approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 219, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 2nd day of April 1997.

Foreign-Trade Zones Board.

**William M. Daley,**

*Secretary of Commerce, Chairman and Executive Officer.*

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

*Executive Secretary.*

[FR Doc. 97–9261 Filed 4–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[DOCKET 25–97]**

### Foreign-Trade Zone 202, Los Angeles, CA; Proposed Foreign-Trade Subzone, Chevron U.S.A. Inc. (Oil Refinery Complex) El Segundo, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Los Angeles Board of Harbor Commissioners, grantee of FTZ 202, requesting special-purpose subzone status for the oil refinery complex of Chevron U.S.A. Inc., located in El Segundo, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 31, 1997.

The refinery complex (256,000 BPD, 1,200 employees) is located on a 1,000-acre site at 324 W. El Segundo Boulevard, in El Segundo (Los Angeles County), California, some 19 miles south of Los Angeles. The refinery is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, butane, petroleum coke and sulfur. Some 19 percent of the crude oil (92 percent of inputs), and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 9, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 24, 1997.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 11000 Wilshire Blvd., Room 9200, Los Angeles, California 90024

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: April 2, 1997.

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

*Executive Secretary.*

[FR Doc. 97–9263 Filed 4–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### 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:** On May 14, 1996, 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. The review covers one manufacturer/exporter, CEMEX, S.A. (CEMEX), and the period August 1, 1993, through July 31, 1994. 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 the best information available (BIA) in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act). Specifically, when a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we assign as BIA the higher of: (a) The highest rate 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 a 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, the margin applied is the highest rate found for any firm in the second administrative review, i.e., CEMEX's margin, as amended pursuant to court-ordered remand proceedings, 109.43 percent. See *CEMEX, S.A.* v. *United States*, Slip Op. 96-–179 (CIT Oct. 24, 1996), *appeal pending*, Appeal No. 97–1151 (Fed. Cir.) The ''All Others'' rate for this order is 61.35 percent.

**EFFECTIVE DATE:** April 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nithya Nagarajan or Kristen Smith, 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

The Department is conducting this review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

#### Background

On May 14, 1996, the Department published in the **Federal Register** (59 FR 2884) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371). The Department has now completed this review in accordance with section 751(a).

**Scope of the 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**

The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Company of California (Petitioners) and CEMEX submitted case briefs on June 13, 1996, and rebuttal briefs on June 20, 1996. A public hearing was held on July 9, 1996.

*Comment 1*

CEMEX contends that the antidumping duty order should be revoked and considered void *ab initio* due to the Department's alleged failure to investigate Petitioners' standing in the original LTFV investigation. Specifically, CEMEX argues that ''[a]t the time of the original investigation, the relevant U.S. statute that prescribed the requirement to establish standing to file an antidumping petition contained no express language addressing the degree of support necessary for a petition to be filed in a regional industry case . . . the statute simply required that the petition be filed 'on behalf of' an industry but provided no express guidance on how compliance with this criterion was to be determined.'' Faced with this lacuna in the statute, CEMEX asserts, the Department is compelled by the decision in *Murray* v. *Schooner Charming Betsy*, 6 U.S. 64, 2 Cranch 64 (1804), to reinterpret U.S. law in accordance with the international obligations of the United States. In the opinion of CEMEX, this means that the Department is required (in the fourth review) to revisit the issue of initiation in the original investigation and abide by a July 9, 1992 ruling by a three-member panel convened under the auspices of the 1947 General Agreement on Tariffs and Trade (''1947 GATT''). See Report of the Panel, *United States—Anti-Dumping Duties on Gray Portland Cement and Cement Clinker From Mexico*, GATT Doc. ADP/82 (July 9, 1992) (''GATT Report''). According to CEMEX, this panel held that the initiation of the original investigation contravened the requirements of the 1979 GATT Antidumping Code (''GATT AD Code'') because the Department ''failed properly to ascertain'' that ''all or almost all'' of the regional industry supported the original petition. If the Department revisited the issue of initiation in light of the GATT Report, CEMEX maintains, it would revoke the order *ab initio*, terminate all proceedings, and refund ''at the very least, all cash deposits posted during the POR.''

CEMEX further maintains that the Department has the authority to revoke the antidumping order at this stage of the proceeding. Citing *Gilmore Steel Corporation* v. *United States*, 583 F. Supp. 607 (CIT 1984), CEMEX argues that government agencies (like the Department) have the authority to correct ''jurisdictional defects'' at any time. CEMEX also argues that the decision in *Ceramica Regiomontana S.A.* v. *United States*, 64 F.3d 1579 (Fed. Cir. 1995) provides ''specific legal precedent to revoke the order in this case'' and that its failure to challenge the Department's determination on industry support for the petition during the original LTFV investigation should be excused given the ''exception to the doctrine of exhaustion of administrative remedies upheld in *Rhone Poulenc* v. *United States*, 583 F. Supp. 607 (CIT 1984).''

The Petitioners claim, in response, that these are the same arguments the Department considered and rejected in the third administrative review of this order. Since ''CEMEX has presented no new arguments or information about any change in circumstances that would justify a departure from the Department's reasoning in the third administrative review,'' Petitioners assert that the Department should reject CEMEX's arguments in this review.

Petitioners note that the GATT Report was never adopted by the GATT Antidumping Code Committee. Therefore, given the legal framework of the 1947 GATT, it imposed no international legal obligation upon the United States which might trigger the doctrine of statutory construction articulated in the *Charming Betsy* case.

Petitioners also contend that U.S. law takes precedence over the 1947 GATT. ''Accordingly, even adopted GATT panel decisions are not binding on the United States to the extent that such decisions are inconsistent with U.S. law or with the intent of Congress.''

Petitioners further note that the Department initiated the antidumping investigation in accordance with U.S. law. According to Petitioners, neither the courts nor the Congress have required the Department to affirmatively establish prior to the initiation of regional-industry cases that the petition is supported by all or almost all of the relevant industry. Indeed, Petitioners assert, the Department's longstanding practice of presuming industry support for a petition in the absence of evidence to the contrary has been upheld by numerous courts, including the Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 966 F.2d 660, 663 (Fed. Cir. 1992).

Finally, Petitioners assert that the Department lacks the authority to revoke the order or otherwise rescind its 1989 initiation of the LTFV investigation. Quoting from the final results of the third administrative review, the Petitioners argue that CEMEX failed to challenge the Department's determination on industry support for the petition before the Court of International Trade (''CIT'') and, accordingly, under sections 514(b) and 516A(c)(1) of the Act, '' 'that determination is final and binding on all persons, including the Department.' ''

*Department's Position*

For the following reasons, CEMEX's arguments are without merit. First, like the GATT itself, panel reports under the 1947 GATT are not self-executing and thus have no direct legal effect under U.S. law.

Second, neither the 1947 GATT nor the GATT AD Code obligates the United States to affirmatively establish prior to the initiation of a regional-industry case that all or almost all of the producers in the region support the petition. There certainly is no suggestion in either instrument that the standing requirements in regional-industry cases are any more rigorous than the standing requirements in national-industry cases.

Furthermore, a GATT panel report, such as the present one, has no legal effect or formal status unless and until it is adopted by the GATT Council or, in the case of antidumping actions, the GATT Antidumping Code Committee. This follows from the fact that the 1947 GATT has, throughout its history, operated on the basis of consensus for purposes of decision-making in general and the resolution of disputes in particular. In the present case, it is undisputed that the GATT Report has

never been adopted by the Antidumping Code Committee. Thus, the recommendations contained in the report are not binding, do not impose any international obligations upon the United States, and do not trigger the rule of statutory construction set forth in the *Charming Betsy* case.

Third, the object of CEMEX's comment is not the preliminary results of this review. Rather, CEMEX complains about an event which occurred over six years ago—the initiation of the original LTFV investigation. The time to voice such objections before the Department was *during* the investigation. Instead, CEMEX, as well as the other Mexican cement producers that participated in the original investigation (Apasco, S.A. de C.V. and Cementos de Chihuahua (''CdC'')), sat silent before the Department. See Final Determination of Sales at Less Than Fair Value, Gray Portland Cement and Clinker From Mexico, 55 FR 29244 (1990) (hereinafter ''*Final LTFV Determination*''). Moreover, neither CEMEX nor any other party appealed the agency's final affirmative LTFV determination (including the decision to initiate) to the appropriate court, and the statute of limitations for doing so has long expired. See 19 U.S.C. § 1516a(a)(2)(A).

The only one who appealed the Department's Final LTFV Determination was the Petitioners. They challenged certain aspects of the Department's final determination before the CIT and the Federal Circuit. See *Ad Hoc Committee Of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 94–152 (CIT), *aff'd*, 68 F.3d 487 (Fed. Cir. 1995). CEMEX participated in that litigation as an intervenor on the side of the Department. On October 10, 1995, the Federal Circuit issued an opinion which disposed of the last issue in this case.

Therefore, even if the Department, of its own volition, were to reinterpret U.S. law in light of the GATT Report, it lacks the legal authority in this review to revoke the order or otherwise rescind the initiation of the underlying investigation. As we stated in the final results of the third administrative review and reaffirm here:

> * * * 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.*
>
> *Gray Portland Cement and Clinker from Mexico; Final Results Third Review*, 60 FR 26865 (1995) (emphasis added).

Fourth, no court, including the court in *Gilmore Steel*, has ever held that the Department has the authority, in an administrative review under section 751(a) of the Act, to reach back more than six years and reexamine the issue of industry support for the original petition. *Gilmore Steel* involved a challenge to the termination of a pending investigation based upon information obtained in the course of that investigation. In particular, the petitioner contended that the Department lacked the authority to rescind the investigation based upon insufficient industry support for the petition after the 20-day period provided for in section 732(c) of the Act (19 U.S.C. 1673a(c)) had elapsed. 585 F. Supp. at 673. In upholding the Department's determination, the court recognized that administrative officers have the authority to correct errors, such as ''jurisdictional defects,'' at anytime during the proceeding. *Id*. at 674–75. The court did not state or imply that a change in legal interpretation (in this case a non-binding one) authorizes administrative officers to reopen prior agency decisions which are otherwise final. The court simply held that the administering authority may, in the context of the original investigation, rescind an ongoing proceeding after expiration of the 20-day initiation period.

Similarly, in *Ceramica Regiomontana, S.A.* v. *United States*, 64 F.3d 1579 (Fed. Cir. 1995), the respondent did not ask the Department to reconsider and rescind a decision made in a prior proceeding. Indeed, the court's entire analysis was based upon the belief that the prior decision—the issuance of a countervailing duty order under former section 303(a)(1) of the Act against ceramic tile from Mexico—was in accordance with law (*i.e.*, ''properly issued''). *Ceramica Regiomontana* concerned the authority of the Department to assess duties pursuant to a valid order *after* Mexico became a ''country under the Agreement'' which entitled it to an injury test under section 701 of the Act. The court held that the Department lacked such authority and ordered the agency, on remand, to revoke the order as to all unliquidated entries occurring after this date. *Id*. at 1583.

CEMEX also errs when it relies on *Rhone Poulenc* v. *United States* to support its claim that ''an exception to the doctrine of exhaustion of administrative remedies'' permits the ''retroactive application of the 1992 GATT decision.'' 583 F. Supp. 607 (CIT 1984) (a party may raise a new issue on appeal if the applicable law has changed due to a judicial decision that arose after the lower court or agency issued the contested determination). First of all, whether CEMEX's claim is barred by the doctrine of exhaustion of administrative remedies is a matter more properly decided by a reviewing court or binational panel under Chapter 19 of the North American Free Trade Agreement. Secondly, even if the issue is timely, the exception claimed by CEMEX does not apply. The GATT Report is not a judicial decision and it did not change U.S. law. In fact, as we explain above, it did not even effect a change in the law on the international plane (*i.e.*, as between Mexico and the United States).

Finally, we note, as we did in the final results of the third review, that numerous courts have upheld the Department's practice of assuming, in the absence of evidence to the contrary, that a petition filed on behalf of a regional or national industry is supported by that industry. See, *e.g.*, *NTN Bearing Corp.* v. *United States*, 757 F. Supp. 1425, 1427–30 (CIT 1991); *Citrosuco Paulista* v. *United States*, 704 F. Supp. 1074, 1085 (CIT 1988); *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407, 1410–12 (CIT).

Indeed, the very issue raised by CEMEX in this review was before the Federal Circuit in the *Suramerica* case. 966 F.2d at 665 & 667. In *Suramerica* the appellees challenged the Department's interpretation of the phrase ''on behalf of'' which applies to both national- and regional-industry cases. Specifically, the appellees argued that the Department's practice of presuming industry support for a petition was contrary to the statute *and* an unadopted GATT panel report involving the U.S. antidumping order on certain stainless steel hollow products from Sweden. In affirming the Department's practice, the Federal Circuit observed that the phrase ''on behalf of'' was not defined in the statute. *Id*. at 666–67. The statute was, in fact, open ''to several possible interpretations.'' In the opinion of the court, the Department's practice with regard to standing and industry support for a petition reflected a reasonable ''middle position.'' 966 F.2d at 667. While there was a gap in the statute, the

court stated, ''Congress did make [one thing] clear—Commerce has broad discretion in deciding when to pursue an investigation, and when to terminate one.'' *Id.*

The court then dismissed the argument that the gap in the statute must be interpreted in a manner that is consistent with the 1947 GATT or the GATT panel ruling:

> Appellees next argue that the statutory provisions should be interpreted to be consistent with the obligations of the United States as a signatory country of the GATT. Appellees argue that the legislative history of the statute demonstrates Congress's intent to comply with the GATT in formulating these provisions. Appellees refer also to a GATT panel—a group of experts convened under the GATT to resolve disputes—which ''recently rejected [Commerce's] views on the meaning of 'on behalf of.' ''
>
> *We reject this argument.* First, the GATT panel itself acknowledged and declared that its examination and decision were limited in scope to the case before it. The panel also acknowledged that it was not faced with the issue of whether, even in the case before it, Commerce had acted in conformity with U.S. domestic legislation.
>
> Second, even if we were convinced that Commerce's interpretation conflicts with the GATT, *which we are not*, the GATT is not controlling. *While we acknowledge Congress's interest in complying with U.S. responsibilities under the GATT, we are bound not by what we think Congress should or perhaps wanted to do, but by what Congress in fact did.* The GATT does not trump domestic legislation; if the statutory provisions at issue here are inconsistent with the GATT, it is matter for Congress and not this court to decide and remedy. *See* 19 U.S.C. § 2504(a); *Algoma Steel Corp.* v. *United States*, 865 F.2d 240, 242 * * * (Fed. Cir. 1989).

*Id.* at 667–68 (emphasis added).

*Comment Two*

CEMEX believes that the Department improperly applied BIA to it in the current review. Specifically, CEMEX argues that the Department abused its administrative discretion by refusing to accept requested information on home market sales of Type I bulk cement once it became available. In making this argument, CEMEX recognizes that it did not provide data on its home market rates of Type I bulk cement within the time limits set by the Department. It also recognizes that the Department's regulations specify that factual information submitted in the context of an administrative review must normally be submitted within 180 days of the initiation of the review. However, CEMEX maintains, the Department has the authority to request a party to submit information at any time during a proceeding and has done so on two prior occasions within the course of this review (August 23, 1995, supplemental questionnaire and August 23, 1995, request for cost of production/constructed value response.) Pursuant to this authority, CEMEX claims, the Department should have ''re-requested'' and accepted a complete home market sales listing for Type I cement.

CEMEX also argues that the Department's application of BIA was ''premature.'' In particular, CEMEX claims that the missing home market sales listing ''was not 'essential' to the [Department's] review at the time that the [Department] applied BIA.'' CEMEX asserts that ''the application of BIA by reason of the absence of a home market sales listing of Type I cement would be justified under the statute only if the [Department] had determined * * * that home market sales of merchandise identical to that sold in the United States (Type II and Type V cement) could not be used in the calculation of FMV.'' According to CEMEX, the statute permits the Department to base foreign market value on home market sales of merchandise similar to merchandise sold in the United States only if home market sales of identical merchandise do not exist, or if the Department determines that sales of identical merchandise must be disregarded because they are either (1) Insufficient in volume to form a fair basis of comparison with U.S. sales; (2) sold at prices below the cost of production; (3) made to a fictitious market; or, (4) made outside the ordinary course of trade. In making this argument, CEMEX maintains that the purpose behind the BIA provision is to prevent a ''hindrance of the proceedings.'' In the current review, CEMEX contends that it has not in any way hindered the Department's investigation with respect to the calculation of FMV and that the determination of whether home market sales were made within the ordinary course of trade could have been made without the requested information.

In the current review, CEMEX contends, the Department was provided with complete sales and cost information on merchandise identical to that sold in the United States during the POR—Type II and Type V cement. Despite having this information, CEMEX argues, the Department failed either to use it to make an FMV calculation or to prove that this information must be disregarded. Therefore, CEMEX concludes, the Department's application of BIA was inappropriate since ''CEMEX should have only been 'at risk' for use of BIA in the event that the Department determined Type II cement could not be used as a basis for FMV and that data on Type I cement was required.''

Petitioners counter that CEMEX's refusal to report home market sales of Type I cement requires the Department to use BIA. Quoting the statute, Petitioners assert that the Department ''[s]hall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise impedes an investigation, use the best information otherwise available.'' 19 U.S.C. 1677e(b). The purpose behind this statutory provision, Petitioners maintain, is to ensure that the Department, not the respondent, controls the antidumping proceeding.

Additionally, Petitioners submit that CEMEX selectively withheld Type I sales data for tactical reasons. Indeed, Petitioners allege, CEMEX's suggestion that the Department request CEMEX to report its Type I sales data after it refused to comply with earlier requests was merely designed to influence an appeal to a NAFTA binational panel. In making this assertion, Petitioners maintain that CEMEX was fully aware of its obligation to report home market sales of Type I cement even before the review was initiated. Moreover, Petitioners argue ''[e]ven if it were truly difficult for CEMEX to provide Type I information, it was incumbent upon CEMEX to demonstrate that fact at a far earlier stage of this review, not to belatedly offer to provide the information months after its responses to the Department's information requests were due.''

In the current review, Petitioners argue that the Department was justified in requesting sales information on Type I cement. This is because, Petitioners contend, the Department is in the best position to know what information it requires to make its dumping determination. Therefore, Petitioners state, ''CEMEX's assertion that the Department did not need Type I sales information because its sales of Type II cement were within the ordinary course of trade prejudges the outcome of an issue that only the Department can decide and in no way excuses CEMEX's refusal to supply the Type I information.''

Moreover, Petitioners continue, the Department is not obligated to continuously solicit information from CEMEX after the company repeatedly failed to cooperate with information requests. The Department, Petitioners assert, has the discretion to set and enforce its own deadlines. Citing *Mantex, Inc.* v. *United States*, 841 F. Supp. 1290 (CIT 1993), Petitioners note that a respondent's ''consistent failure to provide Commerce with complete and

timely submissions provided Commerce with ample reason to resort to BIA.''

*Department's Position*

The Department agrees with Petitioners that the application of BIA in the current review was consistent with the law. Section 776 of the Act and § 353.37 of the regulations provide that where a respondent does not furnish requested information in a timely manner, a determination will be made based on BIA. Generally, the Department will assign BIA based on the following two-tier methodology: (1) 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 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, and (2) when a company substantially cooperates with our requests for information, but fails to provide the information requested in a timely manner or in the form required, we use as BIA the higher of (a) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or (b) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin.

In the current review, we have found that CEMEX has significantly impeded the proceeding by failing to provide data pertaining to sales of Type I cement in the home market in a timely manner. As we explained in our preliminary results ''given the Department's determination that CEMEX's sales of Type II and Type V cement in the home market were outside the ordinary course of trade during the second administrative review, we believe that it is necessary (as the case in the second administrative review) to address the same issue in the fourth administrative review.'' Preliminary Results of Antidumping Duty Administrative Review, Gray Portland Cement and Clinker from Mexico 61 FR 24284. An ordinary course of trade determination requires evaluation of each review on an individual basis taking into account the relevant facts of each case. *Nachi-Fujikishi Corp.* v. *United States,* 798 F. Supp. 7716,719 (CIT 1992). This means that the Department must review all circumstances particular to the sales in question. For this reason, we requested information on Type I merchandise in order to conduct the same type of analysis that we conducted in earlier reviews to determine whether CEMEX's home market sales of Type II and Type V cement had been made in the ordinary course of trade. As detailed below, this information was requested numerous times. First, the Department sent CEMEX a standard antidumping questionnaire on September 30, 1994, instructing CEMEX to report *all* U.S. and home market sales of subject merchandise, including sales of Type I cement in Mexico. On November 22, 1994, CEMEX responded to the questionnaire. However, as in its response in the third review, CEMEX limited its reporting to Type II sales in the U.S. and home market, and failed to report sales of Type I cement in the home market. At this time, CEMEX claimed that its home market sales of Type II cement were made in the ordinary course of trade, and that it was unnecessary to report home market sales of Type I cement.

Next, on August 23, 1995, the Department issued a supplemental questionnaire which indicated that CEMEX must submit, *inter alia,* home market sales of Type I cement in bulk form. The questionnaire warned CEMEX that a failure to submit the requested information could result in the application of BIA. The Department also asked CEMEX to respond to the cost of production/constructed value (COP/CV) section of the questionnaire at this time. The due date for the supplemental information and the Type I sales data and the COP/CV data, was September 14, 1995, and September 30, 1995, respectively—a full year after the review was initiated.

CEMEX requested, in a September 5, 1995 letter, an extension of two weeks for its response to the Department's August 23, 1995, supplemental questionnaire and an additional four-week extension for the submission of Type I sales data. In that letter CEMEX also requested a six-week extension for the submission of COP/CV data. CEMEX expressed that an extension was required due to the ''enormous burden related to the collection and preparation of sales and cost data for Type I cement.'' On September 6, 1995, the Department notified CEMEX that its request to extend the deadline for submitting the supplemental response (including the information on Type I cement) was denied, but that it was granted a three-week extension regarding the COP/CV submission.

CEMEX submitted its supplemental questionnaire response on September 14, 1995. In its response, CEMEX failed to include the required information pertaining to Type I sales. On October 5, 1995, CEMEX submitted its COP/CV questionnaire and again failed to include information pertaining to sales of Type I cement. In both cases, the explanation for the lack of information on home market sales of Type I cement was the size of the reporting burden; in both cases CEMEX claimed that the Type I information would be forthcoming as soon as possible.

Four months later, on February 8, 1996, CEMEX advised the Department that it was prepared to provide a listing of its home market sales of Type I cement in bulk form. In a letter dated February 15, 1996, the Department informed CEMEX that the administrative record was closed and that no new information would be accepted.

As the case history detailed above demonstrates, CEMEX has consistently failed to cooperate with the Department despite repeated requests for Type I sales information. This lack of cooperation significantly impeded the Department's review. Given the Department's determination that CEMEX's home market sales of Type II and Type V cement were outside the ordinary course of trade in the second administrative review, we believe that it is necessary (as in the third administrative review) to review the ordinary course of trade issue in this fourth administrative review. Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47283 (1993). In the second review, CEMEX also sold Types II and V cement in the United States, and Types I, II, and V in Mexico. Unlike the current review, however, CEMEX cooperated with the Department's requests for information in the second review, and supplied information for all home market sales, including Type I cement. Having access to this data, the Department agreed with Petitioner's allegation that CEMEX's Type II and V sales were outside the ordinary course of trade. *Ibid.,* at 47255. In a ruling issued on April 24, 1995, the CIT sustained the Department's determination. *CEMEX, S.A.* v. *United States,* Slip Op. 95–72 at 14 (CIT April 24, 1995).

In the second review, the Department's determination that CEMEX's Type II and V sales were outside the ordinary course of trade hinged on a comparison between home market sales of Type I cement and Type II and V cement. Specifically, the Department analyzed five factors: the volume of home market sales, sales patterns, shipping arrangements,

profitability, and corporate image. Given the Department's analysis in the second review, and the CIT's subsequent ruling, the Department acted reasonably in requesting similar information (*i.e.*, a complete home market sales listing of Type I cement) in the fourth review. Had CEMEX cooperated with the Department's request in a timely fashion, the Department could have fully analyzed the factors focused upon in the second review, and possibly other factors as well. Transaction-specific data on home market sales of Type I cement would have enabled the Department to fully examine the sizes of the transactions, the number of customers, customer identities, category of customers, terms of sale, the freight expenses incurred, and the distances shipped. A detailed sales listing would also have helped the Department to confirm the accuracy of the aggregate sales volume information provided by CEMEX. Therefore, we do not agree with CEMEX's assertion that it was not required to provide Type I cement sales data because the Department has allegedly not demonstrated the relevance of this information to its ordinary course of trade determination.

In addition, we note that, as the Department stated in the final results of the third review, 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 request 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 clarifications. Moreover, even if the Department had been able, using the information supplied by CEMEX in this review, to determine whether the Types II and V cement sales were outside the ordinary course of trade, we would still require Type I data to conduct our antidumping duty analysis.

For all of the foregoing reasons, CEMEX's failure to provide timely information regarding its Type I home market sales prevents the Department from determining whether CEMEX's home market sales of Type II cement were made in the ordinary course of trade. As a result of this failure to cooperate, the Department finds it necessary to apply first-tier BIA of 109.43, the margin for the second administrative review, as affirmed by the CIT on October 24, 1996.

In addition, the Department does not agree with CEMEX's assertion that the Department abused its discretion when it refused to reopen the record and issue yet another request for the Type I sales information. Throughout the course of the review CEMEX was on notice that this information was important to the Department's analysis and that a failure to cooperate might result in the application of adverse BIA. Despite repeated requests from the Department and the extension of numerous deadlines, CEMEX failed to provide the Department with the requested information. Its belated offer in February of 1996, to provide the requested data came one full year after the original deadline for submission of factual information and four months after the record has closed.

The Department's practice not to accept new data after a particular deadline ensures timely reporting of data to be considered in the administrative process. All parties to antidumping proceedings must be given the opportunity to comment on all submitted information. Without adhering to deadlines on the submission of new information, the Department is unable to ensure that parties have been allotted time to review submissions and is unable to perform comprehensive analysis on a timely basis. As we noted above, had CEMEX cooperated with the Department's request in a timely fashion, the Department could have fully analyzed the factors focused upon in the second review, and possibly other factors as well. Furthermore, to allow CEMEX to submit new information at such a late date would undermine Department procedures and would hinder the administration of future administrative reviews.

*Comment Three*

CEMEX contends that the Department erroneously determined that the absence of a home market sales listing for Type I cement prevented the Department from determining whether CEMEX's home market sales of Type II cement were made within the ordinary course of trade. Rather, CEMEX argues that it provided sufficient information to make an ordinary course of trade determination with respect to CEMEX's home market sales of Type II and Type V cement. Specifically, CEMEX notes that the type of information relied upon by the Department to determine whether CEMEX's home market sales of identical merchandise were outside the ordinary course of trade in the second administrative review period was on the record during the present review.

Pursuant to the Department's August 23, 1995 request, CEMEX argues that it submitted information addressing all five factors specified by the Department, as well as additional information demonstrating that there was a bona fide home market demand for Type II and Type V cement in Mexico and that sales of Type II and Type V cement were not extraordinary sales of obsolete or sample merchandise, but rather, sales meeting the specified needs of its home market customers. In particular, CEMEX claims its submissions to the administrative record provide information as to whether: (1) CEMEX incurred greater expenses in shipping Type II and Type V cement as compared to Type I cement; (2) CEMEX shipped Type II and Type V cement over greater distances as compared to Type I cement; (3) CEMEX sold Type II and Type V cement to a niche market; (4) the relative volume of Type II and Type V cement was small as compared to Type I cement; and (5) the profit on sales of Type I cement was abnormal relative to the profit it earned on sales of Type II and V cement. No additional information relevant to the ordinary course of trade issue, CEMEX asserts, would be obtained by submission of a sales listing of Type I cement. Therefore, CEMEX argues, the Department should have reached a definitive decision regarding the ordinary course of trade issue.

Petitioners also object to the Department's conclusion that CEMEX's refusal to report home market sales of Type I cement ''prevents the Department from determining whether CEMEX's sales of Type II cement in the home market were made in the ordinary course of trade.'' Rather, Petitioners maintain, the Department should affirmatively determine that Type II sales were *outside* the ordinary course of trade. Specifically, Petitioners argue that the evidence of record for this review, and the adverse inference resulting from CEMEX's lack of

compliance with the Department's repeated requests for Type I sales data relevant to the ordinary course of trade issue, compel such a determination.

To support their claim, Petitioners note that CEMEX's September 26, 1996 submission demonstrates that the five factors the Department relied upon in the second administrative review to determine that sales of Type II cement were outside the ordinary course of trade continue to be present in the current review. According to Petitioners, CEMEX concedes that (1) CEMEX ''ships Type II cement over greater distances than Type I cement'' and that differences in shipping distances are the result of the locations of the plants which produce each type of cement; (2) the differences in profit between Type I and Type II cement result from ''the higher costs involved to transport cement to customers'; (3) there was a promotional quality to CEMEX's sale of Type II cement; (4) Type II cement represented a ''specialty market'; and (5) CEMEX only began to sell Type II cement in Mexico when it began production for export in the mid-1980s despite the fact that there had been small domestic demand for the product.

Petitioners also argue that the determination that sales of Type II cement were outside the ordinary course of trade is justified by the adverse inference created by CEMEX's refusal to report Type I sales. Petitioner's note that the Department made it clear to CEMEX that it wanted Type I sales data to use as a benchmark for determining whether Type II sales were outside the ordinary course of trade. Based on CEMEX's failure to report this data, Petitioners argue, the Department should have inferred that the Type I information would have been adverse to CEMEX's claim that Type II sales were in the ordinary course of trade.

*Department's Position*

The Department is not able to conclude whether sales of Type II and Type V cement were made within the ordinary course of trade because CEMEX failed to supply the requested information on home market Type I sales. As the Department stressed in the third review, ''[a]bsent 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 sales of Type II and Type V cement during this review period were made within the ordinary course of trade.'' Had CEMEX cooperated with the Department's request in a timely fashion, the Department could have fully analyzed the factors focused upon in the second review, and possibly other factors as well. Therefore, as CEMEX's actions prevented the Department from making an important determination in this review, our resort to BIA is justified.

*Comment Four*

Petitioners argue that the Department's preliminary results unjustifiably rely on the ''first-tier'' BIA rate applied to uncooperative respondents under the Department's standard two-tier methodology. Specifically, Petitioners insist that the presumption that the first-tier BIA rate (*i.e.*, 61.85 percent) is adverse to CEMEX (and thus serves the compliance-inducing purposes of BIA) has been completely rebutted. To support this claim, Petitioners contend that the Department's practice in similar cases, as well as the evidence of record, mandate the use of a higher BIA rate that is truly adverse to CEMEX.

Accordingly, Petitioners demand that the Department select a BIA rate which will (1) encourage future cooperation with the Department's information requests, and (2) enable the Department to accurately determine dumping margins. To ensure these goals, Petitioners note that the Department applies a rule of reasonable inference where the Department infers that the respondent would have complied with information requests if it had been advantageous for the respondent to do so. Thus, Petitioners conclude, the Department uses as BIA a dumping margin that is unfavorable to the noncompliant respondent which ensures that the respondent does ''not find itself in a better position as a result of its noncompliance than it would have had it provided * * * complete, accurate and timely data.'' Petitioners' Case Brief at 47 citing Silicon Metal From Argentina, 58 FR At 65,338.

Generally, Petitioners acknowledge, the Department relies on its standard two-tier methodology in choosing BIA and applies the highest prior margin to a noncompliant respondent. However, Petitioners explain, both the Department and the courts have emphasized that this standard methodology ''merely establishes a *presumption* that the highest prior margins are the best information available'' which can be rebutted by evidence demonstrating that the margin would be higher had the respondent complied with the Department's information requests. Petitioners'' Case Brief at 48 citing *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185,1191 (Fed. Cir. 1993).

Pointing to evidence on the record, Petitioners insist that they have ''unequivocally'' demonstrated that the 61.85 percent first-tier BIA rate is not adverse to CEMEX and, therefore, the presumption that the highest prior margin is the best information available has been rebutted. To support this claim, Petitioners refer to the third administrative review where the Department relied on a first-tier BIA rate of 61.85 percent, the same rate used in the preliminary results for this review. In the third review, Petitioners note, the Department stated that ''[we do not believe that the revised margin of 61.85 percent is insufficient to induce cooperation in a future proceeding.'' However, Petitioners insist, this is exactly what happened; CEMEX continued to defy the Department's requests for home market sales data for Type I cement.

Based on pricing information supplied in a September 14, 1994 CEMEX offering circular for the sale of certain securities in the United States, Petitioners calculated a dumping margin of 83.35 percent. Petitioners argue that this information is at least as reliable, if not more so, than any pricing data reported by CEMEX in the course of the administrative review, since both CEMEX and its underwriters and outside counsel were under a legal obligation to accurately report pricing data in the offering circular.

Additionally, Petitioners point to administrative and case law where they claim the Department, in factually similar cases, has found that the presumption in favor of the two-tier methodology has been rebutted and has applied a BIA rate higher than the first-tier rate. See Certain Malleable Cast Iron Pipe Fittings From Brazil, 60 FR 41,876 (1995); Cold-Rolled Stainless Steel Sheet From Germany, 59 FR 15,888 (1994), *aff'd, Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789 (CIT 1993); Silicon Metal From Argentina, FR 65,336 (1993). In particular, Petitioners cite Steel Wire Rope From the Republic of Korea, 60 FR 63,499 (1995), where, according to Petitioners, the Department recognized that in reviews involving a limited number of participants and, therefore, a small number of rates available for BIA, the standard first-tier methodology may not induce respondents to cooperate. Petitioners maintain that the concern in such cases with respect to the two-tiered methodology is that the lack of past rates, as well as the small number of participants in the current review, could allow a respondent to manipulate the

proceeding by choosing not to comply with the Department's requests for information. In such cases the cooperation-inducing function of the BIA provision of the Act may not be achieved by use of the two-tiered BIA methodology, in which case the Department will resort to alternative sources in determining the BIA rate for uncooperative respondents. Specifically, Petitioners argue that no respondent other than CEMEX has participated in the first three administrative reviews on gray portland cement and, therefore, the highest previous margin was CEMEX's own margin. This enabled CEMEX, Petitioners argue, to compare the first-tier rate to the rate it would have received on a price-to-price comparison and, as a result, manipulate the outcome by choosing not to cooperate.

Petitioners offer two alternatives to the Department's preliminary results. First, Petitioners urge the Department to use as total BIA the highest margin from the petition—111 percent. The resulting higher margin, argue Petitioners, would have the added effect of inducing CEMEX to comply fully in future administrative reviews.

Alternatively, Petitioners argue that the Department should conduct a price-to-price comparison using public home market pricing data and CEMEX's reported U.S. prices. As noted above Petitioners calculated a rate of 83.35 percent using this approach. Petitioners claim that this approach is consistent with other cases in which the Department used a respondent's publicly available information when use of the standard two-tier methodology would reward the respondent for its refusal to cooperate.

CEMEX, in turn, argues that the Department's analysis of its standard two-tier BIA methodology and the application of this methodology, as set forth in the preliminary results, was in accordance with law. CEMEX argues that under the Department's standard two-tier BIA policy for respondents that have been determined to be uncooperative or who have impeded the investigation, the Department will apply first-tier BIA, namely, the higher of: (1) The highest rate found for any firm in the original investigation or in any subsequent administrative review of that case; or (2) the highest rate found for any firm in the original investigation or in any subsequent administrative review of that case. This methodology, CEMEX points out was reviewed by the Federal Circuit in *Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993) and found to be fully in accordance with the law.

In the current review, CEMEX continues, the Department used as first-tier BIA the highest margin found for any company in the original investigation or subsequent administrative review that was in effect as of the date of the Department's preliminary results in the fourth review, the 61.85 percent margin assigned to CEMEX in the final remand results of the original investigation which was issued by the DOC on May 12, 1994 and affirmed by the CIT on September 26, 1994 in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* Slip Op. 94–152 (September 26, 1994). Since the above-referenced rate was sufficiently adverse to CEMEX and determined using methodology confirmed by the Federal Circuit, CEMEX concludes that in the event that the Department decides to continue using BIA for the final results, the Department's BIA methodology was appropriate and should be incorporated into the final results.

In addition, CEMEX asserts that the purpose of BIA is not to obtain the highest possible margin, but rather, to use an adverse margin to encourage future cooperation. In the current case, CEMEX argues, the Department's application of first-tier BIA in the third administrative review successfully induced CEMEX to cooperate with the Department's information requests in the present and subsequent administrative reviews. In this regard, CEMEX references its February 8, 1996 offer to submit a sales listing covering Type I cement in the present review and its complete ''cooperation.''

*Department's Position*

We disagree with Petitioners. As in the third review, the Department sees no grounds for departing from our well-established first-tier BIA methodology of selecting the highest margin found for any firm either in the LTFV investigation or in a subsequent review. Currently, the highest rate found in any prior review or the investigation is the 109.43 percent assigned to CEMEX in the second court ordered remand of the second administrative review. Because this is a higher rate than the 83.35 percent rate proposed by Petitioners, and comparable to the 111.11 percent rate also proposed by petitioners, we do not need to address Petitioners' argument that the rate used in the preliminary result is insufficient to induce cooperation.

We also reject CEMEX's argument that the rate assigned to it in the preliminary results of this review ''successfully induced'' it to cooperate with the Department's information requests. The central purpose of the BIA rule, as CEMEX concedes, is to induce respondents, in the absence of any subpoena power vested in the Department, to provide the necessary factual information so that the investigating authority can achieve the fundamental purpose of the Act—namely, ''determining current margins as accurately as possible.'' *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990). In the present case, however, CEMEX did not provide the necessary factual information. It significantly impeded the progress of the review and only offered to provide requested information one full year after the original deadline for submission of factual information and four months after the record had closed.

Petitioners argue that CEMEX's belated offer of cooperation only came after the Department issued its February 1, 1996 remand results in connection with the second administrative review. *See CEMEX, S.A.* v. *United States,* Slip Op. 96–132 (CIT Aug. 13, 1996). These results, Petitioners assert, put CEMEX ''at risk'' of a higher BIA rate—82.86, (the rate from the first court remand of the second administrative review,) as opposed to 61.85 percent. They may be right; however, the important point is that CEMEX did not cooperate with the Department's administrative review. Therefore, under these circumstances, we are justified in relying upon BIA and in relying upon our two-tier BIA methodology.

*Comment Five*

Petitioners argue that if BIA is based on the first-tier rate, the Department must use the rate calculated on remand in the second administrative review. This is because, Petitioners contend, this margin is based on a price-to-price comparison of Type II cement sales in the United States to Type I cement sales in Mexico, the same comparison CEMEX has thwarted in the current review by refusing to supply requested information. In making this claim, Petitioners insist that nothing in the statute bars the Department from using the margin from the second review remand proceeding as BIA simply because that margin has not been finally approved by the courts or published by the Department in the **Federal Register**.

CEMEX counters that the use of the 82.86 percent margin, (the first court ordered remand results of the second administrative review,) would be contrary to law. According to CEMEX, the remand results in the second review have no legal effect until they are

affirmed by the CIT. Therefore, CEMEX argues, a margin established by the Department in remand results may not serve as the basis for first or second-tier BIA unless they are affirmed. CEMEX asserts that the Department's use of the 61.85 percent rate continues to be the appropriate margin upon which to base first-tier BIA.

*Department's Position*

We agree with Petitioners and CEMEX. As noted in our response to comment four, the Department is applying a first-tier BIA rate of 109.43 percent, (the results from the second court ordered remand). This rate has been approved by the CIT. *See CEMEX, S.A.* v. *United States*, Slip Op. 96–179 (CIT Oct. 24, 1996), *appeal pending*, Appeal No. 97–1151 (Fed. Cir.)

**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, 1993, through July 31, 1994, to be 109.43 percent and the all other rate to be 61.35. 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 for 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 (LFTV remand results). 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice 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 APT materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APT 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: April 2, 1997.

**Robert S. LaRussa,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–9258 Filed 4–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–834–802, A–835–802, A–844–802]**

### Agreement Suspending the Antidumping Investigation on Uranium from Kazakstan, Kyrgyzstan and Uzbekistan

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

**ACTION:** Notice of price determination on Uranium from Kazakstan, Kyrgyzstan and Uzbekistan.

**SUMMARY:** Pursuant to Section IV.C.1. of the antidumping suspension agreement on uranium from Kazakstan, Kyrgyzstan, and Uzbekistan, the Department of Commerce (the Department) calculated a price for uranium of $15.34/lb. On the basis of this price, the export quota for uranium pursuant to Section IV.A. of the Kazakstani agreement, as amended on March 27, 1995, is 700,000 lbs. for the period April 1, 1997, through September 30, 1997. The export quota for uranium pursuant to Section IV.A. of the Uzbek agreement, as amended on October 13, 1995, remains 940,000 lbs. for the period October 13, 1996, through October 12, 1997. Exports pursuant to other provisions of these agreements are not affected by this price.

**EFFECTIVE DATE:** April 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Alexander Braier or Cindy Sonmez, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3818 or (202) 482–0961, respectively.

**PRICE CALCULATION:**

**Background**

Section IV.C.1. of the antidumping suspension agreements on uranium from Kazakstan, Kyrgyzstan, and Uzbekistan specifies that the Department will issue its observed market price on April 1, 1997, and use it to determine the quota applicable to exports from Kazakstan and Kyrgyzstan during the period April 1, 1997, to September 30, 1997 and from Uzbekistan during the period of October 13, 1996 to October 12, 1997. Consistent with the February 22, 1993, letter of interpretation, the Department provided interested parties with the preliminary price determination on March 12, 1997.

**Calculation Summary**

Section IV.C.1. of these agreements specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the weighted-average long-term price as determined by the Department on the basis of information provided by market participants and a simple average of the UPIS U.S. Base Price for the months in which there were new contracts reported. The Department's letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound $U_3O_8$ equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 2.34 percent, which was derived from a rolling average of the annual GDP Implicit Price Deflator index from the past four years. The Department used the base quantities reported on the summary sheet for the purpose of weight-averaging the prices of the long-term