future. Any investigation of material injury or threat of material injury will involve evaluation of data for the calendar years 1999 to 2002, for available financial and import data for the year to date and for forecast data.

21. It should be noted that the inclusion of any information in this report does not indicate that the Ministry necessarily accepts that information or any conclusions arising from it. Any final determination of whether or not goods are dumped and causing injury can be made only after a full investigation carried out in accordance with the Act.

2. New Zealand Industry

22. Section 3A of the Act provides the definition of “industry”:

3A. Meaning of “industry”—For the purposes of this Act, the term “industry”, in relation to any goods, means—

- (a) The New Zealand producers of like goods; or
- (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

“Like goods” is defined in section 3 of the Act:

“Like goods”, in relation to any goods, means—

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 Like Goods

23. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

The Imported Goods

24. The subject goods have been identified in section 1.4 of this Report as:

General purpose Portland cement.

New Zealand Production

25. The New Zealand industry (Golden Bay and Holcim) produces and sells Portland cement, which has previously been referred to as ordinary Portland cement. In its simple form Portland cement is mixed with sand, aggregate and water which creates a paste and through the process of hydration the paste hardens to form a rock like mass known as concrete.

26. The New Zealand industry considers its Portland cement may not be like the subject goods in all respects but it has characteristics that closely resemble the subject goods and therefore are like goods within the definition of section 3 of the Act.

27. The New Zealand industry claims the differences between the subject goods and the domestically produced goods are variations in the chemical composition of the clinker, and the percentage of the additives. The similarities, as submitted by the New Zealand industry are that the subject goods and the domestically produced goods are made under the same Portland process, distributed via the same or similar distribution channels in New Zealand and they have the same end use.

Imported Goods

28. The New Zealand industry advised that the imported product from Thailand is Portland cement, which is a grey powder that is ground from clinker and mixed with gypsum to produce cement and it is classified, according to the Tariff of New Zealand, under tariff item 2523.29.00, statistical key 00A.

29. The New Zealand industry has provided [REDACTED] Portland cement [REDACTED] Type I and Type III.

30. According to the American Society for Testing and Materials Specification C-150 Type I is a normal, general purpose Portland cement suitable for all uses. It is used in general construction projects such as buildings, bridges, floors, pavements and other pre-cast concrete products. Type III Portland cement is a high-early-strength cement that causes concrete to set and gain strength rapidly. Type III is chemically and physically similar to Type I, except that its particles have been ground more finely.

Like Goods Considerations

31. In deciding like goods issues the Ministry takes into account the following considerations:

- a. physical characteristics, which includes appearance, size and dimensions, components, production methods and technology.
- b. function/usage. This includes consumer perceptions/ expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant.
- c. pricing structures.
- d. marketing issues such as distribution channels and customers' advertising.
- e. other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.

32. This framework will be used to consider which goods produced in New Zealand are like goods to the allegedly dumped imports.

33. Other cement products produced by the New Zealand industry that could also be like goods are Easicrete, Quickcrete, Mortaplus, Duracem and blended Portland cement.

Physical Characteristics

Appearance

34. The New Zealand industry described the subject goods as grey powder that has been ground from cement clinker and mixed with gypsum to produce cement.

35. The New Zealand industry advised that the domestic Portland cement is grey powder that has been ground from clinker and mixed with gypsum to produce cement. It has different grades that meet different specifications as defined within the New Zealand Standard NZS 3122:1995 and depending on the manufacturing specifications, the cement is sold as a specific type or grade.

Components and Production Methods

36. The New Zealand industry advised that the subject goods from Thailand and the goods produced by the New Zealand industry use the same Portland process.

37. The New Zealand industry described the process as follows:

- Limestone is mined and reduced in size, and is then crushed with clay (silica, alumina and iron) and limestone. The crushed limestone and clay is homogenised by stacking and reclaiming in a long layered stockpile. Depending on the mineral content of the clay and limestone, additional sand and high iron clay may be added. The limestone, clay, sand and iron are milled and dried in a roller mill until it is fine enough to be conveyed by air to an homogenising silo.
- The milled and dried material is mixed again in a special silo then transported to the top of the kiln tower. The kiln is designed to maximise the heat transfer from coal combustion into the clinker. In the stationary part of the kiln the raw materials are heated rapidly to a temperature of about 800⁰C, where the limestone forms burnt lime. Once the process is complete, the temperature is raised to 1350⁰C in the rotating part of the kiln, until the minerals have fused together to form predominantly calcium silicate crystals (i.e. clinker). This molten material is then cooled as rapidly as possible in a grate cooler and stored ready for milling.
- Cement mills are large rotating drums filled with steel grinding medium. Gypsum is added to control the setting time and the cement fineness controls the strength growth in concrete.

38. Golden Bay uses the process described above and Holcim uses a wet process as the raw materials are introduced to the kiln as a liquid, consequently more energy is required to heat and dry the mix.

39. In its application the New Zealand industry did not provide specifically the process to manufacture the imported Portland Cement from Thailand. However, it can be assumed for the purposes of this report that cement that bears the name of Portland, irrespective of its country of origin, is produced in the same manner. The chemical components may differ slightly because of the mineral content of the raw materials but it is not significant enough to alter the resultant product.

Technology

40. The New Zealand industry did not provide in its application any reference specifically to the technology used in the production of the subject goods from Thailand nor the quality of the product.

41. According to the information that is held on its website, Golden Bay's technical team monitors the manufacturing process and its Portland laboratory has seen major investment in both testing and maintaining equipment in recent years. Golden Bay uses a dry process cement plant, which is considered more energy efficient and environmentally friendly than older methods of manufacture.

42. In its application Holcim provided a brochure on its products. Its interests span more than 70 countries, which provides access to a pool of the world's best practice. Holcim states that it believes very strongly in innovation - continually refining its core products to meet and exceed the increasingly demanding needs of the marketplace.

43. The Ministry assumes for the purposes of this report that the technology used to produce the subject goods from Thailand is of a high standard as the exporter is a large public company that exports its building products worldwide and the New Zealand industry also produces its goods to a high standard to compete in the international market.

Function and Usage

Consumer Perceptions/Expectations and End Use

44. The New Zealand industry claims that the end use of the subject goods from Thailand is the same as the end use of domestically produced goods.

45. Golden Bay's general purpose cement (Type GP) which is similar in its application to Holcim's Ultracem (UC) is considered ideal for use in structural concrete, mortars, renders, grouts and cement based products where the properties of low heat hydration is specified. It can also be used as a general binder for applications such as soil stabilisation.

46. Golden Bay's Type GP initial setting time is 100 minutes taking into account all other factors and its fineness over a specific surface area is 320-340m²/kg. Holcim's UC setting time initially is 105 minutes taking into account all other factors and its fineness over a specific surface is 350-360m²/kg.

47. Holcim's Rapidcem (RC) which is similar in its application to Golden Bay's High-Early-Strength (HE) is a special purpose cement used in precast work and concrete manufactured products when quick turnaround of moulds is desired. It is also widely

used for general concrete in winter conditions and where early trafficking or load bearing is required. The chemical properties are slightly dissimilar to general purpose Portland cement.

48. Holcim's RC initial setting time is 80 minutes taking into account all other factors and its fineness over a specific surface is 450m²/kg. Golden Bay's HE initial mean setting time is 74 minutes taking into account all other factors and its fineness over a specific surface is 441m²/kg.

49. By using the Portland cement name, it is assumed for the purposes of this report that the public would recognise the name and consider that it is of a special quality that can be relied upon, irrespective of its country of origin.

50. It appears that Golden Bay's Type GP and Holcim's UC can be substituted for the imported Portland cement Type I and Golden Bay's HE and Holcim's RC can be substituted for the imported Portland cement Type III. Although the types of Portland cement differ in strengthening qualities both types are the major component of concrete and therefore have the same end use.

Pricing Structures

51. As mentioned previously, in its application the New Zealand industry [REDACTED] . Grey cement Type I and grey cement Type III [REDACTED] .

52. The New Zealand industry claims that there is the potential for the price of the subject goods to undercut the price of the domestically produced Portland cement. It has not been able to establish a pricing pattern of the subject goods on the domestic market but through its research it has been able to provide the Ministry with an indication as to the possible prices of the subject goods that were imported in September 2002.

53. The New Zealand industry submitted that the subject goods may be sold at the following prices:

- The bulk Portland cement supplied [REDACTED];
- The 40kg bags at approximately \$ [REDACTED] each; and
- 25 bags of 40kg (i.e. per tonne) at \$ [REDACTED] (GST exclusive).

54. As an extra note to the above the New Zealand industry believes a conservative price of \$ [REDACTED] per tonne (GST exclusive) is more realistic as the prices above are a first response retail price for a single purchase and the actual selling price could be less resulting from discounts, rebates and negotiations.

55. The New Zealand industry provided the Ministry with its average price for both types of Portland cement. Holcim's revenue per tonne for year to date November

2002 is \$ [REDACTED]. Golden Bay's revenue per tonne for the same time period is \$ [REDACTED], which equates overall to a weighted average per tonne of \$ [REDACTED].

56. It is apparent [REDACTED] that there are different prices for the different types of Portland cement imported into New Zealand but overall the prices do not differ to such a large extent that would indicate that the products should not be considered as like to the subject goods.

Marketing Issues

Brand Recognition and Distribution Channels

57. The New Zealand industry has not provided any information on brands used by the importer in its sales of Portland cement.

58. The New Zealand industry sells its products under its own brands. Golden Bay advised that its Portland cement is produced and sold in 2 grades: Type GP and HE otherwise known as Premium Portland Cement. Holcim advised that its Portland cement is produced and sold in 2 grades, UC and RC.

59. The New Zealand industry claims that the importer has a distribution network in place to handle cement imported through Tauranga, Napier, New Plymouth and Timaru where imports have occurred over the past years. It states that for the volume of imports since September 2002, the distribution system would be similar to the distribution system of the New Zealand industry.

60. [REDACTED] percent of Type GP is sold in bulk and the remaining [REDACTED] percent is sold in 40kg and 25kg bags. Type GP is available in multi-walled paper sacks from Golden Bay stockists and in bulk from the company's Customer Service Centers.

61. The New Zealand industry advised that [REDACTED] percent of Holcim's UC is sold in bulk and the remaining [REDACTED] percent is sold in 40kg bags.

Other

Tariff Classification

62. The subject goods are classified according to the Tariff of New Zealand under tariff item 2523.29.00, statistical key 00A. On the information available the New Zealand industry's product and the imported subject goods would be classified under the same tariff item and statistical key as it is Portland cement other than white and the proportion of iron oxide (Fe_2O_3) is greater than 0.5%.

Other Cement Products

63. The New Zealand industry produces other cement products that are concrete dry mixes. They are as follows:

- Eascrete - is ready to use concrete mix which is used for small projects around a home and all that is needed is water

- Quickcrete - is a dry concrete mix designed for applications where fast setting is desirable such as installing posts and all that is needed is water.
- Mortaplus - ready to use mortar mix ideal for all forms of masonry and all that is needed is water.
- Duracem - is a blended specialist cement that incorporates a high proportion of blast furnace slag. It is used in concrete exposed to harsh environments such as marine structures and food processing areas. A special mix design may be required when using Duracem.
- Blended cement - The most common is Portland cement and Flyash. Flyash is a by-product of the steel industry and is considered to improve the properties of the resultant concrete. It can be added either at the clinker grinding stage or by blending with ground Portland cement. In some applications it could be used in place of Portland cement. Fundamentally it is a specialist cement that contains supplementary cementitious material (SCM) and on the domestic market the New Zealand Standard allows for the addition of up to 5 percent SCM in Portland cement.

Conclusions Relating to Like Goods

64. The subject good imported from Thailand is Portland cement, which is a grey powder that is ground from clinker and mixed with gypsum to produce cement. [REDACTED] two types of Portland cement, Type I and Type III [REDACTED]. The New Zealand industry considers its Portland cement while not like in all respects has characteristics that closely resemble the subject goods.

65. Of all the like goods considerations undertaken by the Ministry, the size and dimensions, production method, usage, distribution and possibly the pricing structure of the domestically produced goods are similar to the production and sale of the subject goods from Thailand. However, the physical characteristics, in particular its chemical components, while not like in all respects closely resemble the subject goods.

66. The New Zealand industry produces other cement products e.g. Easicrete, Quickcrete etc. of which Portland cement is a component. To create concrete, Portland cement is mixed with sand, aggregate and water whereas the other cement products just require water to create concrete. From the information available it appears that the physical characteristics, function/usage, pricing structures and marketing of the domestically produced other kinds of cement are not like goods to the subject goods.

67. Blended cement can be a combination of Portland cement and blast furnace slag or flyash. The SCM's change the quality of the resultant product for specific applications and while blended cement can replace Portland cement in certain applications, Portland cement cannot replace blended cement. Based on the information available the physical characteristics, function/usage, pricing structures and marketing of the domestically produced goods are not like goods to the subject goods.

68. The Ministry, therefore, considers that general purpose Portland cement while not identical in all respects has characteristics closely resembling the subject goods and is therefore the like goods, which will be the subject of any investigation.

2.2 New Zealand Industry

69. An investigation may not be initiated unless the Chief Executive is satisfied that the requirements of section 10(3) of the Act are met. These requirements are that the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes:

- a. Twenty-five percent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than six months); and
- b. More than 50 percent of the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

70. The application was submitted on behalf of Golden Bay and Holcim as the only New Zealand producers of Portland cement. The Ministry investigated allegedly dumped Portland cement from China in 1998 and was satisfied that there were only two New Zealand producers of Portland cement and there have been no new companies set up since that time.

71. The Ministry is satisfied that the application has been made on behalf of the New Zealand industry producing like goods, and has the level of support required by section 10(3) of the Act.

2.3 Imports of Portland Cement

72. Section 11(1) of the Act provides that where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence of dumping or injury to justify proceeding with the investigation then the investigation shall be terminated. Section 11(2) of the Act provides that evidence of dumping shall be regarded as insufficient if the volume of imports of dumped goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the Anti-Dumping Agreement. The Agreement deals with the negligibility of dumped imports under Article 5:8 as follows:

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which

individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

73. The fourth Ministerial Conference at Doha in November 2001 decided that a number of implementation-related issues and concerns in the anti-dumping area needed to be addressed. One such issue was to ensure the maximum possible predictability and objectivity in the application of timeframes when determining a volume of dumped imports that can be considered negligible. New Zealand notified the WTO Committee on Anti-dumping Practices in document G/ADP/N/100/NZL of 24 January 2003, that, in determining negligible import volumes, it will use "the period of data collection for the dumping investigation" as its preferred timeframe in all future investigations. Accordingly the consideration of negligible volumes of dumped imports was calculated using the period of data collection for the dumping investigation in this investigation, which is the year ended 30 April 2003.

74. Information from Statistics New Zealand (INFOS) was not available to 30 April 2003 to update the figures provided by the industry, so the following table has been compiled by the Ministry using Customs data for the proposed period of any dumping investigation.

Table 2.1: Import Volumes of Subject Goods (Tonnes)

	Year Ended April 2003	Percentage
Imports from Thailand	■	■%
Other Imports	■	■%
Total imports	■	100%

75. The import volume figures in the above table show that imports from Thailand represented ■ percent of all imports in the year ended April 2003.

76. On the basis of this information, imports of the subject goods from individual countries are not negligible.

2.4 New Zealand Market

77. The import volume figures in the following table were compiled from statistical information accessed from INFOS for the calendar years 1999 to 2002. The New Zealand industry's sales figures are those supplied by the applicant industry.

Table 2.2: New Zealand Market (Tonnes)

	1999	2000	2001	2002
Subject Goods	4,000	3,765	3,691	17,259
Other Imports	4,149	1,233	514	1,321
Total Imports	8,149	4,998	4,205	18,580



3. Evidence of Dumping

78. Section 3(1) of the Act states:

"Dumping", in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and 'dumped' has a corresponding meaning:"

79. Information was provided in the application concerning the export price and the normal value of the goods, which are subject to the application. The following is an assessment of the information provided.

3.1 Export Prices

80. Export prices are determined in accordance with section 4 of the Act.

81. The New Zealand industry has not provided any information on whether it considers there is any relationship between the buyer (importer) and seller (exporter) therefore for the purposes of this report it has been assumed that there is no relationship between the parties and the purchase of the goods by the importer is at arm's length.

Base Prices

82. The New Zealand industry has provided two examples to determine an ex-factory export price. Both examples are using a deductive method which is detailed below:

- The first example originates from the free-on-board (FOB) price of United States Dollar (USD) [REDACTED] per tonne for grey cement Type I with deductions from on board the ship to ex-factory to determine the ex-factory export price in Thai baht (THB). The New Zealand industry has provided in support of the FOB price [REDACTED] data from INFOS.
- The second example [REDACTED] data recorded by INFOS for an entry in mid September 2002. The deduction method in this example starts with the CIF price per unit in New Zealand dollars (NZD) 108.67, which is the combined price of grey cement Type I and Type III with various deductions from on board the ship to ex-factory in order to arrive at an ex-factory export price in THB.

83. The New Zealand industry has selected the second example to calculate the ex-factory export price. Details can be sighted in Table 3.1 below.

Import Data

84. In relation to import data on export prices, the New Zealand industry has provided the Ministry with overseas trade statistics compiled by INFOS. The data is presented on a monthly basis from January 2000 to September 2002 and shows the

country of origin, New Zealand Port, unit, quantity, VFD, CIF, VFD per tonne and freight per tonne of Portland cement imported into New Zealand. The INFOS description is 2523.29.00.00, covering “cement; Portland, other than white, whether or not artificially coloured” and measured in tonnes.

85. Customs import data has been obtained by the Ministry to compare its data with that which has been supplied by the applicant. The Ministry considers the New Zealand industry has provided sufficient evidence concerning the imports of Portland cement.

Exchange Rates

86. The New Zealand industry has used an exchange rate as at mid September 2002 of THB:NZD at 19.17 and THB:USD at 42.185 sourced from OANDA website <http://www.oanda.com> in its calculation to establish an ex-factory export price in THB.

Unit of Measure

87. In accordance with the Tariff of New Zealand the unit of measure is tonnes. For the purposes of establishing an ex-factory export price the New Zealand industry has calculated its prices on a per tonne basis.

Adjustments

88. The New Zealand industry has provided what it considers to be the costs, charges and expenses incurred in preparing the goods for shipment to New Zealand which are additional to those costs, charges and expenses generally incurred on sales for home consumption.

Ocean Freight and Insurance

89. The New Zealand industry has provided the cost of ocean freight and insurance per tonne based on the statistics published by INFOS. These costs per tonne are NZD37.43.

Export Packing

90. The New Zealand industry has provided what it considers to be the cost to pack Portland cement into jumbo bags on a per tonne basis. The cost is based on advice from [REDACTED] who claim [REDACTED] a 1 tonne Jumbo bag is USD [REDACTED]. The cost has been converted to THB based on the exchange rate of 42.185.

Inland Freight

91. The New Zealand industry has provided a cartage cost from the plant to Sriracha Port, Thailand. The cost has been provided by [REDACTED] in Thailand, [REDACTED].

Harbour Charges

92. The harbour charges are considered by the New Zealand industry to be wharfage, labour, storage of [redacted] days ([redacted] days are free) at THB [redacted] per day and a gate fee of THB [redacted] per truck, which holds [redacted] tonnes of Portland cement. The New Zealand industry bases these charges on information provided to [redacted] Thailand export ports.

Wharf to Shipline

93. The New Zealand industry estimates the truck transport and labour equipment from the wharf to shipline at THB [redacted] and THB [redacted] respectively. It is based on information provided [redacted] Thailand export ports.

Cost of Credit

94. The credit term that is offered to the New Zealand importer is estimated to be for 60 days. The New Zealand industry has not provided information supporting this period but it has advised that 60 days of credit [redacted]. The interest rate for an overdraft facility in Thailand has been assessed by the New Zealand industry to be 8 percent per annum. To calculate the cost of credit the FOB price in THB has been multiplied by 8 percent then divided by 6.08 (365/60) to arrive at an amount that represents the cost of working capital.

Export Price Calculation

95. The export price has been calculated by deducting the adjustments above from the base price which is shown in the following table:

Table 3.1: Export Price Per Tonne (THB)

CIF NZD	108.67
less Ocean Freight & Insurance	37.43
VFD (FOB) NZD	71.24
FOB Export Price in THB	1,365.67
<i>Less Export Costs (THB):</i>	
Jumbo bag cost	[redacted]
Plant to wharf	[redacted]
	[redacted]
<i>Less Harbour Charges (THB):</i>	
Wharfage	[redacted]
Labour	[redacted]
Storage for [redacted] days	[redacted]

Gate fee	██████████
	██████████
<i>Less Charges of Wharf to Shipline (THB):</i>	
Truck transport	██████████
Labour equipment	██████████
	██████████
<i>Less cost of credit</i>	
60 days @ 8%	██████████
Ex-factory export price (THB)	██████████

96. The Ministry has also calculated an alternative ex-factory export price (see the first example described in paragraph 82) by deducting from the FOB price (USD), of the Portland cement that was imported into New Zealand in September 2002, the costs as provided by the New Zealand industry to arrive at an ex-factory export price. The ex-factory export price using this method is slightly greater than shown in the table above because of the exchange rates used.

97. The Ministry considers that the information used to calculate the ex-factory export price in Table 3.1 is sufficient for the purposes of initiation of an investigation.

3.2 Normal Values

98. Normal values are determined in accordance with section 5 of the Act.

Introduction

99. The normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

100. The New Zealand industry understands that SCT, the exporter of Portland cement to New Zealand, does not supply the domestic market. However, SCT's supplier of Portland cement, Siam Cement Industries Co. Limited (SCI) is the major supplier of Portland cement to the Thai domestic market. The New Zealand industry believes SCI sales can be used to establish normal values.

101. The New Zealand industry was not able to provide actual invoices or published price lists for SCI sales. It has provided information on domestic pricing from discussions undertaken and reported by ██████████ (██████████) in Thailand, ██████████ (██████████) market price lists and the Asia Cement Producers Association's (APAC) published statistics.

102. According to the ██████████ report ordinary Portland cement on the domestic market in Thailand is known as Elephant brand and Siam Cement Group's website shows Type I Portland cement as sold under the Elephant brand.

Base Prices

103. The New Zealand industry has provided three sources of price information on the Thai domestic market detailed below:

- The [REDACTED] report advised the New Zealand industry that [REDACTED] offers the same price to its wholesalers/suppliers throughout the country [REDACTED]. The price of Portland cement to wholesalers is approximately THB95-96 per 50kg bag which equates to THB1,920 per tonne. The [REDACTED] report does not disclose a date but it is assumed that it was undertaken in the last quarter of calendar year 2002.
- The [REDACTED] report has provided price information from [REDACTED] ([REDACTED]) as it is considered to purchase a similar volume to the New Zealand importer. [REDACTED] is a [REDACTED] company and end user of Portland cement. The prices offered by [REDACTED] suppliers to [REDACTED] is THB2,100 per tonne.
- The New Zealand industry also obtained market price lists valid from 18 September 2002 for [REDACTED], which is considered to be [REDACTED] of Portland cement in Thailand. The market prices show an ex-factory price for bulk Portland cement (Type I) of THB2,194 per tonne.
- The APAC collects and publishes production, supply and price statistics from member countries. The statistics for Thailand for January to June 2002 show the ex-works price for bulk cement of THB [REDACTED] for the 1st quarter rising to THB [REDACTED] for the second quarter per tonne.

104. The New Zealand industry has provided the Ministry with ex-factory normal values starting with the base prices of [REDACTED], [REDACTED] and [REDACTED].

Adjustments

Discount and Rebates

105. The [REDACTED] report advised that Siam Cement generally offers to its wholesalers [REDACTED] percent discount for cash payment and between [REDACTED] percent volume rebate. Transportation cost [REDACTED]. Siam Cement [REDACTED]. In establishing an ex-factory normal value the New Zealand industry has assumed that no credit is extended to its wholesalers and therefore they qualify for a [REDACTED] percent discount and a [REDACTED] percent volume rebate.

106. The [REDACTED] report advised that [REDACTED] receives approximately [REDACTED] percent [REDACTED] discount if buying [REDACTED] volumes. Siam Cement offers a [REDACTED] to its [REDACTED] at approximately THB [REDACTED] for a 50kg bag. Therefore as [REDACTED] of Portland cement the New Zealand industry has deducted, in addition to the volume discount, the [REDACTED] in the price it pays.

107. It appears from the information in the application that [REDACTED] a discount [REDACTED] offer a rebate of THB [REDACTED] to its customers.

Credit Terms

108. The [REDACTED] report indicates that Siam Cement offers its wholesalers [REDACTED] percent discount for credit payment. Credit terms can be one or two months. The report indicates that Siam Cement offers to [REDACTED] days credit. An offer of credit by [REDACTED] to its customers is not mentioned in the application.

Packaging

109. According to the [REDACTED] report the quoted prices refer to 50kg bags. The New Zealand industry has allowed for the difference between bagged prices and the bulk product exported to New Zealand. The figure is based on the cost in New Zealand of USD [REDACTED] per tonne using an exchange rate of THB42, which represents 20 individual 50kg paper bags.

Normal Value

110. The New Zealand industry believes that the price offered by Siam Cement to its wholesalers disclosed in the [REDACTED] report is the base price from which adjustments described above can be deducted. The New Zealand industry considers this adjusted normal value is the most conservative of all the examples provided to the Ministry.

111. The table below shows the adjusted normal value.

Table 3.2: Normal Value (THB) per tonne

Ex-factory sale price		[REDACTED]
Cash Discount	[REDACTED] %	[REDACTED]
Volume Rebate	[REDACTED] %	[REDACTED]
Credit of 60 days		[REDACTED]
Packaging		[REDACTED]
Normal Value Price		[REDACTED]

112. The Ministry notes the adjusted normal value may be based on Type I Portland cement. However, on the information available, Portland cement Type [REDACTED] therefore the Ministry considers it can be used for comparative purposes. The Ministry has also calculated an adjusted normal value using each example of the base prices described above with deductions as provided by the New Zealand industry. It has established a higher normal value in all instances therefore it confirms that the New Zealand industry has taken a conservative approach in its calculation of normal value.

113. The Ministry considers that the information on normal values provided by the industry is sufficient for the purposes of considering the initiation of an investigation.

3.3 Comparison of Export Price and Normal Value

114. The table below shows the export price, normal value and dumping margin calculations.

Table 3.3: Dumping Margin (THB) per tonne

Normal Value	████████████████████
Export Price (EP)	████████████████████
Dumping Margin (DM)	████████████████████
DM as a % of EP	96%

115. The evidence provided shows that the alleged margins of dumping are not *de minimis* in terms of Article 5.8 of the Agreement.

3.4 Conclusions Relating to Dumping

116. The New Zealand industry has calculated an export price using a deductive method based on the CIF price as provided by INFOS and information from ██████████ in Thailand. The normal value is based on information gained through market intelligence reports and other suppliers of Portland cement in Thailand. The Ministry has calculated an export price and normal value based on Customs data and information provided by the New Zealand industry and agree that it has taken a conservative approach in establishing a dumping margin.

117. The Ministry is satisfied on the basis of the information and evidence provided by the New Zealand industry that the comparison of the export price and normal value has provided sufficient evidence that dumping occurred in September 2002.

118. Any investigation will need to give consideration to the provisions of section 4 (export price) and section 5 (normal value) of the Act as they should apply, and in particular to the application of the appropriate adjustments required by section 4(1)(a)(i) and (ii) and section 5(3).

4. Evidence of Injury

4.1 Material Injury and Threat of Material Injury

Material Injury

119. The basis for considering material injury is set out in section 8(1) of the Act:

8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the Chief Executive shall examine—

- (a) The volume of imports of the dumped or subsidised goods; and
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

Threat of Material Injury

120. Article 3.7 of the WTO Anti-Dumping Agreement states:

A determination of a threat of material injury shall be based on facts and not merely on 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 imminent¹⁰. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- (i) a 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 any 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; and
- (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

¹⁰ One example, though not an exclusive one, 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.

Evidence Provided by the Industry

121. In support of their allegation of threat of material injury, the two producers (Golden Bay and Holcim) making up the applicant industry have each provided several scenarios in which they forecast likely import volumes of dumped goods and the volume, price and adverse effects that dumping is likely to cause. The scenarios are based on a range of likely responses that they might make in the face of competition from the allegedly dumped goods.

122. Golden Bay considers that it [REDACTED]. Golden Bay has provided three scenarios based on the possible effects following from [REDACTED] resulting in either [REDACTED] in one scenario or [REDACTED] in two scenarios.

123. Holcim may either [REDACTED] or [REDACTED]. Holcim has provided six scenarios based on [REDACTED], or [REDACTED], or [REDACTED]. Only Holcim identifies what it considers to be its most realistic scenario, namely [REDACTED].

124. In assessing the likely impact on the industry as a whole, the Ministry has combined the effects of different scenarios presented by the producers so that the likely effect of dumped imports can be assessed on the industry as a whole. The Ministry was able to match four scenarios from the information provided by the two producers. For purposes of assessing the sufficiency of evidence for initiation purposes, the Ministry has examined the two most conservative scenarios of the total industry options available.

- Scenario A - industry [REDACTED] (Golden Bay scenario 2 and Holcim scenario 6); and
- Scenario B - [REDACTED] (Golden Bay scenario 1 and Holcim scenario 4).

125. It should be noted that all scenarios make assumptions about what would happen to the industry's financial results in the calendar year 2003. Golden Bay's scenarios are relative to its estimated full year performance in 2002 at a time when there were Thai imports in the market, whereas Holcim's scenarios are relative to its 2003 forecast that is based on an absence of adverse effects from dumped imports.

126. Scenarios A and B assume that, to compete with the allegedly dumped imports, Golden Bay would [REDACTED] and Holcim would [REDACTED]. The extent to which this scenario is realistic, depends on the extent to which the importer's prices are likely to undercut the prices of the industry. Price undercutting of [REDACTED] percent is estimated as the most likely extent of price undercutting, as discussed below in section 4.3. This level of price undercutting lends support to [REDACTED] assumed by Golden Bay and Holcim in the two industry scenarios. Golden Bay also supports [REDACTED] by reference to the full margin of dumping, as it currently considers that [REDACTED] and that if dumped imports were in the market it would [REDACTED].

The estimated dumping margin is 717 Baht or NZD37 per tonne, which is [REDACTED] Golden Bay and Holcim under the two scenarios, indicating that the two scenarios take a conservative approach.

127. Scenario A assumes that the volume of dumped imports would be 30,000 tonnes and that the domestic industry's loss of sales would be shared by the two domestic producers.

128. Scenario B assumes that [REDACTED] at the 2002 level for Golden Bay and the forecast 2003 level for Holcim. Golden Bay assumes under this scenario that Thai imports would be 13,000 tonnes, whereas Holcim considers [REDACTED]. For purposes of scenario B, the Ministry considers it reasonable to assume that 13,000 tonnes in total may be imported in 2003, this amount being equivalent to the amount imported in September 2002.

129. The Ministry notes that the forecast scenarios provided by the New Zealand producers are based on assumptions that there is likely to be a significant increase in the import volumes of cement from Thailand and that prices of Thai cement will undercut significantly average industry prices. The Ministry's assessment below in sections 4.2 and 4.3 of the evidence provided, leads the Ministry to conclude that the two most conservative forecasts are based on reasonable assumptions and constitute sufficient evidence for an assessment, for the purposes of initiation of an investigation, of whether the New Zealand industry is being threatened with material injury.

130. The two producers have provided details of the assumptions they have used to develop the different scenarios. Scenarios provided by the two producers in addition to A and B above, are based either on a higher volume of imports, namely 60,000 tonnes, or in one case is based on a further price reduction by importers. There is sufficient evidence that around 30,000 tonnes is likely to be imported and that the importer may be intending to import around 60,000 tonnes of cement from Thailand over a longer term. It is considered that injury is likely to occur under scenarios A and B. Scenarios A and B have been used as a conservative test of whether there is sufficient evidence of a threat of material injury. In these circumstances, the Ministry considers that threat of greater injury than that evidenced below is likely.

4.2 Import Volumes

131. Section 8(2)(a) of the Act provides that the Chief Executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

Historic and Forecast Imports

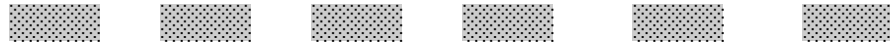
132. The applicant industry provided import information from INFOS for the years 1997 to 2002. Imports from Thailand commenced in 1999 as reflected in the table below.

133. Forecast figures for 2003 in the following table have been constructed by the Ministry based on the two most conservative scenarios presented by the applicant industry. The Ministry has used an average of the most recent three years to estimate other import volumes for 2003.

Table 4.1: Import Volumes (Tonnes)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Thailand	4,000	3,765	3,691	17,259	30,000	13,000
Other Imports	4,149	1,233	514	1,321	1,023	1,023
Total Imports	8,149	4,998	4,205	18,580	31,123	14,023
NZ Industry Sales						
NZ Market						
Change on Previous Year:						
- Thailand		-235	-74	+13,568	+12,741	-4,259
- Other Imports		-2,916	-719	+807	-298	-298
- Total Imports		-3,151	-793	+14,375	+12,443	-4,557
- NZ Industry Sales						
- NZ Market						
% change:						
- Thailand		-6%	-2%	368%	74%	-25%
- Other Imports		-70%	-58%	157%	-23%	-23%
- Total Imports		-39%	-16%	342%	67%	-25%
- NZ Industry Sales						
- NZ Market						
Thai imports as a % of:						
- NZ Industry Sales						

- NZ Market



Likelihood of Increased Imports

134. The applicant expects further increases in the volume of imports from Thailand in 2003 and subsequent years. The evidence provided in support of a likely significant increase in imports (including that in support of the forecast figures shown above) has been assessed below by the Ministry, first in terms of the framework set out in Article 3.7 of the Agreement cited above, and then by looking at other relevant factors.

Rate of Increase

135. There has been a significant rate of increase of imports of the allegedly dumped goods. Imports of the subject goods increased by 368 percent in 2002 over the previous year. However, this rate of increase is from a low volume base. If this rate of increase were to continue, imports in 2003 would be over 80,000 tonnes. The importer has announced its intention to import larger volumes than previously and has put infrastructure in place to support this intention. Based on this information, the applicant considers that imports in 2003 could increase to up to volumes ranging from 60,000 to [redacted] tonnes.

136. Customs data to the end of April 2003 shows that there have been no imports of cement from Thailand since September 2002. Bell Gully advised in April 2003 that a shipment of cement from Thailand was being loaded in Thailand and was expected to arrive in New Zealand in early May, but did not do so [but refer to paragraph 154].

Exporter's Capacity

137. The applicant has provided evidence that Thailand is a significant producer and exporter of the subject goods. The evidence shows that in 2001 35 million tonnes of cement was produced and almost half of this was exported. The evidence shows that Thailand's producers have an annual production capacity of 47 million tonnes.

138. The applicant has provided evidence from an article in *International Cement Review (September 2002)* that Siam Cement is the largest Thai producer and it expects domestic cement demand to grow 15 to 22 percent to 22 million tonnes this year. The article also says because of continuing high export levels it was expected to produce 38 million tonnes, which represented a utilisation rate of 74 percent. The utilisation rate was forecast to rise slightly to 76 percent in 2003 with estimated local demand at 23 million tonnes.

139. A later article in *Intercem E-line (6 November 2002)* stated that Siam Cement has reported solid operating results for the third quarter of the year, citing resilient domestic demand in most of its businesses and revealed plans for expansion. However, it indicates that expansion will be considered in areas other than cement production. The cement business was reported to have 20 percent unused production capacity.

140. No evidence has been provided about the availability of other export markets to absorb exports, but the article in *International Cement Review (September 2002)* provided by the applicant refers to continuing high export levels resulting in increased utilisation of Thai production capacity.

141. The applicant has stated that Thai producers and Siam Cement “have indicated that increasing exports are a primary objective in restoring the profitability and health to the industry.” Bell Gully advised that such statements about increasing exports to restore profitability [by firms in general] were widely reported following the Asian financial crisis.

142. Evidence has been provided that Thai producers have substantial unused production capacity that could supply the needs of the total New Zealand market several times over.

Effects of Prices on Demand

143. In section 4.3 below, the Ministry has concluded that there is evidence that prices of the subject goods are undercutting significantly the New Zealand industry’s prices.

Inventories

144. No evidence has been provided of increased inventories held by exporters or importers.

Other Factors

145. The evidence provided by the applicant supports forecast annual imports from Thailand ranging from 20,000 tonnes to [REDACTED] tonnes. The applicant considers that an importation of 13,000 tonnes of the subject goods in September 2002 “demonstrates that the importer already has the infrastructure in place to handle the importation and distribution of significant volumes.”

146. The applicant has provided a copy of a newspaper article from the *Northern Advocate, Whangarei* dated 5 September 2002 in which importer Philip Henderson of Fern Cement is reported as stating that “he was supplying only about 20,000 tonnes to 30,000 tonnes of cement a year . . .”

147. Golden Bay has accumulated information and evidence that indicates that Fern is moving towards importing at least 60,000 tonnes of cement per annum. [REDACTED]

148. The industry has provided a copy of *Perryodical*, a Perry Group newsletter, of December 2002 that states that “Fern Cement is conservatively targeting 3 to 4% of

New Zealand's market of a little over one million tonne". This infers that imports would be at least in the range of 30-40,000 tonnes.

149. The applicant states that when imports of cement commenced in about 1997, Mr Henderson of the Ton Group stated that "the company aimed to secure 10% of the New Zealand market and this would equate to 90,000 tonnes per annum." The applicant has provided Companies Office records that show Mr Henderson is a director of the alleged importer from Thailand, Fern. [REDACTED]

150. [REDACTED] indicating that arrangement of another shipment is imminent.

151. The information on likely volumes of cement imports has been supplemented by information about the development by the importer of a storage and distribution network to support increased import volumes. [REDACTED] cement silos were imported with 13,000 tonnes of cement in September 2002, the importations being reported in general terms in the *Northern Advocate, Whangarei* of 5 September 2002. The applicant notes that the silos will facilitate the transfer of cement from [REDACTED] tonne Jumbo bags of cement to tankers.

152. The applicant has provided a report from a market research company that indicates that six shipments are planned, which at 13,000 tonnes would total 78,000 tonnes per annum. The market research company also reports on significant developments in the establishment of the importer's infrastructure, including that:

- one of three Fern cement silos at Papakura has been erected;
- [REDACTED] arrangements have been made for storage; and
- [REDACTED].

153. The applicant has provided details of significant shipments in recent years through the ports of Tauranga, Napier, New Plymouth and Timaru and considers that "the importer clearly has a distribution network in place to handle cement imported through" those ports. The applicant also considers that the importer's relationship with the Perry Group, which has a significant presence in the North Island, supports the industry's claim that "the importer has and is further developing access to large and sophisticated national distribution network and market." The report by a market research company also shows that imported cement has been distributed as far south as Wellington.

154. The applicant has now provided further evidence that a shipment exceeding 9000 tonnes will in fact arrive in Timaru on 9 June 2003. [REDACTED]



Conclusion

155. There is evidence that import volumes of the subject goods have increased significantly in absolute terms in the year 2002. Also in that year, import volumes of the subject goods increased slightly relative to production and consumption in New Zealand.

156. There is evidence of an imminent importation of a significant volume of the subject goods.

4.3 Price Effects

Price Undercutting

157. *Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.*

158. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importer’s store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.

159. The applicant industry states that it “has not yet been able to establish the pricing pattern of the dumped cement imported in September [2002]”. The industry has calculated the average value for duty (VFD) per tonne from INFOS import information for September 2002 and has added estimated costs for ocean freight, stevedoring, transport to store, storage, overheads, debagging and cost of finance to establish a cost of sales figure per tonne of \$[REDACTED]. The applicant has added three different importer’s margins to the costs of sales figure ([REDACTED]%, [REDACTED]% and [REDACTED]%) and the final calculation in each case results in price undercutting of the industry’s average price per tonne. Evidence has been provided in support of the importer’s mid-range margin of [REDACTED]% in the form of the average margin range of \$[REDACTED] referred to in [REDACTED].

160. The industry has used the above method to calculate importer’s selling prices and price undercutting as shown in the following table as at September 2002.

Table 4.2: Price Undercutting (NZD per tonne)

VFD	71.24	71.24	71.24
Freight	37.43	37.43	37.43
Stevedoring	[REDACTED]	[REDACTED]	[REDACTED]

Transport to Store	██████	██████	██████
Storage	██████	██████	██████
Overheads	██████	██████	██████
Debagging	██████	██████	██████
Cost of Finance	██████	██████	██████
Cost of Sales	██████	██████	██████
Importer's Margin	██████	██████	██████
Importer's Selling Price	██████	██████	██████
Industry Average Price	██████	██████	██████
Undercutting	██████	██████	██████
% Undercutting	██████%	██████%	██████%

161. The industry has estimated the cost additions in the table above on the following bases:

- Freight has been calculated from INFOS information.
- Stevedoring includes wharfage and estimated costs have been based on costs of moving ██████ by ship.
- Transport to store costs have been based on ██████ average transport cost from wharf to a range of locations”.
- Storage costs have been estimated on the assumption that product is stored in one location. Other evidence provided by the industry indicates that the imported cement will be stored in more than one location so costs may be slightly higher, but would not reverse the overall evidence that price undercutting is occurring.
- No explanation was provided of the basis for calculating overheads and the cost provided is relatively small. Even if this cost were significantly higher, the higher cost would not reverse the overall evidence that price undercutting is occurring.
- Debagging costs are based on the industry's own costs to bag cement taking account of the cost of the silo, debagging plant and operational costs.
- The cost of finance is based on the importation of 13,000 tonnes and includes asset depreciation on a diminishing-value basis of ██████ percent and a capital-financing rate of ██████ percent, and stock holding costs for ██████ days with interest at ██████ percent. On this basis, particularly the rate of depreciation, the cost of finance appears to be overstated. Because this overstatement increases the

estimated importer's ex-store price, and reduces the likelihood of price undercutting, the Ministry considers that the approach taken by the industry is quite conservative.

162. [REDACTED] supports the \$ [REDACTED] margin per tonne, indicating that price undercutting of [REDACTED] percent is likely in areas where imports are in the market. The Ministry considers that an [REDACTED] percent reduction is likely, however, it is not considered that a reduction in price would be likely to be applied across the whole country, but would more likely be applied only in the areas where the imports are competing with the domestic product. The applicant states that areas where the imports have been sighted include Auckland, Napier, New Plymouth, Tauranga and Timaru and distributions have been made to Wellington.

163. The applicant has also provided a copy of a newspaper article about imports of cement in which importer Philip Henderson of Fern Cement is quoted as saying he was "certainly not undercutting" local suppliers. Also, the market survey report refers to the prices of the imported cement as \$ [REDACTED] per tonne in bulk and \$ [REDACTED] per tonne for 40kg bags. The applicant industry has stated that it believes that those prices "are a first response retail price for a single purchase and are in no way indicative of the actual selling price that would result after discounts, rebates, negotiations and volume considerations". The \$ [REDACTED] used by the industry is also a conservative figure as demonstrated by the calculation of the achievable importer's selling prices in Appendix 20 of the application. Appendix 20 is replicated in Table 4.2.

164. The newspaper article and market survey comments on price are indicative of the possible prices and the reasons given by the applicant industry for not accepting the price cited in the market survey report appear to be reasonable. The Ministry also notes that the average prices of the two New Zealand producers [REDACTED], and in 2002 were \$ [REDACTED] and \$ [REDACTED] respectively. The evidence provided clearly supports the likelihood that the average price of [REDACTED] will be undercut significantly and that the industry's average price is likely to be undercut by the importer's bulk price.

165. The Ministry has calculated the impact of price undercutting in 2003 assuming a situation similar to Scenario A (with imports of 30,000 tonnes and [REDACTED] NZD [REDACTED] per tonne). An assumption has been made that 66 percent of the domestic volume (approximately [REDACTED] tonnes) which is based on the percentage of the value of New Zealand building consents issued for non-residential buildings in the regions where Thai cement has been unloaded, may be affected by price reductions. The impact may be a reduction in the industry's revenue in the order of NZD [REDACTED] million (66 percent of 2002 industry sales x average industry price, less 66 percent of 2002 industry sales x discounted industry price of NZD [REDACTED]).

166. The Ministry concludes that there is sufficient evidence of price undercutting for purposes of initiation of an investigation.

Price Depression

167. *Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.*

168. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period.

169. The industry claims that price depression will be caused by the imported goods. The following table shows the average industry price per tonne since 1999 and the forecast average industry prices under the two most conservative industry scenarios.

Table 4.3: Average Selling Price (NZD per Tonne)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Average Price	██████████	██████████	██████████	██████████	██████████	██████████
Increase/Decrease		██████████	██████████	██████████	██████████	██████████
Percentage Change		██████████	██████████	██████████	██████████	██████████

170. The figures in the table show that the average price ██████████ slightly between 1999 and 2001, but ██████████ in 2002. In both forecasts scenarios A and B, price undercutting is expected ██████████ by the domestic producers and significant price depression is forecast during the calendar year 2003.

171. The Ministry concludes that there is no evidence of historic price depression, but sufficient evidence has been provided that prices are likely to be depressed.

Price Suppression

172. *Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.*

173. The Ministry has generally based its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected in declines in gross profit and EBIT expressed as a percentage of sales. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression. While the inability to recover cost increases in prices is the main indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression.

174. The industry has made no claim that the allegedly dumped imports have suppressed or will suppress its prices. The following table shows the industry's costs and gross margin relative to sales revenue. The Ministry has taken gross margin after material costs, fixed and variable costs.

Table 4.4: Price Suppression: Revenue, Costs and Gross Margin per Tonne

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Ave. Selling Price						
Cost of Production						
Gross Margin						
S & A Expenses						
Total Costs						
As a % of Revenue						
- Cost of Production						
- S & A Expenses						
Total Costs						
Gross Margin						

175. The figures in the table show that the industry's cost of production and selling and administration expenses per tonne have [REDACTED] over the period from 1999 to 2002. Gross margin has [REDACTED] over the same period, indicating that the industry has [REDACTED] during that period. The industry has not argued that this situation is due to the allegedly dumped imports.

176. Under both forecast scenarios, average selling prices [REDACTED]. The forecasts show that per tonne costs of production are expected to fall below costs in 2002, but will still be above the level of costs of production in 1999, 2000 and 2001. Gross margin is expected to decline significantly in both absolute terms and relative to sales revenue, indicating the likelihood of price suppression.

Conclusions on Price Effects

177. There is sufficient evidence of price undercutting in 2002. There is no evidence of historic price depression, but sufficient evidence has been provided that prices are likely to be depressed. The industry has made no claims in respect of price suppression, but figures provided by the industry indicate that price suppression is likely.

4.4 Economic Impact

178. Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—

- (i) *Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and*
- (ii) *Factors affecting domestic prices; and*
- (iii) *The magnitude of the margin of dumping; and*
- (iv) *Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.*

Output and Sales

179. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

Output

180. The industry claims that volume will be lost because of the allegedly dumped imports. The following table shows the industry's production volumes from 1999 to 2002 and forecast production volumes under the two most conservative scenarios.

Table 4.5: Output (Tonnes '000)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Portland cement	██████████	██████████	██████████	██████████	██████████	██████████
Increase/Decrease		██████████	██████████	██████████	██████████	██████████
Percentage Change		██████████	██████████	██████████	██████████	██████████

181. The industry's output increased ██████████. Under scenario A for 2003, the industry's output will decline significantly from 2002, but will still be above the output level in 2001. Under scenario B the output will decline but it is above the output level in 2001.

182. On the basis of the two most conservative scenarios, there is some evidence of a likely decline in output.

Sales Volume and Revenue

183. The industry claims that sales volume and sales revenue will be lost because of the allegedly dumped imports.

The following table shows the industry's sales volumes and revenues from 1999 to 2002 and forecast sales volumes and revenue under the two most conservative industry scenarios.

Table 4.6: Sales Volumes and Sales Revenue

	(Tonnes '000 and NZD000)					
	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Sales volume (Tonnes)						
Increase/Decrease						
Percentage Change						
Sales Revenue (NZD)						
Increase/Decrease						
Percentage Change						

184. The figures in the table show that the industry's sales volumes [REDACTED], and are forecast to decrease significantly under scenario A, but only slightly under scenario B. Sales revenue has [REDACTED] is forecast to decrease significantly due to [REDACTED]. The [REDACTED] leads to a forecast of a very significant loss of sales revenue under scenario A which is below the sales revenue of 2001 and 2002. The effect of [REDACTED] under scenario B leads to a forecast of a significant loss of sales revenue to below that for 2001 and 2002.

185. The Ministry considers that there is no evidence that actual sales volumes and revenues have declined. There is sufficient evidence, however, that sales volume is likely to decline and sales revenue is likely to decline significantly in 2003 under scenario A.

Market Share

186. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

187. The industry claims that market share will be lost to the allegedly dumped imports.

Table 4.7: Market Share (Tonnes '000)

	1999	2000	2001	2002	Est. 2003 Scen. A	Est. 2003 Scen. B
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NZ Industry Sales						
Thai Imports	4	4	4	17	30	13
Other Imports	4	1	0.5	1	1	1
Total market						
As a percentage of Total Market:						
- NZ Industry Sales						
- Thai Imports						
- Other Imports						

188. The figures in the table show that the market size has grown significantly. The applicant has stated that “the market size fluctuates with changes in the New Zealand construction industry”. Under both forecast scenarios it is likely to lose further market share to imports from Thailand. The overall loss of market share is expected to be percent of the market (approximately NZD million in revenue) when compared with 2001 when imports from Thailand were relatively small.

189. The Ministry considers that there is sufficient evidence that in 2002 the industry lost some market share to imports from Thailand and that it will lose further market share in 2003, which together constitutes a significant loss of market share.

Profits

190. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these. Normally, the extent of any decline in profit will be measured against the level achieved in the period immediately preceding the commencement of dumping.

191. In an investigation, the Ministry’s assessment of the impact of dumped imports is based on an examination of trends in actual profits in order to establish whether or not there is an actual or potential decline in profits. In some circumstances, it may be possible to determine that injury is being caused where profits are not declining, but that would depend on the circumstances of the case and would need to be based on positive evidence. Such an impact would also need to be attributable to the dumping of imports.

192. The industry claims that profits will be lost because of the allegedly dumped imports. The following table shows earnings before interest and tax (EBIT) from 1999 to 2002 and forecast EBIT under the two scenarios.

Table 4.8: Earnings Before Interest and Tax

	(NZD000)					
	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Sales Revenue	██████████	██████████	██████████	██████████	██████████	██████████
EBIT	██████████	██████████	██████████	██████████	██████████	██████████
As % of Revenue	██████████	██████████	██████████	██████████	██████████	██████████
Per Tonne EBIT	██████████	██████████	██████████	██████████	██████████	██████████
EBIT Change		██████████	██████████	██████████	██████████	██████████
% EBIT Change		██████████	██████████	██████████	██████████	██████████
Per Tonne Change		██████████	██████████	██████████	██████████	██████████
% Per Tonne Change		██████████	██████████	██████████	██████████	██████████

193. The figures in the table show that the industry's profit has been ██████████ since 1999. The applicant has not claimed that these declines in profitability are due to imports of the allegedly dumped goods.

194. The forecast declines in profit are significant in absolute and per tonne terms and also in relation to sales revenue. The applicant industry claims that these declines in profitability will be caused by an increase in the import volumes of dumped goods from Thailand.

195. When compared with costs in 2002, the material, variable and fixed costs used by the applicant industry in its forecast scenarios appear to be reasonable. The loss of profit forecast in scenario A arises from ██████████ with a consequent reduced contribution to fixed costs. The loss of profit forecast in scenario B arises ██████████.

196. Scenario A assumes an increase in imports from Thailand of 30,000 tonnes. This volume represents a ██████ percent increase in market share for the imports from calendar year 2002. Industry revenue equivalent to this volume of imports at the 2002 average industry price of NZD ██████ per tonne would be about NZD ██████ million, with profits before interest and tax of about NZD ██████ million. If the industry sold 30,000 tonnes of product at the reduced price (NZD ██████ per tonne) sales revenue would be about NZD ██████ million, which would be a loss in sales revenue in the order of NZD ██████ and earnings before interest and tax of NZD ██████. If the industry lost some sales volume in addition to the price reduction then the impact would be somewhat greater than this. (A loss of all 30,000 tonnes at 2002 prices would be a loss of NZD ██████ million in revenue). The industry has stated that in addition to the loss of profit on sales resulting from the price reduction, there is also the loss of the total contribution from the sales that are lost to imports.

197. The industry has stated that it has lowered its prices “in some circumstances” in order to match or compete with the prices being offered or quoted for imports. Presumably this is mainly in reaction to the September 2002 import of 13,000 tonnes since this has been the only significant import [REDACTED]. The Ministry considers that it is more likely that the industry’s current approach to price cutting would continue, at least in the short term, rather than [REDACTED]. The industry has stated that the importer has been setting up a distribution network and has made imports of cement to five sites in New Zealand. The industry has stated that the importer has distributed some of that product further afield. It is considered, on this basis, that some major markets would be affected.

198. The Ministry has also estimated the potential decline in EBIT from the 2002 market if 30,000 tonnes of Thai imports (an increase of [REDACTED] percent market share) entered the New Zealand market in 2003. The Ministry has used its assessment of 66 percent of 2002 domestic sales being affected (based on regional non-residential building consents) by a reduction in price to NZD [REDACTED]. Based on these assumptions the industry’s total revenue in 2003 would be approximately NZD [REDACTED] million with an EBIT of NZD [REDACTED] million, which is a reduction in EBIT from 2002 of NZD [REDACTED] million. This translates to percentage change in EBIT of [REDACTED] percent (compared with [REDACTED] percent in scenario A). The Ministry considers that this potential reduction in EBIT is significant.

199. The Ministry considers that there is sufficient evidence of a likely significant decline in profit in 2003.

Productivity

200. Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

201. The applicant industry has made no claims in relation to productivity, but each producer has provided productivity measurements in terms of volume produced per employee that can be matched to assess the impact on the productivity of the industry as a whole. The following table shows changes in output per employee.

Table 4.9: Productivity (Tonnes ‘000)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Tonnes Per Employee	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Increase/Decrease		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Percentage Change		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

202. The figures show that productivity per employee was [REDACTED] until 2001 and [REDACTED] in 2002. Productivity per employee is forecast to decline under scenarios A and B, but is not expected to fall below productivity levels between 1999 and 2001.

Return on Investments

203. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

204. The industry claims that return on investment will be lost because of the allegedly dumped imports. The Ministry notes above under the heading 'Profits' that there is sufficient evidence of a likely decline in profit that will adversely affect return on investments. The two producers provided asset figures (current and fixed combined) and the following table shows changes in returns on assets.

Table 4.10: Return on Investments (\$000)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Average Assets	██████████	██████████	██████████	██████████	██████████	██████████
EBIT	██████████	██████████	██████████	██████████	██████████	██████████
EBIT as % of Assets	██████████	██████████	██████████	██████████	██████████	██████████

205. Assets declined between 1999 and 2002 by ██████████ percent. The figures in the table show that return on investment in assets ██████████ slightly between 1999 and 2002. Forecast figures indicate that return on assets would ██████████ significantly under scenarios A and B.

Utilisation of Production Capacity

206. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

207. The industry claims that there will be increased under-utilisation of capacity caused by the allegedly dumped imports. The Ministry notes above under 'Output' that there is evidence of the likelihood of some decline in output, but that output will still be above the output level in 2001.

208. The following table shows the levels of utilisation of production capacity.

Table 4.11: Utilisation of Production Capacity (Tonnes 000)

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Capacity	██████████	██████████	██████████	██████████	██████████	██████████

Production	
Utilisation %	

209. The figures in the table show that the industry’s utilisation of production capacity is relatively high and that it to in 2002. Utilisation of production capacity is expected to fall under scenarios A and B, but will still be at or above capacity utilisation levels between 1999 and 2001.

Other Adverse Effects

210. In considering other adverse effects, the Ministry considers actual and potential effects on cash flow, inventory, employment, wages, growth, ability to raise capital, and investments.

Cash Flow

211. The industry claims that cash flow will be reduced because of the allegedly dumped imports. Industry cash flow increased significantly in 2002.

212. The industry’s forecast cash flow figures show that under scenarios A and B, cash flow would decline significantly in 2003 from the level on 2002, but would respectively be equal to or above the cash flow level in 2001.

Inventories

213. The industry claims that if injury expands there may be a negative impact in terms of a build-up of inventories. Holcim commented that imports will result in its inventories increasing “to a point where eventually kilns will have to be stopped due to lack of space.”

Employment and Wages

214. The industry claims that . No claims have been made in relation to adverse effects on wages.

215. The following table shows . Numbers of employees are based on the beginning of each period, except for the forecast figures that show the impact of imports in those years.

Table 4.12: Employment

	1999	2000	2001	2002	Est. 2003 (Scen. A)	Est. 2003 (Scen. B)
Employees						
Increase/Decrease						
Percentage Change						

216. The figures show that employment by the industry has [REDACTED] since 1999 and is forecast to [REDACTED] in 2003.

Growth

217. The applicant industry has made no claims in relation to adverse effects on growth.

Ability to Raise Capital

218. The industry claims that if injury expands there may be a negative impact in terms of an inability to raise capital.

Investments

219. The applicant industry has made no claims in relation to investments.

4.5 Other Causes of Injury

220. Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—

- i. The volume and prices of goods that are not sold at dumped prices; and
 - ii. Contraction in demand or changes in the patterns of consumption; and
 - iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and
 - iv. Developments in technology; and
 - v. Export performance and productivity of the New Zealand producers; and
- (f) The nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Factors Other than Dumping

221. The applicant industry has stated that it “is not aware of any other causes of injury.”

Non-dumped Imports

222. The INFOS import information, shows that the main sources of imports in 1998 were China and Indonesia and in 1999 were Malaysia and Thailand. In the past three years, Australia has been the only significant supplier of cement apart from Thailand. The volumes of imports from Australia have been substantially less than the volumes of imports from Thailand. Imports from Australia in 2002 represented only 7 percent of imports.

Demand or Consumption Change

223. The applicant has not identified any changes in demand or consumption.

Restrictive Trade Practices

224. The applicant has not identified any restrictive trade practices that are having an adverse impact on the industry.

Developments in Technology

225. The applicant industry has stated that “there have been no significant changes in production methods, end uses of the product or the requirements of users”.

Export Performance

226. The industry exports cement and the Ministry understands that the financial information relating to Portland cement does not include financial information relating to exports. There is no evidence that exports have impacted on the industry’s domestic business.

Imports by the Industry

227. The applicant industry has stated that it “has not imported any GPPC [Portland cement] in the previous twelve months”. Customs data, however, indicates that small quantities of cement were imported () by the industry from . These imports were made by . These imports were so insignificant that it is not thought that they would have caused injury to the New Zealand industry.

Other

228. The applicant has provided a copy of a newspaper article about imports of cement in which importer Philip Henderson of Fern Cement is quoted as saying that the main [New Zealand] producers are hard-pressed to supply the domestic market. On the other hand, .

Conclusion on Other Factors

229. There is no evidence that injury is being caused by other factors.

4.6 Conclusions Relating to Threat of Material Injury

Import Volumes

230. There is sufficient evidence that import volumes of the subject goods have increased significantly in the rate of imports and have significantly increased in absolute terms. The subject goods have increased slightly in volume relative to production and consumption in New Zealand.

There is sufficient evidence of an imminent importation of a significant volume of imports of the subject goods.

Price Effects

231. There is sufficient evidence of price undercutting and likely price depression and suppression. There is no evidence of historic price depression and no claims have been made in respect of price suppression.

Economic Impact

232. There is no evidence that actual sales volumes and revenues have declined. There is sufficient evidence however that sales volume is likely to decline and sales revenue is likely to decline significantly in 2003.

233. There is sufficient evidence that in 2002 the industry lost some market share to imports from Thailand and that it will lose further market share in 2003.

234. There is sufficient evidence of a likely significant decline in profit in 2003.

235. Productivity per employee is likely to decline in 2003, but is not expected to fall below productivity levels between 1999 and 2001.

236. Return on investments is likely to decline significantly in 2003.

237. Utilisation of production capacity is likely to decline in 2003, but will still be above capacity utilisation levels between 1999 and 2001.

238. Cash flow is expected to decline significantly in 2003. No evidence has been provided of imminent adverse effects on inventories, growth, ability to raise capital, employment and wages, and investments.

Other Causes of Injury

239. There is no evidence that injury is being caused by other factors.

Threat of Material Injury

240. Articles 3.7 and 3.8 of the WTO Anti-Dumping and Countervailing Agreement state that:

3.7 A determination of a threat of material injury shall be based on facts and not merely on 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.¹ In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

¹One example, though not an exclusive one, 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.

- (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 any 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; and
- (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

241. The two most conservative scenarios that were used in this report were based on individual company scenarios that were combined by the Ministry, and have been used as a conservative test of whether there is sufficient evidence of a threat of material injury. There is sufficient evidence to support scenario A being a realistic conservative forecast of the likely effect on the industry as a whole.

242. There is evidence of a significant increase in the rate of allegedly dumped imports indicating a likelihood of substantially increased importation.

243. There is sufficient evidence that the exporter has a large capacity to produce Portland cement and is planning to expand its production and that the forecast 30,000 tonnes imported into New Zealand in scenario A or the capacity to increase that volume, is considered to be insignificant relative to the exporter's capacity.

244. The Ministry is satisfied that a threat of injury from allegedly dumped imports is clearly foreseen and imminent and is further supported by the arrival of another shipment of Portland cement in New Zealand in the near future which is likely to depress and suppress prices.

245. There is no evidence of increased inventories, however, there is evidence that the importer or a related company is setting up an infrastructure that could support a considerably larger volume of imports and which the importer has stated its intention to achieve.

246. These conclusions are based on a conservative interpretation of the industry's scenarios. The Ministry notes that evidence was also supplied in support of other industry scenarios and that threat of greater material injury than that discussed in this report is also possible.

5. Conclusions

247. On the basis of the information available, it is concluded that there is sufficient evidence that:

- a. general purpose Portland cement from Thailand is being dumped; and
- b. by reason thereof material injury to the industry is being threatened.

6. Recommendations

248. It is recommended on the basis of the conclusions reached and in accordance with section 10 of the Dumping and Countervailing Duties Act 1988:

- a. that the Chief Executive formally initiate an investigation to establish whether imports of general purpose Portland cement from Thailand are being dumped and thereby threatening to cause material injury to the New Zealand industry producing like goods;
- b. that the Chief Executive sign the attached *Gazette* Notice, and give notice to interested parties in accordance with section 9 of the Act.

Investigating Team
Trade Remedies Group