racks, emergency generators, panels and consoles (1997 duty rate range: free—5.2%, *ad valorem*).

FTZ procedures would exempt MHI from Customs duty payments on the foreign components (except steel mill products) used in export activity (up to 100% of total production). On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility'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 on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 10, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 24, 1997).

A copy of the application will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, World Trade Center, Suite 307, 164 Northern Avenue, Boston, MA 02210

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

Dated: September 4, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–23997 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–25–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 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, 1995, through July 31, 1996, and one firm, CEMEX, S.A., and its affiliated party Cementos de Chihuahua, S.A. de C.V. 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, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Kristen Smith or Kristen Stevens, 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 353 (April 1997).

Background

On August 12, 1996, the Department of Commerce (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 for the above-referenced period (61 FR 156, August 12, 1996). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the Petitioner, the Southern Tier Cement Committee, requested a review of CEMEX. On October 17, 1996, the Department published a Notice of Initiation of Antidumping Review (61 FR 181, September 17, 1996). The Department is now conducting a review of this Respondent 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. The Department's 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 Respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in verification reports in the official file for this case (public versions of these reports are on file in room B–099 of the Department's main building).

Collapsing

On May 19, 1997, the Department published new regulations (62 FR 27296, May 19, 1997). Although this proceeding is not governed by those regulations, they are instructive where they describe current Department practice and policy. Section 351.401(f) of the new regulations, 62 FR at 27410, describes the Department's current policy regarding when it 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 (62 FR 17148, 17154, April 9, 1997). 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. 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 had equity ownership of over 5 percent in Cementos de Chihuahua, S.A. de C.V. (CDC); therefore, we have preliminarily found that the two parties are affiliated. In addition, CDC and CEMEX have similar production processes and facilities. Therefore, 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. 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 a memorandum from Roland L. MacDonald to Joseph A. Spetrini, dated September 2, 1997, located in the official file of this case.)

Duty Absorption

On September 30, 1996, Petitioner requested that the Department determine whether Respondent had absorbed antidumping duties during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27394 (May 19, 1997). Because the antidumping duty order on Mexican cement has been in effect since 1990, this order is a transition order in accordance with section 751(c)(6)(C) of the Act. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al,: Preliminary Results of Antidumping Administrative Review (62 FR 31568, June 10, 1997). The preamble to the new antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year, and reviews initiated in 1998 will be considered initiated in the fourth year (62 FR 27317, May 19, 1997). This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for a sunset review of the order under section 751(c) of the Act on entries for which the second and fourth years following an order have already passed. Since this review was initiated in 1996, and a request was made for a determination, we are making a duty-absorption determination as part of this administrative review.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, Respondent sold through importers that are affiliated within the meaning of section 751(a)(4) of the Act. Furthermore, we have preliminarily determined that CEMEX has margins on 92.59 percent of its U.S. sales.

We presume that duties will be absorbed for sales which were dumped. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et.al,: Preliminary Results of Antidumping Administrative Review (62 FR 31568, June 10, 1997). Our duty-absorption presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we preliminarily find that antidumping duties have been absorbed by CEMEX on the percentage of U.S. sales indicated.

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 U.S. CEP sales during the period of review. See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review (58 FR 48826, 1993) (Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade 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*, Slip Op. 95–195 (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 of 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 based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for

early payment discounts and corrections for billing errors. We deducted direct and indirect selling expenses, including imputed credit expenses and inventory carrying costs, that related to commercial activity in the United States in accordance with section 772(d) of the Act. 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 in accordance with section 772(c)(2) of the Act. 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 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 estimated 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 preliminarily determine the value added is likely to exceed substantially the value of the subject merchandise. In addition, sales of identical and other subject merchandise were made in sufficient quantities to serve as a basis for comparison. 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 (and no party disputes) 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, at verification the Department discovered that all of the merchandise produced at the Yaqui and Campana plants was either Type V or pozzolanic. In other words, cement sold as Type I and Type II from these plants was actually Type V. Since we received this information at such a late date, the Department was not able to determine whether these sales of Type I cement provide an appropriate basis for calculating NV. For example, the Department does not know whether these sales were made above cost or within the ordinary course of trade. In short, our sales and cost data base for these sales of Type I cement (produced at either Yaqui or Campana) is extremely flawed. Therefore, as facts available, the Department finds these sales to be an inappropriate basis for NV and is excluding them from its calculations.

As for CEMEX's home market sales of Type II and Type V 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.

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, and that such partial facts available should be based on an adverse inference. Accordingly, we have applied a twenty percent upward adjustment (the maximum usually permitted by the Department) as adverse facts available.

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. Section 776(b) authorizes the Department to base adverse facts available on information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record.

At verification, the Department found that the DIFMER reported by CEMEX was based not on physical differences, but an allocation of costs between Type I and Type II cement sales for what was in fact the same physical product—Type

V cement (see below). This information could not be used for purposes of the DIFMER calculation, and other information on the record is not appropriate for this purpose. Thus, pursuant to section 776(b) and 782(e) of the Act, the Department had to rely on facts available for the DIFMER adjustment. In addition, we determined that CEMEX significantly impeded the review by not informing the Department until verification that there were no physical differences in any cement (other than pozzolanic) produced at Yaqui. As explained below, this failure prevented the Department from collecting and analyzing other information that could have been used to calculate the DIFMER adjustment.

The Department first requested DIFMER information from CEMEX on September 23, 1996. 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 December 24, 1996, in a supplemental questionnaire, the Department requested for the second time that CEMEX submit DIFMER information. On February 14, 1997, CEMEX reported variable cost information for Type I cement at 11 plants, including the Yaqui facility, and information for Type II cement for the Campana and Yaqui facilities. On March 10, 1997 the Department sent another supplemental questionnaire requesting that CEMEX quantify the DIFMER. In response, CEMEX stated that ''differences in VCOM (variable cost of manufacturing) reflect differences in physical characteristics for Type I and Type II cement.'' In other words, CEMEX asserted that the Campana and Yaqui facilities produced different types of cement (Type I and Type II at Yaqui and Type II and Type V at Campana), each having different physical characteristics. At verification, the Department found that the VCOM reported by CEMEX for the Yaqui and Campana facilities was based on sales allocations, not physical differences. In fact, only one type of cement (other than pozzolanic) is produced at these plants—Type V. Although CEMEX produces only Type V at Yaqui, it sells this Type V cement sometimes as Type I and sometimes as Type II. In other words, CEMEX sold Type V cement to customers only requiring Type I or Type II cement. These facts rendered the reported DIFMER data unusable.

Furthermore, it is not appropriate to use other information on the record as a basis for a DIFMER adjustment. We determined in the last 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. Because we did not learn until verification in the instant review that in fact only one type of cement was produced at Yaqui and thus there were no cost differences, we were precluded from properly considering other appropriate alternatives for a DIFMER adjustment. For example, we did not have an opportunity to solicit comments and obtain information about differences in production processes, plant efficiencies, and material inputs that may have provided an appropriate basis for a DIFMER adjustment.

Therefore, we have applied to CDC's home market sales a calculated DIFMER based upon plant-specific reported data, and as adverse facts available, applied a twenty percent upward adjustment for CEMEX's sales in the home market. See *CEMEX S.A.* v. *United States,* Slip Op. 96–132 at 9 (CIT 1996), *appeal pending,* Appeal No. 97–1151 (Fed. Cir.) (upholding the use of 20% adverse DIFMER under similar circumstances).

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 and indirect 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 December 12, 1996, 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 January 3, 1997, 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. 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 administrative review for certain sales of Type II 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).

In the instant review, Petitioner alleged, as it did in the second review, that CEMEX's sales of Type II cement in Mexico were outside the ordinary course of trade. Based on this 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 Type II cement were outside the ordinary course of trade. Therefore, 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 marketed as Type II cement (which are identical in physical characteristics to the cement that CEMEX sells in the United States).

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 II home market sales is extremely small compared to sales of other cement types, (ii) the number and type of customers purchasing Type II cement is substantially different from other cement types, (iii) shipping distances and freight costs for Type II home market sales is significantly greater than for sales of other cement types, and (iv) CEMEX's profit on Type II sales is small in comparison to its profits on all cement types.

There are two other factors, historical sales trends and the ''promotional quality'' of Type II cement sales, which were considered in the second review ordinary-course-of-trade analysis. On March 10, 1997, the Department issued a questionnaire requesting CEMEX to support its position that home market sales of Type II 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 administrative review), 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 II 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 II 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 II 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 and fifth reviews that home market sales of Type II 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.

We have also preliminarily determined that home market sales of Type V cement by CEMEX during the POR are also outside the ordinary course of trade. As more fully described in the above-mentioned agency memorandum, these sales share many attributes with CEMEX's sales of Type II cement. First, the volume of these sales, either individually or in combination with sales of Type II cement, is extremely small compared to sales of Type I cement. Second, shipping distances and freight costs for sales of Type V cement are significantly greater than for sales of Type I. Third, the number and type of customers purchasing Type V cement is substantially different from those purchasing Type I.

As part of this analysis, we have also determined, based upon the facts otherwise available, that: (i) CEMEX did not sell Type V cement in Mexico 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 (as they did in the second review) a promotional quality that is not evidenced in CEMEX's ordinary sales of cement. We believe that this use of facts available is warranted and appropriate. First, the Department did not learn until verification that these sales of Type V involved cement physically identical to the cement that CEMEX sold in Mexico (and the United States) as Type II. Had Respondent disclosed this fact earlier in the review, we could have expanded our ordinary-course-of-trade inquiry for Type II sales, including the scope of verification and our questionnaires, to include home market sales of the physically identical Type V cement. Second, as noted above, the Type V and Type II sales involve physically identical merchandise marketed under similar conditions and circumstances (*e.g.*, low sales volume shipped unusually long distances). Therefore, it is reasonable, as facts available, to extend the results of our inquiry concerning the history of Type II sales and their promotional nature to the Type V sales as well. We also note that those results are consistent with our findings in the second review concerning sales of Type V cement.

In conclusion, the decision to exclude sales of Type II and 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

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade. The NV level of trade is that of the starting price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit.

For both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM) or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is a pattern of no price differences, the

difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP level and NV level affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the ''CEP offset,'' is identified in section 773(a)(7)(B) of the Act and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price used to calculate CEP.

The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

To determine whether an level-of-trade adjustment was appropriate, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Mexican markets, including the selling functions, classes of customer, and selling expenses for CEMEX and CDC. Upon consideration of these factors, the Department determined that there is one level-of-trade in the home market—sales of cement shipped to end-users and ready-mixers in bulk and bagged form—and a different level-of-trade in the U.S. market—sales to affiliated importers. Because there was only one level of trade in the home market, we were unable to perform the analysis for a level of trade adjustment. We further determined that Respondent's sales to end users and ready-mixers in the home market are at a more advanced level of trade than sales to affiliated importers in the United States because CEMEX and CDC perform more selling functions for sales to end-users and ready-mixers in the home market than for sales to affiliated importers in the United States. As a result, the Department has preliminarily determined to grant Respondent an adjustment to normal value in the form of a CEP offset.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1995, through July 31, 1996, to be 35.88 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 10 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.

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 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double dumping duties.

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

Dated: September 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–24000 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review

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

ACTION: Notice of final results of new shippers antidumping duty administrative review.

SUMMARY: On May 1, 1997, the Department of Commerce published the preliminary results of a new shippers administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The review covers two manufacturers/exporters. The period of review is May 1, 1995 through April 30, 1996.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations for Rajinder Pipes Ltd. and Lloyd's Metals & Engineers Ltd. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of Review*.''

EFFECTIVE DATE: September 10, 1997.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Kristie Strecker, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: (202) 482–4733.