

CRUSHED LIMESTONE FROM MEXICO

Determination of the Commission
in Investigation No. 731-TA-562
(Preliminary) Under the Tariff
Act of 1930, Together With the
Information Obtained in the
Investigation

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**United States International Trade Commission
Washington, DC 20436**



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-562 (Preliminary)

CRUSHED LIMESTONE FROM MEXICO

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of crushed limestone, provided for in subheading 2517.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 20, 1992, a petition was filed with the Commission and the Department of Commerce by Texas Crushed Stone Co., Georgetown, TX, Parker LaFarge, Inc., Houston, TX, and Gulf Coast Limestone, Inc., Seabrook, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of crushed limestone from Mexico. Accordingly, effective May 20, 1992, the Commission instituted antidumping investigation No. 731-TA-562 (Preliminary).

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 Chairman Newquist recused himself from this investigation.

Notice of the institution of the Commission's investigation and of a public conference 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 May 27, 1992 (57 F.R. 22255). The conference was held in Washington, DC, on June 10, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF VICE CHAIRMAN WATSON AND COMMISSIONERS BRUNSDALE AND CRAWFORD¹

On the basis of the information obtained in this preliminary investigation, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of crushed limestone from Mexico that are allegedly sold at less than fair value (LTFV).

I. The Legal Standard for Preliminary Investigations

The legal standard in preliminary antidumping investigations requires the Commission to determine whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury or threat thereof to a domestic industry by reason of the subject imports.² In this investigation, the Commission considered whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."³ The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is sufficiently reasonable."⁴ In American Lamb, the Federal Circuit stated that the purpose of preliminary material injury determinations is to "'eliminate unnecessary and costly investigations which are an administrative burden and

¹ Chairman Newquist did not participate in this investigation.

² 19 U.S.C. § 1673b(a). American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Calabrian Corp. v. United States Int'l Trade Comm'n, Slip Op. 92-69 (CIT 1991) (citing American Lamb). Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

³ American Lamb, 785 F.2d at 1001.

⁴ Id. at 1004.

an impediment to trade'",⁵ and that the "reasonable indication" standard requires more than a finding that there is a "possibility" of material injury.⁶

II. Like Product

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product". The statute defines "like product" as "a product which is like or, in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"⁷ The Commission's decision with respect to determining the appropriate domestic product or products like the imported articles subject to investigation is essentially a factual determination, with the Commission applying the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁸

The Department of Commerce ("Commerce") has defined the imported product that is subject to this preliminary investigation as:

[C]rushed limestone from Mexico. The subject merchandise consists of all forms of crushed limestone, including limestone base -- whether or not stabilized -- limestone aggregate, including coarse aggregate and fine aggregate (limestone sand), and any other forms of crushed

⁵ Id. at 1002-1003, citing S. Rep. No. 1290, 93rd Cong., 2d Sess. 171, reprinted in 1979 U.S. Code Cong. & Ad. News 7186, 7308.

⁶ Id. at 1001-1004.

⁷ 19 U.S.C. § 1677(10).

⁸ Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (CIT 1988) ("Asocoflores"). In analyzing like product issues, the Commission generally considers a number of factors, including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations.

limestone. . . . Specifically excluded from the scope of the investigation are limestone flux, agricultural limestone and limestone cement kiln feed, used in the manufacture of lime and cement . . .⁹

Petitioners assert the domestic product that is like the subject imports is crushed limestone base and aggregates and would have the Commission exclude limestone flux, lime used in the production of cement ("cement kiln feed"), and limestone used for the manufacture of lime from the like product definition.¹⁰ Respondents contest the like product definition proposed by petitioners. They assert that many different materials may be used interchangeably as construction aggregates and propose a like product definition to include all such materials. Specifically, they argue that sand and gravel, other types of crushed stone, recycled portland cement concrete and asphaltic concrete, calcium sulfate, shell, and slag are like crushed limestone base and aggregates.¹¹ Respondents also argue that the like product should include crushed limestone used as cement kiln feed, crushed limestone used to manufacture lime, and agricultural limestone.

We determine that the appropriate like product is crushed limestone, excluding limestone flux, cement kiln feed, limestone used for the manufacture of lime, and agricultural limestone.

Crushed limestone is a sedimentary, carbonate rock used primarily in the construction industry as a raw material in production of pavement base, portland cement concrete, and asphaltic concrete. Crushed limestone is

⁹ Initiation of Antidumping Duty Investigation: Crushed Limestone from Mexico, 57 Fed. Reg. 26818 (June 16, 1992). Limestone base is crushed limestone in various sizes used for road or other paving purposes, while limestone aggregate is crushed limestone that is combined with other substances to form downstream products (e.g., portland cement concrete and asphaltic concrete.) Staff Report at I-4-5.

¹⁰ Petition at 52.

¹¹ Respondents' Brief at 6.

produced from quarries by drilling and blasting stone fragments from the stone face, then transferring the fragments to a crushing plant for sizing and further processing. Limestone base is then stockpiled by size. Limestone aggregate is brought from the first crushing plant to a secondary crushing plant, where it is screened and washed and further crushed, stockpiled by size, and blended to meet customer size requirements.¹²

The chemical characteristics of a limestone deposit directly affect its uses. Unless the limestone has the required chemical composition, it cannot be used in cement or lime production. Further, limestone for different uses generally is quarried at different locations because of the different characteristics needed.¹³

Like crushed limestone base and aggregate, cement kiln feed is crushed limestone, but generally must have high calcium and low magnesium carbonate content.¹⁴ Limestone for lime production must have an appropriate chemical composition -- at least 90 percent calcium carbonate, with the remainder being less than 5 percent magnesium carbonate and less than 3 percent other impurities.¹⁵ Further, lime feed and cement kiln feed limestone generally require higher clay content.¹⁶ Agricultural limestone is a powdered form of very high calcium carbonate limestone that is sold only for agricultural applications.¹⁷ Limestone flux is used in the production of iron and steel products and requires a high calcium composition.¹⁸

For the most part, customers perceive crushed limestone as a different

¹² Staff Report at I-6.

¹³ Petitioners' Brief at 14.

¹⁴ Staff Report at I-5.

¹⁵ Id.

¹⁶ Petitioners' Brief at 14.

¹⁷ Staff Report at I-6.

¹⁸ Transcript at 16-17.

product than the other limestone products. Cement kiln feed and limestone for the manufacture of lime, limestone flux, and agricultural limestone are purchased for their unique properties and to serve specific purposes.¹⁹

Crushed limestone is sold through distributors. Limestone used in the manufacture of lime and cement kiln feed are consumed captively by the quarrying company,²⁰ while agricultural limestone generally is sold through different distributors than crushed limestone.²¹

We turn next to the various substitute construction aggregates proposed by respondents for inclusion in the like product definition. First, we find that these materials have different physical characteristics than limestone. Sand and gravel are composed, respectively, of silica and of varying amounts of different rock types. Although there is some overlap in the applications for limestone on the one hand and sand and gravel on the other hand,²² for the most part the two materials do not have the same uses.²³ Sandstone is largely composed of silica and is a more polished material than crushed limestone base and aggregates.²⁴ Although sandstone and crushed limestone may be used in concrete production, they impart different properties to the end product and do not have the same uses; the relative mix of each material will vary according to the specifications of the particular project.²⁵ Crushed shell has a high calcium carbonate content.²⁶

Recycled concrete is torn-up concrete that has been recrushed and mixed

¹⁹ Petitioners' Brief at 14-15.

²⁰ Staff Report at I-5-6.

²¹ Transcript at 15-16.

²² Gravel is used infrequently as base material, but has some overlap with limestone in the production of concrete. Transcript at 19.

²³ Id. at 19-22; Staff Report at I-7.

²⁴ Transcript at 21-22; Staff Report at I-7.

²⁵ Transcript at 21-22; Staff Report at I-7.

²⁶ Id. at I-7.

with new material. Because it contains cement and sand, it has a mixed chemical composition.²⁷ Slag is a substance formed by chemical action and fusion at furnace operations. It is the waste material typically formed during the smelting operations of ores and refining operations of metals. The chemical content of slag depends on the chemical content of the ore or metal being processed and the processing technique. Slag may be used in certain base and aggregate applications, although it is not widely used in either application.²⁸

Although there is some degree of interchangeability among crushed limestone and the various substitute materials, such interchangeability is limited. Sand and gravel may be used in place of crushed limestone in concrete aggregate, but substitution is not extensive.²⁹ Further, there are numerous applications for sand and gravel for which crushed limestone simply is not usable.³⁰ Sandstone and crushed limestone are complementary materials in concrete production, not substitutable materials.³¹

Shell and slag have size and strength characteristics that cause them to be considered inferior products to crushed limestone.³² At best, they may be used in certain projects as aggregates along with, rather than to the exclusion of, crushed limestone. Because they contain materials such as cement and sand, which affect product strength, recycled concrete and asphalt are used in applications where quality is of secondary importance.³³

For the most part, customers perceive crushed limestone as a different

²⁷ Id.

²⁸ Id.

²⁹ Petitioners' Brief at 11.

³⁰ Id. at 12-13; Staff Report at I-7.

³¹ Id.

³² Petitioners' Brief at 11.

³³ Staff Report at I-7.

product than either the other limestone products or the substitute materials. Customers also typically specify the type of construction material (e.g., crushed limestone, sand and gravel) that they require, depending on the importance of quality in the particular project.³⁴

Sandstone is produced in much the same manner as crushed limestone, although the production costs for sandstone are twice those for crushed limestone.³⁵ Sand and gravel and crushed shell are dredged from riverbeds, not blasted from quarries.³⁶ Slag, calcium carbonate, and recycled concrete and asphalt are recycled materials that require the addition of other materials to be used in construction.³⁷

Substitute materials generally are sold through different distributors than those who sell crushed limestone.³⁸

In view of the distinct physical characteristics, end uses, production facilities and processes and channels of distribution, and the limited interchangeability among the other materials, we define the like product to be crushed limestone, excluding limestone flux, cement kiln feed, limestone used for the manufacture of lime, and agricultural limestone.

III. Analysis of Material Injury or Threat Thereof to a Separate Industry

Petitioners requested that the Commission undertake a regional industry analysis in this investigation and asserted that the appropriate region contained 75 counties in southeastern Texas (the "Southeast Texas region.") Respondents agree that a regional analysis is appropriate, but propose a far larger region encompassing all or parts of ten states along the Mississippi

³⁴ Id. at I-7-8, I-10-11.

³⁵ Transcript at 21-22.

³⁶ Petitioners' Brief at 13-14.

³⁷ Transcript at 23.

³⁸ Id. at 13.

River and Gulf Coast.³⁹

Section 771(4)(C) of the Tariff Act of 1930 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--

(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.

The statute provides criteria both for defining a separate industry and also for determining whether such an industry has been materially injured or threatened by material injury by reason of dumped imports.

In accordance with the statute, the Commission determines whether a regional market and a separate industry exist by applying the criteria of subsections (i) and (ii) of section 771(4)(C) to the evidence in the investigation. If these criteria are met, the Commission then may make a finding of material injury or threat thereof to the defined industry, provided that there is a concentration of dumped imports into such an isolated market and that the producers of all, or almost all, of the production within that

³⁹ The ten states are Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Tennessee and Texas.

market are being materially injured or threatened by material injury by reason of the dumped imports. If either of these conditions is not met, the Commission is precluded from finding material injury or threat thereof to the industry.

In sum, section 771(4)(C) constitutes the statutory framework for defining the separate industry and the conditions necessary to a finding of material injury or threat of injury (as defined in section 777(7)) to the defined industry.

A. Determination of a Regional Market and a Separate Industry

Appropriate circumstances for defining a regional market consistently have been found when the products under investigation have had low value-to-weight ratios and where high transportation costs have made the area of production necessarily isolated and insular.⁴⁰ Although these prior findings are not binding in this investigation, they do provide guidance for our analysis.

Because of the low value-to-weight ratio and the fungible character of crushed limestone, transportation costs limit the distances it can be shipped profitably. In 1991, for instance, 53.8 percent of the crushed limestone mined in the Southeast Texas market was shipped fewer than 50 miles away from the quarry.⁴¹ Less than one-half of one percent of the crushed limestone was

⁴⁰ For instance, in all investigations involving cement but one, the Commission has used a regional analysis. See Portland Hydraulic Cement and Cement Clinker from Columbia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Invs. Nos. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (December 1986) ("Portland Hydraulic Cement"). In that case, the regional industry issue was not raised by the parties. The petitioner had noted that cement was produced and sold in a series of regional markets, but argued that imports were injuring producers in all of the regional markets, and therefore injury could be assessed on a national basis.

⁴¹ Staff Report at I-8.

shipped over 300 miles.⁴²

During the period of investigation, shipments by producers of crushed limestone in the Southeast Texas market overwhelmingly went to customers located within that market. The percentage of shipments staying within the market is in the range⁴³ that the Commission previously has considered to satisfy the statutory criterion under section 771(4)(C)(i).^{44 45} Similarly, the percentage of consumption in the Southeast Texas market that was supplied by U.S. producers of crushed limestone from outside that market remained at extremely low levels, and falls within the range⁴⁶ that we consider sufficient to treat the Southeast Texas market as a regional market that satisfies the criterion of section 771(4)(C)(ii).⁴⁷ Accordingly, we find that the region

⁴² Id.

⁴³ The precise data are confidential.

⁴⁴ Staff Report at I-10.

⁴⁵ See, e.g., Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (March 1980) at 8 (96 percent found to be sufficient); Portland Hydraulic Cement from Australia and Japan, Invs. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 at 4 (November 1982) (93 percent found to be sufficient); Fall Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 (December 1983) at 7 (84.7 percent found to be sufficient); Operators for Jalousie and Awning Windows from El Salvador, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987) (over 80 percent found to be sufficient).

⁴⁶ The precise data are confidential.

⁴⁷ The Commission has found in the past that an average of 10.5 percent was acceptable and on several occasions that percentages of outside supply of less than 10 percent were acceptable. See, e.g., Gray Portland Cement and Cement Clinker from Venezuela, Inv. No. 731-TA-519 (Preliminary), USITC Pub. 2400 at 8-10 (July 1991) (10.5 percent); Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 at 15 (August 1990) ("Mexico Cement") (between 8 and 8.5 percent acceptable); Sugars and Syrups from Canada, USITC Pub. at 4, 14 (5.5 percent acceptable); Portland Hydraulic Cement, USITC Pub. 1310 at 9 (less than 10 percent acceptable). The Commission determined in one case that 30 percent was too large, and in a second case that percentages that ranged between 25 and 50 percent were too large. See also Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (June 1982); 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, Inv. No. 731-TA-261 (Preliminary), USITC Pub. 1710 at 8 (June 1985).

proposed by petitioners satisfies the criteria of sections 771(4)(C)(i) and (ii).

Concurrent with the determination of the relevant market, the statute authorizes the Commission to treat the producers in that market as a separate (i.e. regional) industry. Accordingly, for purposes of this investigation, we define producers in the Southeast Texas region as the relevant domestic industry.⁴⁸

B. Concentration of Imports

Having found a separate industry, the Commission must next determine whether there is a concentration of dumped imports into such an isolated market.⁴⁹ The concentration of imports is not a factor in defining the region.⁵⁰

While the statute does not define concentration, the Commission generally has found concentration of dumped imports at or above 80 percent of total imports into the United States to meet the statutory criterion.⁵¹

Imports of crushed limestone from Mexico into the region are below 60 percent of total Mexican imports into the United States. In 1990, 55.1 percent of imports from Mexico were imported into the region; in 1991, 59.6 percent of imports from Mexico were imported into the region; and to date in 1992, 54.3 percent of imports from Mexico have been imported into the region.

⁴⁸ Because we find that Southeast Texas meets the regional industry criteria in this investigation, we do not address the Mississippi River/Gulf Coast region proposed by respondents.

⁴⁹ 19 U.S.C. § 1677(4)(C).

⁵⁰ Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 (April 1992) at 15-16.

⁵¹ See, e.g., Portland Hydraulic Cement, USITC Pub. 1310 at 10 (99 percent); Offshore Platform Jackets and Piles from the Republic of Korea and Japan, Invs. Nos. 701-TA-248 and 731-TA-259-260 (Final), USITC Pub. 1848 (May 1986) at 10 (100 percent); Sugars and Sirups from Canada, USITC Pub. 1047 at 4 (96 percent).

We conclude that these levels of imports do not satisfy the concentration requirement of the statute.

We note that petitioners have argued, in the alternative, that concentration should be measured by comparing import market share in the region with import market share in the United States generally. Under this approach, petitioners urge the Commission to find concentration if the import market share is clearly higher in the region than in the United States as a whole. Although the Commission has discretion to analyze import concentration on this basis,⁵² ⁵³ we do not find it appropriate in the present case to consider concentration based on a comparison of import share in the region to import market share in the United States as a whole. The available evidence demonstrates that imports are not dispersed widely throughout the country, but are found overwhelmingly in the 10-state Mississippi River/Gulf Coast region that was identified by respondents.⁵⁴ In the absence of a wide dispersion of imports throughout the United States, we decline to consider concentration on the basis of import market share.⁵⁵

C. Material Injury or Threat of Material Injury to the Producers of All or Almost All of the Production within the Market

In order to make an affirmative determination with respect to a separate

⁵² See Mexico Cement, USITC Pub. 2305 at 10, n.19.

⁵³ H.R. Rep. No. 96-317 (96th Cong., 1st Sess.) at 73 (1979) ("[s]uch concentration could be found to exist if the ratio of such imports to consumption is clearly higher in the regional market than in the rest of the U.S. market") (emphasis added).

⁵⁴ Staff Report at I-13, I-15.

⁵⁵ Mexico Cement, USITC Pub. 2305 at 10 ("[i]t might be appropriate ... to point to a high level of import penetration as justifying a regional market in a case where a small isolated market received a large share of the subject imports, e.g. 55 percent, while the remainder of the imports were spread evenly around the rest of the country. In such a case, the small regional market could be feeling a substantial impact from the imports despite the fact that it does not meet the Commission's traditional test, while the imports are not a significant part of the market anywhere else in the country.")

industry, the statute requires both a finding of import concentration and also a finding that the producers of all or almost all of the production within the isolated market are being materially injured or threatened by material injury. Because imports are not concentrated in the market, we do not reach the issue of material injury or threat thereof to the producers of all or almost all of the production within the market.⁵⁶

IV. No Reasonable Indication of Material Injury or Threat of Material Injury to the Separate Industry

Because of our finding that subject imports are not concentrated in the market, one of the two necessary conditions of section 771(4)(C) is not met in this investigation. Accordingly, we determine that there is no reasonable indication that the domestic industry in this investigation is materially injured, or threatened with material injury, by reason of allegedly LTFV imports of crushed limestone from Mexico.

⁵⁶ We also do not address whether there is a reasonable indication of material injury, or threat thereof, to a national industry. The statute does not contemplate that a national industry analysis is necessary when the Commission has found the existence of a separate industry. We note that the Commission in the past has undertaken a national industry analysis when import concentration has not been found. Such an analysis is unnecessary in this investigation, however. Petitioner never requested that we undertake a national industry analysis, and indeed argued throughout the investigation that a regional industry analysis was appropriate. Moreover, we have no question that the producers in the Southeast Texas market constitute the appropriate industry. We also note that the record evidence demonstrates that the subject imports account for a very small portion (less than 0.5 percent, Staff Report at I-11) of total national consumption. For these reasons, a national industry analysis is unnecessary.

VIEWS OF COMMISSIONERS DAVID B. ROHR AND JANET A. NUZUM

We determine that there is no reasonable indication that the regional crushed limestone industry is materially injured or threatened with material injury by reason of imports of crushed limestone from Mexico that are allegedly sold at less than fair value (LTFV).¹

Like Product/Domestic Industry

In any investigation under title VII of the Tariff Act of 1930 (the "Act"), the Commission first defines the "like product" and the domestic industry. Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product"² In turn, the statute defines "like product" as "a product which is like or, in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"³

The Commission's determination of the appropriate domestic product or products like the imported articles subject to investigation is a factual determination. We apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁴ An analysis of these provisions begins with the articles subject to investigation as defined by the Department of Commerce ("Commerce").

Commerce has defined the imported product subject to this preliminary

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

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n.5 (CIT 1988) ("Asocoflores"). In analyzing like product issues, the Commission generally considers a number of factors, including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations.

investigation as:

[C]rushed limestone from Mexico. The subject merchandise consists of all forms of crushed limestone, including limestone base -- whether or not stabilized -- limestone aggregate, including coarse aggregate and fine aggregate (limestone sand), and any other forms of crushed limestone. . . . Specifically excluded from the scope of the investigation are limestone flux, agricultural limestone and limestone cement kiln feed, used in the manufacture of lime and cement . . .⁵

We determine that the appropriate like product is all forms of crushed limestone, coextensive with the definition of the imported articles provided by Commerce, and specifically excluding limestone flux, cement kiln feed, limestone used for the manufacture of lime, and agricultural limestone excluded from the scope of the investigation by Commerce. In making this determination, we concur with our colleagues' views concerning like product and domestic industry, and therefore will not repeat them here.⁶

The Legal Framework for Analysis of Material Injury or Threat Thereof to A Regional Industry

Petitioners requested that the Commission undertake an analysis of material injury or threat thereof to a regional industry. They asserted that the appropriate regional market contains 75 counties in southeastern Texas (the "Southeast Texas regional market"). The petition contained no allegations or information regarding injury to a national industry. Respondents agree that a regional analysis is appropriate, but propose a larger regional market encompassing all or parts of ten states along the Mississippi River and Gulf Coast.⁷

Regional analysis is authorized by section 771(4)(C) of the Act, which 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--

⁵ Initiation of Antidumping Duty Investigation: Crushed Limestone from Mexico, 57 Fed. Reg. 26818 (June 16, 1992). Limestone base is crushed limestone in various sizes used for road or other paving purposes, while limestone aggregate is crushed limestone that is combined with other substances to form downstream products (e.g., portland cement concrete and asphaltic concrete.) Staff Report at I-4-5.

⁶ See Views of Vice Chairman Watson, Commissioner Brunsdale and Commissioner Crawford.

⁷ The ten states are Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Tennessee and Texas.

(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.

In accordance with the statute, the Commission first determines whether a regional market exists. If such a regional market exists, the Commission defines the industry as the producers of the like product within that market (i.e., the regional industry). Where we differ from our colleagues is in our analysis of the appropriateness of a particular regional market. Given the facts of this particular investigation, the differences in our approaches do not result in different conclusions. Under certain circumstances, however, our approach could lead to a regional market definition different from that of the analysis proposed by our colleagues.

We begin our analysis by employing the two "market isolation" factors identified in subsections 771(4)(C)(i) and (ii) of the Act to determine the appropriateness of a particular region for statutory regional analysis. Often the boundaries of a regional market meeting the statutory criteria of subsections 771(4)(C)(i) and (ii), however, are not precise. More than one possible region often satisfies the statutory market isolation criteria. In general, the smaller the region, the higher the level of the market isolation criteria. This does not mean, however, that the levels of market isolation of a larger region might not also be sufficient to meet the statutory criteria.

Some criteria must be used to decide between possible alternative regional markets that satisfy the market isolation criteria of subsections 771(4)(C)(i) and (ii). We believe that the Commission should first look to choosing that region that, while satisfying the

market isolation criteria, includes the maximum volume of imports. Second, the Commission should apply the test of market reality, including the pattern of shipments between locations, to determine whether any such region is appropriate.

For example, one possible region may have 98 percent of regional shipments remaining within the region, two percent of regional demand met by outside domestic producers and 75 percent of the imports. A second, larger region may have 95 percent of shipments remaining within the region, 5 percent of regional demand met from outside domestic sources and 85 percent of the imports. A third possible region may include 95 percent of the imports but have a lower volume of shipments remaining within the region, 60 percent, and more of internal demand met by nonregional producers. In our view, the second region would, absent some special circumstances showing that the second region was not commercially realistic, be the more appropriate region. While both the first two regions meet the statutory criteria, the second contains a larger amount of the imports. While the third contains an even larger amount of the imports, it would be inappropriate to expand the region because it would no longer meet the market isolation requirement.

Having defined the appropriate regional market in this manner, we then turn to whether there is material injury or threat thereof to the regional industry. In order to do so, the Commission is required to determine: 1) that subject imports are concentrated in the region; and 2) that the producers of all or almost all of the production within the region are being materially injured or threatened with material injury by reason of the subject imports. If both of these necessary conditions are not met, the Commission is precluded from finding material injury or threat thereof to the regional industry. In other words, absent a sufficient concentration of imports, the statute compels a negative determination.

Defining the Appropriate Regional Market

The circumstances in which the Commission employs a regional analysis usually involve products having low value-to-weight ratios and situations in which high

transportation costs have made the area of production necessarily isolated and insular.⁸ This is, of course, the situation with crushed limestone. We generally concur with the analysis of the statutory market isolation criteria provided by our colleagues.⁹

We differ only with respect to their decision not to consider any alternative region. We do not believe that the fact that the region proposed by petitioner satisfies the market isolation criteria is a sufficient basis for not considering any alternative region. In this investigation, the data show that allegedly unfair imports from Mexico enter the United States at several ports within the Southeast Texas region and also at two ports outside that region, New Orleans and Tampa. We note that New Orleans is the closest port contiguous with the proposed region, and inclusion of New Orleans would significantly increase the volume of imports included within the region.

We conclude, however, that it would not be appropriate to define a region to include both the Southeast Texas regional market proposed by respondents and New Orleans. None of the producers within the proposed region ship their product to the New Orleans market. It would not be economical for them to do so. To the extent demand in that market is satisfied by domestic producers, it is met by producers of crushed limestone in Kentucky and Missouri shipping their product down the Mississippi River. Over the period of the investigation, such producers rarely sold product, and then only in limited quantities, to the Southeast Texas regional market. The evidence does not suggest therefore that such an expanded region would satisfy the market isolation criteria or that such a region would be consistent with market reality.

Thus, we concur with our colleagues' conclusion that the appropriate region in this

⁸ For instance, in all investigations involving cement but one, the Commission has used a regional analysis. See Portland Hydraulic Cement and Cement Clinker from Columbia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Inv. No. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (December 1986) ("Hydraulic Cement"). In that case, the regional industry issue was not raised by the parties. The petitioner had noted that cement was produced and sold in a series of regional markets, but argued that imports were injuring producers in all of the regional markets, and therefore injury could be assessed on a national basis.

⁹ See Views of Vice Chairman Watson, Commissioner Brunsdale and Commissioner Crawford.

investigation is the Southeast Texas region.

Material Injury to the Producers in the Southeast Texas Region

The first element in our determination of whether producers of all or almost of regional production are materially injured or threatened with material injury is to determine if the import concentration in the chosen region satisfies the statutory requirement. There is no precise numerical limit for determining when import concentration is sufficient to support a determination of material injury to a regional industry. The Commission, however, generally has found percentages higher than 80 percent of total imports by volume to be sufficient.¹⁰

Imports of crushed limestone from Mexico into the Southeast Texas regional market are below 60 percent of total U.S. imports. In 1990, 55.1 percent of imports from Mexico entered the region; in 1991, 59.6 percent of imports from Mexico entered the region; and to date in 1992, 54.3 percent of imports from Mexico have entered the region. It is our view that these levels of imports are too low to satisfy the concentration requirement.¹¹

We note that petitioners have argued, in the alternative, that concentration should be measured by comparing import market share in the region and in the United States generally. Under this approach, they urge that there is sufficient concentration if the import market share is clearly higher in the regional market than in the United States as a whole. The statute does not require any particular approach for determining import concentration levels.¹²

We are not convinced that it is appropriate to base a decision on the sufficiency of import concentration solely on a comparison between import market share in the region to

¹⁰ See, e.g., Portland Hydraulic Cement, USITC Pub. 1310 at 10 (99 percent); Offshore Platform Jacket, USITC Pub. 1848 at 10 (100 percent); Sugars and Sirups, USITC Pub. 1047 at 4 (96 percent).

¹¹ We note that the Commission has complete information about the extent of imports of crushed limestone from Mexico entering the United States and the Southeast Texas regional market.

¹² H.R. Rep. No. 96-317 (96th Cong., 1st Sess.) at 73 (1979) ("[s]uch concentration could be found to exist if the ratio of such imports to consumption is clearly higher in the regional market than in the rest of the U.S. market") (emphasis added).

import market share in any other areas or in the United States as a whole, even if the Commission has the discretion to do so. At any rate, we believe that to do so here is clearly inappropriate. Evidence in the record demonstrates that imports from Mexico are not dispersed throughout the country. Moreover, the Southeast Texas region accounts for a very small portion -- 3 percent -- of total United States consumption of crushed limestone.¹³

Having determined that the condition precedent, import concentration, to an affirmative injury finding in a regional industry investigation is lacking, we are compelled to conclude that there is no reasonable indication that producers of all or almost all of regional production are being materially injured or threatened with material injury by reason of the allegedly unfair Mexican imports.¹⁴

Our colleagues also raise the question of whether the Commission should, having found no injury to the regional industry, consider whether there is injury or threat thereof to a national industry.¹⁵ We note that in a recent investigation involving Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final),¹⁶ we made alternative findings as to a national industry, finding that such an industry was also not being injured or threatened with injury by reason of the subject imports. We did so not because we determined that such an analysis was required by our finding that the regional industry was not injured or threatened with injury. Rather, we did so to clarify that we would have reached a

¹³ Staff Report at I-10, I-11.

¹⁴ Petitioners also requested the Commission to exclude Vulcan Materials from the domestic industry as a related party. Under section 771(4)(B) of the Tariff Act of 1930, producers who "are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise" may be excluded from the domestic industry. 19 U.S.C. § 1677(4)(E). Application of this provision is within the Commission's discretion based upon the facts in each investigation. Vulcan Materials is the parent company of Vulcan/ICA, which accounts for 100 percent of the imports from Mexico. Under the statute, therefore, Vulcan Materials is a related party. Because we determine that the concentration of imports from Mexico into the Southeast Texas region is insufficient to make an affirmative determination that there is a reasonable indication of material injury or threat thereof to the regional industry, we do not reach the issue of whether appropriate circumstances exist to exclude Vulcan Materials from the domestic industry.

¹⁵ We note that the petition upon which this investigation was initiated contained no allegations that the allegedly unfair imports from Mexico injured or threatened injury to the national crushed limestone industry. At no point in the investigation was the possibility of such injury raised by anyone.

¹⁶ USITC Pub. 2502 (April 1992).

negative determination under either a regional or a national industry analysis.

For the foregoing reasons, we determine that there is no reasonable indication that the regional crushed limestone industry is materially injured or threatened with material injury by reason of the allegedly unfair imports from Mexico.

INFORMATION OBTAINED IN THE INVESTIGATION

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

INTRODUCTION

On May 20, 1992, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Texas Crushed Stone Co., Georgetown, TX; Parker LaFarge, Inc., Houston, TX; and Gulf Coast Limestone, Inc., Seabrook, TX, alleging that imports of crushed limestone¹ from Mexico are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective May 20, 1992, the Commission instituted antidumping investigation No. 731-TA-562 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 such imports.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on May 27, 1992 (57 F.R. 22255).² The public conference was held in Washington, DC, on June 10, 1992,³ and the vote was held on June 29, 1992. The statutory deadline for the Commission to transmit its determination to the Secretary of Commerce in this investigation is July 6, 1992. Crushed limestone has not been the subject of any other investigation conducted by the Commission.

NATURE AND EXTENT OF THE ALLEGED SALES AT LTFV

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioner. The petitioner identified one Mexican producer, Calizas Industriales del Carmen, S.A. de C.V. (Calica), which manufactures and exports crushed limestone to the United States. Using sales, bids, or offers for sale and constructed value to establish U.S. price and foreign market value, the petitioners' calculated dumping margins, as adjusted by Commerce in its notice of initiation, range from 2.52 percent to well over 900 percent.

¹ Commerce defined the imported product subject to this investigation as "all forms of crushed limestone, including limestone base--whether or not stabilized--limestone aggregate, including coarse aggregate and fine aggregate (limestone sand), and any other forms of crushed limestone. Crushed limestone is classifiable under subheading 2517.10.00.20 of the Harmonized Tariff Schedule of the United States (HTS). Specifically excluded from the scope of the investigation are limestone flux, agricultural limestone and limestone cement kiln feed, used in the manufacture of lime and cement, provided for under subheading 2521.00.00.00.6 of the HTS."

² Copies of the Commission's and Commerce's notices are shown in app. A.

³ A list of witnesses appearing at the conference is presented in app. B.

THE PRODUCT

Description and Uses

The imported merchandise subject to the petitioners' complaint--crushed limestone--is a sedimentary, carbonate rock used primarily in the construction industry as a raw material to produce pavement base, portland cement concrete, and asphaltic concrete, and in other uses.

Crushed limestone is produced and sold for two broad applications: base and aggregates. These products are manufactured in various grades, which are a function of the mineral purity of the limestone. The amount of clay is a key concern because clay reduces the bonding strength required for both base and aggregates and restricts the permeability required for quality base material.⁴

Limestone base is limestone crushed to various sizes (1-3/4 inch particles to fine sand particles of less than 1/8 inch) and combined in a well-graded unwashed blend for road and other paving applications. Limestone base is generally used either by itself as a paving medium or is installed under concrete or asphalt paving to provide stability, moisture control, and strength. It is an end product rather than a raw material. Base may be stabilized with lime or cement to further improve its strength (using a ratio of 3-5 percent stabilizer to 95-97 percent limestone); it is especially popular in the Houston market because of soil erosion concerns.

Limestone aggregate consists of crushed limestone particles of various sizes,⁵ from 4-inch rocks to fine limestone sand of less than 1/8 inch, and is combined with other substances to form downstream products, e.g., portland cement concrete when combined with portland cement, natural (siliceous) sand, and water, and asphaltic concrete when combined with asphalt oil and natural (siliceous) sand. Concrete production uses large limestone aggregates and coarse natural sand, and asphaltic concrete production uses smaller limestone aggregates and fine natural sand.

In both the base and the asphalt concrete mixtures, the angular structure and rough surface of crushed stone are important characteristics in providing strength for end-use applications. However, unless very high-strength concrete is desired, surface characteristics become less important and gravel may be a suitable substitute for crushed stone, although artificially crushed stone, including limestone, has a greater degree of interlocking and binding characteristics than does gravel.^{6 7}

⁴ Transcript of the Commission's conference (transcript), p. 60.

⁵ The term aggregate is used by the construction materials industry to mean any combination of crushed stone, sand, and gravel in their actual or processed state.

⁶ National Stone Association, "Properties of Aggregate for Specific End-Use Applications," chapter 3 in The Aggregate Handbook (Washington, DC: National Stone Association, 1991), pp. 3-21 to 3-31.

⁷ Bureau of Mines, A Dictionary of Mining, Mineral, and Related Terms (Washington, DC: U.S. Department of the Interior, Bureau of Mines, 1968), p. 284.

Not subject to the petitioners' complaint are limestone used in the manufacture of cement ("cement kiln feed") and lime ("lime feed"); limestone flux, which is used in steel and chemical applications; and powdered limestone used for agricultural applications.

Limestone for cement production, or cement kiln feed, is crushed limestone generally sized at 3/4 inches. The important feature of cement kiln feed is the preference by the cement industry for a high-calcium limestone with no more than 5 percent magnesium carbonate.⁸ For quality control and economic transportation costs, cement producers typically prefer to quarry their limestone requirements at their own cement production plant sites. Accordingly, cement kiln feed is generally produced at separate facilities than other crushed limestone (with the exception of one producer, Parker LaFarge, which produces crushed limestone and cement kiln feed at the same quarry). Demand for cement kiln feed is far less than that for other crushed limestone.⁹ The channels of distribution are different for crushed limestone and cement kiln feed, because the latter is consumed internally by cement companies, including Parker LaFarge. The uses of these products are distinctly different. Price comparisons are not possible, since there are no open market sales of cement kiln feed. There are no known imports of cement kiln feed from any source; however, any future imports would enter the United States under a different HTS designation (2521.00.00) than that of the subject crushed limestone.¹⁰

Lime feed consists of at least 90 percent calcium carbonate, with the balance being less than 5 percent magnesium carbonate and less than 3 percent other impurities.¹¹ Quarries for lime feed are located to obtain a limestone/clay mixture with the appropriate chemistry for lime production.¹² Most lime feed is quarried by lime producers for their own use.¹³ The

⁸ "The uses of limestone...depend largely on physical properties, chemical properties, or both. Physical properties are more important if stone is used "as is," such as for aggregate or building stone. Chemical properties are more important if stone undergoes changes from one form of matter to another, such as the manufacture of cement or lime." (Industrial Minerals and Rocks, 4th Edition, 1975, p. 769). Specifications for limestone used in portland cement manufacture require a content of more than 75 percent calcium carbonate and less than 3 percent magnesium carbonate ("Crushed Stone," Mineral Facts and Problems, 1985 Edition, U.S. Department of Interior, p. 4). Magnesium limestone contains 5 to 35 percent magnesium carbonate, and dolomitic limestone contains 35 to 46 percent magnesium carbonate.

⁹ According to industry sources, about 7 million tons of cement kiln feed are consumed annually in southeastern Texas, compared with about 30 million tons of the subject crushed limestone, transcript, p. 50.

¹⁰ Combined data for crushed limestone and cement kiln feed operations are presented in app. C. Responding firms account for approximately *** of total production in southeastern Texas in 1991, according to industry estimates of cement kiln feed production, transcript p. 50.

¹¹ Crushed Stone Mineral Yearbook, 1989, p. 23.

¹² Petitioner's brief, p. 14.

¹³ Combined data for crushed limestone and lime feed operations, as well as combined data for crushed limestone, lime feed, and cement kiln feed, are

(continued...)

channels of distribution are different for crushed limestone and lime feed, as the latter is consumed internally by lime companies, including Redland. The uses of these products are distinctly different. Price comparisons are not possible, as there are no open market sales of lime feed. There are no known imports of lime feed from any source; however, any future imports would enter the United States under a different HTS designation (2521.00.00) than the subject crushed limestone.

Agricultural limestone and limestone flux are imported into the United States under the HTS designation 2521.00.00. Agricultural limestone is a powdered form of limestone with at least 80 percent calcium carbonate content, sold for only agricultural applications. The quantities consumed are negligible when compared with other crushed limestone consumption.¹⁴

Production Process

Crushed limestone is produced from surface mines (quarries) by drilling and blasting stone fragments from the stone face, of suitable size for later crushing operations.¹⁵ The large boulders and fragments are typically hauled to the primary crushing plant using front-end loaders and oversized trucks used specifically for mining purposes.¹⁶

Material transported from the quarry is crushed in the primary plant and sorted (screened) into various size particles, many of which are suitable for limestone base without any further processing. The remaining limestone base particles are transported to a screening (sizing) operation by conveyer belt, and then stored in large stockpiles containing various sizes of stone, ranging in size from 1-3/4 inch particles to fine limestone sand, or "fines". Limestone base is transferred to rail cars or trucks directly from the stockpile or mixed with cement or lime to produce a stabilized base,¹⁷ which is generally taken by truck to a construction site.

Oversized aggregates (greater than four inches) produced by the primary plant for the production of limestone aggregate are conveyed to a secondary crushing plant, then through a screening and washing operation to remove clay and fines. The aggregates are conveyed to stockpiles by particle size.

¹³ (...continued)

presented in app. C. Data are presented by company in app. D. Companies reporting data for lime feed account for most of the lime feed produced within the Southeastern Texas region, according to petitioner's estimates that total annual lime feed production within the region amounts to around ***.

¹⁴ About 300,000 tons of agricultural limestone are consumed annually in the southeastern Texas region, according to industry sources, transcript, p. 50.

¹⁵ Firms responding to Commission questionnaires reported that no other products were produced on the same equipment and machinery used in the production of crushed limestone.

¹⁶ One producer, Redland, uses a portable crusher that moves along the stone face, a new piece of technology designed to increase efficiency and reduce transportation costs of the mining operation.

¹⁷ Stabilized base is a perishable product, viable for only 3 to 4 hours.

Before shipment, aggregates for concrete or asphalt production are blended to the customer's specified size requirements and conveyed to truck or rail car loading stations. Rail is the predominant means of transportation.

Substitute Products

Among the products that allegedly may be used in place of the subject crushed limestone are sand and gravel, crushed sandstone, shell, recycled asphaltic concrete and portland cement concrete, slag, and calcium sulfate.

Sand and gravel are sometimes used as aggregates for concrete and, to some extent, asphalt production, depending on customer preference and specifications for end products. Unlike the natural adhesion characteristics of crushed stone, sand and gravel have smooth, round surfaces causing particles to shift under pressure unless compensated for with a proper mixture of portland cement or end-use design specifications. Industry sources estimate that consumption of sand and gravel within the southeastern Texas region is about one-third the consumption of crushed limestone.¹⁸ A significant portion of this consumption is accounted for by the requirement for natural sand in concrete and gravel production--for which manufactured limestone sand is not a substitute.

Crushed sandstone is used as an aggregate in road surface asphalt production when highway specifications require a certain degree of skid resistance. Limestone is not substitutable, as the degree of sandstone needed is outlined in the customer end-use specification. The amount of sandstone consumed annually in the southeastern Texas market is about *** tons, an insignificant amount of tonnage when compared with the nearly 30 million tons of crushed limestone consumed in that market each year.¹⁹

Shell is mainly derived from fossil reefs or oyster shell, and contains a high concentration of calcium carbonate. As a result of substantial depletion of oyster shell in the southeastern Texas region and of environmental concerns, significant amounts of shell are not available within the region.²⁰

Recycled concrete and asphalt consist of old concrete and asphalt that have been picked up, recrushed, and blended back with fines and new aggregate. Recycled concrete and asphalt, which are dark-grey in color, typically contain materials such as cement and sand. As such, recycled concrete and asphalt is used only for base material applications where quality is secondary.²¹

Crushed blast furnace slag is allowed by Texas DOT specifications for use in cement-stabilized base, and is also permitted for use in portland cement concrete applications.²² However, this material is not widely used in either application.

¹⁸ Exhibit 10 to conference.

¹⁹ Staff interviews with industry representatives, June 4, 1992.

²⁰ Petitioner brief, p. 9.

²¹ Transcript, pp. 22-23, Petitioner brief, p. 9.

²² Respondent brief, pp. 8-10.

In 1987, E.I. Du Pont de Nemours & Co. (Du Pont), a large chemical producer, started to promote calcium sulfate, a by-product of its fluorocarbon production process, as a construction aggregate.²³ This product is not currently available in large quantities.

U.S. Tariff Treatment

U.S. imports of crushed limestone covered by the scope of this investigation from countries entitled to the column 1-general (most-favored-nation or MFN) duty rate, including Mexico, enter free of duty under subheading 2517.10.00 of the HTS. The column 2 rate of duty, applicable to imports from those countries and areas indicated by general note 3(b) of the HTS, is 30 percent ad valorem.

THE MARKET FOR CRUSHED LIMESTONE

The Regional Character

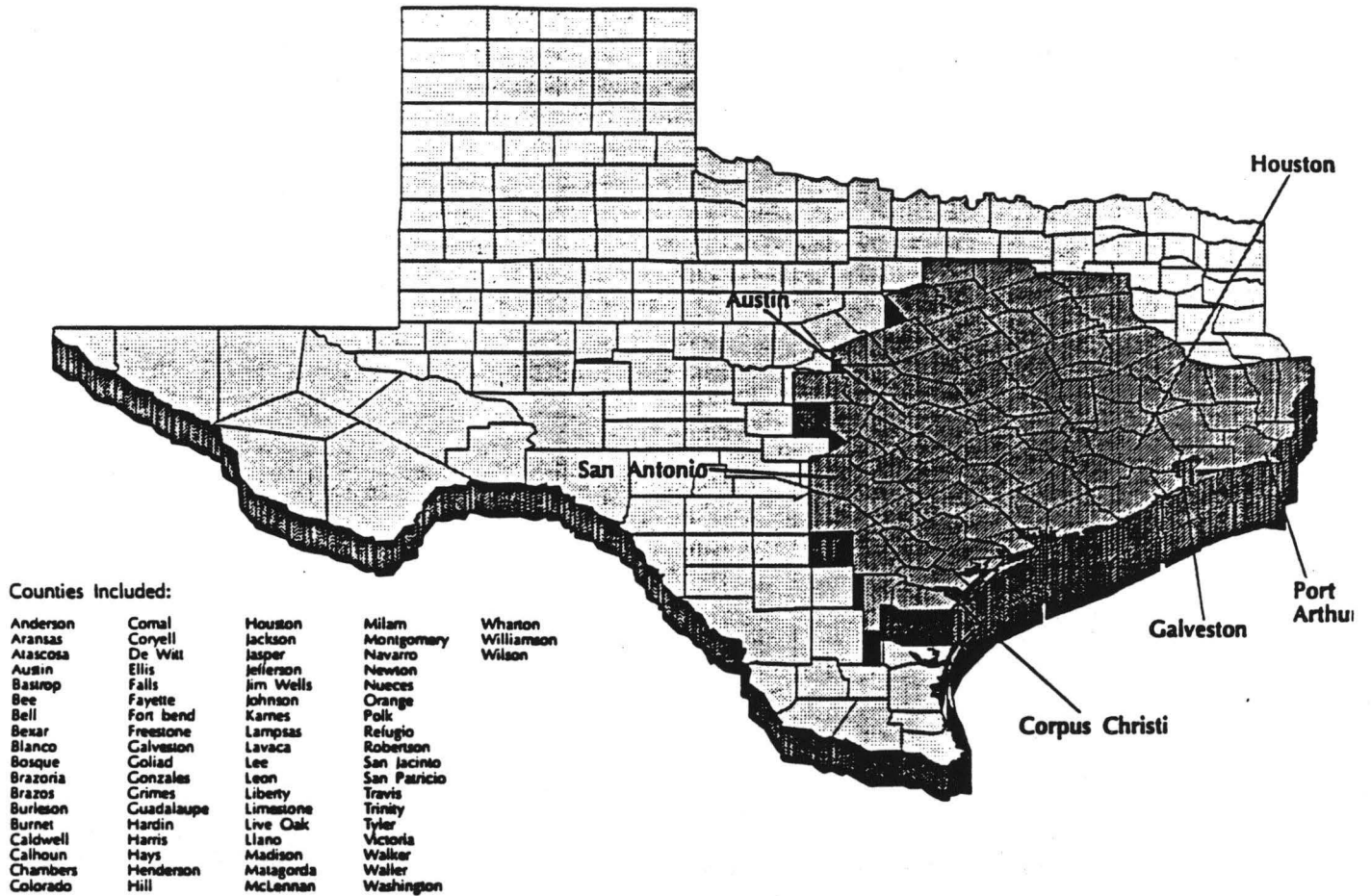
The petitioners in this investigation have alleged injury to an industry located in southeastern Texas, as defined geographically in figure 1. In order to determine the existence and applicability of a regional industry under the statute, the Commission examines the extent to which regional producers ship inside (as opposed to outside) the region and the degree to which consumption within the region is supplied by producers inside (as opposed to outside) the region and, having defined the region, must examine the degree of concentration of subject imports into the region in determining whether there is material injury by reason of the subject imports.

Because of the low value-to-weight ratio and the fungible character of crushed limestone, transportation costs are an important limiting factor on its shipment. The following tabulation of 1991 regional shipments illustrates how crushed limestone produced in southeastern Texas is rarely shipped great distances:

<u>Miles shipped</u>	<u>Percent of total</u>
0-49.....	53.8
50-99.....	12.9
100-199.....	19.8
200-299.....	13.1
300 & up....	<u>0.4</u>
Total...	100.0

²³ Transcript, p. 86.

Figure 1: Southeastern Texas region



Source: The petition, p. 2.

Southeastern Texas regional producers shipped the vast bulk of their U.S. shipments of crushed limestone within the region, as shown in the following tabulation of reported 1991 U.S. shipments by such producers (other years' shipments exhibited similar ratios to the total):

	<u>Within the region</u>	<u>Outside the region</u>	<u>Total shipments</u>	<u>Percent out- side region</u>
Quantity (1,000 tons).....	25,099	***	***	***
Value (1,000 dollars)..	89,676	***	***	***

Apparent consumption of crushed limestone within southeastern Texas-- nearly 30 million tons annually, valued at over \$100 million--is overwhelmingly supplied by domestic producers located within the region. As the following tabulation indicates, only a negligible portion of regional consumption is supplied by domestic producers located outside the region (***):²⁴

<u>Year</u>	<u>Southeast Texas apparent consumption (1,000 tons)</u>	<u>Shipments from producers outside the region into the region (1,000 tons)</u>	<u>Share of consumption for outside producers (Percent)</u>
1989.....	26,320	***	***
1990.....	27,435	***	***
1991.....	27,024	***	***
Jan.-Mar.--			
1991.....	5,743	***	***
1992.....	6,873	***	***

Producers in Texas to the north of the region generally supply the Dallas/Fort Worth market (which is not part of the region as drawn by the petitioner); producers in southwest Texas do not ship into the region; there are no significant limestone deposits due west or east of the region in Texas. Imports from Mexico are not only entering the region, but are also entering New Orleans, competing with production from Missouri and Kentucky barged down the Mississippi river (there are no limestone deposits in Louisiana), and Tampa, competing with Florida producers.²⁵ The concentration of imports from Mexico into the southeastern Texas region ranged from about 54 to 60 percent, as presented later in this report in the section entitled "U.S. Imports".

²⁴ ***.

²⁵ Exhibit 10 to conference.

Annual apparent consumption of crushed limestone within the State of Texas generally runs about 70 million tons, valued at an estimated \$258 million in 1991.²⁶

Apparent consumption within the United States generally amounts to over 1 billion tons, valued at \$5 billion in 1991.²⁷ Total import penetration for that year was less than 0.5 percent, and the ratio of imports from Mexico to total consumption was negligible. Consumption is heavily dependent on the construction industry. Approximately half of the construction demand is generated by building construction such as housing, commercial buildings, and manufacturing plants; the other half comes from public works such as highways, bridges, airports, and water-related projects.²⁸

Channels of Distribution

Producers' and importer's shipments of crushed limestone to end users and distributors in southeastern Texas and in the United States as a whole are summarized in the following tabulation:

<u>Item</u>	<u>Southeastern Texas producers (Percent)</u>	<u>Importer (Percent)</u>
Southeastern Texas shipments to:		
Unrelated end users.....	77	***
Related users.....	16	***
Unrelated distributors.....	<u>7</u>	<u>***</u>
Total.....	100	100
Total United States shipments to:		
Unrelated end users.....	77	***
Related users.....	16	***
Unrelated distributors.....	<u>7</u>	<u>***</u>
Total.....	100	100

Southeastern Texas Producers and Importers

There are 22 known producers of crushed limestone, lime feed, or cement kiln feed located in Southeastern Texas. Their plant locations, relative size, and position on the petition are presented in table 1. Of the 22, two firms produce solely cement kiln feed. There are 17 producers of the subject crushed limestone, only one of which also produces cement kiln feed (Parker LaFarge). Of the 22, two produce solely lime feed (Austin White and Chemical Lime); one (A.P. Green) produces crushed limestone principally for its own lime plant but also produces small amounts of the subject crushed limestone

²⁶ Bureau of Mines Mineral Industry Surveys, first quarter 1992.

²⁷ Bureau of Mines Mineral Industry Surveys, first quarter 1992.

²⁸ The Aggregate Handbook, National Stone Association, 1991, section 2, p. 3.

Table 1

Crushed limestone and cement kiln feed: Southeastern Texas producers, plant locations, shares of reported production and total domestic shipments in 1991, and position on the petition, by firms

Firm	Plant locations	Share of production reported Percent	Share of domestic shipments Percent	Position on petition
<u>Crushed limestone:</u>				
Barrett Industries ¹	San Antonio, TX	***	***	***
Bandas Industries.....	Temple, TX	***	***	***
Brauntex Materials.....	New Braunfels, TX	***	***	***
Brazos Point, Inc. ²	Cleburne, TX	***	***	***
Capitol Aggregates ³	Georgetown, TX	***	***	***
Centex Materials ⁴	Austin, TX	***	***	***
Gifford-Hill & Co. ⁵	New Braunfels, TX	***	***	***
Hunter Industries ⁶	Austin, TX	***	***	***
L.D. Krause.....	New Braunfels, TX	(⁷)	(⁷)	***
Parker LaFarge, Inc....	New Braunfels, TX	***	***	Supports
Pioneer Concrete.....	Burnett, TX	(⁸)	(⁸)	***
Redland Stone Products.	San Antonio, TX	***	***	***
Texas Readymix Inc. ⁹ ...	San Antonio, TX	***	***	***
Tarmac Texas, Inc. ¹⁰ ...	Lampasas, TX	***	***	***
Texas Crushed Stone....	Georgetown, TX	***	***	Supports
Vulcan Materials Co....	San Antonio, TX	***	***	***
Total.....		100.0	100.0	
<u>Lime feed:</u>				
Austin White Lime Co...	Austin, TX	(¹¹)	(¹¹)	***
Chemical Lime Co.....	Clifton, TX	***	(¹²)	***
A.P. Green Lime Corp...	New Braunfels, TX	***	(¹³)	***
Total.....		100.0	100.0	
<u>Cement kiln feed:</u>				
Alamo Cement Co. ¹⁴	San Antonio, TX	***	(¹⁵)	***
Parker LaFarge.....	New Braunfels, TX	***	(¹⁵)	***
Texas-Lehigh Cement....	Buda, TX	***	(¹⁵)	***
Total.....		100.0	100.0	

- 1 ***.
- 2 ***.
- 3 ***.
- 4 ***.
- 5 ***.
- 7 ***.
- 8 ***.
- 9 ***.
- 10 ***.
- 11 ***.
- 12 ***.
- 13 ***.
- 14 ***.
- 15 ***.

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.

for ***; and *** produces small amounts of lime feed for its own lime plant, along with large amounts of the subject crushed limestone for the open market.

The Southeastern Texas crushed limestone industry is concentrated in five firms, which accounted for the majority of production (77.1 percent) and domestic shipments (81.7 percent) in 1991. All of these firms produce and sell crushed limestone base (stabilized or not) and aggregates of different sizes. All firms own quarries with adequate stone reserves to sustain production for several decades. Of these five, two are petitioning firms (Texas Crushed Stone or "TCS," and Parker LaFarge) and one firm is also the only importer of crushed limestone from Mexico (Vulcan Materials/Vulcan ICA).

Firms supporting the petition accounted for 73.3 percent of crushed limestone production and 79.6 percent of domestic shipments in 1991. Firms opposing the petition accounted for *** percent of crushed limestone production and *** percent of domestic shipments in 1991. Firms taking no position accounted for *** percent of 1991 crushed limestone production and *** percent of 1991 domestic shipments.

Gifford-Hill bought the facilities of Servetex Co. over 15 years ago; it currently produces crushed limestone ***.

Parker LaFarge was formed in May 1990, when LaFarge Corp., a large construction firm, purchased Parker Brothers' crushed limestone facilities. ***.

Redland, established in the 1920s, ***.

TCS, a family-run firm for over 40 years, ***.

Vulcan Materials is a large firm operating many limestone quarries throughout the United States. Its quarries in the San Antonio area were acquired in 1971 and 1990. A portion of Vulcan's production within the Southeastern Texas region is consumed by its own readymix and asphalt plants. Vulcan's open market sales of crushed limestone are usually made on a delivered basis; *** of its domestic production is sold from its Houston yard.

Another Vulcan subsidiary, Vulcan Materials Co./ICA Distribution Co. (Vulcan/ICA), is also the only importer of crushed limestone from Mexico, which it sells on the open market on an f.o.b. Houston terminal and delivered basis. The ratio of the quantity of Vulcan's imports in 1991 to its southeastern Texas production in that year was *** percent. During the conference, Vulcan testified that it did not allow its domestic production to compete with its import operations.²⁹ The trends in Vulcan's production and shipments were generally *** the industry aggregate without Vulcan, *** as shown in the tables in appendix D.

²⁹ Transcript, p. 102.

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES³⁰

Southeastern Texas Production, Capacity, Capacity Utilization, Shipments, Inventories, and Employment

Southeastern Texas producers' capacity, production, and capacity utilization for crushed limestone are presented in table 2. During 1989-91, capacity remained relatively flat, while production decreased, resulting in a decline of approximately six percentage points in capacity utilization.

Table 2

Crushed limestone: Southeastern Texas capacity, production, and capacity utilization, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Average-of-period capacity					
(1,000 tons)	59,802	60,548	60,509	15,384	15,235
Production (1,000 tons)	27,315	25,964	25,008	5,886	6,235
Capacity utilization					
(percent)	46.8	42.9	41.3	38.3	40.8

Note.--Capacity utilization is calculated from unrounded figures, using data of firms providing both capacity and production information.

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

Total shipments within the southeastern Texas region by regional producers declined in quantity and value between 1989 and 1991, then increased in the first quarter of 1992, as shown in table 3.³¹ Unit values for domestic shipments generally declined during the same period.

³⁰ Summary data for this section of the report are presented in app. C. Company-by-company data for this section are presented in app. D. Unless otherwise indicated, data provided in this section account for virtually all production of crushed limestone (excluding cement kiln feed and lime feed) in southeastern Texas.

³¹ As indicated previously, virtually all shipments of crushed limestone by producers located in the southeastern Texas region consisted of shipments within the region. Shipments to the remainder of the United States consisted of *** percent of total shipments in 1991, and exports *** were negligible.

Table 3

Crushed limestone: Southeastern Texas producers' shipments to the southeastern Texas region, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Company transfers:					
Quantity (1,000 tons)..	4,209	5,138	4,571	1,024	970
Value (1,000 dollars)..	17,127	19,588	20,632	4,537	4,120
Unit value (per ton)...	\$4.07	\$3.81	\$4.51	\$4.43	\$4.25
Domestic shipments:					
Quantity (1,000 tons)..	21,600	20,994	20,528	4,328	5,333
Value (1,000 dollars)..	77,226	73,592	69,044	14,199	17,082
Unit value (per ton)...	\$3.58	\$3.51	\$3.36	\$3.28	\$3.20
Total shipments:					
Quantity (1,000 tons)..	25,809	26,133	25,099	5,352	6,303
Value (1,000 dollars)..	94,353	93,180	89,676	18,736	21,202
Unit value (per ton)...	\$3.66	\$3.57	\$3.57	\$3.50	\$3.36

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.

Regional producers' inventory holdings are presented in table 4. Inventories generally fluctuated downward during the period for which data were collected, both in absolute terms and as a ratio of total shipments.

Table 4

Crushed limestone: End-of-period inventories of southeastern Texas producers, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Inventories (1,000 tons) . . .	10,883	10,946	10,408	11,349	10,714
Ratio of inventories to--					
Production (percent)	39.9	42.2	41.6	48.2	41.2
Total shipments (percent) . .	41.6	41.3	40.7	52.2	40.0

Note.--Ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

The number of production and related workers in the southeastern Texas regional industry fluctuated generally downward from 1989 to 1991, as presented in table 5. Hours worked, total compensation paid to such workers,

and productivity followed a similar trend, while hourly compensation and unit labor costs generally increased.

Table 5

Average number of southeastern Texas production and related workers producing crushed limestone, hours worked,¹ wages and total compensation paid to such employees, and hourly wages, hourly total compensation, productivity, and unit labor costs,² 1989-91, January-March 1991, and January-March 1992³

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Production and related workers (PRWs)	725	762	712	726	688
Hours worked by PRWs (1,000 hours)	1,787	1,885	1,694	432	412
Wages paid to PRWs (1,000 dollars)	17,837	18,841	16,772	4,170	4,120
Total compensation paid to PRWs (1,000 dollars)	20,331	21,793	20,046	4,886	4,791
Hourly wages paid to PRWs . . .	\$9.98	\$10.00	\$9.90	\$9.65	\$10.00
Hourly total compensation paid to PRWs	\$11.38	\$11.56	\$11.83	\$11.31	\$11.63
Productivity (tons per hour) .	16.6	13.8	14.7	13.6	15.1
Unit labor costs (per ton) . .	\$0.69	\$0.84	\$0.80	\$0.83	\$0.77

¹ Includes hours worked plus hours of paid leave time.

² On the basis of total compensation paid.

³ Firms providing employment data accounted for 100 percent of reported total U.S. shipments (based on quantity) in 1991.

Note.--Calculations use data of firms supplying both numerator and denominator information.

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

In response to the question "Did you reduce the number of production and related workers producing crushed limestone by at least 5 percent or 50 workers during any of the period January 1989-March 1992," 7 firms indicated a reduction in the number of workers. The total number of workers cited was 159, many of whom were laid off on a temporary basis, and reasons for the reduction were inventory control, low volume, cost reduction, profit concerns, loss of sales, improved plant efficiency, declines in orders and shipments, and plant closings.

Only one firm, ***, responded that it produced other products *** using the same production and related workers employed in the production of crushed limestone. No firms reported having production and related workers represented by a union.

Financial Experience of U.S. Producers

Thirteen firms,³² accounting for *** percent of reported production of crushed limestone in the southeastern Texas region in 1991, supplied income-and-loss data on their crushed limestone operations and on their overall establishment operations. In addition, Concord Materials, Inc., which exited from the crushed limestone regional industry by selling its production equipment in June 1990 because of ***, also provided income-and-loss data.

Crushed Limestone Operations³³

Income-and-loss data are shown in table 6. Net sales of crushed limestone dropped by 8 percent from \$98.1 million in 1989 to \$90.2 million in 1991. Such net sales increased by 15 percent from \$18.8 million in January-March 1991 to \$21.6 million in January-March 1992. The responding firms suffered aggregate operating losses in all reporting periods except in January-March 1992. The operating losses increased from \$593,000, or 0.6 percent of net sales, in 1989 to \$3.3 million, or 3.7 percent of net sales, in 1991. These firms earned an aggregate operating income of \$233,000, or 1.1 percent of net sales, in January-March 1992 compared with operating losses of \$1.7 million, or 9.1 percent of net sales, in January-March 1991. Pretax net loss margins followed a similar trend as operating income or loss margins. The key financial data by firm are presented in table D-7 in appendix D.

Eight firms ***, accounting for about *** percent of total net sales in 1991, reported either higher operating income or lower operating loss margins in January-March 1992 compared with the corresponding period of 1991. During this period, ***.³⁴

The aggregate data excluding Vulcan's data are shown in following tabulation:

<u>Item</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>January-March--</u>	
				<u>1991</u>	<u>1992</u>
Net sales (1,000 dollars)....	***	***	***	***	***
Operating income or (loss) (1,000 dollars).....	***	***	***	***	***
Operating income or (loss) margin (percent).....	***	***	***	***	***

Vulcan accounted for *** percent of total net sales in 1991 and ***. The operating income or loss margins for crushed limestone operations without Vulcan's data *** aggregate operating income or loss margins with the Vulcan data.

Only one firm, ***, reported net sales of cement kiln feed. ***.

³² ***.

³³ Data exclude operations on cement kiln feed and lime feed.

³⁴ Per letter submitted by *** to the Commission dated June 18, 1992.

Table 6

Income-and-loss experience of U.S. producers on their operations producing crushed limestone,¹ fiscal years 1989-91, January-March 1991, and January-March 1992²

Item	1989	1990	1991	January-March--	
				1991	1992
Value (1,000 dollars)					
Net sales	98,134	95,299	90,231	18,811	21,645
Cost of goods sold	86,742	85,297	81,507	17,887	18,488
Gross profit	11,392	10,002	8,724	924	3,157
Selling, general, and administrative expenses . . .	11,985	11,162	12,071	2,631	2,924
Operating income or (loss) . .	(593)	(1,160)	(3,347)	(1,707)	233
Interest expense	***	***	***	***	***
Other income, net	***	***	***	***	***
Net (loss) before income taxes	(3,965)	(4,285)	(8,371)	(2,178)	(332)
Depreciation and amortiza- tion	13,340	12,735	11,581	2,802	2,842
Cash flow ³	9,375	8,450	3,210	624	2,510
Ratio to net sales (percent)					
Cost of goods sold	88.4	89.5	90.3	95.1	85.4
Gross profit	11.6	10.5	9.7	4.9	14.6
Selling, general, and administrative expenses . . .	12.2	11.7	13.4	14.0	13.5
Operating income or (loss) . .	(0.6)	(1.2)	(3.7)	(9.1)	1.1
Net (loss) before income taxes	(4.0)	(4.5)	(9.3)	(11.6)	(1.5)
Number of firms reporting					
Operating losses	8	6	7	6	5
Net losses	7	7	8	6	6
Data	14	14	13	12	12

¹ Data for these southeastern Texas producers include net sales outside the region. Net sale values of some firms at their terminals are on a delivered basis.

² ***.

³ 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.

Overall Establishment Operations

Income-and-loss data on the overall operations of establishments within which crushed limestone is produced are presented in table 7. The percentages of aggregate crushed limestone sales to total establishment sales declined each year from about 69 percent in 1989 to 56 percent in 1991 and to 54 percent in January-March 1992. Net sales increased whereas operating losses declined during 1989-91. During interim periods of 1991-92, net sales and operating income or losses for establishment operations showed the same trend as crushed limestone operations.

Investment in Productive Facilities

The value of property, plant and equipment and total assets of the reporting firms are shown in table 8, 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. These returns were *** when Vulcan's data are excluded from the aggregate data but their trends ***.

Capital Expenditures

Capital expenditures incurred by the reporting firms are shown in table 9. In 1990, the majority of capital expenditures were spent by ***. Vulcan Materials reported capital expenditures of *** for ***. Total capital expenditures for crushed limestone without Vulcan's data were *** in 1989, *** in 1990, *** in 1991, *** in January-March 1991, and *** in January-March 1992.

Research and Development Expenses

Only 4 out of 14 firms reported research and development expenses, which are shown in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>January-March--</u>	
				<u>1991</u>	<u>1992</u>
All products	***	***	***	***	***
Crushed limestone (with Vulcan)	***	***	***	***	***
Crushed limestone (without Vulcan)	***	***	***	***	***

Table 7

Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein crushed limestone is produced,¹ fiscal years 1989-91, January-March 1991, and January-March 1992²

Item	1989	1990	1991	January-March--	
				1991	1992
Value (1,000 dollars)					
Net sales	141,945	156,169	161,099	33,530	39,943
Cost of goods sold	127,142	141,913	145,730	31,814	35,308
Gross profit	14,803	14,256	15,369	1,716	4,635
Selling, general, and administrative expenses	18,694	18,128	19,126	4,087	4,514
Operating income or (loss) . . .	(3,891)	(3,872)	(3,757)	(2,371)	121
Interest expense	***	***	***	***	***
Other income, net	***	***	***	***	***
Net (loss) before income taxes	(10,113)	(10,298)	(12,226)	(3,613)	(1,117)
Depreciation and amortiza- tion	16,247	16,876	15,933	3,776	3,837
Cash flow ³	6,134	6,578	3,707	163	2,720
Ratio to net sales (percent)					
Cost of goods sold	89.6	90.9	90.5	94.9	88.4
Gross profit	10.4	9.1	9.5	5.1	11.6
Selling, general, and administrative expenses	13.2	11.6	11.9	12.2	11.3
Operating income or (loss) . . .	(2.7)	(2.5)	(2.3)	(7.1)	0.3
Net (loss) before income taxes	(7.1)	(6.6)	(7.6)	(10.8)	(2.8)
Number of firms reporting					
Operating losses	10	7	7	7	7
Net losses	7	8	8	7	8
Data	14	14	13	12	12

¹ Data for these southeastern Texas producers include net sales outside the region. Net sale values of some firms at their terminals are on a delivered basis.

² ***.

³ 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 8

Value of assets and return on assets of U.S. producers' establishments wherein crushed limestone is produced, fiscal years 1989-91, January-March 1991, and January-March 1992

Item	As of the end of fiscal year--			As of Mar. 31--	
	1989	1990	1991	1991	1992
Value (1,000 dollars)					
All products:					
Fixed assets:					
Original cost	259,975	290,503	290,877	287,512	288,233
Book value	134,600	149,561	142,072	144,540	138,009
Total assets ¹	225,270	231,996	219,596	229,944	221,198
Crushed limestone:					
Fixed assets:					
Original cost	198,822	212,186	213,401	211,583	212,467
Book value	106,860	111,788	106,515	108,006	103,825
Total assets ²	180,793	171,679	162,368	169,987	165,227
Return on book value of fixed assets (percent) ³					
All products:					
Operating return ⁴	(2.9)	(2.6)	(2.6)	(6.6)	0.4
Net return ⁵	(7.5)	(6.9)	(8.6)	(10.0)	(3.2)
Crushed limestone:					
Operating return ⁴	(0.7)	(1.0)	(3.1)	(6.2)	1.3
Net return ⁵	(3.9)	(3.8)	(7.8)	(8.0)	(0.9)
Return on total assets (percent) ³					
All products:					
Operating return ⁴	(1.9)	(1.8)	(2.0)	(4.3)	(6)
Net return ⁵	(4.7)	(4.6)	(5.8)	(6.5)	(2.2)
Crushed limestone:					
Operating return ⁴	(0.7)	(0.8)	(2.4)	(4.2)	0.5
Net return ⁵	(2.5)	(2.6)	(5.5)	(5.3)	(0.8)

¹ Defined as the book value of fixed assets plus current and noncurrent assets.

² Total establishment assets are apportioned, by firm, to product groups on the basis of the ratios of the respective book values of fixed assets.

³ 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. Data for the partial-year periods are calculated using annualized income-and-loss information.

⁴ Defined as operating income or loss divided by asset value.

⁵ Defined as net income or loss divided by asset value.

⁶ A negative return of less than 0.05 percent.

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

Table 9

Capital expenditures by U.S. producers of crushed limestone, by products, fiscal years 1989-91, January-March 1991, and January-March 1992

(In thousands of dollars)					
Item	1989	1990	1991	January-March-- 1991	1992
All products:					
Land and land improve- ments.....	***	***	***	***	***
Building and leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	7,953	21,068	11,155	1,548	964
Total.....	9,276	26,333	11,732	1,569	1,007
Crushed limestone:					
Land and land improve- ments.....	***	***	***	***	***
Building and leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	5,383	14,677	8,228	1,061	466
Total.....	6,404	16,766	8,427	1,061	509

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

Impact of Imports on Capital and Investment

The Commission requested each firm to describe and explain the actual and potential negative effects, if any, of imports of crushed limestone from Mexico on their growth, investment, ability to raise capital, or existing development and production efforts. Their responses are shown in appendix E.

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 the merchandise, the Commission shall consider, among other relevant economic factors³⁵--

³⁵ Section 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."

(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 706 or 736, are also used to produce the merchandise under investigation,

(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.³⁶

Subsidies (item (I) above) 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 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.

Southeastern Texas Inventories of Crushed Limestone from Mexico

Vulcan/ICA reported ***.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other than the United States

Calizas Industriales del Carmen, S.A. de C.V. (Calica) is the only known exporter of Mexican crushed limestone to the United States; however, it accounts for only about *** percent of estimated Mexican production of crushed limestone. Total production of crushed limestone in Mexico in 1991 is estimated to be 32.8 million tons.³⁷ No other detailed information is available about the Mexican industry; data concerning Calica's production, shipments, and inventories are presented in table 10.

Table 10

Crushed limestone: Calica's production, capacity, exports, and inventories, 1989-91, January-March 1991, and January-March 1992

* * * * *

³⁶ Section 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."

³⁷ Foreign producers' questionnaire of Calica, referencing U.S. Bureau of Mines publication Mexico Minerals Yearbook.

Calica was formed as a joint venture of Ingenieros Civiles Asociados (ICA) and Vulcan Materials Co., and is located 48 miles south of Cancun in the state of Quintana Roo, Mexico. The plant began operation in March 1988, and began shipments of crushed limestone in January 1990. Until January 1991, shipments consisted of limestone dredged during the construction of the harbor. After that time, Calica began shipping limestone mined from its main plant.³⁸

During 1989-91, production ***.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Mexico is the largest supplier of foreign-made crushed limestone to the United States³⁹ and the only foreign supplier of crushed limestone into the southeastern Texas region (there are no imports of cement kiln feed or lime feed from any source into the United States). Relatively small amounts of crushed limestone are imported into other areas of the United States from the Bahamas, Canada, and China. A majority of total U.S. imports of crushed limestone from Mexico entered ports in southeastern Texas. The ports of New Orleans, LA, and Tampa, FL, were also significant points of entry. Data presented in table 11 account for all known imports from any source. Data concerning imports from Mexico were supplied by Vulcan/ICA; data on imports from other sources were derived from U.S. Department of Commerce official import statistics.

There were no imports from Mexico into the United States of crushed limestone in 1989. Imports from Mexico into southeastern Texas from 1990 to 1991 increased by ***. Imports from Mexico into the region increased by *** between the interim periods. The concentration of imports from Mexico within southeastern Texas increased by *** percentage points from 1990 to 1991, then decreased by *** percentage points from interim 1991 to interim 1992.

Regional Consumption and Market Penetration

Apparent consumption of crushed limestone in the southeastern Texas region generally increased during the period for which data were collected, and the share of consumption supplied by imports from Mexico increased at the same time, as presented in table 12. There is a significant variation in the import penetration rate between quantity and value. Because transportation costs can

³⁸ Information supplied by the U.S. embassy in Mexico City, June 3, 1992, in response to the Commission's telegram.

³⁹ Mexico supplied about *** of total imports of crushed limestone into the United States during the period for which data were collected in the investigation.

Table 11

Crushed limestone: U.S. imports from Mexico and all other sources, by regions, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-March--	
				1991	1992
Quantity (1,000 tons)					
Southeastern Texas:					
Mexico.....	0	***	***	***	***
All other sources.....	0	0	0	0	0
Total.....	0	***	***	***	***
All other regions:					
Mexico.....	0	***	***	***	***
All other sources.....	(1)	499	843	103	113
Total.....	(1)	***	***	***	***
Total United States:					
Mexico.....	0	***	***	***	***
All other sources.....	(1)	499	843	103	113
Total.....	(1)	***	***	***	***
Value ² (\$1,000)					
Southeastern Texas:					
Mexico.....	0	***	***	***	***
All other sources.....	0	0	0	0	0
Total.....	0	***	***	***	***
All other regions:					
Mexico.....	0	***	***	***	***
All other sources.....	(1)	3,968	7,273	628	1,128
Total.....	(1)	***	***	***	***
Total United States:					
Mexico.....	0	***	***	***	***
All other sources.....	(1)	3,968	7,273	628	1,128
Total.....	(1)	***	***	***	***
Share of total quantity (percent)					
Mexico:					
Southeastern Texas.....	(3)	***	***	***	***
Outside the region.....	(3)	***	***	***	***
Total.....	(3)	100.0	100.0	100.0	100.0
All other sources:					
Southeastern Texas.....	(3)	(3)	(3)	(3)	(3)
Outside the region.....	(1)	100.0	100.0	100.0	100.0
Total.....	(1)	100.0	100.0	100.0	100.0
Total United States:					
Mexico.....	(3)	***	***	***	***
All other sources.....	(1)	***	***	***	***
Total.....	(1)	100.0	100.0	100.0	100.0

¹ Not available. Prior to 1990, limestone excluding pebbles and gravel was not a separate tariff item.

² Landed duty-paid value.

³ Not applicable.

Note.--Because of rounding, figures may not add to the totals shown. Shares are calculated using unrounded data.

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

Table 12

Crushed limestone: Southeastern Texas regional apparent consumption and ratios of market shares to consumption, by type of supplier, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	Quantity (1,000 tons)				
Regional producers' shipments.....	25,809	26,133	25,099	5,322	6,303
Regional shipments by producers outside the region.....	511	***	***	***	***
Mexican importer's shipments.....	0	***	***	***	***
Total apparent consumption.....	26,320	27,435	27,024	5,743	6,873
	Value (\$1,000)				
Regional producers' shipments.....	94,353	93,180	89,676	18,736	21,202
Regional shipments by producers outside the region.....	4,702	***	***	***	***
Mexican importer's shipments.....	0	***	***	***	***
Total apparent consumption.....	99,055	104,177	107,807	22,496	26,525
	Share of the quantity of consumption (percent)				
Regional producers' shipments.....	98.1	95.3	92.9	93.2	91.7
Regional shipments by producers outside the region.....	1.9	***	***	***	***
Mexican importer's shipments.....	(¹)	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0
	Share of the value of consumption (percent)				
Regional producers' shipments.....	95.3	89.4	83.2	83.3	79.9
Producers' outside the region shipments.....	4.7	***	***	***	***
Mexican importer's shipments.....	(¹)	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0

¹ No imports in 1989.

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.

amount to more than double f.o.b. shipment values, and because some major domestic producers sell on an f.o.b. plant basis while imported merchandise is sold on an f.o.b. Houston terminal or delivered basis, the import penetration rate in value terms is somewhat inflated and may not be a meaningful statistic.⁴⁰

Prices

Crushed limestone is used primarily in the manufacture of concrete and asphalt and as a base material in highways and other public and private construction. Thus, the demand for crushed limestone is highly dependent on the general level of construction, particularly the level of state and county funding for roads and highways.

The Texas Highway Department is one of the largest end users of crushed limestone in Texas. Each month, the highway department holds a 2-day "letting" in which contractors can bid on a number of construction projects. Highway contractors solicit bids from material suppliers, including crushed limestone suppliers, prior to placing their bids with the highway department in order to prepare their bids for specific projects. In some cases, the winning contractor may allow limestone producers to resubmit quotes after the highway department's bidding process.

The State of Texas and municipalities may also request quotes directly from crushed limestone suppliers. This is a more formal process in which each supplier submits a sealed bid that is revealed in a public opening. The lowest bidder is awarded the contract.

Other important purchasers of crushed limestone are asphalt and concrete plants and contractors for commercial projects. Sales to these customers are by informal contracts, such as verbal agreements, in which prices are fixed for six months to one year or for the length of the project.

Vulcan/ICA reports that legally-binding written contracts account for approximately *** percent of its sales of crushed limestone. The U.S. producers generally reported a lower percentage of legally-binding written contracts. However, a large part of producers' sales consist of six month to one year verbal contracts.⁴¹

Each project for which contractors receive quotes from crushed limestone suppliers details specifications for the materials to be used. For example, highway base material is usually specified under Texas Highway Department specification 249. Under specification 249, Type A refers to crushed or broken aggregate excluding gravel aggregate and Types B-G refer to other materials including gravel, iron ore, sand, shell, caliche, and slag. Within each letter classification, there may also be several grades. Aggregates are also classified under Highway Department specifications or by ASTM standards.

⁴⁰ Average unit values for imports from Mexico during the period were the following: ***.

⁴¹ Conversations with ***.

The Commission requested crushed limestone producers and Vulcan/ICA to report which materials met the bid specifications for the five largest contracts on which each firm bid in 1991. Out of 65 contracts for which limestone met the specifications, other crushed stone met the specifications for 25 contracts, sand or gravel for 15 contracts, shells for 4 contracts, recycled concrete or asphalt for 9 contracts, and slag for 8 contracts.

Although crushed limestone is usually used for most base and aggregate applications even when other items meet the specifications, substitute products are used for some applications. In particular, gravel is reportedly commonly used in the manufacture of concrete.⁴² Also, the use of recycled concrete has reportedly increased for base applications⁴³ and is beginning to be used for aggregate applications.

Transportation Costs

Delivery costs reported by U.S. producers and Vulcan/ICA generally ranged from \$2.00 to \$4.00 per ton for shipments of less than 50 miles, \$5.00 to \$7.00 per ton for shipments of 50-99 miles, \$6.00 to \$7.00 for shipments of 100-299 miles, and then rise to \$10.00 to \$13.00 for shipments of over 300 miles.

The f.o.b. quarry prices reported by U.S. producers were generally less than \$2.00 per ton for base material and less than \$4.00 per ton for aggregates during 1989-92. Since the cost of transportation can comprise well over 50 percent of the delivered cost of the crushed limestone, the distance from the quarry to the purchaser and any freight advantages that the producer can offer are crucial to a successful sale. Because of the cost of shipping by truck, the crushed limestone supplier with the closest quarry or distribution yard to a given project is often able to provide the lowest price to the contractor.

Producers quote prices on an f.o.b. quarry basis; on an f.o.b. distribution yard basis which includes the cost of transportation, usually by rail, from the quarry to the yard; or on a delivered basis. Vulcan/ICA sells mostly on a delivered basis, although it also quotes f.o.b. terminal prices at its Beaumont, Galveston, and Houston yards.

Ten of the 16 producers reported having 98 percent or more of their 1991 sales occurring within 100 miles of their quarries. These producers do not sell in the Houston area where Vulcan/ICA competes. The remaining six producers reported selling 25 percent or more of their crushed limestone between 100 and 299 miles from their quarries. Only a very small proportion of 1991 shipments were transported more than 300 miles. Vulcan/ICA reportedly shipped *** percent of its imported crushed limestone within 50 miles of its three Texas terminals in 1991.

⁴² Transcript, p. 20.

⁴³ Transcript, p. 23.

Questionnaire Price Data

U.S. producers and importers were requested to provide bid information for annual quotes to their 10 largest customers within the southeastern Texas region for quantities to be delivered in 1989, 1990, 1991, and 1992. The Commission requested pricing data for the following five products:

- Product 1: Texas Department of Transportation Specification Item 249, Type A, Grade No. 1
- Product 2: Texas Department of Transportation Specification Item 249, Type A, Grade No. 2
- Product 3: Texas Department of Transportation Specification Item 249, Type A, Grade No. 3
- Product 4: Texas Department of Transportation Specification Item 421, Grade No. 2, also known as ASTM C33, #467 (1-1/2" aggregate)
- Product 5: Texas Department of Transportation Specification Item 421, Grade No. 4, also known as ASTM C33, #57 (1" aggregate)

Products 1, 2, and 3 are each different grades of limestone base material and products 4 and 5 are limestone aggregates. The f.o.b. price of the base material is less than that of the aggregate material.

Price Trends

Prices were requested on an annual basis because of the importance of long-term contracts in this industry; therefore, price trend analysis is possible only on a yearly basis.

Five southeastern Texas producers provided f.o.b. quarry pricing. U.S. producer f.o.b. quarry prices of products 1-5 are shown in table 13. Producer f.o.b. quarry prices of the limestone base products 1, 2, and 3 were variable over the 4 years while prices of the crushed limestone aggregate products 4 and 5 increased.

Vulcan/ICA reported prices on an f.o.b. U.S. terminal and delivered basis. Weighted-average f.o.b. terminal prices of product 1 were *** per ton, respectively, in 1990, 1991, and 1992. No prices were reported for product 2 and f.o.b. prices were only reported in one or two of the three years for the other three products. There were no sales of crushed limestone imported from Mexico in 1989.

Table 13

Weighted-average net f.o.b. quarry prices of products 1-5 reported by producers of crushed limestone, by year, 1989-92¹

Period	(Per ton)				
	Product 1	Product 2	Product 3	Product 4	Product 5
1989.....	\$1.82	\$1.64	\$***	\$3.09	\$3.43
1990.....	1.59	1.59	***	3.36	3.50
1991.....	1.84	1.67	***	3.48	3.56
1992.....	1.69	1.59	(²)	3.64	3.74

¹ Prices reported for year in which delivery occurred. In a few cases, producers quoted prices prior to the year in which the deliveries took place.

² No sales reported.

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

Price Comparisons

The relevant price in a customer's purchasing decision for crushed limestone is the delivered price. Due to the high transportation costs, delivered prices to even the same customer for different projects in different locations can vary widely. Therefore, the most valid comparison would be to compare producer and importer quotes to the same customer for a given project. However, Vulcan/ICA and the southeastern Texas producers did not report bids for the same projects in their questionnaire responses.

A less exact comparison is to compare prices to projects within a certain market area. However, even within a small market area, prices can vary by several dollars per ton depending on the distance between the crushed limestone supplier's distribution yard and the customer's project.

For example, in the greater Houston area where the import product is sold, delivered prices were reported by Vulcan/ICA and price quotes were reported by Parker LaFarge for product 1.⁴⁴ Other producers quoted prices for product 1 on an f.o.b. quarry or f.o.b. yard basis or did not have any sales into the area where Vulcan/ICA competes. Vulcan/ICA's delivered prices for product 1 varied from *** per ton to *** per ton in 1990. Parker LaFarge quoted delivered prices which ranged from *** per ton to ***. The import price of product 1 in 1991 ranged from *** to ***. Parker LaFarge's quotes ranged from *** to ***. In 1992, the import price ranged from *** to *** while Parker LaFarge reported only one price, ***, for product 1.

⁴⁴ ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1989 through January-March 1992 the nominal value of the peso depreciated by 24.2 percent overall relative to the U.S. dollar, declining in every quarter except one (table 14).⁴⁵ Adjusted for movements in producer price indexes in the United States and Mexico, the real value of the Mexican currency appreciated 22.9 percent overall between January-March 1989 and the first quarter of 1992.

Lost Sales and Lost Revenues

Three U.S. producers, ***, alleged having lost sales and lost revenues due to imports of crushed limestone from Mexico. The lost sales totaled 3.5 million tons valued at \$39.9 million while allegedly \$418,384 in revenues were lost on sales totaling 938,915 tons. Staff was able to contact 6 of the 27 purchasers named in the allegations.

*** alleged having to lower prices during *** on *** sales of crushed limestone totaling *** to ***. In addition, *** alleged *** lost sales during *** totaling ***.⁴⁶ *** also reported one lost sale to *** involving *** tons of crushed limestone in *** in which *** allegedly quoted a delivered price of *** for limestone base which was rejected for the import price of ***. Also, *** alleged that in *** it had to lower its price on *** tons of limestone base from *** per ton to *** because of an import price of ***.

*** of *** was not able to comment on the specific allegations. He did say that *** has purchased both domestic and imported crushed limestone. According to ***, the quotes from the different suppliers are usually very close in price and price is dependent on where his projects are located. For example, *** has used the imports for its projects *** where the U.S. producers do not have rail sites and so cannot provide the product at as low a price.

He also said that the crushed limestone from Mexico provided a slightly higher yield per ton than the U.S. product because of the slightly lower weight of the Mexican rock as compared with the limestone found in Texas. *** added that crushed limestone prices have been basically flat during the past three years. Lastly, he said that calcium sulfate, crushed recycled concrete, and gravel were sometimes used as a substitute for limestone but that limestone is preferred for most projects.

*** alleged *** lost sales of limestone base and cement stabilized limestone base totaling *** tons and *** involving ***. *** could not address the specific allegations although he said *** generally had higher prices than the other suppliers ***. He said that *** has purchased from ***. According to ***, trucking costs for crushed limestone usually average about 10 cents per ton for each mile and because of these high transportation costs, the

⁴⁵ International Financial Statistics, June 1992.

⁴⁶ ***.

Table 14

Exchange rates:¹ Indexes of nominal and real exchange rates of the Mexican peso and indexes of producer prices in the United States and Mexico,² by quarters, January 1989-March 1992

Period	U.S. producer price index	Mexican producer price index	Nominal exchange rate index	Real exchange rate index ³
1989:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.8	103.3	96.2	97.7
July-September.....	101.4	105.7	92.7	96.6
October-December....	101.8	109.7	89.4	96.4
1990:				
January-March.....	103.3	117.9	86.4	98.6
April-June.....	103.1	125.7	83.6	102.0
July-September.....	104.9	132.9	81.4	103.1
October-December....	108.1	139.9	79.5	102.9
1991:				
January-March.....	105.9	147.8	78.4	109.5
April-June.....	104.8	153.5	77.4	113.4
July-September.....	104.7	158.0	76.5	115.4
October-December....	104.8	163.2	75.8	117.9
1992:				
January-March.....	104.6	169.5 ⁴	75.8	122.9 ⁴

¹ Exchange rates expressed in U.S. dollars per Mexican peso.

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 Mexico.

⁴ Derived from Mexican price data reported for January-February only.

Note.--January-March 1989 = 100.

Source: International Monetary Fund, International Financial Statistics, June 1992.

closest crushed limestone supplier to a particular project almost always gets the business.

*** said that prices for asphalt and aggregates, including crushed limestone, have fallen since 1990 and have finally stabilized in 1992. ***.

*** alleged losing one sale to *** involving *** tons of limestone aggregate for which *** quoted *** per ton and the import price was allegedly *** per ton. *** could not comment on the specific allegations but said that *** had purchased crushed limestone imported from Mexico because it was priced lower than the domestic product and that *** had increased its use of Mexican crushed limestone. *** said that *** usually purchases crushed limestone from the lowest bidder and that freight is the main factor in the price. He also said that limestone aggregate prices have decreased in the past 18 months.

*** also discussed the issue of substitute products. He said that sand and gravel are substitutable for crushed limestone in the manufacture of concrete and that freight costs are usually the main factor in competition between the two products. However, gravel is not used as a substitute for crushed limestone in the manufacture of asphalt. *** further said that the Texas Highway Department usually specifies crushed limestone over other aggregates.

*** alleged having lost *** sales totaling *** tons and *** and having lost revenues of *** on *** sales totaling *** tons, all involving ***. Staff talked with *** , who said that *** had not purchased any Mexican crushed limestone.⁴⁷ *** said that sales usually go to the low bidder and that prices of crushed limestone had fallen in the past three years.

*** also cited *** lost sales and *** instance of lost revenue during ***. The *** lost sales totaled *** tons of crushed limestone with a total value of ***.⁴⁸ *** also alleged having to lower its price on *** tons of limestone base from *** to *** due to imports priced at ***.

*** could not comment on the specific allegations. However, he said that *** buys both domestic and imported crushed limestone on a low-bid basis. He said that less than *** percent of *** total 1991 crushed limestone purchases were crushed limestone from Mexico. In 1990, however, about *** percent of *** purchases of crushed limestone consisted of imports from Mexico because *** in the *** area, where the imports are priced lower than the domestic product.

*** said that in *** crushed limestone suppliers usually quote within \$0.10 to \$0.20 and any one of the suppliers may have the lowest quote for a given project. He said that *** always takes the lowest bid if the quotes are more than \$0.05 per ton different. If the quotes are within \$0.05 of each other, then *** may look at other factors such as a good delivery record. Lastly, *** said that his firm does not use gravel or calcium sulfate because these are not available at a low enough price in the area where *** projects

⁴⁷ ***.

⁴⁸ ***.

are located, and that recycled concrete is used for manufacturing new concrete but the price is not usually low enough to use it as a base material.

Finally, each of the three producers listed *** in lost sales and/or lost revenues allegations. *** instances of lost sales during *** totaling *** tons and ***.⁴⁹ ***.

Staff spoke with ***. *** could not address the specific allegations but said that *** always awards its contracts to the low bidder. He also said that delivered prices of crushed limestone have remained the same since 1989.

* * * * *

⁴⁹ ***.

APPENDIX A
FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-562
(Preliminary)]

**Crushed Limestone From Mexico;
Preliminary Antidumping Investigation**

AGENCY: United States International Trade
Commission.

ACTION: Institution and scheduling of
preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 721-TA-562 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 Mexico of crushed limestone,¹ provided for in subheading 2517.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 6, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

¹ For purposes of this investigation, crushed limestone consists of limestone base, whether or not stabilized; limestone aggregate, including coarse aggregate and fine aggregate (limestone sand); and any other forms of crushed limestone.

Background

This investigation is being instructed in response to a petition filed on May 20, 1992, by Texas Crushed Stone Company, Georgetown, TX, Parker Lafarge, Inc., Houston, TX, and Gulf Coast Limestone, Inc., Seabrook, TX.

**Participation in the Investigation and
Public Service List**

Persons (other than petitioner) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. 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.

**Limited Disclosure of Business
Proprietary Information (BPI) Under an
Administrative Protective Order (APO)
and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 10, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202-295-3182) not later than June 8, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation of the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may

submit to the Commission on or before June 18, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 21, 1992.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-12421 Filed 5-26-92; 8:45 am]

BILLING CODE 7020-02-M

Notices

Federal Register

Vol. 57, No. 116

Tuesday, June 16, 1992

DEPARTMENT OF COMMERCE

International Trade Administration

(A-201-807)

Initiation of Antidumping Duty Investigation: Crushed Limestone From Mexico

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

EFFECTIVE DATE: June 16, 1992.

FOR FURTHER INFORMATION CONTACT:
Bill Crow, 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)
377-0116.

INITIATION OF INVESTIGATION:

The Petition

On May 20, 1992, we received a petition filed in proper form by the Texas Crushed Stone Company, Parker Lafarge, Inc., and Gulf Coast Limestone, Inc. (the petitioners). Supplements to the petition were received on May 21, May 26, and June 2, 1992. In accordance with 19 CFR 353.12, the petitioners allege that crushed limestone from Mexico is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or

threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of a regional U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

We received letters dated May 22, 1992, from Vulcan Materials Company, Pioneer Concrete of Texas Inc., and The Fordyce Company, and a letter dated May 27, 1992, from Thorstenberg Materials Company, regarding the standing of petitioner to file on behalf of the industry. On June 5, 1992, the Department sent standing questionnaires to these companies. We will examine the responses to these questionnaires during the course of the investigation.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is crushed limestone from Mexico. The subject merchandise consists of all forms of crushed limestone, including limestone base—whether or not stabilized—limestone aggregate, including coarse aggregate and fine aggregate (limestone sand), and any other forms of crushed limestone. Crushed limestone is classifiable under subheading 2517.10.00.20 of the Harmonized Tariff Schedule of the United States (HTS). Specifically excluded from the scope of the investigation are limestone flux, agricultural limestone and limestone cement kiln feed, used in the manufacture of lime and cement, provided for under subheading 2521.00.00.00.6 of the HTS. Although the HTS subheadings are provided for convenience and customs purposes, our

written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioners' estimate of U.S. price (USP) is based on information from domestic industry sources and is comprised of sales, bids, or offers for sale of the subject merchandise in the United States by the Mexican producer. Petitioners based USP on exporter's sales price and deducted movement charges and selling expenses. We have modified the deduction for ocean freight and marine insurance by applying the ocean freight and insurance charge into the port of Port Arthur, Texas. We examined ocean freight and insurance statistics from the U.S. Bureau of Census for entries of subject merchandise into the ports of New Orleans, Houston/Galveston and Port Arthur. Based on its proximity to the alleged region, it appears that freight costs into the port of Port Arthur are most reasonable. We have also adjusted USP for handling. We have accepted only those U.S. prices which were reported for the period May 1991 through May 1992.

Petitioners estimated foreign market value (FMV) based on (1) a home market sales price list obtained from market research commissioned by petitioners in Mexico and (2) constructed value (CV). Petitioners made no deductions from the home market price.

For the purposes of initiation, we are not accepting petitioners' less than fair value allegations which were based on comparisons of U.S. prices and the home market price list, because the respondent allegedly has no sales in the home market and because the price list is outdated. An independent research firm included estimates of materials, labor and overhead incurred at a quarry in Mexico in its calculation of CV. The petitioners added general expenses based upon the aforementioned research firm's estimates of general and administrative and interest expenses, and the statutory minimum of eight percent profit. The Department excluded depreciation expenses on the port facilities because these expenses were incurred after the merchandise left the factory. Interest expenses were recalculated based upon the last known expenses incurred.

Based on the comparisons of both the home market price list and CV to the U.S. prices, the petitioners' alleged dumping margins for crushed limestone from Mexico range from 1.90 percent to 901.90 percent. Since we have rejected the home market price list, disallowed U.S. prices that are not

contemporaneous, and made the adjustments stated above, our recalculated margins range from 2.52 percent to well over 900 percent. Our recalculated margins are based on all comparisons of USP to CV.

Initiation of Investigation

We have examined the petition on crushed limestone from Mexico and have found that the petition meets the requirements of section 732(b) of the Act and 19 CFR 353.12. Therefore, we are initiating an antidumping duty investigation to determine whether imports of crushed limestone are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by July 6, 1992, whether there is a reasonable indication that imports of crushed limestone from Mexico are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14112 Filed 6-15-92; 8:45 am]

BILLING CODE 3510-06-M

APPENDIX B
LIST OF WITNESSES

LIST OF WITNESSES

Investigation No. 731-TA-562 (Preliminary)

Those listed below appeared at the United States International Trade Commission conference held in connection with the subject investigation on June 10, 1992.

In support of the imposition of antidumping duties:

Stewart & Stewart
Washington, DC
on behalf of

Texas Crushed Stone, Georgetown, TX
William B. Snead, Executive Committeeman

Parker Lafarge, Inc., Houston, TX
John R. Moran, Vice President

Gulf Coast Limestone, Inc., Seabrook, TX
Robert R. Robinson, Sales Manager

Eugene L. Stewart)
James R. Cannon, Jr.) --OF COUNSEL

In opposition to the imposition of antidumping duties:

Covington & Burling
Washington, DC
on behalf of

Vulcan Materials Co., Birmingham, AL
William J. Grayson, Executive Vice President, Construction Materials Group

Vulcan/ICA Distribution Co., Pasadena, TX
Tom R. Ransdell, Chief Executive Officer

National Economic Research Associates, Inc.
Frederick C. Dunbar, Senior Vice President

Consulting & Research Services, Inc.
Bob M. Gallaway, President

Harvey M. Applebaum)
O. Thomas Johnson, Jr.) --OF COUNSEL

APPENDIX C
SUMMARY DATA

Table C-1

Crushed limestone excluding lime feed and cement kiln feed: Summary data concerning the southeastern Texas market for all producers, 1989-91, January-March 1991, and January-March, 1992

Item	Reported data					Percentage change	
	1989	1990	1991	Jan. -Mar. --		1989-91	Jan. -Mar. 1991-92
				1991	1992		
Regional consumption:							
Quantity ¹	26,320	27,435	27,024	5,743	6,873	2.7	19.7
Value ²	99,055	104,177	107,807	22,496	26,525	8.8	17.9
Mexican shipments of imports:							
Quantity ¹	***	***	***	***	***	*** ³	***
Share of consumption ⁴	***	***	***	***	***	*** ³	***
Value ²	***	***	***	***	***	*** ³	***
Share of consumption ⁴	***	***	***	***	***	*** ³	***
Unit value ⁵	***	***	***	***	***	*** ³	***
Ending inventories ¹	***	***	***	***	***	*** ³	***
Regional producers' --							
Average capacity ¹	59,802	60,548	60,509	15,384	15,235	1.2	(1.0)
Production ¹	27,315	25,964	25,008	5,886	6,235	(8.4)	(5.9)
Capacity utilization ⁴	46.8	42.9	41.3	38.3	40.8	(5.5)	2.6
Regional shipments:							
Quantity ¹	25,809	26,133	25,099	5,352	6,303	(2.7)	17.8
Share of consumption ⁴ ..	98.1	95.3	92.9	93.2	91.7	(5.2)	(1.5)
Value ²	94,353	93,180	89,676	18,736	21,202	(5.0)	13.2
Share of consumption ⁴ ..	95.3	89.4	83.2	83.3	79.9	(12.1)	(3.4)
Unit value ⁵	\$3.66	\$3.57	\$3.57	\$3.50	\$3.36	(2.5)	(4.0)
Ending inventories ¹	10,883	10,946	10,408	11,349	10,264	(4.4)	(9.6)
Inventory/shipment ratio ⁴ ..	41.6	41.3	40.7	52.2	40.0	(1.0)	(12.2)
Production workers.....	725	762	712	726	688	(1.8)	(5.2)
Hours worked (1,000s).....	1,787	1,885	1,694	432	412	(5.2)	(4.6)
Total comp. paid ²	20,331	21,793	20,046	4,886	4,791	(1.4)	(1.9)
Hourly comp. paid.....	\$11.38	\$11.56	\$11.83	\$11.31	\$11.63	4.0	2.8
Productivity ⁶	16.6	13.8	14.7	13.6	15.1	(11.2)	10.9
Unit labor costs ⁵	\$0.69	\$0.84	\$0.80	\$0.83	\$0.77	15.9	(7.2)
Net sales ²	98,134	95,299	90,231	18,811	21,645	(8.1)	15.1
COGS/sales ratio ⁴	88.4	89.5	90.3	95.1	85.4	2.1	(10.2)
Operating income ²	(593)	(1,160)	(3,347)	(1,707)	233	N/A	N/A
Op. income/sales ratio ⁴	(0.6)	(1.2)	(3.7)	(9.1)	1.1	N/A	N/A

¹ In 1,000 tons. ² In \$1,000. ³ Between 1990 and 1991. ⁴ In percent.

⁵ Per 1,000 tons. ⁶ Tons per hour.

Note.--Percentage change calculations for shares of consumption, capacity utilization, and inventory/shipment ratios are shown as percentage point changes.

Source: Compiled from data presented in the body of this report.

Table C-2

Crushed limestone including lime feed but excluding cement kiln feed: Summary data concerning the southeastern Texas market for all producers, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table C-3

Crushed limestone including lime feed and cement kiln feed: Summary data concerning the southeastern Texas market for all producers, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table C-4

Crushed limestone excluding lime feed and cement kiln feed: Summary data concerning the southeastern Texas market for all producers except for Vulcan, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table C-5

Crushed limestone including lime feed but excluding cement kiln feed: Summary data concerning the southeastern Texas market for all producers except for Vulcan, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table C-6

Crushed limestone including lime feed and cement kiln feed: Summary data concerning the southeastern Texas market for all producers except for Vulcan, 1989-91, January-March 1991, and January-March 1992

* * * * *

APPENDIX D
FIRM-BY-FIRM DATA

Table D-1

Crushed limestone, lime feed, and cement kiln feed: Southeastern Texas capacity, production, and capacity utilization, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-2

Crushed limestone, lime feed, and cement kiln feed: Southeastern Texas producers' domestic shipments, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-3

Crushed limestone, lime feed, and cement kiln feed: Southeastern Texas producers' company transfers, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-4

Crushed limestone, lime feed, and cement kiln feed: Southeastern Texas producers' U.S. shipments, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-5

Crushed limestone, lime feed, and cement kiln feed: End-of-period inventories of southeastern Texas producers, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-6

Average number of production and related workers producing crushed limestone and lime feed, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, by products and by firms, 1989-91, January-March 1991, and January-March 1992

* * * * *

Table D-7

Income-and-loss experience of U.S. producers on their operations producing crushed limestone, by firms, fiscal years 1989-91, January-March 1991, and January-March 1992

* * * * *

APPENDIX E

**EFFECTS OF IMPORTS ON PRODUCERS' GROWTH, INVESTMENT,
ABILITY TO RAISE CAPITAL, AND EXISTING
DEVELOPMENT AND PRODUCTION EFFORTS**

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of crushed limestone from Mexico on their growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or more advanced version of the product). The responses by producers are shown below.

Ten firms--***--accounting for *** percent of regional production of crushed limestone in 1991, stated "No" to the actual and potential negative effects of imports of crushed limestone from Mexico on their operations. Two firms--***--accounting for *** percent of regional production of crushed limestone in 1991, reported "No" to only actual negative effects of imports. Comments of responding firms are presented below:

* * * * *

In response to the question "Has the scale of capital investments undertaken been influenced by the presence of imports of crushed limestone from Mexico?", 3 producers responded "Yes" and 14 producers responded "No".

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