

Portland Cement from Thailand

Non-Confidential Final Report

Dumping and Countervailing Duties Act 1988 Dumping Investigation

Ministry of Economic Development

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Trade Remedies Group

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
CIF	Cost, Insurance and Freight
CSM	Cementthai Sales and Marketing Co., Limited
EBIT	Earnings Before Interest and Tax
Fern	Fern Cement Limited
FOB	Free on Board
Holcim	Holcim Cement Division
Golden Bay	Golden Bay Cement Division
GP	General Purpose Portland Cement
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
SCI	Siam Cement Industry Co., Limited
SCT	Siam Cement Trading Co., Limited
THB	Thai Baht
Chief Executive (the)	Chief Executive of the Ministry of Economic Development
USD	United States Dollars
VFD	Value for Duty
WTO	World Trade Organisation

1. Proceedings

1.1 Proceedings

1. On 25 February 2003, the Chief Executive of the Ministry of Economic Development (“Chief Executive”) accepted a properly documented application from the New Zealand cement industry, alleging that general purpose Portland cement from Thailand was being dumped and by reason thereof threatening to cause material injury to the New Zealand industry.

2. On 6 June 2003, the Chief Executive formally initiated an investigation pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (“the Act”), on being satisfied that sufficient evidence had 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 accordance with section 10 of the Act, the Ministry’s investigation was to determine both the existence and effect of the alleged dumping of Portland cement from Thailand.

4. The purpose of this report is to provide a summary of the matters established by the investigating team as a basis for a termination of the investigation to be made under section 11 of the Act. It should be noted that this report provides a summary only of the information analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.

5. Following verification visits to all interested parties, and in accordance with section 10A of the Act, the parties to the investigation have been given written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act, but were advised at that time that, “in the absence of any evidence to the contrary, the findings in the Essential Facts and Conclusions Report provide grounds for the Minister to consider terminating the investigation.” This Report includes consideration of responses made by parties as a result of that advice.

Grounds for the Application

6. The cement industry claims that as a result of the alleged dumping, there is a threat of material injury from:

- increased volumes of the allegedly dumped imports;
- price undercutting and price depression;

which will result in:

- loss of volume;
- loss of market share;
- loss of revenue;
- loss of profits;
- loss of return on investments; and
- adverse effects on cash flow, inventories, employment, and ability to raise capital.

7. The Portland cement industry has stated in its application that the threat of material injury arises from the importation of one shipment of the allegedly dumped Portland cement in September 2002. It also advised that another shipment was on the way to New Zealand, and this arrived in June 2003, shortly after this case was initiated. No claims of current material injury have been made.

8. 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 is threatened with injury.

1.2 Interested Parties

New Zealand Industry

9. The application was submitted by Bell Gully, Trade Law Group on behalf of Golden Bay ("Golden Bay"), a division of Fletcher Concrete and Infrastructure Limited and Holcim (New Zealand) Limited ("Holcim"). The companies are the only producers of Portland cement in New Zealand. The Chief Executive was satisfied that the application was made by or on behalf of the New Zealand industry producing like goods, and had the amount of support required by section 10(3) of the Act.

Thai Producer

10. The Thailand producer of the goods is Siam Cement Industry Co., Limited ("SCI") which manufactures cement for its domestic market and for export. Export and domestic sales are made through subsidiary companies SCT Co., Limited ("SCT") for exports and Cementthai Sales and Marketing Co., Ltd ("CSM") for domestic sales. Under SCI there are four wholly owned cement subsidiaries producing Portland cement of which two, the Siam Cement (Kaeng Khoi) Co., Limited and The Siam Cement (Ta Luang) Co., Limited export Type I and Type III Portland cement to New Zealand, which are the subject goods. SCI has headquarters in Bangkok and production facilities elsewhere in Thailand.

Importers and Exporters

Fern Cement Limited

11. The importer of the Portland cement is Fern Cement Limited ("Fern"). According to New Zealand's Companies Office database, Fern is owned by Supreme Cement Limited, Holm Sweet Holm Limited, Philip Henderson and Ian McCulloch. Supreme Cement Limited is owned by Perry Group Limited and Holm Sweet Holm Limited is owned by Ian and Hilary Holm.

Siam Cement Trading Co., Limited

12. All exports are made through SCT, which is the export-marketing arm of the Siam Cement group of companies and handles the Group's international trading and marketing for a wide range of products, including cement. The Portland cement exported to New Zealand is manufactured at the Kaeng Khoi plant at Saraburi (Type I) and Ta Luang plant at Saraburi (Type III). Siam Cement operates other plants within Thailand that also produce Portland cement (for both the domestic and export markets), and together these plants make up the cement manufacturing activities of SCI.

1.3 Imported Goods

13. The investigation was initiated on the basis of the subject goods described as:

General purpose Portland cement.

14. At the time of initiation of the investigation it was considered that the description of the subject goods described above covered both types of Portland cement, general purpose and high early strength and this was clear in the Initiation Report and in information sent to interested parties. During the investigation verification visits to the New Zealand industry, exporter and importer have been undertaken and a greater understanding of the goods has emerged.

15. The imported goods are Portland cements Type I and Type III and the industry produces general purpose and high early strength (rapid hardening) Portland cement with the difference being the degree of grinding. The Ministry considers that general purpose and high early strength Portland cement are like goods (discussed further under section 2.1: Like Goods) but the description of the subject goods at the time of initiation was a generalised explanation. It has been noted that 'general purpose' describes the cement's application e.g. for structural concrete, mortars, renders, grouts and cement based products. However, this description does not apply to the application of high early strength Portland cement, as it is a special purpose cement primarily used for precast work or concrete manufactured products when quick turnaround of moulds is desired. Therefore, having considered all aspects of the subject goods from Thailand and the New Zealand produced goods the Ministry has revised its description of the subject goods to the following:

General purpose and high early strength (rapid hardening) Portland cement

Submission by SCT

16. In response to the Essential Facts and Conclusions Report, SCT commented "that the revision of the subject goods from 'general purpose Portland cement' to 'general purpose and high early strength (rapid hardening)' is not proper. At the time of initiation, the investigation was limited to general purpose Portland cement".

Ministry's Response

17. The Initiation Report described the imported goods as "2 types of grey cement, Type I and Type III" (paragraph number 29) and "According to the American Society for Testing and Materials Specifications 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" (paragraph number 30). The conclusion on like goods in the Initiation Report described the subject goods (paragraph 64) as two types of cement, Type I and Type III Portland cement.

18. At initiation, therefore, the Ministry noted both types of Portland cement imported from Thailand were clearly shown to be the imported goods and therefore subject to the investigation. Throughout the investigation all communication with interested parties and verification of information was on the basis of two types of Portland cement. The Ministry, therefore, does not consider that the revised description of the subject goods is incorrect, but it defines the goods more clearly.

19. The revised description of goods does not alter the classification of goods by the New Zealand Customs Service ("Customs"). A small volume of goods which had unit values higher than the range of unit values that Portland cement enters New Zealand at, and which were not the subject goods have been removed from the import data. Goods that were classified incorrectly have also been removed.

20. 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 or 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

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

1.4 Investigation Details

22. In this report, unless otherwise stated, years are calendar years and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for Customs purposes.

23. The period of investigation for dumping is the year to April 2003, while the investigation of injury involves evaluation of the threat of injury in calendar years 2003 and 2004, and looks at industry data prior to this for trends.

1.5 Exchange Rates

24. Article 2.4.1 of the Agreement provides as follows:

When the comparison under paragraph 4 [of Article 2] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale⁸, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

⁸ Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

25. In this report, when dealing with information provided by exporters, the exchange rate used is the forward exchange rate used by the exporter for the shipment in question and where value of the shipment was not fully converted at that rate, the exchange rate for the date of sale (as established by the investigation) was taken from www.oanda.com.

26. In this Report, when dealing with Customs data, including VFD and CIF values in foreign currency, the amounts are converted to VFD and CIF to NZD values by use of the Customs exchange rate applicable to that shipment. The rates are published each fortnight in the Customs *Release*.

1.6 Disclosure Of Information

27. The Ministry of Economic Development makes available all non-confidential information to any interested party through its non-confidential (Public File) system.

28. Article 6.7 of the Agreement provides as follows:

In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

29. A verification visit was carried out at Siam Cement Trading, the export arm of Siam Cement Industry Co., Limited. SCI and CSM were also represented.

30. A copy of the Verification Report was provided to the exporter visited, and a non-confidential copy placed on the Public File.

31. Article 6.8 of the Agreement provides as follows:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

32. The exporter supplied all of the information requested.

33. Section 10A of the Act provides as follows:

(1) Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the Secretary shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

(2) Nothing in subsection (1) of this section limits the Official Information Act 1982 or section 10(7) of this Act.

34. In order to meet this obligation, essential facts and conclusions were provided to interested parties on 28 October 2003, being 144 days after the initiation of the investigation. Comments received from Bell Gully (on behalf of the industry), Siam Cement Trading Limited, and Fern Cement Limited were taken into account in preparation of this Final Report.

2. New Zealand Industry

35. 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

36. In order to establish the existence and extent of the 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 Subject Goods

37. The goods which are the subject of the investigation are described as follows:

General purpose and high early strength (rapid hardening) Portland cement.

38. Note: the above description of the subject goods differs from the description at the time of initiation of the investigation, see section 1.3: Imported Goods.

New Zealand Production

39. The industry (Golden Bay and Holcim) produces and sells Portland cement. The industry produces two types of Portland cement, namely general purpose and high early strength (rapid hardening) which are sold under their own respective brand names.

40. The industry claimed 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. The industry states the differences are variations in the chemical composition of the Portland clinker, and the percentage of additives. The similarities refer to the method of production of Portland clinker, distribution via the same or similar channels and the same end use.

Imported Goods

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

42. The grey cement is imported as two types, Type I and Type III. The difference between the two Types is the quantity of the gypsum and the fineness of the particles. The manufacturer in Thailand, SCI, tests its cement according to its own standards as well as the American Society for Testing and Materials Specification C-150-00 ("ASTM"). According to the ASTM, 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 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

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

- (a) physical characteristics, which includes appearance, size and dimensions, components, manufacturing process 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.

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

45. Other cement products produced by the industry that could also be like goods are Golden Bay's Ciment Tropical and Holcim's Easicrete, Mortaplus, Quickcrete and Duracem.

Physical Characteristics

Appearance and Chemical Components

46. The imported Portland cement (Type I and Type III) is a powder that is made from ground Portland clinker and a proportion of gypsum. The difference between the two types of imported Portland cement's components is the quantity of the gypsum. Both types of imported Portland cement have no mineral cement extenders.

47. Holcim's Ultracem and Golden Bay's general purpose is ground Portland clinker, which is mixed with less than 5 percent of gypsum and may contain up to 5 percent mineral cement extenders. Holcim's Rapidcem is ground from Portland clinker and mixed with gypsum but does not contain any mineral cement extenders. However, Golden Bay high early strength contains ground Portland clinker, gypsum and a small percentage of mineral extenders.

48. The following table shows the nominal components:

General Purpose	Clinker %	Gypsum %	Mineral cement extenders%
Golden Bay general purpose	91	4	5
Holcim Ultracem	90	5	5
SCI Type I			

High Early Strength			
Golden Bay high early strength			
Holcim Rapidcem			
SCI Type III			

Standard Requirements

49. In addition to SCI's own standard the Portland cement is tested according to the ASTM standards C 150-85. The ASTM covers eight types of Portland cement. Portland cement is defined according to the ASTM as "a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition".

50. The New Zealand produced Portland cement conforms to the New Zealand standard NZS3122:1995 for the domestic market in New Zealand. The scope of the NZS 3122:1995 "specifies requirements and methods of test for hydraulic cements consisting of Portland cement or of mixtures of Portland cement and one or both of

fly ash and ground granulated iron blast-furnace slag". "It does not purport to provide for all of the requirements which may be needed in specific applications". The New Zealand standard provides for the cement types, sampling and testing, requirements, packaging with appendices on chemical composition, method for determination of loss of ignition, method for determination for potential compounds and normal consistency of Portland and blended cements.

51. Cement types described in the New Zealand standard are as follows:

General Purpose Cements	
Type GP	General purpose Portland cement
Type GB	General purpose blended cement
Special purpose cements	
Type HE	High early strength cement
Type LH	Low heat cement
Type SR	Sulphate resisting cement
Type SL	Shrinkage limited cement

52. The New Zealand standard describes Portland cement as "A hydraulic cement which is manufactured as a homogeneous product by grinding together Portland cement clinker and calcium sulphate, and which at the discretion of the cement manufacturer may contain up to 5 percent of mineral additions". Blended cement is described as "A hydraulic cement containing Portland cement and a quantity greater than 5 percent of flyash or granulated iron blast-furnace slag or both".

Manufacturing Process

53. SCI and the industry manufacture Portland clinker under the same Portland process. SCI and Golden Bay use a "dry" production process. However, Holcim uses a "wet" production process, which requires more energy to heat and dry the mix.

54. SCI provided an explanation of its manufacturing process in its questionnaire response and it is recorded in its verification report.

55. Holcim's manufacturing process of Portland cement is described in detail in its verification report which is supported by Holcim's 'Annual Review 2002' report. Golden Bay's manufacturing process of Portland cement is also described in detail in its verification report.

Technology

56. SCI states that it uses world class technology in its production of Portland cement which is backed by experience, expertise and efficiency and it is one of the low-cost cement producers of the Association of South East Asian Nations.

57. The industry monitors its manufacturing of Portland cement as it takes samples at different stages of its production process to ensure it meets the New Zealand standard NZS 3122:1995 and it is predictable in its performance. Golden Bay's technical team monitors the manufacturing process and its Portland laboratory, which is ISO 9002 certified, has seen major investment in both testing and maintaining equipment in recent years. Holcim's interests span more than 70 countries, which provides it with 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.

Function and Usage

Application

58. 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.

59. Type I Portland cement is suitable for structural concrete works such as roads, bridges, dams, high rises and all types of concrete products, all of which require a high comprehensive strength. Type III Portland cement is suitable for concrete works requiring high early comprehensive strength such as for foundation piles, columns and beams. The initial setting time of Type I and Type III is normally 105 minutes and 80 minutes respectively.

60. Golden Bay's general purpose Portland cement which is similar to Holcim's Ultracem is considered ideal for use in structural concrete, mortars, renders, grouts and cement based products where the properties of low heat hydration are specified. It can also be used as a general binder for applications such as soil stabilisation. Holcim's Rapidcem, which is similar to Golden Bay's high early strength 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 initial setting time, all other factors considered, for general purpose and high early strength is 100 minutes and 74 minutes respectively. The initial setting time, all other factors considered, for Ultracem and Rapidcem is 105 minutes and 80 minutes respectively.

61. The area that Portland cement covers is less important to the end user than its strengthening qualities. Compressive strength is measured by Mpa at intervals of 3, 7, and 28 days. High early strength Portland cement differs in its early strengthening capabilities from general purpose cement but over a longer period (28 days) the compressive strength is similar. The Portland cement produced by the industry is tested continually throughout the production process according to the New Zealand standard 3122:1995 and Fern arranges for an independent test by OPUS

International Consultants of the imported Portland cement every 6 weeks approximately. The following table is a snapshot of results:

	Mpa at 3 days	Mpa at 7 days	Mpa at 28 days
General purpose	35	48	62
Ultracem	34.5	46	60
Type I	33.2	47.5	62.5
High early strength	35.8	47.3	62.8
Rapidcem	41	51.5	61
Type III	45.9	53.7	65.1

Substitution

62. Types I and III can be substituted for one another especially substitution of Type I by Type III in cases of limited time. Moisture content and temperature of concrete aids the chemical reaction of hydration and it is the heat generated from the chemical reaction during setting that determines the setting times and this is dependent on the chemical composition of the cement rather than environmental factors.

63. Golden Bay's general purpose and Holcim's Ultracem can be substituted by the imported Portland cement Types I and III and Golden Bay's high early strength and Holcim's Rapidcem can be substituted by the imported Portland cement Type III. High early strength and Rapidcem can substitute General Purpose and Ultracem and the reverse can apply when high early strength is not required. The industry states it is not cost effective to substitute high early strength and Rapidcem with general purpose and Ultracem as a higher quantity of cement and/or additional accelerators and/or water reducing additives need to be used to gain the same early strength qualities.

Form Sold

64. Type I and Type III is sold on New Zealand's domestic market in bulk bags of 1 tonne, 2 tonnes and smaller quantities of 50kg or 25kg bags.

65. Portland cement produced by the industry is available either in bulk or bag. On average 80 percent (Holcim at 70 percent and Golden Bay at 80 percent) of sales are by bulk and 20 percent (Holcim at 30 percent and Golden Bay at 20 percent) are by bag. Bulk cement is distributed by pressurised road tankers in accordance with customers' requirements and bagged cement is available in 1.3 tonne bulk bags, 40kg and 25kg bags, which are multi-walled paper sacks or made of strong paper lined with plastic.

Pricing Structures

66. The basis of the purchase price by Fern is [REDACTED]. The price per tonne differs between Type I and Type III. For the shipment that arrived in New Zealand in September 2002 the price per tonne was USD [REDACTED] (Type I) and USD [REDACTED] for Type III. When converted to NZD using the Customs exchange rate at the time of import the price per tonne was NZD [REDACTED] (Type I) and NZD [REDACTED] (Type III) with a weighted average for both Types of NZD [REDACTED] per tonne. With costs added to the point of ex-store the prices per tonne for Type I and Type III are NZD [REDACTED] and NZD [REDACTED] respectively with a weighted average of both types at NZD [REDACTED].

67. The industry's price of Portland cement differs between general purpose and high early strength. For calendar years 1999 to year-to-date June 2003 Holcim's ex-factory bulk sale prices of both types excluding distribution costs to customer's ranges from NZD [REDACTED] to NZD [REDACTED]. Over the same period the prices per tonne of Golden Bay's bulk sales are NZD [REDACTED] to NZD [REDACTED].

Marketing Issues

Advertising and Brand Recognition

68. Fern sells on New Zealand's domestic market Types I and III cement under the name of "Fern Cement" as Type G.P (ordinary Portland) or Type H.E (rapid hardening). Its bags show the logo of "Fern Cement, the Independent Alternative" and it promotes the sale of its products via its website, which is accessed through the Perry Group Limited's website.

69. The industry sells its products under its own brands, General cement (Type GP), High early strength, Ultracem and Rapidcem. Holcim has recently been through a branding exercise whereby all of its cement products are now sold as a brand name. The industry does not [REDACTED], as cement is a composite material of a finished product but in relation to [REDACTED]. It does promote its production and sale of Portland cement by way of brochures and the Internet that shows the range of products and features of each type of Portland cement.

Distribution Channels

70. Fern imports its cement in [REDACTED] tonne and [REDACTED] tonne bags and its sales are on the basis of [REDACTED]. It has 4 depots/storage facilities in New Zealand, Papakura, Te Poi, Napier and Timaru [REDACTED]. It has debagging operations at [REDACTED] and [REDACTED] to transport its sales of bulk cement. Its bagging facility, to supply [REDACTED] kg and [REDACTED] kg bags of cement, [REDACTED].

71. The industry supplies its product as bulk and 1.3 tonne bulk bags, 40kg and 25kg bags. Its distribution centres or depots throughout New Zealand manage its sales of bulk and bagged cement.

72. The distribution channels are described in detail in each respective verification report, which can be sighted on the Public File. In summary the Portland cement is produced at Holcim's Westport and Golden Bay's Portland plants and transported by the industry's marine tankers, *Milburn Carrier II*, *Westport* (Holcim) and the *MV Golden Bay* (Golden Bay) to a number of ports nationwide. The cement is pneumatically discharged into port silos from which road tankers are loaded for sales that are mainly to [REDACTED] companies. The bagging of cement is undertaken at the plant and/or distribution centres/depots, which are sold mostly to [REDACTED] such as [REDACTED]. A small percentage of bulk and bagged sales are to [REDACTED] companies and [REDACTED].

Other

Tariff Classification

73. 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 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 where the proportion of iron oxide (Fe_2O_3) is greater than 0.5%.

Other Cement Products

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

- Easicrete - is a ready-to-use concrete mix for smaller concreting projects around a home, just add water.
- Mortaplus - is a ready-to-use mortar mix that is ideal for all types of masonry work, just add water.
- Quickcrete - is a dry concrete mix designed for applications where fast setting is desirable such as installing posts, just add water.
- Duracem - is a blended specialist cement that incorporates a high proportion of blast furnace slag. It is used in concretes exposed to harsh environments such as marine structures and food processing areas.
- Ciment Tropical - is a general purpose blended cement for warm coastal environments such as the Pacific Island group where a superior performance is required.

Conclusions Relating to Like Goods

75. The Portland cement imported from Thailand is a grey powder that has been ground from Portland clinker and gypsum. It is imported as Type I and Type III in [REDACTED] tonne and [REDACTED] tonne bulk bags. Type I is a high compressive strength Portland cement which is suitable for structural concrete works such as roads, bridges, dams,

high rises and all types of cement based products. Type III Portland cement is suitable for concrete works requiring high early compressive strength such as foundation piles, columns and beams.

76. The industry's Portland cement is a grey powder that has been ground from Portland clinker and gypsum and up to 5 percent mineral cement extenders. The industry produces two types of Portland cement, general purpose and high early strength and it is available nationwide by bulk and 1.3 tonne bulk bags, 40kg and 25kg bags. General purpose Portland cement is suitable for use in structural concrete, mortars, renders, grouts and cement based products and can be used as a general binder for applications such as soil stabilisation. High early strength Portland cement is a special purpose Portland cement that can be used for general concrete in winter conditions but it is more suitable for use in precast work and concrete manufactured products when quick turnaround of moulds is desired.

77. Considering all factors on like goods i.e. physical characteristics, function and/or usage, pricing structures, marketing and other considerations the domestically produced goods are not like in all respects to the imported Portland cement from Thailand. The industry's Portland cement differs in its percentage of Portland clinker, gypsum and mineral extenders. However, in terms of section 3(1) of the Act, in the absence of like goods in all respects, goods that have characteristics closely resembling the imported goods are like goods. The domestic Portland cement is produced under a similar Portland process and has similar characteristics, its application is similar, testing under the New Zealand standard has shown no significant difference in performance, each type can be substituted by the other under certain circumstances, its pricing structure does not vary significantly that it could not be considered a like good and its distribution channels, packaging and end use are similar. In terms of section 3(1) of the Act, therefore, the Portland cement produced by the industry is a like good to the subject goods.

78. The industry produces other dry mix cement products such as ready-to-use concrete mixes and specialist blended cements. Put simply, to create concrete, Portland cement is mixed with sand, aggregate and water whereas ready-to-use concrete mixes require only water to create concrete. Blended cements are specialist cements consequently they are higher in price and while they can replace general purpose Portland cement in some circumstances, the reverse cannot apply. The ready-to-use concrete mixes and blended cement are not like in all respects to the imported product nor do they have characteristics that closely resemble the imported product therefore they are not like goods as provided by section 3 of the Act and are not included in this investigation.

2.2 New Zealand Industry

79. The application was submitted by Bell Gully Trade Law Group on behalf of Golden Bay and Holcim as New Zealand producers of Portland cement. Golden Bay and Holcim are the only producers of Portland cement in New Zealand and as such met the requirements of section 10(3) of the Act with regard to the levels of support, so the applicants had standing to make an application

80. Golden Bay Cement is a division of Fletcher Concrete and Infrastructure Limited ("FCI") which is a company fully owned by the publicly listed company Fletcher Building Limited. Holcim Cement is a division of Holcim (New Zealand) Limited, which is 100 percent owned through a number of other companies by the parent company Holcim Limited a Swiss-based supplier of cement, aggregates and concrete.

81. The like products under investigation that are made by Golden Bay are general purpose Portland Cement and high early strength. Holcim manufactures Ultracem and Rapidcem.

82. The Ministry has not found any other New Zealand producers of Portland cement that are producing like goods.

2.3 New Zealand Market

83. The following table shows the New Zealand market for Portland cement. Import volume figures have been compiled from Customs import data for the calendar years 2000 to 2002. The forecast figures for calendar year 2003 are based on Customs data up to and including September 2003 and annualised for the calendar year 2003 taking into account the importer's and exporter's statements that [REDACTED]. For the forecast figures for 2004, the Ministry has estimated dumped imports based on the importer's assessment of its capacity, the importer's intentions to import and the exporter's statements that [REDACTED].

The New Zealand market figures for Portland cement are therefore as follows:

Table 2.1: New Zealand Market (Tonnes – Calendar Years)

	2000	2001	2002	Forecast 2003	Forecast 2004
Subject Goods	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]*	[REDACTED]*
Other Imports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]*	[REDACTED]*
Total Imports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NZ Industry Sales	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]*	[REDACTED]*
NZ Market	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

* Estimated by the Ministry.

3. Dumping Investigation

84. 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.”

3.1 Introduction

Siam Cement Industry Co., Limited

85. SCI is part of the Siam Cement Group of companies, and manufactures cement for both the Thai domestic market and for export. Export and domestic sales are made through the subsidiary companies SCT for exports and CSM for domestic sales. The first arm's length sale is made from SCT and from CSM into their respective markets, and these prices (the base prices) have been used as the starting point to make adjustments to enable a fair comparison to be made between the export price and the normal value.

3.2 Export Prices

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

(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be-

(a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents-

- (i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
- (ii) ...

Export Sale

87. Over the dumping period SCT exported ██████████ tonnes of Type I Portland cement and ██████████ tonnes of Type III Portland cement. The sales were made to one importer, Fern ██████████ basis and there is no relationship between SCT and Fern other than a business relationship so the sale made to Fern is an arm's length transaction.

Base Prices

88. Base prices are the [REDACTED] invoice prices for Type I and Type III in [REDACTED] converted to THB on the basis of an average of the forward exchange rates and the Oanda rate (www.oanda.com) at the date of sale.

Adjustments

Costs of Packing

89. Exports of bulk Portland cement were packed in [REDACTED] tonne bulk bags. Sales on the domestic market are in bulk and not in bulk bags therefore an adjustment was made of THB [REDACTED] per tonne for the cost of packaging.

Inland Freight

90. The Kaeng Khoi and Ta Luang factories that produce Portland cement are located in Saraburi. These plants supply Portland cement of Type I and Type III that may be exported. From Saraburi the bulk cement is shipped by barge down the Chao Phraya river to the seaport Koh Sichang.

91. Inland freight refers to the moving of the cement from SCI's factories at Kaeng Khoi and Ta Luang to the barges, the loading of the barges, transportation down the Chao Phraya and unloading at Koh Sichang. Based on verified information the adjustment was THB [REDACTED] per tonne.

Surveyor Fee

92. The surveyor measures the weight of the vessel by the waterline of the ship before and after loading. The surveyor also checks that the vessel is clean and the hatches are watertight and sealed properly so that there are no leaks. If requested the surveyor takes samples to analyse the cargo for quality and to count the number of bags and their condition.

93. The surveyor fee was THB [REDACTED] per tonne. An additional THB [REDACTED] per tonne was charged for a quality analysis of the cement to be undertaken before being shipped. An adjustment was made for the collective amount.

Handling and Stevedore Charge

94. The handling and stevedore charge relates to the transport of the goods from the wharf and to load the Portland cement onto the ship at Koh Sichang. The charge specifically relates to forklifting and cargo supervising services and dunnage and lashing materials supplied on loading jumbo bags of cement. The adjustment was THB [REDACTED] per tonne

Bill of Lading

95. No adjustment was sought as it was found to be very small when calculated on a per tonne basis.

Customs Clearance

96. A flat fee is paid for the loading of each shipment and for the September 2002 shipment, the fee was THB [REDACTED] per tonne.

Other Costs and Charges

97. Section 4(1)(a)(ii) of the Act provides that, where the purchase of the goods by the importer was an arm's length transaction, the export price is the price paid by the importer other than any part of that price that represents:

- (ii) Any other costs, charges and expenses resulting from the exportation of the goods or arising after their shipment from the country of export; or ...

Discounts and Rebates

98. There are no discounts or rebates given on export sales of Portland cement to New Zealand.

Duty Drawback

99. SCT does not use any imported component materials to manufacture Portland cement and so cannot claim any import duty back when the goods are exported.

SCT's Commission and Difference in Estimated Expenses

100. SCI pays a commission to SCT for the selling and marketing services on export sales. The commission is based on [REDACTED]

101. No adjustment has been made for the commission as the commission is used to pay for the costs of exporting the goods.

Cost of Credit

102. SCT extends credit to Fern on the basis of [REDACTED]. The invoice is sent to Fern [REDACTED]. Fern pays [REDACTED]. SCT provided copies of the invoices for each shipment and the bank confirmation of payment by Fern with the exchange rates used and the amount of Thai Baht resulting from the transactions. [REDACTED]

103. Fern's payment for the invoice dated [REDACTED] was deposited in SCT's account on [REDACTED] which was received in [REDACTED] and converted to Thai Baht. Credit was therefore extended for [REDACTED] days.

104. SCT provided a schedule of commercial overdraft rates from the Thai Farmers Bank and the Siam Commercial Bank. The rate used by the Ministry is the average of the two closing rates for August 2002 of 7.25 percent and 7.5 percent respectively, the average being 7.375 percent. In applying these rates to the number of days of credit extended to Fern, the cost of credit adjustment is THB [REDACTED] and THB [REDACTED] for Type I and Type III Portland cement respectively.

Quantities

105. There is no adjustment required for difference in quantities.

Physical Characteristics

106. There is no difference in the specifications of the cement sold on the export market to that sold on the domestic market.

3.3 Export Price Calculation

107. The adjustments noted above were deducted from the base prices to arrive at the ex-factory export price that provided a fair comparison with the normal values. The adjusted export price is shown in Table 3.1 below.

Table 3.1 Export Prices per Tonne

Type of Portland cement	THB
Type I	[REDACTED]
Type III	[REDACTED]

3.4 Normal Values

Section 5(3) of the Act provides:

Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison the normal value and the export price shall be compared by the Chief Executive of the Ministry of Economic Development—

- (a) At the same level of trade; and
- (b) In respect of sales made at as nearly as possible the same time; and
- (c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences which affect price comparability.

Introduction

Domestic Sales

108. SCI produces Portland cement at its plants and sells it on the domestic market through two channels. It sells its Portland cement directly to related companies and its marketing arm, CSM, handles all domestic sales to unrelated companies in Thailand. In Thailand orders are placed with CSM by e-ordering or facsimile. CSM arranges for the cement to be despatched from SCI's plants in Thailand and delivered to the customers of the agents or dealers.

109. CSM sells its goods to resellers, described as agents or dealers. The agents or dealers sell all kinds of building products sourced from SCI and other companies therefore there is no exclusive purchasing or selling arrangements. SCI advised that there is no relationship with the agents or dealers other than a business relationship therefore all sales are made at arm's length.

110. [REDACTED] list price, discount amount and rebate structure of its products. The list price is the same for each agent or dealer but the [REDACTED]. The terms of payment are cash or 60 days and if an agent or dealer chooses to purchase [REDACTED]. SCI and CSM's policy is to [REDACTED] and for the year-to-date, an average percent of purchases are [REDACTED] and in addition to a discount the agent or dealer may be entitled to a rebate.

111. Portland cement is sold [REDACTED]. If the goods are sold [REDACTED]. However, mostly all of the bulk cement is [REDACTED].

112. CSM [REDACTED] charges CSM for the transport of its bulk cement and CSM charges its agents or dealers.

Sales in the Ordinary Course of Trade

113. Domestic sales in Thailand are made at a profit and the domestic sales volume is greater than 5 percent of the export volume to New Zealand. Domestic sales are therefore of sufficient quantity and price for the sales to be considered to be in the ordinary course of trade as required by Article 2.2 of the WTO Anti-Dumping Agreement. The Ministry considers that they are suitable to be used in determining normal values

Selection of Domestic Customers

114. Two domestic customers were selected for the transaction-to-transaction comparison of Type I and Type III Portland cement with the exports to New Zealand. The selection process is outlined in more detail in Siam Cement's Verification Report.

115. The customers selected have no relationship other than a business relationship with CSM. Total sales to these customers were on average a similar monthly volume to the export sale when considered over an annual period and the transactions were at the same time to the export sale to New Zealand.

Base Prices

116. The base prices on which normal values are based are the invoiced list prices per tonne for Type I and Type III Portland cement.

3.5 Adjustments

Levels of Trade

117. CSM sells its goods to agents or dealers. It does not sell its goods direct to end-users. The agents or dealers are not categorised and they are not under any contract therefore the list prices of the goods are the same for all agents or dealers. SCI has not sought an adjustment for level of trade and considering there is no difference that would affect price comparability, an adjustment for level of trade is not required.

Time Period

118. In relation to the verified customers the issue date of the invoices produced for export sales and the issue date of the invoices on the domestic market is the same.

Discounts and Rebates

119. [REDACTED] are offered to domestic customers. All agents or dealers irrespective of date of payment are eligible for a rebate but they must meet [REDACTED] criteria. The amount of discount is shown on each invoice and it [REDACTED]. Rebates are paid to customers on [REDACTED] basis which are based on the [REDACTED], and they are recorded separately to the sales invoice.

120. Both domestic customers verified by the Ministry received [REDACTED] they also received a rebate which is shown in the table below:

Table 3.2: Discount and Rebate Amounts

Type of Portland Cement	Discount Amount (THB)	Rebate (THB)
Type I	██████████	██████████
Type III	██████████	██████████

Inland Freight

121. The charge for freight is shown separately on each invoice and is not included in the price of the cement.

Cost of Credit

122. In relation to the transaction of Type I Portland cement the terms of payment ██████████ there was ██████████, in respect to the sale of Type III the terms of payment ██████████ but the account was not settled until ██████ days later therefore the cost of credit of THB ██████ applies.

123. Cost of credit also applies on export sales and the difference between the export and the domestic sales cost of credit has been added to the normal value. In effect this adjustment increases the normal value of both Type I and Type III by THB ██████.

Taxation

124. All invoices show the value-added-tax of 7% as a separate item and have been excluded in the calculation of normal values.

Quantities

125. The verification team chose domestic customers that purchase relatively the same volume as exported to New Zealand therefore no adjustment was made.

Physical Characteristics

126. Sales of Types I and III Portland cement on the domestic market are the same products as the Portland cement that is exported to New Zealand. However, they are known more by their brand names of Elephant (Type I) or Erawan (Type III).

Packaging

127. CSM sells bulk and bagged (50kg) Portland cement on the domestic market but does not sell its bulk Portland cement in bulk bags. The exports to New Zealand are only made in bulk bags for which an adjustment has been made on the export price side, therefore no adjustment to the normal value was given.

Other Differences Affecting Price Comparability

CSM Fee

128. SCI sells its products to CSM for on-selling to agents or dealers on the domestic market. For CSM's sales and marketing services it receives for all sales a commission of [REDACTED] percent of [REDACTED]. The costs of selling on the domestic market are taken out of this commission so an adjustment has not been made.

Government Price Control

129. There are price controls imposed by the Thai government but they do not apply to the sale of cement products.

Other Differences Affecting Price Comparability

130. The Ministry is unaware of any other adjustments, than those described above that need to be made.

Ex-Factory Normal Values

131. The adjustments recorded above have been deducted from base prices i.e. list prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The normal values are shown in Table 3.3 below.

Table 3.3 Normal Values

Type of Portland cement	THB per tonne
Type I	[REDACTED]
Type III	[REDACTED]

3.6 Comparison Of Export Price and Normal Value

Margins of Dumping

132. The Ministry has established the dumping margins for the investigation period by comparing export prices shown in Table 3.1 and normal values shown in Table 3.3 above. Comparisons of export prices and normal values and the calculation of dumping margins have been done on a transaction to transaction basis.

133. There were [REDACTED] lines of transactions over the dumping period i.e. Type I and Type III Portland cement. Both Types of Portland cement are dumped with a dumping margin of [REDACTED] percent and [REDACTED] percent for Type I and Type III respectively.

134. The following table shows the export prices, normal values and dumping margins.

Table 3.4 Dumping Margins (THB per tonne)

	Type I	Type III
Export Prices	██████████	██████████
Normal Values	██████████	██████████
Dumping Margins	██████████	██████████
Margins % of EP	██████████	██████████

135. The assessment of threat of injury also includes consideration of the subject goods that arrived in New Zealand in June 2003. By using the same methodology as described above, to calculate an export price and normal value of the goods over the dumping period, the Ministry established that Type I and Type III Portland cement are dumped ██████████ margin of dumping for Type I ██████████. The following table shows these results:

Table 3.5 Dumping Margins (THB per tonne)

	Type I	Type III
Export Prices	██████████	██████████
Normal Values	██████████	██████████
Dumping Margins	██████████	██████████
Margins % of EP	██████████	██████████

* The figures may differ due to rounding.

3.7 Volume of Dumped Goods

136. 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 it 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 WTO Agreement.






137. The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 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.

138. The Ministerial Conference at Doha 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, to assess whether future imports are likely to be negligible.

139. One hundred percent of the subject goods were dumped for the year ended April 2003. The volume of dumped goods and the volume of other imports over the same period are shown in the table below:

Table 3.6: Volume of Dumped Imports

	Year to April 2003	%
Dumped Imports		
Other Imports		
Total Imports		100

140. On the basis of this information, imports of the subject goods are greater than 3 percent of all imports of the like goods and therefore are not negligible.

3.8 Conclusions Relating to Dumping

141. The Ministry concludes, on the basis of the information available, that Type I and Type III Portland cement from Thailand has been dumped during the period of investigation.

142. In relation to the latest shipment that arrived in New Zealand in June 2003, 100 percent of the goods are dumped [REDACTED].

143. The Ministry concludes that based on the available information there is likely to be dumping in 2004.

4. Injury Investigation

4.1 Material Injury and Threat of Material Injury

Material Injury

144. The basis for considering threat of 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.

145. The Ministry interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. In the case of threat of material injury the Ministry considers the likely effect on the industry, of future volumes of dumped goods and their effect on prices. This is consistent with Article 3 of the WTO Anti-Dumping Agreement.

146. The Act goes on to set out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These equally apply in the case of threat of injury. These factors and indices include:

- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
- the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
- the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic

prices; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

147. In addition, the Chief Executive must have regard to factors other than dumping which may be injuring the industry, since in accordance with Article 3 of the WTO Anti-Dumping Agreement, it must be demonstrated that the dumped imports are, through the effects (as set out in paragraphs 144 to 146 above) of dumping, causing or threatening to cause material injury. The demonstration of a causal relationship between the dumped imports and the injury or threat of injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the dumped imports which at the same time are injuring or threatening to injure the domestic industry, and the injury caused or threatened by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

148. Section 11(1) of the Act provides for the termination of an investigation where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened by means of the dumping of the goods.

149. Section 13 of the Dumping and Countervailing Duties Act 1988 provides:

... the Minister shall make a final determination as to whether or not, in relation to the importation or intended importation of goods into New Zealand,—

- (a) The goods are being dumped or subsidised; 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.

150. This means that the material injury must be caused or threatened by reason of the dumping of goods.

Threat of Material Injury

151. 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.

152. The claims by the New Zealand industry are based solely on the threat of material injury arising from two imported shipments of the subject goods in September 2002 and June 2003. The industry has provided historical and forecast data but has made no claims of current material injury relating to the historical data.

Evidence Provided by the Industry

153. The two New Zealand producers have provided historical data and forecasts based on each of their respective company's budgets for calendar years 2003 and 2004. The budgeted years 2003 and 2004 are based on each company's most recent budget round. [REDACTED]. Holcim's financial year differs from Golden Bay's.) The industry also provided actual data for the year to June 2003.

154. Golden Bay and Holcim have also provided scenarios based on their individual assessments of 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 the companies might make in the face of competition from the allegedly dumped goods.

155. Golden Bay provided two revised scenarios that it considers most likely. These are:

- Scenario 1: Assumes imports of [REDACTED] tonnes with a volume impact of [REDACTED] tonnes on Golden Bay's sales volume [REDACTED]
- Scenario 2: Assumes imports of [REDACTED] tonnes with a volume impact of [REDACTED] tonnes on Golden Bay's sales volume [REDACTED]

[REDACTED]

156. Of the six scenarios Holcim provided, it considered that the two most likely scenarios are:

- Scenario A: Holcim’s scenario 2, based on an import volume of [REDACTED] tonnes with a volume impact of [REDACTED]; and
- Scenario B: Holcim’s scenario 6, based on an import volume of [REDACTED] tonnes with a volume impact of [REDACTED]

157. The Ministry has considered these two scenarios and where required, has referred to them as scenarios A and B respectively.

158. The Ministry has also considered the industry’s scenario put forward in the application of imports of 13,000 tonnes of Portland cement on the actual and budgeted results in 2003, and the impact of dumped imports on the results of 2002.

159. Golden Bay stated that it was not able to provide sales figures for general purpose and high early strength separately, so the figures used and comparisons made in this report are for these products combined.

160. The impact of the imports has been assessed on a company basis as the companies have different accounting systems, [REDACTED]. The impact on the industry as a whole has then been assessed by considering the individual effects on both companies or combining both companies figures where meaningful. The Ministry has also taken into account the information that it has received from the importer, the exporter and information from other sources.

4.2 Import Volumes

161. 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.

162. Portland cement is imported under tariff item 2523.29.00.00A, which covers the subject goods and other more specialised Portland cements. Some goods in the import data that were found to have been incorrectly classified or correctly classified but not considered to be the subject goods have been removed from the import figures. Imports by the industry have also been removed from the import figures, as any imports by the industry sold domestically would appear as industry sales. The volume of these goods is small over the historical injury period and so would have had only a small impact, if any, on the industry.

163. In Table 4.1 below, the percentage of dumped imports (100 percent) found in the dumping investigation period, has been used by the Ministry to estimate the volume of dumped imports for each calendar year. The Ministry's forecast for the imports for the calendar year 2003 contains nine months (year to September) of actual Customs information. In estimating the imports for the remainder of calendar year 2003 and for calendar year 2004 the Ministry has taken the following information into account.

[REDACTED]

[REDACTED]. SCT provided information that its domestic market had expanded significantly over the last two years and was continuing to expand as the Thai economy picked up. SCT stated that its priority was to supply the domestic market and the export customers that it had contracts with [REDACTED]. SCT stated that although SCI was expanding some of its other operations it was not currently expanding its domestic cement production, so did not have excess capacity coming on stream to supply increased exports. SCT provided figures to show that, [REDACTED].

164. The importer has confirmed that it [REDACTED]

[REDACTED]

[REDACTED] Fern indicated that it took a time frame of about [REDACTED] from the time of first approaching a company to supply cement, to it arriving in New Zealand. Fern also stated that the maximum amount of cement it could realistically handle (logistically and financially) over the next 12 months was about [REDACTED].

165. The Ministry's estimate of imports for calendar year 2003 includes actual imports up to and including September and the likelihood that no further shipments by the importer from Thailand will arrive in 2003. Any shipments from SCT in calendar year 2004 will be up to about [REDACTED] tonnes. This takes into account the fact that Fern [REDACTED].

166. The forecast for 2004 for "other" imports has been annualised based on the Ministry's assessment including the previous year's imports and [REDACTED].

167. The industry's domestic sales figures have been combined to give the industry's sales figures by calendar year and the industry's budgeted sales for 2003 and 2004 have been constructed by combining Golden Bay's and Holcim's budgeted sales for those years.

168. The industry has not claimed that it has suffered material injury from dumped imports in 2002. The industry has claimed that it will lose sales volume to the imports, not that its total sales volume will decline. The Ministry interprets this to mean that the industry will lose some sales that it would otherwise have gained in an expanding market, but that production volume will be unaffected

169. Table 4.1 has used industry sales rather than production figures, since sales gives a more accurate picture of the amount of product in the market. Sales of Portland cement by the industry. The Table shows the trend in imports and consumption in the industry and the volume of dumped subject goods in relation to New Zealand consumption. This includes the Ministry's assessment of the volume of dumped goods against the industry's budgets so as to assess the threat of injury that dumped imports might pose to the industry. The industry has stated that the budgets take no account of dumped goods in the market.

Table 4.1: Imports for the Subject Goods: Calendar Years (Tonnes)

	2000	2001	2002	Budget 2003	Budget 2004
Dumped Imports					
Other Imports					
Total Imports					
NZ Industry Sales					
NZ Market					
Change on Previous Year:					
-Dumped Imports					
-Other Imports					
-Total Imports					
NZ Industry Sales					
NZ Market					

Dumped Imports as a % of:



*Estimated by the Ministry

170. In absolute terms, the dumped imports are estimated to decline in 2003 and in 2004 compared with 2002.

171. The dumped imports as a percentage of industry sales are forecast to slightly decline in 2003 and slightly increase in 2004. It is not likely that there will be any more Thai imports in the remaining 2 months of 2003.

172. Other imports are likely to decline in 2003 and increase in 2004.

173. The dumped imports compared with the total consumption in the New Zealand market show that they are forecast to decline in 2003 and estimated to increase again slightly in 2004, but are estimated to be less than in 2002.

Industry Submission

174. In response to the Essential Facts and Conclusions Report the New Zealand industry stated that the Ministry in its overall conclusion, (paragraph 325 (b)) had been persuaded by its conclusion on imports (paragraph 168) that imports are not likely to increase substantially from 2002 levels and that they are not increasing substantially nor imminently. The industry noted that it accepts that to date the increase in imports had not been substantial as referred to in the WTO Agreement¹⁰.

175. The industry stated, however, that its view of future events differs from that of the Ministry. The industry argued that the Ministry had not treated with due scepticism representations made by interested parties and as such had placed too much reliance on them. The industry stated that "it is the normal reaction of importing parties during an investigation to limit their imports, refrain from placing future orders, and for exporters to refer to limited capacity."

176. The industry stated that the context of the Thai exports to New Zealand and the projected volumes needed to be considered. The industry argued that the export volumes are immaterial when compared to SCT's past total export volumes and the size of its domestic production in Thailand.

¹⁰ Article 3.7(i) requires the authorities to consider inter alia a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation.

that there is still considerable capacity available for export which is “far more than required to fulfil the New Zealand distributor's projections”.

177. The industry has also stated that the same scepticism should be applied to statements by the importer. The industry noted paragraph 322 of the report which states that the importer is setting up an infrastructure and noted that the Ministry had reported the importer's capacity in 2003 and volume expected to be imported in 2004. In response the industry had noted the Ministry's comment that the volume of imports from Thailand is likely to decline between 2002 and 2004, and asks from 2003 onwards when the importer could already sell 17,000 tonnes as in 2002 why:

- the importer has been working to increase distribution capability through such associations as the Perry Group if it is going to import less than prior to the association;
- would the importer increase bagging and silo capacity in 2003 if they were going to import less than in the previous year;
- would the importer go to the extent of developing its own Fern packaging if volumes were not to be increased; and
- the Perry Group would be publicly promoting the imported cement and making statements regarding increased capacity when this is not the plan.

178. The industry notes that these activities described above would increase costs, reduce profitability, and do not make commercial sense unless additional volume was imported. The industry is of the view that the Ministry has wrongly relied on the representations made by the exporter and importer in reaching its conclusion in paragraph 325 of the Essential Facts and Conclusions Report.

Fern's Submission

179. Fern responded to the industry's submission above as follows.

180. Fern stated that it had not reduced or refrained from placing orders during the investigation, and noted that it still had not been able to secure an order, supporting its claim of what is happening in the Thai domestic market.

181. Fern noted that its own limited capacity was “undeniable”. It also stated that its association with the Perry Group had been fully documented by the Ministry and that this association has not changed over the last 12 months and Fern does not expect it to do so.

182. With regard to increased infrastructure Fern stated that it had not increased its bagging or silo capacity in 2003. Fern stated that the improvements it had made in infrastructure were for normal business reasons to improve product quality, reduce manual operations and associated labour costs, improve product availability and customer service. Fern stated that it has had its own packaging and branding since 1998. It noted that the Perry Group indicated on its website that it was now involved with Fern, but that this is normal practice for the start-up of a joint venture.

183. Fern noted that since 2002, it believes that the cement market has grown from about 1.050 million tonnes to 1.2 million tonnes and that the market will continue to grow for quite some time before it levels out.

184. Fern stated that “the local producers can only manufacture up to 960,000 tonnes of cement per annum, without imports whether they be clinker or the finished product, therefore imports are absolutely vital if New Zealand is to continue to grow”.

185. Fern reiterated that both manufacturers “have had an excellent year” and that to cap the maximum quantity of imported cement at 17,000 tonnes is absurd” and that this is an attempt to cap Fern’s activity by aligning Fern’s sales with the quantity imported in 2002. Fern stated that because of stock movements “the import tonnage figure has no direct relationship with actual sales”.

Ministry Comments

186. The Ministry considers that it has treated with due scepticism the information given to it by all parties. It has considered the information by all parties and has checked information where possible from other sources. It considers that it has evaluated all of the information carefully, bearing in mind the context in which the information has been provided. The industry has argued that although importers may, in reaction to a dumping investigation being initiated, limit imports, Fern has not indicated that the dumping investigation has significantly altered its purchasing behaviour and has stated in its response to the industry’s submission that it has not done so. With this type of product, customers generally rely on ongoing supply and the importer is more likely to carry on importing sufficient cement to maintain its customer base. Cement also has a “shelf life” of approximately six months, so to maintain sufficient supply it would need to import on an ongoing basis. The Ministry also notes that

187. The Ministry agrees with the industry’s comment that faced with a dumping investigation, exporters may say that their capacity is limited. It is agreed that SCT/SCI has a considerable volume of exports, but the exporter has provided a range of information that supports its submission that

, and has had

. It has further provided data tracking its domestic and export sales, and provided information, which has not been disputed, about the considerable expansion of the

Thai domestic market and its ongoing growth. It should be noted that

188. The industry has raised questions about why the importer would build infrastructure and conduct marketing activity if it was not planning to increase its volume of imports. With regard to the points raised by the industry about market place activities, such as its references to distribution capacity, bagging plants and developing its own Fern packaging and promoting the product, Fern has responded that the bagging facilities and silo capacity were in place prior to 2003 and that it has had its own packaging and branding since 1998, and the other activities related to infrastructure are part of improving the efficiency of the business.

189. With regard to an increase in imports, Fern has responded that its imports are likely to increase particularly with the increase in the size of the market. It should be emphasized that the Ministry has never stated that Portland cement imports *per se*, would not increase over the long term, particularly as the New Zealand market for cement is continuing to expand. Within the confines of this investigation the Ministry does not consider that the import volumes from Thailand likely to enter New Zealand in the next 12 months will be significantly different from current levels, which as is stated in the report, are likely in 2004 to be slightly less than those imported in 2002. It is considered that current import volumes do not represent a threat of imminent material injury to the industry.

Conclusion

190. The Ministry considers that there is evidence that the dumped imports are likely to decline absolutely and as a percentage of industry sales and as a percentage of the market in calendar year 2003, and increase absolutely and as a percentage of industry sales and as a percentage of the market in 2004. The increase in imports in 2004 is to a level that is likely to be less than those in 2002. There is no evidence that Thai imports are likely to increase substantially from the level in 2002. The imports are not considered to be increasing substantially nor imminently.

4.3 Price Effects

Price Undercutting

191. 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.

Level of Trade

Introduction

192. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importers' store levels, to ensure that differences in distribution costs do not confuse the impact of dumping. Accordingly, the Ministry's position is generally to compare importers' prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand industry's ex-factory price, but not including cost elements relating to the distribution of goods.

193. The relevant level of trade for imports is that at which the imported product first competes with the New Zealand industry's ex-factory price in the New Zealand market. The Ministry would normally consider the first point of competition to be the point at which the first potential buyer in the New Zealand market is faced with the economic choice of purchasing either the imported goods or the goods produced in New Zealand.

194. Details of the distribution systems and the basis on which sales are made are described below for Fern and for the industry.

Fern Cement

195. Fern is an importer and distributor of the subject goods in New Zealand. It is not an end user. Fern has 4 depots or storage facilities throughout New Zealand i.e. Papakura, Te Poi, Napier and Timaru

[REDACTED] Its customers are mainly companies who purchase the goods Papakura, [REDACTED] Te Poi, [REDACTED] Napier or Timaru [REDACTED].

196. There is [REDACTED], purchases bulk bags [REDACTED] Fern [REDACTED] (Fern is recorded with Customs as the importer), and [REDACTED]

[REDACTED]. The Ministry notes that according to the price list as of April 2003 provided by Fern, the price charged [REDACTED].

197. The importer considers that the first point of price comparison should be when the imported goods are at the ex-wharf level [REDACTED]. Fern stated that the comparison price with the industry is at the point when the industry's goods have been offloaded at the port into the port silos which does not include the costs associated with the running of the silos or depots.

Golden Bay and Holcim (the Industry)

198. The industry sells its bulk and bagged Portland cement to [REDACTED]. The bulk cement sales are used in the production of other goods and its bagged product is sold to distributors. Sales are not made [REDACTED].

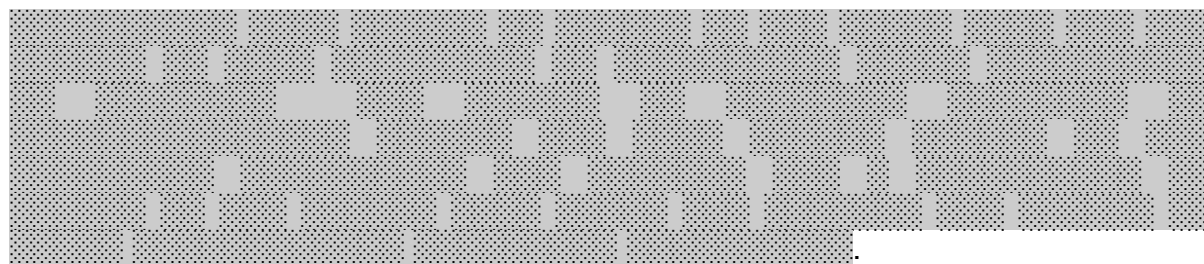
199. Its Portland cement is transported from the production facilities (plant) by its shipping fleet to various distribution centres or depots located nationwide. All sales of bulk cement are made on an [REDACTED] and the purchase of bagged Portland cement is on the basis of ex-distribution centre [REDACTED]. Golden Bay supplies its bagged Portland cement in 1.3 tonne bags, 40kg and 25kg bags. The customer can source its cement from the port silo or distribution centre or it is delivered depending upon the customer's needs. [REDACTED] it is the ex-port-silo price net of [REDACTED] and rebates and freight to distributors that is the point at which the product is considered by the industry to first compete in the New Zealand domestic market.

Conclusion on Level of Trade

200. The subject goods can be purchased from [REDACTED] on the basis [REDACTED]. The majority of Fern's sales, therefore, are made on [REDACTED].

201. The industry's sales of bulk cement are made on an [REDACTED] basis, therefore, the first point at which a potential buyer is faced with the economic choice of purchasing either the imported goods or the goods produced in New Zealand is at the ex-store price and ex-port-silo price at various locations nationwide respectively.

202. Since September 2002 [REDACTED]. The industry (Golden Bay) supplies its Portland cement in 1.3 tonne bags, which is not too dissimilar in weight to the imported goods. [REDACTED]



203. The relevant level of trade for price undercutting purposes is the comparison of prices of the New Zealand industry's ex-port-silo price net of [REDACTED], rebates and freight with Fern's ex-store price which is the [REDACTED] price plus costs of overseas transport, overseas insurance, costs to store, selling and administration costs and net profit.

The Industry's Ex-Factory Price

204. Golden Bay supplied its financial data separated by bulk and bag and Holcim supplied its financial data by bulk and bag that has been further separated by the type of Portland cement. Golden Bay stated that it was unable to separate the product by type. For calendar year 2002 Golden Bay has provided its financial data by quarters and Holcim has provided its financial data by months. To calculate a weighted average price for bulk sales, the Ministry has calculated a price per tonne based on revenue from bulk sales of the like goods which is divided by the sales volume for the same period. A combined average price for the two types of cement has been calculated for each company.

Fern's Ex-Importer's Store Price

205. The ex-importer's store price used by the Ministry applies to the products imported in September 2002 with verified costs between the point of purchase [REDACTED] and sale. The price per tonne is a combination of both types which is taken on the same basis as the industry price.

Submission by Fern on its Pricing

206. In response to the Essential Facts and Conclusions Report with regard to its ex-store prices, Fern advised that it does not undercut the prices of the local industry. Because no pricing information has been supplied to Fern, it believes that without the relevant figures, it is extremely difficult for it to come to a conclusion.

Ministry's Response

207. In response to the submission, the Ministry provided Fern with the spreadsheet detailing the cost build up to Fern's selling price based on its own verified information. In response to this information, Fern advised that the invoice on storage and handling costs provided at the verification visit referred to the cost for the tonnage stored at only one storage facility whereas Fern is charged for four depot/storage facilities in New Zealand.

208. Fern advised that it budgets for NZD [redacted] per tonne which is evidenced in Fern's accountant's statement already provided to the Ministry. Fern further provided the Ministry with an invoice issued for each storage facility, which applied to the months of [redacted] 2003 which showed the charges for handling and storage of Portland cement. It was charged approximately [redacted] at [redacted] and it was charged NZD [redacted].

209. The Ministry considers that it is reasonable that an additional cost for storage and handling should be applied. Consequently Fern's ex-store price has been recalculated. The Ministry's recalculation based on the imported subject goods in September 2002, has shown a higher cost of storage than the budgeted figure as it is taken on actual volume imported. The overall effect is an increase in the ex-store price per tonne but no change from the Essential Facts and Conclusions Report that there is price undercutting by the importer, although the extent of price undercutting is less.

210. The following tables show the comparison of Fern's ex-store price with the industry's ex-port-silo price.

Price Undercutting comparison of the Industry and Fern

211. The following table shows the extent of price undercutting per tonne as at September 2002.

Table 4.2: Price Undercutting per Tonne for Bulk Sales (September 2002)

	NZD
Importer's ex-store price	[redacted]
Holcim average monthly price	[redacted]
Undercutting	[redacted]
% of undercutting	[redacted]
Importer's ex-store price	[redacted]
Golden Bay average quarterly price	[redacted]
Undercutting	[redacted]
% of undercutting	[redacted]
Importer's ex-store price	[redacted]
Industry average price	[redacted]
Undercutting	[redacted]

% of undercutting

%

* The Ministry has amended Holcim's average price by increasing it by [redacted] cents as there was an error in the original report.

212. The assessment of threat of injury also includes considering the most recent shipment that arrived in June 2003, shortly after the investigation was initiated. Since September 2002, the [redacted]

[redacted]. The following table compares the importer's ex-store price with the industry's ex-port-silo price that applied for the month of June 2003.

Table 4.3: Price Undercutting per Tonne for Bulk Sales (June 2003)

	NZD
Importer's ex-store price	[redacted]
Holcim average monthly price	[redacted]
Undercutting	[redacted]
% of undercutting	[redacted]
Importer's ex-store price	[redacted]
Golden Bay average monthly price	[redacted]
Undercutting	[redacted]
% of undercutting	[redacted]
Importer's ex-store price	[redacted]
Industry average price	[redacted]
Undercutting	[redacted]
% of undercutting	[redacted]

213. The tables above show that the prices of the imported goods from Thailand undercut the prices of the like goods produced by the industry. The price per tonne differs between the companies that make up the industry, consequently the price of the imported subject goods undercut [redacted] prices of like products. The difference in the recalculated price per tonne of the subject goods from Thailand has shown a decrease in the percentage of price undercutting in September 2002 and June 2003 of [redacted] percentage points and [redacted] percentage points respectively.

Conclusion

214. The level of price undercutting differs between the companies that make up the industry. On the basis of the recalculated prices and the industry's average price

over the dumping period, there is price undercutting of NZD [redacted] per tonne or [redacted] percent as a percentage of the industry's average price. Even though there has been an increase in Fern's ex-store price the change does not remove price undercutting, but it reduces the extent of price undercutting.

215. Since this time [redacted]

Price Depression

216. 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.

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

218. The industry has not claimed current price depression. The industry states that price depression will occur if, in order to increase its customer base, the importer reduces prices and undercuts the industry's prices.

219. The following table shows the average prices in the industry.

Table 4.4: Industry Average Prices

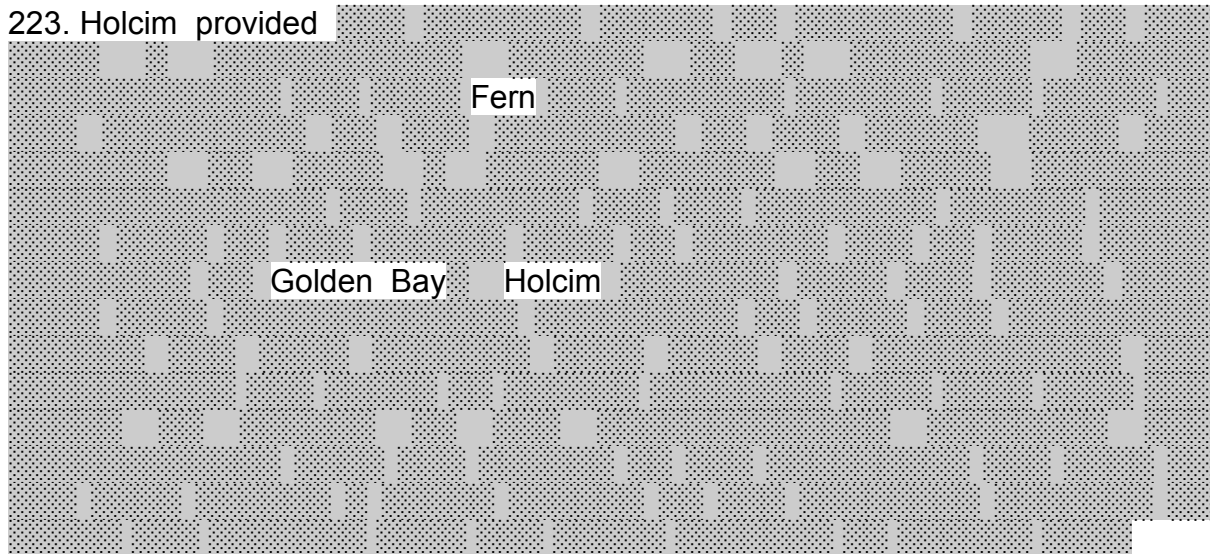
	2001	2002	Budget 2003	Budget 2004
Industry Sales Revenue (NZD 000)	[redacted]	[redacted]	[redacted]	[redacted]
Industry Sales Volume (Tonnes)	[redacted]	[redacted]	[redacted]	[redacted]
Revenue per Unit (Tonnes)	[redacted]	[redacted]	[redacted]	[redacted]

220. The table shows that average industry revenue per tonne increased from 2001 to 2002 and is budgeted to increase from 2002 to 2003 and then again in 2004.

221. In considering the scenarios that Golden Bay and Holcim have submitted as to the way they would respond to increased Portland cement volumes entering the market and the likely effects, both companies have provided the following estimates of price depression for 2004.

222. Based on imported cement volumes of [redacted] and [redacted] tonnes, Golden Bay has identified that it may [redacted] and at the same time suffer projected losses in volume of [redacted] respectively. Holcim stated in relation to imports of [redacted] tonnes that it would suffer a projected loss in volume of [redacted]

223. Holcim provided



224. The volume of dumped imports in the year to 30 April 2003 was 13,000 tonnes and the estimated calendar year 2003 is [redacted] tonnes. The average actual revenue figures for bulk sales reported by both Golden Bay and Holcim over the year to June 2003, show little or no impact on revenue. If the level of Thai imports was to be about the [redacted] tonnes as estimated, then each company would [redacted] of that volume, having an impact in loss of volume of about [redacted] tonnes. The revenue foregone by Holcim, calculated at the average industry price in 2002 (since the industry [redacted] as a result of dumped imports being in the market) would be about NZD [redacted] million of potential lost sales. This result is reflected in the scenario for 13,000 tonnes of imports put forward in the industry's application, in which Holcim's estimated a loss of revenue of NZD [redacted] million. Golden Bay, however, considered that this would [redacted], this does not appear to have occurred in the actual figures for the six months to 30 June 2003 and is considered by the Ministry to be unlikely to occur in the full year to December 2003.

Conclusion

225. The Ministry concludes that there has been [redacted] by the New Zealand industry, [redacted] in 2002, which is likely to continue in 2003 and 2004. At the volumes of imports forecast, it is not considered likely that there will be any general reduction in prices.

Price Suppression

226. 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.

227. The Ministry generally bases 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 an important indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression, including evidence of prices that would have been achieved but for the dumping. In the case of threat of injury, the Ministry will consider the effect of further volumes of dumped imports on the ability of the industry to recover future cost increases or maintain or increase prices.

228. The industry has been operating over the last three years in an environment where pressure on costs has increased, a recent example being the temporary increase in power costs in the first half of 2003 as a result of national power shortages. Industry revenues have [REDACTED] each year from 2000 to 2002 but costs have [REDACTED] and the average industry EBIT has [REDACTED] over the same period.

229. The industry has not claimed any current price suppression, however, it does claim that price suppression will be a consequence of an increase in dumped imports and price undercutting by the importer.

230. The following tables show Golden Bay's cost of production, selling and administration expenses and total costs relative to sales.

Table 4.5 Golden Bay Price Suppression

		Budget	Budget
	2002	2003	2004
Revenue (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Production Costs (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Selling and Admin (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Total Costs (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
As % of Sales:			
Production Costs	[REDACTED]	[REDACTED]	[REDACTED]
Selling and Admin	[REDACTED]	[REDACTED]	[REDACTED]
Total Costs	[REDACTED]	[REDACTED]	[REDACTED]
EBIT	[REDACTED]	[REDACTED]	[REDACTED]

231. The table above shows that Golden Bay's revenue is forecast to be [REDACTED] than in 2002, [REDACTED] the budgeted year 2004 will [REDACTED] slightly without the effect of any dumped imports. Golden Bay has forecast its selling and administration expenses to [REDACTED] significantly in 2003 and 2004, [REDACTED] these are [REDACTED] not caused by dumped imports as the budgets have not taken these into account. In Golden Bay's scenarios 1 and 2 (imports of [REDACTED] tonnes or [REDACTED] tonnes [REDACTED]), Golden Bay has estimated that the selling and administration [REDACTED] for the budget for 2004 in each scenario, that fixed costs [REDACTED], and that there would be some [REDACTED] in the variable production costs. When measured as a percentage of sales, Golden Bay's total costs are estimated to [REDACTED] percent.

232. With the Ministry's estimated volume ([REDACTED] tonnes) of imports for 2003 and 2004 taken into account, however, it is not very likely that either of these scenarios will eventuate, and not likely that they will affect [REDACTED], but may [REDACTED] selling and administration expenses as in 2002 and the year to June 2003 when dumped imports of 13,000 tonnes were in the market. (The year to June figures include the effect of the dumped imports in September 2002.)

233. The following table shows Holcim's cost of production, selling and administration expenses and total costs relative to sales.

Table 4.6: Holcim Price Supression

	2002	Budget 2003	Budget 2004
Revenue (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Production Costs (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Selling and Admin (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
Total Costs (NZD 000)	[REDACTED]	[REDACTED]	[REDACTED]
As % of Sales:			
Production Costs	[REDACTED]	[REDACTED]	[REDACTED]
Selling and Admin	[REDACTED]	[REDACTED]	[REDACTED]
Total Costs	[REDACTED]	[REDACTED]	[REDACTED]
EBIT	[REDACTED]	[REDACTED]	[REDACTED]

234. The table above shows that Holcim's budget for its selling and administration expenses [REDACTED] from 2002 and has [REDACTED] in its scenarios A and B. It should be noted that the selling and administration

costs were [REDACTED] in 2002 (and 2001) [REDACTED].

235. In addition, production costs in 2004 are budgeted to [REDACTED]

[REDACTED] production of clinker is [REDACTED]

236. With the estimated volume of Thai imports taken into account, however, it is not very likely that either of Holcim's scenarios A or B will eventuate, and not likely that [REDACTED] will be affected, but they may [REDACTED] as that in 2002 and the year to June 2003.

Conclusion

237. The Ministry concludes that there is no evidence that price suppression will occur due to a threatened increase of dumped imports, [REDACTED] at similar levels to 2002 [REDACTED].

4.4 Economic Impact

238. 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

239. 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.

240. The table below shows the industry's combined production volume and sales revenue. The forecasts are based on Golden Bay and Holcim's budgets for the relevant years, which assume no dumped imports in the market.

Table 4.7: Industry Output and Sales Volume (Tonnes)

	2002	Budget 2003	Budget 2004
Total Production Volume: Like Goods	[REDACTED]	[REDACTED]	[REDACTED]
Total Sales Volume: Like Goods	[REDACTED]	[REDACTED]	[REDACTED]
Difference	[REDACTED]	[REDACTED]	[REDACTED]

241. The industry's total production volume is [REDACTED] 2002, in 2003 and 2004. Holcim has provided information showing that it is producing at [REDACTED] percent capacity and Golden Bay stated in the application that it has "[REDACTED]

[REDACTED]

[REDACTED] The Ministry notes that clinker production [REDACTED]

[REDACTED]

242. The volume of industry production, [REDACTED] appears unlikely to be affected by imports.

243. The industry's total sales volume is budgeted to [REDACTED] in 2003 and [REDACTED] in 2004. The above figures indicate that the industry is selling [REDACTED]

[REDACTED]

[REDACTED] The volume of sales by the industry, [REDACTED], are projected to [REDACTED] in 2003 and 2004.

244. It is likely the industry's sales volume will be affected in 2003 and 2004, to a similar degree to that in 2002, when dumped imports were in the market.

Table 4.8: Sales Revenue

	2002	Budget 2003	Budget 2004
Industry Sales Revenue (NZD 000)	██████████	██████████	██████████

245. The industry's combined sales revenue and budgets show that revenue is predicted to ██████████ by ██████ percent in 2003 and ██████ percent in 2004, assuming a market unaffected by dumped imports.

246. The industry stated in its application that "the market size for cement is controlled by the requirement for the end product and not the suppliers of the cement. The market size fluctuates with changes in the New Zealand construction industry and Golden Bay and Holcim sales fluctuate in line with this. ...an increase in sales by one company, relative to any change in market size results in lower sales by the other, there is no elasticity available to compensate for the increase by one company. Likewise any new or additional supplier will not create a bigger market but simply take volume from one of the existing suppliers."

247. The importer, Fern, advised that the company's infrastructure and distribution system have the capacity to handle about ██████████ tonnes of cement over the next 12 months. SCT stated that its company's own domestic market in Thailand was expanding ██████████

248. The dumping investigation found that all of the cement was dumped with dumping margins of █ and █████ percent and that the most recent shipment in June 2003 had dumping margins of █ and █████ percent.

249. The Ministry has taken the industry's budgeted sales volume and revenue and estimated the impact of the likely volume of Thai imports on the figures for 2004.

Table 4.9: Estimated Impact of dumped Imports on Volume and Revenue

	2002	2003	2004
Industry Sales Volume (Tonnes)	██████████	██████████	██████████
Industry Sales Revenue* (NZD 000)	██████████	██████████	██████████
Dumped Imports (Tonnes)	██████████	██████████	██████████
Change in Industry Volume (%)		██████████	██████████
Change in Industry Revenue (%)		██████████	██████████

*The 2003 and 2004 figures are the industry's budgeted figures less the impact of ██████████ and ██████████ tonnes of Thai imports at NZD ██████████ per tonne.

250. The table above shows the level of estimated imports for 2004 and calculates the average industry price for 2002 to estimate revenue. The assumption has been made that as in 2002 there will be a small direct volume impact and [REDACTED], but both the industry's volume and revenue are likely to increase.

Conclusion

251. The Ministry concludes that the industry sales volume will increase in 2003 and 2004 and that sales revenue will also continue to increase in total.

Market Share

252. 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.

253. The following table shows the New Zealand market and changes in market share.

Table 4.10 Market Share (Calendar Years, Tonnes)

	2002	Budget 2003	Budget 2004
Dumped Imports	[REDACTED]	[REDACTED]	[REDACTED]
Other Imports	[REDACTED]	[REDACTED]	[REDACTED]
Total Imports	[REDACTED]	[REDACTED]	[REDACTED]
NZ Industry Sales	[REDACTED]	[REDACTED]	[REDACTED]
NZ Market	[REDACTED]	[REDACTED]	[REDACTED]
Change on Previous Year:			
Dumped Imports	[REDACTED]	[REDACTED]	[REDACTED]
-Other Imports	[REDACTED]	[REDACTED]	[REDACTED]
-Total Imports	[REDACTED]	[REDACTED]	[REDACTED]
NZ Industry Sales	[REDACTED]	[REDACTED]	[REDACTED]
NZ Market	[REDACTED]	[REDACTED]	[REDACTED]
Share held by:			

-NZ Industry Sales	
-Dumped Imports	
-Other Imports	

*The imports have been estimated by the Ministry based on all the information available to it.

254. The figures show that the market size expand from 2002 to 2004. The industry is likely to increase slightly its market share in 2003 and decline slightly in 2004. The industry sales volume is also likely to continue to grow.

255. The dumped imports are likely to decrease their market share slightly in 2003 and then increase it slightly in 2004.

256.

257. The industry has claimed that in a non-elastic market any sales that it loses to dumped imports displaces volume that the industry could have provided. The dumped imports had percent of the market in 2002, which is likely to decline slightly to percent in 2003 and estimated to increase to about percent in 2004. There would appear to be significant non-elasticity in the cement market, however, in a growing market it is considered that the industry's sales may also grow. It would appear that the industry is likely to maintain or even increase its level of market share over the next 12 months.

Conclusion

258. The Ministry concludes that the industry's market share is likely to increase slightly in 2003 and decline slightly in 2004

. Dumped imports are also likely to increase their market share slightly,

There is evidence that it is likely the industry's sales volume will increase and no evidence to conclude that the industry's market share will decline significantly due to dumped imports.

Profits

259. 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.

260. The combined EBIT of the industry shows that profits

Over the period Golden Bay's EBIT
 Holcim's EBIT
 . This was over a period where dumped imports were not in the market (except for 2002).

261. The following are Golden Bay's budgets for 2003 and 2004 and the projected effect of the dumped imports under its scenarios 1 and 2, compared with the base year of 2002.

Table 4.11: Golden Bay Profits

		Budget	Budget	Scenario	Scenario
	2002	2003	2004	1	2
EBIT (NZD 000)					
Change on 2002 (NZD 000)					
Net Revenue (NZD 000)					
% of Revenue					
Sales Volume (NZD 000)					
EBIT per Tonne					
Change on 2002					

262. The table shows Golden Bay's projected scenarios 1 and 2 being [redacted] and [redacted] tonnes of dumped imports respectively [redacted]. Golden Bay's estimates show that there may be projected [redacted] of between [redacted] and [redacted] percent of EBIT per tonne for 2004.

263. The following are Holcim's budgets for 2003 and 2004 and the projected effect of the dumped imports under its scenarios A and B, compared with 2002.

Table 4.12: Holcim Profits

		Budget	Budget	Scenario	Scenario
	2002	2003	2004	A	B
EBIT (NZD 000)					
Change on 2002 (NZD 000)					
Net Revenue (NZD 000)					

% of Revenue					
Sales Volume (Tonnes)					
EBIT per Tonne					
Change on 2002					

264. The table shows Holcim's projected scenarios A and B being an import volume of [REDACTED] tonnes, [REDACTED]. [REDACTED] Holcim estimates a [REDACTED] and [REDACTED] percent EBIT per tonne in 2003 respectively.

265. The industry will not likely lose any production capacity or output of clinker as a result of the dumped imports, but it may [REDACTED]. Both companies are, [REDACTED] in order to meet the demands of the New Zealand domestic market and it is likely that [REDACTED] will be displaced by the dumped imports.

266. The industry has argued that the dumped imports not only affect volume but also affect the selling prices in the market and that competition for sales will cause prices to drop resulting in lower average profits and the large drops in EBIT projected above.

267. The Ministry has estimated that the imports from Thailand will be in the region of [REDACTED] tonnes in the next 12 months which is a similar level of imports to 2002, where there was no evidence of material injury.

Fern's Submission

268. In response to the Essential Facts and Conclusions report Fern noted that "Fletcher Building has just released their annual report which states that their profits in all divisions are the best in the company's history." Fern stated that this supports its claim that it has had very little or no effect on the profitability of either company, as Fern also stated that Holcim's annual report earlier this year also claimed "an excellent year for that company".

Ministry Comments

269. It is public knowledge that parent companies of both Holcim and Golden Bay have reported very good years for the year to December 2002 and the year to June 2003 respectively. It is recorded on Fletcher Building's website, in particular the 2003 Annual Report under the heading of Operational Overview that "there was record domestic demand for cement for the second successive year"..."Prices were similar to those obtained in the previous year, but margins had improved by increased volumes and ongoing operational improvements". It is recorded on Holcim's website that for the third quarter of 2003 there was continued recovery and

the initial outlook for 2004 is improving because of inter alia "higher sales in all three core segments of cement, aggregates and ready-mix concrete".

Conclusion

270. The Ministry concludes that there is evidence that dumped imports will displace some of the sales that the industry might have made, but in the next 12 months Thai imports are not considered likely to be at a level where industry profits will be materially affected.

Productivity

271. 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.

272. Holcim provided the following figures in relation to productivity.

Table 4.13: Holcim Productivity

		Budget	Budget	Scenario	Scenario
	2002	2003	2004	A	B
By Volume:					
Tonnes per Employee					
Tonnes per Period					
By Value (NZD):					
Revenue per Employee					
Revenue: Employee per Period					

273. Holcim did not provide estimated figures for productivity by volume, but did provide projections by value. Holcim has estimated that productivity will decline in both scenarios.

274. Golden Bay provided the following figures in relation to productivity.

Table 4.14: Golden Bay Productivity

	Forecast	Forecast	Scenario	Scenario	
	2002	2003	2004	1	2
By Volume:					
Tonnes per Employee					
Tonnes per Period					
By Value (NZD):					
Revenue per Employee					
Revenue: Employee per Period					

275. Golden Bay has advised that the plant at Portland runs 24 hours per day, seven days per week and that

276. Golden Bay has budgeted productivity to for the year ended December 2003. Scenarios 1 and 2 have been based on the 2004 calendar year budgets and estimate that productivity per employee and per tonne will in 2003 and 2004.

277. The Ministry's estimated Thai import levels suggest that the industry's scenarios of and tonnes are not likely to occur in the near future. At the import volumes indicated, productivity is likely not to be affected

Conclusion

278. The Ministry concludes that it is likely that productivity will not be affected in 2003 and 2004 at the estimated level of Thai imports.

Return on Investments

279. 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.

280. Golden Bay's division contributes to the return on investment of Fletcher Building Ltd. rather than receiving the returns itself. Golden Bay did not provide an assessment of the impact that the dumped goods might have.

281. Holcim stated that return on investments was measured at the company level (Holcim NZ) rather than at the cement division level. However, it was considered that if the cement division was not performing then this would impact on the returns to Holcim NZ and in turn to Holcim Ltd, which may have an impact on the parent company's willingness to invest in the New Zealand company.

282. The industry did not provide any evidence, however that return on investments would be threatened.

Conclusion

283. The Ministry concludes that there is no evidence that there is any current impact on return on investments, or likely to be at the estimated level of imports.

Utilisation of Production Capacity

284. 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.

285. The capacity of kilns producing clinker is the main current limiting factor on production capacity. Holcim has described the clinker production and cement grinding capacity of the plant as just a theoretical figure noting that, shipping, storage, weather, and availability of raw materials are all issues that impinge on the utilisation of that capacity.

286. Golden Bay was running at [redacted] percent utilisation of clinker production capacity in 2002 producing [redacted] tonnes of clinker and [redacted] tonnes of cement. Clinker and cement production is forecast to be [redacted] tonnes and [redacted] tonnes respectively in 2003, and [redacted] and [redacted] in 2004. Clinker production is budgeted to be [redacted]

[redacted]
Golden Bay has also [redacted]
[redacted]

287. Holcim cement division's published capacity for the Westport plant is 500,000 tonnes and it produced [redacted] percent of published capacity in 2002. Holcim has [redacted]

supplying the domestic market.

Conclusion

288. The Ministry concludes that the industry's clinker production and that grinding capacity is

Magnitude of the Margin of Dumping

289. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

290. The dumping margins for the September shipment 2002 ranged from to percent during the period of the investigation. The dumping margins for the June shipment in 2003 ranged from to percent. Fern's average price undercut the industry's average prices during the dumping period by percent for Golden Bay and percent for Holcim.

Other Adverse Effects

Cash Flow

291. Golden Bay provided cash flow information showing a positive cash flow from operations for the year ended 2002 of NZD million and budgets of NZD million for calendar year 2003 and NZD million for calendar year 2004. On the assumption in scenario 1 of tonnes imported, Golden Bay projects cash flow of NZD million from a projected loss of sales of tonnes and NZD which is equivalent to its forecast in EBIT (see Profits above). Assuming tonnes were imported, Golden Bay projects cash flow of NZD million from a projected loss of sales of tonnes assuming the

292. There were tonnes of dumped imports in the nine months to September 2003 although it is not likely that there will be any further imports from Thailand this year. This equates to a loss of sales of tonnes and using the industry average price in 2002 of NZD per tonne, is a loss of revenue of NZD in 2003 assuming no price reductions.

293. Golden Bay also estimated for 2003 in the application, that for 13,000 tonnes of Thai imports, revenue million, and EBIT per tonne. The actual six monthly results to June 2003 show revenue of NZD million and EBIT per tonne of NZD. These results while for six months are both well above what could be expected for the full year if Golden Bay's scenarios held up. It would appear that the projected

for 2003 at a level of 13,000 tonnes of Thai imports were considerably over estimated.

294. Golden Bay stated in the application that “13,000 tonnes of cement could be effectively countered with [REDACTED]. Golden Bay’s scenarios 1 and 2 are not considered likely if estimated imports of [REDACTED] tonnes were to occur, and the outcomes are likely to be similar to those of 2002.

295. Holcim provided cash flow information showing [REDACTED] cash flow from operations for calendar year 2002 of NZD [REDACTED] million and budgets of NZD [REDACTED] million for calendar year 2003 and NZD [REDACTED] million for calendar year 2004. On the assumption of [REDACTED] tonnes imported compared with budget 2004, Holcim projects [REDACTED] cash flow of NZD [REDACTED] million from a projected [REDACTED] tonnes in volume with [REDACTED]. Holcim considers that the most likely impact will be [REDACTED] which would [REDACTED] million in cash flow in 2004.

296. Holcim’s scenarios A and B are not considered likely if imports of [REDACTED] tonnes were to occur, and the outcomes are more likely to be similar to those which occurred in 2002. The Ministry considers that dumped imports from Thailand will [REDACTED] for 2003 and about [REDACTED] tonnes in 2004. The combined effect on the industry is likely to be considerably less than that projected by the industry, and in fact revenue for the industry is likely to increase rather than decrease overall in a growing market. In addition, it is not considered likely that there will be an effect on cash flow greater than that in 2002.

Conclusion

297. The Ministry concludes that there is sufficient evidence that the imports may impact on the industry’s cash flow to some extent, but that the impact in 2003 and 2004 will be at a similar level to 2002.

Inventories

298. Golden Bay stated that cement does not have a long shelf life. After about six months the product begins to go lumpy and deteriorate. Golden Bay produces [REDACTED]. It produces enough to keep the silos well stocked.

299. Holcim’s inventories are managed at about [REDACTED] tonnes which is about [REDACTED] days supply on average. Holcim has a maximum theoretical storage capacity of [REDACTED] tonnes if silos were full at all the Port Depots (which is not practical in practice because stocks would have to be delivered to each Port Depot more or less simultaneously).

300. Neither company provided evidence that inventories would be affected by the Thai imports.

Conclusion

301. The Ministry concludes that the industry's level of inventories will not be affected because supply is [REDACTED].

Employment and Wages

302. Golden Bay said there would be no impact on employment or wages under the current scenarios.

303. Holcim stated that [REDACTED]. It stated that there would have to be a loss of volume of about [REDACTED]. Holcim explained that cement is produced in a continuous stream except when parts of the plant are shut down for maintenance. It is not practical for a kiln to be stopped for short periods, it is more likely that the period of maintenance on a kiln would be extended to reflect the reduced volume, [REDACTED].

304. Holcim did not, [REDACTED].

Conclusion

305. The Ministry concludes that there will be no impact on employment and wages at the levels of imports being considered.

Growth and Investments

306. Golden Bay stated that any growth is more likely to come from [REDACTED]. The profitability of the division determines whether it meets Fletcher Building Ltd's criteria for the weighted average cost of capital (WACC) ratio. Meeting the criteria set would give the division access to the capital required to support growth.

307. Golden Bay advised that it intends to upgrade its plant over the [REDACTED] years at a cost of approximately [REDACTED], which will increase its production capacity of around [REDACTED] tonnes per annum to [REDACTED] tonnes per annum. Phase One of the planned capital expenditure will improve the independence of manufacturing energy operations from the kiln. This will allow repairs of the coal mill to be undertaken without having to completely shut down the kiln, and crushed coal will be able to be prepared and stored for later use, reducing the inter-dependence between the coal mill and the kiln. Phase Two will further improve heat transfer between materials during the manufacturing process by improving the cooling process the

clinker goes through after exiting the kiln. Phase Two is intended to be completed by [REDACTED].

308. Golden Bay indicated if severe volume effects were suffered then Phase Two of the project would be scaled down and a cheaper alternative would be implemented. Due to the inter-related nature of the Portland manufacturing infrastructure Phase Two will have to be undertaken in some form.

309. Holcim stated that its share of domestic sales (estimated at [REDACTED] percent) had [REDACTED] by about [REDACTED] tonnes over the last [REDACTED] years. Cement is a commodity product, the main driver of consumption being the construction industry, both residential and commercial. The growth in these markets tends to be cyclical and dictates, to a large extent, the domestic consumption of cement. Holcim said that a loss of sales to imports would constrain its growth. In recent times Holcim has [REDACTED].

Holcim has [REDACTED].

310. The Ministry notes that the industry's sales are [REDACTED] and that both companies are producing [REDACTED] and both companies [REDACTED] a market that is continuing to grow.

Conclusion

311. The Ministry concludes that there is no evidence that growth and investments are being affected, however, they could be constrained if a large enough volume of dumped imports were to enter the market, but not at the [REDACTED] tonnes currently being considered likely.

Ability to Raise Capital

312. In order to gain access to capital injections from Fletcher Building Ltd. Golden Bay stated that it must meet the WACC set by Fletcher Building for its divisions. Capital expenditure is approved only on a stage by stage basis even when meeting the WACC ratio.

313. Holcim stated that Holcim Ltd provides the capital for investment in the company. Holcim NZ competes for capital with all the other companies in the Group and if Holcim NZ is less profitable then it is clearly a less desirable prospect in which to invest.

Conclusion

314. The Ministry concludes that the ability of the industry to raise capital is not currently affected however, it could potentially be affected if a large enough volume of dumped imports were to enter the market, but not at the levels currently being considered.

4.5 Other Causes of Injury

315. 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

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

Volume and Prices of Goods not Sold at Dumped Prices

316. Imports of Portland cement from other countries over the period of investigation are significantly less than the imports of the subject goods from Thailand. The Ministry has not found any evidence, that the volume and prices of Portland cement from other countries has injured or are injuring the industry.

Contraction in Demand or Changes in the Patterns of Consumption

317. Demand for Portland cement follows the business cycle, in particular the construction and residential building markets. There has been no contraction in the demand for Portland cement or change in the pattern of consumption. On the contrary the demand on the domestic market for cement has expanded. The activity of the building and construction sector has increased which is evidenced in the increasing number of building consents issued. According to Statistics New Zealand the residential buildings consents issued have risen since June 2001 and the non-residential building consents have risen since June 2002.

318. A significant proportion of Portland cement production is used by the Ready Mix Concrete operators and the statistics recorded by Statistics New Zealand show that for " the June 2003 ready mix production result was 13 percent higher than the production for April 2003 quarter and 9 percent higher than the same quarter last year" (sourced from www.goldenbay.co.nz/newsandstats.asp?page=2).

319. Holcim [REDACTED] to focus [REDACTED] the domestic market. The domestic demand has increased to the extent that it has increased its output from the kilns at

Westport works and it has imported Portland clinker to supplement the production process and increase its production volume. Holcim states [REDACTED] the imported clinker [REDACTED] there are no significant cost implications. To meet demand [REDACTED].

320. Golden Bay also [REDACTED]. Golden Bay's production policy for Portland cement is [REDACTED]. It is upgrading its plant and production processes to utilise resources efficiently and to increase its production capacity. Golden Bay monitors the market through statistical analysis and constructs regression models to anticipate its future market demand.

321. There is evidence that the industry is taking steps to meet domestic demand, which has increased the costs of production and or increased the capital expenditure. However, these extra costs have been built into the costs of production and are considered minimal considering the sales volume therefore there is no evidence that the industry has been injured or is being injured by these initiatives.

Restrictive Trade Practices of, and Competition Between, Overseas and New Zealand Producers

322. There are no restrictive trade practices. There is a requirement that Portland cement meets the New Zealand standard of 3122:1995. The domestically produced goods are tested frequently on site throughout the production process to ensure they consistently meet the standard and performance criteria.

323. The industry consists of Golden Bay and Holcim and they compete in the same market as the imported subject goods. Golden Bay's plant is located in the North Island and Holcim's plant is in the South Island. The chain of distribution for both companies is nationwide and there is [REDACTED]. Both companies [REDACTED] and operate similarly. The industry states that competition between the companies ensures that the products are of the highest quality and competitively priced. There is no evidence that competition between overseas and New Zealand producers is having an adverse impact on the industry.

Developments in Technology

324. The production of Portland cement is machinery based and operates twenty-four hours a day seven days a week and is only shut down for maintenance work, which is negligible considering its total running time. There have been no significant changes in the production method of Portland cement since its inception.

325. The New Zealand government has signed the Kyoto Agreement, which commits it to cut greenhouse gas emissions back to 1990 levels. The government has announced that it intends to introduce a carbon tax on fuel from July 2007. The industry is [REDACTED] it is researching the possibility of substituting fuels during the manufacturing process and [REDACTED] to reduce the CO₂ emissions. The additional costs at this stage are small and have been built into the costs of production over the period of investigation. However, in time it is likely that these costs may increase which will need to be recovered by an increase in prices.

326. There is no evidence that the industry has been injured or is being injured by developments in technology.

Export Performance and Productivity of the New Zealand Producers

327. Holcim [REDACTED] to export its products [REDACTED] domestic market. Golden Bay has made a strategic decision [REDACTED] domestic market and its exports [REDACTED].

Imports by the Industry

328. Over the period of the investigation the industry [REDACTED] Portland cement of the type that is the subject of this investigation. It has [REDACTED] other types of cement [REDACTED] which are normally recorded under another tariff item and statistical key. When looking at the VFD per unit the values are relatively higher than the subject goods therefore they have been misclassified.

329. In addition Golden Bay has [REDACTED].

Fern's Submission

330. In its response of 13 November 2003 to the Essential Facts and Conclusions report, Fern stated that an import by the industry of "a load of cement is about to be discharged from the M.V. Senator in Dunedin in the next day or so, which we believe

supports our case that importing is now necessary to fulfil the current and future demands of this industry.

Ministry's Comment

331. The Ministry notes that from information available on the internet of Vessel Schedules and Ships in Port, that the "Senator" has visited Dunedin and Christchurch and is recorded as carrying clinker.

Other

332. Fern claims that other factors that are causing injury to the industry are:

- The increasing cost of power;
- The [REDACTED];
- Extra costs of importing clinker - Fern claims that importing clinker [REDACTED].

333. Holcim budgets for increasing costs of electricity and its strategy is to buy on the spot prices and/or run its machinery over night when the charges are less. Golden Bay budgets for the increasing electricity charges.

334. The Ministry does not hold any information pertaining to [REDACTED]

335. For the year ended 30 April 2003 the industry imported [REDACTED] tonnes of clinker. In most cases Portland clinker represents 90 percent of the production of Portland cement therefore theoretically it can produce [REDACTED] tonnes of cement [REDACTED] and [REDACTED] domestic market. From the Custom's data [REDACTED] tonnes of clinker in the year to April 2003, which could produce [REDACTED] tonnes of cement which is considered minor in relation to its total sales volume of [REDACTED] excluding export sales.

336. Over the period of investigation the material costs [REDACTED]. It is recorded in Holcim's Annual Review of 2002 that Holcim imported clinker towards the end of 2001 but there is no evidence over the period of investigation that since this time the material costs have risen significantly.

Conclusion of Other Factors

337. There is no evidence that injury has been caused or is being caused or is threatened by other factors.

4.6 Conclusions Relating to Threat of Material Injury

Import Volumes

338. There is evidence that dumped imports of the subject goods are likely to decline slightly in absolute terms in 2003 and will likely increase slightly in 2004. The subject goods are likely to decline slightly in volume relative to production and consumption in 2003 and increase in 2004.

339. There is no evidence of a significant rate of increase of imports of the subject goods although the import volumes are actually likely to decline slightly between 2002 and 2004. There is evidence of a likely increase in absolute terms compared with the dumping investigation year, but no evidence of a likely substantial increase in dumped imports.

Price Effects

340. There is evidence of price undercutting, but no evidence that this will cause price depression and suppression. There is no evidence of historic price depression or price suppression caused by dumped imports in 2002 when the dumped goods were in the market or threat of price depression or suppression, although there may [REDACTED].

Economic Impact

341. There is no evidence that actual industry sales volumes and revenues have declined in absolute terms. There is no evidence that the industry sales volume and revenue are likely to decline in 2003 or 2004. There is evidence that dumped import volumes are likely to replace some industry sales volume and take some revenue but this is not likely to cause a decline of total volume or revenue in a growing market.

342. There is evidence that in 2002 the industry lost a small amount of market share to imports from Thailand, it is likely that it will gain a small amount of market share in 2003, but lose some again in 2004.

343. There is evidence that dumped import volumes replaced some industry sales volume and therefore profits in 2002. There is no evidence of a likely significant decline in profits in 2003 and 2004 at the estimated level of imports.

344. There is no evidence that productivity per employee is likely to decline in 2003, and there is no evidence that productivity will be affected in 2004 at the level of imports estimated.

345. There is no evidence that dumped imports have caused a decline in return on investments. There is no evidence that dumped imports at the levels estimated, will likely cause a decline in return on investments in 2003 and 2004.

346. Utilisation of production capacity did not decline in 2002. Utilisation of production capacity is not likely to decline in 2003, or 2004 since utilisation is [REDACTED], and the industry [REDACTED]

347. There is evidence that cash flow may have been affected in 2002, and it is likely that there will be some effects in 2003 and 2004 to a level similar to that in 2002.

348. No evidence has been provided of adverse effects on inventories, growth, ability to raise capital, employment and wages, and investments in 2002. No evidence has been provided of imminent adverse effects on inventories, growth, ability to raise capital, employment and wages, and investments.

4.7 WTO Anti-Dumping Agreement on Threat of Injury

349. In addition to considering injury under the injury section (s.8) of the Act as it relates to threat of injury, Articles 3.7 and 3.8 of the WTO Anti-Dumping and Countervailing Agreement further 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.¹¹ 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.

¹¹One 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.

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.

350. The scenarios that were used in this report were two individual sets of scenarios from each company that the companies believed were the most realistic over the period of this investigation. Taking into account the information from the exporter and the importer about future shipments likely in the next 12 months, there is not sufficient evidence to support either set of scenarios being likely in the current set of circumstances that have developed. The Ministry considers that the most likely scenario to occur is that of imports of about [REDACTED] tonnes, which is similar in volume to that which entered the market in 2002 and would likely have similar effects.

351. There is evidence that there will be a small increase in the rate of dumped imports but this is from a low base, but it is not likely that there will be substantially increased import volumes in the foreseeable future.

352. There are [REDACTED], therefore, it is not likely that imports from Thailand will enter New Zealand at prices that will in effect depress or suppress the industry's average prices.

353. There is evidence that the exporter has a large capacity to produce Portland cement, but there is also evidence to suggest that [REDACTED]. SCT has stated that SCI is not expanding its cement production, but [REDACTED]. The exporter has stated that [REDACTED].

354. There is evidence that the importer is setting up an infrastructure to distribute cement, but there is no evidence to suggest that the current infrastructure could currently support more than [REDACTED] tonnes of imports and it is not likely that the importer will import more than [REDACTED] tonnes from Thailand in 2004. [REDACTED]. The importer has stated in the marketplace its intention to import larger volumes on an annual basis, but [REDACTED].

355. The Ministry is not satisfied that there is a change in circumstances creating a situation, in which it is clearly foreseen and imminent that dumping would cause material injury.

356. These conclusions are based on all of the information that the Ministry has before it.

5. Conclusions

357. On the basis of the information available, it is concluded that:

- a. The goods under investigation are being dumped; and
- b. any injury threatening the industry is not considered to be material nor is it clearly foreseen or imminent that material injury will arise as a result of the dumped goods.
- c. Section 11 of the Act provides that where the Minister is satisfied that there is insufficient evidence that material injury is being threatened by means of dumped goods, the Minister shall terminate the investigation with respect to those goods.

6. Termination of an Investigation

358. A summary of the Essential Facts and Conclusions Report was sent to interested parties on 28 October 2003 and a copy of the full report followed. Comments were sought and further submissions were received. These submissions have been incorporated into this report and analysed carefully, and the context in which the information has been provided has been taken into account, but it is not considered that they provided any new information that would change the substantive facts and conclusions drawn in this report.

359. Section 11(1)(b) of the Act states that:

(1) Where the Minister, at any time before making a final determination under section 13 of this Act, is satisfied in respect of some or all of the goods under investigation, that--

...

(b) There is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened or the establishment of a New Zealand industry has been or is being materially retarded by means of the dumping or subsidisation of the goods; or

...

the Minister shall--

(f) Terminate the investigation with respect to those goods; and

(g) Give notice of such termination.

360. The Ministry considers that there is insufficient evidence that there is an imminent threat of material injury to the New Zealand industry.

Industry Submission

361. The industry has requested that “if the investigation is terminated we rely on the Ministry to continually monitor the level of imports of the dumped cement. If at any time they exceed the levels for 2002 we expect the Ministry to immediately initiate a further investigation as provided for in section 11(3)(a) of the Act, and that such an investigation will be conducted in a judicious manner to ensure that the industry is not materially injured by dumped imports the Ministry had the opportunity to protect it from.”

362. Section 11(3)(a) and section 4 of the Act state that:

...

(3) Where--

(a) Any investigation is terminated under subsection (1) of this section, and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such nature as materially to affect the decision to terminate the investigation;

...

the Chief Executive may initiate a further investigation and all the provisions of this Act shall have effect accordingly.

(4) Notice shall be given of the initiation of every further investigation under subsection (3) of this section.

Ministry Comments

363. With regard to setting a level of imports, it should be noted that at no stage has the Ministry stated that the level of imports in the year 2002 was a threshold level, which would cause material injury to the New Zealand industry if imports exceeded that level. It could not be expected that a market would remain at a constant level and there is no specific level of dumped imports at which the Ministry considers that material injury would be caused. If that were the case, imports to the year ending 30 June 2003, which as the industry is aware were about 22,000 tonnes, would have been considered by the industry to be causing it material injury. The industry has not raised the argument during the course of the investigation that it has been or is now threatened with material injury at this level of imports.

364. The Ministry has considered its obligations under section 11(3)(a) of the Act and considers that it would be obliged to consider a new investigation only if information used in this investigation, as the Act states “was incorrect or did not disclose material facts” and which would have materially affected the decision to terminate the investigation. The Ministry considers that, the industry’s view that in order to meet this obligation the Ministry must monitor imports, is an incorrect interpretation of s11(3)(a). The Ministry will consider information given to it, but does not consider that it is obliged to seek out information in that regard.

365. In addition, with regard to s11(3)(a) of the Act, the very nature of a threat of material injury case involves predominantly forecasts and projections, rather than actual facts other than information which is historical. Much of the information used by the Ministry, from the industry, the importer and the exporter is that of forecasts (even if based on facts). It is possible for business circumstances and plans to change over time and it is valid for these changes to occur. Any decision of whether s11(3)(a) should be applied, would need to take such issues into account and any other relevant information that was available to the Ministry.

7. Recommendations

366. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of Portland cement from Thailand:

1. That the Minister terminate the investigation pursuant to section 11(1)(f) of the Dumping and Countervailing Duties Act 1988
2. That the Minister sign the attached *Gazette* Notice, and give notice of the termination of the investigation to interested parties in accordance with section 11(1)(g) of the Act.

Investigating Team
Trade Remedies Group