

ownership, catch history, financial information, and a bid for the amount for which Federal fishing permits will be surrendered. NOAA will use the information to select the vessels to be removed. A vessel selected to participate must be scrapped by the owner.

*Affected Public:* Individuals, businesses or other for-profit organizations.

*Frequency:* One time.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Don Arbuckle, (202) 482-7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: May 15, 1995

**Gerald Tache,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 95-12333 Filed 5-18-95; 8:45 am]

BILLING CODE 3510-CW-F

**Foreign-Trade Zones Board**

[Docket A(32b1)-7-95]

**Foreign-Trade Zone 155—Calhoun County, Texas, Request for Export Manufacturing Authority, ABB Randall Corporation (Gas Plant Modules)**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Calhoun-Victoria FTZ, Inc., grantee of FTZ 155, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting authority on behalf of ABB Randall Corporation (ABB Randall) to manufacture gas plant modules for export under zone procedures within FTZ 155. It was formally filed on May 8, 1995.

The authority would be used for the fabrication of nine gas plant modules for shipment abroad as part of an overseas plant construction contract involving ABB Randall which will be completed by the end of 1996. Certain components (about 80% of total) would be sourced from abroad, including: flat rolled steel and steel alloy products, steel and steel alloy bars/rods and angles/shapes, reservoirs/vessels/tanks (iron or steel), steel, copper and aluminum wire, steel,

copper and aluminum pipe/tubing, pumps, electric power motors and generators, electrical signaling devices, and electrical machines.

Because all of the modules would be exported, zone procedures would exempt ABB Randall from Customs duty payments on the foreign materials.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is June 19, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 3, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 12, 1995.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 95-12396 Filed 5-18-95; 8:45 am]

BILLING CODE 3510-DS-P

**International Trade Administration**

[A-201-802]

**Gray Portland Cement and Clinker From Mexico; Final Results Of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** The review period is August 1, 1992, through July 31, 1993. This review covers one manufacturer/exporter, CEMEX, S.A. (CEMEX). On June 3, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. We gave interested parties an opportunity to comment.

For our final results, we have determined that CEMEX failed to cooperate with the Department. As a result, we have assigned CEMEX a margin based upon best information available (BIA), in accordance with section 776(c) of the Tariff Act of 1930,

as amended (the Act). When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we use as BIA the higher of (a) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or prior administrative review, or (b) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin. For purposes of the instant review, this margin is the highest rate found for any firm in the LTFV investigation, *i.e.*, CEMEX's margin, as amended pursuant to litigation (61.85 percent). The "All Others" rate for this order is 61.35 percent.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert James or John Kugelmann, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 3, 1994, the Department published in the **Federal Register** (59 FR 28844) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 30, 1990). The Department has now completed this review in accordance with section 751 of the Act.

**Scope of Review**

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. Our written description of the scope remains dispositive.

### Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement and the National Cement Company of California (petitioners) and CEMEX on July 5, 1994. We received written rebuttal comments from petitioners and CEMEX on July 11, 1994. On July 18, 1994, we held a public hearing.

*Comment 1:* CEMEX insists that the Department, in accordance with a July 1992 panel report from the Antidumping Code Committee of the General Agreement on Tariffs and Trade (1947 GATT), must revoke the antidumping duty order *ab initio*, due to what CEMEX contends was the Department's failure to properly establish petitioners' standing in the original LTFV investigation. CEMEX argues that the U.S. statute is silent on the degree of support required to warrant initiation of a LTFV investigation. In cases where the U.S. statute does not specifically address an issue, CEMEX argues, the law must be interpreted in a manner which will not conflict with U.S. obligations under international agreements. According to CEMEX, the Department failed to affirmatively ascertain that the petition, filed on behalf of a regional industry, was supported by "all or almost all" of that regional industry. As a result, CEMEX argues, initiation of the LTFV investigation was improper and, thus, the investigation and all subsequent proceedings following from the investigation are void and must be rescinded. Only then, CEMEX maintains, will the actions of the administering authority in the United States (*i.e.*, the Department) be brought into compliance with the findings of the GATT panel report.

Petitioners argue that U.S. courts have established that the provisions of the GATT Antidumping Code cannot be interpreted to supersede domestic law. Citing the Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660 (Fed. Cir. 1992) (*Suramerica*), petitioners assert that U.S. law takes precedence over the conclusions of a GATT panel report. The Federal Circuit further held, petitioners maintain, that it is the duty of Congress, and not the courts, to reconcile any conflicts between U.S. law and the GATT Antidumping Code. Petitioners note that, in *Suramerica*, the dispute also centered on the Department's manner of addressing standing in a LTFV

investigation. The Federal Circuit, petitioners maintain, "summarily rejected" the respondents' request to revoke the order. Further, petitioners argue, the Fifth Circuit Court, in *Mississippi Poultry Association, Inc. v. Madigan*, 992 F.2d 1359 (5th Cir. 1993), specifically concluded that the Department's interpretation of standing takes precedence, even if such interpretation "is virtually certain to create a violation of the GATT."

Finally, petitioners aver that the GATT panel report is not binding upon the United States, as the panel's conclusions have not been adopted by the GATT Antidumping Code Committee. Petitioners claim that until such time as this report is adopted, the panel report creates no legally binding obligation upon the United States under international agreements.

*Department's Position:* We agree with petitioners that unadopted GATT panel reports create no obligation upon the United States. In the present case, the Government of the United States has not agreed to the adoption of the GATT panel report regarding Mexican cement and clinker on both legal and procedural grounds, and the Antidumping Code Committee has not, in fact, adopted this report. In the investigations of pure and alloy magnesium from Canada and Norway, respondents also cited an unadopted GATT panel report on seamless stainless steel hollow products from Sweden. This panel report faulted the Department's interpretation of the expression "on behalf of an industry," which is found at section 732(b) of the Act. See *Pure and Alloy Magnesium from Canada: Final Affirmative Determination*, 57 FR 30940 (July 13, 1992), and *Pure and Alloy Magnesium from Norway: Final Negative Determination*, 57 FR 30944 (July 13, 1992). In those cases, the Department rejected any applicability of the unadopted GATT panel report.

We also agree with petitioners that U.S. law, which the Department followed when initiating the LTFV investigation, takes precedence over the GATT Antidumping Code. This position has been supported by the Federal Circuit which concluded that "the GATT does not trump domestic legislation; if the statutory provisions at issue here are inconsistent with the GATT, it is a matter for Congress and not this court to remedy." *Suramerica*, 966 F.2d at 667-668. Rather, as the CIT stated in *Timken Company v. United States*, 14 CIT 753 (CIT 1990), "any guidance the ITA gleams from the [GATT] Code is clearly hortatory and not mandatory."

Furthermore, the Department has no authority to rescind its initiation of the LTFV investigation. Under sections 514(b) and 516A(c)(1) of the Act, a LTFV determination regarding initiation becomes final and binding unless a court challenge to that determination is timely initiated under 516A. Even if judicial review of a determination is timely sought, the Department's determination continues to control until there is a resulting court decision "not in harmony with that determination." See 19 U.S.C. 1516a(c)(1). In this case, no one challenged the Department's determination on standing before the CIT. Therefore, that determination is final and binding on all persons, including the Department.

With respect to the statute's purported "silence," we note that the 1947 GATT, as well as the Agreement on Implementation of Article VI of the GATT (the AD Code), is silent as to the degree of support required for a petition filed in a regional industry case. Likewise, in considering the proper interpretation of the requirement that a petition be filed "by or on behalf of" an industry, the AD Code provides no express guidance as to how compliance with this criterion is to be ascertained. Thus, even if the Act is silent on these issues, our interpretation of the statute could not conflict with the AD Code.

We also reject any suggestion that our practice of presuming the support of the domestic industry, absent an affirmative showing to the contrary, conflicts with U.S. law. In fact, numerous decisions by the U.S. Court of International Trade (CIT) have upheld the Department's practice. See, *e.g.*, *Citrosuco Paulista v. United States*, 704 F. Supp. 1074 (CIT 1988); *Comeau Seafoods v. United States*, 724 F. Supp. 1407 (CIT 1989).

For these reasons, we have concluded that (i) the GATT panel report does not govern the Department's conduct of this administrative review, and (ii) our determination in this regard is in accordance with law.

*Comment 2:* CEMEX argues that the Department erred in applying BIA in this review, as the data on sales of Types II and V cement, as well as data on constructed value for Types II and V cement submitted by CEMEX, were sufficient for the Department to accurately calculate margins in the instant review. CEMEX claims that the Department's conclusion in its preliminary results that data on sales of Type I cement were "essential" to determining if home market sales of Types II and V cement were within the ordinary course of trade (see below) was without foundation and, therefore, did not warrant use of total BIA. CEMEX

contends that the Department's sole basis for applying BIA was CEMEX's refusal to supply the Type I information, and not because the Department had insufficient information to determine whether CEMEX's Type II and Type V sales were made in the ordinary course of trade. CEMEX further maintains that, "absent a legally sufficient excuse for resorting to comparisons of similar merchandise," the Department is required to use sales of identical merchandise as a basis for foreign market value (FMV). In this case, CEMEX argues, use of BIA would only be appropriate if the Department had reviewed the information in the record and found that the sales of identical merchandise were outside the ordinary course of trade. Since, according to CEMEX, it had provided adequate information to support its claim that its sales of identical merchandise were within the ordinary course of trade, the Department should have used those sales. Instead, CEMEX claims, the Department simply disregarded all information on sales of identical merchandise provided by CEMEX and resorted to BIA.

CEMEX insists that its sales of Type II and Type V cement were made in the ordinary course of trade and, thus, are the appropriate sales for comparison purposes. Further, CEMEX maintains that no evidence on the record of the instant review rebuts this contention. CEMEX argues that it provided sufficient data regarding each of the five criteria cited by the Department in support of its conclusion in the second review that CEMEX's Type II and V sales were outside the ordinary course of trade. These factors were summarized as: (a) Shipping arrangements; (b) profitability of sales; (c) marketing reasons, other than profit; (d) volume of sales; and (e) historical sales trends.

Thus, in the instant review, according to CEMEX, the Department had no need for information on home market sales of Type I cement in order to determine that sales of Types II and V were made in the ordinary course of trade. CEMEX maintains the Department never rendered a decision in its ordinary-course-of-trade investigation and, therefore, never demonstrated its need for sales data on Type I cement. CEMEX claims that the administrative burden and cost of submitting sales data on "similar" merchandise, *i.e.*, Type I cement, is not justified in this case, since CEMEX was able to supply sufficient data on sales of identical merchandise.

Petitioners suggest, in turn, that CEMEX, through its refusal to supply the requested data on Type I sales, is

attempting to "wrest control" of this review from the Department by deciding unilaterally what information the Department is entitled to receive. It is not incumbent upon the Department, continue petitioners, to demonstrate to respondents' satisfaction the relevance of any given information sought. Yet, petitioners suggest, this is precisely the standard CEMEX is attempting to impose in this review. Petitioners maintain that CEMEX would turn the Department's administrative review into "the equivalent of a federal court discovery dispute, where the respondent is free to object to substantial portions of the questionnaire on relevance and other grounds." See Petitioners' Rebuttal Brief, July 11, 1994, pages 2 and 8.

Petitioners maintain that the Department had good cause to request Type I sales data, as this information would be vital in conducting an investigation of whether CEMEX's sales of Type II and Type V during the period of review were or were not within the ordinary course of trade. Petitioners argue that full and complete responses to the Department's information requests are necessary; otherwise, petitioners aver, the Department would be forced to operate "in a vacuum" in making any ordinary-course-of-trade determination. Finally, petitioners contend that contrary to CEMEX's claims, the record of this review for the 1992-1993 period is not sufficient to demonstrate that CEMEX's Type II and Type V sales were within the ordinary course of trade. Petitioners note that in the 1991-1992 review, the entire ordinary-course-of-trade issue hinged on a comparison of CEMEX's treatment of home market Type II and Type V cement sales with its treatment of home market Type I sales.

*Department's Position:* We agree with petitioners that it is not incumbent upon the Department to demonstrate to CEMEX's satisfaction the relevance of any given information sought. In the conduct of an administrative review, the Department is routinely confronted with voluminous data and various possible interpretations of these data. It would be impossible to state with complete confidence, at the outset of a proceeding, precisely what information will eventually be deemed relevant in arriving at the final results of a review. This presumes a level of prescience neither the Department nor respondents themselves can legitimately claim. Therefore, the Department must frame its requests for information after considering all the facts at its disposal at the time the information requests are made. At times, subsequent requests for

information may be issued as the Department interprets the data that it has received. Generally, however, the statutory and regulatory deadlines of antidumping proceedings often do not allow the Department to use such a staggered approach; this is especially true where the subsequently requested data would be voluminous or itself capable of various reasonable interpretations which might require further clarification.

While the Department is by no means obligated to state the specific reasons for requesting information prior to its submission by a respondent, in the instant review, the Department did, in fact, explicitly state its grounds for insisting on Type I home market sales data. On three separate occasions in this review, we requested the necessary data on Type I cement sales. In our questionnaire, under "Home Market Sales," we asked CEMEX to report "all sales of the subject merchandise," *i.e.*, Types I, II and V cement. See the Department's questionnaire, dated October 14, 1993, at pages 10 and 14A, which is on file in the Central Records Unit, Room B-099 of the Main Commerce Building. CEMEX requested clarification of its reporting requirements, which we provided in a letter dated November 29, 1993. We explained that, as we had been unable to use home market sales data on Type II and Type V cement for comparison purposes in the prior review, the Department would require home market Type I sales data in the third review. See Letter from Division Director/OADC to CEMEX dated November 29, 1993. Later, in our supplemental questionnaire, we reiterated our need for Type I sales data, stating "[t]hese sales are relevant to your claims that home market sales of Type II and Type V cement are within the ordinary course of trade." See Letter from Division Director/OADC to CEMEX dated February 4, 1994, Section V.A.

We also explained at length in a decision memorandum dated April 18, 1994, and then in our preliminary results of review, why information on home market Type I sales was crucial to determining if CEMEX's home market sales of Type II and Type V cement had been made in the ordinary course of trade. See Decision memorandum to Joseph A. Spetrini dated April 18, 1994, Use of BIA in the Third Administrative Review; see also *Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 59 FR 28844 (June 3, 1994).

We had previously determined, in the course of the prior review, that

CEMEX's sales of Type II and Type V cement in the home market had been made outside the ordinary course of trade (after comparing these sales to sales of Type I cement); therefore, we were unable to use CEMEX's Type II and Type V sales data for comparison purposes. In the instant review, we requested data on sales of such (Types II and V cement) and similar (Type I) merchandise in order to conduct the same type of analysis that we conducted in the prior review, and to determine whether CEMEX's home market sales of Type II and Type V cement during the instant period of review had been made in the ordinary course of trade. CEMEX refused to comply with the Department's repeated requests for Type I sales data. CEMEX did not suggest that it was unable to provide this information; rather, CEMEX asserted that the information was not relevant, and chose not to comply.

Although CEMEX has argued that it is not required to provide its Type I sales data, it is well established that a respondent does not have the right to direct the Department's investigation. As the CIT concluded in *Ansaldo Componenti, S.p.A. v. U.S.*, 628 F. Supp. 198 (CIT 1986), "[i]t is Commerce, and not the respondent, that determines what information is to be provided for an administrative review."

Moreover, the unreported Type I sales data are essential to our analysis. As CEMEX notes in its case brief, "[i]n cases where [the Department] has excluded certain sales for being outside the ordinary course of trade, the administrative record established that the subject sales were either unrepresentative of sales in general, or were made under unusual circumstances relative to other sales in the home market." See CEMEX Case Brief, July 5, 1994 at 5 (emphasis added). Our analysis in the 1991-1992 review used the specific information pertaining to these "other sales in the home market" (i.e., sales of Type I) as a basis for comparison to the Type II and V sales in question. In the present case, we are unable to ascertain conclusively whether or not CEMEX's sales of Type II and Type V cement were within the ordinary course of trade precisely because CEMEX denied us the requisite information regarding sales of Type I cement to arrive at such a decision.

The Department's regulations, at § 353.37(a)(1), state that the Department will use BIA whenever the Secretary "[d]oes not receive a complete, accurate and timely response to the Secretary's request for factual information." 19 CFR 353.37(a)(1) (1994). This same section

continues by stating that when "an interested party refuses to provide factual information \* \* \* or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available." 19 CFR 353.37(b). As CEMEX refused to submit information essential to our analysis of whether certain sales were made in the ordinary course of trade, CEMEX significantly impeded the conduct of this administrative review. For these reasons, we have assigned CEMEX a first-tier, or uncooperative, BIA margin.

We also disagree with CEMEX's argument that the record evidence of this review establishes that its Type II and Type V cement sales were in the ordinary course of trade. In the 1991-1992 review, after analyzing various data on Type I, Type II and Type V cement, we found, first, that over 95 percent of all cement shipments fell within a radius of 150 miles; CEMEX's shipments of Type II and Type V cements were over far greater distances, and, unlike its sales of other cement products, CEMEX absorbed much of the added freight costs for sales of Types II and V. Second, the profitability of sales of Type II and Type V cement was likewise unusual in that these sales generated lower profits than did home market sales of other types of cement. Third, we also found in the 1991-1992 review that CEMEX's home market sales of Type II and Type V cement had a promotional quality which was lacking in its other cement sales, in that CEMEX's Type II and V home market sales were made in large measure to enhance CEMEX's corporate image. Fourth, Type II and Type V cement accounted for a "minuscul" percentage of CEMEX's total cement sales, as these products represent specialty cements sold to a "niche" market. Finally, with regard to historical sales trends, we found that CEMEX did not market Type II and Type V cement in the home market, despite the existence of a small domestic demand, until it began production for export to the United States (circa mid-1980s).

When viewed in their totality, these facts led the Department to conclude that CEMEX's home market sales of Types II and V cement during the 1991-1992 review period had been made outside the ordinary course of trade. See Decision memorandum to Joseph A. Spetrini, dated April 18, 1994; see also, Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993, a public version of which is on file in Room B-099 of the Main Commerce Building. This determination was recently upheld by the CIT in a decision

issued on April 24, 1995. *CEMEX, S.A. v. United States*, Slip Op. 95-72 at 14 (CIT 1995) (*CEMEX*).

In the present review, CEMEX argues that the existence of a home market demand for Types II and V cement, irrespective of CEMEX's business practices, indicates that CEMEX's sales were within the ordinary course of trade. See, e.g., CEMEX Case Brief at 12 through 13. Therefore, CEMEX concludes, most of the factors that the Department analyzed on the ordinary-course-of-trade issue in the 1991-1992 review are not relevant or probative.

However, CEMEX proceeds to address each of these five factors. While CEMEX admits that sales profitability is unusually low for its Type II and Type V sales, it dismisses the relevance of this factor when considered in isolation. CEMEX also maintains that relative sales volume alone should not be determinative as to whether or not sales are within the ordinary course of trade. See Supplemental Questionnaire Response, February 28, 1994 (Supplemental Response) at 12 through 13. In addition, CEMEX contends that in this analysis, the Department should examine differences in terms of sale, not shipping distances. The sole change from the 1991-1992 review that CEMEX claims is that it now "bears all transportation costs on c.i.f. delivered sales" in the home market, whereas in the 1991-1992 review, these costs were fully absorbed on sales of Type II and Type V cement, and partially passed on to the customer on Type I sales. See Supplemental Response at 8 (original emphasis).

We remain unconvinced that the mere existence of a home market demand for Types II and V cement, in and of itself, demonstrates that CEMEX's sales of these products were within the ordinary course of trade. Despite its ninety-year history of cement sales in Mexico, CEMEX made no attempt to address this specialty cement demand until the mid-1980's when it began producing Types II and V cement for export. Further, in any examination involving ordinary-course-of-trade issues, as the CIT recently stated in the *CEMEX* case, "[d]etermining whether home market sales are in the ordinary course of trade requires evaluating not just 'one factor taken in isolation but rather \* \* \* all the circumstances particular to the sales in question.'" Slip Op. 95-72 at 6 (quoting *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993)). Our decision in this case, therefore, turns on the totality of circumstances relating to the Type II and V sales in question and the fact that CEMEX withheld the information

necessary to evaluate fully whether those sales are outside the ordinary course of trade.

Contrary to CEMEX's assertion regarding the irrelevance of the factors cited by the Department in the 1991-1992 review, we note that an examination of these factors supports the conclusion that CEMEX's home market sales of these specialty products "were made under unusual circumstances relative to other sales in the home market." The evidence available to the Department regarding CEMEX's sales of Types II and V cement suggests that the circumstances which prevailed at the time of the Department's decision in the 1991-1992 review still obtain.

In particular, CEMEX continues to sell "minuscule" quantities of these specialty cement products compared to its total production of all cement products. CEMEX realizes a low profit on these sales. CEMEX also concedes the promotional nature of its Type II and Type V sales, stating that its sales of Type II and Type V cement are made in the hope that customers "may decide to source all their cement needs \* \* \* from the same company that sources their specialty cement needs." See Supplemental Response at 12. In addition, CEMEX continues to ship these "niche" products over great distances, incurring high freight expenses. CEMEX's contention that it now absorbs all freight expenses on delivered sales does not alter the Department's conclusions with respect to this issue. The fact that CEMEX incurs high freight costs for Types II and V cement is evidence of the aberrational quality of CEMEX's home market sales of these products. Finally, it should be noted that the factors relied upon by the Department in this review were upheld by the CIT in the *CEMEX* case, which concerned the final results of the second administrative review. Slip Op. 95-72 at 6-14.

The available evidence appears to support the conclusion that sales of Types II and V cement in the home market are aberrational, as noted above. However, the Department has not been able to reach a definitive conclusion on this point due to respondent's failure to supply the requested information on home market Type I sales, which is vital to determining whether any of these factors have changed. Absent some benchmark (i.e., home market sales of similar merchandise, such as Type I cement) against which to measure the Type II and Type V sales in question, the Department is unable to determine whether Type II and Type V sales in this review period were made within the

ordinary course of trade. Therefore, as CEMEX's actions prevented the Department from making this determination, our resort to BIA is justified.

Further, even if the Department had been able, using the information supplied by CEMEX in this review, to determine that the Types II and V cement sales were outside the ordinary course of trade, we would still have needed the Type I data to conduct our antidumping duty analysis. This is another reason why CEMEX's failure to report these data supports the Department's conclusion that it needed to use adverse BIA in this case.

*Comment 3:* Petitioners insist that in the event the Department reverses its preliminary BIA decision altogether, and opts to use CEMEX's submissions of Type II and Type V sales data, the Department must follow the decision of the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers v. United States*, 13 F.3d 398 (Fed. Cir. 1994), and treat pre-sale home market transportation costs as indirect expenses in calculating FMV.

*Department's Position:* As we have not reversed our preliminary decision with regard to BIA, the treatment of pre-sale home market transportation costs is not at issue in this review.

*Comment 4:* Petitioners contend that the Department's application in the present review of its "two-tier" system of BIA, set forth in *Antifriction Bearings And Parts Thereof from France, et al.*, 57 FR 28360 (June 24, 1992), is misguided. Petitioners insist that use of first-tier BIA, reserved for those respondents deemed by the Department to have substantially impeded a proceeding, will result in CEMEX receiving a lower margin than would be the case had CEMEX fully cooperated in the instant review by providing the data requested on home market sales of Type I cement. Rather, petitioners continue, the Department must choose as BIA a rate which will (a) induce a non-cooperative respondent to provide complete and timely responses in any future proceeding; and (b) not leave a respondent "in a better position, as a result of its noncompliance, than it would have had it provided the Department with complete, accurate and timely data." Petitioners' Case Brief, July 5, 1994, at 3 and 4, quoting *Silicon Metal from Argentina; Final Results of Administrative Review*, 58 FR 65336 (December 14, 1993). Petitioners argue that the Department is not required to "blindly" follow its two-tier methodology; the selection of BIA "is made on a case-by-case basis." Petitioners' Case Brief at 3, citing

*Silicon Metal from Argentina, and Cold-Rolled Stainless Steel Sheet from Germany; Final Results of Administrative Review*, 59 FR 15888 (April 5, 1994), *aff'd Krupp Stahl, A.G. v. United States*, 822 F. Supp. 789 (CIT 1993). Petitioners suggest that use of first-tier, or non-cooperative, BIA would, in effect, "reward" CEMEX for obstructing the present administrative review. Petitioners suggest that CEMEX calculated its margin using its Type I sales data, and compared this margin to its non-cooperative BIA margin. According to petitioners, CEMEX then made a deliberate and rational decision not to comply with the Department's requests for information, as this information would result in a margin substantially higher than its preliminary BIA rate of 60.33 percent (CEMEX's rate in the original LTFV investigation, as amended pursuant to litigation). In an effort to support this claim, petitioners use selective data on sales of Types II and V cement taken from CEMEX's questionnaire responses submitted in the instant review to arrive at a margin higher than the Department's preliminary BIA rate. See Petitioners' Case Brief, July 5, 1994 at 4, 5 and Appendix 2.

Petitioners offer three alternatives to the Department's first-tier BIA for determining CEMEX's margin in these final results. First, citing *Silicon Metal from Argentina*, 58 FR 65338 (December 14, 1993), and the *Krupp Stahl* case, petitioners urge the Department to use as BIA the highest margin from the petition, which they claim would be 111 percent. The resulting higher margin, argue petitioners, would have the added effect of inducing CEMEX to fully comply in future administrative reviews.

As a second alternative, petitioners suggest basing FMV on information obtained from a CEMEX press release, submitted by petitioners, regarding average 1992 and 1993 sales prices. United States price (USP) would be based on CEMEX's questionnaire response and subsequent submissions on the record of the present review for its sales of Type II and Type V cement in the United States.

As a final alternative, petitioners suggest that the BIA rate should be the highest rate calculated on remand from the original investigation, or the first or second administrative reviews. Petitioners aver that the Department, in its final results of redetermination in the second remand of the LTFV investigation in *Ad Hoc Committee v. U.S.*, Court No. 90-10-00508, filed on May 12, 1994, established a rate of 61.85 percent for CEMEX as its margin in the

original investigation. This rate, petitioners insist, should be selected as BIA in the instant review, should the Department reject either of petitioners' first two alternatives. Petitioners further contend that should the Department, pursuant to a remand in either the first or second administrative reviews, establish a rate higher than the 61.85 percent rate on remand in the LTFV investigation, this higher rate should then supersede the rate from the investigation.

CEMEX counters that there is no basis for the Department to depart from its standard two-tier methodology in selecting BIA. CEMEX notes that this two-tier methodology has been approved by the Federal Circuit in *Allied-Signal Company v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). CEMEX contends that the two cases cited by petitioners as precedent for using a more "punitive" BIA rate are not analogous to the instant review, as in both prior cases, the highest rates would have resulted in little or no change in the margins of the non-cooperative respondents. Further, argues CEMEX, the Department in a more recent case elected *not* to depart from its two-tier methodology. See *Iron Construction Castings from Canada; Final Results of Administrative Review*, 59 FR 25603 (May 17, 1994). In that case, CEMEX maintains, first-tier BIA would result in a significant increase over any individual rate then in effect, and the Department correctly decided that the first-tier BIA rate "is adverse and will achieve the objective of encouraging complete responses in future reviews." *Id.* at 25605. CEMEX maintains that a similar situation obtains in the instant review.

*Department's Position:* We disagree, in part, with petitioners. We do not believe that the revised BIA margin of 61.85 percent is insufficient to induce cooperation in a future proceeding. We do not see how such a markedly adverse change in CEMEX's margin—from a margin of 42.74 percent (the rate calculated in the second review) to 61.85 percent—would constitute "rewarding" a non-compliant respondent.

We also agree with CEMEX that the parallels to the *Silicon Metal* and *Krupp Stahl* cases may be overdrawn. In both cases, first-tier BIA would have resulted in the uncooperative respondent receiving precisely the same margin then in effect for that company. In *Silicon Metal*, the Department resorted to constructed value based, in part, on data submitted by petitioners as first-tier BIA. In *Krupp Stahl*, the Department chose a higher margin from the

preliminary LTFV determination for its BIA rate. The final results in the latter case were upheld by the CIT. In the instant review, we note that CEMEX's margin would not revert to the same margin previously in effect, but would increase substantially.

For these reasons, we see no grounds for departing from our established first-tier BIA methodology of selecting the highest margin found for any firm either in the LTFV investigation or in a subsequent review.

As the Department has not altered its decision to apply first-tier BIA in this case, the alternative choices for BIA posited by petitioners must be rejected.

*Comment 5:* Petitioners argue that the Department should have completed its investigation of sales below the cost of production, which it initiated on February 4, 1994. Petitioners suggest that when the Department preliminarily determined to apply BIA, the sales-below-cost investigation was merely dropped. Petitioners also fault the Department for failing to conduct a "fictitious market" investigation based on petitioners' March 30, 1994 request.

*Department's Position:* Since the Department has applied total BIA to CEMEX, there is no need for the Department to expend the time and analytical resources necessary to complete a cost investigation which will not be used in calculating CEMEX's margin. Likewise, an examination of petitioners' fictitious market allegation is no longer justified, as the Department has decided to use total BIA.

*Comment 6:* Petitioners suggest that the Department should change the "All Others" rate in this third review to reflect the Department's results of redetermination on the second remand resulting from *Ad Hoc Committee v. U.S.*, Court No. 90-10-00508. The Department filed its redetermination results on May 12, 1994. Petitioners note that the "All Others" rate increased from 59.91 percent to 61.35 percent; this new rate, petitioners maintain, should be put in place with the final results for this third review.

*Department's Position:* The Department will adjust the "All Others" rate to reflect the CIT's affirmation of our remand redetermination in the LTFV investigation (*Ad Hoc Committee of AZ-TX-NM-FL Producers of Gray Portland Cement v. United States*, Slip Op. 94-152 (CIT September 26, 1994)). Therefore, effective with the date of publication of these final results, the "All Others" rate will be 61.35 percent.

#### Final Results of Review

As a result of our review, we determine the weighted-average

dumping margin for CEMEX, S.A. for the period August 1, 1992, through July 31, 1993, to be 61.85 percent. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 61.35 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 12, 1995.

**Paul L. Joffe,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 95-12395 Filed 5-18-95; 8:45 am]

BILLING CODE 3510-DS-P

### Notice of Scope Rulings

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Scope Rulings and Anticircumvention Inquiries.

**SUMMARY:** The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

**EFFECTIVE DATE:** May 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Trentham, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-3931.

### Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in July 1995 a notice of scope rulings and anticircumvention inquiries completed between April 1, 1995, and June 30, 1995, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

#### I. Scope Rulings Completed Between January 1, 1995, and March 31, 1995

Country: Canada

A-201-805 *Steel Jacks from Canada*  
Seeburn, a division of Ventra Group,

Inc.—Seeburn's automobile tire jacks are outside the scope of the finding. 2/3/95.

Country: People's Republic of China

A-570-504 *Petroleum Wax Candles*  
Two's Company—Red and gold angel taper candle is outside the scope of the order. Decorated pillar candles are within the scope of the order. 1/13/95.

Springwater Cookie and Confections—Feather twist candles are within the scope of the order. 2/14/95.

Watkins Inc.—Holiday pillar candles are within the scope of the order. 2/14/95.

A-570-001 *Potassium Permanganate*  
Aerostat Inc.—Plastic ignitor spheres are outside the scope of the order. 1/13/95

Country: Japan

A-588-405 *Cellular Mobile Telephones and Subassemblies*  
JRC International—Model PTR-829 portable cellular telephone is outside the scope of the order. 1/3/95.

JRC International—Model PTR-870 portable cellular telephone is outside the scope of the order. 1/3/95.

NEC Corporation and NEC America, Inc.—Models MP5A1D1 and MP5A1D2 portable cellular telephones are outside the scope of the order. 1/3/95.

Matsushita Communication Industrial Corporation of America—Panasonic models EB-3560 and EB-3561 portable cellular telephones are outside the scope of the order. 1/3/95.

A-588-014 *Tuners*  
Fujitsu Ten Corporation of America—Fujitsu's ETV front ends are outside the scope of the finding. 1/20/95.

Alpine Electronics—Tuning element printed circuit boards (PCBs) are outside the scope of the finding. 2/3/95.

A-588-604 *Tapered Roller Bearings and Parts Thereof*  
Koyo Seiko—Certain forgings are within the scope of the order. 2/2/95.

#### II. Anticircumvention Rulings Completed Between January 1, 1995, and March 31, 1995

Country: Mexico

A-201-806 *Steel Wire Rope*  
Committee of Domestic Steel Wire and Specialty Cable Manufacturers—Affirmative determination of circumvention of

the order by importing steel wire strand into the United States where it is wound into steel wire rope. 2/28/95.

#### III. Scope Inquiries Terminated Between January 1, 1995 and March 31, 1995

Country: India

A-533-809 *Forged Stainless Steel Flanges from India*  
Improved Piping Products, Inc.—Clarification to determine whether "convoluted" flanges are within the scope of the order. Scope inquiry terminated on 1/31/95.

Country: Japan

A-588-804 *Cylindrical Roller Bearings*  
Aerodyne Dallas—Clarification to determine whether outer races and balls, produced in the United States and assembled in Japan after the machining process, are within the scope of the order. Scope inquiry terminated on 2/22/95.

A-588-028 *Roller Chain, Other than Bicycle*

Allied-Apical Co.—Clarification to determine whether a specified replacement part for a tender is within the scope of the finding. Scope inquiry terminated on 2/3/95.

Iwatani International Corporation of America—Clarification to determine whether certain chain imported by Iwatani is within the scope of the finding. Scope inquiry terminated at Iwatani's request on 2/17/95.

#### IV. Anticircumvention Inquiries Terminated Between January 1, 1995 and March 31, 1995

None.

#### V. Pending Scope Clarification Requests as of March 31, 1995

Country: Canada

A-122-823 *Certain Cut-to-Length Carbon Steel Plate*

Sidbec-Dosco Inc., and Canberra Industries—Clarification to determine whether hot-rolled carbon steel plate is within the scope of the order.

A-122-006 *Steel Jacks from Canada*  
Whiting Equipment Canada Inc.—Clarification to determine whether Whiting's rail vehicle electric jacks are outside the scope of the finding.

Country: Mexico

A-201-805 *Circular Welded Non-Alloy Steel Pipe*  
Allied Tube & Conduit Corp., American Tube Co., Century Tube