Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Brazos River Harbor Navigation District, grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the petrochemical complex of Amoco Chemical Company, located in Brazoria County, Texas, was filed by the Board on September 9, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 71–97, 62 FR 49469, 9/22/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149E) at the petrochemical complex of Amoco Chemical Company, located in Brazoria County, Texas, (to be operated in conjunction with Subzone 199A-Amoco Oil Company, Texas City, Texas, refinery), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2710.00.0505—# 2710.00.1050, and # 2710.00.25 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix C);

—Products for export; and,

—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 25th day of August, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–24344 Filed 9–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1996 through July 31, 1997 and one firm, CEMEX, S.A. de C.V. (CEMEX) and its affiliate Cementos de Chihuahua, S.A. de C.V. (CDC). *See* section below entitled ''Collapsing.'' The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 10, 1998.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Nithya Nagarajan or John Totaro, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351, published in the **Federal Register** on May 19, 1997. 62 FR 27296.

Background

On August 4, 1997, the Department published in the **Federal Register** a *Notice of Opportunity to Request Administrative Review* of the antidumping duty order on gray portland cement and clinker from Mexico. 61 FR 41925 (August 4, 1997). In accordance with 19 CFR 351.213, CEMEX, and the petitioner, the Southern Tier Cement Committee (''STCC''), requested a review of CEMEX and its affiliate, CDC. On September 25, 1997, the Department published a *Notice of Initiation of Antidumping Review.* 62 FR 50292 (September 25, 1997). The Department is now conducting a review of these companies pursuant to 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 of 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 number 2523.10. Gray portland cement has also been entered under number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. Our written description remains dispositive as to the scope of the product coverage.

Verification

As provided in Section 782(i) of the Act, we verified information provided by the CEMEX and CDC using standard verification procedures, including on-site inspection of manufacturing facilities, the examination of relevant

sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 351.401(f) of the Department's new regulations, 62 FR at 27410, describes when the Department will treat two or more producers as a single entity (*i.e.*, ''collapse'' the firms) for purposes of calculating a dumping margin. *See also Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12773 (March 16, 1998). The regulations provide that the Department will treat two or more producers as a single entity where (1) the producers are affiliated; (2) the producers have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling; and (3) there is a significant potential for the manipulation of price or production. For this last criterion, the Department may consider (a) the level of common ownership; (b) whether managerial employees or board members of one of the affiliated producers sit on the board of the other affiliated producer; and (c) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. In the current review, CEMEX's equity ownership in CDC exceeded 5 percent; therefore, we have preliminarily found that the two companies are affiliated. In addition, CDC and CEMEX have production processes and facilities sufficiently similar so that a shift in production would not require substantial retooling. Finally in regards to the last criterion, the Department reviewed levels of common ownership, shared board members, and intertwined business relations, and found a significant potential for the manipulation of price or production. As a result, the Department has preliminarily concluded that these affiliated producers should be treated as a single entity and that a single, weighted-average margin should be calculated for these companies. (A complete analysis of this issue is contained in the Memorandum from Roland L. MacDonald to Joseph A. Spetrini, (August 31, 1998), located in the official file of this case (''collapsing memorandum''). Therefore, throughout this notice, references to ''respondent'' should be read to mean the collapsed entity.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine CEP sales during the period of review (POR). *See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 48826 (September 20, 1993) (Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade (CIT) has upheld the Department's practice in this regard. *See The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States,* 914 F. Supp. 535 (CIT 1995.)

Fair Value Comparisons

To determine whether sales of gray portland cement by respondent to the United States were made at less than fair value, we compared the EP or CEP to the NV as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions, during the same month and at the same level of trade.

Export Price and Constructed Export Price

We used EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts in the record. In addition, we used CEP in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP sales based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for early payment discounts, credit expenses, and direct selling expenses. We deducted those selling expenses, including inventory carrying costs, that were related to economic activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duty. We adjusted the starting price for billing adjustments to the invoice price. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Further Manufacturing

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*e.g.*, cement that was imported and further processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determined that the special rule for merchandise with value added after importation under section 772(e) of the Act was applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we have preliminarily determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, for purposes of

determining dumping margins for these sales, we have used the weighted-average CEP calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales.

In particular, we based NV on home market sales of Type I cement by CEMEX and CDC. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise. *See* section 773(a)(1)(B) and 771(16) of the Act. The history of this order demonstrates that, of the various types of cement subject to the order on Mexican cement, Type I cement is most similar to Type II and Type V cement, and pozzolanic cement is the least similar.

During the POR, CDC only sold one type of cement in Mexico subject to the antidumping order—Type I cement. CEMEX, on the other hand, sold four basic types of cement in Mexico during the POR—Type I, Type II, Type V and pozzolanic. However, prior to the commencement of verification, CEMEX notified the Department that the merchandise produced at its Hidalgo plant was either Type V or Type I, although all data from this plant was reported as relating to sales or production of only Type I cement. *See* CEMEX's June 3, 1998, submission explaining the discovery of mis-reported sales at Hidalgo. In other words, a certain portion of the cement sold as Type I from this plant was actually Type V. CEMEX filed a submission on June 16, 1998, revising the home market sales database for sales of Type V cement from Hidalgo. The Department issued a letter on June 25, 1998, rejecting the filing as an untimely response to the Department's questionnaire under section 351.201(b)(2).

Section 776(a) of the Act requires that the Department use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. Section 776(b) of the Act authorizes the Department to use an adverse inference in determining the facts otherwise available whenever an interested party has failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information.

Since the Department was notified that the information on the record regarding sales of cement produced at Hidalgo is inaccurate, we determined that these sales do not provide an appropriate basis for calculating NV. In short, our sales and cost database for cement produced at Hidalgo is extremely flawed. Therefore, in accordance with section 776(b) of the statute, the Department, as facts available, is substituting the highest calculated NV in this review for all sales of cement produced at Hidalgo.

As for CEMEX's home market sales of Type II and Type V cement, and certain home market sales of Type I cement, during the POR, the Department has preliminarily determined that they are outside the ordinary course of trade. As more fully described in the ''Ordinary Course of Trade'' section of this notice, these sales are not representative of CEMEX's home market sales. *See also* Memorandum from Roland L. MacDonald to Joseph A. Spetrini (August 31, 1998).

Where appropriate, we adjusted home market sales of Type I cement for discounts, credit expenses, inland freight, and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We made adjustments, where appropriate, for physical differences in merchandise (DIFMER) in accordance with section 773(a)(6)(C)(ii) of the Act. For CDC's sales, we calculated a DIFMER adjustment using plant-specific cost data reported by CDC. For sales made by CEMEX, we preliminarily determine, in accordance with section 776 of the Act, that the use of partial facts available for a DIFMER adjustment is appropriate. For the reasons discussed below we have preliminarily determined that the most appropriate basis for a facts available DIFMER is the actual cost differences in producing Type I cement sold in the home market and Type V cement sold in the U.S. market. As facts available, and in order to minimize the effect of varying plant efficiencies, the Department has compared CEMEX's variable costs of manufacturing (VCOM) to produce cement at the Hermosillo plants (sold as Types I, II, and V) with the lowest VCOM reported by a CEMEX Type I facility. This calculation is based upon the same methodology used to calculate a DIFMER adjustment for CEMEX in the sixth review (*see Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico,* 63 FR 12764, 12778 (March 16, 1998)), and results in an upward adjustment to home market prices.

As stated above, section 776(a) of the Act authorizes the Department to use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In the instant review, the Department first requested DIFMER information from CEMEX on September 25, 1997. CEMEX was asked to base its DIFMER calculations on differences in physical characteristics between Type I cement sold in Mexico and the type of cement being exported to the United States. CEMEX did not supply DIFMER information in response to this request. On February 17, 1998, in a supplemental questionnaire, the Department requested for the second time that CEMEX submit DIFMER information. On March 20, 1998, CEMEX reported the variable cost information for Type I cement at 11 plants, and information for Type V cement for the Campana and Yaqui facilities. On April 4, 1998, the Department requested interested parties to submit information to assist the Department in determining the most appropriate basis for a DIFMER adjustment in the instant review. In response, CEMEX stated that there were no physical differences between Types I and V cement produced in the home market; therefore, it withdrew its request for a DIFMER adjustment in the instant review. In addition, the Department did not receive any additional information from interested parties demonstrating the most appropriate basis for a DIFMER adjustment.

The Department has determined that the DIFMER information filed by CEMEX on April 20, 1998, and April 27, 1998, (withdrawing its request for a DIFMER adjustment) is contrary to the

data reported by CEMEX in its December 8, 1997, and March 20, 1998, submissions in the reported VCOMH and VCOMU fields. The existing data and product information on the record indicates that there are differences in the physical characteristics of Type I cement and Type V cement. These physical differences were originally made apparent in CEMEX's reported variable manufacturing costs of producing Type I and Type V cement in the home market. In addition, CEMEX's statement on April 20, 1998, is contrary to the facts placed on the record of prior reviews (currently on the record of the instant review), wherein CEMEX states that there *are* differences in the physical characteristics of Type I and V cement which contribute to a difference in the production costs of the two types of cement. Based on the fact that record evidence indicates that there are physical differences between Type I and Type V cement and the fact that interested parties did not submit viable bases for a DIFMER adjustment, the Department has calculated a DIFMER adjustment based upon facts otherwise available.

The Department preliminarily determines that CEMEX's reported DIFMER information, which is flawed and inconsistent with other facts on the record of this case, is unusable. Furthermore, it is not appropriate to use other information on the record as a basis for a DIFMER adjustment. We determined in the fifth administrative review that it is not appropriate to use the weighted-average VCOM of all plants producing Type I and the VCOM of the U.S. merchandise due to efficiency differences between plants. Thus, we relied in that review on the purported VCOM differences for merchandise produced at Yaqui, under the assumption that Yaqui produced both physically Type I and physically Type II cement. In the final results of the sixth administrative review, we determined that Yaqui and Campana only produced a physically Type V cement and not other types of cement. Therefore, we calculated a DIFMER utilizing the most efficient plant producing Type I cement as compared to the plants producing solely Type V. However, in the current review the evidence on the record indicates that any differences in the variable cost of manufacturing cement is attributable, at least in a large part, to differences in plant efficiencies. *See* Home Market Sales Verification Report dated August 21, 1998. In addition, the record evidence indicates, and CEMEX has argued in various submissions, that differences in costs due to plant efficiencies cannot be isolated from other variable costs to calculate a DIFMER consistent with section 773(a)(6) of the statute. Because of different plant efficiencies, the Department is unable to compare the variable costs at the Yaqui and Campana facilities with the average variable costs at CEMEX's numerous facilities producing Type I cement. Therefore, as facts available, and in order to minimize the effect of varying plant efficiencies, the Department has compared CEMEX's VCOM to produce cement at the Hermosillo plants (sold as Types I, II, and V but are physically Type V) with the lowest variable costs reported by a CEMEX Type I facility. This calculation is based upon the same methodology used to calculate a DIFMER adjustment for CEMEX in the sixth review and results in an upward adjustment to home market prices. Additionally, consistent with our prior practice, we have applied to CDC's home market sales a calculated DIFMER based upon plant-specific reported data.

A. Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length.

B. Cost of Production Analysis

Petitioner alleged, on January 9, 1998, that CEMEX and its affiliate, CDC, sold gray portland cement and clinker in the home market at prices below their cost of production (COP.) Based on these allegations, the Department determined, on February 3, 1998, that it had reasonable grounds to believe or suspect that CEMEX had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX and CDC made home market sales during the POR at prices below their COP.

In accordance with section 773(b)(3) of the Act, we calculated an average monthly COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. In our COP analysis, we used the home market sales and COP information provided by the respondent in its questionnaire responses.

After calculating an average monthly COP, we tested whether home market sales of cement were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific average monthly COPs to the reported home market prices less any applicable movement charges, discounts and rebates. In determining whether to disregard home market sales made at prices below the average COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, because less than 20 percent of the respondent's sales of the foreign like product under consideration for the determination of NV were at prices less than COP, we did not disregard any below-cost sales of the product.

C. Inflation

Mexico experienced significant inflation during the POR, as measured by the consumer price index published in International Financial Statistics and the consumer price index from the Bank of Mexico. This data indicated that the annual inflation rate in Mexico during the POR exceeded 40 percent. In accordance with our practice, to avoid the distortions caused by the effects of this level of inflation in prices, we limited our comparisons to sales in the same month. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* 62 FR 9738 (March 4, 1997). When the rate of home market inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated solely due to price inflation that occurred in the intervening time period between the U.S. and home market sales. We have also used monthly cost of production data for this reason.

D. Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York pursuant to section 773(a) of the Act.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, ignoring any ''fluctuations.'' We determine that a fluctuation exists when the daily exchange rate differs from a bench mark rate by 2.25 percent or more. The benchmark rate is defined as the rolling average of the rates for the past 40 business days as reported by the Federal Reserve Bank of New York. When we determine that a fluctuation existed, we substitute the benchmark rate for the daily rate. For a complete discussion of the Department's exchange rate methodology, *see Change in Policy Regarding Currency Conversions,* 61 FR 9434 (March 8, 1996).

E. Produced As vs. Sold As

Section 771(16)(A) of the Act expresses a clear preference for matching sales in the United States with sales in the home market of merchandise that is ''identical in physical characteristics.'' *See CEMEX, S.A.* v. *United States,* 133 F.3d 897 (Fed. Cir. 1998). When circumstances require the Department to compare non-identical merchandise, the statute, at section 773(a)(6)(C)(ii) of the Act, provides for an adjustment for price differences attributable to differences in physical characteristics.

Since the inception of this proceeding, we have seen that all cement generally conforms to the standards established by the ASTM. These standards tend to classify cement according to its physical characteristics, dimensional characteristics, and/or performance properties. Also from the outset, interested parties and the Department have used ASTM standards to identify merchandise subject to this antidumping order and to inform how, and on what basis, we match sales of identical or similar merchandise. Specifically, the Department has sought, wherever possible, to match sales of ASTM standard Type II to Type II, ASTM standard Type V to Type V, and so forth.

During the period covered by the original investigation, the Department discovered one or more instances where Mexican producers sold cement meeting one ASTM standard as if it were cement meeting a lower (included) ASTM standard. However, in the final determination, the Department described these sales as a mistake and not ''the ordinary practice in the industry.'' *Final Determination of Sales at Less Than Fair Value, Gray Portland Cement and Clinker from Mexico,* 55 FR 29244, 29248 (1990). Therefore, based on the fact that it was the normal industry practice to produce and sell on the same basis, the Department accepted that ''matching by ASTM standard was the most reasonable basis for making equitable identical merchandise comparisons.'' *Id.* at 29248.

Devising a methodology for matching sales is often a difficult task and the courts have recognized that the Department has broad discretion ''to choose the manner in which * * * merchandise shall be selected.'' *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995). We have sought, throughout each of the past seven reviews, including the present one, to (i) match based on physical characteristics, (ii) rely on ASTM standards to distinguish one type of cement from another, and (iii) rely on sales documentation as a convenient surrogate for more direct evidence (e.g., mill test certificates) of cement type.

In the instant review, the Department requested CEMEX to report home market and U.S. sales data on both an ''as produced'' basis (*i.e.,* reporting the physical properties of each product sold), and on an ''as sold'' basis. CEMEX reported that it produced cement meeting the physical specifications of Type V cement, and sold this cement in the home market as Types I, II, and V cement. This Type V cement was produced by CEMEX's Yaqui and Campana plants, which are located in the Hermosillo region. CEMEX noted, and the record reflects, that Yaqui and Campana are the only two CEMEX plants which, on a consistent basis, produce cement meeting the physical requirements of one type of cement and sell that cement as another type of cement.

Under these circumstances, we believe it would be unreasonable to match merchandise on a ''sold as'' basis. First, it would make any cost of production or DIFMER calculations more difficult, if not impossible. Moreover, such an approach would not address any sales that were merely labeled ''gray portland cement'' or ''cement.'' Finally, a ''sold as'' approach would lend itself to the type of product manipulation about which petitioner has so often expressed concern. Therefore, for purposes of the instant review, the Department has matched based on the products as produced.

F. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on ''the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.'' Ordinary course of trade is defined as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.''

The purpose of the ordinary course of trade provision ''is to prevent dumping margins from being based on sales which are not representative'' of the home market. *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 278 (CIT 1988). By basing the determination of NV upon representative sales, the provision helps to ensure that the comparison between NV and U.S. sales is done on an ''apples to apples'' basis.

Apart from identifying certain sales that are below cost (section 773(b)(1)) or between affiliated persons (section 773(f)(2)), Congress has not specified any criteria that the Department should use in determining the appropriate ''conditions and practices'' which are ''normal in the trade under consideration.'' Therefore, ''Commerce, in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade.'' *Thai Pineapple Public Co.* v. *United States,* 946 F. Supp. 11, 14–17 (CIT 1996).

The Department's ordinary course of trade inquiry is far-reaching. It evaluates not just '' 'one factor taken in isolation but rather * * * all the circumstances particular to the sales in question.' '' *Murata Mfg. Co.* v. *United States,* 820 F. Supp. 603, 607 (CIT 1993). In short, we examine the totality of the facts in each case to determine if sales are being made for ''unusual reasons'' or under ''unusual circumstances.'' *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 28551, 28552 (1993).

In the second administrative review of this order, the Department determined that CEMEX's sales of Type II and Type V cement were outside the ordinary course of trade and, therefore, could not be used in the calculation of NV (then referred to as ''foreign market value''). *See Gray Portland Cement and Clinker*

from Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 27254 (Sept. 8, 1993). In making this determination, the Department considered, *inter alia,* shipping distances and costs, sales volume, profit levels, sales history, home market demand and the promotional aspect of sales. *See* Decision Memorandum to Joseph A. Spetrini, August 31, 1994; *see also* Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993 (public versions of these memoranda are on file in Room B–099 of the Department's main building). Based upon similar facts and using a similar analysis, the Department reached the same conclusion in the final results of the fifth and sixth administrative reviews for certain sales of Type II and Type V cement by CEMEX in Mexico. *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17151 (April 9 1997); *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review* 63 FR 12764, 12768 (March 16, 1998).

In the instant review, the petitioner alleged, as it did in the second, fifth, and sixth reviews, that CEMEX's sales of Type II and V (produced solely as Type V from the Hermosillo region) cement in Mexico were outside the ordinary course of trade. Pursuant to section 773(a)(1)(B) of the Act, the Department has examined the totality of the circumstances surrounding CEMEX's sales of cement in Mexico that are produced as Type V cement and marketed as Types I, II, and V (which are identical in physical characteristics to the cement that CEMEX sells in the United States). Therefore, based on petitioner's allegation and the relevant findings in the prior review, the Department determined that it had reasonable grounds to believe or suspect that CEMEX's home market sales of cement meeting the physical specifications of Type V cement were outside the ordinary course of trade.

A full discussion of our preliminary conclusions, requiring reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have found: (i) the volume of Type V home market sales is extremely small compared to sales of other cement types, (ii) the number and type of customers purchasing Type V cement is substantially different from other cement types, (iii) shipping distances and freight costs for Type V home market sales tends to be significantly greater than for sales of other cement types, and (iv) CEMEX's profit on Type V sales tends to be small in comparison to its profits on other cement types.

There are two other factors, historical sales trends and the ''promotional quality'' of Type V cement sales, which were considered by the Department in the second administrative review. On September 25, 1997, the Department issued a questionnaire requesting CEMEX to support its position that home market sales of Type V cement were in the ordinary course of trade by addressing, among other things, ''historical sales trends'' and ''marketing reasons for sales other than profit.'' CEMEX's response (copies of its submission from the fifth and sixth administrative reviews) failed to address these two items. Thus, as facts available, the Department finds that the facts regarding these items have not changed since the second review and that: (i) CEMEX did not sell Type V cement until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and (ii) sales of Type V cement continue to exhibit a promotional quality that is not evidenced in CEMEX's ordinary sales of cement (*see* memorandum from Holy A. Kuga to Joseph A. Spetrini, dated August 31, 1993). A public version of this memorandum is on file in room B–099 of the Department's main building.

For the reasons stated above, the Department has preliminarily determined that CEMEX's home market sales of Type V cement during the review period were outside the ordinary course of trade. We note that the facts established in the record of this review are very similar to the facts which led the Department to determine in the second, fifth and sixth reviews that home market sales of Type V cement were outside the ordinary course of trade. The determination involving the second review, as noted above, was affirmed by the CIT in the *CEMEX* case. Slip Op. 95–72 at 14.

In conclusion, the decision to exclude sales of Type V cement from the calculation of NV centers around the unusual nature and characteristics of these sales compared to the vast majority of CEMEX's other home market sales. Based upon these differences, the Department has preliminarily determined that they are not representative of CEMEX's home market sales. Stated differently, these sales were not within CEMEX's ordinary course of trade.

F. Fictitious Market

Petitioner has also claimed that CEMEX established a fictitious market in Mexico for its sales of ''Type II'' cement. Since the sales in question have preliminarily been found to be outside the ordinary course of trade and, accordingly, will not be used in the calculation of NV, it is not necessary for us to address this issue for these preliminary results.

G. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market, or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sales from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61971 (November 19, 1997).

First, based upon a review of the selling functions performed by CEMEX and CDC along the chain of distribution, we have determined that CEMEX's and CDC's Type I home market sales are at different levels of trade. Second, we determined that CEMEX's and CDC's Type I home market sales are also at different levels of trade from CEMEX's CEP sales and CDC's CEP and EP sales.

For a complete discussion of the Department's LOT analysis, *see* Memorandum to the File regarding Level of Trade, dated August 31, 1998. In summary, we found that: (1) there are quantitative and qualitative differences in the selling functions performed by CEMEX in the home market as compared to CEMEX's CEP sales, CDC's CEP sales, and CDC's EP sales; (2) there are also quantitative and qualitative differences in the selling functions performed by CDC in the home market as compared to CEMEX's CEP sales, CDC's CEP sales, and CDC's EP sales; (3) each of the above-mentioned levels of trade are separate and distinct levels; (4) we do not have information which would allow us to examine pricing patterns based on CEMEX's or CDC's sales of other products at the same level as the U.S. CEP sales (CEMEX and CDC) or U.S. EP sales (CDC) to make a level of trade adjustment; and (5) we have determined that CEMEX's NV and CDC's NV are at more advanced levels of trade than CEMEX's CEP and CDC's CEP level of trade. Therefore, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset for CEP sales made by CEMEX and CDC. As stated above in point (2) we determined that CDC's EP sales are at a different level of trade as compared to CEMEX's home market and CDC's home market sales, however we made no similar offset, since neither the Act nor the regulations envision this type of adjustment for EP sales. Finally, record evidence indicates that CEMEX and CDC sell physically different products in the U.S. market. In other words, CEMEX sells physically Type V cement in the U.S., whereas CDC sells physically Type II cement. Therefore, for purposes of this administrative review, we have determined that the most accurate means of comparison would be on a company-specific basis. For purposes of our margin calculation, we compared CEMEX's home market sales to CEMEX's CEP sales, and we compared CDC's home market sales to CDC's CEP and EP sales. This approach allows us to calculate the most accurate DIFMER adjustment. *See* DIFMER section of notice above.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1996, through July 31, 1997, to be 56.89 percent. Interested parties may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish its final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We will base the assessment of antidumping duties on the entered value of the covered merchandise.

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 the 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 determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned 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 in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 61.85 percent, the all others rate from the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 dumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–24347 Filed 9–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Swordfish and Shark Fisheries Vessel Identification Requirements

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; (301) 713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

For vessels permitted in the swordfish or shark fisheries, the vessel's official number is required to be displayed on the port and starboard side of the deckhouse or hull, and on a weather deck, so as to be clearly visible from an enforcement vessel or aircraft. Certain regulations for these fisheries require enforcement while at-sea (e.g., closed areas or seasons, gear restrictions,