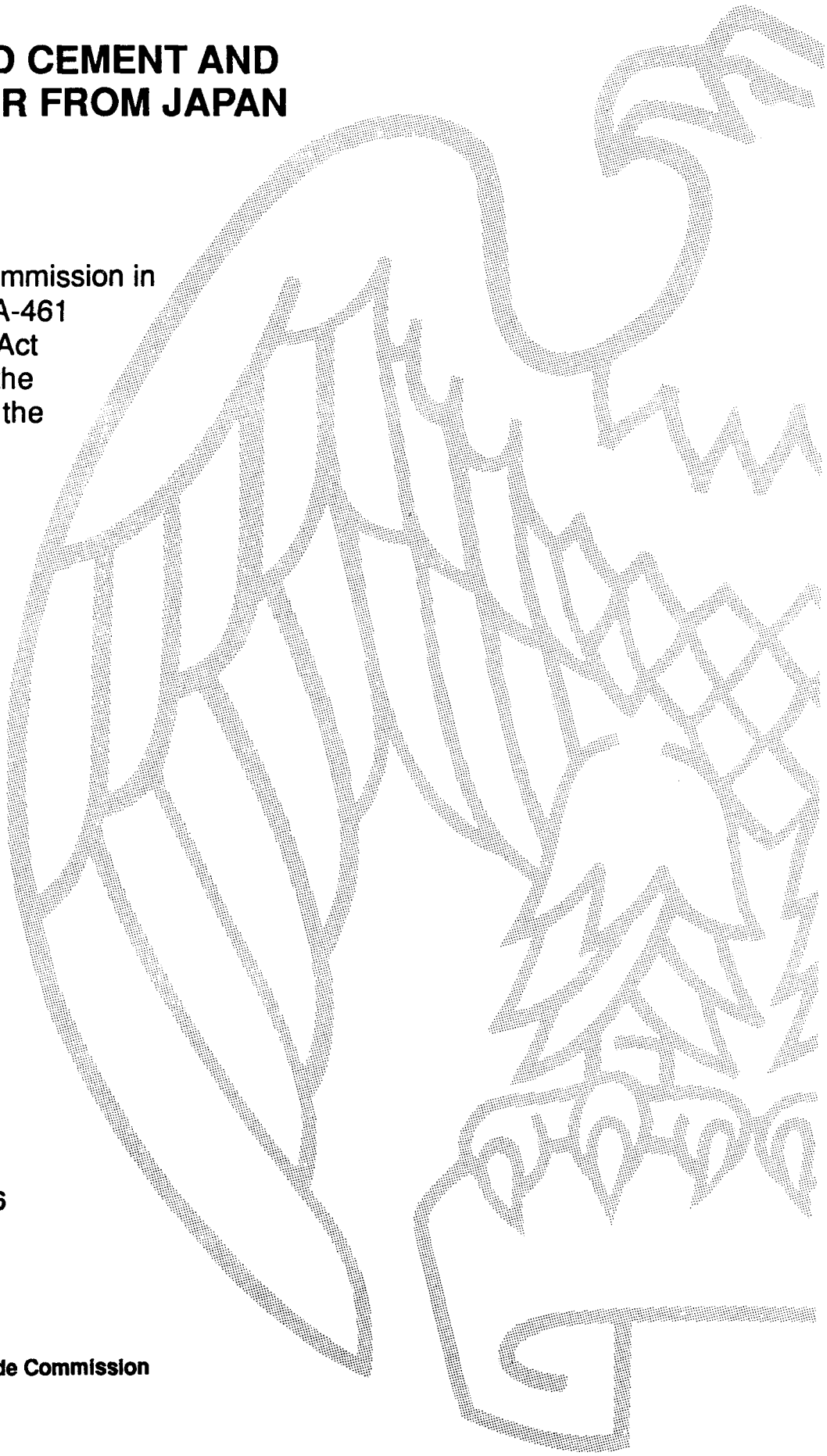
GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN

Determination of the Commission in Investigation No. 731-TA-461 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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C O N T E N T S

	Page
Determination	1
Views of Commissioner Seeley G. Lodwick and Commissioner Don E. Newquist	3
Separate views of Commissioner David B. Rohr	45
Views of Acting Chairman Anne E. Brunsdale	67
Information obtained in the investigation	A-1
Introduction	A-1
Background	A-1
Previous Commission investigations concerning portland cement	A-2
The present investigation	A-2
The product	A-5
Description and uses	A-5
Production process	A-7
U.S. tariff treatment	A-9
The nature and extent of sales at LTFV	A-9
The domestic market	A-11
The regional character	A-11
Factors affecting demand	A-14
Apparent U.S. consumption	A-15
Southern California	A-15
State of California	A-18
U.S. producers	A-18
U.S. importers	A-21
Consideration of alleged material injury to an industry in the United States	A-22
U.S. production, capacity, and capacity utilization	A-22
Southern California	A-23
State of California	A-23
U.S. producers' shipments	A-25
Southern California	A-25
State of California	A-25
U.S. producers' inventories	A-29
Southern California	A-29
State of California	A-29
U.S. producers' employment and wages	A-30
Financial experience of U.S. producers	A-32
Southern California	A-32
Portland cement and cement clinker operations	A-32
Investment in productive facilities	A-38
Capital expenditures	A-39
Research and development expenses	A-39
Impact of imports on capital and investment	A-39
State of California	A-39
Portland cement and cement clinker operations	A-39
Investment in productive facilities	A-44
Capital expenditures	A-44
Research and development expenses	A-44
Impact of imports on capital and investment	A-44

CONTENTS

	Page
Information obtained in the investigation--Continued	
Consideration of the question of threat of material injury	A-46
U.S. inventories of portland cement and cement clinker from Japan	A-47
Ability of foreign producers to generate exports and the availability of export markets other than the United States	A-48
Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury	A-53
U.S. imports	A-53
Market penetration by LTFV imports	A-53
Southern California	A-53
State of California	A-55
Prices	A-62
Price trends and comparisons	A-65
Los Angeles, CA	A-66
Orange County, CA	A-66
Riverside County, CA	A-67
San Diego, CA	A-67
San Francisco, CA	A-68
Purchaser responses	A-69
Prices	A-70
Lost sales and lost revenues	A-71
Exchange rates	A-72

Appendixes

A.	The Commission's and Commerce's Federal Register notices	B-1
B.	Calendar of hearing	B-21
C.	Trade and financial data, by regions and by plants	B-25
D.	Effects of imports on producers' existing development and production efforts, growth, investment, and ability to raise capital	B-31
E.	Weighted-average delivered prices reported by U.S. producers and by importers of portland cement from Mexico	B-35
F.	Delivered purchase prices and margins of under/(over)-selling for U.S.-produced and Japanese cement as reported by U.S. purchasers	B-39

Figures

1.	Portland cement and cement clinker: The Southern California region	A-4
2.	Steps in the manufacture of portland cement	A-8
3.	New technology in dry-process cement manufacture	A-10
4.	Portland cement and cement clinker: Plant locations of U.S. producers in the Southern California region, 1990	A-19

CONTENTS

Page

Tables

1. Portland cement and cement clinker: Previous investigations, determinations, countries subject to investigation, and geographic scope of domestic industry---------- A-3
2. Portland cement: Shipments from U.S. plants, by types of cement, 1989---------- A-6
3. Portland cement: U.S. producers' shipments as a percentage of total shipments, by types of customers, 1989---------- A-7
4. Portland cement: U.S. producers' domestic shipments, imports, and apparent U.S. consumption, 1986-90---------- A-13
5. Authorizations of construction permits, by regions and by types of permit, 1986-89---------- A-14
6. Portland cement and cement clinker: U.S. shipments, U.S. production, imports, and apparent consumption, 1986-90---------- A-16
7. Portland cement and cement clinker: U.S. capacity, production, and capacity utilization, by products and by regions, 1986-90--------- A-24
8. Portland cement: Shipments of U.S. producers, by regions, 1986-90-- A-26
9. Cement clinker: Shipments of U.S. producers, by regions, 1986-90--- A-27
10. Portland cement and cement clinker: End-of-period inventories of U.S. producers, by regions and by products, 1986-90---------- A-29
11. Average number of production and related workers producing portland cement and cement clinker, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by regions, 1986-90----- A-31
12. Income-and-loss experience of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-90---------- A-33
13. Portland cement and cement clinker: U.S. producers' quantity and value of net sales in the Southern California region, by types of sales, accounting years 1986-90---------- A-35
14. Income-and-loss experience (on a per-short-ton basis) of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-90---------- A-36
15. Portland cement and cement clinker: Variances in gross profit and operating income due to changes in price, volume, costs, and expenses in the Southern California region during 1986-90, 1986-87, 1987-88, 1988-89, and 1989-90---------- A-37
16. Portland cement and cement clinker: Value of assets and return on assets of U.S. producers in the Southern California region, accounting years 1986-90---------- A-38
17. Income-and-loss experience of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-90---------- A-40
18. Portland cement and cement clinker: U.S. producers' quantity and value of net sales in the State of California, by types of sales, accounting years 1986-90---------- A-42

CONTENTS

Page

Tables--Continued
19. Income-and-loss experience (on a per-short-ton basis) of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-90 ---- A-43
20. Portland cement and cement clinker: Variances in gross profit and operating income due to changes in price, volume, costs, and expenses in the State of California during 1986-90, 1986-87, 1987-88, 1988-89, and 1989-90 ---- A-44
21. Portland cement and cement clinker: Value of assets and return on assets of U.S. producers in the State of California, accounting years 1986-90 ---- A-45
22. Portland cement: Japanese production capacity, capacity, capacity utilization, shipments, and end-of-period inventories 1986-90 ---- A-49
23. Portland cement: Selected data on Japanese production capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-90 ---- A-51
24. Cement clinker: Selected data on Japanese production capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-90 ---- A-52
25. Portland cement: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90 ---- A-54
26. Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90 ---- A-56
27. Portland cement: U.S. imports from Mexico, Japan, and all other sources, by regions and by months, 1990 ---- A-58
28. Portland cement: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-90 ---- A-60
29. Cement clinker: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-90 ---- A-61
30. Portland cement: Bulk shipments from U.S. plants, by types of carriers, 1989 ---- A-64
31. Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the Los Angeles, CA, market area, by months, January 1986-December 1990 ---- A-66
32. Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the Orange County, CA, market area, by months, January 1986-December 1990 ---- A-67
33. Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the Riverside County, CA, market area, by months, January 1986-December 1990 ---- A-68

CONTENTS

Page

Tables--Continued
34. Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the San Diego, CA, and the San Francisco, CA, market areas, by months, January 1986-December 1990---------- A-68
35. Exchange rates: Indexes of nominal and real exchange rates of the Japanese yen, and indexes of producer prices in the United States and Japan, by quarters, January 1986-December 1990---------- A-73

Note.--Information that would reveal the confidential business operations of individual firms may not be published and therefore has been deleted from this report. Deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-461 (Final)

GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured[3] by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 15, 1990, following a preliminary determination by the Department of Commerce that imports of gray portland cement and cement clinker from Japan were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. § 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 28, 1990 (55 F.R. 49435). The hearing was held in Washington, DC, on March 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1]The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Acting Chairman Brunsdale dissenting.

[3] Commissioner Lodwick and Commissioner Newquist determine that a domestic industry is materially injured by reason of the subject imports. Commissioner Rohr determines that a domestic industry is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to section 735(b)(4), that he would have found material injury but for the suspension of liquidation of entries of the subject merchandise.

VIEWS OF COMMISSIONER SEELEY G. LODWICK AND COMMISSIONER DON E. NEWQUIST

On the basis of the information gathered in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of gray portland cement and cement clinker from Japan that the Department of Commerce has determined are sold in the United States at less than fair value (LTFV). 1/ 2/

Termination Request 3/

As a preliminary matter, before addressing the issues in this case, we believe it necessary to dispose of a procedural matter. On February 13, 1991, counsel on behalf of respondents in this investigation filed a request to terminate the investigation based on petitioners' alleged lack of standing. 4/ Counsel for petitioners opposed the request.

The request asserts that the Commission has the authority to terminate an investigation for lack of standing, and in this case should do so. 5/ In our view, the request is unfounded, and must be denied. Because of the

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1/ Material retardation is not an issue in this investigation and will not be discussed.

2/ Commissioner Newquist notes that the factors which led to his decision not to participate in Inv. No. 731-TA-451, Gray Portland Cement and Cement Clinker from Mexico, are not implicated in this investigation.

3/ Commissioner Rohr concurs in this discussion. See Separate Views of Commissioner David B. Rohr, which follow.

4/ Counsel for respondent Onoda Cement Co., Ltd. filed a letter supporting the request on February 14, 1991.

5/ Although styled a "request," the document is effectively a motion to terminate for lack of standing. There is no provision in the Commission's rules for such a motion, even if styled a request, and as a general matter, "motions" are discouraged in title VII practice. Consequently, although we considered the request earlier, and made our decisions concerning it, we dispose of the request at this time.

relative importance of the issue raised by the request, pending litigation concerning this issue, the fact that standing issues are raised increasingly often before the Commission in title VII investigations, and the need to, if possible, dispose of the issue with finality, we include a discussion of the matter.

Respondents argue that the statute permits the Commission to conduct antidumping investigations only where petitioners have filed "on behalf of" the industry at issue, that petitioners in this case have not met their statutory burden to demonstrate majority support for their petition 6/, and that the Commission and Department of Commerce jointly and severally have an affirmative obligation to ensure that petitioners are acting on behalf of the subject industry. Respondents argument is based in part on the Court of International Trade's decision in Suramerica de Aleaciones Laminadas, C.A. v. United States, 746 F. Supp. 139 (1990), appeal pending. Respondents maintain that lack of standing is a "fundamental defect" going to the heart of the Commission's jurisdiction over an ongoing investigation, and may be raised at any time during an investigation.

Petitioners assert that the appropriate forum for respondents' request is Commerce, that the request is in any event untimely 7/, that the Commission

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6/ Respondents make further arguments based on the facts of this case. Because we conclude that the Commission has no authority to make standing determinations or grant respondents' request, we do not discuss those arguments.

7/ Petitioners note that the facts on which the request is based were known before the deadline for filing such challenges with Commerce had passed in this case, and that the Suramerica case relied on by respondents had been decided before that deadline passed.

lacks legal authority to grant a request to terminate an investigation for lack of standing, and that the request is factually groundless. 8/

The issue of standing to file a petition has become an increasingly contentious one in title VII practice. As the Commission itself has stated on numerous occasions, we do not believe the Commission has the authority under the statute to terminate an investigation for lack of standing.

Our conclusion that respondents' request must be denied is based on our interpretation of the statute, its legislative history, and decisions from the Commission's reviewing Courts. In addition, our conclusion is bolstered by consideration of the bifurcated nature of the title VII investigative process established by the statute. The statute explicitly grants authority only to Commerce to determine issues of standing in the context of the 20-day

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8/ Petitioners' arguments based on the facts of this case are not addressed for the reason state above.

sufficiency of the petition determination 9/. In our view, this grant of authority precludes the Commission from making standing determinations. 10/

In addition, the statute grants Commerce the authority to self-initiate investigations. Consequently, even if Commerce decides, either as part of the 20-day determination, or subsequently, that a petitioner lacks standing (or that the petition is not sufficient in some other respect), Commerce has the authority to institute an investigation 11/ or continue an investigation

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9/ Sections 702(c) and 732(c) of the Act, 19 U.S.C. §§ 1671a(c) and 1673a(c), vest Commerce with the exclusive responsibility for initiating the required investigation after determining a petition's sufficiency, including determining whether the petition is filed by an interested party on behalf of a domestic industry, the two elements of "standing" under title VII. The courts have consistently confirmed that Commerce has the authority to decide whether to dismiss a petition if the petitioner does not have standing. Comeau Seafoods v. United States, 724 F. Supp. 1407, 1410, 1411 (CIT 1989); Sandvik A.B. v. United States, 721 F. Supp. 1322, 1327-28 (CIT 1989), affirmed on other grounds, 904 F.2d 46 (Fed. Cir. 1990); Vitro Flex S.A. v. United States, 714 F. Supp. 1229, 1235-36 (CIT 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1085 (CIT 1988); Gilmore Steel Corporation v. United States, 585 F. Supp. 670, 673 (CIT 1984). Commerce also has the authority to revoke an order when its review under 19 U.S.C. § 1675(b) shows "that the industry which the antidumping order is designed to protect is no longer interested." Oregon Steel, 862 F.2d at 1544.

The Court of International Trade has made clear that Commerce is not limited to considering standing issues during the 20-day period. In Gilmore, the CIT held that Commerce has the "power to reconsider its decision to initiate the investigation" and to terminate an investigation for lack of standing at any time during an investigation. 585 F. Supp. at 675.

10/ In the recent decision in NTN Bearings, Judge Tsoucalas of the CIT specifically stated that "[i]t is the function of the ITA to determine standing. . . ." NTN Bearings, Slip Op. 91-13 at 12 (emphasis in original).

11/ Commerce's ability to self-initiate has previously led the CIT to decide that it would be pointless to find that Commerce should have dismissed a petition for lack of standing.

> Commerce's ability to self-initiate an antidumping investigation contrasts with situations where a properly-filed document is an absolute or jurisdictional prerequisite to an agency's power to act.

Citrosuco, 704 F. Supp. at 1083 (citations omitted). See Florex v. United States, 705 F. Supp. 582, 587 (CIT 1989) ("interested party problems do not,

already instituted. 12/ Thus, a sufficient petition is not a necessary prerequisite for Commerce to properly conduct an investigation. 13/ Commerce's ability to self-initiate investigations means that Commerce can conduct, and can cause the Commission to conduct, an investigation any time Commerce believes such an investigation is warranted. If it would be unreasonable to require Commerce to terminate an investigation that Commerce could self-initiate, then an interpretation of the statute which precludes the Commission from making such a pointless decision must be reasonable.

Moreover, the only time that the statute explicitly authorizes the Commission to terminate an investigation on procedural grounds is when a petitioner withdraws a petition brought under 1671a(b) or 1673a(b). 19 U.S.C. §§ 1671c(a)(1), 1673c(a)(1). Even in that situation, however, the statute

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in every case, require a new petition and investigation, because Commerce may commence proceedings sua sponte"). See also, United States v. Roses, Inc., 706 F.2d 1563, 1568-69 (Fed. Cir. 1983) (as Commerce can self-initiate an investigation if it believes an investigation is warranted, it is absurd to conclude that an outside party can compel an investigation the agency knows is unwarranted simply by making the necessary allegations in the petition).

12/ See Luciano Pisoni Fabbrica Accessori Instumenti Musicali v. United States, 640 F. Supp. 255, 258 (CIT 1986) ("Since Commerce is authorized to commence an antidumping duty investigation sua sponte whenever it determines that an investigation is warranted . . . it would be unreasonable to require that Commerce terminate an investigation commenced after the filing of a petition by an interested party when, despite inaccuracies contained in the petition, it finds evidence of sales at less than fair value.")

13/ The CIT's recent decision in NTN Bearings squarely supports this conclusion. In that case, the CIT held that Commerce's presumption that a petition is filed on behalf of a domestic industry is a reasonable one, and that Commerce must investigate if the presumption is challenged. The court further held that, because the ITA still has the discretion to continue or to dismiss the investigation, even if opponents of the petition outweigh the supporters, the investigation need not be terminated. The Court concluded "[n]either the statute nor the caselaw compels Commerce to dismiss a case which lacks affirmative majority support." NTN Bearings v. United States, Slip Op. 91-13 at 9-10.

prohibits the Commission from terminating an investigation prior to a preliminary determination by Commerce. 19 U.S.C. §§ 1671c(a)(3); 1673c(a)(3).

The view that the Commission has no role in making standing determinations is in keeping with the carefully delineated role that the statute specifies for the Commission in rendering determinations that can lead to antidumping or countervailing duty orders in the bifurcated statutory process. 14/ The statute gives the Commission no discretion but to issue specific findings following specified triggering decisions of Commerce within set times.

The bifurcated system that the statute creates cannot operate effectively if one agency revisits determinations that the statute delegates to the other. No court has ruled that the Commission has the authority, let alone the obligation, to correct a Commerce determination that a petition is sufficient and to dismiss a petition because a petitioner lacks standing. Nor has any court decided that the Commission can overrule a determination made by

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14/ Congress could have chosen to explicitly require the Commission to consider the sufficiency of the petition as Commerce does, or to ascertain a petitioner's standing before rendering a preliminary or final injury determination, but it did not. Congress has had several opportunities to amend the statute if it disagreed with the Commission's practice with respect to standing, but has taken no action. Congress' inaction in this regard, despite the fact that standing issues have frequently been raised before the Commission, and Commerce's practice relating to standing has been subject to numerous Court challenges and upheld, is in stark contrast to Congress' willingness to amend the statute to require certain determinations or specify aspects of Commission practice where Congress was dissatisfied with existing Commission practice, for instance in the area of cumulation. Apparently, Congress does not share Respondents' opinion that Commerce, and the Commission, have failed to properly administer title VII with respect to standing issues. Reenactment of a law without changing an administrative practice constitutes tacit endorsement of that practice. Chaparral Steel Co. v. United States, 901 F.2d 1097, 1106 (Fed. Cir. 1990); Kelly v. United States, 826 F.2d 1049, 1052 (Fed. Cir. 1987).

Commerce on any other issue. 15/ Conversely, the CIT has previously specifically directed the Commission to accept the terms of determinations made by Commerce. Algoma Steel Corp, 688 F. Supp. at 639 (CIT 1988), aff'd, 865 F.2d 240 (Fed. Cir. 1989). As the CIT stated in Algoma, the division of labor between the two agencies "has been upheld even where it has resulted in decisions which are difficult to reconcile. . . . The division of labor cannot be ignored." 688 F. Supp. at 644.

Respondents suggest that "inherent authority" and "implicit authority" create an obligation for the Commission which simply does not exist. Congress' plenary grant of broad authority to Commerce to initiate and terminate investigations, including the exclusive authority to determine whether a petition is filed "on behalf of" the domestic industry, leaves no room for the broad implicit authority to determine those questions that respondents would imply to the Commission. 16/ This is clearly reflected in the very limited circumstances in which Congress authorized the Commission to

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15/ In Borlem S.A. Empreedimentos Industriais v. United States, 913 F.2d 933 (Fed. Cir. 1990), the Federal Circuit held that the CIT had the authority to order the Commission to reconsider its final determination when the Commission's determination relied on a potentially outcome determinative finding by Commerce that Commerce later found was in error. However, there was no suggestion that the Commission should have undertaken to reconsider or correct the Commerce finding in question at any point in the investigation. Indeed, the Court noted that it did not have to address whether it would ever be appropriate for the Commission to second guess a determination made by Commerce. Id. at 938.

16/ Congress has enacted an "intricate administrative machinery" which has the unique feature of allocating responsibility to two agencies. Algoma Steel Corp. Ltd. v. United States, 865 F.2d 240, 241 (Fed. Cir. 1989). Thus, unlike the situation with other agencies, in determining whether the Commission has authority to undertake an action, the overall statutory scheme and the explicit grants of authority for two agencies must be kept in mind.

terminate investigations. Whatever authority might otherwise exist cannot survive an explicit allocation of responsibilities by Congress. 17/

The notion that the Commission has the implicit obligation to determine a petitioner's standing may result from the historical use of the word "standing" as a shorthand description for the question whether a petition is brought "on behalf of" a domestic industry. 18/ Commerce's ability to self-initiate an investigation without the participation of any party could not present more clearly the distinction between court proceedings and antidumping and countervailing duty investigations. 19/ Thus, the statutory requirements for initiation by petition in these title VII investigations are jurisdictional only in the sense that Commerce can be required to initiate and to continue an investigation only in response to a proper petition, not in the

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17/ See, National Railroad Passenger Corp. v. National Association of Railroad Passengers, 414 U.S. 453, 458 (1974), quoting, Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929) ("When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."); Rogers v. Frito-Lay, Inc., 611 F.2d 1074, 1084-85 (5th Cir. 1980) (when legislation expressly provides a "complete administrative scheme" to remedy violations, courts should not expand the scope of the statutes by implying the existence of additional remedies).

18/ The other element of "standing" in title VII practice requires that a petition be filed by an "interested party." This is a true standing requirement because it ensures that the party instigating the action has a stake in the outcome, which is the fundamental principle underlying the concept of standing in jurisprudence.

19/ Respondents rely on cases addressing the issue of standing to bring an adversarial proceeding before a court or an agency's authority to determine whether a particular matter is within the scope of its statutory authority. These cases are not applicable to the fact-finding investigations, which are not inter partes proceedings, which the Commission and Commerce conduct. Moreover, a Commission determination that it lacks statutory authority to make standing determinations or terminate an investigation for lack of standing is the exercise of precisely the type of agency authority addressed in the cases - a decision as to the scope of its responsibilities under its authorizing statute.

sense, as with a court's jurisdiction, that a petition properly filed is a sine qua non for Commerce to conduct an investigation. The court's recent decision in NTN Bearings squarely supports this conclusion. "[E]ven if the opponents outweigh supporters of the petition, the ITA still has the discretion to continue or to dismiss the case, provided that discretion is exercised reasonably and the decision is supported by substantial evidence. Neither the statute nor the caselaw compels Commerce to dismiss a case which lacks affirmative majority support." NTN Bearings v. United States, Slip Op. 91-13 at 10. 20/

Respondents also attempt to create the impression that the Commission has sometimes concluded that it has the authority to address challenges to a petitioner's standing. Certain Commissioners have opined that the Commission may have inherent authority to make standing determinations in title VII investigations, and may even have the authority to terminate investigations for lack of standing. However, the Commission acts through its majority or a dispositive plurality. Moreover, in no case to date has any Commissioner ever explicitly concluded that a petitioner lacked standing, or made a negative determination based on lack of standing, although the relative level of domestic industry support has been considered in the context of determining whether the domestic industry is materially injured or threatened with

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20/ Nor is the court's decision in Gilmore to the contrary. In that case the court concluded that Commerce has authority to correct an error in its original determination that a petition was sufficient. This authority was clearly rooted in Commerce's responsibility to decide whether to initiate an investigation after the filing of a petition. Nothing in the court's discussion imposed an obligation on Commerce, let alone the Commission, to dismiss a petition based on lack of standing. Similarly, in Oregon Steel Mills, Inc. v. United States, 862 F.2d 1541 (Fed. Cir. 1988), the Federal Circuit concluded only that it was reasonable for Commerce to decide that it had the discretion to revoke an antidumping order if the order was not supported by the domestic industry.

material injury. 21/ That individual Commissioners may hold differing views from those of the majority was clearly contemplated by Congress. 22/ The existence of differing views does not preclude a court from sustaining Commission determinations. 23/

Respondents' argument that the Commission must consider issues of standing because respondents are incapable of developing the information necessary to overcome the presumption of standing is without merit in this case. Respondents admit that their request for termination is not based on any confidential information developed in the Commission investigation. Consequently, there was nothing to preclude them from bringing the issue before Commerce. Moreover, all the facts on which the Termination Request is

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21/ Even those Commissioners who have opined that the Commission has the authority to decide standing issues and terminate an investigation for lack of standing have never made a negative determination based on a lack of standing, or concluded that a petition should be dismissed by the Commission for lack of standing. See Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272 (Final) and 731-TA-319 (Final), USITC Pub. 1934 (Jan. 1987) at 7-8 n.18; Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 (Mar. 1988) at 29; Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-366 (Final), USITC Pub. 1970 at 51, n.12; Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Preliminary) USITC Pub. 1960 at 32, n.20.

22/ Congress' intent that Commissioners express their differing views is reflected in the legislative history of the statute. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46 (1979). Statutory provisions relating to the appointment of Commissioners and the functioning of the Commission also indicate that Commissioners are expected to have differing views. For example, Section 1330 of title 19 provides that (1) not more than three of the commissioners are to be members of the same political party, and (2) the chairman and vice chairman of the Commission may not be members of the same political party. Congress also specified that the vote of three of six commissioners would constitute a plurality sufficient to support an affirmative determination. See 19 U.S.C. § 1677(11).

23/ Metallverken Nederland, 728 F. Supp. at 734, citing, Citrosuco, 704 F. Supp. at 1089. See also, Copperweld Corp. v. United States, 682 F. Supp. 552, 556 n.2 (CIT 1988).

based were known to respondents before the deadline established by Commerce's regulations for challenging a petitioner's allegations of standing, and therefore such a challenge could have been brought before Commerce in a timely fashion.

Based on the foregoing, we conclude that the Commission lacks authority to make standing determinations, and that respondents' request to terminate this investigation must be denied.

Like Product and Domestic Industry

In the preliminary determination in this investigation, we concluded that the like product in this investigation included gray portland cement and cement clinker, that domestic grinding only operations should be included in the domestic industry, and that no related parties should be excluded from the domestic industry. 24/ No party has raised those issues in this final investigation, and no new information has been obtained warranting further consideration of those issues. Consequently, we adopt those views in this final determination.

Regional Industry

Petitioner asserts that cement producers in Southern California satisfy the statutory criteria for regional industry analysis and should be treated as a regional industry. 25/ Respondents argue that the statutory criteria for

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24/ Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Preliminary), USITC Pub. 2297 (July 1990)(hereinafter Japan Preliminary) at 49-55 (Views of Commissioner Newquist); id. at 23 (Commissioner Lodwick, concurring).

25/ The proposed region is based on the U.S. Bureau of Mines definition of Southern California for statistical and analytical purposes in considering the cement industry, defined as the counties of San Luis Obispo, Kern, Inyo, Monc, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial. Report at A-2, figure 1.

regional industry analysis are not met by petitioner's proposed region because the imports into the region are not sufficiently concentrated. They also urge that even should the Commission determine that a regional industry analysis is appropriate, the Commission should modify the proposed region to include the entire state of California. 26/

The regional industries section of the statute, section 771(4)(C) provides that:

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--
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> (i) the producers within such market sell all or almost all of their production of the like product in question in that market, and
>
> (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.
>
> In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports. 27/

26/ In this investigation, the staff has incorporated into the record the producers' questionnaires received in connection with the recently concluded Mexican Cement final investigation, (Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 (August 1990)(hereinafter Mexican Cement), and issued supplemental questionnaires seeking additional information for 1990, and information related specifically to the effects of Japanese imports. The Commission received questionnaire responses from producers in the entire state of California.

27/ 19 U.S.C. § 1677(4)(C).

The Commission has considered regional industry analysis as discretionary, based on the language "appropriate circumstances" and "may be treated" found in section 771(4)(C). 28/

The Court of International Trade, however, has cautioned against "[a]rbitrary or free handed sculpting of regional markets." 29/ Further, the Commission has been concerned that the regional analysis be applied only in appropriate circumstances, in order to prevent the imposition of duties on imports sold in the entire national market in cases in which the detrimental impact of the imports is limited to a small segment of that market. The Commission has defined appropriate circumstances on several occasions, focusing on whether a separate geographic market exists and whether the market is isolated and insular. 30/

The Commission has, in the past, interpreted section 771(4)(C) as establishing three criteria for determining whether a regional industry exists: (1) producers within a geographic region must sell "all or almost all"

28/ See, e.g., Mexican Cement at 6; Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (1982) at 6; Fall Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 (1983) at 7; Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986) at 5; Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987).

29/ Atlantic Sugar, Ltd. v. United States, 2 CIT 18, 519 F. Supp. 916, 920 (1981); See also Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 at 11 n.30 (1982).

30/ See Cut-to-Length Carbon Steel Plate from the Republic of Germany, Inv. No. 731-TA-147 (Preliminary Remand), USITC Pub. 1550 (1984) at 8; Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986). The Commission has also stated that the particular region should account for a significant share of production and consumption. See Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1994 (1980).

of their production of the like product to customers within that region; (2) demand within the region must not be supplied, to any substantial degree, by U.S. producers of the like product located elsewhere; (3) there must be a concentration of the unfairly traded imports within the region.

In the preliminary phase of this investigation, we adopted a different approach, whereby we determine whether a regional market exists based on the two "market isolation" factors identified in the statute, (subsections (i) and (ii)), and then as a second step, consider whether imports are concentrated in any regional market so defined. 31/ Effectively, import concentration is thus a condition precedent to analysis of material injury (or threat thereof) to a regional industry.

As a general matter, the Commission has found in past investigations that "appropriate circumstances" exist for the Commission to engage in a regional industry analysis of domestic cement production. 32/ Gray portland cement and clinker has a low value-to-weight ratio and is fungible. 33/ Thus, high transportation costs tend to make the areas in which cement is produced

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31/ Japan Preliminary at 61-62 (Views of Commissioner Newquist); id. at 23 (Commissioner Lodwick, concurring).

32/ In all but one of the Commission's prior investigations of cement a regional analysis was used. See Report at A-3, Table 1. In the 1986 cement case, Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Invs. Nos. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (1986), the regional industry issue was not raised by the parties. The petitioner in the that case noted that cement was produced and sold in a series of regional markets, but argued that regional markets were all being injured by imports and therefore injury could be assessed on a national basis.

33/ See Report at A-11-A-13.

and marketed isolated and insular. 34/ While these prior decisions are not binding precedent, the same considerations apply in this investigation.

This case raises the question of how the Commission is to choose among possible regions which satisfy the market isolation criteria for a regional industry. 35/ In a case such as this, where the choice is between a larger region and a smaller region within the larger region (i.e. the entire State of California or Southern California), we find it appropriate to consider market isolation factors beyond those found in the statute, including changes in shipment patterns, shipments between the smaller region and the remainder of the larger region, and market or commercial realities in the smaller region and the remainder of the larger region, to determine which of the two possible regions is more appropriate.

34/ Id. Purchasers tend to be indifferent to the source of a fungible product, and unwilling to pay high transportation costs to source from a more distant producer.

35/ Generally speaking, with distinctly separate regions, the likelihood of sufficient import concentration in each region to allow a finding of material injury is unlikely. This is the case unless consideration of the concentration of imports is based solely on relative market penetration, in which case more than one region could conceivably satisfy both the market isolation factors and the import concentration requirement. In such a case, a determination that there is material injury to one or more separate regional industries by reason of imports from a single country would be possible. Indeed, this is the argument originally made by petitioner in the Mexican Cement investigation. Because we beleive the concentration requirement is intended to address the potential unfairness of imposing national antidumping (or countervailing) duties based on injury to only a regional subset of domestic producers. We are troubled by the possible results which could flow from consideration of concentration of imports solely based on relative market penetration. See Japan Preliminary at 62-64 (Views of Commissioner Newquist) Nonetheless, the legislative history does allow consideration of relative market penetration in considering whether imports are sufficiently concentrated to warrant analysis of material injury on a regional industry basis. S. Rep. 249, 96th Cong., 1st Sess. 83 (1979); H.R. Rep. 317, 96th Cong., 1st Sess. 73 (1979).

Concerning the first statutory criterion, that producers within a region sell "all or almost all" of their production of the like product within the region, 82.6 percent of cement produced in Southern California in 1990 was shipped to destinations within the region. 36/ The level of consumption within the region supplied by producers in the region is sufficient to satisfy the statutory criterion. 37/ The state of California as a whole also meets this criterion, as producers in the state shipped 93 percent of their production in 1990 to destinations within the state.

Turning to the second market isolation criterion, that demand within the region not be supplied to any substantial degree by producers located outside the region, the Commission has stated that no precise numerical cutoff exists for outside supply above which an area is disqualified from regional industry status. 38/ In 1990, producers outside the region supplied only 1.6 percent

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36/ Report at A-13, table 4. This is not surprising given the fact that due to high transportation costs, 95 percent of portland cement shipments are to customers within 300 miles of the production site. Report at A-11.

37/ Compare Operators for Jalousie and Awning Windows from El Salvador, 701-TA-272, 731-TA-319 (Final), USITC Pub. 1934 (1987) (over 80% found to be sufficient); Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (1982) at 7 (66% found not to be sufficient).

38/ See Cut-to-Length Carbon Steel Plate from Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 (1984). In Atlantic Sugar, Ltd. v. United States, the Court of International Trade suggested that 12 percent outside supply may be too high to be considered insubstantial "in the abstract." 2 CIT 295, at 298 (1981). The Commission has found on several occasions that percentages of outside supply of less than 10 percent were acceptable, e.g., Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (1980) (5.5 % found acceptable); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 (1982) (less than 10 % found acceptable), and found in one case that 30 percent was too large. Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (1982).

of consumption in Southern California. 39/ Again, the information for the state as a whole satisfies this criterion, as only 3.5 percent of California consumption was supplied by producers outside the state. Thus, we are faced with the question of which of these two alternatives is the more appropriate region for consideration. 40/

A smaller percentage of Southern California consumption was supplied by producers outside the region than is the case for the state as a whole. 41/ We believe that a region which is relatively more isolated from outside supplies is more insulated from the effects of market conditions outside the region, and consequently is more appropriate for consideration as the regional industry in this case. On the other hand, Southern California producers shipped an increasing percentage of their production to destinations in Northern California during the period of investigation. 42/ This is consistent with petitioners' claim that producers in Southern California are

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39/ Report at A-13, table 4.

40/ We note that under the regional analysis set forth herein, this question arises only in cases involving a larger and a smaller included region, unless the Commission were to find that something less than 50 percent import concentration is sufficient to warrant analysis on a regional industry basis. Barring that circumstance, two entirely separate and distinct regions could not satisfy both the market isolation criteria and the concentration prerequisite to regional industry analysis.

41/ The less than two percent of consumption in Southern California supplied by producers outside the region includes cement shipped by Northern California producers. Northern California producers shipped only a very small percentage of their production to destinations in Southern California during the period of investigation. Report at A-12.

42/ Southern California producers shipped 6.1 percent of their production to Northern California in 1986, 4.9 percent in 1987, 7.2 percent in 1988, 8.3 percent in 1989, and 8.9 percent in 1990. Report at A-12. Their shipments to destinations outside the state were more constant during the period of investigation. Id.

being squeezed out of their local marketing areas, concentrated around Los Angeles.

In addition, there appear to be differences in the market for cement between Northern and Southern California. Thus, while unit values of shipments in Northern and Southern California followed similar trends over the period of investigation, from 1989 to 1990 unit values in Northern California increased more than in Southern California, to a level higher than for Southern California shipments. 43/ Moreover, the downturn in consumption experienced in 1990 appears to have started later in Northern California than in Southern California. On the basis of these considerations, we determine that the appropriate region for consideration in this case is Southern California. 44/

Finally, in order to warrant consideration of material injury (or threat thereof) to a regional industry, it must be determined whether the requirement that imports be concentrated within the region has been met. There is no precise numerical limit for determining when imports are sufficiently concentrated in the region. 45/ The percentage of total Japanese imports to

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43/ Appendix C, Tables C-2 and C-3.

44/ We note that our determination of present material injury would not be different were we to consider the appropriate regional industry to consist of producers throughout the state of California.

45/ The Commission has generally found percentages higher than 80 percent of total imports subject to investigation to be sufficient, e.g., Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 (1982) (99%); Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (1980) (96.7%); Offshore Platform Jacket and Piles from the Republic of Korea and Japan, 701-TA-248, 731-TA-259 and 260 (Final), USITC Pub. 1848 (1986) (100%), but the requisite concentration has also been found at levels as low as 68 percent, Fall Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 (1983), and 43 percent, Certain Steel Wire Nails from the Republic

the United States entering Southern California was 67.9 percent in 1986, 70.8 percent in 1987, 73.0 percent in 1988, 73.7 percent in 1989, and 61.2 percent in 1990. 46/ Determining whether the subject imports are concentrated in the region is an area in which the Commission exercises considerable discretion. In the circumstances of this industry, and based on the information of record, we conclude that imports from Japan are sufficiently concentrated to warrant consideration of material injury or threat thereof to a regional industry composed of domestic producers of cement in Southern California. 47/

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of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1994 (1980). Still another Commission determination questioned whether the concentration level was sufficient when the percentages of imports ranged from 66.3 percent to 79.2 percent, Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (1987), and in one case the Commission found insufficient concentration when the imports into the region ranged from 69.2 percent to 84.1 percent during the period of investigation. Certain Welded Carbon Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA 293, 294 and 296 (Final), USITC Pub. 1907 (1986).

46/ Report at A-13. We do not believe the statute requires us to find that cumulated imports are concentrated in the region in order to conduct a regional industry analysis, regardless of whether imports are cumulated for purposes of assessing material injury or threat thereof.

47/ In making this determination, we take note of the fact that the Southern California region is a significant market in the United States as a whole, accounting for between 8 and 9.8 percent of total U.S. consumption during the period of investigation. In this context, we believe consideration of the relative import penetration in the region and in the remainder of the United States is warranted. Market penetration of Japanese imports in Southern California increased from 4.9 percent in 1986 to 18.2 percent in 1989, before declining in 1990 to 14.7 percent. In the United States as a whole, market penetration of Japanese imports increased from .6 percent in 1986 to 2.4 percent in 1989, before declining in 1990 to 2.2 percent. Report at A-60, Table 28. Thus, in a market accounting for a significant portion of total U.S. consumption, imports accounted for a much higher share of consumption than in the remainder of the country. While we do not consider this comparison determinative, and would not consider it of much weight if Southern California represented but a very small share of overall U.S. consumption, in the circumstances of this case, it lends further support to our conclusion that imports are sufficiently concentrated in Southern California to warrant regional analysis.

Condition of the Domestic Industry

In examining the condition of the domestic industry, the Commission considers, among other factors, production, shipments, capacity, capacity utilization, inventories, employment, wages, financial performance, capital investments, and research and development expenditures. 48/ In addition, 19 U.S.C. § 1677(7)(C)(iii) requires the Commission to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. 49/

The regional industries provision requires a different standard for determinations of material injury or threat thereof, viz. consideration of whether producers of all or almost all production in the region are materially injured or threatened with material injury by reason of the subject imports. 50/ The Commission generally has concluded that making determinations of material injury on a producer-by-producer basis is inappropriate. 51/ However, producer specific information can highlight

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48/ See 19 U.S.C. § 1677(7)(C)(iii).

49/ See H.R. Rep. 317, 96th Cong., 1st Sess. at 46; S. Rep. 249, 96th Cong., 1st Sess. at 88.

50/ 19 U.S.C. § 1677(4)(C); Atlantic Sugar v. United States, 2 CIT 295 (1981).

51/ In Atlantic Sugar v. United States, the U.S. Court of Appeals for the Federal Circuit noted that there is no basis in the statute or the legislative history for a producer-by-producer or plant-by-plant analysis. 744 F.2d 1556, 1562 & n.27.

We note that in cases involving nationwide industries, the Commission must determine whether a domestic industry, defined as the producers "as a whole of a like product" or the producers "whose collective output of the like product constitutes a major proportion of the total domestic production" (19 U.S.C. § 1677(4)(A)) is materially injured or threatened with material injury by reason of the imports subject to investigation. In such cases, there is clearly no requirement that the Commission make its determination on a plant-by-plant or producer-by-producer basis. We do not believe that a different

salient points that would be masked by solely an aggregate analysis. For example, if a small producer has incurred massive financial losses which result in an overall bleak financial picture of the industry's condition, the Commission might nonetheless conclude that the financial performance of the remaining producers indicates that the regional industry is not materially injured. The choice of analytical method is not one as to which there is a single correct answer in this instance. 52/ In light of the statutory injunction to determine whether producers of all or almost all production are materially injured or threatened with material injury, in addition to considering aggregate information on regional producers, we have carefully

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threshold, requiring injury (or threat thereof) to a domestic industry comprising producers of "all or almost all production" in a region, entails a different analytical approach.

There is nothing in the statute or its legislative history to suggest that Congress intended the Commission to apply any particular analytical method in either case. Moreover, the Commission has generally considered the condition of regional industries on an aggregated basis, and has looked to individual producer information as a secondary matter. E.g., Mexican Cement; Offshore Platform Jackets and Piles from the Republic of Korea and Japan, Invs. Nos. 701-TA-248, 731-TA-259-60 (Final), USITC Pub. 1848 (May 1986); Operators for Jalousie and Awning Windows, Invs. Nos. 701-TA-242 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987); Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987).

Although the statute has been substantially amended twice since the Commission's practice in regional industry cases was first employed, Congress has never acted with respect to this aspect of Commission practice. Congressional silence on this point constitutes tacit endorsement of the Commission's practice. Chaparral Steel Co. v. United States, 901 F.2d 1097, 1106 (Fed. Cir. 1990); Kelly v. United States, 826 F.2d 1049, 1052 (Fed. Cir. 1987).

52/ We have considered with interest the information on industry performance as aggregated in Commissioner Rohr's "percentage of production" analysis (Memorandum CO64-O-030), and believe that it represents a useful approach in interpreting the aggregate data. While we do not believe it is the only way in which a determination can be made in a regional industry case, the "percentage of production" approach can highlight certain important factors.

considered the information on industry performance on a plant-by-plant basis in the record. We note that, in most cases, the company specific information did not reveal any significantly different performance than did the industry information as a whole. 53/

Apparent consumption of cement in Southern California increased by 24 percent from 1986 to 1989, and fell by 8 percent in 1990 as compared with 1989 levels. 54/ Consumption of cement clinker in Southern California increased irregularly during the period 1986-1990, by 5 percent. 55/ Total production of cement in Southern California increased irregularly from 1986 to 1989, by 11 percent overall, before declining in 1990 by 6 percent from the level reported in 1989. 56/ Production of cement clinker in the region increased by 7 percent during 1986-1990. 57/

Southern California producers' capacity to produce both cement and clinker demonstrated an inverse relationship to production levels during 1986-90, falling 1 percent and 9 percent, respectively. 58/ As a result, cement capacity utilization increased from 76 percent in 1986 to 86 percent in 1989, before falling to 80 percent in 1990. 59/ Clinker capacity utilization rose

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53/ Company specific information is confidential, and is therefore not specifically discussed.

54/ Report at A-15 and Table 6.

55/ Id.

56/ Report at A-23 and Table 7.

57/ Id.

58/ Id.

59/ Id.

from 85 percent in 1986 to approximately 100 percent in 1989 and 1990. 60/ The volume of U.S. shipments of cement by producers in Southern California increased by 11 percent from 1986 to 1989, but declined by 6 percent in 1990. 61/ Shipments within the region were virtually the same in 1990 as in 1986, while shipments to destinations outside Southern California increased by 26 percent. 62/

The value of U.S. shipments of cement by producers in Southern California fell by 7 percent during 1986-1988, despite increases in quantities of shipments, due to declines in unit values during the period. The value of Southern California producers' shipments increased by 8 percent in 1989 and then declined by 3 percent in 1990. 63/ Unit values of domestic producers' shipments declined 12 percent from 1986 to 1988, and then increased during 1989 and 1990 at an annual rate of about 3 percent, ending at a level well below that reported in 1986. 64/

In this industry, inventories are not generally maintained for long, or at high levels, because of the high costs of storage. Nevertheless, Southern California producers' inventories of cement increased by 69 percent during 1986-90. 65/ As a share of production, inventories of cement rose from

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60/ Id.

61/ Report at A-25 and Table 8. Most of the clinker produced in Southern California during the period of investigation was consumed internally in the production of cement. Report at A-25.

62/ Report at A-25 and Table 8.

63/ Id.

64/ Id.

65/ Report at A-29 and Table 10.

3.0 percent in 1986 to 4.9 percent in 1990. Inventories of cement clinker showed an increase of 30 percent in 1990 over 1986 levels. 66/

Employment in the regional industry decreased over the period of investigation. 67/ The number of production and related workers producing cement and clinker in Southern California decreased by over 16 percent, as did the number of hours worked by those workers. 68/ The total wages and compensation paid to production and related workers producing cement and clinker in the region decreased by approximately 9 percent. 69/ Productivity increased from 1.9 tons per hour in 1986 to 2.4 tons per hour in 1990. 70/ Unit labor costs declined in Southern California from 1986 to 1989, and increased in 1990. 71/ Productivity in Southern California was lower than that reported in the state as a whole, while unit labor costs were higher. 72/ Five of the seven Southern California producers reported permanent reductions in force in an effort to reduce costs during the period of investigation. 73/

66/ Id.

67/ Report at A-30 and Table 11.

68/ Id.

69/ Id. Hourly wages in Southern California were generally slightly lower than those in the state as a whole. Id.

70/ Id.

71/ Id.

72/ Id.

73/ Report at A-30.

The financial data reveals that the domestic producers in Southern California operated profitably throughout the period of investigation. 74/ Net sales of cement and cement clinker decreased by 3.5 percent from 1986 to 1987, and increased marginally in 1988 and by 4.6 percent in 1989. Net sales declined in 1990 to a level below that reported in 1986 and 1987. 75/ Operating income increased from 1986 to 1987, declined in 1988, and then increased in 1989, but fell significantly in 1990. 76/ Pre-tax net income margins followed a similar trend. 77/

In light of the arguments made by the parties concerning the importance of returns on assets as an indicator of the condition of the industry in this case, we have also examined the operating and net returns on both total assets and the book value of fixed assets for producers in Southern California. Operating return on the book value of regional producers' fixed assets increased from 1986 to 1987, declined in 1988, increased in 1989, and then declined in 1990, to a level below that reported in 1986. 78/ The net return on fixed assets followed a similar trend, as did operating and net return on total assets. 79/

74/ Report at A-32.

75/ Report at A-32 and Table 12.

76/ Report at A-32 and Table 12.

77/ The company specific information varies in the extent of increases and declines in various operating performance indicators during the period of investigation, but shows largely the same overall trends. Appendix C, Table C-12. We also have considered data on the number of plants reporting annual decreases in various financial indicators during the period of investigation. Report at A-34, Table 12.

78/ Report at A-38, Table 16.

79/ Id.

Cement production historically has been subject to cyclical performance, with poor performance in periods of low or declining consumption, and boom performance during periods of high or increasing consumption. In the 1986 Cement case, the Commission determined that cement production is a cyclical industry, closely linked to the construction cycle. 80/ Subsequently, the Omnibus Trade and Competitiveness Act of 1988 amended section 771(7)(C)(iii) to specify that the Commission "shall examine all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry." 81/

Thus, in this investigation, we believe it is important to consider the issue of material injury in the context of the business cycle of the cement industry in the region, as well as the conditions of competition in that industry. 82/ Over the period of investigation, the cement market in Southern California was characterized first by a strong surge in demand, and by declining consumption in the most recent period. The performance trends of the industry must therefore be considered in the context of a growing market at the outset, and a declining market in the most recent period. A loss of

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80/ 1986 Cement at 17 (1986).

81/ 19 U.S.C. § 1677(7)(C)(iii).

82/ We note that the business cycle argument in the context of the cement industry is one that poses particular problems. Unlike the hog cycle, which is predictable since it is driven by the biological fact of the swine gestation period, the cement cycle is driven by the construction industry business cycle, which is far less predictable. Forecasts of peaks and valleys in the cement cycle are thus far less certain, and it is more difficult to factor the cycle and the condition of the industry together in assessing the issue of material injury. As the Commission noted in the 1986 Cement investigation, "the question of where an industry is in its business cycle at any given time, as well as the question of the length of the cycle, is one which is not readily answerable." 1986 Cement at 17, n.52.

market share during a period of growing demand in this industry indicates injury. The effects of lost market share can have a significant adverse impact on the condition of the industry over the long term, by depriving the industry of the full benefits of the upsurge, and making it more difficult for the industry to survive the downturn.

Despite increases in the domestic industry's operating income, the industry has suffered significant declines in market share. Further, domestic prices have declined notwithstanding increased demand over much of the period of investigation. 83/ The fungible character of cement, and the localized nature of competition in the Southern California market, support our conclusion that no producer is shielded from the injury to the industry reflected by these trends. Our consideration of the plant-specific information on the record bears out this observation, as does our consideration of various data presented in the "percentage of production" aggregates.

Cumulation

The statute provides that---

> For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of the imports from two or more countries of like products subject to investigation if the

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83/ Commissioner Lodwick notes that the significant declines in domestic producers' market share and in unit values suggest that profitable operations over the period of invstigation mask the true condition of the industry. See USX Corp. v. United States, 11 CIT ___, 655 F. Supp. 487, 490 (1987) ("[T]he fact that an industry has been lifted out of a recession does not automatically trigger a conclusion that foreign imports are not adversely affecting the domestic industry."); National Association of Mirror Manufacturers v. United States, 12 CIT ____, 696 F. Supp. 642, 647; S. Rep. No. 1385, 90th Cong., 2d Sess. (1968) ("An industry which is prospering can be injured by dumped imports..."); S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (temporary trends can mask real harm caused by imports).

imports compete with each other and with like products of the domestic industry in the United States market. 84/

Imports are to be cumulated if they meet three criteria: (1) they must compete with other imported products and with the like domestic product; (2) they must be marketed within a reasonably coincidental period; and (3) they must be subject to investigation. 85/ In addition, the Commission may cumulate imports subject to a recent final order. 86/ The issue in such cases is whether the final order is sufficiently "recent" that the unfairly traded imports which resulted in imposition of the order are continuing to have an effect on the domestic industry, or whether the order is sufficiently removed in time that LTFV imports entered prior to date of the order no longer have a continuing injurious impact on the domestic industry.

The imports from Mexico which enter Southern California compete with the subject imports from Japan and the domestic like product. As the Commission has frequently noted, cement is a fungible commodity, which competes largely on the basis of price. Imports from Mexico and Japan have been simultaneously present in the California market during the period of investigation. Imports

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84/ 19 U.S.C. § 1677(7)(C)(iv).

85/ See 19 U.S.C. § 1677(7)(C)(iv); H.R. Rep. No. 1156, 98th Cong., 2d Sess. 17 (1984) (which contains the language not contained explicitly in the statute, pertaining to "reasonably coincident" imports). Chaparral Steel Co. v. United States, Slip Op. 89-1338-1339 (Fed. Cir. April 17, 1990, rehearing denied, Order of May 29, 1990. See also, e.g., Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea and Taiwan, Invs. Nos. 731-TA-278, 279, 280 (Final) USITC Pub. 1845 (May 1986) at 7, n. 28, aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (1988), aff'd , 859 F.2d 915 (Fed. Cir. 1988) (adopting the decision of the lower court).

86/ Chaparral Steel Co. v. United States, Slip Op. 89-1338-1339 (Fed. Cir. April 17, 1990), rehearing denied, Order of May 29, 1990; Industrial Nitrocellulose from Yugoslavia, Inv. No. 731-TA-445 (Final), USITC Pub. 2324 (Oct. 1990).

from both Mexico and Japan share common or similar channels of distribution, being imported through bulk import terminals and distributed throughout the region in the same manner. 87/

Imports from Mexico are subject to an antidumping duty order issued on August 30, 1990. Petitioners argue that the imports from Mexico satisfy the competition criteria, and the order is sufficiently recent to warrant cumulation of Mexican imports. Respondents argue that the Commission should not cumulate the Mexican imports because those imports are not currently unfairly traded. They also assert that the Commission should consider the date of the Commerce preliminary (April 12, 1990), when dumping duty deposits went into effect, in determining whether the order is sufficiently recent to warrant cumulation.

The Commission has never established a specific temporal limit for cumulation in such cases. The Mexico order is almost eight months old. 88/

87/ We note that the same importers do not necessarily handle imports from both Mexico and Japan, but the same types of importers handle imports from both countries, and subsequent distribution is via common means.

88/ Petitioners note that respondents requested an extension of time in the Commerce investigation of Japanese imports, which extended the time lag between entry of the Mexico order and the determination in this case by two months. They argue that those two months should be discounted in determining whether the Mexico order is sufficiently recent to warrant cumulation. The Commission has taken account of respondents' requests for extensions at Commerce in previous cases. E.g. Industrial Nitrocellulose from Yugoslavia, Inv. No. 731-TA-445 (Final), USITC Pub. 2324 (Oct. 1990). We note that those instances involved investigations that were filed simultaneously, which was not the case here. However, the Commission has also cumulated with recent orders in cases that were filed seriatim, without "punishing" the petitioner for not filing simultaneously. Oil Country Tubular Goods from Israel, supra. Generally, the Commission considers factors particular to the market and product concerned, including inventory levels, the nature of the distribution system, the competitive conditions in the market, etc., in determining whether cumulation of imports subject to a recent order is warranted. See, Industrial Nitrocellulose from Yugoslavia, supra.

The Commission has cumulated imports subject to orders six to eight months old. Oil Country Tubular Goods from Israel, Inv. No. 731-TA-318 (Final), USITC Pub. 1952 (Feb. 1987); Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA-293, 294, & 296 (Final), USITC Pub. 1907 (Nov. 1986).

We do not agree with respondents' argument that the Commission should consider the date of Commerce's preliminary determination in the Mexico case in determining whether the Mexican imports should be cumulated. Those imports remained "subject to investigation" until Commerce issued its final, and thus the statutory criterion for cumulation was met until the issuance of Commerce's final determination and imposition of the antidumping duty order. 89/ The Commission has never considered anything other than issuance of an antidumping or countervailing duty order as rendering imports the "equivalent of fairly traded" and thus potentially not subject to cumulation. Respondents have presented no compelling reason for changing that practice.

Having found that Mexican imports satisfy the statutory criteria for mandatory cumulation, the question remains of how to accommodate the cumulation provision with those provisions specifically applicable in regional industry cases. This question apparently was not foreseen by Congress, as neither the statute nor the legislative history contain any guidance as to how the two provisions are to operate in conjunction. The cumulation provision makes no specific mention about whether imports are to be cumulated in

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89/ As a factual matter, imports from Mexico did not decrease following issuance of Commerce's preliminary determination. Report at A-58, Table 27. In fact, imports in May, June, and August of 1990 were higher than in any of the months January - April 1990. In addition, prices of imports of Mexican cement reported by purchasers do not show any significant increases after April 1990. Report at Appendix E.

assessing injury or threat in regional industry cases. Nor does either the regional industry provision or the cumulation provision indicate whether cumulated imports are relevant in determining whether there is sufficient import concentration to warrant regional analysis. Thus, we are left to determine what a reasonable interplay of the two provisions should be.

We believe that an interpretation of the interplay between the two provisions which significantly raises the standard for an affirmative determination would not be appropriate or in keeping with Congressional intent. On the other hand, regional industry analysis is a special exception to the usual domestic industry and injury standards, which may be applied only when specific criteria are met and requires a higher standard for affirmative determinations. Therefore, an approach which significantly lowers the standard for an affirmative determination in regional industry cases also would arguably contravene legislative intent.

Petitioners argue that the cumulation provision is mandatory, and does not except regional industry cases. Thus, they contend that the Commission must cumulate in considering material injury if the statutory criteria are met. They further contend that cumulation applies only to material injury determinations, and is irrelevant in determining whether imports into the region are concentrated. Respondents argue that the statutory criteria for cumulation are not met in this case, because Mexican imports compete with the like product of a different regional industry (viz. the Southern tier regional industry) than do imports from Japan. 90/ Respondents further contend that in

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90/ Of course, Southern California is included within that "different region" where Mexican imports compete with domestic producers.

order for the Commission to cumulate in its material injury analysis, it must be shown that cumulated imports are concentrated within the region.

There is only one industry at issue in this investigation - the regional industry comprising Southern California producers. Therefore the question of competition for purposes of cumulation is whether imports from Mexico into the region compete with the like product of that regional industry, and with Japanese imports. That Mexican imports into a different region were, in another case, found to be a cause of material injury to another regional industry does not necessarily preclude cumulation.

As noted above, we do not believe that in order to warrant a regional analysis in this case, we must first determine that cumulated imports from Japan and Mexico are concentrated in the region. Such a requirement would, we believe, defeat the intention of the regional industry provision in many, if not all, instances. 91/

91/ The reasons underlying the concentration of imports prerequisite are not implicated by a decision to cumulate for only purposes of material injury analysis, and not for determining whether imports are sufficiently concentrated to warrant a regional analysis. Only imports from Japan would be subject to duties as a result of an affirmative determination in this investigation. Imports from Mexico will not become subject to duties as a result of an affirmative determination in this investigation, even if the Commission cumulates them. Thus, there is no possibility that imports from Mexico into the rest of the United States which have not been determined to be a cause of injury to a domestic industry will be subjected to antidumping duties as a result of this investigation.

Respondents also assert that petitioners in this investigation and in the Mexican Cement case are, to all intents and purposes, the same, (Southdown, Inc. is the parent company of one of the members of the petitioning group in both investigations) and filed this case as an "afterthought" to the Mexican Cement petition. Respondents argue that petitioners should not be "rewarded" by gaining the benefit of cumulation for injury analysis without paying the price by having cumulated imports considered in assessing import concentration. We do not believe the fact that a single company is the parent of a member of the petitioning group in both this and the Mexican Cement investigation, and that the petitions were filed seriatim, require cumulation in our concentration of imports analysis.

Another question which arises is whether imports subject to cumulation must themselves be concentrated in the region. The regional industry provision does not distinguish between imports subject to the investigation per se, and cumulated imports, in requiring that imports be concentrated in the region. We believe that the same sorts of factors that determine whether a regional analysis is warranted are appropriate to consider in determining whether other imports should be cumulated. Nonetheless, we do not believe that the same degree of concentration is necessary for imports to be cumulated as in determining whether regional analysis is warranted. In this case, approximately 40 percent of total Mexican imports into the United States entered the Southern California region in 1990. In our view, this is sufficient to warrant cumulation, and as the statutory criteria for cumulation are satisfied, we believe cumulation is mandatory. However, we cumulate only those Mexican imports which entered the region. 92/

92/ Respondents argue that there is no statutory basis for cumulating only a portion of imports. We believe that the logic underlying cumulation, which focusses on the "hammering effect" of unfair imports from multiple sources, supports the Commission's exercise of discretion to cumulate only those imports which satisfy the statutory cumulation criteria and are actually entering the relevant regional market.

Accordingly, we have based our determination on a cumulative assessment of the volume and price effects of LTFV imports from Japan and Mexico. 93/

Material injury by reason of LTFV imports

In determining whether a domestic industry is materially injured by reason of imports, the statute provides that the Commission consider in each case:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States; 94/

93/ As noted above, given the uncertain interplay between the cumulation and regional industry provisions of the statute, we believe it is reasonable and in accordance with the underlying intent of the statute to require that imports which otherwise meet the cumulation criteria also be concentrated within the region wherein their potential "hammering effects" are to be assessed. This, of course, implies that under other factual scenarios, we might not cumulate imports in a regional industry case, even though they may qualify for "mandatory" cumulation. We add, however, that both in absolute terms and as a share of regional consumption, Japanese imports increased steadily over the period of investigation, until 1990, when their relative decline within the region far exceeded the decline in total Japanese imports into the U.S., appearing to reflect a response to either the filing of the petition or the affirmative preliminary determination by Commerce. Further, as discussed below, information in the record shows substantial underselling by the Japanese imports, which we believe has led to the suppression and depression of prices for the domestic like product. Based on this evidence, we would have rendered an affirmative determination even had we not cumulated Mexican imports.

94/ 19 U.S.C.(7)(B)(i). The statute also provides that the Commission may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports. 19 U.S.C. § 1677(7)(B)(ii). Finally, the statute gives guidance as to how the factors listed in subsection (B)(i) are to be evaluated. 19 U.S.C. § 1677(7)(C).

The Commission may consider other factors it deems relevant, but must explain why they are relevant. 95/ The Commission may take into account information concerning other causes of harm to the domestic industry, but it is not to weigh causes, 96/ and the imports need only be a cause of material injury. 97/

A. The volume of imports

The volume of cumulated imports from Japan and Mexico into the Southern California region increased by 135 percent from 1986 to 1989, from 934,000 tons to 2.2 million tons, before declining by seven percent in 1990 to 2.0 million tons. 98/ Imports of clinker dropped to zero in 1987 and succeeding years, from 108,000 tons in 1986. 99/

Thus, there has been a significant increase in the absolute volume of subject imports during the period of investigation. 100/ As a share of regional apparent consumption, subject imports from Japan and Mexico increased significantly throughout the period of investigation, from 13.1 percent in

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95/ 19 U.S.C. § 1677(7)(B).

96/ S. Rep. No. 249, 96th Cong. 1st Sess. 57-58, 74 (1979).

97/ LMI-La Metalli Industriale, S.p.A. v. United States, 13 CIT ___, Slip Op. 89-46 (April 11, 1989) at 31; Citrosuco Paulista, S.A. v. United States, 12 CIT ___, 704 F. Supp. 1075, 1101 (1988).

98/ Report at A-60, Table 28.

99/ Report at A-61, Table 29.

100/ With regard to respondents' contention that Japanese imports have played a "complementary" role in the market, satisfying demand that could not be met by the domestic industry, we note that the significant investment in import terminals by Japanese producers and exporters of cement suggest rather the establishment of a permanent presence in the market, indicating to us that this is no longer the case. Further, it appears that the presence of LTFV imports has increased the extent to which domestic producers have had to make sales outside the Southern California region.

1986 to 25.3 percent in 1990. 101/ While some of the increase in the market share accounted for by subject imports was at the expense of imports from other countries, in light of the commodity nature of the product and the conditions of competition in the market, the significant and increasing volume of subject imports has had significant adverse effects on domestic producers. 102/ Moreover, in the most recent period, as regional consumption declined, imports nonetheless maintained a significant share of the regional market. 103/

B. Price effects of imports

In the course of this investigation, the Commission requested pricing information from producers and importers for four distinct marketing areas in Southern California. 104/ Prices were requested for producers' and importers' total shipments to ready-mix customers purchasing the largest volume (within a 300 to 1200 ton range) in the fourth full week of each month from January 1986

101/ Report at A-60, Table 28.

102/ To the extent domestic producers have imported cement from Japan , it appears such imports were motivated at least in part by the availability and price of LTFV imports from Japan. One domestic producer, CPC Co., has an interest in one of the major importers of cement from Japan, CPC Terminals, and is itself owned by a Japanese producer/exporter of cement, Onoda Cement Co., Ltd. Such imports, while perhaps a rational financial decision by a producer, suggest that the domestic production operations of these producers, with which we are here concerned, are suffering as imports take their place.

103/ In this context, we note that the 1990 decline in Japanese imports is due at least in part to the total cessation of imports in November and December, after Commerce's preliminary affirmative dumping determination, and the calculation of substantial dumping margins. Report at A-58, Table 27. We do not consider this change in import patterns probative of likely future behavior.

104/ The Commission also requested price information for the San Francisco market in Northern California, as well as prices for imports from Mexico. Report at A-65 & n.60.

through December 1990. The Commission received pricing information from producers and importers accounting for virtually all production in and imports into Southern California.

We observe that weighted average domestic prices in all four market areas declined from January 1986 through March 1990, before increasing somewhat in the last nine months of 1990. 105/ Trends in weighted average prices for Japanese imports were mixed during the period, but also generally declined 106/, as did weighted average prices for Mexican imports. 107/ This information indicates that both price depression and price suppression may have occurred in this market.

Despite the fact that cement is a commodity product, comparisons of domestic producers' and importers' prices revealed consistent underselling by Japanese imports in all four Southern California marketing areas. 108/ Prices of imports from Mexico were also lower than domestic producers' prices in all but three of 105 possible comparisons. 109/

105/ Report at A-66-A-68, Tables 31-34.

106/ Id.

107/ Report at Appendix E, Tables E-1-E-4.

108/ Out of 60 possible comparisons in the Los Angeles market area, all revealed underselling by Japanese imports, by margins ranging from 0.8 percent to 17.2 percent. Out of 60 possible comparisons in the Orange County market area, 57 revealed underselling by Japanese imports, by margins ranging from 1.7 percent to 13.4 percent. The remaining three comparisons revealed overselling by Japanese imports, by margins ranging from 0.4 percent to 1.3 percent. Out of 59 possible comparisons in the Riverside County market area, all revealed underselling by Japanese imports, by margins ranging from 4.3 percent to 17.9 percent. Out of 12 possible comparisons in the San Diego market area, all revealed underselling by Japanese imports, by margins ranging from 0.1 percent to 8.1 percent. Report at A-66-A-68 and Tables 31-34.

109/ Report at Appendix E, Tables E-1-E-4.

Pricing information was also requested from approximately 50 firms identified as ready-mix concrete producers that purchase portland cement for their largest purchases (within a 500-1200 ton range) of both Japanese and domestic cement. The purchaser price comparisons were mixed, without a distinct pattern of under- or overselling with respect to location or quantity purchased. Nonetheless, in 123 of the 240 possible price comparisons, Japanese cement was priced lower than domestic cement, by margins ranging from less than 0.05 percent to 14.0 percent. 110/

Based on both the producers' and importers', and the purchasers' responses, it appears that LTFV imports of Japanese cement have consistently undersold domestically produced cement in the Southern California regions during the period of investigation. While we are aware of the possibility that our sample may not completely accurately represent pricing patterns in the Southern California market 111/, the consistency with which underselling appears in the reported data, as well as confirmed instances of domestic producers reducing prices to meet lower prices offered on LTFV imports 112/,

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110/ Report at A-69 and Appendix F, Tables F-1-F-11. In 59 of the 240 months in which comparisons were possible, domestic and Japanese cement were priced the same, and in the remaining 58 months, domestic cement was priced below Japanese cement by margins ranging from less than 0.05 percent to 6.9 percent. Id.

We note that while purchaser questionnaire data show many instances where purchasers obtained cement from both Japanese and domestic suppliers at the same price, this is consistent with petitioners' allegation that regional producers have had to reduce their prices in order to meet import competition. See Report at A-71-A-72.

111/ Although a large number of prices reported to the Commission were for sales between related companies, the pricing tables report only prices for sales to unrelated purchasers. Thus, one of the elements which might skew the information has been eliminated.

112/ Report at A-71-A-72.

supports petitioners' argument that the relative prices of imports have had a significant adverse effect on domestic prices.

The conditions of competition in the cement industry in Southern California further support our conclusion that LTFV imports have suppressed and depressed prices in Southern California. 113/ Generally, imports have the greatest impact on domestic prices when they are available in significant volumes, when consumers are unwilling to purchase significantly more of the product even if the prices go down, and when consumers view the imported and like product as close substitutes. Under such circumstances, a decrease in the price of the import is likely to result in direct substitution of the import for the domestic like product, rather than increased overall purchases of the product. When the import market share is significant, this substitution effect tends to lower domestic prices as domestic producers reduce their own prices to meet import competition, in an effort to maintain sales volume and market share.

This case presents just such circumstances, supporting our conclusion that LTFV imports have had significant adverse sales and price effects on domestic producers. Demand for cement is derived from demand for concrete, which in turn depends on the demand for construction. 114/ Portland cement represents a relatively small portion of the cost of most construction

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113/ Commissioner Lodwick notes that the record at the final stage of this investigation reaffirms his conclusions reached at the preliminary stage concerning conditions of competition in this market as a basis for an affirmative determination. Japan Preliminary at 23-29; See also Views of Commissioner Lodwick in New Steel Rails from Canada, Inv. No. 731-TA-422 (Final), USITC Pub. 2217 at 235, for a more detailed discussion of conditions that support claims of significant effects of LTFV imports on domestic prices.

114/ Report at A-14, A-62.

projects 115/, and there appear to be no good substitutes for cement in the production of concrete. 116/ Thus, the amount of cement demanded is unlikely to increase in response to a change in price. Market penetration of Japanese and Mexican imports is significant and increased significantly during the period of investigation. Imports from Japan and Mexico are highly substitutable for the domestic like product, as well as for non-subject imports and each other. 117/ In addition, we note that as the industry's capacity utilization increased, prices declined in the Southern California market, contrary to what would be expected in the absence of LTFV imports. 118/ In the circumstances of this case, suitable competitive conditions for LTFV imports to have a price suppressing and depressing effect are present.

LTFV imports can achieve increases in market share by selling at lower prices, which effectively lowers prices throughout the market for a fungible good such as cement. Domestic producers are faced with either forgoing market share, or lowering prices to compete in an effort to maintain market share. The decline in cement prices in the region, and the increasing market share of

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115/ Memorandum INV-O-064 at 17.

116/ Report at A-63 & n.52.

117/ Memorandum INV-O-064 at 15-17. Imports of both Japanese and Mexican cement are used for the same application, in the production of concrete, and are sold through the same channels of distribution. The fact that all cement generally conforms to the standards established by the American Society for Testing Materials (ASTM) also indicates that imported product cement is an excellent substitute for domestically produced cement.

118/ See Figure 1, Petitioners' Preliminary Conference Exhibit 6, indicating that, from 1975 to 1979, as regional consumption and domestic capacity utilization increased, average shipment values also increased, while from 1985 to 1989, as regional consumption and domestic capacity utilization increased, average shipment values declined.

subject imports, supports the conclusion that the subject imports have indeed had a suppressing and depressing effect on prices for cement in Southern California. 119/

C. Impact of LTFV imports on the domestic industry

We conclude, in light of their volume and effect on prices in Southern California, LTFV imports are a cause of material injury to the domestic producers in the region primarily through their effects on the financial condition of the producers.

The loss of market share throughout the earlier part of the period of investigation, combined with declining prices, adversely affected the financial condition of the domestic producers. Although producers' operating income margins increased between 1986-87 and 1988-89, these increases were largely due to declines in costs and increases in volumes. 120/ Overall, from 1986 to 1990, producers' total operating income declined primarily as a result of a drop in net sales revenues, which resulted from a significant drop in sales prices, partly offset by an increase in the volume of sales. 121/ In the most recent period, 1990, although prices increased, operating income declined, due primarily to a decline in the volume of sales. 122/ Having lost

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119/ The decline in market share accounted for by non-subject imports after 1987, when prices were declining and subject imports' market share was increasing rapidly, suggests that the importers of non-subject cement were unwilling to match declining prices in Southern California, and instead gave up market share.

120/ Report at A-37 and Table 15.

121/ Id.

122/ Id.

significant market share throughout the earlier part of the period of investigation, producers continued to suffer as consumption declined.

The adverse effects of import volumes and prices on the domestic producers' financial condition is reflected in their inability to invest. The record in this investigation reflects that domestic producers have curtailed planned investments, and that the risk of investment in the Southern California cement industry has increased. 123/ Domestic producers, faced with price competition from LTFV imports, have reduced prices in an effort to maintain production volumes and capacity utilization levels, so as to minimize the effect on profits. 124/ While this effort keeps production and shipments at higher levels, it adversely affects the producers' financial indicators. On the other hand, maintaining prices in the face of LTFV import price competition would result in even greater declines in market share, and a resulting drop in contribution profits.

Based on the record evidence, we conclude that the domestic producers of all or almost all production of cement in the Southern California region are materially injured by LTFV imports.

123/ Report at Appendix D, B-59-B-62.

124/ Due to the high fixed costs of cement production, maintaining output volume and capacity utilization at levels as high as possible is vital to maintaining profit levels.

SEPARATE VIEWS OF COMMISSIONER DAVID B. ROHR
FINDING THREAT OF MATERIAL INJURY
IN

GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN
Inv. No. 731-TA-461 (Final)

I determine that producers of all or almost all regional production of gray portland cement and cement clinker in Southern California are threatened with material injury by reason of imports of gray portland cement and cement clinker from Japan found by the Department of Commerce (DOC) to be sold at less than fair value. I further determine, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930, as amended, that I would have found such producers to be materially injured but for the suspension of liquidation of the subject merchandise.

Termination Request

On February 13, 1991, counsel on behalf of Mitsubishi Mining & Cement Co., Ltd., Nihon Cement Co., Ltd., Osaka Cement Co., Ltd., and Ube Industries, Ltd., respondents in the above-referenced investigation, filed a request to terminate this investigation based on Petitioners' alleged lack of standing. Counsel for respondent Onoda Cement Co., Ltd. filed a letter supporting the request on February 14, 1991. Counsel for Petitioners filed a response in opposition to the request on February 19, 1991, and a Reply in support of the request was filed on March 6, 1991.

The Commission has consistently taken the position that, under the statute that governs antidumping and countervailing duty investigations, title VII of the Tariff Act of 1930, as amended, it does not possess the authority to terminate an investigation based on standing issues. It has traditionally dismissed arguments for such termination in summary fashion in footnotes to its opinions.

In this investigation, respondents made a request for a Commission action on this issue, as provided for under Commission rule 201.12. It is clear that the summary disposition of similar arguments in the past has not had the effect of making clear to the public what the Commission's views on this subject are. Therefore, I join in the views expressed by Commissioners Lodwick and Newquist on this issue.

Any inherent authority which either the Commission or the DOC might have over proceedings which we or they may initiate is subordinate to the statutes which govern those particular proceedings. Under the statutory scheme, it is the Department of Commerce which possesses authority to determine standing in title VII investigations. Any recourse from an action that either party may disagree with by the DOC on such issues is not before the Commission. I disapprove the request.

Like Product

The imported articles subject to this investigation include gray portland cement and cement clinker.[1] In the two most recent investigations conducted by the Commission in which these articles were subject to investigation, the Commission found there to be a single like product that included both of these articles.[2] The criteria set forth in the statute and in judicial interpretations of the statute and used by the Commission to determine the appropriate like product are set forth in detail in most Commission majority opinions.[3] I see no need to repeat them here once again. I find there is nothing in these criteria and nothing in the facts as brought out in this investigation that would lead me to change the definition of like product found appropriate in these previous investigations or in the preliminary in this

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[1] 55 Fed. Reg. 24295, 24296 (June 15, 1990).

[2] Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Inv. No. 731-TA-356-363 (Preliminary), USITC Publication 1925 (1986) (*1986 Cement*); and Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Preliminary), USITC Publication 2235 (1989) (*Mexican Cement*).

[3] *Mexican Cement* at 3-5.

investigation.[4] There is a single like product in this investigation including both gray portland cement and cement clinker.

Domestic Industry

A. Regional Industry

The Commission has conducted approximately 12 investigations of U.S. cement producers since 1960.[5] In all but one of these cases, the Commission has found it appropriate to analyze the industry on a regional basis. The Commission found different regions to be appropriate based on the facts of each investigation. The principal difference in the investigations that appears to account for the different regions is the different imports subject to each investigation, a fact that underlines the traditional importance of imports in the Commission's determination of an appropriate region.

In my additional and dissenting views in *Mexican Cement*, I noted that cement has usually been viewed as a particularly appropriate candidate for regional analysis.[6] The fact that 11 of 12 investigations of cement producers by the Commission were conducted on a regional basis is a vivid indication of this proposition.[7] The difficult question for this investigation, as it has been in most cement investigations, is not whether a regional analysis is appropriate, but rather what is the appropriate region for such analysis.

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[4] Report at A-5 through A-7. I also note that none of the parties in this investigation have challenged the like product definition as including both cement and clinker.

[5] Report at A-2. The twelfth case is the Mexican cement preliminary investigation conducted in 1989. *See Mexican Cement.*

[6] *Mexican Cement*, Additional Views of Commissioner David B. Rohr Concerning Regional Industry, Injury to a Regional Industry, and Threat, at 50, Inv. No. 731-TA-451 (Preliminary), USITC Publication 2235 (November 1989) (*Rohr Preliminary Mexican Cement Views*); Dissenting Views of Commissioner David B. Rohr at 70-71, Inv. No. 751-TA-451 (Final), USITC Publication 2305 (August 1990) (*Rohr Final Mexican Cement Views*).

[7] The *1986 Cement* case is the one exception. The decision not to engage in a regional analysis was based on factors unique to that investigation.

Applying the regional industry provisions set forth in section 771(4)(C) of the Tariff Act of 1930, as amended,[8] in this investigation, I find that the appropriate "region" for analysis encompasses the producers located in Southern California as defined on page A-4 of the Commission's Report. These include the two CPC facilities at Colton and Mojave, the Calaveras facility at Monolith, the Mitsubishi and National facilities, the two Riverside facilities at Crestmore and Oro Grande, and the Southwestern facility at Victorville.

In making this decision I am consciously reversing the determination I made in the preliminary investigation that the proper region to consider comprised all of the cement producers of California, a determination that added three domestic facilities in Northern California to those previously mentioned, the Calaveras facility at Redding and the Kaiser and RMC Lonestar facilities. I make this determination taking into consideration the statutory requirements of section 771 (4)(c)(i)&(ii), the import concentrations in the two regions, and the market realities relevant to the sale of cement on the West Coast.

As I noted in the preliminary, both possible regions, "all of California" and "Southern California," meet the requirements of regional industry set forth in the statute. The differences between them are slight. The criterion of the share of regional producers' shipments staying within the region, section 771(4)(c)(i), is improved using all of California as a region. The criterion of the share of regional consumption supplied by producers outside the region, section 771(4)(c)(ii), is improved by using Southern California as the appropriate region. The import concentration increases, by a relatively small amount using all of California as a region. In view of the small magnitudes in the changes in these criteria between the two possible regions, I do not believe they present a compelling case for either possible region over the other

In my preliminary views, I choose to proceed on the basis of the larger region because, among other factors, it afforded more flexibility for reconsideration of the matter for purposes of a final investigation. I noted, as well, that I was concerned about what seemed to

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[8] 19 U.S.C. §1677(4)(C).

be the adoption of a new test for the definition of the regional industry, involving intra-regional shipments, for which I could find no legal basis.[9] On further reflection, in this final investigation I have come to the conclusion that it is proper to consider intra-regional trade among the other "market realities" that the Commission has traditionally considered in deciding the issue of the appropriate region.

Upon consideration of the several "market realities" which appear in this final investigation, I now believe, although the question remains a close one, that it is appropriate to consider Southern California as a separate region. As confirmed in this final investigation, intra-regional shipments between Northern California and Southern California markets are quite low.[10] I note also the considerable difference between Japanese import penetration in Northern and Southern California. The import penetration ratio for Japanese cement into Southern California was substantially above the national average throughout the period of investigation. In contrast, the import penetration ratio for Japanese cement in Northern California was not significantly above the national average import penetration ratio.[11]

Further refinement of shipment data for the domestic industry also reveals that competition with the imports is very limited geographically because both the Southern California producers and the import terminals are very concentrated near the two main port areas of Los Angeles and San Diego.[12] Evaluation of the unit value and pricing data in Northern and Southern California also supports the fact that these two markets are substantially isolated from one another.

The marginal increase in import concentration obtained by including Northern California in the appropriate region for this investigation does not outweigh the reality of

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[9] Views of Commissioner David B. Rohr at 36-37, Inv. No. 731-TA-461 (Preliminary), USITC Publication 2297 (*Rohr Preliminary Japanese Cement Views*).

[10] Report at A-11.

[11] The market penetration ratio for Japanese imports into Northern California can be calculated by subtracting the Southern California data from the State of California data contained in Table 28, Report at A-60.

[12] Report at A-19.

the isolation of the two markets. Because, although somewhat low, the import concentration into Southern California is sufficient for purposes of regional industry analysis, I conclude that Southern California is the appropriate region for this investigation.

B. Grinding-Only Operations and Related Parties

I determine that it is appropriate to include within the domestic industry those operations which only grind clinker into cement.[13] I also conclude that it is not appropriate to exclude any producers from the domestic industry on the basis of the related parties provision of title VII, section 771(4)(B).[14] No information has come to light in this final investigation which would lead me to change the conclusions that I reached in the preliminary, and I reaffirm my views as expressed in that determination.[15]

Condition and Vulnerability of the Regional Industry

Having carefully examined the condition of the Southern California regional cement industry in the context of the business cycles relevant to cement and to the region, I conclude that producers of "all or almost all" of Southern California regional production are not currently experiencing material injury. In view of a number of significant downturns in industry performance during 1990, however, and taking into consideration the nature of the business cycle for cement in Southern California, I also conclude that the industry is extremely vulnerable to the effects of imports. In reaching this conclusion, I have examined the aggregate indicators of industry performance traditionally examined by the Commission, as well as how those aggregates are affected by individual plant performance. I also base my conclusion on the "percentage of production" method of analysis that I set forth in my recent decisions involving regional industries as a good and appropriate way to analyze the "all or

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[13] This involves a single small producer located in Southern California.

[14] 19 U.S.C. §1677(4)(B).

[15] *Rohr Preliminary Japanese Cement Views* at 38-39.

almost all" injury criteria required by section 771(4)(C) in regional industry investigations.[16]

Looking first at regional production, I note that the traditional aggregate data show a decline in production from 1986 to 1987, increases in 1988 and 1989, and a decline in 1990, with the 1990 production level remaining above the level of 1986 production.[17] This pattern does not strongly suggest either an injured or an uninjured industry. When I add to my consideration the percentage of production accounted for by producers who increased or decreased production during the period an additional element of the picture is formed.

I note that, between 1986 and 1987, when the overall aggregate for the industry decreased, one producer, accounting for a significant percentage of regional production, did increase production, although by less than 5 percent. In the years in which the aggregates increased, producers of all or almost all regional production increased their individual production. The extent of these increases was considerable. Producers of a significant percentage of regional production increased their production by both 5 and 10 percent.

In 1990, even with a relatively significant drop in aggregate production, producers accounting for more than 34% of production were able to increase their production. The amount of these increases was, however, rather small in most cases. Most of the increases were less than 5 percent. Only one producer managed to increase its production by as much as 10 percent.

Turning to capacity, I have examined both portland cement capacity, that is, grinding capacity, and cement clinker capacity because both are relevant to this industry. Aggregate

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[16] The principle objection to this method of analysis was made by petitioners who appear to believe that the percentage of production analysis is improper in light of the decision of the United States Court of Appeals for the Federal Circuit in Atlantic Sugar v. United States, 744 F2d. 1556. As I indicated in my views in the Mexican Cement Final, I do not believe the percentage of production approach is anything like the "piecemeal" approach discussed by the Court of International Trade and criticized by the Federal Circuit in Atlantic Sugar. *Rohr Final Mexican Cement Views at 73-75.* Rather it is an attempt to use aggregate data to determine the performance level of that percentage of producers representing all or almost all regional production. I have no doubt that, over time, this methodology can be refined to provide a more complete picture of the performance of an industry. I encourage parties in future regional industry investigations to assist in developing such refinements.

[17] Table 7, Report at A-24.

data show a drop in grinding capacity in 1988 with a partial recovery in capacity in 1989 and 1990.[18] The same pattern can be seen in the aggregate clinker figures, with a larger dip in 1988.[19] Looking at the percentage of production data, one firm in each of 1989 and 1990, in each case a large firm accounting for a significant percentage of regional production, increased its grinding capacity during the period of investigation. Only one of these increases was in excess of 5 percent.

The clinker story is similar with even a smaller increase in capacity. One firm, again a large firm accounting for a significant percentage of regional production, increased its clinker capacity in each of the last two years of the investigation. Only one of these increases exceeded 5 percent.

In general, the lack of significant capacity expansion by the domestic industry during a boom time in the business cycle for cement must be viewed as a significant weakness for the domestic industry. This conclusion is further strengthened by the cancellation of at least one planned capacity increase by a producer accounting for a significant percentage of regional production. Respondents' arguments purporting to show that no increases in capacity would have been rational for the domestic industry are unpersuasive. Several other factors, however, reduce in part the significance of the lack of increased capacity.

First, there was a significant increase in regional capacity immediately prior to the period of investigation, when a major expansion of Southdown's Victorville operation came on line. This certainly reduced the need for capacity expansions during the period of investigation. Second, environmental restrictions certainly increased the cost significantly of increasing capacity in the Southern California cement industry, particularly given the locations of the cement facilities in this region. Third, the need for capacity increases cannot be adequately examined without a consideration of capacity utilization, as discussed below.

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[18] *Id.*

[19] *Id.*

The capacity utilization for finished portland cement generally rose over the period of investigation, with a small drop from 1986 to 1987 to a low of 72 percent to a high in 1989 of 86 percent with a decline to 80 percent in 1990.[20] Clinker capacity utilization was at higher levels throughout the period with a slightly different trend. Clinker capacity utilization rose from 85 percent in 1986 to 101 percent in 1989 with a slight drop to 100 percent in 1990.[21]

These arithmetic averages, however, say little about the capacity utilization of producers of all or almost all of regional production. For grinding capacity utilization, producers of between 60 percent and 80 percent of regional production had capacity utilizations above the arithmetic average in each year of the investigation. For clinker capacity, in 1986, 72 percent of regional production was accounted for by producers who had capacity utilizations above the regional arithmetic average. This percentage declined steadily over time, but, even in 1990, producers accounting for 26 percent of regional capacity exceeded the regional arithmetic average of 100 percent capacity utilization.

In order to provide a more complete picture of the performance of producers of all or almost all of regional production, I undertook to calculate the percentage of regional production accounted for by producers whose grinding operations operated above 90 and 95 percent capacity utilization and whose clinker operations operated above 95 percent and 100 percent of capacity. The information obtained during the investigation indicated that grinding capacity utilization rates should normally be expected to be somewhat lower than clinker capacity utilization rates and that clinker operations are optimal at very high levels of capacity utilization.

The data show that a very large percentage of regional production was accounted for throughout the period by producers whose grinding operations were utilized above 90 percent. In 1986 and 1987, no producers operated above a 95 percent capacity utilization rate. In 1988 and 1989, however, a very significant percent of regional production was accounted for by

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[20] *Id.*

[21] *Id.*

producers operating at above 95 percent of capacity. In 1990, only one producer accounting for a relatively small percentage of regional production operated above that level, while another producer accounting for a significantly larger proportion of regional production operated at a level very close to that.

With respect to clinker capacity, producers of a very large percentage of regional production operated at above a 95 percent capacity utilization rate through the entire period of investigation. At the 100 percent capacity utilization rate, I note that producers of a significant percentage of regional production operated above that level, including producers of 70 percent of such production during 1989. In 1990, the percentage of production operating above 100 percent capacity drops to 26 percent, but even in that year more than 50 percent of capacity operated at levels above the 95 percent capacity utilization rate.

With regard to shipments, aggregate data show a drop in shipments between 1986 and 1987, significant increases in shipments over the next two yearly periods and a drop in 1990.[22] The percentage of production data tell a slightly different story. Between 1986 and 1987, when the aggregate shipments drop, one producer accounting for a significant 15 percent of regional production did manage to increase its shipments, although by less than 5 percent. Between 1987 and 1988, almost all producers increased shipments by more than 10 percent. In the next period, smaller increases were generally made. Ninety seven percent of production was accounted for by producers who increased shipments, but only 43 percent of production was accounted for by producers that increased shipments by 5 percent and only producers accounting for 6 percent of production increased shipments by 10 percent. During the 1990 shipment downturn, producers accounting for 34 percent of production increased their shipments, but only 11 percent increased shipments by more than 5 percent and only 5 percent increased shipments by 10 percent.

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[22] Table 8, Report at A-26.

Unit value of shipments data show, in the aggregate, that unit values fell from 1986 to 1988 and then increased from 1988 to 1990.[23] The percentage of production data show that these aggregates account for widely different amounts of production in each year. In 1986, producers accounting for 37 percent of production had unit values above the arithmetic average; in 1987, 61 percent; in 1988, 54 percent; in 1989, 54 percent ; and in 1990, 33 percent. I also note during the period of increasing unit values, these increases were quite small. During the 1988-1990 period, only two producers, accounting for a relatively small percentage of regional production, recorded increases in excess of 5 percent. Both of these increased the unit value of their shipments by in excess of 10 percent.

Petitioners also urged that I examine the ratio between shipments and production, arguing that particularly during boom times one should see virtually 100 percent of production being shipped. This is, in fact, what the data show. The aggregate shipment to production ratio was almost 100 percent in 1986, 99 percent in 1987, 100 percent in 1988, slightly over 100 percent in 1989 and slightly under 100 percent in 1990. The percentage of production data show that producers of 60 percent of regional production exceeded the 1986 average in 1986, 75 percent exceeded the 1987 average in 1987, 53 percent exceeded the 1988 percentage in 1988, 50 percent exceeded the 1989 average in 1989, and 80 percent exceeded the 1990 average in 1990. Looking at the percentages of production exceeding the 95 percent and 99 percent levels, I find similarly large percentages above those levels.

Turning to employment indicators, I note that, in aggregate, there was a decrease in the hours worked by production and related workers throughout the period.[24] A slightly different picture is shown by the percentage of production figures. Despite the overall decrease, producers of a small but significant percentage of regional production managed to increase the hours worked by their employees. Over the period of investigation, such producers accounted for 20 percent of regional production with the largest increase occurring in the

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[23] Table 8, Report at A-27.

[24] Table 11, Report at A-31.

period between 1989 and 1990 when 43 percent of regional production was accounted for by producers who increased the hours worked by their employees. Most of these increases were, however, relatively small.

Aggregate compensation data show a steady decline in compensation from 1986 through 1989 with a small upturn in 1990.[25] The percentage of production data show that between 1986 and 1987 47 percent of regional production was accounted for by producers who increased their total compensation. Most of these increases were relatively small as producers of 22 percent of production had compensation increases exceeding 5 percent and no producers increased total compensation more than 10 percent. Between 1987 and 1988, no producers increased their total compensation. In the next period, producers accounting for only 9 percent of regional production increased their total compensation, but all of these increases were in excess of 10 percent. Between 1989 and 1990, 31 percent of regional production was accounted for by producers whose total compensation increased. Only 11 percent increased their total compensation by more than 5 percent, but all of this increase was in excess of 10 percent.

Productivity aggregates are largely the inverse of the hours worked aggregates in this investigation. There was a steady increase in productivity from 1986 through 1989, with a slight decline in 1990.[26] The percentage of production data show that producers accounting for roughly half of regional production were above these aggregates, while half were below. Producers of a significant percentage of regional production reported increases above both the 5 percent and 10 percent levels during the period of productivity increase. In 1990, producers of 20 percent of production reported productivity increases exceeding both these two levels.

All of the parties to this investigation have emphasized an analysis of the financial indicators of the regional cement industry as providing the best guide to what has been happening and is continuing to happen in the industry. Looking at the traditional aggregate of net sales, I note a decline from 1986 to 1987, a very small increase from 1987 to 1988, a

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[25] *Id.*

[26] *Id.*

larger increase from 1988 to 1989 and a significant drop from 1989 to 1990.[27] In the first period, a producer accounting for 20 percent of regional production did manage to increase net sales, but by a small amount. In the second period, 53 percent of production was accounted for by producers who increased net sales. All of these producers increased net sales by in excess of 5 percent but only 19 percent by in excess of 10 percent. Between 1988 and 1989, producers of 94 percent of regional production managed to increase net sales, 41 percent by in excess of 5 percent, but no one by more than 10 percent. In 1990, in which the aggregates dropped significantly, one producer accounting for a significant percentage of regional production did manage to continue to increase its net sales by in excess of 5 percent.

Turning now to operating income, the traditional aggregates show a significant increase between 1986 and 1987, when net sales fell; a significant drop between 1987 and 1988, when net sales rose slightly; a very significant jump between 1988 and 1989 when net sales rose; and a significant drop in 1990, when net sales also fell.[28] I note as well that the 1990 drop in operating income was less precipitous than the drop in net sales.

According to the percentage of production data, between 1986 and 1989, a very significant percentage of regional production was accounted for by producers who increased their operating income. Further, such producers increased such operating income by more than 10 percent in each year. I note that it is not the same producers who account for such increases in each year. In 1990, producers of only 11 percent of regional production reported increases in operating income, but these increases were in excess of 10 percent.[29]

Turning to operating income margins, I note that the traditional arithmetical averages show operating returns over the period to be 14 percent, 16 percent, 12 percent, 15 percent, and

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[27] Table 12, Report at A-33.

[28] *Id.*

[29] In CO64-0-030, which contains updated percentage of production tables, I note that the column for the change over the period at the 5 percent increase in operating income level is miscalculated. That column should be identical to the period column at the 10 percent increase level.

14 percent.[30] Using the percentage of production data, I note that significant percentages of regional production were accounted for by producers who exceeded these arithmetic averages in each year, specifically, producers accounting for 61 percent of regional production exceeded the arithmetic average in 1986; 39 percent in 1987; 53 percent in 1988; 68 percent in 1989; and 69 percent in 1990. I interpret this data to mean that the performance of the industry as revealed in the traditional aggregate is being pulled down significantly by the weak performance of producers who do not account for the bulk of regional production.

In order to provide a better picture of the operating performance of the industry using the operating income margin as an indicator of performance, I examined the performance of the industry at two additional levels of performance. I looked closely at the arguments of the parties to determine the appropriateness of these levels. It was generally conceded that, due to the capital intensive nature of cement and the effects of the business cycle on cement that operating income margin levels should be relatively high compared to a non-capital intensive industry. Much of the argument focussed on how much higher such levels should be. Estimates by the parties ranged from as low as around 10 percent to as high as above 40 percent.

Several factors have led me to determine that it is appropriate to look at the performance of this industry at the 13 percent and 17.5 percent operating income margin levels. I note that these numbers bracket the arithmetic averages revealed in the traditional Commission data. Second, I note that these represent levels 2 to 3 times higher than the operating income margins I often see in title VII cases.

The estimates calling for higher levels, in excess of 20 percent appear to me to be based on inappropriate comparisons between Commission and public data and between different industries. For example, Commission estimates of operating income margins tend to be more conservative than much publicly available data which usually are calculated on a cash flow basis, and hence treat depreciation differently than does the Commission. Further, cement

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[30] Table 12, Report at A-33.

industry assets tend to have relatively long lives, reducing the level of Commission calculated operating income margins.

I note that in each year of the investigation, producers accounting for very large percentages of production, 61 percent, 75 percent, 53 percent, 79 percent, and 69 percent, had operating income margins exceeding 13 percent. At the 17.5 percent level, producers accounting for 12 percent of regional production achieved higher operating income margins in 1986; in 1987, 39 percent; in 1988, 22 percent; in 1989, 43 percent; and, in 1990, 31 percent.

The final financial performance indicator that I have examined is the Commission's operating return on assets margin. The Commission aggregates over the period were 9 percent, 9 percent, 7 percent, 9 percent, and 8 percent.[31] The percentages of production of producers operating above these arithmetic averages were, respectively, 50 percent, 39 percent, 53 percent, 52 percent, and 51 percent. I note again that the Commission's treatment of the operating returns to assets ratio tends to be more conservative than most publicly available data.

In this investigation, the parties have argued convincingly that the operating return on assets ratio should generally be lower than the operating income margin because of the capital intensity of the industry.[32] I choose the 9 percent and 12.5 percent levels at which to examine this indicator. I choose the 9 percent indicator as a level which the data show has been achieved by the industry and 12.5 percent as one above the industry average, which appears to be in line with the proper relationship between operating income and operating returns.

At the 9 percent operating income level, producers accounting for 50 percent of production operated with better returns in 1986; in 1987, 39 percent; in 1988, 53 percent; in 1989, 52 percent; and, in 1990, 51 percent. At the 12.5 percent return level, the percentage of

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[31] Table 16, Report at A-38.

[32] I note this is a different position than the one I took in the Mexican Cement case, in which I examined operating returns on assets at a higher level than operating income. I note generally that I made a negative determination in that case. The use of a lower level can have no other result on the relevant percentages of production than to have them remain the same or increase them.

production accounted for by producers operating in excess of that return level were, for each year of the investigation, 24 percent, 27 percent, 27 percent, 25 percent, and 16 percent.

Finally, I have also examined carefully the variance analysis performed on the financial data of this industry to determine what has been happening to it.[33] This analysis provides valuable information about the nature of any vulnerability that the industry may have. Based on the Commission's five years of data, there are four annual periods that can be examined using a financial variance analysis. In summary, this analysis shows increased profits between 1986 and 1987, a large decrease in profits between 1987 and 1988, an even larger increase in profits between 1988 and 1989, and a somewhat smaller decrease in profits between 1989 and 1990.

In the 1986 to 1987 period, the positive income variance (increased profits) resulted from the fact that, although there was a significant negative price impact on the industry's returns, this was more than offset by a decrease in costs, particularly cost of goods sold but also in selling, general, and administrative expenses. In the 1987 to 1988 period, I see an even larger negative price impact on the industry's net sales, but this negative impact was more than offset by a large increase in the volume of sales. On the cost side, while unit cost of goods sold and unit selling, general, and administrative expenses continued to decline to the benefit of the industry, the additional costs of producing and selling the larger volume of cement more than swallowed such decreases, resulting in a significant decline in income.

Between 1988 and 1989, selling expenses and the cost of producing the larger volume of goods sold negatively impacted profits, but these were more than offset by a slight increase in price, a substantial increase in the volume sold and continued declines in unit costs. In 1990, I see an improvement in price that positively affected the industry but a decline in sales volume that had a negative effect three times as great. It is further clear that there was an increase in the costs of goods sold that was roughly parallel to the increase in the unit prices and a decline in costs due to reduced volume that was less than the decline in net sales due to

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[33] Table 15, Report at A-37.

volume, resulting in a negative cost picture. As in 1989, the costs of selling cement increased.

My overall evaluation of the condition of this industry is that while the indicators are mixed, they present a picture of an industry that is not currently experiencing material injury. They do reveal, however, a downward trend in the most recent period, both in the actual performance of producers and in the percentage of producers operating at levels that I conclude are not indicative of injury, which indicates some serious vulnerability to the potential effects of LTFV imports.

I see fewer producers and smaller percentages of regional production accounted for by producers operating at high levels in the most recent period. The inability of the industry to have increased capacity during the last 5 years is not a good sign for the future. Over the period of investigation, a major reason for the excellent financial performance of the industry was its ability to reduce costs, particularly the cost of goods sold. This ability declined steadily over the period, turning negative in 1990. The potential for further significant cost reductions appears limited, particularly as increased efficiencies from higher capacity utilization rates are unlikely. By 1990, therefore, I see all or almost all producers in Southern Califonria displaying characteristics that I would deem very close to those of an injured industry. Its vulnerability, as a result, and given the nature of the business cycle for cement, I must deem to be very high.

Threat of Material Injury by Reason of LTFV Imports

Section 771(7)(F) of the Tariff Act of 1930, as amended, directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." [34] Such a determination may not be made on the basis of "mere conjecture or

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[34] The ten factors that the statute requires the Commission to consider are: (I) the nature of the subsidy (obviously applicable only to countervailing duty investigations), (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States, (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level, (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices

supposition." [35] In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. [36] I consider these factors in turn.

Looking first at Japanese production and capacity, relevant to factors (II) and (VI), I note the following. For the Japanese industry as a whole, clinker capacity has been stable from 1988 to 1990, and with rising production, capacity utilization has increased.[37] Clinker capacity utilization, however, remained only at 90 percent, below that which would appear optimal for cement producers.[38] In addition, this 10 percent unused capacity represents an amount of cement equal to or exceeding the entire apparent consumption of cement in Southern California. The same pattern is true of portland cement capacity and production. As in the situation with the domestic industry, one would expect to see, and in fact one does see capacity utilization rates below those for clinker.

Looking at just those Japanese manufacturers who have exported to the United States during the period of investigation, my conclusions are basically the same. For such producers,

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of the merchandise, (V) any substantial increase in inventories of the merchandise in the United States, (VI) the presence of underutilized capacity for producing the merchandise in the exporting country, (VII) any other demonstrable adverse trends that indicate the probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, (VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation, (IX) in any investigation under this title which involves imports of both raw agricultural product (within the meaning of paragraph (4)(E)(iv) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and (X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

[35] 19 U.S.C. § 1677(7)(F)(ii).

[36] See 19 U.S.C. § 1677(7)(F)(iii), as amended by Section 1329 of the 1988 Act, Pub. L. 100-418, 102 Stat. 1107, 1206.

[37] Table 22, Report at A-49.

[38] Report at A-48.

excess grinding capacity in 1990 was close to 7 million tons,[39] and excess clinker capacity was near 3.5 million tons.[40]

Japanese respondents have argued that this capacity should not be viewed as threatening the regional market because it will not be directed to the Southern California region but rather to satisfy growing domestic demand. It is certainly true that Japanese home market shipments increased in 1990, and there were reports of a growing number of what would appear to be cement intensive construction projects. It appears however, that a number of capacity reductions in recent years have not necessarily permanently reduced capacity, but could be brought back relatively easily if required. Further, while our data provide some support for the proposition that demand in Japan will remain strong, this evidence does not suggest it will absorb even the current excess capacity in Japan.

Looking at inventories, item (V), I conclude that inventories are not a factor which threatens the industry.

Turning to imports and import penetration, items (II) and (III), several conclusions appear to be warranted by the facts in the Commission's possession. First, imports increased steadily from 1986 through 1989 with large increases in 1988 and 1989. Imports did decline by approximately 400,000 short tons in 1990, but the significance of this decline is questionable. The data is questionable because, in particular, there were no imports from Japan into the region following Commerce's suspension of liquidation, which affects the data for November and December of 1990. It is not clear that much, if any, decline would have occurred absent this fact.

Looking at import penetration levels, I note an increase over the period of investigation from 5 percent to 7 percent to 14 percent to 18 percent before a decline to 15 percent. These levels certainly provide support for finding that imports have adversely affected the industry, even if they have not yet caused it to decline to the level of material injury. I believe these

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[39] Table 23, Report at A-51.

[40] Table 24, Report at A-52.

levels also likely to be injurious in the future, even if they do not substantially increase.

The volume of imports and import penetration level, while providing support for a finding of a causal connection between the imports and the condition of the industry, either in the present or in the future, are only one factor in an analysis of causation, which might be further supported or contradicted by other evidence, particularly information relating to price, which is a factor to be considered in making a threat determination under item (IV). Generally domestic prices follow the pattern that I have already observed existed, that is, a downward trend in price from 1986 through 1988 with firmer and increasing prices in 1989 and 1990.

Japanese prices, according to our producer and importer questionnaire data remained steady, significantly below the domestic prices until 1988 when they too dropped, preserving the margins of underselling that had existed. The data show some slight variations based on location, but the general patterns are similar for all three Southern California locations investigated by the Commission. Purchasers' questionnaires show fewer instances and smaller levels of underselling, as would be expected. I note that in a product such as cement, however, even small levels of underselling must be considered significant.

Apart from our statistical data, the responses the Commission obtained from purchasers of cement provide clear support for both the importance of price in this market and for the negative price impact which Japanese cement has had in the market. Most cement purchasers indicated that price was one, if not the most, important factor in their purchasing decision, and it appears that most that did not are vertically integrated with primary cement producers. Exactly half of the respondents to our purchasers questionnaires indicated that Japanese cement was available at a lower delivered price than domestic cement.[41]

Item (VII), other demonstrable adverse trends, on the list of threat factors is a catch-all for other factors and conditions of trade that will affect the future impact of imports. A factor which seems significant is the involvement of Japanese interests in acquisitions or

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[41] Report at A-69.

projects involving import terminals that have extremely large throughput capacity. Such investments would be extremely uneconomical unless used, and it is reasonable to believe that Japanese cement could be a major source of throughput supply.

I believe therefore that the evidence is strong that Japanese LTFV imports pose a threat to producers of all or almost all of regional cement production in Southern California.

Section 735(b)(4)(B) Finding

Section 735(b)(4)(B) of the Tariff Act of 1930, as amended, states:

> If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

This provision is relevant because after a threat determination duties are generally collected only as of the date of the final order rather than the preliminary determination as is the case with a present material injury finding. The exception to this generalization is in the case of an affirmative finding under this provision. Because two of my colleagues have rendered a present material injury determination, this determination may technically be viewed as unnecessary.

For the record, I am making an affirmative finding under section 735(b)(4)(B). The evidence shows that the industry is very close to a condition of material injury. The record also indicates that Japanese imports stopped virtually completely after the suspension of liquidation. It is unlikely that this would have been the case had there been no suspension of liquidation. Had it not been for the cessation of Japanese imports, I believe the condition of the industry would be worse than it is today, and that the difference in condition would have been enough to justify the conclusion that the industry is currently materially injured by LTFV Japanese imports. The finding that material injury would have occurred but for the suspension of liquidation appears to be warranted in this instance.

VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE

Gray Portland Cement and Cement Clinker from Japan
Inv. No. 731-TA-461 (Final)

Based on the information gathered in this final investigation, I conclude that the domestic regional industry consisting of producers of gray portland cement and cement clinker located in the State of California is not injured or threatened with injury by reason of imports of gray portland cement and cement clinker from Japan that the Department of Commerce found to be sold at less than fair value. Specifically, I conclude that the subject Japanese imports are not sufficiently concentrated within the State of California to permit a finding of injury or threat of injury to the regional industry.

Like Product, Grinding Operations, and Related Parties

In the preliminary investigation, my colleagues and I determined that the like product consisting of gray portland cement (cement) and cement clinker. The Commission further determined that firms that only grind clinker into cement are part of the domestic industry and that the conditions to exclude any firms as related parties were not present in this case.[1] In this final

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[1] Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Preliminary) (Hereinafter "Preliminary Investigation") at 49-55 (Views of Commissioner Newquist), with which both I and Commissioner Lodwick concurred (See Views of

(continued...)

investigation, no party has challenged these findings and no evidence has been introduced suggesting that the findings are incorrect. I therefore continue to find that there is one like product, that firms that only grind clinker into cement are part of the domestic industry, and that no firm should be excluded from the domestic industry as related parties.

Request to Terminate for Lack of Standing

While the current investigation was pending, respondents asked the Commission to terminate the investigation because petitioners allegedly lacked standing. They argued petitioners had failed to show that they were "representative" of the regional cement industry and that the petition was filed "on behalf of" the regional industry.[2] Petitioners responded that they indeed had standing to bring the case and, furthermore, that the Commission has no authority to terminate investigations for lack of standing.[3]

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[1](...continued)
Acting Chairman Anne E. Brunsdale at 3 and Views of Commissioner Seeley G. Lodwick at 23.) Commissioner Rohr made similar findings. (See his views at 31, 38.)

[2] Termination Request on Behalf of Mitsubishi Mining & Cement Co., Ltd., Nihon Cement Co., Ltd., Osaka Cement Co., Ltd., Ube Industries, Ltd., February 13, 1991. Respondent Onoda Cement Co., Ltd., stated its support for the termination request in a letter to the Secretary from Patrick F.J. Macrory of Akin, Gump, Strauss, Hauer & Field dated February 14, 1991.

[3] Petitioners' Response to Termination Request, dated February 19, 1991. Respondents replied to petitioners' claims in a Reply in Support of Termination Request, dated March 6, 1991.

Whether the Commission has the authority to terminate an investigation for lack of standing is a complicated question involving both statutory and policy considerations. The question is currently before the Court of Appeals for the Federal Circuit in the appeal of Suramerica de Aleaciones Lamindada, C.A. v. U.S. The appeal has been fully briefed and oral argument was heard on April 5.

We need not anticipate the Federal Circuit in this case, because the facts suggest no lack of standing on the part of petitioners. The combination of co-petitioning firms and trade unions and firms that have informed the Commission they support the petition accounts for a majority of cement production in the State of California,[4] which as I discuss below is the appropriate regional industry for this case. Therefore, the termination request must be denied.

Definition of the Regional Industry

Under the statute, the Commission is given discretion to analyze the effects of dumping on a regional industry in appropriate circumstances. In the language of the statute,

> In appropriate circumstances, the United States ... may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if --
> (i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

[4] Staff Report at A-21.

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.[5]

Both petitioners and respondents agreed that, in this case, it is appropriate to examine the effects of the dumped imports on a regional industry. However, they disagreed as to the appropriate region. Petitioners proposed a region consisting of the U.S. Bureau of Mines' Southern California region.[6] Respondents, on the other hand, countered with a region consisting of the entire State of California.[7]

In the preliminary investigation, after noting that either proposed regional market appeared to meet the two statutory criteria, I adopted petitioners' proposed region as being the appropriate assumption to make for purposes of a preliminary determination.[8] However, in this final investigation we are provided with new and different information on the percent of shipments from producers in the Southern California region that go to destinations within Southern California. At the time of the preliminary determination, the available information indicated that between 84.0 and 88.1 percent of shipments of producers in the Southern California region went to destinations in Southern California.[9] In the final investigation, we learned

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[5] 19 U.S.C. 1677(4)(C).

[6] Petitioners' Pre-Hearing Brief at 12.

[7] Respondents' Pre-Hearing Brief at 2.

[8] Preliminary Investigation at 6 and 9.

[9] Id. at A-14, Table 4.

that a somewhat lower percentage of these shipments stay within the region -- ranging from 87.3 percent in 1987 to 82.6 percent in 1990 to 81.9 percent in 1989.[10]

I find it difficult to accept that a region is appropriately isolated when almost 20 percent of shipments from producers in the region go outside of that region. I therefore conclude that the Southern California region proposed by petitioners does not meet the statutory requirement that "all or almost all" the production of regional producers be sold in that regional market.

There is no such problem in defining the entire State of California as a regional industry. Over the period of investigation, the percentage of shipments from producers in the State of California remaining in the state ranged between 92.1 percent and 93.7 percent, and hit an even 93.0 percent in 1990.[11] The requirement that no substantial quantity of shipments come from producers located in other parts of the United States is also clearly satisfied for a region consisting of the State of California. Between 3.0 and 3.5 percent of cement consumed in California came from outside the state during the period of investigation.[12] Thus, a market consisting of the State of California clearly meets the statutory requirements for definition of a regional industry, and I find such a market to be

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[10] Staff Report at A-13, Table 4.

[11] Id.

[12] Id.

the appropriate market for considering the effect of the dumped imports of Japanese cement in this case.[13]

No Injury Because Japanese Imports Are Not Adequately Concentrated

For cases in which a regional industry is defined, the statute sets forth circumstances under which material injury or the threat of material injury can be found in that regional industry.

> In such appropriate circumstances, material injury, the threat of material injury, or material retardation ... may be found to exist ... even if the domestic industry as a whole ... is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury ....[14]

Thus, material injury to a regional industry may only be found if the subject imports are sufficiently concentrated within that regional industry.

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[13] In my opinion in the preliminary investigation, I discussed how information about the correlation of prices between Northern and Southern California could help determine whether California was one or two regional markets. (Preliminary Investigation at 8-9) In response to this discussion, petitioners provided data in this final investigation allegedly showing that prices in Southern California were less correlated with prices in Northern California than they were with prices in the States of Arizona, Nevada, and New Mexico. (Petitioners' Pre-Hearing Brief, Exhibit 15) However, my calculations suggest that the reported correlations are not significantly different from one other. While this would still appear to undermine my argument for a single California market, the small number of observations used in calculating the correlations leads me not to rely on this evidence as it would be very difficult to find a statistically significant difference between any two correlations that were based, as are these, on only seven annual observations.

[14] 19 U.S.C. 1677(4)(C).

In the present case, I find that Japanese cement imports are not adequately concentrated in the State of California. In 1986, 67.9 percent of Japanese imports were shipped into the State of California. This figure rose to 70.8 percent in 1987, 75.4 percent in 1988, and 79.2 percent in 1989. However, in 1990, California accounted for only 67.5 percent of all imports of cement from Japan.[15]

In previous cases, I have found import concentration figures of this magnitude to be insufficient to support a determination of injury on the basis of a regional industry. In Certain Welded Carbon Steel Pipes and Tubes from Taiwan, I rejected an argument that injury should be found on the basis of a regional industry where up to 79.2 percent of subject imports came into the proposed region. In that case, the concentration of imports in the proposed West Coast region had been as low as 66.3 percent and stood at 72 percent in the last full year of the period of investigation.[16]

In explaining my decision, I stated that

> it is crucially important in [the analysis of the concentration of imports within the regional market] that the facts show a history of consistently high ratios of the subject imports in the region under consideration in order to constitute the required "concentration" under the statute.[17]

I also noted that

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[15] Staff Report at A-13, Table 4.

[16] Inv. No. 731-TA-349, USITC Pub. 1994, (July 1987) at 7 (Views of Chairman Liebeler and Vice Chairman Brunsdale).

[17] Id. at 8.

> If a consistently high ratio of imports is not shown, it amplifies the risk that relief will be extended to an entire industry when only a small portion of the industry actually has been adversely affected by the subject imports.[18]

In the present investigation, I find no reason to reverse my previous stand and conclude that the concentration requirement is satisfied with import concentrations of no more than 79.2 percent in the present case. The minimum concentration of imports in this case -- 67.5 percent -- is approximately equal to that in the previous case -- 66.3 percent. However, the minimum value in this case occurred at the end of the period of investigation, whereas 72 percent of the subject imports were sold in the proposed region in the last full year of the period of investigation in the earlier case. In my view, this makes the present case an even weaker candidate for finding the necessary concentration of imports.[19]

Petitioners have argued that, in determining whether imports are sufficiently concentrated to find injury to a regional industry, the Commission is not supposed to consider the percentage of imports that flow into the regional market, but rather whether import penetration in the proposed region is

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[18] Id. at 8, n.19.

[19] Since the share of Japanese imports entering the State of California is insufficient to meet the concentration of imports requirement, it should be obvious that this would also be true if I had accepted petitioners' proposed Southern California region. Indeed, the percentage of Japanese imports entering the Southern California region never exceeded 73.7 percent and reached a low of 61.2 percent in 1990. (Staff Report at A-13)

greater than elsewhere in the United States.[20] Responding to the same argument in the recent Mexican cement case,[21] I stated:

> Based on the legislative history cited by petitioners, I believe that it may be appropriate in some circumstances to find that the requisite level of concentration exists even though the quantity of the subject imports being sold outside of the proposed regional market would cause the proposed region to fail the Commission's traditional test. Such a finding would be based on the relative levels of import penetration. However, I further believe that such circumstances should only be found to exist in exceptional circumstances. To allow a higher level of import penetration to justify the use of regional industry analysis in general would result in the imposition of antidumping duties on imports sold in the entire national market when no material injury has been shown in regions where a significant quantity of the imports are sold.[22]

I went on to suggest that it might be appropriate to base a finding of concentration in a regional market on import penetration if the imports that were not sold in the proposed region were distributed evenly around the rest of the country and did not account for a significant percentage of consumption in any other part of the country. In such a case, the imports would not be a significant part of the market elsewhere but could be causing substantial injury to producers located in the regional market.[23]

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[20] Petitioners' Pre-Hearing Brief at 24-26.

[21] Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305, (August 1990). (Hereinafter "Mexican Cement".)

[22] Id. at 10.

[23] Id.

In this case, the facts are not consistent with this hypothetical scenario. Essentially all imports of Japanese cement that did not go into California went into Washington, Oregon, or Alaska. Similarly, the State of Hawaii accounted for essentially all imports of Japanese cement clinker not going into California.[24] Further, Japanese imports accounted for a substantially higher percentage of consumption in Alaska and a somewhat larger percentage of consumption in Washington and Oregon than they did in California.[25]

Because a relatively low percentage of imported Japanese cement entered the California market, with almost all of the remainder going into Washington, Oregon, Alaska, and Hawaii, and because these imports were a significant percentage of consumption in those states, I believe it would be inappropriate to find that imports of Japanese cement and cement clinker were sufficiently concentrated in California to permit a finding of material injury or threat of material injury in the California market. I therefore find no material injury and no threat of material injury to that regional industry and find in the negative in this case.[26,27]

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[24] See Memorandum to Acting Chairman Brunsdale from Director, Office of Investigations, Dated April 19, 1991, Entitled Investigation No. 731-TA-461 (Final): Gray Portland Cement and Cement Clinker from Japan -- Additional Information (INV-O-062).

[25] Id.

[26] Although my dissent depends on the lack of concentration of imports, I would also object to cumulating imports from Mexico with those from Japan. Mexican imports have been subject to a

(continued...)

[26](...continued)
final antidumping order since the Commission completed its investigation of those imports in late August of last year. Mexican cement entering after the date of the final order in that case is assumed to be fairly traded. (Chaparral Steel Co. v. U.S., 901 F.2d 1097 at 1105 (Fed. Cir. 1990)) The Federal Circuit also held in Chaparral Steel that cumulation is only required where imports are being unfairly traded as of the date the Commission makes its determination. (Id. at 1103) In our investigation of Mexican cement, we found that inventories of Mexican cement in this country never had exceeded 7.2 percent of annual imports. (Mexican Cement at A-63, Table 24) This provides compelling evidence that any cement imported into the United States prior to the entry of the final order in the Mexican Cement case would have been sold well before the conclusion of the present investigation. Thus, any Mexican cement currently being sold in the United States is fairly traded and should not be cumulated with Japanese cement in determining injury in the present case.

[27] My reading of the statute suggests that when imports are insufficiently concentrated in a properly defined regional industry, the Commission should reach a negative determination. No separate examination of the effects of the imports on a national market is required. I also note that the requirement that the imports be concentrated in the regional market is contained in the same paragraph as the requirement that all or almost all producers be injured and that in the Mexican cement case my colleague Commissioner Rohr did not provide a separate discussion of the national market after reaching a negative determination on the basis that not all or almost all producers in the regional market were injured. (Mexican Cement at 69 (Dissenting Views of Commissioner David B. Rohr))

However, had I reached the question of injury to the national industry, I would have found that the industry composed of cement and cement clinker producers located anywhere in the United States was not injured by reason of dumped imports of cement and clinker from Japan. The key factors in such a determination would be the small percentage of total U.S. cement consumption accounted for by the Japanese and the limited substitutability between Japanese and domestic cement in the national market. These considerations would lead me to a negative determination in spite of a dumping margin of 65.2 percent. (Staff Report at A-9)

Imports of Japanese cement ranged from 0.6 percent of apparent consumption in the United States in 1986 to 2.4 percent in 1989 and were equal to 2.2 percent in 1990. Imports of Japanese cement clinker were less than 0.5 percent of apparent consumption in 1986 through 1989. (Staff Report at A-60 - A-61,

(continued...)

[27](...continued)
Tables 28 and 29)

As in the Mexican cement case, my reason for concluding that the substitutability between Japanese and domestic cement is limited is based on the cost of transporting cement from one location to another. (See Mexican Cement at 37-38.) While the cost of transportation led me to conclude that the elasticity of substitution between domestic and Mexican cement was between 5 and 7 in the Southern Tier region being analyzed there, the substitutability between Japanese imports and cement produced by domestic producers throughout the country would be even lower. I would place the value at no more than 2. I am aware that petitioners have argued that my conclusion that spatial considerations reduce the elasticity of substitution is wrong because cement is sold on a delivered price basis. (Petitioners' Pre-Hearing Brief, Economic Appendix B, at 8, n.16) I disagree. While cement producers sell cement on a delivered price basis within their normal marketing area, this does not mean that they would sell on a delivered price basis elsewhere in the country. In order to obtain Japanese cement, a consumer located in Kansas is likely to have to pay the cost of transporting that cement from California to Kansas. And, given that such costs must be incurred, there is every reason to believe that the elasticity of substitution between domestic and Japanese cement is very close, if not equal, to zero for that consumer.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following a preliminary determination by the U.S. Department of Commerce that imports of gray portland cement (hereinafter "portland cement") and cement clinker[1] from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective November 15, 1990, instituted investigation No. 731-TA-461 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigation, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on November 28, 1990 (55 F.R. 49435).[2] The hearing was held in Washington, DC, on March 21, 1991.[3] The Commission voted on the investigation on April 23, 1991, and transmitted its determination to Commerce on April 29, 1991.

Background

This investigation results from a petition filed by counsel on behalf of members of the Ad Hoc Committee of Southern California Producers of Gray Portland Cement[4] on May 18, 1990. The petition alleges that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of portland cement and cement clinker from Japan. In response to that petition the Commission instituted investigation No. 731-TA-461 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C § 1673b(a)) and, on July 2, 1990, determined that there was a reasonable indication of such material injury.

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[1] Gray portland cement and cement clinker are provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Copies of cited Federal Register notices are presented in app. A.

[3] A list of witnesses who appeared at the Commission's hearing is presented in app. B.

[4] The petition lists the following members of the Ad Hoc Committee of Southern California Producers of Gray Portland Cement: National Cement Co., Encino, CA, and Southwestern Portland Cement, Houston, TX. In an amendment to the petition filed on June 22, 1990, petitioners added the following co-petitioners: Independent Workers of North America, Locals 49, 52, 89, 192, and 471, and the International Union of Operating Engineers, Local 12. These unions represent the workers at the following plants: Southwestern/Victorville, National/Lebec, Calaveras/Tehachapi, CPC/Colton, CPC/Mojave, and Riverside/Oro Grande.

Previous Commission Investigations Concerning Portland Cement

There have been 12 previous Commission investigations concerning portland cement, dating back to 1960. All of these have been antidumping investigations concerning portland cement, other than white, nonstaining portland cement, with the investigation in 1986 and the 1989 investigation on Mexico involving cement clinker as well. The first nine investigations were conducted under the provisions of the Antidumping Act of 1921, and the last three were conducted under the provisions of title VII of the Tariff Act of 1930. Of the 12 completed investigations, all but the 1986 investigation were determined on the basis of a regional, rather than a national, industry. A listing of the Commission's previous investigations is presented in table 1.

The Present Investigation

In the present investigation, the petitioners have filed on behalf of a regional industry--the Southern California producers of portland cement and cement clinker. The petitioners utilize the same definition of Southern California as does the U.S. Bureau of Mines; that is, the area consisting of the portion of the State of California which includes the counties of San Luis Obispo, Kern, Inyo, Mono, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial (fig. 1).

Petitioners contend (1) that the producers in Southern California sell all or almost all of their production of the like product in question in that market and (2) that the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States. Petitioners argue that these two factors are sufficient for the Southern California region to satisfy the statutory criteria for regional industry analysis.[5] In their views in the preliminary investigation, Acting Chairman Brunsdale and Commissioners Lodwick and Newquist found a regional industry in the Southern California region, whereas Commissioner Rohr found a regional industry in the region consisting of the entire State of California. For this report, information was collected from producers and importers in the Southern California region as well as the entire State of California. Information for the entire U.S. industry was derived from U.S. Bureau of Mines data and other publicly available data.

With respect to the issue of "like product," the petitioners argue that because clinker is an intermediate product generated during the production of cement and has no other use than to be ground into finished cement, clinker and portland cement constitute one like product.[6] Petitioners further state that most U.S. producers do not sell clinker as a routine matter and, as a result, do not keep profit-and-loss data for clinker operations. In its preliminary determination, the Commission found that gray portland cement and cement clinker constitute one like product.

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[5] 19 U.S.C. 1677(4)(C).

[6] Petition, p. 28.

Table 1
Portland cement and cement clinker: Previous investigations, determinations, countries subject to investigation, and geographic scope of domestic industry[1]

Year of determination	Nature of determination	Subject countries	Geographic scope of domestic industry
1960	Negative	Canada	
1961	Affirmative	Sweden	Rhode Island, eastern Massachusetts, and eastern Connecticut (1 market area)
1961	Affirmative	Belgium	East coast of Florida
1961	Affirmative	Portugal	Connecticut, Massachusetts, and New Jersey (1 market area)
1962	Negative	Dominican Republic	Metropolitan New York City and Puerto Rico (2 market areas)
1963	Affirmative	Dominican Republic	Metropolitan New York City
1975	Affirmative[2]	Mexico	Arizona, New Mexico, and southwestern Texas (1 market area)
1976	Negative	Mexico	Florida and southeastern Georgia (1 market area)
1978	Negative	Canada	"Northeast U.S. market," and the "Canadian border U.S. market"[3] (2 optional market areas)
1983	Negative	Australia, and Japan	California and Nevada (1 region)
1986	Negative	Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela	National
1990	Affirmative	Mexico	"Southern-tier region" and the "alternative Southern-tier region" [4] (2 optional market areas)

[1] Prior to the Trade Act of 1974, the statute provided for an injury analysis on the basis of a "competitive market area," thereafter a "marketing area" or "region."

[2] The Commission "does not determine that there is no reasonable indication that an industry is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States." Subsequent to this determination, the Department of the Treasury made a negative LTFV determination and the investigation was terminated.

[3] The "northeast U.S. market" included the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. The "Canadian border U.S. market" included the States of Alaska, Idaho, Illinois, Indiana, Michigan, Minnesota, Montana, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Washington, Wisconsin, and Wyoming, but did not include those States listed in the "northeast U.S. market."

[4] The "Southern-tier region" included the States of Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Arizona, and California in their entirety. The "alternative Southern-tier region" included the States of Florida, Texas, New Mexico, and Arizona, in their entirety, and only southern California and the coastal counties of Alabama, Mississippi, and Louisiana.

Figure 1
Portland cement and cement clinker: The Southern California region

With regard to the relevant period to be examined in the Commission's consideration of material injury or threat thereof, petitioners request that the Commission consider all relevant economic factors that have a bearing on the state of the industry "within the context of the business cycle,"[7] looking at a period longer than the 3-year period considered in most investigations.[8] Producers and importers were asked to provide trade, financial, and pricing information for the period January 1986 through December 1990 to enable the Commission to better evaluate the industry's performance in the context of the business cycle.

The Product

Description and uses

Portland cement is a hydraulic cement consisting mainly of compounds of calcium, silica, and iron oxide that, when mixed with water and aggregate, chemically react to form concrete. The cement is a highly standardized product, usually prepared from a mixture of limestone, clay, and iron ore, that is crushed and ground by either a wet or dry process. The mill feed is sintered at about 2,700 degrees Fahrenheit in refractory-lined, cylindrical, steel rotary kilns to make cement clinker, which is in the form of small, grayish-black pellets. Clinker is quite different in appearance and properties from the finished product and has no other use than for the production of cement.

Clinker may be stockpiled outside in a dry climate, but must be protected from moisture in areas with varied weather conditions. When the clinker is ground into cement, about 5 percent gypsum and other materials are added to retard the absorption of water and to facilitate handling. The final grinding step and the materials added are very important in determining the specifications and type of finished cement.

Hydraulic cements are distinguished from nonhydraulic cements by their ability to set, or harden, under water; nonhydraulic cement will not set under water. Portland[9] cement is the most important of the four major categories of hydraulic cements,[10] accounting for about 95 percent of domestic production and, reportedly, for almost all imports.

All cement generally conforms to the standards established by the American Society for Testing Materials (ASTM). General descriptions of the five standard types of portland cement are given by ASTM as follows:[11]

> Type I--For use when the special properties specified for any other type are not required;

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[7] Sec. 771(7)(C) of the Tariff Act of 1930.

[8] Petition, p. 40.

[9] The name was given in 1824 by Joseph Aspdin, a bricklayer of Leeds, England, to a hydraulic lime that he patented, because when set with water and sand, it resembled a natural limestone quarried on the Isle of Portland in England.

[10] Portland, masonry, pozzolanic, and natural or Roman cement are the four major categories of hydraulic cements.

[11] ASTM designation C-150, petition, p. 6.

Type II--For general use, especially when moderate sulfate resistance or moderate heat of hydration is required;

Type III--For use when high early strength is required;

Type IV--For use when a low heat of hydration is required; and

Type V--For use when high sulfate resistance is required.

In 1989, types I and II portland cement together accounted for 92.1 percent of the quantity of all shipments of portland hydraulic cement from U.S. plants (table 2). Specifications for type I and type II portland hydraulic cement are very similar. The chemical specifications for types I and II differ in that type I has no specifications for several items that are specified for type II. Thus, type II cement meets all the requirements of type I cement and may be used in lieu of type I. In addition to the standard portland cements, many special cement blends contain portland cement.

Table 2
Portland cement:[1] Shipments from U.S.[2] plants, by types of cement, 1989

Type of cement	Quantity	Value	Unit value
	1,000 short tons	1,000 dollars	Per short ton
General use (types I and II).....	77,597	3,718,291	$47.92
High-early strength (type III)...	3,133	164,291	52.45
Sulfate-resisting (type V).....	758	43,970	58.03
Oil well.....	869	42,316	48.70
White.....	456	70,715	155.24
Slag and pozzolan.....	545	29,618	54.33
Expansive.....	40	3,999	100.62
Miscellaneous[3]	832	48,358	58.10
Total or average.....	84,229	4,121,558	48.93

[1] The U.S. Bureau of Mines' portland cement classification includes some cements that are special blends consisting of portland cement but that are technically outside of the portland cement category.
[2] Includes Puerto Rico.
[3] Includes waterproof, low-heat (Type IV), and regulated fast-setting cement.

Note.--Because of rounding, data may not add to totals shown.

Source: U.S. Department of the Interior, Bureau of Mines, Mineral Industry Surveys, "Cement in 1989," July 13, 1990, p. 17.

Cement is hygroscopic; that is, it has a tendency to absorb moisture. Because cement and water form concrete, cement must be handled and stored in a manner that minimizes the possibility of contamination by water. Thus, both domestic producers and importers must use some type of enclosed system or storage silo and relatively sophisticated equipment to handle finished cement.

Portland cement is used predominantly in the production of concrete. Concrete is consumed almost wholly by the construction industry. The chief applications are highway construction (using ready-mix concrete) and building construction (using ready-mix concrete, concrete blocks, and precast concrete units). In many building applications, concrete is used with steel reinforcement to obtain greater strength and durability. One ton of portland cement is used to make about 4 cubic yards of concrete.

Concrete, as a major material in building construction, competes with structural steel, clay products, building stone, and other materials in various building construction applications. However, in almost every type of structure, regardless of the principal building material used, there are certain basic uses for concrete (foundations, basements, floors, and so forth) for which there is little direct competition. The choice of the principal structural material is governed by many factors, such as cost, personal preference, and building code specifications. Concrete made with gray portland cement is one of the most widely used construction materials in the United States. Table 3 shows the types of customers for cement during 1989.

Table 3
Portland cement:[1] U.S. producers' shipments[2] as a percentage of total shipments, by types of customers, 1989

Type of customer	Percent of total
Building material dealers	4.2
Concrete product manufacturers	11.4
Ready-mixed concrete	73.5
Highway contractors	4.8
Other contractors	3.6
Federal, State, and other government agencies	.2
All other	2.3
Total	100.0

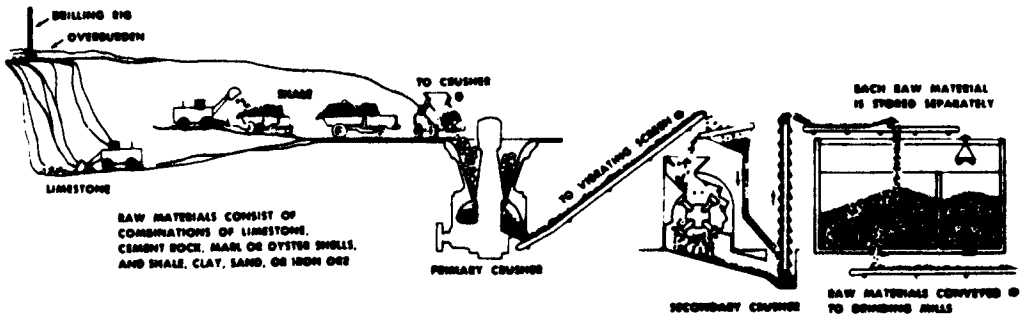
[1] Includes cement imported and distributed by domestic producers.
[2] Includes Puerto Rico.

Source: U.S. Department of the Interior, Bureau of Mines, Mineral Industry Surveys, "Cement in 1989," p. 16.

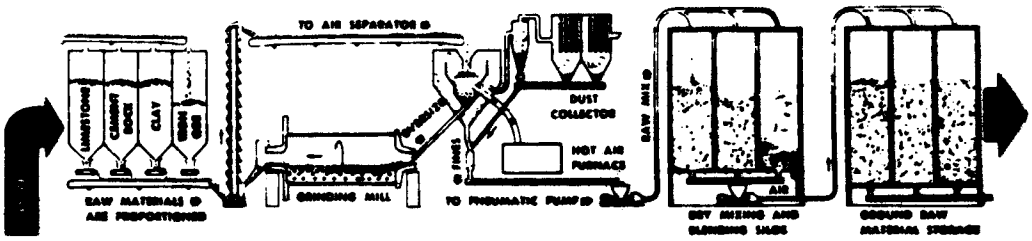
Production process

There are basically two processes used to blend the raw materials to produce cement: the wet process and the dry process. In the wet process, the raw materials are ground, blended, and mixed with water to produce a slurry. This slurry is fed into rotary kilns in which it is heated to induce chemical reactions that convert the raw material into clinker. The wet process is used when some of the raw materials are very moist. It is also the older process, having been used in Europe before the manufacture of portland cement in the United States. In the dry process, all grinding and blending are done with dry materials in a roller mill. Both the wet and dry processes are depicted in figure 2.

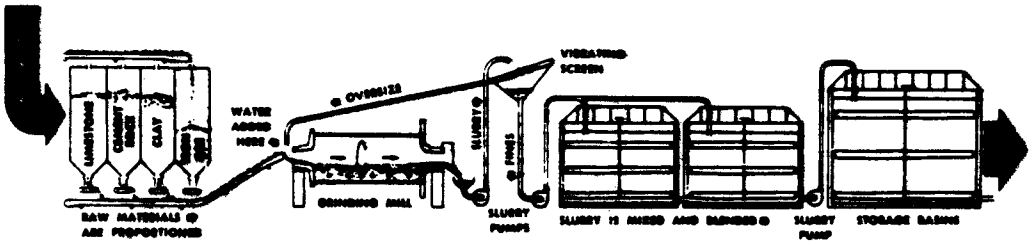
Figure 2
Steps in the manufacture of portland cement



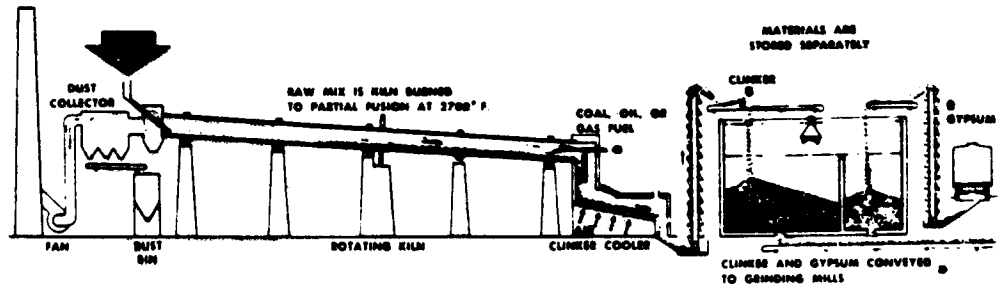
1. Stone is first reduced to 5-in. size, then to ¾ in., and stored.



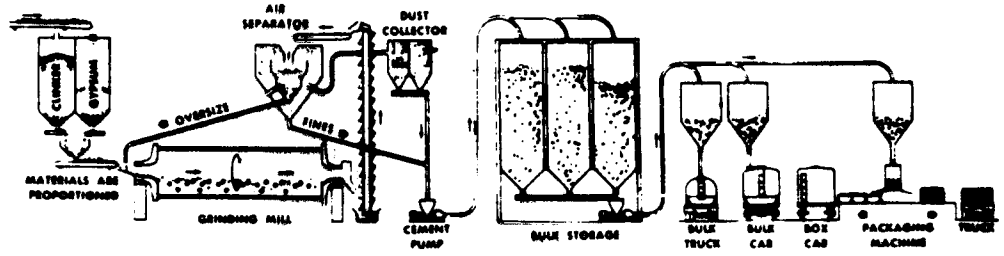
OR 2. Raw materials are ground to powder and blended.



2. Raw materials are ground, mixed with water to form slurry, and blended.



3. Burning changes raw mix chemically into cement clinker.



4. Clinker with gypsum is ground into portland cement and shipped.

Source: Portland Cement Association.

In more technically advanced facilities, the blended raw meal then goes through a preheater and precalciner in which it is partially calcined by direct firing before entering the rotary kiln. In the dry-process facilities that do not include a preheater or precalciner, the raw meal is fed directly into a rotary kiln in which it is calcined into clinker. The advantage of using preheaters and precalciners is that they can reduce kiln fuel consumption.[12] Figure 3 shows some of the new technology used in the dry-process manufacture of portland cement.

In the United States, approximately 59 percent of the cement clinker production facilities use the dry process.[13] Many domestic producers have converted their facilities to the dry process. The main advantage of this process is that it is more energy efficient than the wet process because less time is needed for heating. In the dry process, material travels through the kiln in 15 to 20 minutes; the wet process requires approximately 90 minutes of kiln time. For both the wet and dry processes, the major sources of energy to operate the kiln include coal, oil, and gas. The U.S. cement industry uses predominantly coal, whereas the Japanese industry uses mostly fuel oil. The choice of fuel is simply an economic decision based on fuel prices, transportation costs to the production site, and efficiency costs of using one fuel over another.

U.S. tariff treatment

U.S. imports of portland cement (other than white, nonstaining portland cement) from countries entitled to the column 1-general (most-favored-nation) duty rate, including Japan, enter free of duty under subheadings 2523.29.00 and 2523.90.00 of the HTS. U.S. imports of cement clinker from countries entitled to the column 1-general duty rate enter free of duty under subheading 2523.10.00. The column 2 rate of duty for both portland cement and cement clinker is $1.32 per metric ton, including the weight of the container, and is applicable to imports from those Communist countries and areas specified in general note 3(b) to the HTS.

The Nature and Extent of Sales at LTFV

On March 22, 1991, Commerce published notice in the Federal Register of its final determination of sales at LTFV (app. A). It determined that portland cement and cement clinker from Japan are being, or are likely to be, sold at LTFV, but that critical circumstances do not exist. Commerce found dumping margins for two Japanese producers, Onoda Cement Co., Ltd., and Nihon Cement Co., Ltd. The weighted-average dumping margins for these companies were 47.79 and 84.70 percent, respectively. The weighted-average dumping margin for all other producers was 65.22 percent.

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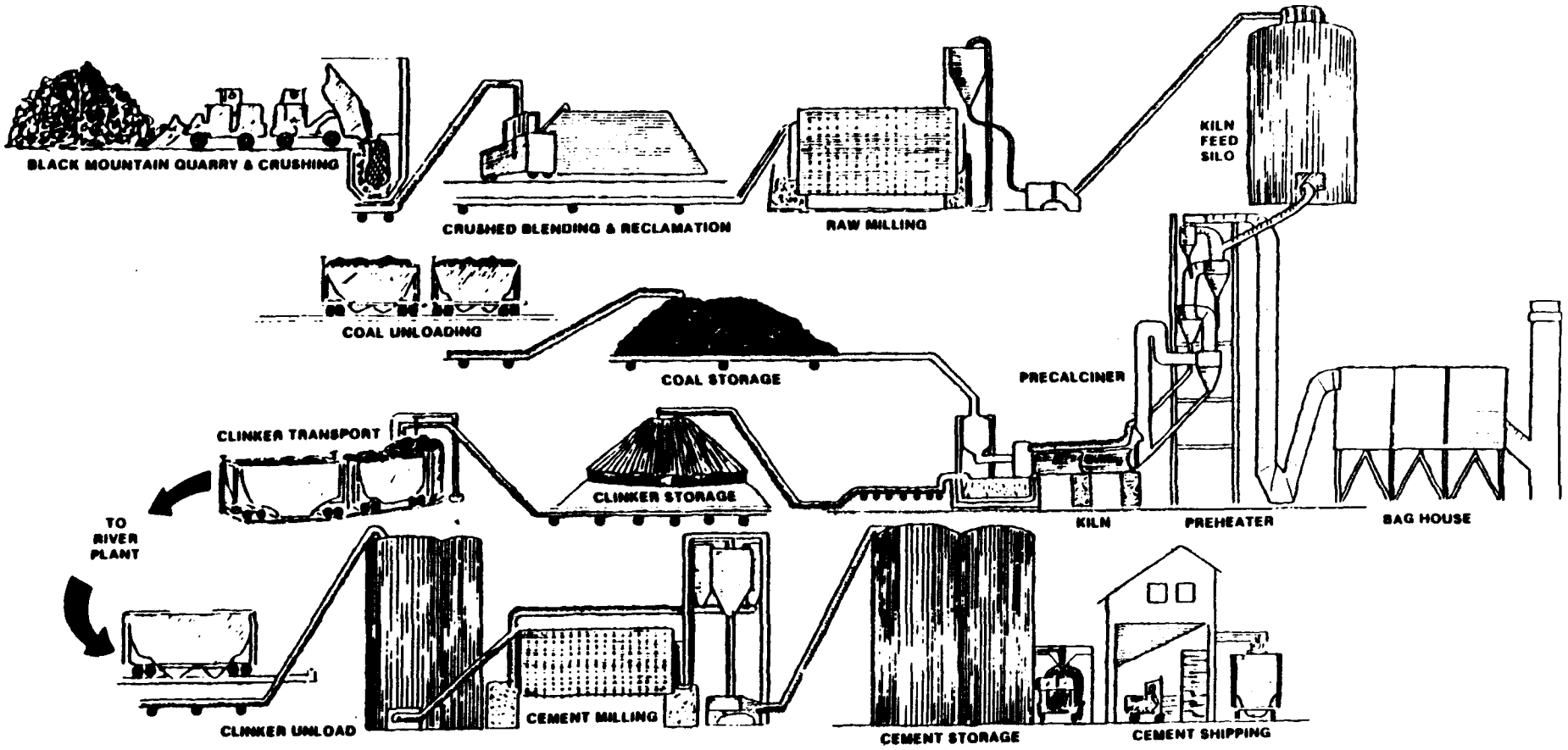
[12] Norman L. Weiss, ed., SME Mineral Processing Handbook (Society of Mining Engineers, American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc., New York, NY, 1985), vol. 2, p. 26.

[13] U.S. Department of the Interior, Bureau of Mines, Directory of Cement Producers and Importers in 1988, Feb. 1, 1989, pp. 10-18.

Figure 3
New technology in dry-process cement manufacture



Source: Southwestern Portland Cement Co.

Commerce investigated sales during the period December 1, 1989, through May 31, 1990. Commerce examined U.S. sales of cement from Japan totaling * * * short tons with a total adjusted net value of $* * *. Of this, * * * percent, by volume and by value, were found to be sold at LTFV.[14]

The Domestic Market

The regional character

Because of the low value-to-weight ratio and the fungible character of cement, transportation costs are an important limiting factor on its shipment. Approximately 95 percent of U.S. producers' portland cement shipments in the United States are to customers located within 300 miles of the production site. The following tabulation presents the distribution of U.S. producers' shipments of portland cement, by distances, for the Southern California region and the State of California in 1990 (in percent):

Miles shipped	Southern California region	State of California
0-99.....	49.4	49.6
100-299.....	45.1	45.8
300-499.....	***	***
500 or more..	***	***

[1] * * *.

Importers of cement from Japan located in the Southern California region and the State of California shipped more than 95 percent of their cement within a 300-mile radius of their terminals in 1990. The following tabulation presents the distribution of shipments of portland cement by importers of cement from Japan by distance shipped in 1990 (in percent):

Miles shipped	Southern California region	State of California
0-99.....	***	***
100-299.....	***	***
300-499.....	***	***
500 or more..	***	***

[1] * * *.

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[14] See letter from Francis J. Sailer, Deputy Assistant Secretary for Investigations, Import Administration, United States Department of Commerce, to Lynn Featherstone, Director, Office of Investigations, United States International Trade Commission, Mar. 26, 1991.

Noting that there are shipments made between the Northern California Region[15] and the Southern California region, respondents argued that the more appropriate region to investigate would be the State of California.[16] The following tabulation presents the distribution of U.S. shipments of portland cement by producers located in the Northern California region, by destination (in percent, based on quantity), as compiled from questionnaires of the U.S. International Trade Commission:

Item	1986	1987	1988	1989	1990
Share of Northern California producers' total shipments made to destinations--					
Within the Northern California region	92.7	94.9	92.6	93.9	93.7
Within the Southern California region	***	***	***	***	***
Within the State of California	***	***	***	***	***
Outside the State of California	***	***	***	***	***

The following tabulation presents the distribution of U.S. shipments of portland cement by producers located in the Southern California region, by destination (in percent, based on quantity), as compiled from questionnaires of the U.S. International Trade Commission:

Item	1986	1987	1988	1989	1990
Share of Southern California producers' total shipments made to destinations--					
Within the Southern California region	85.7	87.3	84.8	81.9	82.6
Within the Northern California region	6.1	4.9	7.2	8.3	8.9
Within the State of California	91.8	92.2	92.0	90.2	91.5
Outside the State of California	8.2	7.8	8.0	9.8	8.5

Information on the statutory criteria set forth for regional analysis is shown in table 4. In addition, appendix C presents selected trade and financial data by regions and by plants.

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[15] The Northern California Region is the northern portion of the State of California, as defined by the U.S. Bureau of Mines, which includes the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumes, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

[16] Transcript of the Commission's conference in investigation No. 731-TA-461 (Preliminary) (hereinafter "Transcript of the conference"), pp. 107-108.

Table 4
Portland cement: U.S. producers' domestic shipments, imports, and apparent U.S. consumption, 1986-90

(In percent, based on quantity)

Item	1986	1987	1988	1989	1990
Southern California region:					
Share of--					
Regional producers' shipments made to destinations within region	85.7	87.3	84.8	81.9	82.6
Regional consumption supplied by U.S. producers outside region	.8	1.0	1.7	1.7	1.6
Total imports from Japan	67.9	70.8	73.0	73.7	61.2
Total imports from Mexico	18.8	16.8	14.3	15.3	40.0
Ratio of imports from Japan to consumption--					
Within region	4.9	6.7	14.1	18.2	14.7
In all other areas	.2	.2	.5	.7	.9
Ratio of imports from Mexico to consumption--					
Within region	8.2	8.5	7.6	6.8	10.6
In all other areas	3.1	3.7	4.7	4.1	1.6
Ratio of imports from Japan and Mexico to consumption--					
Within region	13.1	15.2	21.7	25.0	25.3
In all other areas	3.3	4.0	5.2	4.8	2.6
The State of California:					
Share of--					
Regional producers' shipments made to destinations within State	92.6	93.7	93.2	92.1	93.0
Regional consumption supplied by U.S. producers outside region	3.1	3.0	3.3	3.3	3.5
Total imports from Japan	67.9	70.8	75.4	79.2	67.5
Total imports from Mexico	22.2	23.1	20.4	22.7	47.1
Ratio of imports from Japan to consumption--					
Within region	3.3	4.5	9.9	13.1	10.7
In all other areas	.2	.3	.5	.6	.8
Ratio of imports from Mexico to consumption--					
Within region	6.5	7.9	7.4	6.7	8.2
In all other areas	3.1	3.6	4.6	4.0	1.5
Ratio of imports from Japan and Mexico to consumption--					
Within region	9.8	12.3	17.2	19.8	18.9
In all other areas	3.3	3.9	5.1	4.6	2.3

Source: Regional consumption supplied by producers outside region is from the U.S. Bureau of Mines. Import data are compiled from official statistics of the U.S. Department of Commerce. All other data are compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Factors affecting demand[17]

As noted earlier, virtually all portland cement is used in the manufacture of concrete, one of the essential building materials for most types of construction. Thus, the demand for portland cement is highly dependent on general construction activity.

One indicator of construction activity is the number of construction permits authorized. Table 5 presents data on such authorizations by regions and by types of permit. These statistics show that authorizations of residential permits in the United States declined by 24 percent from 1986 to 1989. The value of authorizations of nonresidential permits, adjusted for inflation, increased irregularly by 6 percent from 1986 to 1988 and then decreased by 2 percent in 1989 in comparison with that in 1988.

Table 5
Authorizations of construction permits, by regions and by types of permit, 1986-89

Item	1986	1987	1988	1989
	Quantity (units)			
Residential:				
California	314,641	251,824	253,369	237,694
Total United States	1,769,443	1,534,772	1,455,623	1,338,423
	Value (million dollars)			
Nonresidential:[1]				
California	11,814	11,704	13,014	12,556
Total United States	71,730	70,927	76,060	74,673

[1] Deflated by implicit price deflator.

Source: Compiled from statistics of the U.S. Department of Commerce, Bureau of the Census.

In California, the number of authorizations for residential construction was off by nearly 25 percent from 1986 to 1989. Nonresidential authorizations in California rose irregularly in real dollar terms, by over 10 percent from 1986 to 1988, and then declined by 4 percent in 1989.

[17] California voters recently passed Proposition 111 which authorized a 5-cent per gallon increase in the State gasoline tax. The tax increase is expected to generate an additional $3 billion in revenues for highway improvement.

Apparent consumption

Table 6 shows apparent consumption of portland cement and cement clinker in the Southern California region and the State of California, as well as the portion of consumption supplied by U.S. producers outside those regions. Additionally, table 6 presents total apparent consumption of portland cement for the entire United States.[18]

Regional portland cement consumption for the Southern California region and the State of California represents the total of shipments, as reported in Commission questionnaires, within the respective regions by producers[19] operating within those regions, plus shipments supplied from U.S. producers outside the regions,[20] plus imports[21] into the regions.[22]

Given cement clinker's status as an intermediate material used in the production of finished portland cement, data on consumption, production, capacity, and capacity utilization must be evaluated separately for cement clinker and finished portland cement to avoid double counting or other aberrations. Regional consumption of clinker is the total of regional domestic production plus regional imports. On the basis of data submitted in response to questionnaires, virtually all regional production and regional imports of cement clinker are shipped to destinations within the respective regions.

Southern California.--The Southern California region experienced a 24-percent increase in consumption of portland cement from 1986 to 1989. In 1990 apparent consumption fell by 8 percent from 1989 levels.

Consumption of cement clinker increased irregularly in the Southern California region during 1986-90, from 6.7 million short tons to 7.0 million short tons, or by 5 percent. Imports of clinker into the Southern California region dropped to zero.

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[18] U.S. Bureau of Mines data have been used for total U.S. apparent consumption.

[19] Riverside's Crestmore, CA, facility is a grinder operation. That is, it produces cement from cement clinker imported or purchased from domestic sources, rather than producing its own clinker. For purposes of this investigation, data for Riverside's Crestmore, CA, facility are aggregated with those "producers" who produce and grind their own clinker to produce portland cement.

[20] To obtain the share of Southern California and State of California regional consumption supplied by producers outside the State, staff relied on shipment data submitted to the Commission by the U.S. Bureau of Mines.

[21] For imports, official statistics of the U.S. Department of Commerce have been used. Examination of the responses to Commission importer questionnaires indicates that all, or virtually all, imports are shipped within the region where they are received. Hence, it is assumed that the imports shown in the official statistics are shipped within the region where they are received. To the extent any of these imports are shipped outside the region, consumption for a given region may be slightly overstated.

[22] In calculating consumption, there were no export shipments to be extracted from overall shipments data.

Table 6
Portland cement and cement clinker: U.S. shipments, U.S. production,[1] imports, and apparent consumption, 1986-90

(In thousands of short tons)

Item	1986	1987	1988	1989	1990
Portland cement:					
Southern California region:					
Regional apparent consumption supplied by--					
Shipments by regional producers/grinders	5,588	5,325	5,830	5,906	5,579
Shipments by U.S. producers/grinders located outside region	57	76	140	148	127
Imports from--					
Japan	349	486	1,183	1,607	1,186
Mexico	586	624	642	595	857
Subtotal	934	1,110	1,825	2,201	2,043
All other sources	535	790	614	552	315
All sources	1,470	1,901	2,439	2,753	2,358
Apparent consumption	7,115	7,302	8,409	8,807	8,064
State of California:					
Regional apparent consumption supplied by--					
Shipments by regional producers/grinders	8,555	8,283	9,239	9,534	9,046
Shipments by U.S. producers/grinders located outside region	335	324	411	440	433
Imports from--					
Japan	349	486	1,222	1,726	1,309
Mexico	693	857	916	884	1,009
Subtotal	1,042	1,343	2,138	2,611	2,318
All other sources	711	937	614	629	438
All sources	1,753	2,280	2,752	3,239	2,756
Apparent consumption	10,643	10,887	12,402	13,213	12,235
Total United States:					
Shipments by U.S. producers/grinders	76,362	76,486	75,071	75,592	76,830
Imports from--					
Japan	514	686	1,621	2,180	1.939
Mexico	3,118	3,715	4,491	3,898	2,142
Subtotal	3,632	4,401	6,111	6,078	4,081
All other sources	8,454	9,430	9,114	7,504	6,925
All sources	12,086	13,831	15,225	13,583	11,006
Apparent consumption	88,448	90,317	90,296	89,175	87,836

See footnotes at end of table.

Table 6--Continued
Portland cement and cement clinker: U.S. shipments, U.S. production,[1] imports, and apparent consumption, 1986-90

(In thousands of short tons)

Item	1986	1987	1988	1989	1990
Cement clinker:					
Southern California region:					
Production by regional producers...	6,555	6,596	6,567	7,018	7,032
Imports from--					
Japan.....	26	0	0	0	0
Mexico.....	81	0	0	0	0
Subtotal.....	108	0	0	0	0
All other sources....	37	0	33	0	0
All sources.....	144	0	33	0	0
Apparent consumption...	6,699	6,596	6,600	7,018	7,032
State of California:					
Production by regional producers...	9,212	9,390	9,352	10,085	9,998
Imports from--					
Japan.....	83	0	0	41	28
Mexico.....	81	0	0	0	0
Subtotal.....	164	0	0	41	28
All other sources....	65	0	33	0	0
All sources.....	229	0	33	41	28
Apparent consumption...	9,441	9,390	9,385	10,126	10,026
Total United States:					
U.S. production.....	68,635	68,719	70,439	69,291	(2)
Imports from--					
Japan.....	234	37	137	235	163
Mexico.....	1,095	1,215	437	423	87
Subtotal.....	1,329	1,252	574	658	250
All other sources....	2,643	2,436	1,345	1,087	1,604
All sources.....	3,972	3,687	1,919	1,745	1,854
Apparent consumption...	72,608	72,407	72,358	71,036	(2)

[1] Production figures are used in the calculation of apparent consumption of clinker. Shipment figures are used in the calculation of apparent consumption of portland cement. Virtually all production of clinker in the Southern California region and in the State of California is consumed in the region in which it was produced (see table 9).
[2] Data not available from Bureau of Mines.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Total U.S. data regarding shipments of portland cement, production of cement clinker, and shipments into the Southern California region and into the State of California from firms outside California are from the U.S. Bureau of Mines. Import data are compiled from official statistics of the U.S. Department of Commerce. All other data are compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

State of California.--California experienced a 24-percent increase in consumption of portland cement from 1986 to 1989. Apparent consumption fell in 1990 to a level 7 percent below that of 1989.

In the State of California, consumption of cement clinker increased during 1986-90 from 9.4 million short tons to 10.0 million short tons, or by 6 percent.

U.S. producers

According to the U.S. Bureau of Mines, there were 134 active cement manufacturing plants operating in the United States in 1988, down from 141 in 1986. The list of plants includes 10 operations solely for the grinding of imported, purchased, or interplant transfers of clinker.

Foreign ownership of U.S. cement plants is high and growing, with a number of facilities changing hands since 1986. According to the January 1989 ROI Cement Industry Research Reports publication, "The Organization of the North American Cement Industry," the greatest changes in the North American cement industry "more than anything else over the past decade have been the great increase in joint ventures and foreign ownership, especially by international cement companies." In 1988, 67 of the plants in the United States were operated by foreign ownership or joint ventures with foreign-owned participants.

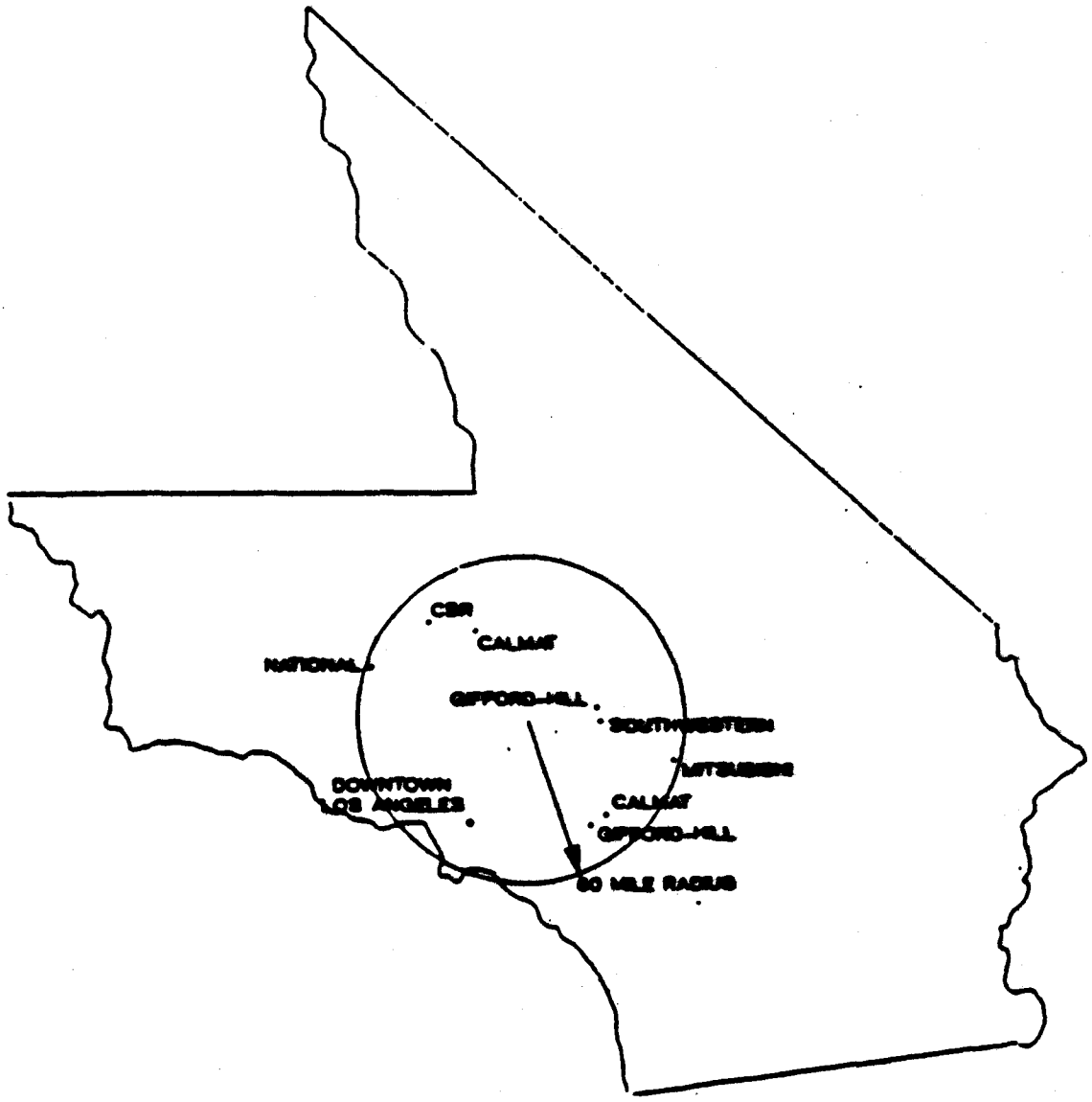
Blue Circle Industries PLC (Blue Circle) of the United Kingdom has cement interests of 3.6 million tons in the United States. Cementos Mexicanos (Cemex), which currently operates 25.2 million tons of cement capacity, all in Mexico, has formed several joint ventures with U.S. cement companies in recent years. Lonestar Industries (Lonestar), of Great Britain, fully owns and operates 4.8 million tons of cement capacity in the United States and has joint-venture interests totaling another 3.9 million tons. Lonestar purchased many of its U.S. cement assets in the 1970s, becoming the largest cement company in the United States. In the 1980s, however, Lonestar has either sold many of its assets entirely or included them in joint ventures.

There are presently 10 active production facilities and one grinder operation in California. Seven of the production facilities and the one grinder operation are located in the Southern California region (fig. 4), and the other three producers are located in the northern part of the State.

Southwestern Portland Cement (Southwestern), a member of the petitioning committee, operates a plant in Victorville in the Southern California region. Southdown, Inc., Southwestern's parent company, also has plants in Florida and the Southwest. The other member of the petitioning committee, National Cement of California (National), produces portland cement at its plant in Lebec, CA. This plant was purchased from a subsidiary of Lafarge in November 1987. National Cement of California is owned by Societe Anonyme des Ciments Vicat of France.

Riverside Cement Co. (Riverside), formerly Gifford-Hill Cement Co. (Gifford-Hill), has two Southern California facilities--one a producer and the other a grinder operation. The producer is located in Oro Grande and the grinder in Crestmore. The Crestmore facility has been a grinder operation since August 1987, with some of its clinker purchased through importers in the Los Angeles area. Riverside * * *. Riverside is a wholly-owned subsidiary of Beazer West, Inc., of Dallas, TX. Riverside * * *.

Figure 4
Portland cement and cement clinker: Plant locations of U.S. producers in the Southern California region, 1990



Note.--CBR denotes Calaveras Cement Co.; Gifford-Hill denotes Riverside Cement Co.; CalMat is now CPC Co.

Source: Counsel for petitioners.

California Portland Cement Co. (CPC Co.) has production facilities located in Colton and Mojave in Southern California. CPC was purchased from CalMat Co. by Onoda Cement Co., Ltd., of Japan late in the summer of 1990. Onoda also purchased CalMat's * * * share in CalMat Terminals, an importer of portland cement. CPC * * *. Mitsubishi Cement Co. (Mitsubishi) operates a production facility in Lucerne Valley, CA. A majority share of Mitsubishi is held by Mitsubishi Mining & Cement Co., Ltd., of Japan. The Lucerne Valley plant was purchased from Kaiser Cement Corp. (Kaiser) in 1988. Mitsubishi is also a joint venture partner with Lucky Cement Corp. of Taiwan in a cement import terminal being built at the Port of Long Beach. * * *. Mitsubishi * * *. The remaining producer in Southern California is Calaveras Cement Co. (Calaveras), with its plant in Monolith, CA. The Monolith plant was purchased from Monolith Portland Cement Co. in March 1989. Calaveras is owned by Cimenteries CBR, S.A., of Belgium and also operates a plant in northern California at Redding. * * *. Calaveras * * *.

Portland cement producers in the Southern California region that oppose the petition accounted for * * * percent of regional production in 1990. However, as noted above, the petition is supported by co-petitioning labor unions at the following plants: Southwestern/Victorville, National/Lebec, Calaveras/Tehachapi, CPC/Colton, CPC/Mojave, and Riverside/Oro Grande. These plants accounted for * * * percent of 1990 production of portland cement in the Southern California region.

In addition to Calaveras, Kaiser and RMC Lonestar operate production facilities in northern California. Their production facilities are located south of San Francisco in Permanente, CA, and Davenport, CA, respectively. RMC Lonestar is a joint venture of California Readymix, Inc. (* * *), New York Trap Rock Corp., and Lone Star California, Inc. Calaveras * * * and RMC Lonestar * * *. Kaiser * * *.

The names, plant locations, and shares of reported 1990 regional production of California producers of portland cement are presented in the following tabulation:

Firm	Location(s)	Share of reported 1990 regional production (percent)
Southern California region:		
Petitioning Committee:		
National Cement Co. of California, Inc . .	Lebec	***
Southwestern Portland Cement	Victorville	***
Other producers:		
CPC Co.[1]	Colton	***
	Mojave	***
Calaveras Cement Co.[2] . .	Tehachapi	***
Riverside Cement Co.[1] . .	Crestmore[3]	***
	Oro Grande	***
Mitsubishi Cement Corp.[1]	Lucerne Valley	***
Northern California:		
Calaveras Cement Co.[2] . . .	Redding	***
Kaiser Cement Corp.[2] . . .	Permanente	***
RMC Lonestar[4]	Davenport	***

[1] * * *.
[2] * * *.
[3] Grinder operations only.
[4] * * *.

U.S. importers

On a national basis, U.S. producers, grinders, and importers having an affiliation with foreign producers (either through direct ownership or a joint-venture operation) account for many of the imports from all sources of portland cement and cement clinker into the United States. In the Commission's 1986 investigation, U.S. producers[23] responding to questionnaires accounted for nearly 40 percent of all portland cement imported into the United States during 1985. Given cement clinker's status as an intermediate product in the production of portland cement, all of the clinker would be imported by or for U.S. producer or grinder operations.

CPC Terminals, Mitsui & Co. (U.S.A.), Inc., and RIC Co. accounted for * * * imports from Japan of portland cement into the Southern California region during the period of investigation. CPC Terminals, formerly CalMat Terminals, was formed in the fall of 1990 when Onoda Cement Co., Ltd. of Japan purchased a * * * share in the venture which was owned by CalMat Co., a U.S. producer of portland cement in the Southern California region. CalMat Co. was also purchased by Onoda in the fall of 1990 and is now called CPC Co. CPC Terminals/CalMat Terminals has imported portland cement from * * * into the Southern California region since it began operations in October 1987.

Although Mitsui & Co. (U.S.A.), Inc. (Mitsui), does not operate an import terminal in the United States, it * * *.[24] * * *.

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[23] Including grinders.
[24] * * *.

RIC Co., a joint venture with RIC Corp. and Riverside Cement Holding Co. (an affiliate of Riverside Cement Co.), purchased a storage terminal from Falcon Pacific in December 1988. * * *.[25] As mentioned above, the Crestmore facility has been strictly a grinder operation since August 1987.[26] * * *. Through its affiliate Riverside Cement Holding Co., Riverside Cement Co. also has a joint venture with another importer, Ssangyong/Riverside Ltd. dba CenCal Cement Co. (Ssangyong/Riverside), in Stockton in northern California. * * *.

BCW, Inc., with terminals in San Diego and Richmond, and Southwestern Sunbelt, with a San Diego terminal, * * *. BCW, Inc. also reported * * *.

Based on questionnaire responses, U.S. importers of portland cement from Japan and Mexico ship * * * of their imported goods from storage terminals at the port of entry to their customers in the Southern California region.

Consideration of Alleged Material Injury to an Industry in the United States

U.S. production, capacity, and capacity utilization[27]

In its questionnaire, the Commission requested U.S. producers to provide detailed information about any plant openings, relocations, expansions, acquisitions, consolidations, closures, or prolonged shutdowns because of strikes or equipment failure; curtailment of production because of shortages of materials; or any other change in the character of their operations or organization relating to the production of portland cement or cement clinker. Southwestern reported that * * *.[28] * * *.

Calaveras reported that * * *.[29] * * *.

Riverside closed its kiln at its Crestmore facility in 1987 and since has operated as a grinder facility using clinker produced primarily at its Oro Grande facility. * * *.[30] [31]

In addition, counsel for petitioners noted that * * *.[32] * * *.

It should be noted that there are other discrepancies between the capacity reported to PCA and that reported to the Commission in its questionnaire. For example, Southwestern reported an annual grinding capacity of 1.6 million short tons to the PCA in 1987 and 1988 and 1.65 million short tons in 1989; it reported * * * short tons to the Commission for 1986-88 and * * * short tons for 1989-90. Calaveras/Redding reported 650,000 short tons to PCA and * * * short tons to the Commission. Kaiser reported 1.65 million short tons to PCA and * * * short tons to the Commission. RMC

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[25] Interview with * * *, June 13, 1990.

[26] * * *.

[27] Production capacity is defined as "full production capability"--the maximum level of production that a plant could reasonably be expected to attain under normal operating conditions.

[28] Telephone interview with * * *, Mar. 12, 1991.

[29] Telephone interview with * * *, Mar. 11, 1991.

[30] Interview with * * *, Mar. 26, 1991.

[31] Interviews with * * *, Mar. 26, 1991 and Apr. 2, 1991.

[32] Interview with * * *, Apr. 3, 1991.

reported 850,000 short tons to PCA and * * * short tons to the Commission.

Table 7 details regional capacity and production of portland cement ground from U.S. producers' own clinker, from imported clinker, and from clinker purchased from other sources in the United States. In addition, it presents regional capacity and production data on cement clinker.

Southern California.--Total production of portland cement in the Southern California region increased irregularly from 6.5 million short tons in 1986 to 7.2 million short tons in 1989, or by 11 percent. In 1990 production fell by 6 percent from the level attained in 1989. Portland cement production from clinker directly imported by U.S. producers ended in 1986. Production of cement from purchased clinker accounted for * * * percent of total regional production in 1990. Regional production of cement clinker increased by 7 percent during 1986-90.

During 1986-90, regional capacity to produce portland cement and cement clinker fell 1 percent and 9 percent, respectively. Portland cement capacity utilization rose irregularly from 76 percent in 1986 to 86 percent in 1989 before falling to 80 percent in 1990. Clinker capacity utilization rose from 85 percent in 1986 to approximately 100 percent in 1989 and 1990.

State of California.--Total production of portland cement and cement clinker in the State of California increased during 1986-89, by 12 percent and 9 percent, respectively. In 1990, production of portland cement and cement clinker fell from 1989 levels by 5 percent and 1 percent, respectively. Capacity to produce portland cement in the State of California remained virtually unchanged during 1986-90, whereas capacity to produce cement clinker registered a 6-percent decline during 1986-90.[33] As in the Southern California region, capacity utilization rates in the State increased during 1986-89: from 79 percent to 90 percent for portland cement, and from 86 percent to over 100 percent for cement clinker. In 1990, capacity utilization in the State of California fell to 84 percent for portland cement and 100 percent for cement clinker.

[33] None of the three producers in the Northern California region (Calaveras/Redding, Kaiser, and RMC) * * *.

Table 7
Portland cement and cement clinker: U.S. capacity, production, and capacity utilization, by products and by regions, 1986-90

Item	1986	1987	1988	1989	1990
	Production (1,000 short tons)				
Southern California region:					
Portland cement from--					
Firms' cement clinker	***	***	***	***	***
Imported cement clinker	***	0	0	0	0
Purchased cement clinker	***	***	***	***	***
Total	6,521	6,185	6,852	7,224	6,784
Cement clinker	6,555	6,596	6,567	7,018	7,032
State of California:					
Portland cement from--					
Firms' cement clinker	***	***	***	***	***
Imported cement clinker	***	***	***	***	***
Purchased cement clinker	***	***	***	***	***
Total	9,224	8,987	9,809	10,341	9,779
Cement clinker	9,212	9,390	9,352	10,085	9,998
	End-of-period capacity (1,000 short tons)[1]				
Southern California region:					
Portland cement	8,558	8,558	8,305	8,353	8,453
Cement clinker	7,700	7,700	6,874	6,924	7,024
State of California:					
Portland cement	11,733	11,733	11,480	11,528	11,628
Cement clinker	10,721	10,721	9,895	9,945	10,045
	Capacity utilization (percent)				
Southern California region:					
Portland cement	76.2	72.3	82.5	86.5	80.3
Cement clinker	85.1	85.7	95.5	101.4	100.1
State of California:					
Portland cement	78.6	76.6	85.4	89.7	84.1
Cement clinker	85.9	87.6	94.5	101.4	99.5

[1] U.S. producers reported cement capacity based on operating an average of 23 hours per day, 48.9 weeks per year and reported clinker capacity based on operating an average of 23.9 hours per day, 47.7 weeks per year.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' shipments

U.S. producers ship virtually all of their shipments of portland cement from their plants and from storage terminals near larger metropolitan areas. According to the U.S. Bureau of Mines, over 90 percent of total shipments of portland cement are of bulk product.

Southern California.--The total quantity of shipments of portland cement by producers in the Southern California region increased from 6.5 million short tons in 1986 to 7.2 million short tons in 1989, or by 11 percent (table 8). In 1990, the total quantity of shipments of portland cement fell to 6.8 million short tons, or by 6 percent. During 1986-90, between 82 and 87 percent of the quantity of Southern California producers' total shipments of portland cement remained in the Southern California region. Outside-region shipments registered a 26-percent increase in 1990 compared with those in 1986, whereas within-region shipments were virtually unchanged during this period. There were no exports reported by any of the producers in the State of California.

Unit values of shipments of portland cement, regardless of their destination, fell 12 percent during 1986-88. However, during 1989 and 1990, unit values rebounded at an annual rate of about 3 percent.

Most of the clinker that was produced in the Southern California region was consumed internally in the production of portland cement; however, small amounts of cement clinker were shipped during the period of investigation (table 9). * * *.

State of California.--The total quantity of shipments of portland cement by producers in the State of California increased from 9.2 million short tons in 1986 to 10.4 million short tons in 1989, or by 12 percent. In 1990, total shipments fell 6 percent from 1989 levels. During 1986-90, over 90 percent of the quantity of California producers' total shipments of portland cement remained in the State.

During 1986-89, the average unit value of shipments of portland cement by producers in the State of California was lower than the unit values reported by the producers in the Southern California region. In 1990, however, average unit values in the Southern California region were lower than those for the State as a whole. The average unit value of total shipments reported by all producers in California fell by 10 percent during 1986-88. In 1989 and 1990 unit values increased at an annual rate of about 4 percent. * * *.

Table 8
Portland cement: Shipments[1] of U.S. producers, by regions, 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Within-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	5,588	5,325	5,830	5,906	5,579
Outside-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	929	773	1,043	1,305	1,173
All shipments	6,517	6,098	6,873	7,211	6,752
State of California:					
Within-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	8,555	8,283	9,239	9,534	9,046
Outside-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	683	553	678	822	680
All shipments	9,238	8,836	9,917	10,356	9,726
	Value (1,000 dollars)				
Southern California region:					
Within-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	348,251	317,915	317,575	334,749	325,743
Outside-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	55,731	45,252	57,317	71,806	68,163
All shipments	403,982	363,167	374,892	406,555	393,906
State of California:					
Within-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	517,993	482,970	500,314	535,918	528,660
Outside-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Subtotal	38,942	31,699	37,134	47,787	41,077
All shipments	556,935	514,669	537,448	583,705	569,737

See footnote at end of table.

Table 8--Continued
Portland cement: Shipments[1] of U.S. producers, by regions, 1986-90

Item	1986	1987	1988	1989	1990
	Unit value (per short ton)				
Southern California region:					
Within-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Average	$62.32	$59.70	$54.47	$56.68	$58.39
Outside-region shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Average	59.99	58.54	54.95	55.02	58.11
All shipments	61.99	59.56	54.55	56.38	58.34
State of California:					
Within-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Average	60.55	58.31	54.15	56.21	58.44
Outside-State shipments:					
Company transfers	***	***	***	***	***
Domestic shipments	***	***	***	***	***
Average	57.02	57.32	54.77	58.14	60.41
All shipments	60.29	58.25	54.19	56.36	58.58

[1] There were no export shipments reported by U.S. producers in California.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 9
Cement clinker: Shipments[1] of U.S. producers, by regions, 1986-90

Item	1986	1987	1988	1989	1990

* * * * * * *

[1] There were no export shipments reported by California producers.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The following tabulation presents 1990 monthly shipment data, irrespective of its destination, for U.S. producers located in the Southern California region as reported by the U.S. Bureau of Mines:

Month	Quantity (short tons)
January	569,342
February	569,010
March	687,825
April	614,174
May	655,366
June	620,279
July	602,313
August	626,872
September	541,124
October	615,815
November	509,569
December	454,105
Total	7,065,794[1]

[1] Due to revisions and corrections to monthly shipment data, the annual total presented here does not equal the annual total reported by the Bureau of Mines' Mineral Industry Surveys, "Cement in December 1990," table 1.

The following tabulation presents 1990 monthly shipment data, irrespective of its destination, for U.S. producers located in the State of California as reported by the U.S. Bureau of Mines:

Month	Quantity (short tons)
January	839,562
February	772,963
March	948,885
April	893,943
May	927,466
June	903,599
July	866,846
August	921,546
September	808,139
October	909,092
November	758,490
December	627,237
Total	10,177,768[1]

[1] Due to revisions and corrections to monthly shipment data, the annual total presented here does not equal the annual total reported by the Bureau of Mines' Mineral Industry Surveys, "Cement in December 1990," table 1.

U.S. producers' inventories

Southern California.--End-of-period inventories of portland cement held by producers located in the Southern California region increased from 185,000 short tons in 1986 to 313,000 short tons in 1990, or by 69 percent (table 10). As a share of production, inventories of portland cement rose from 3.0 percent in 1986 to 4.9 percent in 1990. Inventories of cement clinker increased by 30 percent during 1986-90.

State of California.--Inventories of portland cement held by California producers increased irregularly from 355,000 short tons in 1986 to 451,000 short tons in 1990, or by 27 percent. Inventories of portland cement were between 4.0 and 5.7 percent of production during 1986-90. Inventories of cement clinker increased irregularly by 23 percent during 1986-90.

Table 10
Portland cement and cement clinker: End-of-period inventories of U.S. producers, by regions and by products, 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Portland cement	185	258	251	273	313
Cement clinker	535	826	500	311	693
State of California:					
Portland cement	355	491	397	389	451
Cement clinker	685	978	545	368	842
	Ratio to production (percent)[1]				
Southern California region:					
Portland cement	3.0	4.4	3.8	3.9	4.9
Cement clinker	8.2	12.5	7.6	4.4	9.9
State of California:					
Portland cement	4.0	5.7	4.2	3.9	4.8
Cement clinker	7.4	10.4	5.8	3.6	8.4

[1] Calculated using data from firms that provided information on both inventories and production.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' employment and wages

The number of production and related workers and hours worked by such workers fell during every period under investigation (table 11). During 1986-90, the number of production and related workers and the corresponding hours worked in the Southern California region and the State as a whole declined by over 16 percent and 21 percent, respectively. Wages and total compensation paid to production and related workers in the Southern California region and the State of California fell by 9 to 12 percent during 1986-90. Hourly wages in the Southern California region were generally slightly lower than those in the State as a whole. Productivity in the Southern California region was also lower than that reported in the State as a whole. Conversely, unit labor costs in the Southern California region were higher than in the State as a whole in every period.

Several of the firms reporting employment data to the Commission have workforces that are represented by unions. Those firms, and the unions involved, are listed in the following tabulation:[34]

Firm and plant location(s)	Union(s)
Southern California:	
CPC--Colton	Independent Workers of North America
CPC--Mojave	International Union of Operating Engineers
Calaveras--Tehachapi	Independent Workers of North America
Riverside--Oro Grande	Independent Workers of North America
National--Lebec	Independent Workers of North America
Southwestern--Victorville	Independent Workers of North America; Operating Engineers; International Association of Aerospace and Machinists Workers
Northern California:	
Calaveras--Redding	Independent Workers of North America
Kaiser--Permanente	Santa Clara County Building and Construction Trades; Cement, Lime, Gypsum and Allied Workers
RMC Lonestar--Davenport	International Association of Machinists; Local Lodge D46; Cement, Lime, Gypsum and Allied Workers; International Brotherhood of Boilermakers

In its questionnaire, the Commission requested U.S. producers to provide detailed information concerning reductions in the number of production and related workers producing portland cement and/or cement clinker during 1986-90 if such reductions involved at least 5 percent of the workforce, or 50 workers. The reported reductions in force are shown in the following tabulation:

* * * * * * *

[34] The Independent Workers of North America and the International Union of Operating Engineers are co-petitioners in this investigation. Plants whose workers are represented by these unions accounted for * * * percent of production of portland cement in 1990.

Table 11
Average number of production and related workers producing portland cement and cement clinker, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by regions, 1986-90[2]

Item	1986	1987	1988	1989	1990
	Number of production and related workers (PRWs)				
Southern California region	1,146	1,072	986	965	960
State of California	1,651	1,537	1,403	1,362	1,309
	Hours worked by PRWs (1,000 hours)				
Southern California region	2,666	2,538	2,330	2,305	2,172
State of California	3,769	3,515	3,254	3,202	2,973
	Wages paid to PRWs (1,000 dollars)				
Southern California region	38,071	36,854	33,833	33,638	34,702
State of California	54,905	51,945	48,673	48,177	48,118
	Total compensation paid to PRWs (1,000 dollars)				
Southern California region	52,832	51,922	47,715	46,446	48,183
State of California	74,303	71,619	67,694	65,322	66,777
	Hourly wages paid to PRWs[3]				
Southern California region	$14.28	$14.52	$14.52	$14.59	$15.98
State of California	14.57	14.78	14.96	15.05	16.18
	Productivity for portland cement (short tons per hour)[4]				
Southern California region	1.9	1.9	2.3	2.4	2.4
State of California	2.0	2.2	2.5	2.7	2.7
	Unit labor costs for portland cement (per short ton)[5]				
Southern California region	$10.37	$10.50	$8.85	$8.16	$9.21
State of California	9.53	9.24	8.11	7.41	8.12

[1] Includes hours worked plus hours of paid leave time.

[2] Firms providing employment data accounted for * * * percent of reported 1990 production of portland cement in the State of California.

[3] Calculated using data from firms that provided information on both wages paid and hours worked.

[4] Calculated using data from firms that provided information on both hours worked and production.

[5] On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Financial experience of U.S. producers

This section of the report presents the financial experience of U.S. producers of portland cement and cement clinker located in Southern California and the State of California.

Southern California.--Seven plants of U.S. producers,[35] accounting for * * * percent of reported production of portland cement in the Southern California region in 1990, supplied income-and-loss data on their portland cement and cement clinker operations and on their overall establishment operations. Portland cement and cement clinker net sales accounted for an average of 89 percent of total net sales of overall establishment operations during the period covered by the investigation. Hence, only portland cement and cement clinker operations are presented in this section.

Portland cement and cement clinker operations.--Income-and-loss data are shown in table 12. Net sales of portland cement and cement clinker declined by 3.5 percent from $* * * million in 1986 to $* * * million in 1987. Such net sales increased by 4.6 percent to $* * * million in 1989 then dropped by * * * percent to $368.5 million in 1990.

The industry operated profitably throughout the period of investigation. Aggregate operating income increased from $* * * million, or 13.5 percent of net sales, in 1986 to $* * * million, or 15.7 percent of net sales, in 1987, and then fell to $* * * million, or 11.8 percent of net sales, in 1988. Aggregate operating income rose to $* * * million, or 15.1 percent of net sales, in 1989 and then dropped to $50.0 million, or 13.6 percent of net sales, in 1990. Pre-tax net income margins followed a similar trend as operating income margins.

* * * * * * *

A breakdown of the quantity and value of net sales into trade and company transfers of portland cement and cement clinker is presented in table 13. As a share of the total quantity of sales of cement and clinker combined, trade sales and transfers of clinker accounted for * * * percent or less in 1986 and 1987, and * * * percent or less during 1988-90 for the Southern California region. As a share of the total value of such sales, they accounted for * * * percent or less in 1986 and 1987, and * * * percent or less during 1988-90. Company transfers of cement declined steadily from about * * * percent of total net sales in terms of quantity and value in 1986 to approximately * * * percent in 1990.

Income-and-loss data on a per-short-ton basis are shown in table 14. On that basis, average net sales of portland cement and clinker combined declined from $61.11 in 1986 to $58.88 in 1987 and $52.94 in 1988 and then increased to $53.06 in 1989 and $54.69 in 1990. The average cost of goods sold fell from $49.05 in 1986 to $46.35 in 1987, $44.03 in 1988, and $42.09 in 1989, and then increased to $43.74 in 1990. Average selling, general, and administrative (SG&A) expenses per short ton declined from $3.79 in 1986 to $3.29 in 1987 and $2.67 in 1988, and then rose to $2.94 in 1989 and $3.53 in 1990. These changes in per-unit revenues and costs and their relationship with volume changes (net sales quantities) are reflected in the variance analysis below.

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[35] * * *.

Table 12
Income-and-loss experience of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	1986	1987[1]	1988	1989	1990[2]
	Value (1,000 dollars)				
Net sales	***	***	***	***	368,509
Cost of goods sold	***	***	***	***	294,707
Gross profit	***	***	***	***	73,802
Selling, general, and administrative expenses	***	***	***	***	23,792
Operating income	***	***	***	***	50,010
Interest expense	***	***	***	***	***
Other income or (expense), net[3]	***	***	***	***	***
Net income before income taxes	***	***	***	***	23,072
Depreciation and amortization	***	***	***	***	34,538
Cash flow[4]	***	***	***	***	57,610
	Ratio to net sales (percent)				
Cost of goods sold	80.3	78.7	83.2	79.3	80.0
Gross profit	19.7	21.3	16.8	20.7	20.0
Selling, general, and administrative expenses	6.2	5.6	5.0	5.5	6.5
Operating income	13.5	15.7	11.8	15.1	13.6
Net income before income taxes	3.6	11.8	7.5	12.4	6.3

See footnotes at end of table.

Table 12--Continued
Income-and-loss experience of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	1986	1987[1]	1988	1989	1990[2]
	Number of plants reporting				
Data	7	7	7	7	7
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Decreases from previous year in--					
Net sales	-	***	***	***	***
Operating income	-	***	***	***	***
Net income	-	***	***	***	***

[1] Mitsubishi's Lucerne Valley plant was owned by Kaiser during 1986-87. Kaiser provided data for 9 months of 1987, when it changed its fiscal year ending date from December 31 to September 30. These data are annualized for comparative purposes. These data were supplied by Kaiser in the Commission's investigation concerning portland cement from Mexico.

[2] The Colton and Mojave plants of California Portland Cement Co. and the Lucerne Valley plant of Mitsubishi provided data for only 9 months of 1990. Data for these plants are annualized for comparative purposes.

[3] The Commission staff did not include interest income reported by the Crestmore and the Oro Grande plants of Riverside because it was imputed by the company rather than actual interest income earned by the company.

[4] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 13
Portland cement and cement clinker: U.S. producers' quantity and value of net sales in the Southern California region, by types of sales, accounting years 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Net sales:					
Trade:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Total net sales	***	***	***	***	6,738
	Value (1,000 dollars)				
Net sales:					
Trade:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Total net sales	***	***	***	***	368,509

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 14
Income-and-loss experience (on a per-short-ton basis) of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	(Per short ton) 1986	1987	1988	1989	1990
Net sales:					
Trade sales:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Average net sales	$61.11	$58.88	$52.94	$53.06	$54.69
Cost of goods sold	49.05	46.35	44.03	42.09	43.74
Gross profit	12.06	12.53	8.92	10.97	10.95
Selling, general, and administrative expenses	3.79	3.29	2.67	2.94	3.53
Operating income	8.27	9.25	6.25	8.03	7.42
Interest expense	***	***	***	***	***
Other income or (expense), net	***	***	***	***	***
Net income before income taxes	2.19	6.93	3.97	6.57	3.42
Depreciation and amortization included above	5.08	4.76	4.54	4.58	5.13
Cash flow[1]	7.27	11.70	8.51	11.16	8.55

[1] Cash flow is defined as net income or loss plus depreciation and amortization.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

An analysis of the decline or increase in gross profit and operating income on sales of portland cement and cement clinker combined between 1986 and 1990 and during each of the intervening 2-year periods is presented in table 15. The data presented in this table represent an analysis of the changes in gross profit and operating income based on a variance analysis. The variance analysis indicates the relative impact of changes in price, volume, and cost on profit levels between two periods. Such analysis is a reasonable analytical tool in this case because portland cement is essentially a fungible product and there is no significant impact due to changing product mix.

Table 15
Portland cement and cement clinker: Variances[1] in gross profit and operating income due to changes in price, volume, costs, and expenses in the Southern California region during 1986-90, 1986-87, 1987-88, 1988-89, and 1989-90

(In thousands of dollars)

Item	1986-90	1986-87	1987-88	1988-89	1989-90
*	*	*	*	*	*	*

[1] Unfavorable variances are shown in parentheses; all others are favorable.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Price, cost, and expense variances were determined by calculating for each respective period (annual or 1986-90) the change in average unit value for price, cost, and expense and multiplying this unit change by the volume of units sold in the year the period ends. Volume variances for net sales, cost of goods sold, and SG&A expenses were computed by multiplying the change in volume between applicable periods (annual or 1986-90) by the average unit value in the year the period starts.

The total decline of $* * * million in operating income between 1986 and 1990 resulted from a $* * * million drop in net sales revenue, which was offset by a decrease of $* * * million in cost of goods sold and $* * * million in SG&A expenses. The $* * * million net sales decline is a combination of $* * * million attributable to the drop in sales price offset by $* * * million attributable to the increase in sales volume. The net saving in costs of $* * * million is a combination of $* * * million attributable to the decline in the unit cost of production offset by $* * * million attributable to the increase in sales volume.

Between 1986 and 1987, the increase in operating income was mainly due to favorable cost and expense variances that outweighed an unfavorable price variance. Between 1987 and 1988, the drop in operating income was mainly due to a large unfavorable price variance coupled with a much smaller favorable cost variance. Between 1988 and 1989, the increase in operating income was mainly due to a favorable volume variance in net sales and a favorable cost variance.

Between 1989 and 1990, out of the total decline of $* * * million in operating income, $* * * million resulted from a $* * * million drop in net sales revenue due to an unfavorable volume variance, offset by a favorable cost volume variance of $* * * million and a favorable SG&A expense volume variance of $* * * million. The remaining $* * * million can be attributed to an unfavorable cost variance of $* * * million and an unfavorable expense variance of $* * * million, offset by a favorable price variance of $* * * million.

The key financial data by plant and firm are presented in table C-12 in appendix C.

Investment in productive facilities.--The value of property, plant, and equipment and total assets of the reporting plants are shown in table 16, along with the return on book value of fixed assets and the return on total assets. Operating and net returns based both on the book value of fixed assets and on total assets followed generally the same trend as did the ratios of operating and net income to net sales during the reporting periods.

Table 16
Portland cement and cement clinker: Value of assets and return on assets of U.S. producers in the Southern California region, accounting years 1986-90

Item	1986	1987	1988	1989	1990
	Value (1,000 dollars)				
Fixed assets:					
Original cost	***	***	***	***	751,941
Book value	***	***	***	***	530,093
Total assets[1]	***	***	***	***	642,425
	Return on book value of fixed assets (percent)[2]				
Operating return[3]	10.5	11.3	8.1	11.1	9.4
Net return[4]	2.8	8.5	5.1	9.1	4.4
	Return on total assets (percent)[2]				
Operating return[3]	8.9	9.3	6.9	9.4	7.8
Net return[4]	2.3	7.0	4.4	7.7	3.6

[1] Defined as the book value of fixed assets plus current and noncurrent assets. Total assets are derived by apportioning total establishment assets on the basis of the ratios of the respective book values of fixed assets.
[2] Computed using data from only those firms supplying both asset and income-and-loss information, and as such, may not be derivable from data presented.
[3] Defined as operating income or loss divided by asset value.
[4] Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital expenditures.--The capital expenditures incurred by the reporting plants are shown in the following tabulation (in thousands of dollars):

Item	1986	1987	1988	1989	1990
Portland cement and cement clinker.....	***	***	***	***	40,342

Research and development expenses.--None of the responding plants reported research and development expenses for the period covered by the investigation.

Impact of imports on capital and investment.--The Commission requested each producer to describe, by plant, any actual and/or potential negative effects of imports of portland cement and/or cement clinker from Japan on its existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix D.

State of California.--Ten plants of U.S. producers,[36] accounting for * * * percent of reported production of portland cement in the State of California in 1990, provided income-and-loss data on their portland cement and cement clinker operations and on their overall establishment operations. Portland cement and cement clinker net sales accounted for an average of 91 percent of total net sales of overall establishment operations during the period covered by the investigation. Hence, only portland cement and cement clinker operations are presented in this section.

Portland cement and cement clinker operations.--Income-and-loss data are shown in table 17. Net sales of portland cement and cement clinker decreased by 2.8 percent from $* * * million in 1986 to $* * * million in 1987. Such sales increased by 2.3 percent to $* * * million in 1988, further rose by 5.8 percent to $* * * million in 1989, and then dropped by * * * percent to $547.2 million in 1990.

Trends in aggregate operating and pre-tax income margins are similar to those for the Southern California region but are generally somewhat higher. However, in 1990, the aggregate operating income margin showed an increasing trend in the State of California compared to a declining trend in the Southern California region. Aggregate operating income increased from $* * * million, or 13.7 percent of net sales, in 1986 to $* * * million, or 16.3 percent of net sales, in 1987. Such income declined to $* * * million, or 14.5 percent of net sales, in 1988 and then rose to $* * * million, or 17.7 percent of net sales, in 1989. In 1990, such income declined to $101.9 million because of declining sales volume, but was equal to a somewhat higher return on sales of 18.6 percent. Pre-tax net income margins followed a similar trend as the operating income margins during the period of investigation except in 1990.

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[36] * * *.

Table 17
Income-and-loss experience of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	1986	1987[1]	1988	1989	1990[2]
	Value (1,000 dollars)				
Net sales	***	***	***	***	547,178
Cost of goods sold	***	***	***	***	414,166
Gross profit	***	***	***	***	133,012
Selling, general, and administrative expenses	***	***	***	***	31,107
Operating income	***	***	***	***	101,905
Interest expense[3]	***	***	***	***	***
Other income or (expense), net	***	***	***	***	***
Net income before income taxes	***	***	***	***	62,308
Depreciation and amortization	***	***	***	***	46,615
Cash flow[4]	***	***	***	***	108,923
	Ratio to net sales (percent)				
Cost of goods sold	79.0	77.0	79.8	76.6	75.7
Gross profit	21.0	23.0	20.2	23.4	24.3
Selling, general, and administrative expenses	7.3	6.7	5.6	5.7	5.7
Operating income	13.7	16.3	14.5	17.7	18.6
Net income before income taxes	4.9	10.9	8.9	15.1	11.4

See footnotes at end of table.

Table 17--Continued
Income-and-loss experience of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	1986	1987[1]	1988	1989	1990[2]
	Number of plants reporting				
Data	10	10	10	10	10
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Decreases from previous year in--					
Net sales	-	***	***	***	***
Operating income	-	***	***	***	***
Net income	-	***	***	***	***

[1] The Permanente plant of Kaiser provided 9 months of data for 1987, when it changed its fiscal year ending date from December 31 to September 30. These data are annualized for comparative purposes.

[2] The Colton and Mojave plants of California Portland Cement Co. and the Lucerne Valley plant of Mitsubishi provided data for only 9 months of 1990. Data for these plants are annualized for comparative purposes.

[3] The Commission staff did not include allocated interest expense of Hanson PLC, the parent company of Kaiser, because the company could not justify only allocating interest expense and not allocating interest income of the parent company.

[4] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

A breakdown of the quantity and value of net sales into trade and company transfers of portland cement and cement clinker is presented in table 18. As a share of the combined total quantity of sales of cement and clinker, trade sales and transfers of clinker accounted for * * * percent or less in 1986 and 1987, and * * * percent or less in 1988 to 1990 for the State of California. These percentages are lower as a share of the total value of net sales. Company transfers of cement accounted for an average of * * * percent of total net sales in terms of both quantity and value.

Income-and-loss data on a per-short-ton basis are shown in table 19. Average selling prices and cost of sales per short ton showed a similar trend to that of producers in the Southern California region.

Table 18
Portland cement and cement clinker: U.S. producers' quantity and value of net sales in the State of California, by types of sales, accounting years 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Net sales:					
Trade:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Total net sales	***	***	***	***	9,760
	Value (1,000 dollars)				
Net sales:					
Trade:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Total net sales	***	***	***	***	547,178

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 19
Income-and-loss experience (on a per-short-ton basis) of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-90

Item	(Per short ton) 1986	1987	1988	1989	1990
Net sales:					
Trade sales:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Company transfers:					
Portland cement	***	***	***	***	***
Cement clinker	***	***	***	***	***
Average net sales	$60.05	$57.60	$53.02	$54.03	$56.06
Cost of goods sold	47.44	44.36	42.33	41.40	42.44
Gross profit	12.60	13.24	10.68	12.64	13.63
Selling, general, and administrative expenses	4.40	3.83	2.99	3.06	3.19
Operating income	8.20	9.41	7.69	9.58	10.44
Interest expense	***	***	***	***	***
Other income or (expense), net	***	***	***	***	***
Net income before income taxes	2.95	6.28	4.72	8.19	6.38
Depreciation and amortization included above	5.59	5.18	4.34	4.30	4.78
Cash flow[1]	8.54	11.46	9.06	12.49	11.16

[1] Cash flow is defined as net income or loss plus depreciation and amortization.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Variance analysis showing the effects of prices and volume on the U.S. producers' net sales of portland cement and cement clinker, costs and volume on their cost of goods sold, and costs and volume on their SG&A expenses is presented in table 20. These data show a somewhat similar trend of the impact of price, volume, and cost changes on profit in the State of California as that of the Southern California region during each period reported, except between 1986 and 1990. However, during the same period, the increases in operating income in the State of California are higher and the declines in operating income are lower than in the Southern California region, particularly between 1989 and 1990. Between 1986 and 1990, the total increase of $* * * million in operating income in the State of California resulted primarily from favorable cost and expense variances.

Table 20
Portland cement and cement clinker: Variances[1] in gross profit and operating income due to changes in price, volume, costs, and expenses in the State of California during 1986-90, 1986-87, 1987-88, 1988-89, and 1989-90

(In thousands of dollars)

Item	1986-90	1986-87	1987-88	1988-89	1989-90
*	*	*	*	*	*	*

[1] Unfavorable variances are shown in parentheses; all others are favorable.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The key financial data of each plant and firm are presented in table C-12 in appendix C.

Investment in productive facilities.--The value of property, plant, and equipment and total assets of the reporting plants are shown in table 21, along with the return on book value of fixed assets and the return on total assets. Operating and net returns based both on the book value of fixed assets and on total assets followed generally the same trend as did the ratios of operating and net income to net sales during the reporting periods.

Capital expenditures.--Capital expenditures incurred by the reporting plants are shown in the following tabulation (in thousands of dollars):

Item	1986	1987	1988	1989	1990
Portland cement and cement clinker.....	***	***	***	***	49,363

Research and development expenses.--None of the responding plants reported research and development expenses for the period covered by the investigation.

Impact of imports on capital and investment.--The Commission requested each producer to describe, by plant, any actual and/or potential negative effects of imports of portland cement and/or cement clinker from Japan on its existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix D.

Table 21
Portland cement and cement clinker: Value of assets and return on assets of U.S. producers in the State of California, accounting years 1986-90

Item	1986	1987	1988	1989	1990
	Value (1,000 dollars)				
Fixed assets:					
Original cost	***	***	***	***	980,603
Book value	***	***	***	***	678,194
Total assets[1]	***	***	***	***	849,697
	Return on book value of fixed assets (percent)[2]				
Operating return[3]	9.9	11.7	9.8	13.3	13.2
Net return[4]	3.0	7.6	5.9	11.6	7.7
	Return on total assets (percent)[2]				
Operating return[3]	8.2	9.4	8.1	10.8	10.6
Net return[4]	2.5	6.2	4.9	9.4	6.2

[1] Defined as the book value of fixed assets plus current and noncurrent assets. Total assets are derived by apportioning total establishment assets on the basis of the ratios of the respective book values of fixed assets.

[2] Computed using data from only those firms supplying both asset and income-and-loss information, and as such, may not be derivable from data presented.

[3] Defined as operating income or loss divided by asset value.

[4] Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Consideration of the Question of Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors[37]--
>
> (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
>
> (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
>
> (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

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[37] Sec. 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

> (IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and
>
> (X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[38]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation; information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury to an industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows.

U.S. inventories of portland cement and cement clinker from Japan

As mentioned above, CPC Terminals/CalMat Terminals, Mitsui & Co. (U.S.A.), Inc., and RIC Co. * * *. * * *.[39]

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[38] Sec. 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

[39] * * *.

Ability of foreign producers to generate exports and the availability of export markets other than the United States

Japan is one of the three largest cement producing countries in the world. According to counsel for Japanese producers, there are 23 producers of portland cement in Japan.[40] Counsel on behalf of the Japanese producers submitted selected trade data on the entire Japanese portland cement industry (table 22). The data submitted indicate that Japanese capacity utilization for portland cement increased from a low of 66 percent in 1987 to a high of 87 percent in 1990 as production increased and capacity fell.

The following tabulation presents Japanese production capacity, production, and capacity utilization of cement clinker for the entire Japanese industry (in 1,000 short tons, except as noted):

Item	1986	1987	1988	1989	1990
Production capacity[1]	108,004	107,893	96,791	96,791	96,791
Production[2]	76,931	72,470	77,914	81,259	87,240
Capacity utilization (percent)	71	67	80	84	90

[1] Based on operating 24 hours per day, 43 weeks per year.

[2] Includes clinker used in the production of soil stabilizing material, which accounted for 2 to 5 percent of the total. Petitioners argue that clinker production is overstated because counsel for the Japanese allegedly overstated the quantity of clinker used in the production of soil stabilizing material. Using petitioners' figures, clinker production would be 76,442, 71,878, 77,135, 80,226, and 85,779 thousand short tons for the years 1986 through 1990, respectively. See petitioners' prehearing brief, exhibits 1 (exception 10) and 59, and posthearing brief, p. 8 and exhibit Q.

As noted above, reported clinker capacity was based on operating 24 hours per day, 43 weeks per year. By comparison, U.S. producers reported clinker capacity based on operating an average of 23.9 hours per day, 47.7 weeks per year. Petitioners claim that there is too much down time built into the Japanese capacity figure.[41] If the reported Japanese clinker capacity figures were recalculated on the same basis as that used by U.S. producers, it would yield a capacity of 119,309,880 short tons in 1986, 119,187,260 short tons in 1987, and 106,923,100 short tons in 1988, 1989, and 1990. This in turn yields capacity utilization rates of 64.5, 60.8, 72.9, 76.0, and 81.6 percent for the years 1986 through 1990, respectively.

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[40] These are Aso Cement Co., Ltd; Chichibu Cement Co., Ltd; Daiichi Cement Co., Ltd; Denki Kagaku Kogyo K.K.; Hachinohe Cement Co., Ltd; Hitachi Cement Co., Ltd; Kanda Cement Co., Ltd.; Mikawa-Onoda Cement Co.; Mitsubishi Materials Corp.; Mitsui Mining Co., Ltd; Myojo Cement Co., Ltd; Nihon Cement Co., Ltd; Nittetsu Cement Co., Ltd; Nippon Steel Chemical Co., Ltd; Onoda Cement Co., Ltd; Osaka Cement Co., Ltd; Sumitomo Cement Co., Ltd; Ryukyu Cement Co., Ltd; Tohoku Kaihatsu Co., Ltd; Tokuyama Sota K.K.; Toso Co., Ltd; Tsuruga Cement Co., Ltd; and Ube Industries, Ltd. These 23 producers are organized into 5 marketing groups.

[41] Transcript of the Commission's hearing in investigation No. 731-TA-461 (Final) (hereinafter "Transcript of the hearing"), p. 40.

Table 22
Portland cement:[1] Japanese production capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-90

(1,000 short tons, except as noted)

Item	1986	1987	1988	1989	1990
Production capacity[2]	114,140	120,067	109,399	108,647	107,551
Production	78,266	78,704	85,446	87,820	93,070
Capacity utilization (percent)	68.6	65.6	78.1	80.8	86.5
Shipments:					
Home market	74,611	75,188	81,720	82,915	88,821
Exports to the United States:					
Southern California region	540	690	1,323	1,650	1,125
The State of California	540	705	1,346	1,771	1,192
All other States	169	273	450	547	599
Total United States	709	979	1,796	2,318	1,790
Exports to third countries	2,959	2,452	1,928	2,515	2,369
Total shipments	78,279	78,618	85,444	87,749	92,980
End-of-period inventories	924	994	991	1,058	1,128

[1] Data include all Japanese producers of portland cement. These companies are Aso Cement Co., Ltd.; Chichibu Cement Co., Ltd.; Daiichi Cement Co., Ltd.; Denki Kagaku Kogyo K.K.; Hachinohe Cement Co., Ltd.; Hitachi Cement Co., Ltd.; Kanda Cement Co., Ltd.; Mikawa-Onoda Cement Co.; Mitsubishi Mining & Cement Co., Ltd.; Mitsui Mining Co., Ltd.; Myojo Cement Co., Ltd.; Nihon Cement Co., Ltd.; Nittetsu Cement Co., Ltd.; Nippon Steel Chemical Co., Ltd.; Onoda Cement Co., Ltd.; Osaka Cement Co., Ltd.; Sumitomo Cement Co., Ltd.; Ryukyu Cement Co., Ltd.; Tohoku Kaihatsu Co., Ltd.; Tokuyama Sota K.K.; Toso Co., Ltd.; Tsuruga Cement Co., Ltd.; and Ube Industries, Ltd.

[2] Derived by the staff, in the absence of actual data, by dividing cement production by clinker used in the production of cement, and multiplying the result by the difference between clinker capacity and clinker used in the production of soil stabilizing material. Reported clinker capacity was based on operating 24 hours per day, 43 weeks per year.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data supplied by counsel for Mitsubishi Mining & Cement Co., Ltd.; Nihon Cement Co., Ltd.; Osaka Cement Co., Ltd.; and Ube Industries, Ltd.

The following tabulation, based on information submitted by counsel for the Japanese producers, presents forecasts prepared by the Japanese Cement Association for 1991 and 1992 (in 1,000 short tons, except as noted):

Item	1991	1992
Portland cement:		
Production capacity	***	***
Production	***	***
Capacity utilization (percent)	***	***
Cement clinker:		
Production capacity	***	***
Production	***	***
Capacity utilization (percent)	***	***

According to counsel, five producers--Mitsubishi Materials Corp. (Mitsubishi Materials); Nihon Cement Co., Ltd. (Nihon); Onoda Cement Co., Ltd. (Onoda); Osaka Cement Co., Ltd. (Osaka); and Ube Industries, Ltd. (Ube)--account for virtually all exports of portland cement to the United States. Data on these producers' capacity, production, shipments, and end-of-period inventories are presented in tables 23 and 24. All five producers reported that they produced soil stabilizing material on the same equipment and machinery that they use to produce portland cement and cement clinker. Soil stabilizing material, however, accounted for less than * * * percent of each company's total production in 1990. All five companies reported plant closures and/or other types of reductions in their capability to produce portland cement and cement clinker. * * *.

Petitioners allege that Japanese producers of portland cement have undertaken acquisitions or projects in import terminals in the Southern California region that, by the end of 1990, will have a combined annual throughput capacity of 1.9 million tons.[42] Mitsubishi Materials owns Mitsubishi Cement Corp., a U.S. producer of portland cement located in Lucerne Valley, CA. As noted above, Onoda purchased California Portland Cement Co. late in the summer of 1990. Onoda also purchased a * * * share of CPC Terminals, an importer of portland cement. * * *.

The Commission also requested information regarding the cement industry in Japan from the U.S. Embassy in Tokyo. In a telegram to the Commission, the embassy cited sources at the Japan Ministry of International Trade and Industry (MITI) and the Cement Association of Japan predicting that total 1991 cement production would "increase by a few percent over 1990 primarily to help fill a continued bullish market demand in Japan." Sources also indicated that there are no major cement plant expansion or construction projects planned for 1991 as mandated by the existing "industry restructuring law" (effective 1987-95). The law was designed to reduce production capacity and restructure Japan's declining industries, including cement, through government financial aid programs. According to the telegram, an industry source predicts the revision of the law in the near future in order to cope with changing market conditions (shortages). The industry source also predicts that "Japanese cement exports to the United States and other markets in 1991 would level off or slightly increase." The industry source also reported to the embassy that "faced with a growing domestic market demand Japanese cement producers appear to have little export surplus," and that "the ITC case and the strong domestic demand apparently discouraged and reduced Japanese exports to the United States in 1990."

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[42] Petition, pp. 62-63.

Table 23
Portland cement:[1] Selected data on Japanese production capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-90

Item	1986	1987	1988	1989	1990
Production capacity[2] (1,000 short tons)	61,162	64,534	63,866	56,293	56,229
Production (1,000 short tons)	39,794	40,224	44,468	45,488	49,270
Capacity utilization (percent)	65.1	62.3	69.6	80.8	87.6
Shipments:					
Home-market sales (1,000 short tons)	36,636	37,167	41,218	41,343	45,829
Exports to the United States:					
Southern California region (1,000 short tons)	***	690	1,323	1,650	1,124
The State of California (1,000 short tons)	***	707	1,345	1,770	1,192
All other States (1,000 short tons)	***	***	***	***	***
Total United States (1,000 short tons)	***	***	***	***	***
Exports to third countries (1,000 short tons)	***	***	***	***	***
Total shipments (1,000 short tons)	39,460	39,746	44,072	45,170	49,020
End-of-period inventories (1,000 short tons)	342	315	365	443	492
Exports to the United States as a share of--					
Production (percent)	***	***	***	***	***
Total exports (percent)	***	***	***	***	***

[1] Data include only those Japanese producers that export portland cement to the United States. These companies are Mitsubishi Mining & Cement Co., Ltd.; Nihon Cement Co., Ltd.; Onoda Cement Co., Ltd.; Osaka Cement Co., Ltd.; and Ube Industries, Ltd.

[2] Derived by the staff, in the absence of actual data, by dividing cement production by clinker used in the production of cement, and multiplying the result by the difference between clinker capacity and clinker used in the production of soil stabilizing material.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data supplied by counsel for Mitsubishi Mining & Cement Co., Ltd.; Nihon Cement Co., Ltd.; Osaka Cement Co., Ltd.; and Ube Industries, Ltd; and by counsel for Onoda Cement Co., Ltd.

Table 24
Cement clinker:[1] Selected data on Japanese production capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-90

Item	1986	1987	1988	1989	1990
Production capacity[2] (1,000 short tons)	57,831	57,694	56,086	49,984	49,984
Production[3] (1,000 short tons)	40,110	37,245	40,900	42,841	46,496
Capacity utilization (percent)	69.4	64.6	72.9	85.7	93.0
Shipments:					
Home-market sales[4] (1,000 short tons)	37,189	35,507	38,389	39,293	42,328
Exports to the United States:					
Southern California region (1,000 short tons)	***	***	***	***	***
The State of California (1,000 short tons)	***	***	***	***	***
All other States (1,000 short tons)	***	***	***	***	***
Total United States (1,000 short tons)	***	***	***	***	***
Exports to third countries (1,000 short tons)	***	***	***	***	***
Total shipments (1,000 short tons)[3]	39,502	36,774	40,117	41,706	45,129
End-of-period inventories (1,000 short tons)	305	174	238	314	380
Exports to the United States as a share of--					
Production (percent)	***	***	***	***	***
Total exports (percent)	***	***	***	***	***

[1] Data include only those Japanese producers who export portland cement to the United States. These companies are Mitsubishi Mining & Cement Co., Ltd.; Nihon Cement Co., Ltd.; Onoda Cement Co., Ltd.; Osaka Cement Co., Ltd.; and Ube Industries, Ltd.

[2] Includes capacity to produce clinker used to produce soil stabilizing material.

[3] Includes production of clinker eventually used to produce soil stabilizing material.

[4] Includes internal consumption by firms in the production of portland cement.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data supplied by counsel for Mitsubishi Mining & Cement Co., Ltd.; Nihon Cement Co., Ltd.; Osaka Cement Co., Ltd.; and Ube Industries, Ltd; and by counsel for Onoda Cement Co., Ltd.

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury

U.S. imports

A majority of total U.S. imports of portland cement from Japan enters the Southern California region.[43] In 1990, 61 percent of such imports entered ports in the Southern California region. An additional 6 percent entered San Francisco in the northern portion of the State. In 1990, 40 percent of total U.S. imports from Mexico entered ports in the Southern California region, with an additional 7 percent entering in San Francisco.

During 1986-89, imports of portland cement from Japan into the Southern California region more than quadrupled, from 349,000 short tons to 1.6 million short tons (table 25). In 1990, imports from Japan into the Southern California region fell by 26 percent from the 1989 level. Imports from Japan rose from 23.7 percent of total imports into the Southern California region in 1986 to 58.4 percent in 1989. In 1990, imports from Japan accounted for 50.3 percent of total imports into the Southern California region. In value terms, the imports from Japan into the Southern California region rose from $11.9 million in 1986 to $50.1 million in 1989; in 1990, such imports fell to $40.8 million, or by 19 percent.

Imports of portland cement from Mexico into the Southern California region increased from 586,000 short tons in 1986 to 857,000 short tons in 1990, or by 46 percent.

Cumulative imports of portland cement from Japan and Mexico into the Southern California region rose from 934,000 short tons in 1986 to 2.2 million short tons in 1989. In 1990, cumulative imports fell to 2.0 million short tons, or by 7 percent.

Imports of cement clinker from Japan and Mexico into the Southern California region fell to zero in subsequent years from 26,000 short tons and 81,000 short tons, respectively, in 1986 (table 26).

Monthly imports of portland cement for 1990 are presented in table 27.

Market penetration by LTFV imports

Southern California.--Regional market penetration by imports of portland cement from Japan into the Southern California region increased from 4.9 percent in 1986 to 18.2 percent in 1989 (table 28). In 1990, market penetration of imports from Japan fell to 14.7 percent. Market-penetration ratios by imports from Mexico fell from 8.2 percent in 1986 to 6.8 percent in 1989 and rose to 10.6 percent in 1990. Market penetration of cumulative imports by portland cement from Japan and Mexico increased from 13.1 percent in 1986 to 25.3 percent in 1990. Imports of clinker from all sources into the Southern California region were inconsequential in 1986 and 1988 and nonexistent in other years (table 29).

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[43] For imports, official statistics of the U.S. Department of Commerce have been used. As mentioned above, examination of the responses to Commission importer questionnaires indicates that all, or virtually all, imports are shipped within the region they are received. Hence, it is assumed that the imports shown in the official statistics are shipped within the region they are received.

Table 25
Portland cement: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90

Region and source	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Japan	349	486	1,183	1,607	1,186
Mexico	586	624	642	595	857
Subtotal	934	1,110	1,825	2,201	2,043
All other sources	535	790	614	552	315
All sources	1,470	1,901	2,439	2,753	2,358
State of California:					
Japan	349	486	1,222	1,726	1,309
Mexico	693	857	916	884	1,009
Subtotal	1,042	1,343	2,138	2,611	2,318
All other sources	711	937	614	629	438
All sources	1,753	2,280	2,752	3,239	2,756
Total United States:					
Japan	514	686	1,621	2,180	1,939
Mexico	3,118	3,715	4,491	3,898	2,142
Subtotal	3,632	4,401	6,111	6,078	4,081
All other sources	8,454	9,430	9,114	7,504	6,925
All sources	12,086	13,831	15,225	13,583	11,006
	Value (1,000 dollars)[1]				
Southern California region:					
Japan	11,926	17,373	38,756	50,115	40,751
Mexico	21,046	21,456	21,205	19,303	29,533
Subtotal	32,972	38,829	59,961	69,418	70,284
All other sources	18,590	24,232	19,054	21,339	13,226
All sources	51,562	63,061	79,015	90,757	83,510
State of California:					
Japan	11,926	17,373	40,361	54,567	45,821
Mexico	24,525	27,827	28,986	27,476	34,972
Subtotal	36,451	45,200	69,347	82,043	80,793
All other sources	25,984	31,552	19,061	23,739	18,062
All sources	62,436	76,752	88,408	105,782	98,855
Total United States:					
Japan	17,854	23,864	53,339	71,024	69,890
Mexico	106,794	127,625	134,615	125,252	75,810
Subtotal	124,648	151,489	187,954	196,276	145,700
All other sources	306,000	334,175	336,148	303,940	288,385
All sources	430,647	485,664	524,102	500,216	434,086

See footnote at end of table.

Table 25--Continued
Portland cement: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90

Region and source	1986	1987	1988	1989	1990
	Percent of total quantity				
Southern California region:					
Japan	23.7	25.6	48.5	58.4	50.3
Mexico	39.8	32.8	26.3	21.6	36.3
Subtotal	63.6	58.4	74.8	80.0	86.6
All other sources	36.4	41.6	25.2	20.0	13.4
All sources	100.0	100.0	100.0	100.0	100.0
State of California:					
Japan	19.9	21.3	44.4	53.3	47.5
Mexico	39.6	37.6	33.3	27.3	36.6
Subtotal	59.4	58.9	77.7	80.6	84.1
All other sources	40.6	41.1	22.3	19.4	15.9
All sources	100.0	100.0	100.0	100.0	100.0
Total United States:					
Japan	4.3	5.0	10.6	16.1	17.6
Mexico	25.8	26.9	29.5	28.7	19.5
Subtotal	30.1	31.8	40.1	44.8	37.1
All other sources	69.9	68.2	59.9	55.2	62.9
All sources	100.0	100.0	100.0	100.0	100.0

[1] Landed duty-paid value.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

State of California.--Market penetration by imports of portland cement from Japan into the State of California increased from 3.3 percent in 1986 to 13.1 percent in 1989. In 1990, market penetration of such imports fell to 10.7 percent. Market-penetration ratios by imports from Mexico were in the 6- to 8-percent range during 1986-90. Cumulative imports of portland cement from Japan and Mexico into the State of California increased from 9.8 percent in 1986 to 19.8 percent in 1989. In 1990, market penetration of cumulative imports from Japan and Mexico fell to 18.9 percent.

Table 26
Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90

Region and source	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Japan	26	0	0	0	0
Mexico	81	0	0	0	0
Subtotal	108	0	0	0	0
All other sources	37	0	33	0	0
All sources	144	0	33	0	0
State of California:					
Japan	83	0	0	41	28
Mexico	81	0	0	0	0
Subtotal	164	0	0	41	28
All other sources	65	0	33	0	0
All sources	229	0	33	41	28
Total United States:					
Japan	234	37	137	235	163
Mexico	1,095	1,215	437	423	87
Subtotal	1,329	1,252	574	658	250
All other sources	2,643	2,436	1,345	1,087	1,604
All sources	3,972	3,687	1,919	1,745	1,854
	Value (1,000 dollars)[1]				
Southern California region:					
Japan	693	0	0	0	0
Mexico	2,784	0	0	0	0
Subtotal	3,477	0	0	0	0
All other sources	607	0	891	0	0
All sources	4,084	0	891	0	0
State of California:					
Japan	1,976	0	0	1,280	932
Mexico	2,784	0	0	0	0
Subtotal	4,760	0	0	1,280	932
All other sources	1,243	0	891	0	0
All sources	6,003	0	891	1,280	932
Total United States:					
Japan	6,191	1,222	4,281	7,598	5,969
Mexico	23,823	26,241	10,415	13,647	3,175
Subtotal	30,014	27,463	14,696	21,245	9,144
All other sources	70,553	68,753	45,401	41,282	63,178
All sources	100,567	96,216	60,097	62,528	72,322

See footnote at end of table.

Table 26--Continued
Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-90

Region and source	1986	1987	1988	1989	1990
	Percent of total quantity				
Southern California region:					
Japan	18.4	0	0	0	0
Mexico	56.3	0	0	0	0
Subtotal	74.7	0	0	0	0
All other sources	25.3	0	100.0	0	0
All sources	100.0	0	100.0	0	0
State of California:					
Japan	36.2	0	0	100.0	100.0
Mexico	35.4	0	0	0	0
Subtotal	71.6	0	0	100.0	100.0
All other sources	28.4	0	100.0	0	0
All sources	100.0	0	100.0	100.0	100.0
Total United States:					
Japan	5.9	1.0	7.1	13.5	8.8
Mexico	27.6	33.0	22.8	24.2	4.7
Subtotal	33.5	34.0	29.9	37.7	13.5
All other sources	66.5	66.0	70.1	62.3	86.5
All sources	100.0	100.0	100.0	100.0	100.0

[1] Landed duty-paid value.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 27
Portland cement: U.S. imports from Mexico,[1] Japan,[2] and all other sources, by regions and by months, 1990

Region and month	Imports from-- Mexico	Japan	Mexico & Japan	All other sources	All sources
	Quantity (1,000 short tons)				
Southern California region:					
January	83	150	234	0	234
February	92	83	175	36	211
March	83	87	169	0	169
April	55	104	159	0	159
May	102	124	226	29	255
June	155	42	197	39	235
July	74	146	220	0	220
August	103	70	173	0	173
September	11	153	165	0	165
October	31	226	257	25	282
November	29	0	29	84	113
December	38	0	38	103	141
Total	857	1,186	2,043	315	2,358
State of California:					
January	93	150	244	33	277
February	101	83	184	36	220
March	92	87	178	0	178
April	71	104	176	24	199
May	123	155	278	59	337
June	182	42	224	39	263
July	82	205	287	0	287
August	127	70	197	([3])	197
September	25	186	211	0	211
October	31	226	257	25	282
November	43	0	43	110	153
December	38	0	38	112	151
Total	1,009	1,309	2,318	438	2,756

See footnotes at end of table.

Table 27--Continued
Portland cement: U.S. imports from Mexico,[1] Japan,[2] and all other sources, by regions and by months, 1990

Region and month	Imports from-- Mexico	Japan	Mexico & Japan	All other sources	All sources
	Value (1,000 dollars)[4]				
Southern California region:					
January	2,338	4,820	7,158	0	7,158
February	2,617	2,740	5,357	1,319	6,677
March	2,567	1,930	4,496	0	4,496
April	1,879	3,837	5,716	0	5,716
May	4,059	4,392	8,451	1,312	9,763
June	5,640	1,463	7,103	1,604	8,707
July	2,214	5,078	7,292	0	7,292
August	3,905	2,604	6,509	0	6,509
September	512	5,702	6,213	0	6,213
October	1,182	8,185	9,368	1,099	10,467
November	1,138	0	1,138	3,735	4,873
December	1,483	0	1,483	4,155	5,638
Total	29,533	40,751	70,284	13,226	83,510
State of California:					
January	2,564	4,834	7,398	1,112	8,511
February	2,808	2,740	5,548	1,319	6,868
March	2,774	1,930	4,703	0	4,703
April	2,247	3,837	6,084	846	6,930
May	5,024	5,595	10,619	2,303	12,922
June	6,827	1,463	8,290	1,604	9,895
July	2,539	7,518	10,057	0	10,057
August	4,857	2,604	7,461	6	7,467
September	984	7,114	8,097	0	8,097
October	1,182	8,185	9,368	1,099	10,467
November	1,684	0	1,684	5,091	6,775
December	1,483	0	1,483	4,680	6,163
Total	34,972	45,821	80,793	18,062	98,855

[1] On Apr. 12, 1990, Commerce published notice in the Federal Register of its preliminary determination of sales at LTFV of portland cement and cement clinker from Mexico (55 F.R. 13817). On Aug. 30, 1990, Commerce published notice in the Federal Register of its final dumping order on portland cement and cement clinker from Mexico (55 F.R. 35443).

[2] On Oct. 31, 1990, Commerce published notice in the Federal Register of its preliminary determination of sales at LTFV of portland cement and cement clinker from Japan (55 F.R. 45831).

[3] Less than 500 short tons.

[4] Landed duty-paid value.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 28
Portland cement: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Apparent consumption	7,115	7,302	8,409	8,807	8,064
Imports from--					
Japan	349	486	1,183	1,607	1,186
Mexico	586	624	642	595	857
Subtotal	934	1,110	1,825	2,201	2,043
All other sources	535	790	614	552	315
All sources	1,470	1,901	2,439	2,753	2,358
State of California:					
Apparent consumption	10,643	10,887	12,402	13,213	12,235
Imports from--					
Japan	349	486	1,222	1,726	1,309
Mexico	693	857	916	884	1,009
Subtotal	1,042	1,343	2,138	2,611	2,318
All other sources	711	937	614	629	438
All sources	1,753	2,280	2,752	3,239	2,756
Total United States:					
Apparent consumption	88,448	90,317	90,296	89,175	87,836
Imports from--					
Japan	514	686	1,621	2,180	1,939
Mexico	3,118	3,715	4,491	3,898	2,142
Subtotal	3,632	4,401	6,111	6,078	4,081
All other sources	8,454	9,430	9,114	7,504	6,925
All sources	12,086	13,831	15,225	13,583	11,006
	Ratio of imports to consumption quantity (percent)				
Southern California region:					
Japan	4.9	6.7	14.1	18.2	14.7
Mexico	8.2	8.5	7.6	6.8	10.6
Subtotal	13.1	15.2	21.7	25.0	25.3
All other sources	7.5	10.8	7.3	6.3	3.9
Total imports	20.7	26.0	29.0	31.3	29.2
State of California:					
Japan	3.3	4.5	9.9	13.1	10.7
Mexico	6.5	7.9	7.4	6.7	8.2
Subtotal	9.8	12.3	17.2	19.8	18.9
All other sources	6.7	8.6	5.0	4.8	3.6
Total imports	16.5	20.9	22.2	24.5	22.5
Total United States:					
Japan	.6	.8	1.8	2.4	2.2
Mexico	3.5	4.1	5.0	4.4	2.4
Subtotal	4.1	4.9	6.8	6.8	4.6
All other sources	9.6	10.4	10.1	8.4	7.9
Total imports	13.7	15.3	16.9	15.2	12.5

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission, from statistics of the U.S. Bureau of Mines, and from official import statistics of the U.S. Department of Commerce.

Table 29
Cement clinker: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-90

Item	1986	1987	1988	1989	1990
	Quantity (1,000 short tons)				
Southern California region:					
Apparent consumption	6,698	6,596	6,600	7,018	7,032
Imports from--					
Japan	26	0	0	0	0
Mexico	81	0	0	0	0
Subtotal	108	0	0	0	0
All other sources	37	0	33	0	0
All sources	144	0	33	0	0
State of California:					
Apparent consumption	9,441	9,390	9,385	10,126	10,026
Imports from--					
Japan	83	0	0	41	28
Mexico	81	0	0	0	0
Subtotal	164	0	0	41	28
All other sources	65	0	33	0	0
All sources	229	0	33	41	28
Total United States:					
Apparent consumption	72,608	72,407	72,358	71,036	(1)
Imports from--					
Japan	234	37	137	235	163
Mexico	1,095	1,215	437	423	87
Subtotal	1,329	1,252	574	658	250
All other sources	2,643	2,436	1,345	1,087	1,604
All sources	3,972	3,687	1,919	1,745	1,854
	Ratio of imports to consumption quantity (percent)				
Southern California region:					
Japan	(2)	0	0	0	0
Mexico	1	0	0	0	0
Subtotal	2	0	0	0	0
All other sources	1	0	(2)	0	0
Total imports	2	0	(2)	0	0
State of California:					
Japan	1	0	0	(2)	(2)
Mexico	1	0	0	0	0
Subtotal	2	0	0	(2)	(2)
All other sources	1	0	(2)	0	0
Total imports	2	0	(2)	(2)	(2)
Total United States:					
Japan	(2)	(2)	(2)	(2)	(1)
Mexico	2	2	1	1	(1)
Subtotal	2	2	1	1	(1)
All other sources	4	4	2	2	(1)
Total imports	5	5	3	2	(1)

[1] Data not available from U.S. Bureau of Mines.
[2] Less than 0.5 percent.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission, from statistics of the U.S. Bureau of Mines, and from official import statistics of the U.S. Department of Commerce.

Prices

Portland cement is a primary ingredient in the production of concrete and, thus, is essential to all types of general construction, particularly residential buildings, commercial buildings, and highways. The demand for portland cement tends to be cyclical in nature because it is determined by the level of general construction. However, the cement business cycle is likely to be somewhat less volatile than individual construction markets because cement is used in nearly every type of construction, and cycles among these market segments frequently offset each other. In addition, overall cement consumption benefits from the fact that regional business cycles are often localized.[44] [45] The demand for portland cement also tends to be seasonal in nature, with peaks in consumption occurring in the summer months when the level of construction is highest.[46]

One indicator of construction is the number of authorizations for building permits for private nonresidential construction. The following tabulation shows the number of these authorizations in three of the five market areas for which pricing was requested:[47] [48]

	1986	1987	1988	1989	1990
Los Angeles, CA.....	3,750.7	3,722.3	4,179.2	3,642.7	(1)
San Diego, CA.....	982.0	1,042.6	1,071.4	1,094.0	896.1[2]
San Francisco, CA....	699.0	692.2	807.0	646.6	(1)

[1] Data not available.
[2] Data for January-November 1990.

In Los Angeles, the number of permit authorizations decreased less than 1 percent from 1986 to 1987, increased 12 percent from 1987 to 1988, and then decreased 13 percent in 1989. In San Diego, the number of permits increased by approximately 6 percent from 1986 to 1987, 3 percent from 1987 to 1988, and 2 percent from 1988 to 1989. At the time of this writing, data are available only for January to November 1990; the number of authorizations in that period (896.1) indicates a 13-percent decline from the corresponding period in 1989. In San Francisco, the number of authorizations decreased 1 percent from 1986 to 1987, increased 17 percent from 1987 to 1988, and then decreased 20 percent from 1988 to 1989.

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[44] In fact, many producers have cement plants in different regions, allowing them to take advantage of different demands in different regions.

[45] The U.S. Cement Industry, an Economic Report, Third Edition, January 1984, p. 15.

[46] Because of this seasonality, producers tend to build up inventories of clinker and finished cement in the winter; this allows producers to grind more cement per day during the building season (The U.S. Cement Industry, an Economic Report, Third Edition, January 1984, p. 14).

[47] Source: Construction Review, U.S. Department of Commerce, November/December 1990, pp. 31-34.

[48] These data were not available for Orange County or Riverside County, the other market areas for which pricing data were requested.

Because transportation costs for portland cement are high, shipments are generally made within 300 miles of the plant, and the market for cement tends to be regional in nature.[49] The demand in each region is influenced by many different factors, such as demographic movements, industrial development patterns, public spending levels,[50] and local availability of competitive building materials.[51]

In general, there are no substitutes for cement in the production of concrete.[52] There are, however, several substitutes for concrete. In the nonresidential construction market, structural steel is the primary substitute for concrete, while wood is the main substitute in residential construction. Other substitutes for concrete include asphalt (in the paving market), brick, precast concrete panels, and certain products of metal, glass, and plastics.[53]

Since portland cement has a low value-to-weight ratio, inland transportation costs are an important part of the final delivered price to a customer. Prices can differ from location to location, even within a single metropolitan area. However, because cement is a homogeneous product, prices charged by different suppliers to a customer in a given location tend to be similar at any point in time. When changing supply and demand conditions cause prices to decrease, prices tend to equalize between the competing firms within a relatively short time period, as each firm tries to maintain its market share.[54]

Cement prices have traditionally been determined through a "base-point" pricing system. Under this system, the cement mill closest to a particular customer is considered that customer's base point, and that mill effectively sets the price against which other producers must compete. A delivered price for cement consists of an f.o.b. mill price and any freight costs.[55] In areas where freight costs are regulated, a mill may be forced to reduce its f.o.b. price component and its gross revenues in order to compete with the base-point mill. In general, firms trying to enter new markets farther from their plant have to absorb additional freight costs in order to compete with firms closer

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[49] If water transportation is available, cement can be shipped farther than 300 miles, thus increasing the market area.

[50] For example, California voters approved a gasoline tax in 1990 that is earmarked for transportation projects. Since transportation projects are often cement-intensive, it is probable that cement consumption will be positively affected by this tax.

[51] A Competitive Assessment of the U.S. Cement Industry, Department of Commerce (July 1987), p. 9.

[52] A few U.S. producers reported that flyash may be used as a partial substitute for cement as an additive mixture in the production of concrete. However, flyash can only be used for certain applications, and in most cases can only replace 10-15 percent of the portland cement. Due to these limitations, flyash is not a widely accepted substitute for portland cement (Ibid, p. 10).

[53] Ibid, p. 11.

[54] One U.S. producer stated that there are two options for a firm when a lower price is offered in the marketplace: (1) maintain prices and lose market share or (2) maintain proportionate market share by meeting the lower prices (Transcript of the conference, p. 25).

[55] U.S. producers and importers reported that they sell portland cement on both a delivered and an f.o.b. basis.

to the markets. Thus, distance plays an important role in a supplier's willingness and ability to sell to a particular customer.

Shipments of portland cement, in bulk, by mode of transportation in 1989 are shown in table 30. Shipments of portland cement from the U.S. producers' plants to their distribution terminals were by rail, truck, and barge. Rail (40 percent) and barges and boats (42 percent) carried the majority of the cement to the terminals, and trucks accounted for most of the remainder. Shipments from distribution terminals to consumers accounted for 40 percent of all shipments to consumers, and were predominantly (85 percent) by truck. Approximately 60 percent of total shipments went directly to consumers and the vast majority, 92 percent, of such shipments were made by truck.[56] Most highway transport trucks carry about 25 short tons of cement, whereas a standard rail car holds about 100 short tons. A standard barge transports approximately 1,500 short tons of dry material.

Table 30
Portland cement: Bulk shipments from U.S. plants,[1] by types of carriers, 1989

(In thousands of tons)

Type of carrier	Plant to terminal	Terminal to consumers	Plant to consumers	Total to consumers
Railroad.....	8,915	1,525	3,041	4,566
Truck.....	3,408	27,210	44,306	71,516
Barge and boat..	9,392	2,879	214	3,093
Unspecified[2]....	517	495	581	1,076
Total.....	22,232	32,109	48,142	80,251

[1] Bulk shipments accounted for 95.3 percent of total shipments in 1989.
[2] Includes cement used at the plant.

Source: U.S. Bureau of Mines, Mineral Industry Surveys, "Cement in 1989," July 13, 1990.

The actual hauling of cement to end users is generally performed by independent common carriers or by subsidiary trucking firms of ready-mix companies. Many ready-mix companies have trucks and pick up the cement at the plant for their basic needs. Since transportation costs account for a significant portion of the delivered price, shipments are generally made relatively close to the plant. In fact, questionnaire responses of U.S. producers in California indicate that about 50 percent of shipments of cement are made within 100 miles of their plant or terminal; most of the remainder of shipments are made within 200 miles.

Producers and importers were asked to estimate the transportation costs for sales within specific distances from each firm's plant or storage facility. Average transportation costs reported by U.S. producers for shipments within 50

[56] Seven of nine responding U.S. producers stated that 100 percent of their 1989 shipments of portland cement to their customers were made by trucks. The remaining two reported that the shares were * * * and * * * percent for their shipments. Similarly, all four U.S. importers of Japanese cement reported that 100 percent of their shipments were made by truck.

miles of the plant were $5.91 per ton. Average shipping costs increased to $9.40 for shipments within 51-100 miles, $13.74 for 101-200 miles, and $17.39 for 201-300 miles. For shipments that are 500 or more miles from the plant, transportation costs increased significantly to about $34.00 per ton.[57] Average transportation costs reported by U.S. importers of Japanese cement were $7.07 for 0-50 miles and $11.30 for 51-100 miles.[58]

Leadtimes for delivery of domestic and imported cement are similar, with the majority of producers and importers responding that delivery occurs within 24 hours. Most producers and importers stated that the minimum quantity requirement for deliveries of cement is one truckload, i.e., 25-26 tons. Producers and importers do not generally charge a premium for subminimum quantity purchases; however, purchasers are sometimes required to pay shipping charges for a full truckload.

The Commission requested price data from U.S. producers and importers of Japanese cement for their sales to five distinct market areas in California.[59] [60] The market areas chosen for price comparisons were Los Angeles, Orange County, Riverside County, San Diego, and San Francisco. Producers and importers were requested to provide price data for their total shipments to the ready-mix customer purchasing the largest volume (within a 300-1,200 ton range) in the fourth full week of each month from January 1986 to December 1990. Usable pricing data were reported by seven U.S. producers and two importers of Japanese cement;[61] these producers and importers accounted for virtually all of the domestic production and the imports from Japan into Southern California. Pricing data are analyzed on a delivered basis because of the significance of freight costs for cement.

Price trends and comparisons.[62]--Weighted-average delivered prices for domestic cement sold in California generally declined in all market areas from January 1986 to March 1990. Trends in weighted-average delivered prices for Japanese cement were mixed during the period, but generally also declined.

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[57] * * *.

[58] * * *.

[59] In the context of this discussion, a market area is defined as a relatively narrow geographic area within which there is little variation between suppliers in freight charges to customers.

[60] Pricing information for imports from Mexico was also requested and is presented in app. E.

[61] Data from two other importers, * * *, were unusable because * * *.

[62] In a commodity-type market, such as cement, one would expect to see only minor differences in price among suppliers. Data collected in this investigation do show some under- and overselling. Some of this may be a function of the data collection process; in this investigation, data were collected for the largest sale in certain market areas. Purchaser data generally indicate smaller differences in prices for domestic and Japanese cement; however, there are still some differences. See the section entitled "Purchaser responses" for additional reasons for price differentials.

Los Angeles, CA.--Prices for domestic cement in the Los Angeles, CA, market area fluctuated during 1986 with no clear trend (table 31). Domestic prices exhibited a cyclical pattern through 1987 and 1988, falling during January-December and then increasing in the following January. Domestic prices increased irregularly during both 1989 and 1990. Overall, however, domestic prices were * * * percent lower in December 1990 than they were in December 1986.[63]

Prices for Japanese cement in this market area showed * * * from January 1986 to October 1987. They then * * * percent in November 1987 and remained at that level through March 1988. Japanese prices * * * percent in April 1988 and generally stayed at that level through the end of 1989. These prices * * * percent in * * * and were * * * for the remainder of the period. Overall, prices for Japanese cement were * * * percent lower in December 1990 than they were in the corresponding month of 1986. In all of the 60 months where comparisons were possible, the Japanese product undersold the domestic, with margins ranging from 0.8 to 17.2 percent.

Table 31
Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the **Los Angeles, CA, market area**, by months, January 1986-December 1990

	(Per short ton)		
Period	U.S. price	Japanese price	Margin (percent)
	* * * * * * *		

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Orange County, CA.--Prices for domestic cement in the Orange County market area declined irregularly during the period of investigation (table 32). Domestic prices decreased * * * percent in 1986, * * * percent in 1987, and * * * percent in 1988. Prices for domestic cement increased * * * percent during 1989 before falling * * * percent during 1990. Overall, prices for domestic cement were * * * percent lower in December 1990 than they were in December 1986.

Prices for Japanese cement in the Orange County market * * * during the period. These prices * * * percent in 1986, * * * percent in 1987, and * * * percent in 1988. Prices for Japanese cement * * * during the later half of 1989, * * * percent in that year, and * * * percent in 1990. In 57 of the 60 months where price comparisons were possible, the Japanese product was priced below the domestic product, with margins ranging from 1.7 to 13.4 percent. In the remaining 3 months, the Japanese product was priced between 0.4 and 1.3 percent above the domestic product.

[63] In discussing overall trends, prices in December 1990 are compared with those in the corresponding month in 1986 because of the often seasonal nature of prices in the cement market.

Table 32
Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the Orange County, CA, market area, by months, January 1986-December 1990

(Per short ton)

Period	U.S. price	Japanese price	Margin (percent)
*	*	*	* * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Riverside County, CA.--Weighted-average delivered prices for domestic cement sold in the Riverside County, CA, market area generally declined during the period of investigation (table 33). Domestic prices showed very little change during 1986, rising less than * * * percent. These prices declined * * * percent in 1987 and * * * percent in 1988 before showing a slight increase (* * * percent) in 1989. Prices for domestic cement showed a slight decrease (* * * percent) in 1990 and were * * * percent lower in December 1990 than they were in December 1986.

Prices for Japanese cement in this market area * * * during the period. These prices * * * percent in 1986 and * * * percent in 1987. Japanese prices then * * * percent in February 1988 and * * * for the remainder of the period. Overall, prices were * * *.[64] In all of the 59 months where comparisons were possible, the Japanese product undersold the domestic product, with margins ranging from 4.3 to 17.9 percent.

San Diego, CA.--Weighted-average prices for domestic cement sold in the San Diego, CA, market area generally declined during the period of investigation (table 34). Domestic prices declined * * * percent in 1986, * * * percent in 1987, and * * * percent in 1988. Prices showed a very slight increase in 1989 and virtually no change in 1990. Overall, prices were * * * lower in December 1990 than they were in the corresponding month of 1986.

Prices for Japanese cement sold in this market area were very spotty, thus making it difficult to determine price trends. Prices were reported for * * *. In all of the 12 months where price comparisons were possible, the Japanese product was priced below the domestic product by between less than 0.1 percent to 8.1 percent.

[64] No data were reported for December 1990.

Table 33
Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the **Riverside County, CA, market area**, by months, January 1986-December 1990

(Per short ton)

Period	U.S. price	Japanese price	Margin (percent)
*	*	*	*
*	*	*	*
*	*	*	*
*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 34
Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the **San Diego, CA, and the San Francisco, CA, market areas**, by months, January 1986-December 1990

(Per short ton)

	San Diego			San Francisco
Period	U.S. price	Japanese price	Margin (percent)	U.S. price
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

San Francisco, CA.--Weighted-average prices for domestic cement sold in the San Francisco, CA, market area * * * during the period (table 34). Domestic prices * * * percent in 1986 but then * * * percent in January 1987. Prices were * * * from February 1987 to March 1988 before * * * percent in April 1988. Domestic prices then * * * from August 1988 to December 1989, * * *. These prices * * * percent in January 1990 and * * *. Overall, prices were about * * * in December 1990 than they were in December 1986.

No prices were reported for sales of Japanese cement in the San Francisco market area; therefore, no price trends or comparisons are possible.

Purchaser responses

Purchaser questionnaires were sent to approximately 50 firms identified as ready-mix concrete producers that purchase portland cement.[65] Responses were received from 25 of these establishments, with 22 providing usable information.[66] These firms purchase portland cement to manufacture concrete and generally sell to building, highway, and residential building contractors.

Nationally, the cement industry has a relatively high degree of vertical integration, with many ready-mix concrete companies being owned by, or related to, cement producers. Vertical integration seems to be even more prevalent in the California market than in other markets. For example, of the 22 ready-mix companies that responded to the questionnaire, 8 of these were related to cement producers or importers.[67] Many ready-mix producers reported that they compete for sales with the facilities owned by the manufacturers or importers from whom they purchase cement. Manufacturers that were named as competitors of ready-mix producers include California Portland, Calaveras, Calmat, Mitsubishi, National, Riverside, and Southwestern Portland. Some purchasers stated that it is difficult to compete with these vertically integrated firms because the integrated firms are often able to offer lower prices for concrete.

Purchasers were asked if Japanese cement was available at a lower delivered price than domestic cement during 1990. Of the 20 firms that responded to this question, exactly half reported that Japanese cement was less expensive during that time. All but one of the 20 purchasers reported that the quality of the Japanese and domestic cement was comparable.[68] Despite the fact that comparable quality Japanese cement was frequently available at a lower price, 10 purchasers bought the higher-priced domestic cement. Five purchasers reported that they bought the domestic product because they are related to the supplier. Other reasons given for purchasing the domestic product included Buy American policies, reliability of supply, consistency of product, transportation distance, and availability.

Purchasers were also asked to list the three major factors generally considered by the firm in choosing a supplier from whom to purchase portland cement. The reasons given included pricing, quality, availability, Buy American policies, and traditional source of supply. Price was named most often as one of the three most important criteria. Fifteen of 22 purchasers ranked price in the top three, and 12 of them stated that price was the most important factor. The other most frequently mentioned factors were that the

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[65] Questionnaires were sent only to ready-mix producers because they are the largest consumers of portland cement, accounting for approximately 74 percent of consumption.

[66] These firms accounted for approximately 28 percent of U.S. shipments in the Southern California region in 1990 and 41 percent of imports from Japan into the Southern California region in 1990. Only one purchaser was from the Northern California region; it only purchased a small amount of cement.

[67] The cement suppliers listed as related parties include * * *.

[68] The remaining purchaser stated that the quality of the Japanese cement was superior to that of the U.S.-produced product.

supplier was a traditional source of supply and the quality of the product.[69] Availability was also frequently mentioned; this is important because cement is the main ingredient in concrete and thus, ready-mix concrete producers typically buy cement as often as every day.

All of the purchasers reported using trucks to pick up all of the cement that they buy. Ready-mix concrete producers use both common carriers and their own private vehicles to transport cement.[70] Many of these ready-mix companies use privately-owned trucks for transportation; this can be both cost-effective and convenient for the frequent purchases that are made. Purchasers were also asked to estimate the typical U.S.-inland freight costs for transporting both domestic and imported portland cement. Data received indicate that these costs are similar for domestic and imported cement. Freight costs averaged between 5 and 20 percent of the f.o.b. plant and warehouse prices. Ten purchasers also reported that both U.S. producers and Japanese suppliers generally equalize freight from the plant or terminal to their location.

Prices.--Purchasers were requested to provide pricing data for their largest purchases (within a 500-1,200 ton range) of both domestic and Japanese cement for a specific market area during the period January 1989-December 1990.[71] Because purchasers were selected without regard to market area, pricing data were received for a number of cities where market conditions varied substantially. Therefore, weighted-average purchase prices are not calculated. However, several purchasers reported purchase prices for both domestic and Japanese cement; price comparisons are shown for these firms' purchases of domestic and Japanese cement.[72]

Purchaser price data are presented in appendix F.[73] Whereas producer and importer data show consistent underselling by the imported product, purchaser data were mixed. There did not appear to be a distinct pattern of underselling or overselling with respect to location or the quantity purchased. For example, areas nearest the ports did not necessarily show underselling by the Japanese.[74] Three firms reported virtually the same price for both domestic and imported cement; these firms were located in * * *. In the market area of * * *, * * * reported consistently higher prices for

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[69] Quality was named by two purchasers as the number one consideration, by five purchasers as the number two consideration, and by one as the third most important criterion.

[70] Nine of 18 purchasers reported using common carriers to deliver over 90 percent of their cement purchases; the remaining 9 stated that common carriers were used for less than 35 percent of all purchases.

[71] Purchasers were asked to indicate the city and state for which pricing data were reported.

[72] In some cases, the purchaser bought imported cement and was able to name the supplier but unable to identify the country of origin. In these cases, notations showing the countries from which that supplier imports cement are made at the end of the tables.

[73] * * * other purchasers reported prices for domestic and Japanese cement; these are not presented in a table because the prices represent related party purchases.

[74] In some cases, purchaser price data show equal or lower prices for smaller quantities (see app. F).

Japanese cement. The market areas that demonstrated the most underselling by Japanese cement were * * *.

For all purchasers, prices for Japanese and domestic cement were the same in 59 of the 240 months where price comparisons were available. In 123 months, purchase prices for Japanese cement were lower than those for domestic cement; margins ranged from less than 0.05 to 14.0 percent. In the remaining 58 months, Japanese cement was priced above the domestic cement, with margins ranging from less than 0.05 to 6.9 percent.

Lost sales and lost revenues

The Commission received allegations of lost sales and lost revenues from five U.S. producers. The 19 lost sales allegations totaled approximately $26.4 million and involved 409,920 tons of portland cement allegedly purchased from Japanese suppliers during January 1986-December 1990. The 29 lost revenue allegations totaled approximately $4.1 million and involved 1,309,081 tons of cement. Staff contacted three purchasers; a summary of the information obtained follows.

* * * named * * * in a lost sales allegation totaling $* * * and involving * * * tons of portland cement allegedly purchased from Japanese suppliers in * * *. * * * had no information on this allegation. * * * is a * * *. According to * * *, * * * typically purchases finished concrete for its projects but has on occasion purchased cement for specific jobs. * * * was unable to provide any specific information concerning the firm's cement purchases.

* * * cited * * * in two lost sales allegations totaling $* * * and involving * * * tons of cement. These lost sales allegedly occurred in * * *. * * * stated that U.S. companies did not receive these contracts because they were unable to provide the total amount of cement needed. Additionally, in the * * * allegation, * * * stated that * * * did not receive the contract because its bid was the highest price. The Japanese price quote and other U.S. companies' price quotes were significantly lower. In the * * * allegation, the * * * bid was much higher than prevailing market prices. * * * stated that it was likely that * * *. Moreover, according to * * *. * * * commented that the most important criterion for his company is consistency of product. * * * believes that to achieve this objective, cement should be purchased from one supplier; therefore, * * * was not a suitable source.

Currently, * * * purchases approximately * * * tons of cement nationally; this amount is much lower than the * * * tons that it purchased two years ago. * * * stated that this decline is due to the downturn of the U.S. construction market. Currently, * * *. * * *.

* * * alleged that it lost revenues of $* * * on three separate sales of cement to * * * during the month of * * *. These allegations involved a total of * * * tons of cement. * * * stated that its U.S. suppliers did reduce their prices to meet the competition of Japanese suppliers. * * * reported that * * * has purchased Japanese cement but prefers to buy domestic cement. * * * also stated that its U.S. suppliers have met the prices of imports on virtually all sales to * * *.

* * * alleged that it lost revenues of $* * * on * * * tons of cement that it sold to * * *. * * * also alleged that it lost a sale to * * * totaling approximately $* * * and involving * * * tons of cement during * * *. * * * did not comment on the specific allegation but did provide information on * * *'s purchasing habits. Until * * * used to buy all of its cement from domestic suppliers; however, * * * now buys from both Japanese and domestic suppliers. According to * * *, the price of imported cement has generally been lower than that of the domestic cement. He stated that U.S. cement manufacturers have not been able to raise prices as much as one would expect given the supply and demand conditions in the market. * * * stated that domestic prices might be higher if the imports were not in the marketplace; however, he also stated that domestic producers probably would not have enough cement to satisfy the market.

* * * alleged that it lost revenues of $* * * on a sale of * * * tons of portland cement to * * * in * * *. * * * confirmed this allegation. * * * reported that U.S. producers have lowered their prices in order to remain competitive with imports from Japan. * * * has purchased Japanese cement and has found the quality of the Japanese cement to be comparable to that of the domestic. * * * stated that the main reason Japanese cement was purchased was because it was lower-priced.

* * * reported that it lost $* * * on a sale of * * * tons of portland cement to * * * in * * *, due to competition from Japanese cement. * * * stated that * * * did get domestic suppliers to lower the price of their cement based on the lower prices of Japanese cement. * * * reported that cement is a fungible product and the main consideration in a purchasing decision is price. * * * purchases cement from several suppliers and all of them, both domestic producers and importers, offer the same quality, the same services, and the same delivery lead time. * * * stated that * * * can switch or threaten to switch suppliers if a new supplier's lower price is not met by the current suppliers.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1986-December 1990 the nominal value of the Japanese yen fluctuated, appreciating 43.7 percent overall relative to the U.S. dollar (table 35).[75] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency showed an overall appreciation of 17.3 percent for the period January 1986 through December 1990.

[75] International Financial Statistics, March 1991.

Table 35
Exchange rates:[1] Indexes of nominal and real exchange rates of the Japanese yen, and indexes of producer prices in the United States and Japan,[2] by quarters, January 1986-December 1990

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index[3]
1986:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	98.2	96.3	110.4	108.3
July-September.....	97.7	93.8	120.6	115.8
October-December....	98.1	92.8	117.2	111.0
1987:				
January-March.....	99.2	92.2	122.7	114.0
April-June.....	100.8	91.5	131.7	119.5
July-September.....	101.9	92.6	127.9	116.2
October-December....	102.4	92.3	138.4	124.7
1988:				
January-March.....	103.0	91.3	146.8	130.0
April-June.....	104.7	90.9	149.6	130.0
July-September.....	106.2	91.8	140.5	121.5
October-December....	106.7	91.0	150.0	128.0
1989:				
January-March.....	109.0	91.5	146.3	122.7
April-June.....	111.0	93.9	136.1	115.1
July-September.....	110.5	94.6	132.0	113.0
October-December....	111.0	94.4	131.3	111.8
1990:				
January-March.....	112.6	94.8	127.0	107.0
April-June.....	112.4	95.6	121.0	102.9
July-September.....	114.4	95.6	129.4	108.1
October-December....	117.8	96.2	143.7	117.3

[1] Exchange rates expressed in U.S. dollars per Japanese yen

[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.

[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Japan.

Note.--January-March 1986 = 100.

Source: International Monetary Fund, International Financial Statistics, March 1991.

APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-461 (Final)]

Gray Portland Cement and Cement Clinker From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-461 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheading 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LFTV). Commerce is scheduled to make its final LTFV determination on or before March 15, 1991, and the Commission will make its final injury determination within 45 days after receipt of Commerce's final determination (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of gray portland cement and cement clinker from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 18, 1990, by the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, of Washington, DC. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 28465, July 11, 1990).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the later entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later then twenty-one (21) days after the application of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 1, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Request to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 11, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a perhearing conference to be held at 9:30 a.m. on March 14, 1991, at U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is March 14, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due March 15, 1991.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

Prehearing briefs submitted by parties must conform with the provisions of §207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevent to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 27, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due March 28, 1991. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigation on or before March 27, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than April 1, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing

briefs. A nonbusiness proprietary version of such additional comments is due April 2, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.20 of the Commission's rules (19 CFR 207.20)

Issued: November 21, 1990.

By order of the Commission.

[FR Doc. 90-27936 Filed 11-17-90; 8:45 am]

BILLING CODE 7020-02-M

International Trade Administration

[A-588-815]

Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Japan

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

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that gray portland cement and clinker (cement and clinker) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances do not exist with respect to imports of cement and clinker from Japan. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the Customs Service to continue to suspend liquidation of all entries of cement and clinker from Japan, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: March 22, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta, David C. Smith, or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0186, 377-3798, 377-1769, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that cement and clinker from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination (55 FR 45831, October 31, 1990) the following events have occurred. On October 31 and November 1, 1991, respondents requested that we postpone making our final determination for a period of 60 days pursuant to section 735(a)(2)(A) of the Act. On November 19, 1990, we published a notice postponing the final determination until March 15, 1991 (55 FR 48146).

On October 25, 1990 Onoda Cement Co., Ltd. (Onoda) submitted a request that we exclude oil well cement from the scope of this investigation. On November 9, 1990 petitioners filed a submission disagreeing with Onoda's exclusion request. On December 26, 1990, Onoda revised its exclusion request to include only certain classes o. oil well cement. On November 30, 1990, Mitsui & Co. (U.S.A.), a U.S. importer of the subject merchandise, requested that the Department confirm that microfine cement is outside the scope of this investigation. (See "Scope of the Investigation" section of this notice.)

We verified questionnaire responses in Tokyo, Japan from January 14 through 23, 1991, and in Seattle, Washington from January 24 through 30, 1991. Petitioners and Onoda submitted comments for the record in case briefs on February 25, 1991. All parties submitted rebuttal briefs on February 28, 1991. On March 1, 1991, we held a public hearing in which petitioners and respondents participated.

Scope of the Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement.

The Department determined that microfine cement is outside the scope of this investigation. We based our determination on two factors: (1) Petitioners never intended to include this cement type within the scope of the investigation; and (2) this cement type differs from the subject merchandise in terms of physical characteristics, end-uses, and the distribution channels within which it moves. Microfine cement is a blended hydraulic cement classified by the American Society for Testing Materials (ASTM) as a slag cement. It is classified under the Harmonized Tariff Schedules (HTS) item number 2523.90 as "other hydraulic cement."

With respect to oil well cement, we have insufficient information on the record at this time upon which to base a conclusion that certain classes of oil well cement should be excluded from the scope of the investigation. Therefore, we continue to include oil well cement within the scope of the investigation. (See DOC Position to Comment 22 in the "Interested Party Comments" section of this notice for further explanation.)

Gray portland cement is currently classifiable under HTS item number 2523.29, and clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Period of Investigation

The period of investigation (POI) is December 1, 1989 through May 31, 1990.

Such or Similar Comparisons

Pursuant to section 771(16) of the Act, we established two categories of "such or similar" merchandise: Cement and clinker. Where there were no sales of identical merchandise in the foreign market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the ASTM standards described below. We used home market or third country sales as the basis for foreign market value (FMV), as described in the "Foreign Market Value" section of this notice.

For both respondents, we compared U.S. sales of bulk cement to home market sales of bulk cement. For Onoda, we also compared U.S. sales of cement which was further manufactured into ready-mix to home market sales of bulk cement, and U.S. sales of clinker to a third country sale of clinker. Both Onoda and Nihon Cement Co., Ltd (Nihon) reported that they sold a small quantity of bagged cement to the United States during the POI. Because of the small volumes involved, we did not require respondents to report these sales. (See DOC Position to Comment 15 in the "Interested Party Comments" section of this notice.)

Product comparisons were made on the basis of standards established by the ASTM. All of the cement sold in the United States during the POI fell within two ASTM standards: Type I and Type II. Onoda sold both Type I and Type II cement in the United States; Nihon sold only Type II in the United States. Both respondents sold at least three types of cement in the home market during POI: Ordinary portland cement (NC), moderate heat cement (MC), and high early strength cement (VC).

Both petitioners and respondents agree that NC is most similar to Type I and we have made product comparisons on this basis. Based on our preliminary determination and information submitted on the record, and consistent with the Department's finding in the 1983 investigation (see Final Determination of Sales at Less Than Fair Value; Portland Hydraulic Cement from Japan, 48 FR 41059, September 13, 1983), we have determined that MC is the home market cement type which is most similar to Type II for comparison purposes. (See DOC Position to Comment 1 in the "Interested Party Comments" section of this notice).

Fair Value Comparisons

To determine whether sales of cement and clinker from Japan to the United States were made at less than fair value, we compared the United States prices to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Onoda, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. Where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. For Nihon, we based United States price on purchase price because all sales were made directly to unrelated parties prior to importation into the United States.

A. Onoda

For Onoda, we calculated purchase price based on f.o.b. Japanese port prices. We made deductions, where appropriate, for discounts and loading charges, in accordance with section 772(d)(2) of the Act. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of value added tax (VAT) that would have been collected if the merchandise had not been exported.

For certain sales of bulk cement originally reported by Onoda as ESP sales which we reclassified as purchase price sales, we calculated purchase price based on c.i.f. prices to which we added the additional revenue associated with these sales. (See DOC Positions to Comments 12 and 13 in the "Interested Party Comments" section of this notice for further discussion of this issue.) We made deductions, where appropriate, for loading charges, ocean freight, marine insurance, harbor and Customs user fees. We also added to the net unit price the amount of VAT that is not collected by reason of exportation of the merchandise.

We calculated ESP based on c.i.f. picked up or delivered prices. We made deductions, where appropriate, for discounts, loading charges in Japan, ocean freight, marine insurance, harbor and Customs user fees, U.S. unloading charges, U.S. inland freight and inland insurance. In accordance with section 772(e) (1) and (2) of the Act, we made additional deductions, where appropriate, for credit expenses, trading company commissions, warranty expenses, and indirect selling expenses. Indirect selling expenses consisted of U.S. terminal costs, advertising, technical services, dispatcher costs, product liability expenses, inventory carrying costs, general and administrative (G&A) expenses, other indirect selling expenses incurred in

Japan and the United States, and quality control expenses incurred in Japan and the United States.

We included in our deductions of the trading company commissions referred to above, an amount equivalent to the commission granted by Onoda to the trading company involved in the U.S. sales negotiation process. Because Onoda had not claimed this commission as a selling expense for ESP sales, we used best information available to compute the commission. As best information available, we used the verified f.o.b. price of the subject merchandise to the trading company to which we applied the verified commission percentage reported by Onoda.

Onoda claimed U.S. terminal costs as movement charges. Based on our findings at verification, we determined that these costs are pre-sale warehousing expenses and, therefore, are more appropriately classified as indirect selling expenses. (See DOC Position to Comment 3 in the "Interested Party Comments" section of this notice for further discussion of this issue.)

For ready-mix sales, in addition to the aforementioned deductions associated with the subject merchandise, we deducted all value added resulting from further manufacturing performed on the imported merchandise after its importation into the United States, pursuant to section 772(e)(3) of the Act. This value added comprised two parts: (1) The costs associated with the production and sale of ready-mix, other than the costs associated with the subject merchandise, and (2) a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the ready-mix all production and selling costs incurred by respondent for the ready-mix. The total profit or loss was then allocated proportionately to the components of cost. Only the profit or loss attributable to the value added was deducted.

We have determined that further manufacturing costs included (1) The costs of manufacture (cost of materials and the related labor and overhead costs), (2) movement charges, and (3) general expenses, including selling, general and administrative (SGA) expenses and interest expenses. (See DOC Position to Comment 17 in the "Interested Party Comments" section of this notice.)

In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of VAT that would have been collected on the export sale had it been subject to the tax. (See DOC Position to Comment 4 in the "Interested Party Comments" section of this notice.)

For both purchase price and ESP sales, Onoda reported quality control expenses as direct selling expenses. Based on our findings at verification, we determined that these expenses are more appropriately classified as indirect selling expenses. (See also DOC Position to Comment 9 in the "Interested Party Comments" section of this notice for further explanation.)

B. Nihon

For Nihon, we calculated purchase price based on the f.o.b. Japanese port price (Kamiiso). We made deductions for loading, ship survey fees, foreign brokerage and demurrage. (See DOC Position to Comment 30 in the "Interested Party Comments" section of this notice.) In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of VAT that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of cement and clinker in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of cement and clinker to the volume of third country sales of cement and clinker, in accordance with section 773(a)(1) of the Act. Both respondents had viable home markets with respect to sales of cement made during the POI. For Onoda's sales of clinker, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, in accordance with § 353.48(a) of the Department's regulations, we determined that home market sales of clinker did not constitute a viable basis for calculating FMV.

In selecting which third country market was the most appropriate for comparison purposes, we selected the third country market with the most similar merchandise and the largest volume of sales, in accordance with § 353.49(b) of the Department's regulations. We then determined whether this third country had an "adequate" volume of sales, within the meaning of § 353.49(b)(1) of the Department's regulations. We determine that the volume of sales to a third country market is adequate if the sales of such or similar merchandise exceed or are equal to five percent of the volume sold to the United States.

In accordance with section 773 of the Act, we calculated FMV for Onoda based on home market sales prices or third country sales prices, as appropriate. For Nihon, we calculated FMV based on home market sales prices.

A. Onoda

For Onoda, we calculated FMV of cement sales based on ex-factory, c.&.f. terminal or delivered prices to unrelated and related customers in the home market. We used the related party sales because the prices to related parties were determined to be at arm's-length, in accordance with § 353.45(a) of the Department's regulations.

For comparisons to purchase price sales, we made deductions, where appropriate, for discounts, rebates, inland freight and tanker freight. We did not make a deduction for claimed service station costs. Based on our findings at verification, we determined that these costs are pre-sale warehousing expenses and, therefore, more appropriately classified as indirect selling expenses. (See also "United States Price" section and DOC Position to Comment 3 in the "Interested Party Comments" section of this notice for further discussion of this issue.)

We also did not make a deduction for claimed collateral rebates because we determined that they did not constitute allowable rebate expenses for purposes of our analysis. (See DOC Position to Comment 7 in the "Interested Party Comments" section of this notice.)

Pursuant to § 353.56 of the Department's regulations, we made circumstances of sale adjustments, where appropriate, for differences in credit expenses and revenue obtained from late-paying customers. We recalculated home market credit expenses to account for discounts. (See DOC Position to Comment 6 in the "Interested Party Comments" section of this notice.)

We made further adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with § 353.56(a)(2) of the Department's regulations. Where commissions were paid in one market and not in the other, we allowed an adjustment for indirect selling expenses incurred in the other market to offset commissions, in accordance with § 353.56(b) of the Department's regulations. For comparisons to those sales which we reclassified as purchase price sales, we included in our adjustment for differences in commissions an amount equivalent to the commission granted by Onoda to the trading company involved in the U.S. sales negotiations process. To calculate this commission, we used best information available. (See "United

States Price" section of this notice for explanation.)

We also made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales. We computed the VAT adjustment based on a U.S. price net of discounts. (See DOC Position to Comment 4 in the "Interested Party Comments" section of this notice.)

For comparisons to ESP sales, we made further deductions for home market indirect selling expenses, comprised of advertising, technical services, general indirect selling expenses, inventory carrying costs, quality control expenses, service station costs and other selling expenses associated with distribution terminal scrap and disposal of obsolete equipment. We capped the amount deducted for home market indirect selling expenses by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56(b)(2) of our regulations. For ESP sales of ready-mix, we computed the amount of the cap based on the portion of indirect selling expenses attributable to the subject merchandise.

We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales. For comparisons to ESP sales of bulk cement, we computed the VAT adjustment based on a United States price net of discounts. For comparisons to ESP sales of ready-mix, we computed the VAT adjustment based on the United States price of the subject merchandise net of discounts. (See DOC Position to Comment 4 in the "Interested Party Comments" section of this notice.)

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. (See DOC Position to Comment 2 in the "Interested Party Comments" section of this notice.)

We calculated FMV of clinker sales based on f.o.b. Japanese port prices. We made deductions, where appropriate, for discounts and loading charges. Pursuant to § 353.56 of the Department's regulations, we made a circumstance of sale adjustment, where appropriate, for differences in credit expenses. We recalculated third country and U.S. credit expenses based on gross prices net of discounts.

For both home market and third country sales, Onoda reported quality control expenses as direct expenses. Based on our findings at verification, we determined that these expenses are more appropriately classified as indirect selling expenses. (See Comment 9 of the "Interested Party Comments" section of this notice for further explanation.)

B. Nihon

For Nihon, we calculated FMV based on c. & f. terminal or delivered prices to related and unrelated customers in the home market. For sales made by two of Nihon's three related company producers, we based FMV on best information available. (See DOC Position to Comment 23 in the "Interested Party Comments" section of this notice.) For Nihon's related party distributors we used the sales information because the prices to related party distributors were determined to be at arm's-length, in accordance with § 353.45(a) of the Department's regulations. (See DOC Position to Comment 24 in the "Interested Party Comments" section of this notice.) We made deductions, where appropriate, for discounts, inland freight, and loading and unloading costs. (See DOC Position to Comment 27 in the "Interested Party Comments" section of this notice.)

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses pursuant to § 353.56 of the Department's regulations. We recalculated home market and U.S. credit expenses using the average short-term borrowing rate reported for the POI. (See DOC Position to Comment 31 in the "Interested Party Comments" section of this notice.) We recalculated home market inventory carrying costs using the average short-term borrowing rate reported for the POI and recalculated indirect selling expenses using verified total sales data. (See DOC Position to Comment 29 in the "Interested Party Comments" section of this notice.)

Where commissions were paid to unrelated parties in one market and not in the other market, we allowed an adjustment for indirect selling expenses incurred in the other market, in accordance with § 353.56(b) of the Department's regulations. We also made a circumstance of sale adjustment for VAT incurred on home market sales and not one export sales. We computed the VAT adjustment based on United States price.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of cement and clinker from Japan. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value, and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to § 353.16 (f) and (g) of our regulations, we selected the period from May 18, 1990 (the day the "proceeding began") to August 16, 1990, as the base period. We then compared the quantity of imports during the base period for each respondent to the imports during the immediately preceding period of comparable duration. We found that shipments from neither of the respondents had increased by at least 15 percent during the base period. Based on the above finding, we determined that imports of gray portland cement and clinker have not been massive over a relatively short period.

Since we did not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that such merchandise was being sold at less than fair value. Therefore, we find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cement and clinker from Japan.

Verification

As provided in section 776(b) of the Act, we verified all information used in making our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1

All parties agree that the merchandise sold in the United States is both Type I and Type II cement. It is also undisputed that Type I cement is to be compared to home market sales of NC. However, the parties disagree as to the appropriate product match for U.S. sales of Type II merchandise. Petitioners argue that the most similar home market merchandise is VC, not MC as the Department preliminarily determined. Petitioners point out that section 771(16)(B) of the

Act directs the Department to look for a home market cement product that is most similar to Type II cement "in both material or materials and in the purposes for which used." Petitioners maintain that both Type II and VC are general use cements with approximately the same compressive strengths and Blaine fineness levels, and that both cements have tricalcium aluminate levels sufficient "to prevent sulfate attack in concrete."

Respondents assert that the critical comparison specification is the tricalcium aluminate content of cement and that only MC meets the specifications for sale in the United States. Respondents note that MC cement meets the requisite levels of tricalcium aluminate, while VC cement "with its much higher tricalcium aluminate levels, cannot be used for [Southern California construction] purposes." They note that cement which exceeds the maximum eight percent tricalcium aluminate content is not merchantable as Type II. They point out that the Department's 1983 investigation, and the Department's October 11, 1990 memorandum and preliminary decision in this case, all refer to tricalcium aluminate as the critical component for matching purposes. Respondents also note that MC is a general use cement whereas VC is a specialty use cement requested by contractors when rapid hardening time is required. Respondents rebut petitioners' argument that MC is necessarily a specialty cement because of lower sales volumes (as compared to VC) by citing the Department's 1983 decision which disposed of the issue by finding that "it is immaterial that [ordinary portland] cement is sold in a greater volume than was moderate heat."

DOC Position

We agree with respondents and have made product comparisons using MC cement. The statute directs the Department to select the most similar product match in terms of materials and use, among other criteria (section 771(16)(B)(ii) of the Act). It is evident from the record that there are many chemical and physical specifications for the subject merchandise. Further, arguments for matching any two types of cement can be made by selecting one or two particular characteristics or properties to the exclusion of all others. The key to proper analysis under section 771(16)(B)(ii) is identification of the properties a U.S. contractor desires when requesting Type II cement. The ASTM promulgates the definitive industry standards for portland cements. These standards are used by U.S. contractors in determining the appropriate type of concrete for a particular project. Standard C-150 is the "Standard Specification for Portland Cement." The scope of that standard defines Type II as [f]or general use, more especially when moderate sulfate resistance or *moderate heat of hydration* is desired" (emphasis added). Those characteristics are principally determined by the tricalcium aluminate content of cement and the record is clear that tricalcium aluminate levels of MC fall within the maximum allowable range of eight percent and that VC, when calculated pursuant to the ASTM standard, exceeds the maximum allowable limit.

Comment 2

Petitioners contend that the Department should disallow Onoda's claimed difference in merchandise adjustments for comparisons between MC and Type II cements for the following reasons; (1) Onoda's claims for comparisons of these two cement types are largely inconsistent with Nihon's claims; (2) Onoda failed to submit timely factual information justifying its claim for difference in merchandise adjustments; (3) Onoda has failed to establish that any cost differential between Type II and MC is related to differences in the physical characteristics of the merchandise in accordance with the Department's regulations; and (4) the information provided by Onoda establishes that any cost differences between the products result from plant location and production efficiencies, rather than physical characteristics.

With respect to Nihon, petitioners argue that the Department must make a difference in merechandise adjustment based on best information available to account for differences in physical characteristics between MC and Type II cement produced and sold by Nihon during the POI. Petitioners question Nihon's claim that its cost accounting system does not recognize a cost difference betwen MC and Type II and assert that record evidence shows that the two products are not identical with respect to physical and chemical characteristics. As best information available, petitioners suggest that the Department should compare variable costs at only one of Nihon's two facilities which produced MC during the POI, the Kawara plant, which produced a greater quantity of MC than did Nihon's other home market facility at Saitama. Petitioners suggest that variable costs for MC produced at Kawara can be compared to variable costs for Type II produced at Nihon's Kamiiso facility.

Onoda maintains that the Department should grant its claimed difference in merchandise adjustment. Respondent states that the record contains descriptions of the physical and chemical differences of the comparable cements as well as the differences in the variable costs of production. It also asserts that the claimed difference in merchandise adjustment was verified by the Department. Respondent argues that because the comparable merchandise is produced in different plants, differences in variable costs, to be calculated meaningfully, must be based on a weighted-average of total variable costs across all plants. Respondent further asserts that this approach is consistent with the Department's normal practice.

Nihon asserts that it does not recognize a cost difference between Type II and MC cements while acknowledging that the two products are not identical. Nihon maintains that the Department verified that no variable cost differences exist between the two cement types and suggests that using best information available for its inability to provide difference in merchandise cost information that does not exist is inappropriate. Furthermore, Nihon maintains that petitioners' suggested best information available methodology is arbitrary and should be rejected. If petitioners' position is accepted by the Department, Nihon maintains that the appropriate difference in merchandise adjustment, consistent with the Department's practice, would be to compare weighted-average variable costs at both the Saitama and Kawara plants with respect to MC to the variable costs of Type II produced at Kamiiso.

DOC Position

All parties to this proceeding maintain that there are differences in physical characteristics (both chemical and technical) which exist between the types of cement being compared in this investigation. In their respective responses to the Department's questionnaire, respondents explained the nature of these differences and quantified these differences through variable costs of production. However, Nihon did not quantify these differences with respect to Type II separately since it simply assigns MC costs to Type II in its accounting system. Onoda quantified variable costs for comparisons of Type II and MC cement as well as Type I and ordinary portland cements.

We disagree with petitioners with respect to Onoda. As the verification

report indicates, we verified Onoda's claimed difference in merchandise adjustment and found it to be an accurate representation of the relevant variable costs of production as reflected in its actual cost accounting records. We also found the weighted-average calculation methodology used by Onoda to be consistent with Department practice. Given the fact that most physical differences between types of cement arise from differences in the production process (e.g., amount and duration of heat), rather than from differences in component materials, we are satisfied that Onoda has reasonably tied cost differences to physicial differences. Furthermore, there is no evidence on the record to demonstrate that cost differences were attributable to factors other than the physical differences between the products. Therefore, we made an adjustment to FMV to account for differences in physical characteristics of the merchandise in accordance with § 353.57 of the Department's regulations. (See "Foreign Market Value" section of this notice.)

With repect to Nihon, we agree with petitioners that we should make a difference in merchandise adjustment for comparisons between Type II and MC cement based on the physical differences of the products. At verification, we requested that Nihon support its claim that MC cement and Type II cement produced by its facilities during the POI had identical costs of manufacture despite having different physical characteristics. Nihon indicated that it had no way to prove its claim that it treats MC and Type II as identical products for cost purposes. Because Nihon did not claim a difference in merchandise adjustment, we used best imformation available. However, we did not use petitioner's proposed best information available methodology since it is inconsistent with our normal practice of weight averaging variable costs across home market production facilities.

As best information available, we used the relevent cost data submitted in Exhibit 17 of Nihon's October 4, 1990 response to the Department's questionnaire. Consistent with our normal practice, we compared variable costs for Type II cement produced at the Kamiiso plant with the weighted-average variable costs for MC produced at the Kawara and Saitama plants. Based on the results of these calculations, we determined that Nihon, like Onoda, actually had a negative difference in merchandise adjustment since the weighted average variable costs for the home market product exceeded the variable costs for the U.S. product. However, because Nihon has not claimed such as adjustment and in fact has maintained that it does not recognize any cost differential, and because we did not verify the variable cost information, we determined that an adjustment to FMV would be inappropriate in this case.

Comment 3

Petitioners argues that all pre-sale movement charges incurred in the home market (from the plant to the service station) must be treated as indirect rather than direct expanses for calculating FMV. Petitoners maintain that service station costs are general overhead expenses or, alternatively, pre-sale warehousing expenses, and as such should be treated as indirect selling expenses.

Onoda contends that in order to achieve a fair price-to-price comparison, the Department should deduct movement expenses incurred to ship cement from the plants to the service stations in calculating FMV, whether or not the transportation occurred before or after the sale. Onoda also contends that the Department should deduct service station costs as part of these movement expenses. Onoda maintains that Onoda's service stations do not function as warehouses, but rather serve as transfer points between water and land transportation. Onoda also maintains that the cost of operating service stations is an integral part of Onoda's home market distribution network and, therefore, should be deducted as part of the cost of delivering the product from the plant to the customer.

Nihon contends that the vast majority of its sales made during the POI pursuant to long-term contracts which precede shipment dates, and therefore, petitioners' argument is not pertinent to Nihon.

DOC Position

We agree with respondents in part and petitioners in part. Because we deducted all pre- and post-sale movement expenses incurred in transporting the merchandise from the plant to the point of sale in calculating United States price, we determined that a fair price-to-price comparison requires a similar deduction to FMV, consistent with the Department's policy. See Red Raspberries from Canada, 56 FR 677 (January 8, 1991); and Gray Portland Cement and Clinker from Mexico (Cement from Mexico, 55 FR 29244, 29251 (July 18, 1990). Therefore, we have deducted all verified home market movement charges incurred from the plant to the service station in our calculation of FMV for both Onoda and Nihon.

However, based on the nature of service station functions, and costs, we determined that these costs are more appropriately classified as warehousing expenses and, for Onoda, have treated them as indirect selling expenses for purposes of the final determination. See Phosphoric Acid from Israel, 52 FR 25440, 25442 (July 7, 1987). For Onoda, we verified that these charges were largely comprised of overhead costs associated with service station operations in addition to costs associated with contract labor used to load and unload the subject merchandise at the service station. Although we would normally consider costs associated with loading and unloading functions to be movement charges, Onoda did not separately report these cost components in its response and we could not separately verify these cost components at verification. Therefore, based on the insufficiency of the verified information on the record, we are precluded from making a deduction to FMV for the loading and unloading cost portion of the claimed service station costs. (See "Foreign Market Value" section of this notice.) For the reasons explained above, we have treated terminal costs claimed on U.S. sales in the same manner. (See "United States Price" section of this notice.)

Comment 4

Petitioners argue that the full amount of VAT should not be added to United States price because it is unclear as to how much of the tax, if any, was actually passed on to home market customers on home market sales.

Respondents maintain that the Department should make a circumstance of sale adjustment to both FMV and United States price by adding the amount of the VAT that would have been collected upon the product exported to the United States had it been sold in the home market to achieve tax neutrality.

DOC Position

By examining the relevant invoices and payment documentation at verification, we verified that the full amount of the Japanese VAT less discounts was charged to home market customers. Therefore, consistent with our normal practice, we have added VAT to United States price and accordingly made a circumstance of sale adjustment to FMV for the final

determination. (See "Foreign Market Value" section of this notice for calculation of VAT.)

Comment 5

Petitioners argue that Onoda was not charged an arm's-length price for tanker freight by its related shipping company. In calculating FMV, petitioners maintain that the Department should reduce the claimed home market inland freight charges by an amount based on best information available.

Onoda asserts that the tanker freight charges by Onoda's related shipping company are equivalent to arm's-length prices. Respondent maintains that tanker freight charges for vessels of equivalent tonnage capacity do not vary significantly between related and unrelated shipping companies.

DOC Position

We agree with Onoda. Petitioners' argument rests on a statement contained in the verification report which reports a difference between the related and unrelated shipping company with respect to the average per ton vessel charterage costs which constitute a portion of total reported tanker freight charges. However, upon further review of the verification exhibits pertaining to this issue, we found that the verification report incorrectly stated that this result was based on a comparison of charges for vessels of equivalent tonnage capacity. Rather, the result included charges by the related company for vessels of different capacities than those of the unrelated company. Our review of source documentation obtained at verification revealed that tanker freight shipping services provided by Onoda's related shipping company were charged at arm's-length prices. Therefore, we have deducted the verified inland freight charges from FMV for purposes of the final determination.

Comment 6

Petitioners argue that the Department must recalculate home market credit expenses using the Department's normal methodology rather than the methodology provided by Onoda.

DOC Position

We verified that the methodology used by Onoda to report home market credit expenses was an accurate representation of respondent's accounting records. (The verification report incorrectly states that there was an error in respondent's methodology.) However, we have recalculated these expenses to account for discounts. (See "Foreign Market Value" section of this notice for further explanation.)

Comment 7

Petitioners argue that Onoda's claimed "collateral" rebates should not be deducted from FMV because they are not directly related to sales of the subject merchandise made during the POI.

DOC Position

We agree with petitioners. We verified that these rebates were granted to distributors as a gesture of goodwill on a one-time basis in the initial year in which the distributors provided a fund to serve as collateral against any potential bad debt or bankruptcy on their part. We noted that these rebates were not based on any written policy or fixed amount and could not be reasonably tied to sales made during the POI. Based on our findings at verification, we determined that the claimed "rebates" do not constitute allowable rebate expenses and, accordingly, made no adjustment to FMV.

Comment 8

Petitioners contend that Onoda's claimed technical service expenses incurred on home market sales do not qualify as an appropriate circumstance of sale adjustment because these expenses are of a routine nature for the promotion of goodwill and future sales.

Onoda asserts that the Department should make an adjustment to FMV for all technical service expenses, whether fixed or variable, incurred by Creo Co., a wholly-owned subsidiary, with respect to home market sales. They assert that these expenses relate to customer claims regarding specific cement shipments beyond the promotion of goodwill and future sales, but cannot be directly identified with particular sales because of the nature of Creo's accounting system and the way in which these expenses are incurred related to the complexity of the distribution system in Japan.

DOC Position

At verification we found that the technical service expenses incurred during the POI were largely comprised of fixed expenses such as salaries and overhead, which would have been incurred whether or not a particular sale was made. Therefore, based on our verification findings, we have treated these expenses as indirect selling expenses for purposes of the final determination.

Comment 9

Petitioners argue that quality control expenses claimed by Onoda should be treated as indirect rather than direct selling expenses, because they are overhead expenses.

Onoda maintains that contrary to findings at verification, quality control costs were not double-counted in the response as part of cost of manufacturing (COM) as well as selling expenses. Respondent asserts that quality control expenses are separately incurred by Onoda at the plant and head office. Onoda explains that the quality control expenses included in COM were those incurred at the plant, while the quality control expenses reportd as selling expenses were those incurred by the quality control section at the head office. Respondent maintains that the expenses incurred by the head office should be deducted as a selling expense.

DOC Position

Our examination of relevant documentation during verification revealed that the claimed quality control costs for home market and export sales comprised both expenses incurred at Onoda's plants as part of COM and expenses incurred by Onoda's head office. We determined that only the verified portion of the claimed expenses associated with Onoda's head office constitute selling expenses for purposes of our analysis. Because they could not be tied to specific sales made during the POI, we have treated these expenses as indirect selling expenses, and have made the appropriate adjustments to FMV and United States price in the final determination. (See "Foreign Market Value" section of this notice.) To ensure a fair price-to-price comparison, we have treated the claimed quality control expenses incurred on ESP sales in the same manner. (See "United States Price" section of this notice.)

Comment 10

Onoda contends that OBSNUMP 1 reported in the purchase price database should be excluded from margin analysis because the essential terms of sale (price and quantity) were fixed prior to the POI. Onoda maintains that price and quantity were established under a 1987 long-term requirements contract, and that this contract was signed by Onoda with the notion that Onoda had accepted and agreed to the terms of the contract. In particular, respondent asserts that the quantity term was fixed prior to the POI for two reasons: (1) The shipping vessel was nominated prior to the POI and vessel capacity was known to both parties; and (2) the requirements contract effectively fixed the quantity terms for purposes of defining date of sale whether or not a

minimum tonnage had actually been shipped.

Petitioners argue that OBSNUMP 1 must be included in calculating United States price as a purchase price sale made during the POI. Petitioners contend that the contract governing the essential terms of the transaction at issue did not provide sufficient evidence that the trading company involved in the export sales process was contractually obligated to purchase cement from Onoda and that Onoda was contractually obligated to provide the cement sold by the trading company to the U.S. customer. They maintain that only the contract note dated within the POI contractually bound Onoda to provide cement to the trading company for sale to the U.S. customer.

Furthermore, petitioners state that the price actually paid to Onoda by the trading company was not the price stipulated in the contract. They also maintain that the contract was not definite as to the quantity to be purchased by the U.S. customer. They assert that any shipments made pursuant to a requirements contract in excess of the minimum amount are not within the quantity fixed in the contract, and that the date of sale of such excess shipments is the date of shipment. They argue that absent verified data concerning whether or not a minimum quantity had been satisfied, the Department must assume that it was and consider the trransaction to fall within the POI. With respect to nomination of the vessel, petitioners assert that an agreement to nominate a vessel is not definite and binding as to the quantity to be shipped or even as to whether the ship will actually be used for transport. Even if binding, petitioners argue that the agreement does not mention price and there is no proof that the quantity would be the maximum amount the ship would hold.

DOC Position

We agree with petitioners. It is the Department's practice with respect to minimum requirements contracts to consider the date the parties executed the contract as the date of sale for shipments up to the minimum requirement, and to consider the date of purchase order or shipment date as the date of sale for shipments in excess of the minimum quantity. The rationale behind this practice is that neither the buyer nor the seller knows at the time of contract negotiation the actual quantity to be provided above the minimum requirement. See Cement from Mexico, 55 FR 29249; Titanium Sponge from Japan, 54 FR 13,403 (April 3, 1989) and *Toho Titanium Co., Ltd.* v. *United States*, Slip Op. 90–71 (July 30, 1990). In this case, the contract at issue specified a minimum/maximum quantity range, as opposed to a typical requirements contract where a seller agrees to supply all of the purchaser's requirements. Based on the fact that respondent provided no evidence at verification to show that a minimum quantity requirement had been satisfied, we have included this shipment made within the POI in our calculation of Untied States price. We also note that the documentation depicting nomination of a vessel whose capacity was known to the parties does not establish the quantity that would actually be shipped.

Comment 11

Onoda argues that certain reported shipments made to one particular U.S. customer on a purchase price basis (OBSNUMP 2, 4 and 7) should be excluded from margin analysis because the essential terms of sale were established prior to the POI. Respondent argues that while the long-term contract governing these sales was not formally signed among the parties until April 16, 1990, the price and quantity terms stipulated in the contract were established in written correspondence dated prior to the POI. Citing Certain Forged Steel Crank Shafts from the Federal Republic of Germany (Crankshafts from FRG), 52 FR 28170, 28175 (July 28, 1987), respondent states that the date of sale for the shipments at issue was not the date on which the contract was memorialized, but rather was the date that the essential terms were established. Onoda argues further that if the Department determines that the subject sales should be included in margin analysis, the OBSNUMP 2 should be treated as a sale at the original full price established by the relevant contract because the reduced price reflected an offset or compensation for damages incurred by the customer with respect to a shipment arranged prior to the POI.

Petitioners contend that Onoda's claim with respect to the price and quantity terms of the 1990 contract is inconsistent with information contained in the documentation examined at verification by the Department. They maintain that certain documents contained in a verification exhibit relevant to this issue demonstrate that continual negotiation and informal correspondence ensued among the parties over price and quantity up until the formal signing of the agreement during the POI. With respect to OBSNUMP 2, petitioners contend that the price actually charged by Onoda for OBSNUMP 2 is the correct gross price to be used in the calculation of U.S. price. They argue that the fact that Onoda charged and received less revenue for a sale during the POI does not excuse Onoda from accurately reporting the actual price paid. In addition, Onoda's decision on the price of that shipment was made during the POI, regardless of whether or not it may have been influenced by events occurring prior to the POI.

DOC Position

It is the Department's practice to determine the date of sale as that date on which the essential terms of the sale, specifically price and quantity, are finalized to the extent that they are outside the parties' control. See Titanium Sponge from Japan (54 FR 13403, 13404 (April 3, 1989)) (aff'd, Toho Titanium Co. v. United States, 743 F. Supp. 888 (CIT 1990)); Brass Sheet and Strip from France, 52 FR 812, 814 (1987). The Department normally considers the contract date as the date of sale because a written contract best represents the date at which the terms of sale are formalized and the parties are bound. Only where there is written evidence that the parties were bound at an earlier point in time will the Department look to that earlier date. In this case, Onoda reported, and the Department verified that the parties formalized negotiations in a contract for sale which was signed during the POI. Since the essential terms were set during the POI, we have included the transactions at issue in our calculations.

Respondent's reliance on Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170 (July 27, 1987) is misplaced. That case stands for the proposition that the Department need not look only to a formal memorialization to determine the proper date of sale. In Crankshafts reliance on a formal contract as the date of sale was inappropriate where purchase orders were the first written evidence of a binding commitment (52 FR at 28175). The evidence cited by respondent in this case does not establish that the parties were bound prior to signing the contract.

With respect to OBSNUMP 2, our review of pertinent source documentation at verification revealed that the difference between the original contract price and the actual price charged by Onoda for this transaction reflected the method Onoda chose to compensate the customer for damages incurred with respect to a shipment arranged prior to the POI pursuant to a contract unrelated to OBSNUMP 2. Had the damage claim not existed, we have

no reason to believe that Onoda would have charged a price other than that stipulated in the contract. In effect, the full price reported by Onoda was paid, partly by direct payment and partly by satisfaction of an existing claim for damages. Therefore, we have used the contract price as the price Onoda charged the unrelated trading company involved in the transaction for purposes of calculating United States price. We have also included in our calculations the verified data pertaining to three additional shipments made pursuant to the 1990 long-term contract between June and October 1990 which had not occurred at the time respondent was preparing its response to the Department's questionnaire.

Comment 12

Petitioners argue that all U.S. sales of the subject merchandise made by Onoda, including those made to its related subsidiary Lone Star Northwest (LSNW), during the POI are purchase price sales. They contend that because these sales were made prior to the date of importation to an unrelated trading company for exportation to the United States, they constitute purchase price sales. In addition, they argue that Onoda has not established that its sales to LSNW are ESP transactions because it has not proven that LSNW is the importer of record and that LSNW sells cement for the account of Onoda.

With respect to Channel 1 sales (one of four different distribution paths in the United States), petitioners argue that these sales should be treated as purchase price sales for three reasons: (1) The unrelated U.S. customer agrees to purchase Onoda cement prior to importation; (2) LSNW serves only as a processor of sales-related documentation and a communication liaison between Onoda and the U.S. customer; and (3) as a matter of standard practice, the subject merchandise never enters LSNW's inventory, but rather is shipped directly from the manufacturer to the unrelated U.S. customer.

Based on the above-stated arguments, petitioners assert that the Department must use best information available to calculate purchase price for the sales improperly reported as ESP sales. As best information available, they state that, for sales of Type I cement, the Department should base purchase price on the f.o.b. prices reflecting LSNW's accounts which were obtained at verification. For the adjustments to purchase price, they propose that the Department use the weighted-average of all adjustments for cement sales previously reported by Onoda as purchase price sales. For sales of Type II cement, petitioners propose using, as best information available, the average net United States price of Onoda's Type II sales previously reported as purchase price sales.

Onoda refutes petitioners' arguments with respect to those sales reported by LSNW, referred to as Channels 2, 3 and 4 (the three remaining distribution paths in the United States). Onoda contends that these sales are made for the account of Onoda, LSNW's related exporter, and are ESP sales. LSNW serves as the importer of record for cement imported from Onoda. Respondent asserts that Onoda is directly involved in sales negotiations between LSNW and the unrelated trading company, while it is not involved in the negotiations between the unrelated trading company and its other U.S. customers. Onoda states that the trading company participates in these negotiations, where its primary role is to arrange and monitor transportation services. Respondent asserts that the trading company's presence in the title transfer chain between Onoda and LSNW facilitates bookkeeping and shipment of the subject merchandise. Respondent maintains that LSNW's cement and ready-mix sales should be considered ESP sales.

With respect to Channel 1 sales, however, Onoda agrees with petitioners as to their characterization as purchase price sales. However, Onoda asserts that the calculation of United States price for these sales should be based on the price paid by the customer to LSNW plus profit net back.

DOC Position

With respect to Channel 1 sales, we agree with petitioners. For the reasons given by petitioners, we have treated these sales as purchase price sales in the final determination. However, we disagree with petitioners' proposed best information available methodology on which to base United States price. Rather, for these sales, we have based United States price on the verified c.i.f. price to the customer and included profit net back as part of the price paid by the customer. (See also DOC Position to Comment 13 below and "United States Price" section of this notice.)

However, with respect to Channels 2, 3 and 4, we agree with Onoda. For purposes of this investigation, we determined that LSNW's sales of bulk cement and ready-mix are ESP sales. The transaction between Onoda and the trading company merely facilitated the sale between Onoda and its related purchaser, LSNW, who we determine is the exporter of the merchandise since it is the person by whom or for whose account the merchandise is imported into the United States. See section 771(13) of the Act. Our determination that these are ESP sales, rather than purchase price sales, is based on five factors which we confirmed at verification: (1) Onoda holds a significant equity position in LSNW and plays a major role in the sales negotiation process with LSNW, which is unlike that with respect to unrelated U.S. customers (see *e.g.*, LSNW financial statements and contract notes between Onoda and the trading company concerning sales to LSNW as opposed to unrelated customers. (2) The trading company plays a substantial role in the transportation flow of the merchandise as facilitator (see, *e.g.*, shipment detail reports and freight bills) and an inconsequential role in the title transfer chain. (3) The office of Onoda Northwest, a wholly-owned subsidiary of Onoda, exists and functions on LSNW's premises as liaison between Onoda and LSNW with respect to cement sales. (4) Substantial correspondence takes place directly between Onoda and LSNW personnel regarding cement sales. (5) There is no evidence on the record that the trading company has any effect upon or the ability to affect the essential terms of sale.

Comment 13

Petitioners argue that the profit net back associated with Channel 1 sales should not be added to United States price. Petitioners argue that this revenue constitutes a rental payment from the customer to LSNW which occurs long after the sale of cement is made and is not part of the actual sales price.

Onoda contends that profit net back is an integral part of the sales price for Channel 1 sales and should be considered as the second of two payments due on Channel 1 sales. Respondent maintains that this additional revenue is a condition of sale agreed to between LSNW and the particular customer. Based on the nature of the sales arrangement between the parties, Onoda argues that it would not be logical for LSNW to be engaged in the sale at all without the expectation of the additional revenue. Onoda asserts that this additional revenue is an economic rent and not a real estate rent as petitioners have characterized it.

DOC Position

We agree with respondent. This case presents a factual situation analogous to installment sales where the selling price was based on total payments received

including both principal and revenue. See Certain Internal Combustion Forklift Trucks from Japan, 53 FR 12552, 12557 (April 15, 1988). See also, Acetylsalicyclic Acid (Aspirin) From Turkey, 52 FR 24492, 24493 (July 1, 1987). Petitioners refer to profit net back as "rent" based on the terminology used in the agreement which exists between LSNW and the particular customer to which Channel 1 sales are made. This is misleading. As specified by the agreement, an essential term of these sales is the receipt of the after-sale revenue referred to as "additional rent." However, "rent" in this case is an economic term suggesting revenue. Although this revenue is not realized by LSNW until after the sale of cement is made to the customer, it is an integral part of the sale price. For these reasons, we have included the verified per metric ton amount of profit net back as part of U.S. price for Channel 1 miles. We have also recalculated credit expenses associated with Channel 1 sales to account for this additional revenue. (See also "United States Price" section of this notice.)

Comment 14

Petitioners argue that the Department should not adjust the underreported prices for ready-mix sales resulting from a computer programming error. Petitioners assert that Onoda never provided a revised computer tape to correct this error which was discovered as early as December 21, 1990 when it was disclosed to the Department. They also state that at that time Onoda was not certain of the extent of the affected transactions. Therefore, they conclude that the Department should not make any adjustment to the sales tape because any such adjustment would be based cn substantial new information submitted for the first time at verification.

Onoda contends that the Department should include in the calculation of United States price, the additional revenue which was omitted from the reported gross prices of ready-mix sales but included in value added costs. Onoda maintains that it notified the Department by letter dated December 21, 1990, once the error was discovered, and offered to submit a new tape at a time most convenient for the Department. Respondent also maintains that at verification the Department was able to randomly check data pertaining to certain affected transactions and found no discrepancies. For these reasons, respondent maintains that the additional revenue data was submitted on a timely basis and was verified, and therefore, should be included in United States price.

DOC Position

We agree with petitioners. Although Onoda is correct in maintaining it had notified the Department of the error once it was discovered, Onoda fails to state that at the time LSNW personnel were not certain of the magnitude of the problem. It was not until the end of verification that respondent attempted to provide the Department with information regarding a clerical error made by LSNW which affected numerous ready-mix transactions. This information was not provided in a timely fashion in accordance with § 353.31(a)(1)(i) of the Department's regulations and was therefore rejected at verification. Further, as stated in the verification report, due to time constraints, we could not sufficiently test the data to ensure that respondent had accurately and completely captured all affected transactions, nor were we able to test the affected cost fields. Based on the insufficiency of the verified data on the record, we are precluded from adjusting the prices or costs as requested by Onoda for purposes of the final determination.

Comment 15

Petitioners argue that the unreported sales of bagged cement made by LSNW must be included in margin analysis based on best information available.

Onoda contends that it complied fully with the Department's request for information concerning bagged cement sales, and that the Department should disregard these sales in the final determination based on the insignificant volume they represent relative to Onoda's total U.S. sales made during the POI.

DOC Position

Since Onoda's U.S. sales of bagged cement represent an insignificant portion of total U.S. sales made during the POI, we have excluded them from margin analysis in the final determination. See Sweaters Wholly or In Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32659, 32661 (August 10, 1990).

Comment 16

Petitioners contend that LSNW incorrectly annualized its reported cost data and, therefore, the Department must reject this data in determining U.S. value added and use best information available. They maintain that LSNW was required to report only the costs it actually incurred during the POI for further manufacturing. They further argue that the comparison of actual prices during the POI and annually adjusted costs distorts the calculation of U.S. price and potential dumping margins. Petitioners assert that there appear to be no peculiar aspects to the concrete business which would make it unfair to match actual costs incurred during the POI with actual prices in the same period. They also maintain that Onoda has not provided any specific data demonstrating that LSNW's concrete sales revenue is seasonal, that LSNW is a high fixed cost operation or that high fixed costs unfairly distort actual cost data. Rather, they maintain that LSNW's concrete operations are subject to a higher proportion of variable costs relative to fixed costs.

Onoda maintains that further manufacturing costs should be annualized to account for LSNW's geographic location in the northwestern United States and the extreme seasonality of cement and concrete sales, as well as high fixed costs, and thereby prevent distortion of per unit charges and adjustments. Onoda asserts that ready-mix materials costs, yard costs and delivery costs are largely comprised of high fixed costs relative to total costs. Onoda further claims that the Department frequently measures costs in analogous situations for a period other than the POI or period of review. Respondent cites Certain Fresh Cut Flowers from Colombia (Colombian Flowers), 55 FR 20491, 20496 (May 17, 1990), and Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan, 55 FR 34585, 34598 (August 23, 1990), Offshore Platform Jackets and Piles from Japan (Platform Jackets), 51 FR 11786 (1986) and Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989) to support its position.

DOC Position

While the Department does not agree with respondent that the Colombian Flowers and Platform Jackets cases are analogous, because the production process for these products is longer than six months, we agree with Onoda regarding use of annualized fixed costs. The per ton depreciation and other fixed costs may fluctuate significantly because of the seasonality of the production process, the time such costs are incurred, and the method of accounting for these costs. We have examined the record and determined that LSNW's fixed costs are significant enough to affect the per metric ton cost

of ready-mix when cement and concrete sales are seasonal in nature.

Comment 17

Onoda maintains that LSNW's SG&A expenses and movement charges incurred on ready-mix sales made in the United States should be apportioned between the further manufacturing in the United States and the imported cement when calculating the total U.S. value added and the profit associated with this value added.

Petitioners maintain that delivery charges associated with the delivery of ready-mix to the customer must remain as part of U.S. value added. Because mixing of the raw materials occurs on the truck while in motion, petitioners argue these expenses cannot be separated from concrete manufacturing costs.

DOC Position

We agree with Onoda. We have apportioned SG&A and movement charges associated with ready-mix sales between the further manufacturing in the United States and the imported cement based on COM, and have deducted them from United States price on that basis. (See also "United States Price" section of this notice.)

We disagree with petitioners as to treatment of delivery costs. The costs incurred in delivery of the ready-mix to the ultimate customer are in the nature of movement charges. The fact that the cement is mixed in conjunction with delivery does not alter the primary function of the cement truck as a delivery vehicle.

Comment 18

Petitioners claim that goodwill as reported on Onoda's financial statements should be included as part of value added. Citing Color Television Receivers from Korea, 55 FR 26225, 26228 (June 27, 1990), petitioners argue further that the Department included the goodwill as a general and administrative cost in the calculations.

Respondent claims that goodwill amortization should be excluded from cost calculations not only because it cannot be deducted for tax purposes, but also because the amortization expense does not reflect any cash paid out by LSNW.

DOC Position

We agree with petitioners. The goodwill was related to the organization of the joint venture and represented the economic value of the company over the market value of its underlying assets. The excess over value of assets in a reorganization or purchase is capitalized and amortized over future periods for financial statement reporting. The Department considers such goodwill amortization expense as a current cost, part of the cost of manufacturing goods and includes it in calculations of value added costs.

Comment 19

Respondent Onoda claims that its allocation of LSNW interest and G&A costs over sales value is proper, and should be applied to the sales price to determine a per unit interest or G&A factor.

DOC Position

We disagree. If G&A and interest costs are allocated on the basis of sales value, the amount of G&A and interest for exactly the same product, manufactured at exactly the same time, would vary simply because the product was sold at a different price. To avoid this distortion, the Department normally calculates per unit interest and G&A expense on the basis of relationship to cost of sales rather than sales value. The resulting ratio is applied to the COM of the manufactured goods to determine a per unit cost.

Comment 20

Petitioners claim that interest paid on loans should be added to LSNW's reported interest expense because the overall organization of the partnership has a direct bearing on the manufacturing process.

Onoda claims that loans transacted at the time of forming the joint venture should be excluded from consideration in calculating interest expense for the U.S. value added.

DOC Position

We agree with petitioners. Interest paid on all loans has been included in calculation of U.S. value added costs because the Department recognizes the fungible nature of financing. Only amounts paid to Onoda Northwest have been excluded since that debt interest has been included elsewhere as an indirect selling expense.

Comment 21

Onoda argues that the corporate and divisional advertising expenses incurred by LSNW should be included in the ESP CAP because they are indirect selling expenses.

Petitioners contend that LSNW's advertising expenses incurred on U.S. sales are direct expenses, and as such, they should not be included in the ESP CAP.

DOC Position

We agree with Onoda in part. Based on our findings at verification, we determined that the advertising expenses incurred by LSNW are indirect selling expenses, and have included them in the ESP CAP. However, for sales of bulk cement we have excluded divisional advertising expenses from the ESP CAP because they are solely associated with sales of ready-mix.

For ready-mix sales, in order to ensure a fair price-to-price comparison, we have included in the ESP CAP only that portion of U.S. indirect selling expenses attributable to the subject merchandise, *i.e.*, bulk cement sales and the cement portion of ready-mix sales. (See also "Foreign Market Value" section of this notice.)

Comment 22

Onoda requests that the Department exclude classes G and H oil well cement from the scope of the investigation based on the following reasons: (1) The physical and chemical properties of classes G and H are very different from the general purpose cement that is the focus of the petition; (2) they sell for much higher prices than general purpose cement; (3) they are used in highly specialized applications and, therefore, not interchangeable with general purpose cement and; (4) petitioners have failed to indicate whether they manufacture these classes of oil well cement.

Petitioners maintain that oil well cement is included in the scope of the investigation. They maintain that all types of the subject merchandise are within the scope of the investigation, even the particular types which are only appropriate for certain customized uses. They assert that all classes of oil well cement are currently classifiable under the same HTS number as other types of general use cement. Petitioners state that the Department need not consider criteria beyond the description of the subject merchandise at issue in the petition, the ITA and ITC notices of initiation, the ITA and ITC preliminary determinations in this investigation, and past cement cases.

DOC Position

We have insufficient information at this time upon which to base a conclusion that classes G and H oil well cement should be excluded from the scope of the investigation. Should an antidumping duty order be issued in this case respondent will be able to request a scope ruling, as described in section 353.29(b) of the Department's regulations.

Comment 23

Petitioners argue that Nihon's failure to report home market sales information by its related companies warrants use of best information available for determining Nihon's FMV. Petitioners note that the Department requested such information on at least three occasions and that Nihon did not report such sales, other than a quantity sold by one related company reportedly produced by one of Nihon's competitors. Petitioners also note that Nihon has made the unsupported statement that the other two related companies did not produce MC during the POI. Petitioners assert that the Department verified that all three related parties were at least 10 percent owned by Nihon and that the Dainihon sales company representative present at verification could have provided sales information, at least insofar as the related parties made sales through Dainihon. Petitioners point out that Nihon and its related parties are closely intertwined, have interlocking boards of directors and substantially identical production equipment, and that Nihon and its related parties should be collapsed "for purposes of responding to the Department's questionnaire."

Respondent admits that Nihon and its three related parties are related but asserts that the mere existence of relationship does not necessarily mean that Nihon has access to the sale and expense information. Nihon points out that one related party, Ryukyu, which is 10 percent owned by Nihon, is actually controlled by one Nihon's competitors, and that Ryukyu does not belong to the Dainihon sales group but in fact belongs to a different joint sales entity. Nihon also asserts that the Department verified "that neither Myojo nor Daiichi produced moderate heat cement during the POI"; therefore, the use of best information available is unnecessary with respect to related party sales. Nihon argues that if a penalty is to be levied for its "technical noncompliance with the Department's request for related party information" it would be sufficient to impute Nihon's margin to "Myojo and Daiichi."

DOC Position

We agree with petitioners in part and have used best information available for purposes of determining sales quantities and values for Myojo and Daiichi. Contrary to respondent's assertion that the Department verified related party sales, or lack of sales, the Department's verification report states that Nihon was only able to report a single, unverified quantity of subject merchandise as having been sold by Myojo. Since we repeatedly requested such information and Nihon refused to respond, and because it is clear that Nihon controls a substantial interest in Myojo and Daiichi, we determine that there is a reasonable basis to believe collapsing Nihon and its related parties Myojo and Daiichi is warranted. With respect to Ryukyu, "[i]t is the Department's practice *not* to collapse related parties except * * * where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation." (Emphasis in original.) See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19089 (May 3, 1989). In this case, the evidence does not support such a relationship with Ryukyu. To determine an appropriate home market quantity to assign to Myojo and Daiichi, we used petitioners' calculation of projected home market sales quantities of MC for Myojo and Daiichi based on those companies' financial statements. For FMV we used the highest calculated net price for any sales transaction in Nihon's database and added those sales to Nihon's database, as best information available. In accordance with Department practice, Nihon, Myojo and Daiichi have been assigned the same less than fair value margin.

Comment 24

Petitioners argue that Nihon has not met its burden of proof in documenting that sales to related distributors (to be distinguished from the related party producers discussed in Comment 23, above) in the home market are at arm's length and that the Department wrongly included those sales in the preliminary determination. Petitioners cite as authority Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19090 (May 3, 1989). That case noted that the "burden of proof is on the respondent" and that "a respondent must provide a detailed analysis of the prices charged to related parties and to unrelated parties." Based on that information, as petitioners note in their brief, "[the Department] will generally compare net prices charged to related and unrelated parties." Petitioners suggest that net prices to related parties are actually much lower than net prices to unrelated distributors.

Nihon charges that petitioners' calculations are in error since petitioners deducted freight expenses for unrelated customers only, in its calculation of net FMVs.

DOC Position

We agree with respondent. Nihon sustained its burden to produce a detailed analysis of prices to related and unrelated parties when it submitted its home market database which clearly indicates gross prices, and adjustments, to related and unrelated parties alike. As petitioner points out, it is then incumbent upon the Department to analyze that data. Both for the preliminary determination and this final determination, the Department calculated net prices to related and unrelated parties, and found that the net prices to related parties were at arm's length. Based on this finding, the Department concluded that sales made to related parties were properly includable in FMV calculations. Nihon's characterization of the error in petitioners' allegation is correct.

Comment 25

Petitioners contend that Nihon is not entitled to a commission offset for indirect selling expenses in the home market against U.S. Commissions since Nihon actually pays commissions in the home market. Petitioners also claim that Nikon is not allowed to claim the home market commission as an offset against U.S. commissions since the home market commission went unreported until verification; therefore Nihon has effectively waived its right to such an offset. Petitioners point out that even if Nihon has not waived its right to claim such an offset, commissions paid to related parties are considered intracorporate transfers and are not properly deductible from FMV as an offset.

Respondent asserts that the commission in the home market is what petitioners have alleged—an intracorporate transfer to a related party. Respondent charges that petitioners elevate form over substance in citing § 353.56(b)(1) language that an offset is triggered only when "no commission is paid in the other market * * *" since the regulation fails to distinguish between commissions paid to related parties and commissions paid to unrelated parties.

DOC Position

We agree with respondent. The purpose of a circumstance of sale adjustment is to make reasonable allowances for bona fide price differences in different markets. Nihon has reported home market prices which include any commission Nihon paid to a related party. These related party commissions are intracompany transfers which cannot be used to offset U.S.

commissions. However, they have reported home market indirect selling expenses and U.S. commissions which the Department verified. Nihon is entitled to a reasonable allowance or offset using home market indirect selling expenses and U.S. commissions in accordance with § 353.56(b)(1) of the Department's regulations.

Comment 26

Petitioners assert that the rebate claimed by Nihon should not be deducted from FMV since that rebate is not paid out periodically. Petitioners argue that the Department does not permit deductions from FMV for anticipated but unpaid post-sale expenses which have not been recorded by respondent as being paid out on a regular basis. Petitioners cite Color Television Receivers from Taiwan, 49 FR 7628, 7632 (1984), for the proposition that rebates booked by a respondent but not yet paid, "which a manufacturer's history demonstrates were given in previous years," may be deducted from FMV and concludes that Nihon has not met that level of proof.

DOC Position

We agree with petitioners and have disallowed the adjustment to FMV. At verification, respondent was unable to document payment of the rebate and reported that, since the inception of the rebate program, "only a handful" of customers had received the rebate.

Comment 27

Petitioners claim that the adjustment for the database field "load one" (loading charges incurred at service stations) should be disallowed as "inconsistent and contradictory" since there is such a wide disparity in loading charges and it is "inconceivable" to petitioners that two different plant locations could incur such inconsistent loading charges.

DOC Position

We disagree with petitioners and have deducted the database field "load one" from FMV. Petitioners have confused a loading charge in the database field "load two," applicable to a production plant with a loading charge in the data base field"load one," which covers the loading of cement at service station. The "load one" charges were verified by the Department as accurate.

Comment 28

Petitioners charge that Nihon inexplicably incurs higher freight charges for moderate heat cement than it does for ordinary portland or high early strength cement. They allege that there is no explanation for such divergent charges and requests that the Department weight-average all home market freight charges.

DOC Position

The Department verified freight charges and found that freight charges are levied, based on a "tariff rate schedule using a zone system." As indicated in the verification report, Nihon documented to the Department's satisfaction that freight rates vary by destination and not by cement type. Therefore we have deducted freight charges as reported by respondent.

Comment 29

Petitioners assert that Nihon incorrectly calculated indirected selling expenses by failing to allocate total expenses and home market sales values between subject merchandise and other products produced by Nihon. Petitioners contend that the indirect selling expense applied to each sale is "inaccurate and must be recalculated."

DOC Position

We disagree with petitioners. Essentially petitioners argue that both the numerator (indirect selling expenses) and the denominator (total sales of all merchandise) in respondent's calculation are overstated by amounts attributable to non-subject merchandise. Since it is impossiible to allocate indirect selling expenses by product, respondent necessarily would reduce indirects by the same amount as total sales.

Comment 30

Petitioners assert that charges for demurrage were included in U.S. price for some sales, contrary to Nihon's claim that all reported U.S. sales prices are net of demurrage charges. As best information available for those sales where demurrage is included in U.S. price, petitioners suggest that the Department assign to those sales that the Department did not verify the highest, verified demurrage expense in the database.

With respect to the allegation, Nihon contends that U.S. price, as reported, does not include charges for demurrage, therefore those charges are not properly deductible from United States price. Nihon has indicated previously that it reported such charges in the interest of full disclosure but requested that the Department not deduct them from United States price since Nihon's sells U.S.-bond merchandise FOB Kamiiso.

DOC Position

We agree with petitioners. For certain transactions, Nihon has reported gross U.S. prices, inclusive of demurrage (and sometimes dead freight and despatch) charges, which must be deducted from U.S. price. We note FOB sale terms do not absolve a seller of its responsibility to load the merchandise aboard the vessel in a manner and period to be set under the vessel charter; indeed Nihon sometimes incurred a demurrage charge to its own account. That fact is reflected in labor overtime charges Nihon claimed for loading. Therefore, for the six verified sales (of 16 total U.S. sales transactions), we used the actual charge for demurrage on those transactions where a demurrage charge was included in United States price. For the remaining 10 U.S. sale transactions, as best information available, we applied the highest verified demurrage rate after excluding one transactional demurrage charge that was extraordinarily high and, therefore, unrepresentative. (See "United States Price" section of this notice.)

Comment 31

Petitioners charge that Nihon should use actual credit days in calculating credit, rather than an average 15 day period.

DOC Position

On its final tape submitted to the Department, Nihon used both the verified credit rate and actual credit days in determining the imputed credit deduction. The Department recalculated credit using actual credit days and the verified short term credit rate. (See also "Foreign Market Value" section of this notice.)

Comment 32

Petitioners argue that United States price of Nihon should be reduced by an amount that accounts for electrical expenses incurred in operating a pipeline used to load ocean-going vessels at the port of Kamiiso. In particular, petitioners note that Nihon has repeatedly refused to provide an expense allocation covering electrical and other costs associated with operating the pipeline used to load vessels. As best information available, petitioners suggest that the Department deduct from United States price "a per ton loading charge at least as large as the weighted average loading charge deducted from FMV * * *."

Nihon argues that the only expense incurred by Nihon that is identifiable with the particular U.S. sales in question are loading expenses, which have been

eported. In response to the Department's deficiency questionnaire and at verification Nihon characterized electrical costs associated with operating the pipeline as negligible. Furthermore, Nihon asserts that it has not claimed as deductions from FMV electrical costs associated with operating the pipeline for home market sales.

DOC Position

We have not made any adjustment to United States price for electrical expenses associated with operating the pipeline since the expense would be the same in both "markets" on a unit basis. Petitioners' suggestion that the Department use as best information available "a per ton loading charge at least as large as the weighted average loading charge deducted from FMV * * *" is not a reasonable estimate of best information available for the electrical expense involved in operating the pipeline.

Continuation of Suspension of Liquidation

In accordance with § 353.15(a)(3)(i) of the Department's regulations, we are directing the United States Customs Service to continue to suspend liquidation of all entries of cement and clinker from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 31, 1990, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of subject merchandise from Japan exceed the U.S. price, as shown below.

Manufacturer/producer/exporter	Margin percentage
Onoda Cement Co., Ltd	47.79
Nihon Cement Co., Ltd	84.70
(Myojo Cement Co., Ltd.)	(84.70)
(Daiichi Cement Co., Ltd.)	(84.70)
All others	65.22

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine within 45 days from the date of this final determination whether there is material injury, or the threat thereof, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on gray portland cement and clinker from Japan entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and § 353.20(a)(4) of the Department's regulations (19 CFR 353.20(a)(4)).

Dated: March 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-6897 Filed 3-21-91; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN
Inv. No.	:	731-TA-461 (Final)
Date and Time	:	March 21, 1991 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W., Washington, D.C.

In Support of Imposition of
Antidumping Duties:

Kilpatrick & Cody
Washington, D.C.
On behalf of

The Ad Hoc Committee of Southern California Producers of Gray Portland Cement

The Independent Workers of North America
(Includes Locals 49, 52, 89, 192 and 471)

The International Union of Operating Engineers

F. Gerard Adams, Professor of Economics and Finance,
University of Pennsylvania

Clarence C. Comer, President and Chief Executive Officer,
Southdown, Inc.

Charles L. May, Vice-President and General Manager,
Transit Mixed Concrete Co.

William McCormick, Vice-President and General Manager,
Southwestern Div., Southdown, Inc.

Donald UnMacht, President, National Cement Company of California, Inc.

Andrew Wechsler, Senior Vice President, Economists, Incorporated

Joseph W. Dorn)
Michael P. Mabile)--OF COUNSEL
Walter E. Spiegel)

In Opposition to the Imposition of
Antidumping Duties:

Graham & James
Washington, D.C.
On behalf of

Mitsubishi Materials Corp.

Nihon Cement Co., Ltd.

Osaka Cement Co., Ltd.

Ube Industries, Ltd.

Daniel W. Klett, ICF Consulting Associates

Kimball McCloud, President, Mitsubishi Cement Corp.

Yoshihiro Saito)
)--OF COUNSEL
Brian McGill)

Akin, Gump, Strauss, Hauer & Feld
Washington, D.C.
On behalf of

Onoda Cement Co., Ltd.

CPC Terminals, Inc.

Merv Keces, California Portland Cement Terminal, Inc.

Dr. Robert Litan, Brookings Institution

Patrick F.J. Macrory)
)--OF COUNSEL
Spencer S. Griffith)

APPENDIX C

TRADE AND FINANCIAL DATA, BY REGIONS AND BY PLANTS

* * * * * * *

Individual financial data of U.S. producers

This section of appendix C presents the income-and-loss experience and return on total assets of U.S. producers of portland cement and cement clinker by region. The regions are the State of California and Southern California.

To analyze the relative financial experience of each producer by plant, selected financial results and indicators of the plants are presented in the following table and figures. A brief description of the selected financial indicators is presented below.

Operating income margin.--The operating income margin (OIM) is operating income divided by net sales. The ratio is useful in measuring relative operational results of each plant over the time series (1986-90) and in comparing the operational results among the various plants by reducing the results to "common size" ratios for comparison purposes.

Net income margin.--The net income margin (NIM) is net income divided by net sales. The use of the ratio is similar to the operating income margin, but it is measured at the net income level. Therefore, additional expenses such as interest expense on debt and other income and expense items are included in the computation of the ratio. In the case of the plants in the two regions, interest expense and write-downs of assets were the major additional expense items included in deriving net income from operating income. Depreciation expense for the plants is deducted in the computation of both operating income and net income.

Operating return on total assets.--Operating return on total assets (OROTA) is operating income divided by the book value of total assets. Total assets includes the book value of plant, property, and equipment (the cement plants in the case of the producers in each of the regions, as none of the plants are leased or rented) and the current assets of the plant (items such as inventory, cash and cash equivalents, investments, and receivables). Fixed assets attributable to each plant in the two regions are typically apportioned to cement based on the ratio of cement production to production of other nonsubject products. In the case of the plants in the two regions, portland cement and cement clinker comprised 89 and 91 percent of total net sales of the establishments in the Southern California and California regions, respectively, during the period covered by the investigation.

Operating return on total assets is computed on a pre-tax basis. In addition, the ratio does not take into account the timing of the operating income and the time value of money.

Net return on total assets.--Net return on total assets (NROTA) is net income divided by the book value of total assets. Total assets and net income are computed as described above.

The net return on total assets ratio is a relative measure useful for some comparison purposes. Net income may fluctuate widely from plant to plant and from period to period due to the changes in the characteristics of the items deducted from operating income to derive net income. In the case of the plants in the two regions, asset write-downs for some plants in certain periods created significant fluctuations in net income levels. In addition, interest expense is not directly comparable between plants or even with the same plant between periods, as different plants have different costs and are

capitalized with different debt/equity ratios, and some plants have been revalued or refinanced over the period of the investigation.

Net income on total assets is computed on a pre-tax basis. The ratio does not take into account the timing of the net income and the time value of money.

Cost of capital.--As described above, the financial indicators utilized are not directly comparable to the cost of capital for each cement plant as they do not consider factors such as the time value of money, debt/equity ratios utilized for the capitalization of each plant, and the differences in the original cost and book value of each plant. In addition, all computations are on a pre-tax basis.

Based on overall establishment data, the results of * * *'s plant could be used to indicate a relative rate of return based on a simplified rate of return analysis, without considering taxes, residual value, or the business cycle. The following tabulation presents the estimated cash flow available for the return of and on capital for the period of the investigation (in thousands of dollars):

* * * * * * *

The average annual pre-tax cash flow available for capital costs, as defined, was approximately * * * for the * * * plant during 1986 to 1990. The original cost of the cement plant (* * *) and the other assets allocated to cement (* * *) total approximately * * *. The following would be the discounted rate of return based on an annual pre-tax cash flow of * * * on a * * * investment in total assets with the indicated life:

* * * * * * *

This example, using the * * * plant, is for comparison with the establishment operating return (* * * percent in 1990) and net return (* * * percent in 1990) on total assets. The results may differ as the basis for the calculations are significantly different. The discounted rate of return is more comparable to a return of capital measurement.

The operating return over total assets (OROTA) is also not directly comparable to certain other cost-of-capital estimates, including 30-year U.S. Treasury bonds and the Pretax Return on Permanent Capital Employed (PRPCE) as computed and published by Standard & Poor's. The cost of capital as measured by Treasury bonds utilizes, in effect, a full cash return rather than operating income (i.e. the depreciation deducted in computing the operating return would have to be added back). In addition, the total asset (book value) computation for the cement producers is not equivalent to the principal investment of U.S. Treasury bonds or the Permanent Capital Employed computation of Standard & Poor's. Additionally, it is not clear that an appropriate rating category for cement producers in California is equivalent to firms rated BB by Standard & Poor's.

In view of the above, certain qualifications should be considered if these cost of capital measurements are compared directly to the operating return on total assets.

* * * * * * *

APPENDIX D

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of portland cement and/or cement clinker from Japan on the producers' existing development and production efforts, growth, investment, and ability to raise capital. The responses by producers are shown below, by plant.

* * * * * * *

APPENDIX E

WEIGHTED-AVERAGE DELIVERED PRICES REPORTED BY U.S. PRODUCERS AND BY IMPORTERS OF PORTLAND CEMENT FROM MEXICO

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APPENDIX F

DELIVERED PURCHASE PRICES AND MARGINS OF UNDER/(OVER)-SELLING FOR U.S.-PRODUCED AND JAPANESE CEMENT AS REPORTED BY U.S. PURCHASERS

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