GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN

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

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Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal the confidential business operations of individual firms may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-461 (Preliminary)

GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured[3] or threatened with material injury[4] by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously in item 511.14 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 18, 1990, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, of Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of gray portland cement and cement clinker from Japan. Accordingly, effective May 18, 1990, the Commission instituted preliminary antidumping investigation No. 731-TA-461 (Preliminary).

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

[2] Commissioner Eckes dissenting.

[3] Acting Chairman Brunsdale and Commissioner Lodwick determine that there is a reasonable indication that a domestic industry is materially injured by reason of the subject imports.

[4] Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication that a domestic industry is threatened with material injury by reason of the subject imports.

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 25, 1990 (55 F.R. 21662). The conference was held in Washington, DC, on June 8, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE

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

July 2, 1990

Based on the information gathered in this preliminary investigation, I conclude that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of gray portland cement and cement clinker from Japan that are alleged to be sold at less than fair value. On the issues of like product, grinding operations and related parties, I concur with the determinations of my colleague Commissioner Newquist.[1] I also concur with Commissioner Newquist's discussion of the condition of the domestic industry as an accurate portrayal of the state of the industry during the period of investigation. However, I differ from my colleague in that I do not believe that an analysis of the condition of the domestic industry is sufficient or necessary to establish that a domestic industry is or is not injured by reason of dumped imports -- the latter being the issue the statute requires us to address.[2] Further, I do not believe that an independent legal determination based on the condition of the industry is either required by the statute or useful.[3]

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[1] See his views, infra.

[2] 19 U.S.C. 1673(2).

[3] See Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989)

(continued...)

There remain four issues with which I deal below: First, I consider the appropriate regional market within which to examine the effects of the dumped imports. Second, I set forth my views on the appropriateness of cumulating imports of cement from Mexico, which are subject to an ongoing antidumping investigation, with the subject imports from Japan in the context of a regional industry. I then consider whether Japanese imports are sufficiently concentrated within the Southern California market to meet the requirements for finding injury under the regional industry provision. Finally, I set forth my views on causation -- in the words of the statue, the "by reason of" issue -- in the current case.

Regional Market

Petitioner in this case urges the Commission to analyze the effect of the dumped imports within a regional market. They propose that the market be defined as the Bureau of Mines District for Southern California, which consists of the counties of San Luis Obispo, Kern, Inyo, Mono, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial.[4] Respondents and two importers of Japanese cement who

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[3](...continued)
at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass). I do, however, find the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped imports is material.

[4] Antidumping Petition on Behalf of Southern California Producers of Gray Portland Cement, May 18, 1990, at 8.

have intervened in this case -- Pacific Coast Cement Corporation and CalMat Terminals, Inc. -- agree that a regional market should be used but argue that a market consisting of all of California is more appropriate.[5]

The relevant portion of Title VII 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.[6]

In the current case, these two criteria appear to be satisfied by either the Southern California market urged by the Petitioner or the entire State of California. According to the staff report, producers located within the Southern California region sold between 86.3 and 88.1 percent of their output within that region during the period of investigation. Between 0.9 and 1.8 percent of consumption in the Southern California region came from domestic producers located outside of the region. Looking at the entire State of California, producers located within the

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[5] Post Conference Brief of Onoda Cement Co., Ltd., Nihon Cement Co., Ltd., Ube Industries, Ltd., Mitsubishi Mining & Cement Co., Ltd., and Osaka Cement Co., Ltd., June 12, 1990, at 32 (Hereinafter "Respondents' Post Conference Brief"); Post-Hearing Brief on Behalf of Respondents Pacific Coast Cement Corporation and CalMat Terminals, Inc., June 12, 1990, at 3-8 (Hereinafter "Importers' Post-Hearing Brief").

[6] 19 U.S.C. 1677(4)(C).

region sold between 92.1 and 93.5 percent of their output within the state. The percentage of California consumption supplied by domestic producers located outside of the state ranged between 3.2 and 3.6 percent.[7] Thus, either petitioner's or respondents' proposed market definition would appear to be consistent with the requirements of the statute.

The statute does not speak to the issue of choosing among regional market definitions when either of the proposed markets would meet the statutory standards, and none of the parties provides us with a compelling argument for selecting their proposed construction. Petitioner argues that the Southern California market is distinct from Northern California, both because of the low levels of shipments between the two markets and because both consumption and production in the State of California are allegedly concentrated in Southern California.[8] Looking at the inter-regional shipments issue, evidence in the record suggests that shipments from Southern California to Northern California accounted for between 5 and 10 percent of Southern California production during the period of investigation.[9] For three of the four years in the period, shipments from Southern to Northern California accounted for a

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[7] Staff Report at A-14, Table 4.

[8] Petitioner's Post-Conference Brief, June 12, 1990, at 26-29.

[9] Data on shipments from Southern California to Northern California are taken from Importers' Post-Hearing Brief at Exhibit 1. Production data are from Staff Report at A-25, Table 7.

higher percentage of Southern California production than did shipments of California producers to consumers outside of the state.[10] Thus, while shipments from Southern to Northern California do not appear large, they are not insubstantial either. As to the argument that California consumption and production are concentrated in Southern California, petitioner itself reports that 68 percent of state-wide consumption and 72 percent of state-wide production occur within the region.[11] These figures hardly seem overwhelming.

Importers, on the other hand, base their argument for the combination of Southern and Northern California into a single market on the supposed inter-relationships between the markets. In support of this position, they point to the existence of some shipments between the two regions and to a substantial correlation of prices between the two regions.[12] As I have discussed above, I do not find the data on shipments between the two parts of California to provide clear resolution of this issue.

As to the evidence on the correlation of prices, the information on the record at this time is incomplete. Since there are some shipments between Northern and Southern California, it does not surprise me that prices in the two

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[10] Data on the percent of shipments going to locations outside of California can be derived from data in the Staff Report at A-27, Table 8.

[11] Petitioner's Post-Conference Brief at 29.

[12] Importers' Post-Hearing Brief at 2-7.

regions tend to move together.[13] However, the statute does not appear to require a complete lack of shipments between a regional market and the adjoining parts of the country before a regional market analysis may be employed. Thus, the high correlation of prices is not, in itself, dispositive. What might be more informative is a comparison of the correlation of prices between the two California regions and between California and adjoining regions such as Arizona, Nevada, or Oregon. If this type of analysis is to truly support a regional market defined as all of California rather than just Southern California, it would seem that we should be looking for a higher correlation of prices between Southern and Northern California than between California and other adjoining areas, which the importers do not propose to include in the regional market.[14]

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[13] Importers compare the correlation of prices between Northern and Southern California with the correlation between prices in Southern California and those in Maine/New York. (See Importers' Post-Hearing Brief at 4-5 and exhibits 2-6.) However, since there are no shipments between Southern California and Maine or New York, I am not surprised that the correlation of prices between these two regions is lower than those between Southern and Northern California.

[14] Respondents argue that sales of cement produced in the Southern California region are not sufficiently concentrated in that region to qualify Southern California as a region. They claim that in excess of 20 percent of Southern California production is sold outside of the region. (Respondents' Post-Conference Brief at 34 and exhibit 32) These figures differ substantially from those contained in the Staff Report. In any final investigation in this matter, I would be interested in any explanation of the differences between the two sets of figures and any reasons why those supplied by respondents should be used rather than those in the staff report.

Absent a compelling reason to choose the regional market proposed by respondents and importers rather than that proposed by petitioner, I have accepted the regional market consisting of Southern California for purposes of this investigation. Such an approach seems consistent with the appropriate standards to be used in preliminary investigations in that it presumably provides petitioner with its best opportunity to demonstrate injury.[15] However, I note that I would find a reasonable indication of material injury in this case even if the market included the entire State of California.

In any final investigation in this matter, I would expect to revisit the issue of the appropriate regional market and would be most interested in the views of the parties concerning the evidence that the Commission should use to help it choose among regional markets that appear to satisfy the statutory criteria. Should the regional market be the smallest area that satisfies the two conditions in order to avoid the aggregation of two or more markets that are, in fact, distinct regional markets? Or, should a broader definition of the regional market be used?

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[15] For a discussion of my views on the proper standard to employ in preliminary investigations, see New Steel Rails from Canada, Inv. Nos. 701-TA-297 and 731-TA-422 (Preliminary), USITC Pub. 2135 (November 1988) at 55-68 (Views of Acting Chairman Anne E. Brunsdale) and Electrolytic Manganese Dioxide from Greece, Ireland, and Japan, Inv. Nos. 731-TA-406 - 408 (Preliminary), USITC Pub. 2097 (July 1988) at 21-25 (Additional Views of Vice Chairman Anne E. Brunsdale, Commissioner Susan Liebeler, and Commissioner Ronald A. Cass).

Cumulation of Imports from Mexico in the Current Case

For the purposes of this preliminary investigation, I cumulate the subject Japanese imports on the regional industry with the imports from Mexico that are also subject to investigation. However, for the purposes of analyzing the regional industry issue, I consider only Japanese imports. This issue, however, is by no means clear and warrants further consideration in any final investigation.

Regional industry analysis focuses primarily on whether the region is insular from the perspective of domestic producers. Thus, regional industry analysis is appropriate only if the producers in a region sell all or almost all of their product within the putative region and demand for the product within the putative region is not supplied to any substantial degree by other U.S. producers.[16] Neither of these criteria implicates the cumulation provision.

The cumulation provision itself also contains a limitation that removes it from the ambit of the regional industry determination. Specifically, the provision states:

> For the purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States.[17]

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[16] 19 U.S.C. 1677(4)(C).

[17] 19 U.S.C. 1677(7)(C)(iv) (emphasis added).

Clauses (i) and (ii) referred to in the cumulation provision refer to the provisions setting forth the proper method of evaluating volume and price effect of the relevant imports.[18] Neither of these clauses is relevant to the Commission's construction of a regional industry.

Difficulties arise down the road, however, because the regional industry provision permits an affirmative determination on a regional industry basis only

> 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 the market are being materially injured or threatened with material injury . . . by reason of the subsidized or dumped imports.[19]

The question then, assuming that regional industry analysis is otherwise appropriate, is whether imports into the region that would otherwise be cumulated if the case were considered on a national industry basis should be cumulated with imports into the region for purposes of assessing concentration and injury to the regional producers.

I conclude that, for the purpose of establishing material injury by reason of the subject imports to producers within the regional industry, it is appropriate to cumulate other imports into the region that meet the cumulation provision. The injury analysis with respect to the regional industry is essentially the

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[18] 19 U.S.C. 1677(7)(C)(i) & (ii).

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

same as the analysis of the national market.[20] It therefore requires an injury analysis pursuant to 19 U.S.C. 1677(7), which includes the cumulation provision and the specific clauses referred to in the cumulation provision.

The question whether imports from different countries should be cumulated for the purpose of satisfying the regional industry provision's concentration requirement is more difficult. The language of the statute is silent on the issue. Unlike the injury analysis just discussed, the structure of the statute yields no clues. The policies that underlie the cumulation and regional industry provisions of the statute do not necessarily point in one direction or the other and, indeed, may provide conflicting signals.

I conclude for purposes of this preliminary determination that cumulation for purposes of the concentration test is not appropriate. I base this conclusion on a practical concern while inviting further elaboration from the parties in any final investigation. Petitioners in this case were not the petitioners who brought the case involving Mexican cement and clinker imports for which we found the "southern tier" region -- including Southern California -- to be appropriate. If we hold that Mexican and Japanese imports combined must satisfy the concentration provision, we penalize the producers in the smaller region whose primary concern -- as appears to be the case here -

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[20] The only real difference is that injury be assessed on a producer-by-producer basis. 19 U.S.C. 1677(4)(C).

- is imports that have little or no impact on the lion's share of the larger region. Indeed, this issue raises questions about the Commission's determination regarding the appropriate region in the Mexico case. Perhaps we would have been more precise characterizing the "southern tier" as several regions, of which Southern California is one -- rather than piece the entire southern United States together. I emphasize, however, that this is simply a preliminary view and will be subject to reconsideration in any final investigation.

Concentration of Imports within the Regional Market

Before the Commission can find material injury or the threat of material injury in a regional market, two additional conditions, in addition to the finding that there is material injury or threat, must be satisfied. First, the producers of almost all of the output of the like product in the regional market must be materially injured. Second, imports must be concentrated within

the regional market.[21] I deal with the first issue below. Here, I examine the issue of the concentration of imports.

Traditionally, in determining whether the concentration-of-imports criterion has been satisfied, the Commission has examined the volume of subject imports coming into a regional market in relation to the volume of subject imports coming into the entire country. In the current case, the percentage of Japanese imports entering Southern California has ranged from 67.9 percent in 1986 to 73.7 percent in 1989.[22] In an earlier case, I found concentrations exceeding these levels insufficient to justify a regional industry approach.[23] I see no reason to change that view here. Thus, based on the traditional criteria of the percentage of the subject imports being sold within the regional

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[21] The relevant language in the statute reads:

> [Where appropriate circumstances for the use of a regional industry analysis are found to exist,] 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 production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if 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. (19 U.S.C. 1677(4)(C))

[22] Staff Report at A-14, Table 4.

[23] See Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994, at 7 (Views of Chairman Liebeler and Vice Chairman Brunsdale).

market, I would not find material injury within the Southern California region.

However, petitioner in this case has argued that Congress intended the Commission to consider another measure of import concentration in regional industry cases -- whether the ratio of the subject imports to total consumption is higher in the regional market than in the rest of the country.[24] Considering this measure of concentration, it is clear that Japanese imports are concentrated in Southern California. Japanese imports into the Southern California region ranged from 5.6 percent of consumption in 1986 to 20.0 percent in 1989. Outside of Southern California, Japanese imports accounted for between 0.2 and 0.7 percent of consumption.[25]

While Congress may not have intended that the Commission consider only the regional concentration of imports relative to regional consumption, the legislative history cited by petitioner suggests that Congress may have intended that the Commission would take such a measure into account.[26] Therefore, for

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[24] Petition at 42-43.

[25] Staff Report at A-14, Table 4.

[26] The language in the Senate report states:

> The requisite concentration will be found to exist in at least those cases where the ratio of the subsidized, or less-than-fair-value, imports to consumption of the imports and domestically produced like product is clearly higher in the relevant regional market than in the rest of the U.S. market.

(continued...)

purposes of this preliminary investigation, I find that imports of Japanese cement are sufficiently concentrated in the Southern California region to allow a finding of material injury to a regional industry. This finding is based on the higher levels of import penetration in the Southern California region. I expect, however, additional argument from the parties as to which analysis is appropriate, so that I may revisit the issue in any final investigation.

Material Injury by Reason of Dumped Imports

While the record in a preliminary antidumping investigation is less developed than in a final investigation and the standard for reaching an affirmative decision is lower, I am required to answer the same basic question in both instances. I therefore find it useful to employ the same simple tools of economic analysis in this case as I have utilized in final investigations. By using economic analysis, one can examine directly -- as our governing statute requires -- the impact of the imports in question on the domestic industry, the nature of any such impact, and finally whether that impact constitutes material injury.[27]

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[26](...continued)
S.Rep. No. 96-249, 96th Cong., 1st Sess. (1979) at 82-84 (emphasis added). While the legislative history on this provision contained in the House Report is somewhat different, both reports appear to support the conclusion that it is appropriate for the Commission to examine concentration in this, as well as in the more traditional, way.

[27] A more thorough discussion of the economic analysis I use in my approach to causation analysis is contained in Internal

(continued...)

Effect on Prices and Volumes Sold by the Domestic Industry. In any antidumping investigation, I must consider how the dumped imports affect the demand for the domestic like product. I know from basic economic principles that unfair imports will, in most cases, tend to reduce demand for the domestic product. I must determine whether such a reduction occurred in any specific case and, if so, how large it was.

Two factors are of particular importance in evaluating this effect. The first is the substitutability between the domestic product and the subject imports. The more substitutable the domestic and imported products, the greater the effect of any dumping on the domestic industry, because more of the purchasers of the domestic product will switch to the imported product if it is sold at a dumped price. The second factor is the effect of a

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[27](...continued)
Combustion Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. 2082, at 66-83 (May 1988) (Additional Views of Vice Chairman Anne E. Brunsdale); see also Certain Steel Pails from Mexico, Inv. No. 731-TA-435 (Final), USITC Pub. 2277, at 24-28 (March 1990) (Additional Views of Chairman Anne E. Brunsdale); Certain Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253, at 33-36 (January 1990) (Additional Views of Chairman Anne E. Brunsdale); Color Picture Tubes from Canada, Japan, the Republic or Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046, at 23-32 (December 1987) (Additional Views of Vice Chairman Anne E. Brunsdale). The Court of International Trade has also discussed with approval the use of elasticities. See Trent Tube Division, et al. v. United States, No. 87-12-01189, slip op. 90-58, at 12-19 (Ct. of Int'l Trade June 20, 1990); Copperweld Corp. v. United States, No. 86-03-00338, slip op. 88-23, at 45-48 (Ct. of Int'l Trade February 24, 1988); USX Corp. v. United States, 12 CIT _____, slip op. 88-30, at 19 (March 15, 1988): Alberta Pork Producers' Marketing Board v. United States, 11 CIT ____, 669 F.Supp. 445, 461-65 (1987).

change in price on the total demand for the product. If the expansion in total sales from a reduction in price is small, more of any increase in sales of imports will come at the expense of reduced sales by domestic producers. As a result, the lower the price-responsiveness of total sales, the greater the effect of any dumping.

In the current case, it is clear that portland cement from any source -- either domestic or foreign -- is highly substitutable for portland cement from any other source. As the economic consultant to the petitioner has correctly noted:

> There is no material difference between cement produced to technical specifications supplied by domestic producers and that supplied from foreign sources, i.e., cement is a fungible product. Because all producers sell essentially the same product, the source of the cement makes little, if any, difference to the purchaser. Furthermore, the user of the final product (e.g., ready-mixed concrete or concrete block) is unable to identify the source of the cement. The product of one producer cannot be materially differentiated from that of other producers either through technical properties or through labeling or advertising.[28]

The fact that the products are excellent substitutes is further assured because "All cement generally conforms to the standards established by the American Society for Testing Materials (ASTM)."[29]

Turning to the second factor -- the responsiveness of demand to a change in price -- the demand for cement depends on the

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[28] Economic Appendix to Petitioner's Post-Conference Brief, June 12, 1990, at C-3 (footnote omitted).

[29] Staff Report at A-6. See also Economic Appendix to Petitioner's Post-Conference Brief at C-3, n. 6.

demand for concrete, which in turn depends on the demand for construction. Cement accounts for a very small portion -- approximately 2 percent -- of the value of new construction.[30] In addition, for certain parts of a building, there are no good substitutes for concrete.[31] It is therefore unlikely that a change in the price of cement will have any appreciable effect on the demand for new construction or on the demand for cement.

Both the high degree of substitutability and the low price responsiveness of total demand suggest a high likelihood that an industry will be materially injured if a substantial quantity of imports are sold at less than fair value.[32]

Import Penetration by Unfair Imports and the Dumping Margin. The two factors that provide evidence on the extent to which imports are sold at less than fair value are the share of the domestic market accounted for by the unfairly traded imports and the size

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[30] Economic Appendix to Petitioner's Post-Conference Brief at C-4, note 10.

[31] Staff Report at A-8.

[32] In any analysis involving a regional industry, it is necessary to consider how the dumping will affect the quantity of the product supplied to consumers in the region by producers located outside of the region. A change in price as a result of any dumping could bring forth a large change in the quantity of the product being supplied by producers outside of the regional market. If so, the injury being suffered by regional producers could be substantially smaller than what an analyst would otherwise estimate. In any final investigation in this case, I would be interested in the views of the parties on the extent to which shipments into the region from outside of that region have been affected by the presence of dumping or would be affected by its cessation.

of the dumping margin. The larger the share of unfairly traded imports in the domestic market -- in this case into Southern California -- the greater will be the effect that any change in the imports' price will have on the demand for the offerings of other producers. Thus, it is more likely that domestic producers are materially injured when the penetration level of the unfairly traded imports is high.

The dumping margin is important because it provides information about the extent to which the price of the unfair imports is reduced by the dumping. If the dumping margin is large, the subject imports are likely to have a relatively larger effect on the domestic industry.

In the current case, we must consider imports into Southern California from both Mexico and Japan. Based on quantity data, imports of portland cement from Japan into Southern California increased from 5.6 percent of consumption in the region in 1986 to 20.2 percent in 1989.[33] Imports from both Japan and Mexico increased from 14.9 percent in 1986 to 27.4 percent in 1989.[34]

In a preliminary investigation, the only information on the dumping margin is contained in the allegations of the petitioner. In the current case, the alleged margins range between 98 and 125

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[33] Staff Report at A-51, Table 21. While the 18.0 percent import penetration figure for the first quarter of 1990 is below the figure for all of 1989, it is above the 15.9 percent figure in the first quarter of 1989.

[34] Id. In the first quarter of 1990, imports from Japan and Mexico together accounted for 32.6 percent of consumption in the region.

percent.[35] In its ongoing investigation of the alleged dumping of cement from Mexico, the Department of Commerce has arrived at a preliminary dumping margin of 56.16 percent.[36]

Conclusion

The evidence discussed thus far would, in a case involving a national market, be sufficient to lead me to conclude that there is a reasonable indication that a domestic industry has suffered material injury. Dumping margins and import penetration are relatively high; the unfair imports are good substitutes for the domestic product; and a decrease in the price of cement is not going to result in a significant increase in the quantity of cement purchased.

However as noted above, because this case involves a regional industry, there is an additional consideration that must be addressed. In order to find material injury in a regional industry, "the producers of all, or almost all, of the production within [the regional market]" must be materially injured.[37] In the current case, two factors suggest that all of the producers

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[35] Id. at A-12, n. 16. These figures are based on the Department of Commerce's recalculation of petitioner's alleged margins. These recalculations reflect certain refinements to petitioner's original estimates but rely on the basic approach adopted by petitioner rather than the data which will ultimately be collected by Commerce. Upon further investigation, Commerce might well find that the dumping margins are not this high. However, petitioner's allegations provide the best information currently available.

[36] 55 Federal Register 13817 - 13820 (April 12, 1990).

[37] 19 U.S.C. 1677(4)(C).

do suffer material injury. First, as discussed above, the cement produced by one firm is virtually indistinguishable from that produced by another, whether it is produced domestically or abroad. Thus, there are no product differences that would shield some producers from the injury being suffered by others. Second, all of the cement plants in Southern California are located within 120 miles of each other and of the Pacific Ocean.[38] Since significant amounts of cement are shipped between 100 and 300 miles from the plant or the importer's terminal,[39] it seems likely that all of the plants in Southern California will face competition from any unfair imports and will therefore share in any material injury.

Therefore, based on the evidence available to us in this preliminary investigation, I believe that there is "a reasonable indication of material injury" to "all, or almost all" producers of gray portland cement and cement clinker located in Southern California by reason of imports of these products from Japan that are allegedly sold at less than fair value.

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[38] Staff Report at A-21.

[39] Id. at A-12 - A-13.

Views of Commissioner Seeley G. Lodwick

Investigation No. 731-TA-461 (Preliminary)
Gray Portland Cement & Cement Clinker from Japan

I find that there is a reasonable indication of material injury to a domestic industry by reason of less than fair value imports of gray portland cement and cement clinker from Japan. [1]

I. Like Product, Related Parties, Regional Industry and Cumulation.

I concur with Commissioner Newquist's findings as they pertain to the definition of the like product, grinding operations, related parties and regional industry. I concur with Acting Chairman Brunsdale's discussion regarding her rationale to cumulate imports of Japan and Mexico.

II. The Business Cycle and Conditions of Competition.

The statute as amended by the Omnibus Trade and Competitiveness Act of 1988 requires the Commission to evaluate the relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry." [2] In regard to the cement and cement clinker industry in southern California, I find two points important to my disposition of this case.

To put the factors we consider in the context of this industry's business

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[1] Material retardation is not an issue in this case.

[2] 19 U.S.C. 1677 (7)(C)(iii).

cycle, one must recognize that this is a cyclical business and that the case was filed after a strong surge in demand in the southern California region. [3] Therefor, the performance trends should be considered in relation to the growth of the market. A loss in domestic market share during such a surge in demand is injurious; the effects of such lost share can impact the long term competitiveness of the U.S. industry.

In this case, some domestic producers increased importing cement from Japan and thus, in this role, they changed hats from being sole producers to producers/importers. To the extent this practice was motivated by the availability and price levels of LTFV imports, such imports have an injurious effect on the domestic industry as defined by statute. In the final investigation, more information pertaining to the U.S. producer's decision to invest in increased capacity or fill additional demand by importing at LTFV prices, would be important to the analysis of material injury by reason of the LTFV imports.

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[3] The Petitioner argued that the performance trends of the industry as defined, may mask the real harm caused by the alleged LTFV imports. Consistent with the trade bill's clause regarding the business cycle and supporting legislative history, a "modified trend analysis" is necessary to take into account the cyclical nature of the industry and the volume and effects of the LTFV imports in the market. Petitioner's Post-Conference Brief at 54.

The Petitioner offered an analysis comparing my views in New Steel Rails from Canada to the record in this case. See Dissenting Views of Commissioner Lodwick, New Steel Rails from Canada, INV. 701-TA-297 (Final), USITC Pub. 2217 (Sept. 1989). In that case, a key factor which made a determination of the condition of the domestic industry inconclusive, was vastly improving net profitability, yet the industry was still losing money. The Petitioner recognizes the operating income to sales ratios in this case is generally positive. id. at 57. In the event of a final investigation, more information regarding the exact cyclical nature of this regional industry and ability or inability to raise capital, that is, service debt or pay dividends to investors over the course of the business cycle, in order to make capital expenditures for future growth would be helpful.

III. Condition of the Domestic Industry.

In conducting its investigations, the Commission collects data regarding several economic factors and financial indices regarding the domestic industry. These economic factors include apparent consumption, domestic output, prices, capacity and capacity utilization, productivity, inventories, employment, wages and market share. The financial indices include net sales, profits, return on investments, and cash flow. [4]

I concur with Commissioner Newquist's discussion of the trends in his condition of the industry section. [5] However, respectfully, I dissent from his conclusion. I note the dip in the employment and especially the large drop in domestic market share. [6] I consider the improvements in the output and financial related indices to be predictable given the significant surge in consumption and that these trends need be considered in this context. The domestic industry has not been the main beneficiary of the surge in demand, perhaps due to the alleged LTFV imports in this market. [7] Therefor, I conclude that under the standard for preliminary determinations, that there is a reasonable indication the domestic industry is suffering harm that is more than immaterial, insignificant or unimportant.

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[4] 19 U.S.C. 1677 (7)(C)(ii) & (iii).

[5] I do not join in any conclusions of Commissioner Newquist beyond the description of the changes in the factors during the period of investigation.

[6] Staff Report at A-31 and A-50.

[7] In addition, I note the domestic industry's testimony that it is unable to invest in additional capacity.

IV. Reasonable Indication of Material Injury by Reason of LTFV Imports.

In determining whether there is a reasonable indication of material injury by reason of LTFV imports, the Commission must consider, in each case:

(I) the volume of imports of the merchandise, which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production efforts in the United States. [8]

A. The Volume of Imports.

The statute requires a consideration of the volume of the subject imports under investigation and whether such import volumes are significant. [9] I consider the cumulated volume of imports in relation to the size of the market to be significant. [10]

B. The Effect of the Subject Imports on Prices.

The next statutory direction is for the Commission to consider and explain "the effect of imports of that merchandise on prices in the United States for the like products."

To accomplish this, our first task is to consider the issue of

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[8] 19 U.S.C. 1677 (7)(B).

[9] 19 U.S.C. 1677 (7)(B)(i)(I).

[10] Report at A-50.

underselling. [11] The evidence regarding underselling is mixed, however during several months, the LTFV imports undersold the domestic product by fairly significant margins considering the commodity-like nature of cement. [12]

Our second task is to consider "the effect of imports of such merchandise otherwise depresses prices or prevents price increases, which otherwise would have occurred, to a significant degree."

In order to consider whether prices were depressed or whether price increases, which otherwise would have occurred (in the absence of subject imports), were prevented [13], one may consider certain basic market relationships and variables. [14]

In these investigations, the subject import penetration levels are significant. To determine "whether price increases had been prevented" by the subject imports, higher subject import penetration levels would have a greater effect on prices.

Next we turn to the capacity utilization level of the domestic industry. In an analysis of whether significant price increases had been prevented because of the subject imports, higher capacity utilization levels suggest that the presence of the subject imports has a greater effect on domestic

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[11] 19 U.S.C. 1677 (7)(C)(ii)(I).

[12] Staff Report at A-57.

[13] It is unclear whether there is any uniform increase or decrease in domestic prices during the period of alleged dumping. Prices in the interim period are fairly flat. Report at A-56. Therefor, the analysis is based on the question of price suppression, not price depression.

[14] See my views in New Steel rails from Canada, Supra 3 at 235. These economic factors include the subject import penetration levels, the excess capacity of the domestic industry, the substitutability of the subject imports for the like product and non-subject imports and other substitutes, the potential supply of non-subject imports and other substitutes, and the sensitivity of demand in this market.

prices. The relatively tight supply in this industry due to fairly high capacity utilization levels implies that the LTFV imports in this market may have a significant effect on domestic prices.

Cement is considered a commodity product and thus, the imports and the domestic product are highly substitutable. High substitutability of the subject imports for the like product implies there is significant price effects caused by the subject imports.

Another important consideration is how substitutable and abundant the supply of non-subject imports and other products are for the subject imports and the domestic like products. In these investigations there is not a significant presence of other non-subject imports and there are no substitutes for the production of concrete [15], that may lessen the effects of the alleged LTFV imports on prices received by domestic producers. These factors and the fact that cement represents a relatively small price of construction projects, support the petitioner's assertion of a low price elasticity of demand.

Based upon the presence of some evidence of underselling in a commodity market and evidence that price increases may have been prevented to a significant degree (increasing and significant LTFV import penetration levels, little excess capacity existed in the domestic industry, and a low sensitivity of demand to changes in price), I believe that the subject imports may have had a significant effect on the prices received by the domestic industry. [16]

C. Impact of the Subject Imports on the Domestic Industry.

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[15] Report at A-54.

[16] 19 U.S.C. (7)(C)(ii)(I) & (II). The law requires a consideration of both significant underselling and whether price depression or "prevented increases, which otherwise would have occurred, to a significant degree," as a basis in evaluating "the effect of imports of such merchandise on prices."

The third factor to be considered is the impact of the imports on the domestic industry. The absolute changes in these factors were noted previously.

Because of the increasing and significant import penetration levels, high substitutability of the LTFV imports for the domestic like product, and the low sensitivity of demand to changes in prices in this market, I consider that there is a reasonable indication that the subject imports are a cause of material injury to the output related indicators, such as employment, shipments, production and capacity utilization.

Given the evidence that the subject imports are having a significant effect on both prices and output, there is a basis to conclude that the imports have affected the income statement related indices, such as profits and cash flows. The evidence supports the notion that this has in turn affected the domestic industry's ability to invest. [17]

Based upon the record as noted above, I conclude that there is a reasonable indication that a domestic industry is materially injured by reason of the alleged subject LTFV imports from Japan.

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[17] As mentioned before, this issue merits further analysis based upon a more complete record at the final investigation. Factors affecting capacity expansion considerations include optimal plant sizes, geographic locations of inputs as well as the cyclical nature of the southern California region, should be more fully addressed by parties in the event of a final investigation.

Views of Commissioner David B. Rohr

I determine there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of gray portland cement and cement clinker from Japan alleged to be sold in the United States at less than fair value (LTFV). In making this determination, I find the appropriate domestic industry is composed of producers of gray portland cement and cement clinker located in the State of California. I find there is no reasonable indication that producers of all or almost all of regional production are currently experiencing material injury. However, I also find that there is a reasonable indication that producers of all or almost all of regional production are threatened with material injury.

Like Product

The imported articles subject to this investigation include gray portland cement and cement clinker.[1] In the two most recent investigations conducted by the Commission in which these articles were subject to investigation, the Commission found there to be a single like product that included both of these articles.[2] The criteria set forth in the statute and in judicial interpretations of the statute and used by the Commission to determine the appropriate like product are set forth in detail in most Commission majority opinions.[3] I see no need to repeat them here once again. I find there is nothing in these criteria and nothing in the facts as brought out in this investigation that would lead me to change the definition of like product found appropriate in these two previous investigations.[4] There is a single like

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

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

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

[4] Report at A-6 through A-11. I also note that none of the parties in this investigation have challenged the like product definition as including both cement and clinker.

product in this investigation including both gray portland cement and cement clinker.

Domestic Industry

A. Regional Industry

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

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

Applying the regional industry provisions set forth in section 771(4)(C) of the Tariff Act of 1930, as amended,[8] in this investigation, I find that the appropriate "region" for analysis encompasses the entire state of California. In *Mexican Cement*, I noted various difficulties which the Commission encounters in applying the regional industry provisions of title VII. I set forth an outline of an interpretation of the statute that I felt was consistent with the statutory language, purpose, and most of the past Commission precedent. Some of my

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[5] Report at A-3. The twelfth case is the Mexican cement preliminary investigation conducted in 1989. *See Mexican Cement.*

[6] *Mexican Cement*, Additional Views of Commissioner David B. Rohr Concerning Regional Industry, Injury to a Regional Industry, and Threat, at 50 (*Rohr Mexican Cement Views*).

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

[8] 19 U.S.C. §1677(4)(C).

colleagues, past and present, as well as the parties to this investigation, have also offered various interpretations of the section 771(4)(C) regional industry provisions. I have considered all of these approaches in reaching my decision in this investigation.

To simplify the arguments for new approaches to regional industry analysis, most of the alternatives to the Commission's traditional three-part analysis focus on a structural analysis of the wording of section 771(4)(C).[9] These approaches parse the words of the statute to find that sections 771(4)(C)(i) & (ii), relating to domestic production and marketing factors, should be used to "define the region." The third of the traditional factors used by the Commission, import concentration, appears in the same provision but in the paragraph below the blocked (i) & (ii) language. Arguably, it has, therefore, a purpose different from the (i) & (ii) language. At this point, different approaches diverge, some viewing import concentration as part of an injury analysis, others as a condition precedent to the finding of a regional industry, or in some other fashion, other than to "define" the region.

In *Mexican Cement*, I referred to the "domestic isolation and market realities requirements" as the elements in determining the possible regions for regional analysis.[10] To clarify, the "domestic isolation and market realities" criteria to which I referred were the two requirements laid out in sections 771(4)(C)(i) & (ii). I then indicated I would look to the

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[9] The language of the provision is:

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

[10] *Rohr Mexican Cement Views* at 52.

import concentration in various regions to determine which region, of the many that might meet the first two criteria, was the most appropriate for the particular investigation. Whether this means I am "defining" the region in terms of three criteria (which is how the Commission traditionally explained its analysis) or in terms of two criteria and a condition precedent (which is arguably a "new" analysis) is not important. What is important is what I intend to actually do in applying the regional industry analysis. Obviously, any new investigations may raise new and unanticipated problems that may require additions to or modification of any basic analysis. The approach I set forth is merely illustrative of how I intend to deal with the basic issues that are encountered in regional industry analyses.

My interpretation of section 771(4)(C) begins in the same place as most of these other interpretation, that is, that sections 771(4)(C)(i) & (ii) should be used to define regional boundaries. The difficulty is that, in many if not most cases, several alternative regions will probably meet the sections 771(4)(C)(i) & (ii) criteria.[11] Therefore, from a practical perspective the best that can be said of sections 771(4)(C)(i) & (ii) is that they define *possible* regional boundaries. Two vitally important questions are unanswered. First, one must decide where to start looking for possible regions. Second, one must have some statutorily valid criteria to choose among the possible regions when more than one possible region meets the sections 771(4)(C)(i) & (ii) requirements.

One answer to these questions might be to merely look to the possible regions argued by the parties to the investigation. In my view, however, this would abdicate the obligation of the Commission to conduct an independent, objective investigation. As an alternative, one could automatically choose either the smallest or the largest possible region. I do not feel it

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[11] The exercise of "defining regions" has one practical purpose, to answer the question whether the operations of particular establishments (firms or plants) will be within or outside of the universe of establishments whose operations will be analyzed by the Commission. The two pieces of data looked at are where the establishment markets its goods and where the purchasers generally in the areas of the establishment's purchasers buy their goods. While the analysis need not always involve a plant-by-plant analysis, at the periphery of any area, one will generally be analyzing the data of only one or a small number of additional establishments.

appropriate to apply any such presumption without a statutory basis.[12] Therefore, until I am persuaded otherwise, I look to what appears to be the only practical, objective, and analytically sound alternative. I will look to the imports and to the import concentration requirement to provide the basis for obtaining the information for the regional analysis and choosing between alternative regions.

The basic purpose of the Commission's title VII analysis is to determine if imports are injuring the operations of domestic producers. In a regional industry situation, the Commission is looking at a particularly defined subset of all domestic producers, but the basic purpose remains the same. The "regional" issue is a matter of whose information the Commission is going to collect and analyze. In a regional industry case, however, there is an additional information issue, above those of a normal investigation, in that information must be obtained relative to special requirements which must be met in a regional industry case.[13]

The first question then becomes from whom does the Commission collect the information needed to define the possible regions. In practical terms, questions relating to both basic injury and the special regional factors must be asked of each individual establishment from whom information is to be collected. The data must then be organized into coherent possible regions. Assuming that the nature of the product does not make the possibility of a regional analysis frivolous, the starting point for the possible regions will be where the imports come in. If we are dealing with a possible region in a case involving imports from Japan, which all go into the West Coast, it would seem rather unduly burdensome to require the detailed data required of regional producers from producers in New Jersey or New York. In a broad sense, then, import patterns from the country or countries whose producers are under investigation broadly define the areas of possible inclusion into the region

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[12] In *Mexican Cement*, I set forth the reason why there *is* a valid statutory basis for the proposition that the Commission should, in applying the import concentration requirement, generally look to the largest concentration possible. *Rohr Mexican Cement Views* at 50-52.

[13] These elements are the two requirements of section 771(4)(C)(i) & (ii), geographical data about shipments of producers and purchases of consumers, as well as the geographical data on import shipments and data needed to meet the requirements of analysis of the "all or almost all of regional production" injury provision.

to be considered by the Commission.[14]

Within the broad areas defined by the import patterns, there will generally be a number of domestic establishments which may be dispersed throughout or concentrated in various locations. The decision as to whether any or all of these operations constitute a regional industry is the process which is commonly referred to as "defining the region." Again, in practical terms, it is a decision about which establishments' operations are going to be examined to determine if imports are injuring them. Here the Commission should begin its analysis by using the two criteria set forth in sections 771(4)(C)(i) & (ii). In my view, however, in most situations in which a regional industry analysis is likely to be appropriate, it is also likely that multiple regions could be defined by these criteria.

Again, focussing on the practical aspects, one is looking at shipment data for individual establishments (producers or purchasers). In any case there is likely to be some overlap and some new territory encompassed by the shipments related to any establishment. In some cases, the extension can be viewed as part of a series of ever larger concentric rings. In others, the extension may involve the adjacency of new areas to the region in some particular direction.[15]

The issue is what criteria can be used to decide between these alternatives. In *Mexican Cement*, I argued that the concentration of imports provides the basic criteria for this decision. In this respect, I must differ from those who urge the Commission to adopt an "overlap of domestic shipments" criterion to decide this issue. This approach would look at domestic competition between parts of a possible region to determine the inclusion/exclusion issue.

I note that there is no statutory basis for the adoption of such an additional criterion. The larger or combined region in this situation meets the statutorily imposed sections 771(4)(C)(i) & (ii) criteria. The addition of a new domestic competition requirement without a statutory basis is suspect. More importantly, domestic competition makes no logical sense as

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[14] I wish to make it clear that I am not saying the import concentration, as used in section 771(4)(C) should be used to begin the regional industry analysis. As a practical matter the Commission must start its information gathering somewhere. That somewhere will generally involve some degree of general proximity to the imports.

[15] The investigation before me does not involve the issue of possible "non-contiguous" regions and nothing herein should be viewed as a comment on the appropriateness or nonappropriateness of such regions.

an additional criteria for regional industry in terms of the ultimate questions which the Commission must address, that is, are imports injuring the industry.

If particular imports are entering two ports, competing with, affecting, and potentially injuring producers in the geographic areas around those ports, what is the relevance of domestic competition between these two areas as long as imports are competing with both of them. As long as the sections 771(4)(C)(i) & (ii) requirements are met, it would seem to make more sense, if the ultimate decision is whether imports are injuring domestic producers, to include as many as possible of the domestic producers who are subject to being injured.[16] This leads me back to the one, statutorily-defined criterion that does operate consistently with the basic purpose of regional industry analysis, that is, import concentration. Obviously, in some cases, import concentrations may not be sufficiently high in any region that meets the section 771(4)(C)(i) & (ii) criteria to justify a conclusion that imports are "concentrated." Regional industry analysis should then not be undertaken. The more difficult case is the one at the margin where the import concentration can be raised by including only a few additional imports while vastly expanding the size of the region. The application of the sound discretion of the Commission can solve any difficulties at this extreme.

Applying these criteria to the investigation at hand it is clear that two adjacent areas, Southern California and Northern California, individually and together, meet the criteria of sections 771(4)(C)(i) & (ii).[17] The share of regional producers' shipments within the region are high in the case of both Southern California and California as a whole. In the case of Southern California, the percentages of regional shipments by producers in the region range in the mid-80's for the years for which we have collected data. For all of California, the ranges are in the low-90's, making both regions appropriate, but "all of California" a better regional "fit."

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[16] Although I am concerned with the appropriateness of the overlap of domestic competition requirement, I shall reconsider its use in light of any new facts or arguments that may be made in the event of a final investigation of this matter.

[17] Table 4, Report at A-14. To put the issues into perspective there are 8 cement establishments in Southern California, 6 of whom could provide data. There are three additional producers in California outside of Southern California. The issue is whether these three producers' data will be considered in evaluating the condition of the industry.

Looking at the regional consumption supplied by producers outside the regions, such percentages are low, whether for Southern California or California as a whole. The range of consumption supplied by producers outside Southern California to Southern California ranges between 1 and 2 percent while all California is at about 3.5 percent. In neither case is there significant consumption from producers outside the region, but Southern California is a slightly better "fit."

Looking at import concentration, both possible regions have significant import concentrations. Southern California received between 68% and 74% of Japanese imports in each year of the period for which the Commission gathered data. For California as a whole, the concentrations are somewhat higher, between 68% and 79%, reflecting the increasing amount of Japanese cement that was progressively going outside Southern California. One therefore obtains a somewhat higher import concentration by looking at the larger region.

On the other hand, inclusion of the three Northern California producers increases regional production by approximately one third for each of 1986-1989. Therefore use of "all of California" involves an increase of roughly 6 percent of imports, 3 producers, and a one/third increase in production. While it is a close question, I believe it is more appropriate to include the operations of the three producers in Northern California to the industry under consideration in this investigation. I therefore include all of California within my regional definition.

B. Grinding-Only Operations and Related Parties

I determine that it is appropriate to include within the domestic industry those operations which only grind clinker into cement.[18] I also conclude that it is not appropriate to exclude any producers from the domestic industry on the basis of the related parties provision of title VII, section 771(4)(B).[19]

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

[19] 19 U.S.C. §1677(4)(B).

I begin by noting that the Commission, as a factual matter, has consistently held that the operations whereby clinker is transformed into finished cement are more than "minor finishing operations," and that it is appropriate to include such operations in the domestic industry.[20] I also note that throughout most of the period under investigation, none of the producers in California have imported any significant amounts of Japanese clinker. There is little therefore to distinguish any "grinding-only" operations from the grinding operations of integrated producers, which operations no one suggests be excluded.

With respect to related parties, several of the domestic producers imported, or have financial interests in companies that imported, Japanese cement into California during the period of investigation. The data from all of these producers, however, was gathered solely on the basis of their domestic production operations. The data that we have gathered in other words, does not reflect any of these companies' importing operations. On the other hand these operations account for a very large percentage of domestic regional production. The fact that these producers account for a significant share of domestic production would not in itself lead me to find that it would be inappropriate to exclude them, if we were not able to isolate their domestic operations from their importing operations. Given the two factors together, that their absence would "skew" the data, and that we have been able to isolate their domestic operations from their importing operations, I conclude it would be inappropriate to exclude them.[21]

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[20] It is a separate question, appropriate to be considered in the context of related parties, whether a grinding-only operation would be excluded if it was grinding cement imported from a country subject to investigation. This factual situation is not presented in this investigation.

[21] A separate related parties issue is potentially presented in this investigation in the context of the grinding only issue and the regional industry and cumulation provisions. There is no indication whatsoever in any legislative history that Congress ever considered the relationship between such provisions. There is no guidance, therefore, in the statute or legislative history as to the proper interrelationship between these provisions. However, factually, in this investigation, the one establishment that fits the "grinding-only" characterization imports the clinker that it grinds from Mexico, which is subject to a separate, current, ongoing investigation.

The Commission has never in the past considered whether a domestic operation should be excluded from a domestic industry because it is related, not to the particular imports under investigation but to imports subject to cumulation with those under investigation. The Commission has also never considered how cumulation may affect the analysis of regional industry. It is not clear whether cumulation may affect how the Commission defines the region or whether, to be cumulated, the cumulated countries' imports have to be concentrated like the imports of the country subject to investigation.

Condition of the Domestic Industry

Having carefully examined the condition of the California regional cement industry in the context of the business cycles relevant to cement, and even taking into consideration that one might expect this industry, at this point in time, to be doing better than the "average" of the cycle, I cannot conclude that there is a reasonable indication that producers of "all or almost all" of California regional production are currently experiencing material injury. In reaching this conclusion, I have examined the aggregate indicators of industry performance traditionally examined by the Commission, as well as how those aggregates are affected by individual plant performance.[22] I also base my conclusion on the "percentage of production" method of analysis that I set forth in *Mexican Cement* as the most appropriate way to analyze the "all or almost all" injury criteria required by section 771(4)(C) in regional industry investigations.[23]

The output indicators for the regional California cement producing industry show significant upward trends from 1986 through 1989.[24] Apparent consumption increased steadily by over 20 percent based on yearly data, remaining essentially flat in the interim 1989 to 1990 comparison.[25] Production, although dropping slightly in 1987 from 1986 increased

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In this investigation, these questions affect the treatment of only one establishment of one multiestablishment company. The production accounted for by this establishment is very small and its exclusion, even were it appropriate, would have no significant effect on the data or my analysis. I have therefore determined not to exclude it.

[22] In general it does not appear the operations of any individual plants present any significant aberrations that change the aggregates.

[23] I concurred with my colleagues' aggregated analysis, but also indicated that I believed a disaggregated analysis was appropriate in regional cases. For such analysis, I looked at percentages of production meeting various standards suggested by the information of record as being relevant to the question of material injury. *Rohr Mexican Cement Views* at 52-55.

[24] Throughout these views I will focus on the indicators reflecting cement operations. I note that I have also considered those for clinker operations, which are generally a subset of all cement operations. There is nothing in the clinker operations which would lead me to conclusions different from those I reach with respect to cement. I also note that the first quarter of 1990 in California was unusually wet which slowed down construction in the region and affecting the reliability of the quarterly interim comparisons. I do not, consequently, place very much significance on the interim comparisons reflected in the data.

[25] Table 6, Report at A-17.

substantially over the period and in the interim period.[26] Capacity fluctuated up and down through a narrow range during the period.[27] Capacity utilization declined by 2 percentage points from 1986 to 1987 but increased to over 85 percent in 1988 and over 90 percent in 1989 with continued increase in the interim comparison.[28]

Shipment data tend to follow production data, with a small decline in 1987 followed by increases in the final two years of the period. Overall, shipments increased 13 percent.[29] Inventories do not appear to be a substantial factor for this industry and fluctuated considerably over the period up to 2 percent as a ratio to shipments, ending only 0.1 percent higher in 1989 than in 1986. Continued fluctuations are apparent on an annualized basis in the interim period.[30]

The employment indicators reflect decreasing utilization of labor in the production of cement throughout the period of investigation. However, both hourly wages and productivity increased during the period of investigation, indicating that fewer laborers were producing more cement and being paid more for doing it.[31]

The parties to this investigation placed great emphasis on an analysis of the financial performance of the industry. Net sales dipped in 1987 but rebounded strongly in 1988 and 1989. As indicated by the Commission's variance analysis, this increase was due largely to an increase in the volume of cement sold but also reflects an improvement in the unit price of cement in 1989.[32] Over the period, gross profits also increased substantially. As a percent of sales, they rose from 21.4 to 24 percent before dropping back to 21 percent and then rising

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[26] Production increased by 14 percent over the period and by 1 percent in the interim.

[27] Table 7, Report at A-25. Over the period there was a slight decline in capacity and a slight increase in the interim comparisons.

[28] Id.

[29] Table 8, Report at A-27. I note that the slight decline in overall regional shipments in the interim period appears to be the result of a decline in company transfers in that period.

[30] Table 10, Report at A-30.

[31] Table 11, at A-32.

[32] Table 14, Report at A-37 and INV-N-054, June 25, 1990.

back to 23.9 percent. These figures indicate that, while the unit price of cement generally dropped during the period, the cost of producing cement was also dropping at an even faster rate, thus leading to increased profits at the gross level.[33]

The increasing profitability of cement operations is particularly striking at the operating income level. This level reflects the actual profitability of making and selling cement, without taking into consideration the efficiency or effectiveness of the management of the financial resources of the firms producing the cement. Operating income margins for the period were 13.7 percent, 17.4 percent, 15.6 percent, and 18.7 percent for the years 1986 through 1989.

I have also examined the operating returns of the regional industry as a ratio to fixed and total assets. Cement is a capital intensive endeavor and the basic value of the capital assets used in production is quite large. The efficiency and effectiveness of the use of these assets is affected by both cement operations and financial considerations.[34] Operating returns to fixed assets rose over the period from 10.2 to 13.2 percent before dropping to 11.6 percent and jumping to 15.2 percent. Total asset returns are somewhat lower but still impressive at 8.4, 10.9, 9.8 and 13.0 percent for the years 1986-1989.[35]

Although it can be argued that these aggregate numbers themselves reflect a lack of present material injury, I have also performed the disaggregated percentage of production analysis that I outlined in *Mexican Cement*. This analysis provides added support for the conclusion that the regional industry is not experiencing material injury as required by the

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[33] This is confirmed by the gross variance analysis which indicates that while the overall decline in price over the period affected the income of producers by some 57 million dollars the decline in costs improved their profits by over 58.5 million dollars. INV-N-064, June 25, 1990.

[34] Petitioners in particular emphasize the importance of return on asset calculations in a capital intensive industry. While I agree in general that return on assets would be a useful indicator, the value of return on assets as an indicator over time in this case is made less useful by the frequency of major revisions in asset values. For example, one firm substantially wrote down the value of its assets during the period of investigation, thus dramatically increasing its ROA without any change in its cement operations. Other operations substantially increased the valuation of assets as a consequence of merger and acquisition activity thus lowering their ROA's, again without any change in their real cement operations.

[35] Table 15, Report at A-38.

statute.

I have focussed this disaggregate analysis on four indicators that the data suggests are particularly indicative of the state of this industry, capacity utilization, net sales, operating income margins and return on asset margins. In each case, I have examined the percentage of production falling into three categories, one below, one at, and one significantly above the general aggregate average. The data on which these comparisons are made are the confidential data by region and plant contained in appendix D to the Commission's report.

Beginning with capacity utilization, I note that at no time during the period of investigation did producers accounting for less than 50% of production have capacity utilization rates of less than 85%.[36] The amount of production accounted for by producers whose capacity utilization exceeded 92.5% increased dramatically from just over 16% in 1986 to 18% and 53% in 1987 and 1988, respectively. In 1989, over 78% of production was accounted for by establishments whose capacity utilization exceeded 92.5%. Also, significantly, over 44% of production in 1989 was accounted for by firms whose capacity utilization exceeded 100%.

Looking next at net sales, I note that 82% of 1989 production was accounted for by firms who increased their net sales over the period of investigation. Looking at individual time periods, only between 1986 and 1987 did less than a significant majority of domestic production increase net sales. The same is true for production of producers who increased their net sales by more than 5%. In 1989, producers accounting for over 33% of production experienced increases in net sales of over 10 percent.

Turning to the profitability indicators I first note that 100% of production had operating income margins in excess of 5% for 1986 and 1987. This percentage dropped in 1988 to 73% and then increased again to 89% in 1989. Raising the profitability criteria to 15% OIM also reveals that significant percentages of production meet or exceed the criteria. For the period under investigation, the percentage of production accounted for by firms meeting or exceeding a 15 percent OIM were: 1986, 47%; 1987, 54%; 1988, 65%; and 1989, 89%. Raising the profitability criteria to 20%, significant percentages of production still exceed the criteria,

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[36] Capacity utilization of 85% would be rather low for a capital intensive industry such as cement but is not an unreasonable level over the full range of a business cycle.

often by significant amounts: 1986, about 10%; 1987, 43%; 1988, 34%; and 1989, 43%.

Even using the less reliable time series ROA figures, one finds that significant percentages of regional production in each year met or exceeded 5%, 15%, and 20% operating ROA profitability levels. The 5 percent level was met in 1986 by about 80%; in 1987 by about 90%; in 1988 by 70%; and in 1989 by about 90% of regional production. At the 15% level, in 1986, 12%; in 1987, 31%; in 1988, 47% and in 1989, 46% of domestic regional production was accounted for by firms meeting or exceeding that level. Finally, even at the 20% OROA level, significant percentages of domestic production were accounted for by firms meeting or exceeding that profitability level, in 1986 and in 1987, about 10%; and in 1988 and in 1989, about 30%.

There can be no question that this industry is profitable. There can be no question that overall, the totality of the indicators indicate an industry that is and has been for several years operating at very respectable levels of production and profitability.[37] These are, however, merely subsidiary questions. The question that the statute requires me to answer is whether the particular levels achieved by the industry are or are not indicative of material injury.

At this point in the business cycles in California,[38] even an injured industry would be likely to be performing fairly well. In the aggregate, the particular levels achieved by this industry as revealed in the data are, however, substantially in excess of "fairly well." The performance of this industry is, in fact, in excess of "fairly well" to a degree that warrants the conclusion of not being indicative of material injury. When I look at the special criteria applicable to regional industries, that is, the requirement that producers of all or almost all of regional production must be experiencing material injury, the conclusion is made even stronger. A significant percentage of California production is currently operating at levels well in excess of any level that could reasonably be described as being indicative of material

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[37] While it is true that employment has declined, in light of the significant production increases this is the result of increased production efficiency.

[38] 19 U.S.C. §1677(7)(C)(iii).

injury.[39]

Threat

While the conclusion that the industry is not currently experiencing material injury is clearly warranted on the basis of the evidence before the Commission, the evidence relating to the future of the industry and the future of Japanese imports does not permit as clear a conclusion with regard to the issue of threat. I cannot say that the evidence is so clear that Japanese imports do not threaten the industry or that additional evidence which may refute current allegations by the parties will not be obtained in any final investigation which the Commission may undertake. A negative threat determination is not warranted on the basis of the information before me.

I have traditionally begun my analysis of the threat posed by imports to an industry by examining the vulnerability of the industry. This is a reflection of the condition of the industry and is basically a reexamination of that data with an emphasis on the most recent periods and how the condition is likely to change in coming months. It is clear, for example, that many of the indicators have gone down in the interim comparisons. It has been pointed out, however, that, due to wet weather, construction was off in the first quarter of 1990 and may not truly reflect current conditions. I do not, therefore place great weight on the interim period comparisons. However, a number of indicators also showed signs of weakening in the annual 1989 figures, which may portend problems for the industry in upcoming quarters.

A major factor likely to affect this industry in upcoming months is the ability of the industry to continue lowering the costs which have been, in large part, responsible for its recent profitability. The variance analysis indicates a sharp decline in the cost variance for 1989, which should be seen in conjunction with the high capacity utilization rates. It seems unlikely that, with so many firms operating at high capacity utilization rates, the kinds of cost reduction associated with the recent past can continue. This leaves the profitability of the industry relatively vulnerable to possible price pressures, which are described below.

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[39] Having concluded there is no reasonable indication that the industry is currently experiencing material injury, I do not address the issues of cumulation and causation.

The next element of any threat analysis is an examination of the statutory factors to determine the likely future impact of the volumes and prices of the imports. The prior examination of the vulnerability of the industry provides some context for the conclusions to be drawn from the data.

The level of Japanese imports has risen rapidly.[40] While there is some evidence that the level of Japanese imports may decline,[41] there is other evidence that Japanese producers have been positioning themselves to remain a significant presence in the California market for the foreseeable future.[42] There is insufficient data to contradict and make me discount the sharply upward trend in Japanese import volumes.

While pricing data is limited in the current case, it appears to indicate significant underpricing by Japanese imports.[43] Overall price levels dropped in California during the period under investigation, which may in part reflect the impact of LTFV imports.[44] The declining prices appear to raise a significant question mark for the California producers. This question mark is even larger due to the specific vulnerability of the industry to price pressures.

It must also be noted there are other data and other possible interpretations of the data submitted to the Commission. There appears, for example, to have been some hardening of prices in 1989 and early 1990, reflected in the pricing tables,[45] and the variance analysis.

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[40] Table 19, Report at A-46.

[41] Japanese producers claim increasing home market demand will absorb their production rather than exports and that they are decreasing their capacity. Tables 16-17, Report at A-42-43.

[42] Japanese producers have become owners of a significant amount of cement import terminal facilities.

[43] In a final investigation, this data should be expanded to reflect additional geographic and end use markets in order to provide a better picture of price competition in the cement market.

[44] I note however that while there appears to have been a decline in the per unit price of cement it also appears that the cost of making cement declined even further and that the decline in costs had a greater positive impact on profits than the decline in price had a negative impact. See INV-N-064, June 25, 1990.

[45] See Report A-56-57.

Further the underselling appears to be the result of fluctuations in domestic prices while Japanese prices remained stable, perhaps reflecting a lack of real impact of the Japanese imports on domestic prices.

Similarly, a major question mark for California producers is the future growth of the market. Some projections indicate the business cycle may have peaked meaning that we would be entering a part of the business cycle in which producers' vulnerability would naturally be greater. While not justifying an affirmative determination in and of itself, certainly where the cement cycle currently stands is relevant to my threat determination. On the other hand, the California cement cycle may not yet have peaked, and may experience significant growth in the near term. Such a conclusion would lead to an entirely different assessment of the possible impact of Japanese imports.

A final investigation, should one be conducted, will provide the Commission an opportunity to obtain more information on these relevant questions. I conclude that the data does reflect a reasonable indication of threat to the regional industry and that there is certainly additional evidence that the Commission could obtain in a final investigation, should one be instituted, on these points.

VIEWS OF COMMISSIONER NEWQUIST 1/

On the basis of the information gathered in this preliminary investigation, I determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of gray portland cement and cement clinker from Japan that are alleged to be sold in the United States at less than fair value (LTFV). 2/

Like Product

In determining whether there is a reasonable indication that a U.S. industry is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first determine the "domestic industry" and concomitantly, the "like product." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic 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 . . . ." 3/ "Like product" is defined 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 . . . ." 4/

In this investigation, petitioner alleges, and no party disputes, that gray portland cement (cement) and cement clinker comprise a single like

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1/ I note that the factors which led to my decision not to participate in Inv. No. 731-TA-451 (Preliminary), Gray Portland Cement and Cement Clinker from Mexico, are not implicated in this investigation.

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

3/ 19 U.S.C. § 1677(4)(A).

4/ 19 U.S.C. § 1677(10).

product. In its most recent investigation of gray portland cement, the Commission found cement and cement clinker to be a single like product. 5/ I see nothing on the record in this preliminary investigation that would lead to a different result. I therefore determine that cement and cement clinker constitute the like product.

Domestic Industry

A. Grinding Only Operations

Based on my conclusion concerning the like product, I conclude that companies which produce cement clinker, or grind clinker into cement, or both, are appropriately considered domestic producers of the like product. 6/ Whether operations which grind imported clinker subject to investigation should be included in the domestic industry is not a factual issue in this investigation, since there have been virtually no imports of Japanese clinker into either California, or Southern California, during the period of investigation. However, in previous investigations it has been argued that grinding imported clinker is not a significant production activity, but rather

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5/ Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Preliminary), USITC Pub. 2235 (1989) (hereinafter Mexican Cement). No party in that case argued for a different definition of the like product. In the only previous investigation involving imports of both cement and cement clinker in which like product was a contested issue, Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Inv. No. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (1986) (1986 Cement), respondent parties had argued that cement and cement clinker are separate like products. The Commission found otherwise, concluding that they are a single like product.

6/ One potential member of the domestic industry, Riverside Cement Co.'s facility in Crestmore California, has ground purchased and imported clinker into cement since August 1987, when its clinker production operation was shut down.

a "minor finishing operation." 7/ Nevertheless, I conclude, as the Commission has in previous cement investigations, including Mexican Cement, that if the like product includes cement, then grinding and blending of clinker to produce cement constitutes domestic production, and therefore companies which only grind clinker into cement are properly included in the domestic industry. 8/

B. Related Parties

The related parties section of the statute provides that when a producer is related to the importer or exporter of a product, or is itself an importer of the allegedly dumped or subsidized imports, the Commission may exclude such a producer from the domestic industry in "appropriate" circumstances. 9/ Several domestic producers are themselves importers of Japanese cement, or are related to exporters and/or importers of Japanese cement. Mitsubishi Cement Co. (Mitsubishi) operates a cement plant in Lucerne Valley California. A majority share of Mitsubishi Cement Co. is owned by Mitsubishi Mining & Cement Co., Ltd. of Japan, a producer and exporter of imports subject to

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7/ E.g. Mexican Cement.

8/ I note that the Senate Report to the Omnibus Trade Act of 1988 criticized the Commission's determination in the 1986 Cement investigation as having been based on consideration of "all profits from the sale of the finished product to be attributable to domestic production, even though only minor finishing operations were performed in the United States with respect to a substantial portion of domestic production". S. Rep. 71, 100th Cong, 1st Sess. (1987) 117. However, the Conference Report indicates merely that, "[i]n cases in which the domestic producers perform minor finishing operations on dumped or subsidized inputs, the ITC may, if appropriate and feasible, take into account that the profits of such producers may reflect incorporation of such inputs". H.R. Rep. 576, 100th Cong., 2d Sess. (1988) 616-17.

9/ 19 U.S.C. § 1677(4)(B) provides:

> When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

investigation. California Portland Cement Co. (CalMat) owns a 50 percent interest in CalMat Terminals, an importer of Japanese cement. Riverside Cement Co. (Riverside), through its affiliate Riverside Cement Holding Co., is a joint venture partner with RIC Corp. in RIC Co., an importer of Japanese cement. Finally, RMC Lonestar (Lonestar), a northern California producer, owns 50 percent of Pacific Coast Cement Corporation, an importer of Japanese cement. 10/

Petitioner has not specifically requested that the Commission exclude these companies from the domestic industry under the related parties provision. Petitioner does argue that the Commission should not weigh whether they support the petition in considering the question of material injury or threat thereof, since their connections to Japanese exporters and importers of Japanese cement account for their positions. Respondents Pacific Coast Cement Corporation and CalMat Terminals, Inc., (hereinafter Importer Respondents) do not urge that the related producers should be excluded from the industry, although they do maintain that domestic producers have imported to serve their own profit-maximizing interests. Respondents Onoda Cement Co., Ltd., Nihon Cement Co., Ltd., Ube Industries, Ltd., Mitsubishi Mining & Cement Co., Ltd., and Osaka Cement Co., Ltd., (hereinafter Japanese Respondents) argue that exclusion of related parties in this investigation would be inappropriate, as it would skew the data regarding domestic production, since related parties account for a significant share of that production.

10/ According to Respondents, Lonestar sold its interest in the import terminal in May 1990, to Cemex, a major producer of cement in Mexico. However, since Lonestar owned the facility during the period of investigation, the related parties question remains.

Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case. 11/ The Commission generally applies a two-step analysis in determining whether to exclude a domestic producer from the domestic industry under the related parties provision. The Commission considers first whether the company qualifies as a related party under section 771(4)(B), and second whether in view of the producer's related status there are "appropriate circumstances" for excluding the company in question from the definition of the domestic industry. 12/ The related parties provision may be employed to avoid any distortion in the aggregate data bearing on the condition of the domestic industry that might result from including related parties whose operations are shielded from the effects of the subject imports. 13/ The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include:

(1) the percentage of domestic production attributable to related producers;

(2) the reason why importing producers choose to import the articles under investigation (viz., whether they import in order to benefit from the unfair trade practice or in order simply to be able to compete in the domestic market); and

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11/ Empire Plow Co. v. United States, 11 CIT ___, 675 F. Supp. 1348, 1352 (1987).

12/ See, e.g., Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (1989) at 15.

13/ Granular Polytetrafluoroethylene Resin from Italy and Japan, Inv. Nos. 731-TA-385 and 386 (Preliminary), USITC Pub. 2043 (1987) at 9. Conversely, the Commission has often decided not to exclude related parties where they account for a substantial portion of total domestic production and their exclusion would therefore distort the data bearing on the condition of the industry. E.g. 1986 Cement.

(3) the competitive position of the related domestic producer vis-a-vis other domestic producers. 14/

The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. 15/

In the 1986 Cement investigation the Commission found that domestic producers accounted for 30 to 50 percent of cement imports and virtually all clinker imports from the countries under investigation, and that these imports accounted for a significant proportion of the industry's domestic production and/or shipments. The Commission, however, did not exclude the related party producers from the domestic industry, on the grounds that exclusion would skew the data concerning the domestic industry. 16/ Similarly, in the Mexican Cement investigation, the Commission did not find the circumstances appropriate to exclude related producers from the domestic industry. 17/

In this investigation, the three importers accounting for virtually all cement imported from Japan during the period of investigation are all related

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14/ See, e.g., Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia and Taiwan, Inv. Nos. 701-TA-292, 731-TA-400, 402-404 (Final), USITC Pub. 2152 (1989); Granular Polytetrafluoroethylene Resin from Italy and Japan, Inv. No. 731-TA-385-386 (Final), USITC Pub. 2112 (1988); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986).

15/ See, e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (1989) at 19 n.59; Rock Salt from Canada, Inv. No. 731-TA-239, USITC Pub. 1798 (1986) at 12.

16/ Portland Hydraulic Cement and Cement Clinker from Columbia, France, Greece, Japan, Mexico, the Republic of Korea, Spain and Venezuela, Inv. Nos. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (1986).

17/ Mexican Cement at 19.

to domestic producers. 18/ The related Southern California domestic producers accounted for approximately 74 percent of Southern California production reported in Commission questionnaires in 1989. In my view, these producers' primary interest lies in domestic production. Further, in light of the significant proportion of domestic production accounted for by related producers, I believe their exclusion would irretrievably skew the data. I therefore determine that no producers should be excluded from the domestic industry as related parties.

C. Regional Industry

Petitioner argues that Southern California (defined as the counties of San Luis Obispo, Kern, Inyo, Mono, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial) qualifies as a regional industry within the context of title VII. 19/ Petitioner asserts that cement producers in Southern California satisfy the statutory criteria for regional industry analysis and should be treated as a regional industry. In making this argument, petitioner contends that the Commission's traditional analysis for defining the appropriate region for regional industry analysis is incorrect as a matter of law. Both the Importer and Japanese Respondents argue that the statutory criteria for regional industry analysis are not met by petitioner's proposed region because the imports into the region are not

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18/ One of those producers, Lonestar, is located in Northern California. Because I find the regional industry to be confined to Southern California producers, I need not consider whether to exclude Lonestar, as it is not a part of the domestic industry at issue. The definition of the regional industry is discussed further below.

19/ Report at A-4, figure 1. The proposed region is based on the U.S. Bureau of Mines definition of Southern California for statistical and analytical purposes in considering the cement industry.

sufficiently concentrated. They also urge that even should the Commission determine that a regional industry analysis is appropriate, petitioner's region has been arbitrarily and self-servingly sculpted, and the Commission should modify the proposed region to include the entire state of California. 20/

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

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--
>
> (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. 21/

20/ In this investigation, the staff has incorporated into the record the producers' questionnaires received in connection with the ongoing Mexican Cement final investigation, and issued supplemental questionnaires seeking information related specifically to the effects of Japanese imports. The Commission received questionnaire responses from producers in the entire state of California.

21/ 19 U.S.C. § 1677(4)(C).

The Commission has interpreted section 771(4)(C) as establishing three criteria for determining whether a regional industry exists: (1) producers within a geographic region must sell "all or almost all" of their production of the like product to customers within that region; (2) demand within the region must not be supplied, to any substantial degree, by U.S. producers of the like product located elsewhere; (3) there must be a concentration of the unfairly traded imports within the region.

The Commission has considered regional industry analysis as discretionary, based on the language "appropriate circumstances" and "may be treated" found in section 771(4)(C). 22/ The Court of International Trade, however, has cautioned against "[a]rbitrary or free handed sculpting of regional markets." 23/

The Commission has been concerned that the regional analysis only be applied in appropriate circumstances, in order to prevent the imposition of duties on imports sold in the entire national market in cases in which the detrimental impact of the imports is limited to a small segment of that market. The Commission has defined appropriate circumstances on several occasions, focusing on whether a separate geographic market exists and whether

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

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

the market is isolated and insular. 24/ The Commission has also stated that the particular region should account for a significant share of production and consumption. 25/

As a general matter, the Commission has found in the past, that "appropriate circumstances" exist for the Commission to engage in a regional industry analysis of domestic cement production. 26/ Gray portland cement and clinker is necessarily sold in regional markets because it has a low value-to-weight ratio and is fungible. Thus, high transportation costs tend to make the areas in which cement is produced and marketed isolated and insular. While these prior decisions are not binding in this investigation, I note that the record in this preliminary investigation reflects the same considerations.

Petitioner in this case makes several novel arguments concerning the interpretation and application of the related parties provision of the statute. 27/ First, petitioner argues that the Commission has erred in the

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24/ See Cut-to-Length Carbon Steel Plate from the Republic of Germany, Inv. No. 731-TA-147 (Preliminary Remand), USITC Pub. 1550 (1984) at 8; Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986).

25/ See Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1994 (1980).

26/ In all but one of the Commission's prior investigations of cement a regional analysis was used. See, e.g., Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 (1982); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986). In the 1986 Cement case, the regional industry issue was not raised by the parties. The petitioner in the that case noted that cement was produced and sold in a series of regional markets, but argued that regional markets were all being injured by imports and therefore injury could be assessed on a national basis.

27/ Some of these arguments were raised by petitioner in the Mexican Cement investigation, who is represented by the same counsel as petitioner here. The Commission majority did not address those arguments in its determination in the Mexican Cement investigation. But see Additional Views of Vice-Chairman Ronald A. Cass, Mexican Cement at 34.

past by considering the concentration of imports in delimiting the region. Petitioner argues that only the two market isolation factors, i.e. whether producers within the regions sell all or almost all of their production in the region, and whether demand in the region is supplied, to any substantial degree, by producers outside the region, are relevant to determining whether a regional industry analysis is appropriate. Thus, according to petitioner, whether there is a concentration of imports is irrelevant to defining the boundaries of the regional industry, and is to be considered only in determining whether the regional industry, as defined by the market isolation factors, is materially injured or threatened with material injury. Petitioner bases this argument primarily on its own strict reading of the statutory language.

Second, petitioner argues that the Commission has erred in assessing concentration of imports in terms of what percentage of total imports subject to investigation entered into the region, rather than by comparing the import penetration level in the region to the import penetration level outside of the region. Petitioner further maintains that in several previous investigations, 28/ the Commission has considered concentration of imports in the manner petitioner proposes.

Petitioner recognizes that the approach it proposes has not been consistently or recently applied by the Commission, but argues that the focus on the proportion of total imports entered into the region has also not been consistently applied since passage of the 1979 Act. Petitioner contends that

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28/ Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1088 (August 1980) at 10-11; Cut-To-Length Carbon Steel Plate from Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 (1984) at 9; Fall-Harvested Round White Potatoes from Canada, Inv No. 731-TA-124 (Final), USITC Pub. 1463 (1983) at 7-8, n.24 (Commissioner Stern).

the concern for fairness posited in support of the Commission's more recent regional industry determinations, i.e., that national antidumping duties not be imposed based on a finding of injury to producers in a region where a small proportion of total imports from the country under investigation are consumed, is based on a flawed premise. Petitioner maintains that any "unfairness" will be eliminated by the fact that actual entries are considered by the Commerce Department in annual reviews, and if found not to be sold at LTFV, dumping duty deposits are refunded. Moreover, petitioner contends that Congress contemplated this situation in providing that antidumping duties may be based on a finding of injury to a regional industry even though the industry as a whole is not injured, and that since U.S. law controls, the Commission need not be concerned with perceived unfairness or potential GATT challenges to the regional industry provision.

Finally, petitioner argues that if the two statutory criteria determining market isolation are met, appropriate circumstances exist to conduct a regional industry analysis, and the Commission has no further discretion to determine otherwise. 29/ Petitioner again bases this interpretation on a strict reading of the statutory language, and on the remedial nature of the antidumping law, which petitioner argues requires a liberal approach in identifying regional industries.

The Importer Respondents do not appear to disagree with petitioner's interpretation of the statute with respect to defining a regional industry based on the two statutory market isolation factors, although they contend

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29/ Petitioner concedes that the Commission retains discretion in determining whether the market isolation factors are satisfied by the particular facts of the investigation. However, petitioner argues, if those factors are satisfied, "appropriate circumstances" exist to engage in a regional industry analysis.

that the entire State of California is a more appropriate market, since more of California's production remains in California than is true for Southern California. The Japanese Respondents do not take issue with the Commission's traditional regional industry analysis, but argue that factually, the entire State of California is a more appropriate regional industry than is Southern California in light of the statutory criteria.

Petitioner's arguments in this case raise a difficult issue, since they effectively ask the Commission to change its traditional interpretation of the regional industry provision. While there is merit to some of petitioner's arguments, there are problems with petitioner's analysis which, as discussed further below, lead me to reach a somewhat different conclusion. Petitioner's arguments suggest a refinement of the Commission's traditional regional analysis which I believe is appropriate.

In determining whether a regional industry analysis of material injury (or threat thereof) is appropriate, it must first be determined whether a regional market, or markets, exists in the United States based on the two market isolation criteria. Then, the second inquiry it to consider whether imports are concentrated in any regional market so defined. Only if imports are sufficiently concentrated is it appropriate to consider whether there is material injury or threat thereof to a regional industry, which requires a determination of whether producers of all or almost all production in the region are materially injured or threatened with material injury. Thus, rather than an element of material injury analysis, as proposed by petitioner, import concentration is effectively a condition precedent to a regional industry material injury analysis. This is similar to the Commission's past

practice, in which import concentration is an element of determining whether a regional industry exists. 30/

Petitioner's proposed analysis does not include any mechanism for choosing between regions which individually satisfy the market isolation factors. With distinctly separate regions, the likelihood of sufficient import concentration in each region to allow a finding of material injury is unlikely. 31/ Moreover, in a case such as this, where the choice is between a larger region or a smaller region within the larger region (i.e. the entire State of California or Southern California), and import concentration in each region is within the parameters deemed adequate in previous investigations, petitioner's proposed analysis does not aid in determining which region the Commission should consider.

I am not persuaded by petitioner's argument that the Commission need not be concerned with the potential unfairness of imposing duties nationally based on injury to producers in a region in which imports are not concentrated because of the availability of review at the Commerce Department. While fairness per se is not the Commission's concern in administering the

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30/ I note that unless one were to adopt petitioner's proposed interpretation of the concentration of imports requirement as mandatory, the regional industries analysis set forth here would not lead to significantly different results than would past Commission practice.

31/ This is the case unless concentration is considered based on relative market penetration, in which case more than one region could conceivably satisfy both the market isolation factors and the import concentration requirement. In such a case, the Commission could determine that there is material injury to one or more separate regional industries by reason of imports from a single country. Indeed, this is the argument originally presented by petitioner in the Mexican Cement investigation. However, because of the fairness or GATT concerns discussed infra, I remain troubled by the possibility of such a result.

antidumping laws, it is the Commission's responsibility to interpret the statute and apply the law in accordance with Congress' intent.

Annual review of imports entered outside the region may, as petitioner notes, result in return of estimated dumping duty deposits if those imports have not been dumped. However, this does not eliminate the need for importers to make such deposits at the time of importation. Furthermore, deposits will not be returned if the imports outside of the region are dumped, even though they have not been determined to cause injury to the domestic industry. Thus, the imposition of an antidumping duty order will have an inhibiting effect on imports outside of the relevant regional market that have not been demonstrated to be injurious. If a significant percentage of imports do not enter the region in which injury is found, then a large volume of imports which have not been found to be injurious will be assessed antidumping duty deposits. This is not a satisfactory result in view of the remedial purpose of the antidumping law. While petitioner is correct in asserting that U.S. law controls the administration of the antidumping law, and not concerns with GATT compatibility, the question of which law applies arises only if there is a conflict between U.S. law and the GATT, which I do not believe is the case here. Moreover, I believe the Commission should make every effort to interpret U.S. law in a manner which is in accordance with the GATT and effectuates both Congress' purposes and the goals of the GATT agreements.

Finally, I do not agree with petitioner's argument that, based on Commission precedent and the legislative history of the Trade Agreements Act of 1979, the Commission must consider import concentration not as the proportion of total imports entered into the region, but as a comparison between import penetration within the region and import penetration outside

the region. The two Commission determinations cited by petitioner 32/ are the only ones I am aware of in which the Commission considered only the relative levels of import penetration within the region and outside the region in determining that imports are concentrated in the region. 33/ Moreover, while the Senate Report on the 1979 Act, cited by petitioner, notes that "the requisite concentration will be found to exist in at least those cases where the ratio of the subsidized, or less-than-fair-value, imports to consumption of the imports and domestically produced like product is clearly higher in the relevant regional market than in the rest of the U.S. market," 34/ the House Report on that Act states that "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." 35/ Thus, while consideration of the relative import penetration ratios is certainly allowable, in light of the legislative history I do not believe it is the only way the Commission may consider import concentration.

Turning to the facts of this investigation, concerning the first statutory criterion -- that producers within a region sell "all or almost all" of their production of the like product within the region, 84 percent of cement produced in Southern California in 1989 was sold within those areas.

32/ Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1088 (August 1980) at 10-11; Cut-To-Length Carbon Steel Plate from Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 (1984) at 9.

33/ Again, as noted above, Congress has never spoken to the question of whether the Commission's analysis of regional industries, including it interpretation of import concentration, is correct.

34/ S.Rep. 249, 96th Cong., 1st Sess. 83 (1979)(emphasis added).

35/ H.R. Rep. 317, 96th Cong., 1st Sess. 73 (1979)(emphasis added).

Over 92 percent of cement produced in the entire State of California in 1989 was sold within the state. 36/ In each case, consistent with prior Commission determinations, the level of consumption within the region supplied by producers in the region is sufficient to meet the statutory test. 37/

Turning to the second market isolation criterion, both the Southern California region and the entire State of California region meet the requirement that demand within the region not be supplied to any substantial degree by producers located elsewhere in the United States. The Commission has stated that no precise numerical cutoff exists for outside supply above which an area is disqualified from regional industry status. 38/ In Atlantic Sugar, Ltd. v. United States, however, the Court of International Trade suggested that 12 percent outside supply may be too high to be considered insubstantial "in the abstract." 39/ The Commission has found on several occasions that percentages of outside supply of less than 10 percent were

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36/ See Report at A-14, table 4. This is not surprising given the fact that due to high transportation costs, 95 percent of portland cement shipments are to customers within 300 miles of the production site. Report at A-12.

37/ See, e.g., Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final) USITC Pub. 1047 (1980) at 8 (96% found to be sufficient); Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (1982) at 7 (66% found not to be sufficient); Portland Hydraulic Cement from Australia and Japan (Final), USITC Pub. 1310 (1982) at 4 (93% found to be sufficient); Fall Harvested Round White Potatoes from Canada, 731-TA-124 (Final), USITC Pub. 1463 (1983) at 7 (84.7% found to be sufficient); Offshore Platform Jackets and Piles from the Republic of Korea and Japan, 701-TA-248, 731-TA-259 and 260 (Final), USITC Pub. 1848 (1986) at 8 (100% found to be sufficient); Operators for Jalousie and Awning Windows from El Salvador, 701-TA-272, 731-TA-319 (Final), USITC Pub. 1934 (1987) (over 80% found to be sufficient).

38/ See Cut-to-Length Carbon Steel Plate from Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 (1984).

39/ 2 CIT 295, at 298 (1981).

acceptable, 40/ and found in one case that 30 percent was too large. 41/ For the period 1987-1989, the percentage of consumption supplied by out-of-region suppliers averaged less than 2 percent for Southern California, and less than 4 percent for the entire State of California. 42/ I am therefore faced with the question of which of these two alternatives is the more appropriate region for consideration. 43/

The less than two percent of consumption in Southern California supplied by out-of-region suppliers includes any cement shipped from Northern California producers. It appears from the record that Southern California producers supply more than two percent of consumption in Northern California. Moreover, slightly less than four percent of consumption in the entire State of California was supplied by producers outside the state. Thus, Southern California appears to be slightly more isolated from outside supplies than the entire State of California. I have concluded that Southern California represents a sufficiently isolated market area, warranting its consideration as the appropriate region in this preliminary investigation.

40/ See, e.g., Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (1980) (5.5 % found acceptable); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 (1982) (less than 10 % found acceptable).

41/ See Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 (1982).

42/ Report at A-14, table 4.

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

Finally, in order to warrant consideration of material injury (or threat thereof) to a regional industry, I must determine whether the requirement that imports be concentrated within the region has been met. There appears to be no precise numerical limit for determining when imports are sufficiently concentrated in the region. The Commission has generally found percentages higher than 80 percent of total imports subject to investigation to be sufficient, 44/ but the requisite concentration has also been found at levels as low as 68 percent 45/ and 43 percent. 46/ Still another Commission determination questioned whether the concentration level was sufficient when the percentages of imports ranged from 66.3 percent to 79.2 percent, 47/ and in one case the Commission found insufficient concentration when the imports into the region ranged from 69.2 percent to 84.1 percent during the period of investigation. 48/

44/ See, e.g., Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 (1982) (99%); Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (1980) (96.7%); Offshore Platform Jacket and Piles from the Republic of Korea and Japan, 701-TA-248, 731-TA-259 and 260 (Final), USITC Pub. 1848 (1986) (100%).

45/ See Fall Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 (1983).

46/ See Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1994 (1980). As discussed elsewhere in this memorandum, this case is one of the few in which the Commission considered concentration based on relative import penetration within the region and outside the region.

47/ See Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (1987).

48/ See Certain Welded Carbon Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA 293, 294 and 296 (Final), USITC Pub. 1907 (1986).

The percentage of Japanese imports into Southern California ranged from 67.9 percent of total Japanese imports in 1986 to 73.7 percent in 1989. 49/ Determining whether the subject imports are concentrated in the region is an area in which the Commission exercises considerable discretion. These percentages are not clearly insufficient, and I therefore conclude that imports are sufficiently concentrated in the Southern California region to warrant consideration of material injury or threat thereof to a regional industry comprised of domestic producers of cement in Southern California. 50/

Condition of the Domestic Industry

In examining the condition of the domestic industry, the Commission considers, among other factors, production, shipments, capacity, capacity utilization, inventories, employment, wages, financial performance, capital investments, and research and development expenditures. 51/ In addition, 19 U.S.C. § 1677(7)(C)(iii) requires the Commission to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. 52/

49/ Report at A-14, table 4.

50/ I note that the enlargement of the region to include all of California would not significantly affect the market isolation criteria, nor would the concentration of imports be significantly greater. Therefore, I do not believe it is inappropriate in the context of this preliminary investigation to consider the impact of allegedly LTFV imports from Japan on producers in Southern California, the region urged by petitioner. However, I shall reconsider the issue of the appropriate region in any final investigation, and welcome arguments by the parties concerning the regional industry analysis employed herein.

51/ See 19 U.S.C. § 1677(7)(C)(iii).

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

The regional industries provision requires a different standard for determinations of a reasonable indication of material injury or threat thereof, viz. consideration of whether there is a reasonable indication that producers of all or almost all production in the region are materially injured or threatened with material injury by reason of the subject imports. 53/ Petitioner maintains that this provision does "not require the Commission to examine the condition of each regional producer individually to determine if it is injured, to exclude non-injured producers, and then determine if the remaining, injured producers constitute all, or almost all, of production." 54/ Petitioner argues that this approach was rejected by the Federal Circuit in overturning the Court of International Trade's decision in Atlantic Sugar v. United States, 744 F.2d 1556 (Fed Cir. 1984). Thus, petitioner contends that the Commission's analysis in a regional industry case should not differ significantly from the aggregate analysis employed in the more usual case.

The Importer Respondents argue that the "all or almost all" criterion involves examining industry performance on a plant-by-plant basis, and that such analysis is most apt in a case such as this one where there are relatively few domestic producers. 55/ The Japanese Respondents also argue that a plant by plant analysis is required.

53/ 19 U.S.C. § 1677(4)(C); Atlantic Sugar v. United States, 2 CIT 295 (1981).

54/ Petitioner's Post-Conference Brief at 84.

55/ The Importer Respondents cite the Mexican Cement investigation, in which the Commission considered plant-specific information in making its determination, and note that the Commission staff routinely provides such information in regional industry cases. Importer Respondent's Post-Conference Brief at 13 & n. 14.

In the past, the Commission has generally concluded that making individual determinations of material injury on a producer-by-producer basis is unnecessary in light of the Federal Circuit's statement in Atlantic Sugar that there is no basis in the statute or the legislative history for a producer-by-producer analysis. However, producer specific information in material injury analysis can highlight salient points that would be masked by solely an aggregate analysis, i.e. if a small producer has incurred massive financial losses which result in an overall bleak financial picture of the industry's condition, the Commission might nonetheless conclude that the financial performance of the remaining producers indicates that the regional industry is not materially injured.

The choice of analytical method is not one as to which there is a single correct answer in this instance. The Commission's reviewing courts have not spoken directly to the "all or almost all" criterion with the exception of the Atlantic Sugar decisions, which neither require nor prohibit a producer-by-producer analysis. 56/ Consequently, I have considered information on industry performance on a plant-by-plant basis as well. 57/

56/ In general, the Commission has considered the condition of regional industries on an aggregated basis, and has looked to individual producer information as a secondary matter. E.g., Mexican Cement;, Offshore Platform Jackets and Piles from the Republic of Korea and Japan, Invs. Nos. 701-TA-248, 731-TA-259-60 (Final), USITC Pub. 1848 (May 1986); Operators for Jalousie and Awning Windows, Invs. Nos. 701-TA-242 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987); Certain Welded Carbons Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987).

57/ Company specific information is confidential, and is therefore not specifically discussed. I note that, in almost all cases, the company specific information did not reveal any significantly different performance than did the industry information as a whole.

Apparent consumption of cement in Southern California increased by 28 percent from 1986 to 1989. Consumption of portland cement in Southern California fell by 3 percent during January-March 1990 as compared with the corresponding period of 1989. Consumption of cement clinker in Southern California increased 3 percent from 1986 to 1989, and increased 4 percent during January-March 1990 as compared with the corresponding period of 1989. 58/ Total production of cement in Southern California increased irregularly from 1986 to 1989, by 13 percent overall. In January-March 1990, however, cement production declined 1 percent as compared with the 1989 interim period. Production of cement clinker in the region increased by 5 percent during 1986-1989, and increased 4 percent during January-March 1990 as compared with the corresponding period of 1989. 59/

Southern California producers' capacity to produce both cement and clinker demonstrated an inverse relationship to production levels during 1986-89, falling 2 percent and 11 percent respectively, and registered a small increase during January-March 1990 as compared with the 1989 interim period. 60/ As a result, cement capacity utilization increased from 74 percent in 1986 to 86 percent in 1989, and clinker capacity utilization rose from 85 percent in 1986 to 100 percent in 1989. 61/ The volume of U.S. shipments of cement by producers in Southern California increased by 12

58/ Report at A-18 and Table 6.

59/ Report at A-24 and Table 7.

60/ Id.

61/ Id.

percent from 1986 to 1989, and declined by 6 percent during January-March 1990 as compared with the corresponding period of 1989. 62/

The value of U.S. shipments of cement by producers in Southern California, on the other hand, remained virtually unchanged in 1989 from that in 1986, despite the 11 percent increase in quantity of shipments, due to declines in unit values during 1986-89. Unit values of U.S. shipments of cement by Southern California producers, regardless of destination, increased 2 percent during January-March 1990 as compared with the 1989 interim period, after falling between 7 and 11 percent during 1986-89. 63/

In this industry, inventories are not generally maintained for long, or at high levels, because of the high costs of storage. Nevertheless, Southern California producers' inventories of cement increased by 61 percent during from 1986-89. As a share of production, inventories of cement rose from 3.2 percent in 1986 to 4.6 percent in 1989. Inventories of cement clinker fell by 22 percent during 1986-89. 64/

Employment in the regional industry decreased over the period of investigation. 65/ The number of production and related workers producing cement and clinker in Southern California decreased by approximately 20 percent, as did the number of hours worked by those workers. The total wages and compensation paid to production and related workers producing cement and

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62/ Report at A-26 and Table 8. Most of the clinker produced in Southern California during the period of investigation was consumed internally in the production of cement. Report at A-26.

63/ Report at A-26 and Table 8.

64/ Report at A-30 and table 10.

65/ Report at A-31 and Table 11.

clinker in the region decreased by approximately 16 to 18 percent. 66/ Productivity increased from 2.11 tons per hour in 1986 to 3.08 tons per hours in 1990, and declined in the interim periods from 2.7 tons per hour in interim 1989 to 2.58 tons per hour in 1990. 67/ Unit labor costs declined in Southern California from 1986 to 1989, and increased slightly in the interim periods. 68/

My examination of the financial data reveals that the financial condition of the domestic producers in Southern California has improved over the period of investigation. Net sales of cement and cement clinker decreased by 4 percent from 1986 to 1988, then rose by 12 percent in 1989. 69/ Operating income increased from 1986 to 1987, declined in 1988, and then rose in 1989. Pre-tax net income margins followed a similar trend. 70/ The average cost of goods sold fell from 1986 to 1989. 71/

In light of the arguments made by the parties concerning the importance of returns on assets as an indicator of the condition of the industry in this case, I have also examined the operating and net returns on both total assets and the book value of fixed assets for producers in Southern California. Operating return on the book value of regional producers' fixed assets

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66/ Id.

67/ Report at A-32, Table 11.

68/ Id.

69/ Report at A-33 and Table 12.

70/ The company specific information varies in the extent of increases and declines in various operating performance indicators during the period of investigation, but shows largely the same overall trends.

71/ Report at A-33 and Table 12.

increased from 9.7 percent in 1986 to 12.7 percent in 1987, declined to 9.5 percent in 1988, and increased to 13 percent in 1989. The net return on fixed assets followed a similar trend, increasing from 1.2 percent in 1986 to 9.6 percent in 1987, declining to 6.4 percent in 1988, and increasing to 11.4 percent in 1989. Operating return on total assets increased from 8 percent in 1986 to 10.5 percent in 1987, declined to 7.9 percent in 1988, and increased to 11. percent in 1989, while net return on total assets increased from 1.0 percent in 1986 to 8.0 percent in 1987, declined to 5.4 percent in 1988, and increased to 9.6 percent in 1989. 72/

The indicators of the condition of the regional industry generally do not support a conclusion that the industry is currently materially injured. However, I am cognizant of the fact that cement production historically has been subject to cyclical performance, with poor performance in periods of low or declining consumption, and boom performance during periods of high or increasing consumption. The decline in consumption in the most recent period suggests the possibility that the improvements over the period of investigation may not continue. Moreover, the consistent decline in unit values, although outweighed by the increases in production, suggests that the industry may be vulnerable to the effects of LTFV imports.

Reasonable indication of threat of material injury by reason of allegedly LTFV imports from Japan

The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Act, which directs 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 to a

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72/ Report at A-33 and Table 13.

domestic industry, or threat thereof, by reason of the subject imports. 73/ The definition of "material injury" is the same in both preliminary and final investigations, but in preliminary investigations an affirmative determination is based on a "reasonable indication" of material injury or threat thereof, as opposed to the actual finding of material injury or threat required in a final determination. 74/

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." 75/ Such a determination may not be

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73/ Maverick Tube Corp. v. United States, 687 F. Supp. 1659, 1573 (1988). Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. No 2128 (1988) ("Shock Absorbers") at 4, citing S. Rep. 1298, 93rd Cong. 2d Sess. 170 (1974)("The Committee felt there ought to be a procedure for terminating investigations at an earlier stage where there was no reasonable indication . . . that an industry in the United States is being or is likely to be injured" by the subject imports.)

74/ Compare 19 U.S.C. § 1673b(a) (1982) with 19 U.S.C. § 1673d(b)(1) (1982).

75/ The Commission must consider ten factors in its threat analysis. The factors are:

> (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

made on the basis of "mere conjecture or supposition." 76/ In the context of this case, in which I am considering the impact of imports on a regional industry, I am required to determine whether there is a reasonable indication that producers of all or almost all of the production in the region are

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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 importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both raw agricultural product (within the meaning of paragraph (4)(E)(iv) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

19 U.S.C. § 1677(7)(F)(i). In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii).

76/ 19 U.S.C. § 1677(7)(F)(ii).

threatened with material injury by reason of the imports subject to investigation. 77/

Petitioner argues that the regional industry is threatened with material injury based on the rapid increases in import penetration, the likelihood of further increases, an imminent downturn in the cement industry business cycle, and continued price suppression and depression. Petitioner contends that imports from Mexico, currently subject to final investigation 78/ should be cumulated with the Japanese imports subject to the current investigation for purposes of the Commission's threat analysis.

Petitioner acknowledges that Japanese capacity has declined over the past several years, but argues that Japanese domestic demand is predicted to decline, and that exports to California are likely to increase, pointing to aggressive increases in Japanese producers' ability to market cement in the region. Respondents dispute these claims, contending that petitioner's capacity utilization data is mistaken and that Japanese exports to the United States are likely to decrease in 1990, 1991, and 1992, due to predicted increased demand in Japan and declining imports to Japan.

With respect to Mexican imports, petitioner contends that the domestic industries are threatened with material injury because Mexican production capacity is underutilized and increasing. It also contends that this excess capacity is targeted at the U.S. market. Petitioner notes that in the Mexican Cement investigation, respondents argued that excess capacity did not threaten

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77/ 19 U.S.C. § 1677(4)(C).

78/ Inv. No. 731-TA-451 (Final), Gray Portland Cement and Cement Clinker from Mexico, instituted April 25, 1990, 55 Federal Register 18683 (May 3, 1990).

petitioner in that investigation's proposed Southwest regional industry because increased capacity was directed at exports to California. Respondents dispute both of these claims, contending that petitioner's capacity data is mistaken and that Mexican exports to the United States are likely to decrease in 1989 due to predicted increased demand in Mexico. Respondents also contend that cumulation for purposes of a threat analysis is prohibited in the context of this investigation, because the Mexican imports which are candidates for cumulation affect a different industry (i.e., a regional industry consisting of the southern tier states) than do the Japanese imports at issue here.

For purposes of this preliminary investigation, I do not formally cumulate imports from Mexico. I note, however, that the presence of significant and increasing volumes of low-priced LTFV imports from Mexico is undoubtedly a relevant factor or condition of trade in the Southern California region. 79/

My preliminary affirmative threat determination is based primarily on the rapid increases in market penetration of allegedly LTFV Japanese imports, the existence of unused or underutilized capacity to produce cement in Japan, suggesting the likelihood that imports will continue to increase, and the likelihood that future Japanese imports will continue to enter at prices that will have a depressive or suppressive effect on domestic prices, as they have

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79/ Even without considering whether LTFV imports from Mexico into Southern California are likely to increase or have a depressive or suppressive effect on prices, there is a "reasonable indication" of threat of material injury by reason of LTFV imports from Japan. However, I intend, in any final investigation, to revisit the question whether cumulation of LTFV imports from Mexico is warranted.

in the past. 80/ In addition, I note the increased investment of Japanese producers in import terminals in the United States, suggesting that the United States is an important market for Japanese cement and is likely to remain so in the future. 81/

Imports of Japanese cement into Southern California increased over 450 percent during the period of investigation, from 349,000 short tons in 1986 to over 1.6 million short tons in 1989, and increased in interim 1990 by 11 percent over interim 1989. As a percentage of total imports into Southern California, Japanese imports increased from 23.7 percent in 1986 to 58.4

80/ Respondents argued that an affirmative preliminary determination in this investigation is precluded because the Commission made a negative preliminary determination in the 1986 Cement investigation. This argument is unpersuasive. As has been frequently observed in the past, Commission determinations are sui generis. Armstrong Bros. Tool Co. v. United States, 483 F. Supp. 312, 328 (Customs Court 1980). Moreover, while the product at issue in the 1986 Cement investigation and this investigation are the same, and imports from Japan were at issue in the prior investigation, the remaining facts and circumstances of the two investigations are different. Thus, for example, in the 1986 Cement investigation, the Commission considered the condition of the entire United States' cement industry, and found no reasonable indication of material injury by reason of imports, while only producers in Southern California are under consideration here. Moreover, whether there was a reasonable indication that the Japanese imports at issue at the time of the 1986 Cement determination posed a threat of material injury to the national cement industry is an entirely different question from that before the Commission in this investigation.

81/ While inventories are not a significant factor in this industry, I note that U.S. producers' inventories have increased over the period of investigation. The potential for product shifting is not a factor in this investigation. Actual and potential negative effects on development and production efforts of the domestic industry are also not a factor in this industry, except to the extent that the impact of allegedly LTFV imports in the future may inhibit investment in production facilities by the Southern California producers. This latter is obviously not an insignificant effect, but based on this preliminary record it is not one on which I have relied. I note that cement is not an industry where continued product development or technological advances result in the need to continually invest in order to compete. See Erasable Programmable Read Only Memories from Japan, Inv. No. 731-TA-288 (Final), USITC Pub. 1927 (1986).

percent in 1989. Imports from Japan showed similar substantial increases when measured in value terms. 82/ As a share of apparent consumption, Japanese imports increased from 5.6 percent in 1986 to 20 percent in 1989, accounting for a significantly increased share of the growing Southern California market. 83/

The information provided by counsel for Japanese producers and exporters of cement indicates that Japanese capacity to produce cement has declined significantly since 1983, while capacity utilization has increased. The Japanese producers and exporters argued that at current levels of capacity utilization, there is no available existing unused capacity to generate increased exports to the United States. I note, however, that the bulk of the decline in overall capacity of the Japanese cement industry occurred between 1983 and 1987, and that capacity remained steady in 1988 and 1989. Exports, however, increased in 1988 and 1989, and are projected to increase in 1990 and 1991, despite no reported increase in capacity in 1989. 84/

Moreover, while the capacity of the five producers who accounted for virtually all exports of cement to the United States declined between 1987 and 1989, their exports to Southern California, as well as total exports, increased consistently during that period, and again in interim 1990 as compared with interim 1989. Capacity utilization for the five producers was

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82/ Report at A-45 and Table 19.

83/ Report at A-14, Table 4.

84/ Report at A-42, Table 16. No projected capacity data was available for 1990 and 1991, while production was projected to increase. Since capacity utilization was reported as 91 percent in 1989, the projected increases in production will have to result from either further improved utilization, or increases in capacity.

84.2 percent in 1989, and increased to 86 percent in interim 1990 as compared with 83.4 percent in 1989. 85/

Consequently, the information available indicates that there exists unused capacity in Japan. Moreover, it is unclear at this time whether the reductions in capacity over the period 1983-1989 represent dismantling of cement capacity, or whether some of that capacity can be brought back into use if economic conditions warrant. In addition, I note that during the same period capacity was being reduced in Japan, and exports were increasing, Japanese domestic consumption was also increasing markedly. 86/

The Japanese respondents argued that demand in Japan is projected to increase in the near future, and that Japanese cement production will thus be devoted to satisfying domestic demand, with little remaining for exports to Southern California. They point to major construction projects in Japan, and commitments to the United States in the context of the Structural Impediments Initiatives talks to make significant infrastructure improvements, in support of their contention that domestic consumption in Japan will increase significantly. However, the construction projects to which they point are already underway, and it is not apparent to me that they will require significantly increased amounts of cement in the near future. Moreover, infrastructure improvements take substantial time to plan and implement, and

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85/ No projections for capacity, production, or exports, were available for 1990 or subsequent years. Information in the record indicates that Japanese producers have contracted with two Southern California importers for significant volumes of shipments during the period March 1990-December 1990. If no other imports from Japan enter Southern California, the level of imports already entered and contracted for in 1990 would represent a 25 percent decline from the 1989 level. See Report at A-46, table 19, and A-23.

86/ Report at A-42, Table 16.

it is unlikely that cement would be stockpiled in anticipation of future needs.

In light of the demonstrated ability of the Japanese industry to increase capacity utilization, and increase exports to Southern California, despite increased demand in Japan, I am unpersuaded that there will be a significant change in the trend of increased imports from Japan. Further, the projected decline of imports into Japan does not support the conclusion that the Japanese industry will become unable in the near future to continue to supply domestic demand and export at least current levels to Southern California.

With regard to pricing, I note that price comparisons were only possible in one market area, Orange County, California. 87/ Given the importance of prices to domestic producers' condition, and the asserted negative effects on domestic prices of allegedly LTFV Japanese imports, I anticipate the Commission will gather further information on this issue in any final investigation. The pricing data, including trends in domestic prices in the two relevant market areas, and price comparisons in Orange County, are confidential. Thus, I can only observe that the pricing information available indicates that allegedly LTFV imports have had an adverse impact on domestic prices for cement.

While I have not found a reasonable indication of material injury by reason of the allegedly LTFV Japanese imports subject to investigation, the

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87/ The Commission requested price data from U.S. producers and importers of Japanese cement in two distinct market areas in Southern California, San Diego and Orange County. Because of the significance of transportation costs in cement prices, a market area in this context represents a relatively narrow geographic area in which there is little variation between suppliers in freight charges to customers. Pricing data were analyzed on a delivered basis because of the importance of transportation costs. Report at A-56-57.

Southern California producers of cement are not unaffected by those imports, particularly in view of the substantial presence of unfairly traded Mexican imports of cement in the region. In my view, there is not clear and convincing evidence in the record that the trends manifested by Japanese imports evident in the record are likely to change course significantly in the near future. I conclude that there is a reasonable indication that allegedly LTFV imports from Japan pose a real threat of imminent material injury to producers of all or almost all production of cement and cement clinker in the Southern California region.

Dissenting Views of Commissioner Eckes

Unlike my colleagues in this preliminary investigation, I have determined that there is no reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of cement and cement clinker from Japan which are allegedly sold at less than fair value.

In sum, based on the Commission standard for making preliminary determinations,1/ I conclude that the record in this investigation contains clear and convincing evidence that there is no reasonable indication of material injury or threat of such injury to this industry and that it is not likely that additional evidence will arise in a final investigation to support the petitioner's point of view. I also note that because the Commission is authorized to weigh evidence in a preliminary investigation, a negative preliminary determination may be issued even if some evidence in the record supports an affirmative determination, or even if there is some reasonable

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1/ From the perspective of the Commission's reviewing court, the Commission cannot terminate a petition unless the record "as a whole contains clear and convincing evidence that there is no material injury or threat of such injury." And, the Commission cannot terminate an investigation if there is any likelihood "that contrary evidence will arise in a final investigation." American Lamb. Co. v. United States 785 F.2d 994, 1001 Fed. Cir. 1986).

doubt whether a negative determination is warranted. 2/

This is the most recent in a number of Commission cement investigations spanning three decades. In reaching my negative determination, I reviewed my affirmative dissenting views in the 1986 preliminary investigation covering imports from a number of sources.3/

Interestingly, three of my present colleagues reached a negative determination in that investigation. From my point of view, negative determinations on the incomplete and conflicting data in the 1986 investigations cannot be reconciled with affirmative determinations in the present investigation. The record here is complete; there are no serious gaps in the information on the domestic industry and foreign producers. In any final investigation, the report will be virtually the same as this preliminary report. And, the evidence is clear and convincing that there is no reasonable indication of material injury.

Like Product and Domestic Industry

In this investigation, I have accepted the petitioner's allegation that gray portland cement (cement) and cement clinker

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2/ Wells Mfg. Co. v. United States, 677 F. Supp. 1239 (1987); Jeannette Sheet Glass Corp. v. United States, 654 F. Supp. 179 (1987).

3/ Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela, Inv. Nos. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (1986).

comprise a single like product.4/

Normally, the impact of imports which are subject to investigation is assessed on the industry as defined in section 771(4)(A). In appropriate circumstances, however, the statute permits the impact to be assessed on a regional industry basis.5/

For the purposes of this preliminary investigation, I find these statutory criteria to be met for the Southern California

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4/ The Commission reached similar conclusions in recent investigations regarding imports of cement and clinker. Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Preliminary), USITC Pub 2235 (1989), and Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, japan, Mexico, the Republic of Korea, Spain, and Venezuela, Inv. Nos. 731-TA-356-363 (Preliminary), USITC Pub. 1925 (1986).

My analysis of the condition of the industry focuses on data for cement. I have also reviewed information regarding clinker which is also the like product and find that data for clinker track information on cement.

5/ Section 771(4)(C) provides:

> 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.
>
> . . .there is a concentration of . . . 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 . . . dumped imports.

region as proposed by the petitioner. The Commission found in numerous past investigations that a regional analysis was appropriate regarding the impact of imports on domestic cement production. 6/ The record in this investigation reveals that (1) 84 percent of cement produced in 1989 in the region was sold in that region; (2) for the period 1986-89, less than 2 percent of consumption was supplied by out-of-region suppliers, and (3) from 68 to 74 percent of total Japanese imports were concentrated in the region during the period of investigation. Therefore, I conclude that the domestic industry for this investigation consists of the domestic producers located in the Southern California region.7/8/

6/ With one exception, all of the Commission's prior investigations of cement employed a regional analysis. In the 1986 preliminary investigations, regional industry issues were not raised by the parties.

7/ These producers are National Cement Co. of California, Inc., Southwestern Portland Cement, CalMat Co., Calaveras Cement Co., Riverside Cement Co., and Mitsubishi Cement Corp.

8/ I included within the industry companies which produce cement clinker, or grind clinker into cement, or both. Also, the petitioner has not specifically requested that the Commission exclude from the industry those companies which either import Japanese cement or are owned by Japanese producers subject to this investigation. It is my understanding that these related parties do not import for the purpose of benefiting from the alleged dumping, but rather to compete in the domestic market and should be properly included. Also, the related Southern California domestic producers account for almost three-fourths of reported production in the region in 1989.

Condition of the Domestic Industry

The statute requires that a determination of injury to a regional industry must be made on the basis of injury to the "producers of all or almost all of the production." 9/ I have assessed the condition of each of the individual companies and have determined that there is no reasonable indication of material injury or threat of material injury to "producers of all or almost all of the production."10/ However, because of the confidential nature of individual company information, my discussion will focus on aggregate data.

As noted earlier, the Commission has periodically studied this industry and has conducted 11 separate investigations since 1960. In addition, there is an ongoing investigation concerning the same merchandise from Mexico. As a result, there are few, if any, novel factual issues presented by the record of this

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9/ 19 U.S.C. sec. 1677(4)(C).

10/ The Commission did not receive usable questionnaire responses from two producers of portland cement in the Southern California region. One of these producers accounting for about 11 percent of the productive capacity in the region did supply data on most performance factors for 1988 and 1989. Its data were not included in the aggregate data since they were not available for earlier years in the period.

Information for that producer on production, capacity utilization, inventories, employment, and financial performance track the data for most other producers in the region as well as aggregate data.

Because of the strong performance of the reporting producers in this industry accounting for about 95 per cent of productive capacity in the region, it is not likely that the performance data for the remaining producer would be so adverse as to warrant an affirmative determination.

preliminary investigation.11/ The condition of this domestic industry is robust; it is not experiencing difficulties of a material nature nor do the conditions of trade suggest that it may be vulnerable in the near term to problems associated with alleged LTFV imports from Japan.

Apparent consumption for cement in this region has increased steadily during the period of investigation. Specifically, consumption of cement increased 28 percent from 1986 to 1989.12/

Production of cement in the region increased irregularly from 5.5 million short tons in 1986 to 6.2 million short tons in 1989, by 13 percent. Cement capacity utilization rose from 74 percent in 1986 to 86 percent in 1989, with substantially all of that increase attributable to increased production.13/

Total shipments by producers in the region increased from 5.5 million short tons in 1986 to 6.1 million short tons in 1989, an increase of 12 percent over the four-year period covered. Inventories held by these producers have increased somewhat during the period, reaching a share of production ratio of 4.6

11/ In reaching my negative determination in this investigation, I am mindful of the statutory provisions which require the Commission to examine all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the industry. 19 U.S.C. sec. 771(7)(C)(iii).

12/ In my analysis of the condition of this industry, I have not devoted undue attention to the most recent quarter of data for 1990. Interim data for such a relatively brief period can often be distorted by temporary market conditions.

13/ There was a 2 percent decline in capacity levels over the period.

percent for 1989; however, this is only slightly higher than the 4 percent industry average for the four-year period, and is lower than high for the period of the 4.8 percent in 1987. Although the number of production and related workers for these producers declined by about 20 percent over the period, the employment level over the most recent two years has remained more constant, declining only 3 percent from 1988 to 1989. At the same time the number of workers declined, their productivity levels increased sharply. From 1986 to 1989, productivity for these producers improved a dramatic 50 percent, accounting for an additional ton of cement per manhour.

Finally, data on the financial experience of these producers underscore the strong condition of this industry. Net sales in 1989 for these producers were at their highest for the period, at $352.6 million, an increase of 5 percent over 1988. Operating income stood at $56.5 million in 1989, producing an operating margin of 16.0 percent for these producers.14/ Other measures of economic health show similar strength. For example, these producers experienced an operating return on total assets of 11

14/ During the Commission briefing, it was suggested that sales revenues increased because of increased quantity and that unit values have in fact declined for these producers. While producers may not be commanding the highest possible price for their sales, they are attaining prices sufficient to generate operating returns of double digits for each of the past four years, sufficient to sustain past levels of capital investment and exceed historical levels of return on assets.

Nor are current gross profit margins attributable to exceptional declines in the cost of goods sold over this period, unlike the 7.3 percent sharp decline in COGS as a share of net sales experienced by these producers from 1983 to 1985.

percent for 1989, the highest for the four year period. Capital expenditures by these producers were the same in 1989 as they were for 1986.

Clearly, the information on the condition of this industry does not provide any reasonable indication of material injury. Because of the complete nature of data for this industry, there is no likelihood of contrary evidence being developed in any further investigation.15/

No Reasonable Indication of Threat of Material Injury

Given the strong performance of the industry in recent years, I am unable to find any reasonable indication of a threat of material injury to this industry "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."16/ I am not persuaded that any real threat of imminent injury is posed to this industry based on my analysis of the factors I am required to consider by the statute.

15/ Having concluded that the domestic industry is not experiencing material injury, I find it unnecessary to make a determination with respect to whether there is a reasonable indication whether any present material injury is by reason of imports. See "Views of Commissioners Eckes, Rohr, Lodwick and Newquist," Electromechanical Digital Counters from Brazil, Inv. No. 731-TA-453(Preliminary), USITC Pub. 2273 (April 1990). American Spring Wire Corp. v. United states, 590 F. Supp. 1273 (1984), aff'd sub nom., Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985); National Association of Mirror Manufacturers v. United States, 696 F. Supp. 642 (1988).

16/ 19 U. S. C. sec. 1677(7)(F)(i) and (7)(F)(iii).

First, the coverage of data for Japanese producers who export to the U.S. and importers is virtually complete. There is no likelihood that contrary evidence will be developed upon further inquiry. While the market penetration of these imports has increased during the period, rising from 5.6 percent to 20.2 percent of the market in 1989, I fail to find any basis for concluding that such import levels or even higher levels support a reasonable indication of a "real and imminent" threat of injury.

Although some underselling was reported during the period, the industry obviously has withstood past price competition. There is no reason to believe that this industry will be adversely affected by similar import and price trends in the near future.

U. S. inventories of imported cement are nominal. There is no evidence of an inventory build-up in Japan by exporters.

Foreign capacity has contracted sharply, by almost 15 percent over the past four years, and production levels continue to increase. More than three-fourths of the increase in production over the period has been directed to the home market.

Only 3.7 percent of total Japanese shipments were directed to the U.S. in 1989, compared to 1.3 percent in 1986. In like manner, total exports by these producers increased only slightly from 1986 to 1989, from 2.9 million short tons to 3.8 million short tons. Despite recent increases of subject imports into the region, there has been no demonstrated pattern of past reliance

on export sales by Japanese producers into this region or other markets. Nor is there any indication of an incentive to increase imports in some manner to cause "imminent" injury. Predictions of declining demand in Japan are not enough to support a reasonable indication of threat.

Nor are vague notions of a disruption of the industry business cycle sufficient. Petitioner argues that cement production is a capital intensive, cyclical industry which must accrue high returns during the expansion phase of the business cycle in order to justify capital investments to expand production capacity and to sustain the industry during the next contraction phase of the cycle. While I agree with this notion, I find little in the record on the industry's present performance to suggest that it is not accruing sufficiently high returns; nor do I find sufficient data to conclude that the near term performance of the industry is being threatened by subject imports.

Also, I have considered the cumulation issues presented by this investigation, and find that even if I had cumulated the imports from Mexico which are currently subject to investigation, I still would have reached a negative determination.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On May 18, 1990, a petition was filed with the U.S. International Trade Commission (the Commission) and the U.S. Department of Commerce by counsel on behalf of members of the Ad Hoc Committee of Southern California Producers of Gray Portland Cement.[1] The petition alleges that an industry in the United States is materially injured and is threatened with material injury by reason of imports from Japan of gray portland cement (hereinafter "portland cement") and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (HTS) (previously in item 511.14 of the former Tariff Schedules of the United States (TSUS)),[2] which are allegedly being sold in the United States at less than fair value (LTFV).

Accordingly, effective May 18, 1990, the Commission instituted antidumping investigation No. 731-TA-461 (Preliminary) 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 the alleged LTFV imports of portland cement and clinker into the United States.

Notice of the institution of the Commission's investigation and of a 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 25, 1990 (55 F.R. 21662).[3] The conference was held on June 8, 1990.[4] The Commission voted on this investigation on June 27, 1990. The statute directs that the Commission make its determination in this case within 45 days after receipt of the petition, or by July 2, 1990.

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[1] The petition lists the following members of the Ad Hoc Committee of Southern California Producers of Gray Portland Cement: National Cement Co., Encino, CA, and Southwestern Portland Cement, Houston, TX.

[2] This investigation does not include white, nonstaining portland hydraulic cement, provided for in subheading 2523.21.00 of the HTS previously in item 511.11 of the former TSUS.

[3] Copies of the Commission's and Commerce's notices are shown in app. A.

[4] A list of witnesses appearing at the conference is presented in app. B.

Previous Commission Investigations Concerning Portland Cement

There have been 11 previous Commission investigations concerning portland cement, dating back to 1960. In addition, there is an ongoing investigation concerning portland cement and cement clinker from Mexico (investigation No. 731-TA-451 (Final)). All of these have been antidumping investigations concerning portland cement, other than white, nonstaining portland cement, with the investigation in 1986 and the current investigation on Mexico involving cement clinker as well. The first nine investigations were conducted under the provisions of the Antidumping Act of 1921, and the last three were conducted under the provisions of the Tariff Act of 1930. Of the 11 completed investigations, all but the 1986 investigation were determined on the basis of a regional, rather than a national, industry. A listing of the Commission's previous investigations is presented in table 1.

The Present Investigation

In the present investigation, the petitioner has filed on behalf of a regional industry--the Southern California producers of portland cement and cement clinker. The petitioner utilizes the same definition of Southern California as does the U.S. Bureau of Mines. That is, the area consisting of the portion of the State of California which includes the counties of San Luis Obispo, Kern, Inyo, Mono, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial (fig. 1). Petitioner contends (1) that the producers in Southern California sell all or almost all of their production of the like product in question in that market and (2) that the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States. Petitioner argues that these two factors are sufficient for the Southern California region to satisfy the statutory criteria for regional industry analysis.[5] For this report, information was collected from producers and importers in the Southern California region as well as the entire State of California.[6] Information for the entire U.S. industry was derived from U.S. Bureau of Mines data and other publicly available data.

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

[6] The Commission used trade, financial, employment and pricing data from producers in California collected in questionnaires of the U.S. International Trade Commission mailed in connection with investigation No. 731-TA-451 (Final), Gray Portland Cement and Cement Clinker from Mexico. The Commission mailed producers' questionnaires in the present investigation to collect information on the impact of imports from Japan on capital and investment and information regarding lost sales and lost revenues with respect to imports from Japan. Importers' questionnaires were sent to companies believed to be importing portland cement and/or cement clinker from Japan.

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

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

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

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

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

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

With respect to the issue of "like product," the petitioner argues that because clinker is an intermediate product generated during the production of cement and has no other use than to be ground into finished cement, clinker and portland cement constitute one like product.[7] In support of this claim, petitioner cites the Commission's finding that portland cement and cement clinker constituted one like product in its 1986 investigation. Petitioner further states that most U.S. producers do not sell clinker as a routine matter and, as a result, do not keep profit-and-loss data for clinker operations.

Insofar as the "domestic industry" is concerned, petitioner states that because the like product is portland cement and cement clinker, it consists of the producers of the same in the Southern California region. Petitioner further argues that, since the production of clinker accounts for over 80 percent of the cost of producing portland cement, the grinding of clinker is a minor finishing operation. Therefore, it is argued, profits derived from grinding imported clinker should not be considered as profits of a U.S. producer[8] and should not be considered in the Commission's analysis of the health of the domestic industry in the present investigation.

With regard to the relevant period to be examined in the Commission's consideration of material injury or threat thereof, petitioner requests that the Commission consider all relevant economic factors that have a bearing on the state of the industry "within the context of the business cycle,"[9] looking at a period longer than the 3-year period considered in most investigations. Petitioner argues that the Commission should investigate a period covering "the prior expansion phase (1975-79), the prior contraction phase (1980-82), and the most recent expansion phase (1983-89) of the construction and cement cycle in the California region."[10] As mentioned above, the Commission used trade, financial, employment, and pricing data from producers in California collected in questionnaires mailed in connection with investigation No. 731-TA-451 (Final), Gray Portland Cement and Cement Clinker from Mexico. The Commission mailed supplemental producers' questionnaires in the present investigation to collect information on the impact of imports from Japan on capital and investment and information regarding lost sales and lost revenues with respect to imports from Japan. Importers' questionnaires were sent to companies believed to be importing portland cement and/or cement clinker from Japan. Producers and importers were asked to provide limited trade, financial, and pricing information from 1983 to 1985, in addition to information requested for the period January 1986 through March 1990, to enable the Commission to better evaluate the industry's performance in the context of the business cycle. Those data are presented in appendix C.

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[7] Petition, p. 28.
[8] Petition, p. 29.
[9] Sec. 771(7)(C) of the Tariff Act of 1930.
[10] Petition, p. 41.

The Product

Description and uses

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

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

Hydraulic cements are distinguished from nonhydraulic cements by their ability to set, or harden, under water; nonhydraulic cement will not set under water. Portland[11] cement is the most important of the four major categories of hydraulic cements,[12] accounting for about 95 percent of domestic production and, reportedly, for almost all imports.

All cement generally conforms to the standards established by the American Society for Testing Materials (ASTM). General descriptions of the five standard types of portland cement are given by ASTM as follows:[13]

> Type I--For use when the special properties specified for any other type are not required;
>
> Type II--For general use, especially when moderate sulfate resistance or moderate heat of hydration is required;
>
> Type III--For use when high early strength is required;
>
> Type IV--For use when a low heat of hydration is required; and

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

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

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

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

In 1988, types I and II portland cement together accounted for 92.2 percent of the quantity of all shipments of portland hydraulic cement from U.S. plants (table 2). Specifications for type I and type II portland hydraulic cement are very similar. The chemical specifications for types I and II differ in that type I has no specifications for several items that are specified for type II. Thus, type II cement meets all the requirements of type I cement and may be used in lieu of type I. In addition to the standard portland cements, there are a number of special cement blends that consist of portland cement (table 2).

Table 2
Portland cement:[1] Shipments from U.S.[2] plants, by types of cement, 1988

Type of cement	Quantity	Value	Unit value
	1,000 short tons	1,000 dollars	Per short ton
General use (types I and II).....	79,943	3,826,576	$47.87
High-early strength (type III)...	3,359	178,149	53.04
Sulfate-resisting (type V).....	697	36,600	52.51
Oil well.....	916	48,193	52.61
White.....	365	61,155	167.54
Slag and pozzolan.....	625	33,454	53.52
Expansive.....	64	5,595	87.42
Miscellaneous[3]	769	43,092	56.03
Total or average.....	86,738	4,232,814	48.80

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

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

Source: U.S. Department of the Interior, Bureau of Mines, Mineral Industry Surveys, "Cement in 1988," July 13, 1989, p. 18.

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

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

Concrete, being a major material in building construction, competes with structural steel, clay products, building stone, and other materials in various building construction applications. However, in almost every type of structure, regardless of the principal building material used, there are certain basic uses for concrete (foundations, basements, floors, and so forth) for which there is little direct competition. The choice of the principal structural material is governed by many factors, such as cost, personal preference, and building code specifications. Concrete made with gray portland cement is one of the most widely used construction materials in the United States. Table 3 shows the types of customers for cement during 1988.

Table 3
Portland cement:[1] U.S. producers' shipments[2] as a percentage of total shipments, by types of customers, 1988

Type of customer	Percent of total
Building material dealers	4.4
Concrete product manufacturers	11.2
Ready-mixed concrete	73.9
Highway contractors	4.4
Other contractors	3.5
Federal, State, and other government agencies	.3
All other	2.3
Total	100.0

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

Source: U.S. Department of the Interior, Bureau of Mines, Mineral Industry Surveys, "Cement in 1988," p. 17.

Production process

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

In more technically advanced facilities, the blended raw meal then goes through a preheater and precalciner in which it is partially calcined by direct firing before entering the rotary kiln. In the dry-process facilities that do not include a preheater or precalciner, the raw meal is fed directly into a rotary kiln in which it is calcined into clinker. The advantage of using preheaters and precalciners is that they can reduce kiln fuel consumption.[14] Figure 3 shows some of the new technology used in the dry-process manufacture of portland cement.

In the United States, approximately 59 percent of the cement clinker production facilities use the dry process.[15] Many domestic producers converted their facilities to the dry process. The main advantage of this process is that it is more energy efficient than the wet process, since less time is needed for heating. In the dry process material travels through the kiln in 15 to 20 minutes; the wet process requires approximately 1-1/2 hours of kiln time. For both the wet and dry processes, the major sources of energy to operate the kiln include coal, oil, and gas. The U.S. cement industry uses predominantly coal, whereas the Japanese industry uses mostly fuel oil. The choice of fuel is simply an economic decision based on fuel prices, transportation costs to the production site, and efficiency costs of using one fuel over another.

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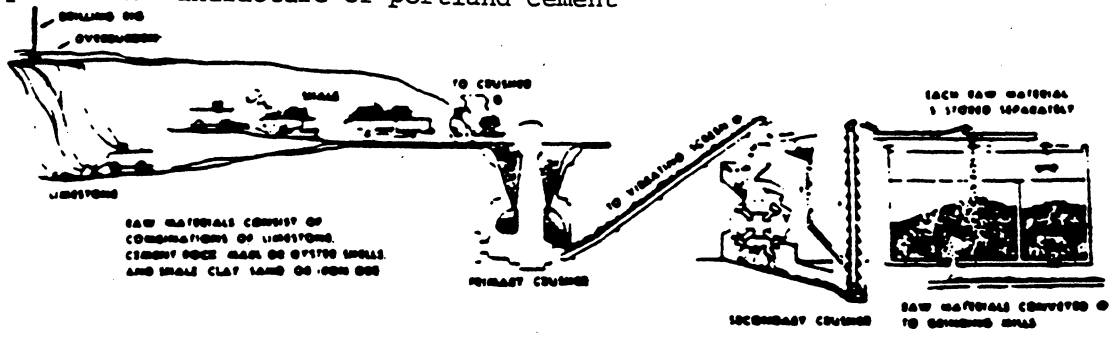
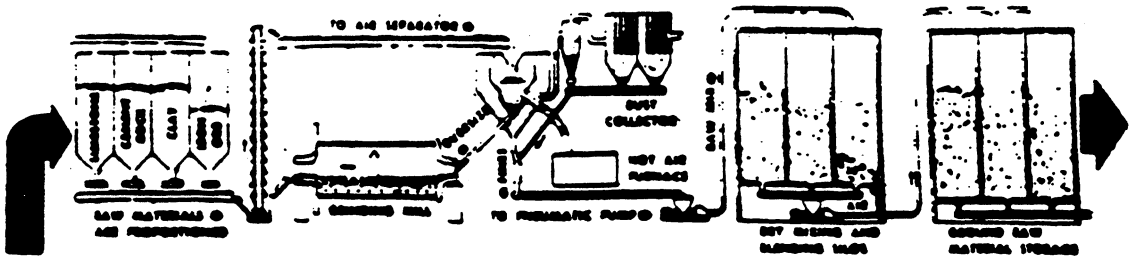
[14] Norman L. Weiss, ed., SME Mineral Processing Handbook (Society of Mining Engineers, American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc., New York, NY, 1985), vol. 2, p. 26.

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

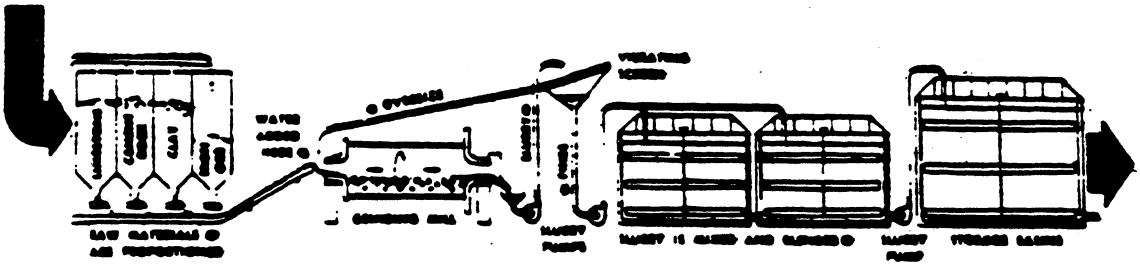
Figure 2
Steps in the manufacture of portland cement



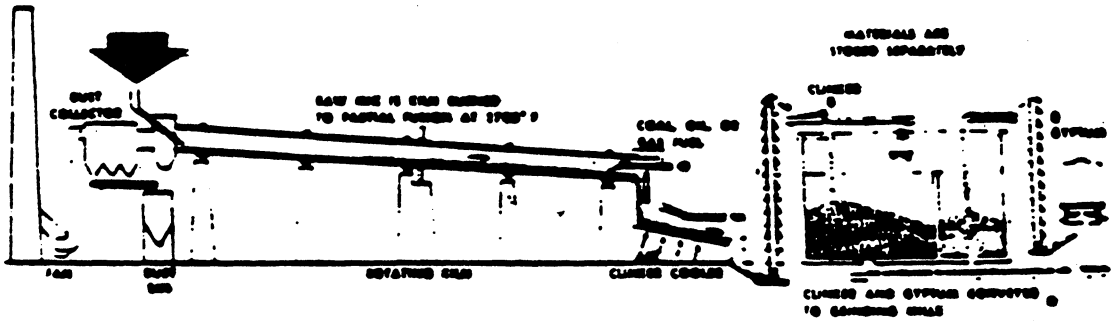
1. Stone is first reduced to 5-in. size, then to ¾ in., and stored.



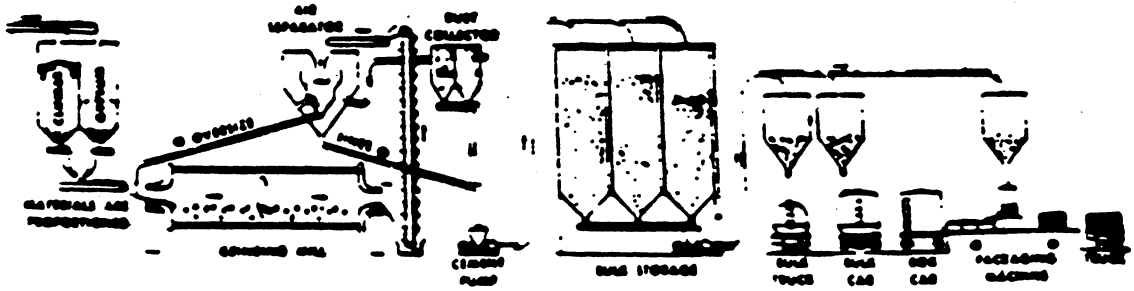
OR 2. Raw materials are ground to powder and blended.



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



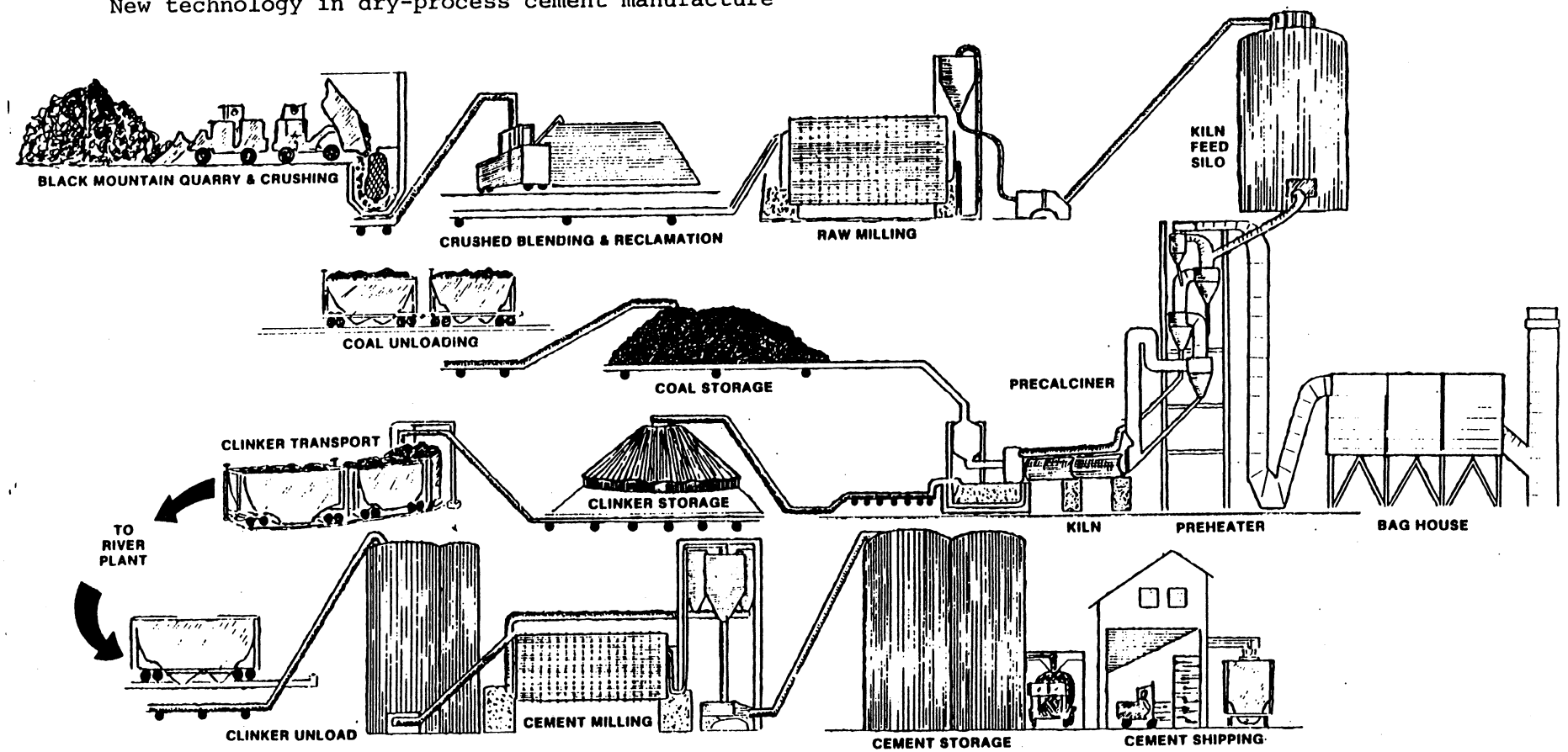
3. Burning changes raw mix chemically into cement clinker.



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

Source: Portland Cement Association.

Figure 3
New technology in dry-process cement manufacture



Source: Southwestern Portland Cement Co.

U.S. tariff treatment

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

The Nature and Extent of Alleged Sales at LTFV

Petitioner has alleged that portland cement is being imported from Japan at prices that are LTFV. As evidence of the U.S. price of portland cement from Japan, petitioner has relied upon the unit export value of portland cement from Japan and upon the unit customs value for imports of portland cement. For the foreign market value, the petitioner has relied on prices at which portland cement is sold or offered for sale in the principal markets of Japan, as reported by a consultant it retained to obtain ex-factory prices from Japanese producers for bulk and bag sales in Japan. From these comparisons, petitioner arrived at alleged dumping margins ranging from 102 to 136 percent.[16]

The Domestic Market

The regional character

Because of the low value-to-weight ratio and the fungible character of cement, transportation costs are an important limiting factor on its shipment. More than 95 percent of portland cement shipments in the United States are to customers located within 300 miles of the production site. The following tabulation presents the distribution of producers' shipments, by distances, for the Southern California region and the State of California in 1989 (in percent):

Miles shipped	Southern California region	State of California
0-99.....	44.2	45.6
100-299.....	49.7	49.4
300-499.....	6.0	4.8
500 or more..	.1	.2

[16] In its notice of initiation, Commerce recalculated the margins, resulting in estimated dumping margins of 98 to 125 percent (app. A, p. B-5).

Producers located in the Southern California region and the State of California shipped more than 90 percent of their cement within a 300-mile radius of their plants in 1989. Moreover, importers of cement from Japan and Mexico located in the same regions shipped virtually all of their imports of portland cement within a 300-mile radius. The following tabulation presents the distribution of shipments by importers located in the Southern California region,[17] by source and by distance shipped, in 1989 (in percent):

Source and miles shipped	Southern California region
Japan:	
0-99.....	90
100-299.....	10
300-499.....	0
500 or more..	0
Mexico:	
0-99.....	90
100-299.....	10
300-499.....	0
500 or more..	0

Information on the statutory criteria set forth for regional analysis is shown in table 4.

[17] Data on the distribution of shipments of imports into the northern portion of California are not available.

Table 4
Portland cement: U.S. producers' domestic shipments, shipments of imports, and apparent U.S. consumption, 1986-89

(In percent, based on quantity)

Item	1986	1987	1988	1989
Southern California region:				
Share of--				
Regional producers' shipments made to destinations within region	86.4	88.1	86.3	84.0
Regional consumption supplied by producers outside region	.9	1.2	1.8	1.8
Total imports from Japan	67.9	70.8	73.0	73.7
Total imports from Mexico	18.8	16.8	14.3	15.3
Ratio of imports from Japan to consumption--				
Within region	5.6	7.5	15.6	20.0
In all other areas	.2	.2	.5	.7
Ratio of imports from Mexico to consumption--				
Within region	9.4	9.7	8.5	7.4
In all other areas	3.1	3.7	4.7	4.1
Ratio of imports from Japan and Mexico to consumption--				
Within region	15.0	17.1	24.0	27.4
In all other areas	3.3	3.9	5.2	4.8
The State of California:				
Share of--				
Regional producers' shipments made to destinations within region	92.1	93.5	93.3	92.5
Regional consumption supplied by producers outside region	3.5	3.2	3.6	***
Total imports from Japan	67.9	70.8	75.4	79.2
Total imports from Mexico	22.2	23.1	20.4	22.7
Ratio of imports from Japan to consumption--				
Within region	3.6	4.9	10.7	***
In all other areas	.2	.2	.5	***
Ratio of imports from Mexico to consumption--				
Within region	7.2	8.6	8.0	***
In all other areas	3.1	3.6	4.6	***
Ratio of imports from Japan and Mexico to consumption--				
Within region	10.8	13.5	18.7	***
In all other areas	3.3	3.8	5.1	***

Source: Regional consumption supplied by producers outside region is from the U.S. Bureau of Mines (1989 data are confidential). Import data are compiled from official statistics of the U.S. Department of Commerce. All other data are compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Factors affecting demand[18]

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

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

In California, authorizations for residential construction were off by nearly 25 percent from 1986 to 1989. Nonresidential authorizations in California rose irregularly in real dollar terms, by over 10 percent from 1986 to 1988, and then declined by 8 percent in 1989.

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

Item	1986	1987	1988	1989
	Quantity (units)			
Residential:				
California	314,641	251,824	253,369	237,332
Total United States	1,769,443	1,534,772	1,455,623	1,340,646
	Value (million dollars)			
Nonresidential:[1]				
California	11,814	11,704	13,014	11,965
Total United States	71,730	70,927	76,060	72,126

[1] Deflated by implicit price deflator.

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

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

Apparent U.S. consumption[19]

Table 6 shows apparent consumption of portland cement and cement clinker in the Southern California region and the State of California, as well as the portion of consumption supplied by U.S. producers outside those regions. Additionally, table 6 presents total apparent consumption of portland cement for the entire United States.[20]

Regional portland cement consumption for the Southern California region and the State of California represents the total of shipments, as reported in Commission questionnaires, within the respective regions by producers[21] operating within those regions, plus shipments supplied from U.S. producers outside the regions,[22] plus imports[23] into the regions.[24]

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

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[19] The Commission did not receive useable questionnaire responses from two producers of portland cement in the Southern California region: National and Calaveras/Monolith. According to the Portland Cement Association, these producers accounted for roughly 16 percent of capacity to produce portland cement in the Southern California region and 11 percent of capacity to produce portland cement in the State of California. Consequently, apparent consumption in the Southern California region and the State of California are understated.

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

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

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

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

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

Table 6
Portland cement and cement clinker: U.S. shipments,[1] U.S. production,[2] imports, and apparent consumption, 1986-89, January-March 1989, and January-March 1990

(In thousands of short tons)

Item	1986	1987	1988	1989	January-March-- 1989	1990
Portland cement:						
Southern California region:						
Shipments by regional producers/grinders..	4,729	4,521	5,015	5,126	1,217	1,130
Imports from--						
Japan.....	349	486	1,183	1,607	289	320
Mexico.....	586	624	642	595	121	259
Subtotal.....	934	1,110	1,825	2,201	410	579
All other sources...	535	790	614	552	165	36
All sources.....	1,470	1,901	2,439	2,753	575	615
Regional apparent consumption supplied from--						
Within region.....	6,199	6,422	7,454	7,879	1,792	1,745
Outside region.....	57	76	140	148	30	29
Apparent consumption..	6,256	6,498	7,594	8,027	1,822	1,774
State of California:						
Shipments by regional producers/grinders..	7,576	7,381	8,296	8,584	1,914	1,861
Imports from--						
Japan.....	349	486	1,222	1,726	289	320
Mexico.....	693	857	916	884	186	286
Subtotal.....	1,042	1,343	2,138	2,611	475	606
All other sources...	711	937	614	629	165	69
All sources.....	1,753	2,280	2,752	3,239	640	675
Regional apparent consumption supplied from--						
Within region.....	9,329	9,661	11,048	11,823	2,554	2,536
Outside region.....	335	324	411	***	***	***
Apparent consumption..	9,664	9,985	11,459	***	***	***
Total United States:						
Apparent consumption..	89,033	90,458	89,856	89,175	15,872	17,295

See footnotes at end of table.

Table 6--Continued
Portland cement and cement clinker: U.S. shipments,[1] U.S. production,[2] imports, and apparent consumption, 1986-89, January-March 1989, and January-March 1990

(In thousands of short tons)

Item	1986	1987	1988	1989	January-March-- 1989	1990
Cement clinker:						
Southern California region:						
Production by regional producers	5,757	5,698	5,716	6,065	1,401	1,459
Imports from--						
Japan	26	0	0	0	0	0
Mexico	81	0	0	0	0	0
Subtotal	108	0	0	0	0	0
All other sources	37	0	33	0	0	0
All sources	144	0	33	0	0	0
Apparent consumption	5,901	5,698	5,749	6,065	1,401	1,459
State of California:						
Production by regional producers	8,391	8,492	8,501	9,126	2,088	2,083
Imports from--						
Japan	83	0	0	41	0	0
Mexico	81	0	0	0	0	0
Subtotal	164	0	0	41	0	0
All other sources	65	0	33	0	0	0
All sources	229	0	33	41	0	0
Apparent consumption	8,620	8,492	8,534	9,167	2,088	2,083
Total United States:						
U.S. production	68,635	68,719	70,439	***	(3)	(3)
Imports from--						
Japan	234	37	137	235	25	28
Mexico	1,095	1,215	437	423	130	87
Subtotal	1,329	1,252	574	658	154	115
All other sources	2,643	2,436	1,345	1,087	207	196
All sources	3,972	3,687	1,919	1,745	361	311
Apparent consumption	72,608	72,407	72,358	***	(3)	(3)

[1] Includes shipments of portland cement by both producers and grinders.
[2] Production for clinker only. Virtually all production in the Southern California region and the State of California is consumed in the region in which it was produced (table 9).
[3] Data not available from U.S. Bureau of Mines.

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

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

Southern California.--The Southern California region experienced a 28-percent increase in consumption of portland cement from 1986 to 1989. Consumption of portland cement in the Southern California region fell by 3 percent during January-March 1990 compared with the corresponding period of 1989.

Consumption of cement clinker increased irregularly in the Southern California region during 1986-89, from 5.9 million short tons to 6.1 million short tons, or by 3 percent. Consumption of clinker in the Southern California region increased by 4 percent during January-March 1990 compared with the corresponding period of 1989. Imports of clinker into the Southern California region dropped to nearly zero.

State of California.--California experienced a * * *-percent increase in consumption of portland cement from 1986 to 1989. Consumption of portland cement in California remained essentially level during January-March 1989 and 1990.

In the State of California, consumption of cement clinker increased during 1986-89 from 8.6 million short tons to 9.2 million short tons, or by 6 percent. Consumption of clinker in the State remained virtually the same during January-March of 1989 and 1990, at roughly 2.1 million short tons.

U.S. producers

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

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

Blue Circle Industries PLC (Blue Circle) of the United Kingdom has cement interests of 3.6 million tons in the United States. Lonestar Industries (Lonestar) fully owns and operates 4.8 million tons of cement capacity in the United States and has joint-venture interests totaling another 3.9 million tons. Lonestar purchased many of its U.S. cement assets in the 1970s, becoming the largest cement company in the United States. In the 1980s, however, Lonestar has either sold many of its assets entirely or included them in joint ventures. Cementos Mexicanos (Cemex) currently operates 25.2 million tons of cement capacity, all in Mexico, 7.3 million tons of which was acquired from Blue Circle this year. Additionally, Cemex has

formed several joint ventures with U.S. cement companies in recent years.

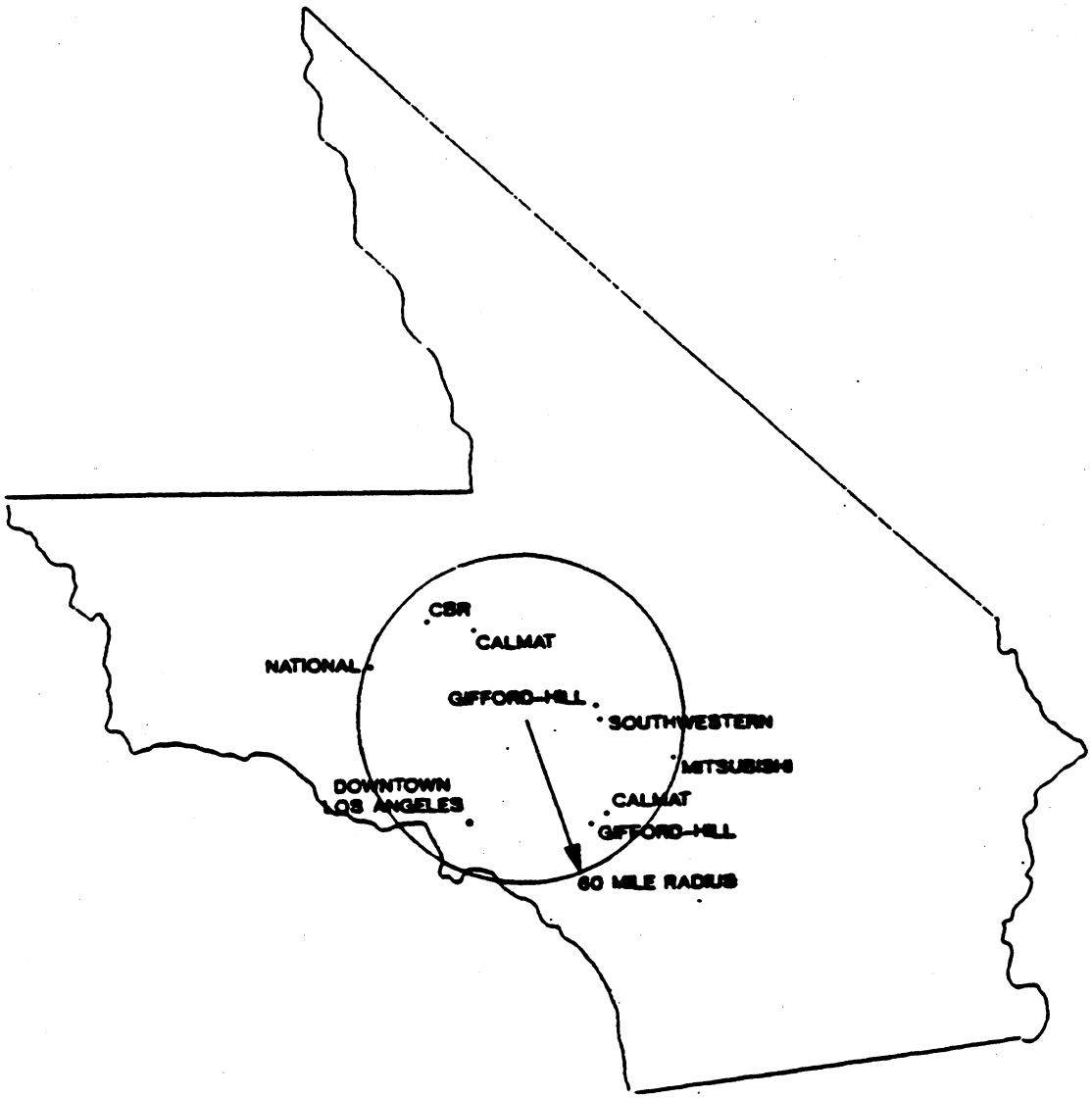
There are presently 10 active producers and one grinder operation in California. Seven of the producers and the one grinder operation are located in the Southern California region (fig. 4), and the other three producers are located in the northern part of the State.

Southwestern Portland Cement (Southwestern), a member of the petitioning committee, operates a plant in Victorville in Southern California. Southdown, Inc., Southwestern's parent company, also has plants in Florida and the Southwest. The other member of the petitioning committee, National Cement of California (National), produces portland cement at its plant located in Lebec, CA. This plant was purchased from a subsidiary of Lafarge in November 1987. National Cement of California is owned by Societe Anonyme des Ciments Vicat of France. Because of its recent acquisition, National was only able to supply the Commission with questionnaire data for January 1988 through March 1990. National and Commission staff were unable to obtain any information from the previous owners. Because of the incomplete data for all periods of the investigation, National's data were not included in any of the aggregates presented in the report. However, National's data for calendar years 1988 and 1989 are presented separately in footnotes at the beginning of the individual sections of the report within "Consideration of alleged material injury to an industry in the United States."

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

California Portland Cement Co. (CalMat) has manufacturing facilities located in Colton and Mojave in Southern California. CalMat * * *. Mitsubishi Cement Co. (Mitsubishi) operates a producer facility in Lucerne Valley, CA. A majority share of Mitsubishi is held by Mitsubishi Mining & Cement Co., Ltd., of Japan. The Lucerne Valley plant was purchased from Kaiser Cement Corp. (Kaiser) in 1988. Mitsubishi * * *. The remaining producer in Southern California is Calaveras Cement Co. (Calaveras), with its plant in Monolith, CA. The Monolith plant was purchased from Monolith Portland Cement Co. in March 1989. Because of the recent purchase of the Monolith plant, Calaveras was not able to supply the Commission with a questionnaire response for that facility, and the Commission was unable to obtain any information from the previous owners. Calaveras is owned by Cimentaries CBR, S.A., of Belgium and also operates a plant in northern California at Redding. * * *. Portland cement producers in the Southern California region who oppose the petition accounted for * * * percent of regional production in 1989.

Figure 4
Portland cement and cement clinker: Plant locations of U.S. producers in the Southern California region, 1989



Note.--CBR denotes Calaveras Cement Co.; Gifford-Hill denotes Riverside Cement Co.

Source: Counsel for petitioner.

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

The names, plant locations, and shares of reported 1989 regional production of California producers of portland cement are presented in the following tabulation:

Firm	Location(s)	Share of reported 1989 regional production (percent)
Southern California region:		
Petitioning Committee:		
National Cement Co. of California, Inc.....	Lebec	***[1]
Southwestern Portland Cement.....	Victorville	***
Other producers:		
CalMat Co.[2].....	Colton	***
	Mojave	***
Calaveras Cement Co.[3].....	Tehachapi	([4])
Riverside Cement Co.[2].....	Crestmore[5]	***
	Oro Grande	***
Mitsubishi Cement Corp.[2]...	Lucerne Valley	***
Northern California:		
Calaveras Cement Co.[3].....	Redding	***
Kaiser Cement Corp.[3]	Permanente	***
RMC Lonestar[6].....	Davenport	***

[1] Company data not included in aggregate data presented in this report (see explanation above).
[2] * * *.
[3] * * *.
[4] Data unavailable.
[5] Grinder operations only.
[6] * * *.

U.S. importers

On a national basis, U.S. producers, grinders, and importers having an affiliation with foreign producers (either through direct ownership or a joint-venture operation) account for many of the imports from all sources of portland cement and cement clinker into the United States. In the Commission's 1986 investigation, U.S. producers[25] responding to questionnaires accounted for nearly 40 percent of all portland cement imported into the United States during 1985. Given cement clinker's status as an intermediate product in the production of portland cement, all of the clinker would be imported by or for U.S. producer or grinder operations.

CalMat Terminals, Mitsui & Co. (U.S.A.), Inc., and RIC Co. accounted for * * * imports from Japan of portland cement into the Southern California region during the period of investigation. CalMat Co., a U.S. producer of portland cement in the Southern California region, owns a 50-percent share in CalMat Terminals. CalMat Terminals has imported portland cement from * * * into the Southern California region since it began operations in October 1987. According to its questionnaire response, CalMat Terminals * * *.

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

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

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

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

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[25] Including grinders.
[26] Interview with * * *, June 13, 1990.

Consideration of Alleged Material Injury to an Industry in the United States[27]

U.S. production, capacity, and capacity utilization[28]

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

Southern California.--Total production of portland cement in the Southern California region increased irregularly from 5.5 million short tons in 1986 to 6.2 million short tons in 1989, or by 13 percent. Cement production registered a 1-percent decline during January-March 1990 compared with the corresponding period of 1989. Portland cement production from clinker directly imported by U.S. producers ended in 1986. Production of cement from purchased clinker accounted for * * * percent of total regional production in 1989.

Regional production of cement clinker increased by 5 percent during 1986-89 and registered a 4-percent increase during January-March 1990 compared with the corresponding period of 1989.

Regional capacity to produce both portland cement and cement clinker during 1986-89 demonstrated an inverse relationship to production levels, falling 2 percent and 11 percent, respectively, and registering a small increase during January-March 1990 compared with the corresponding period of 1989. As a result, portland cement capacity utilization rose from 74 percent in 1986 to 86 percent in 1989, and clinker capacity utilization rose from 85 percent in 1986 to 100 percent in 1989.

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[27] As noted above, the Commission did not receive useable questionnaire responses from two producers of portland cement in the Southern California region, National and Calaveras/Monolith. According to the Portland Cement Association, these producers accounted for roughly 16 percent of capacity to produce portland cement in the Southern California region and 11 percent of capacity to produce portland cement in the State of California. Consequently, data presented in this section of the report for the Southern California region and the State of California are understated.

[28] As mentioned above, because National Cement Co. was unable to provide data for each period of the investigation, its data were not included in any of the aggregates presented in the report. National's reported annual capacity to produce portland cement and cement clinker was * * * short tons and * * * short tons, respectively. National's reported production of portland cement (* * *) was * * * short tons in 1988 and * * * short tons in 1989. National's reported production of cement clinker was * * * short tons in 1988 and * * * short tons in 1989.

Table 7
Portland cement and cement clinker: U.S. capacity, production, and capacity utilization, by products and by regions, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	Production (1,000 short tons)					
Southern California region:						
Portland cement from--						
Firms' cement clinker..	***	***	***	***	***	***
Imported cement clinker.....	***	***	***	***	***	***
Purchased cement clinker.....	***	***	***	***	***	***
Total.....	5,463	5,204	5,760	6,189	1,334	1,325
Cement clinker.....	5,757	5,698	5,716	6,065	1,401	1,459
State of California:						
Portland cement from--						
Firms' cement clinker..	***	***	***	***	***	***
Imported cement clinker.....	***	***	***	***	***	***
Purchased cement clinker.....	***	***	***	***	***	***
Total.....	8,193	8,034	8,755	9,344	1,948	1,975
Cement clinker.....	8,391	8,492	8,501	9,126	2,088	2,083
	End-of-period capacity (1,000 short tons)					
Southern California region:						
Portland cement.....	7,338	7,419	7,122	7,202	1,744	1,758
Cement clinker.....	6,756	6,777	5,735	6,034	1,419	1,454
State of California:						
Portland cement.....	10,413	10,514	10,247	10,372	2,518	2,532
Cement clinker.....	9,762	9,802	8,788	9,132	2,159	2,194
	Capacity utilization (percent)					
Southern California region:						
Portland cement.....	74.4	70.1	80.9	85.9	76.5	75.4
Cement clinker.....	85.2	84.1	99.7	100.5	98.7	100.3
State of California:						
Portland cement.....	78.7	76.4	85.4	90.1	77.4	78.0
Cement clinker.....	86.0	86.6	96.7	99.9	96.7	94.9

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

State of California.--Production of portland cement and cement clinker in the State of California increased during 1986-89, by 14 percent and 9 percent, respectively, and remained virtually unchanged during January-March 1990 compared with the corresponding period of 1989. Capacity to produce portland cement in the State of California remained virtually unchanged during 1986-89, whereas capacity to produce cement clinker registered a 6-percent fall during 1986-89. As in the Southern California region, capacity utilization rates in the State increased during 1986-89; from 79 percent to 90 percent for portland cement, and from 86 percent to 100 percent for cement clinker.

U.S. producers' shipments[29]

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

Southern California.--The quantity of total U.S. shipments[30] of portland cement by producers in the Southern California region increased from 5.5 million short tons in 1986 to 6.1 million short tons in 1989, or by 12 percent (table 8). The quantity of total U.S. shipments of portland cement declined by 6 percent during January-March 1990 compared with the corresponding period of 1989. During 1986-89, between 84 and 88 percent of the quantity of Southern California producers' total U.S. shipments of portland cement remained in the Southern California region. Growth of outside-region shipments, however, outpaced the growth of within-region shipments during the period. Outside-region shipments registered a 31-percent increase; within-region shipments increased by 8 percent. There were no exports reported by any of the producers in the State of California.

Unit values of total U.S. shipments of portland cement, regardless of their destination, fell between 7 and 11 percent during 1986-89, and registered a 2-percent increase during January-March 1990 compared with the corresponding period of 1989. As a result of the decline in unit values, the value of total U.S. shipments of portland cement produced in the Southern California region remained virtually unchanged in 1989 from that in 1986 in spite of the 11-percent increase in the quantity of total U.S. shipments during the same period.

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

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[29] In 1988, National Cement Co. reported U.S. shipments of portland cement totaling * * * short tons, valued at $* * *. In 1989, it reported U.S. shipments totaling * * * short tons, valued at $* * *. Over * * * percent of National's U.S. shipments of portland cement in 1988 and 1989 were made to destinations within the Southern California region. * * *.

[30] U.S. shipments equals the sum of company transfers and domestic shipments.

Table 8
Portland cement: Shipments of U.S. producers,[1] by types and by regions, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	Quantity (1,000 short tons)					
Southern California region:						
Within-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	4,729	4,521	5,015	5,126	1,217	1,130
Outside-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	746	609	796	980	237	240
Total shipments.....	5,475	5,130	5,811	6,106	1,454	1,370
State of California:						
Within-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	7,576	7,381	8,296	8,584	1,914	1,861
Outside-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	649	515	597	700	185	169
Total shipments.....	8,225	7,896	8,893	9,284	2,099	2,030
	Value (1,000 dollars)					
Southern California region:						
Within-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	294,406	271,539	273,539	283,516	66,685	63,365
Outside-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	44,736	34,848	43,231	54,500	12,982	13,465
Total shipments.....	339,142	306,387	316,770	338,016	79,667	76,830
State of California:						
Within-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	460,476	412,768	451,119	477,848	105,964	111,803
Outside-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Subtotal.....	38,345	28,891	32,188	39,123	10,108	9,539
Total shipments.....	498,821	441,659	483,307	516,971	116,072	121,342

See footnotes at end of table.

Table 8--Continued
Portland cement: Shipments of U.S. producers,[1] by types and by regions, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	Unit value (per short ton)[2]					
Southern California region:						
Within-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Average.....	$62.26	$60.06	$54.54	$55.31	$54.79	$56.08
Outside-region shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Average.....	59.97	57.22	54.31	55.61	54.78	56.10
Average, all shipments.	61.94	59.72	54.51	55.36	54.79	56.08
State of California:						
Within-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Average.....	60.78	55.92	54.38	55.67	55.36	60.08
Outside-State shipments:						
Company transfers.....	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***
Average.....	59.08	56.10	53.92	55.89	54.64	56.44
Average, all shipments.	60.65	55.93	54.35	55.68	55.30	59.77

[1] There were no export shipments reported by U.S. producers in California.
[2] Computed using data from firms providing information on both quantity and value of shipments.

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

Table 9
Cement clinker: Shipments of U.S. producers,[1] by types and by regions, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
*	*	*	*	*	*	*

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

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

State of California.--The quantity of total U.S. shipments of portland cement by producers in the State of California increased from 8.2 million short tons in 1986 to 9.3 million short tons in 1989, or by 13 percent. The quantity of total U.S. shipments of portland cement declined by 3 percent during January-March 1990 compared with the corresponding period of 1989, roughly half the decline registered by the producers in the Southern California region during the same period. During 1986-89, over 90 percent of the quantity of California producers' total U.S. shipments of portland cement remained in the State.

During 1986-88, the average unit value of U.S. shipments of portland cement by producers in the State of California was lower than the unit values reported by the producers in the Southern California region. After 1988, average unit values in the Southern California region were lower than those for the State as a whole. The average unit value of U.S. shipments reported by all producers in California fell by 8 percent during 1986-89, whereas unit values reported by producers located in the Southern California region fell by 11 percent.

* * * * * * *

U.S. producers' inventories[31]

Southern California.--End-of-period inventories of portland cement held by producers located in the Southern California region increased irregularly from 176,000 short tons in 1986 to 283,000 short tons in 1989, or by 61 percent (table 10). As a share of production, inventories of portland cement rose from 3.2 percent in 1986 to 4.6 percent in 1989. Inventories of cement clinker fell by 22 percent during 1986-89.

State of California.--Inventories of portland cement held by California producers increased from 346,000 short tons in 1986 to 405,000 short tons in 1989, or by 17 percent. Inventories of portland cement ranged from a low of 3.4 percent of production during January-March 1989 to a high of 6 percent of production in 1987. Inventories of cement clinker fell by 30 percent during 1986-89.

Table 10
Portland cement and cement clinker: U.S. producers' inventories, by regions and by products, as of Dec. 31 of 1986-89, and as of Mar. 31 of 1989 and 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	End-of-period inventories (1,000 short tons)					
Southern California region:						
Portland cement	176	249	199	283	148	227
Cement clinker	466	683	395	363	456	475
State of California:						
Portland cement	346	482	345	405	262	339
Cement clinker	592	835	440	415	601	529
	Ratio to production (percent)[1]					
Southern California region:						
Portland cement	3.2	4.8	3.4	4.6	2.8	4.3
Cement clinker	8.1	12.0	6.9	6.0	8.1	8.1
State of California:						
Portland cement	4.2	6.0	3.9	4.3	3.4	4.3
Cement clinker	7.1	9.8	5.2	4.6	7.2	6.4

[1] Computed using data from firms providing information on both inventory and production. January-March ratios are based on annualized production data.

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

[31] National Cement Co. reported end-of-period inventories of portland cement totaling * * * short tons in 1988 and * * * short tons in 1989. As a share of production, National's inventories of portland cement fell from * * * percent in 1988 to * * * percent in 1989.

U.S. producers' employment and wages[32]

The number of production and related workers, hours worked, and wages and total compensation paid to production and related workers fell during every period under investigation (table 11). During 1986-89, the number of production and related workers and the corresponding hours worked in both the Southern California region and the State as a whole declined by roughly 20 percent. Wages and total compensation paid fell by 16 to 18 percent during the same period. Hourly wages in the Southern California region were generally slightly lower than those in the State as a whole. Productivity in the Southern California region was also lower than that reported in the State as a whole. Conversely, unit labor costs in the Southern California region were higher than in the State as a whole in every period but the interim periods.

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

Firm and plant location(s)	Union(s)
Southern California:	
CalMat--Colton.....	Independent Workers of North America - Local 89
CalMat--Mojave.....	Operating Engineers - Local 12
Riverside--Oro Grande.	Independent Workers of North America
National--Lebec.....	Independent Workers of North America - Local 471
Southwestern--	
Victorville.....	Independent Workers of North America; Operating Engineers; International Association of Aerospace and Machinists Workers
Northern California:	
Calaveras--Redding....	Independent Workers of North America - Local 427
Kaiser--Permanente....	IBEW; IAM; Operating Engineers; Teamsters; Cement, Lime, Gypsum and Allied Workers
RMC Lonestar--	
Davenport.....	International Association of Machinists - Local 1983; Local Lodge D46; Cement, Lime, Gypsum and Allied Workers; International Brotherhood of Boilermakers

In its questionnaire, the Commission requested U.S. producers to provide detailed information concerning reductions in the number of production and related workers producing portland cement and/or cement clinker during January 1986 through March 1990 if such reductions involved at least 5 percent of the workforce, or 50 workers. The reported reductions in force are shown in the following tabulation:

* * * * * * *

[32] National Cement Co. reported * * * and * * * production and related workers producing portland cement and cement clinker in 1988 and 1989, respectively. National's production and related workers producing portland cement and cement clinker worked * * * hours in 1988 and * * * hours in 1989. Wages totaling $* * * in 1988 and $* * * in 1989 were paid to production and related workers.

Table 11
Average number of production and related workers producing portland cement and cement clinker, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by regions, 1986-89, January-March 1989, and January-March 1990[2]

Area	1986	1987	1988	1989	January-March-- 1989	1990
	Number of production and related workers (PRWs)					
Southern California region.	876	792	717	698	698	691
State of California.....	1,381	1,257	1,134	1,095	1,087	1,080
	Hours worked by PRWs					
Southern California region.	2,174	2,003	1,789	1,750	440	431
State of California.....	3,277	2,980	2,713	2,647	661	656
	Wages paid to PRWs (thousands of dollars)					
Southern California region.	32,465	30,991	28,465	26,935	6,814	6,637
State of California.....	49,299	46,082	43,305	41,474	10,505	10,474
	Total compensation paid to PRWs (1,000 dollars)					
Southern California region.	37,986	36,317	33,531	31,025	7,415	7,299
State of California.....	59,457	56,014	53,510	49,901	12,468	12,431
	Hourly wages paid to PRWs[3]					
Southern California region.	$14.93	$15.47	$15.91	$15.39	$15.49	$15.40
State of California.....	15.04	15.46	15.96	15.67	15.89	15.97
	Productivity for portland cement (short tons per hour)[4]					
Southern California region.	2.11	2.27	2.76	3.08	2.70	2.58
State of California.....	2.24	2.49	2.98	3.30	2.83	2.74
	Unit labor costs for portland cement (per short ton)[5]					
Southern California region.	$8.08	$7.78	$6.59	$5.87	$6.44	$6.78
State of California.....	7.99	7.44	6.62	5.92	7.11	7.23

[1] Includes hours worked plus hours of paid leave time.
[2] Firms providing employment data accounted for * * * percent of reported production of portland cement in 1989 (table 7).
[3] Calculated using data from firms that provided information on both wages paid and hours worked.
[4] Calculated using data from firms that provided information on both hours worked and production.
[5] On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Financial experience of U.S. producers

This section of the report presents the financial experience of U.S. producers of portland cement and cement clinker by regions. It is divided into two regions: the Southern California region and the State of California.

Southern California.--Six plants of U.S. producers,[33] accounting for 100 percent of reported production of portland cement in the Southern California region in 1989, provided income-and-loss data on their portland cement and cement clinker operations and on their overall establishment operations. Portland cement and cement clinker net sales accounted for an average of 86 percent of total net sales of overall establishment operations during the period covered by the investigation. Hence, only portland cement and cement clinker operations are presented in this section.

Portland cement and cement clinker operations.--Income-and-loss data are shown in table 12. Net sales of portland cement and cement clinker decreased by 4 percent from $349.6 million in 1986 to $336.3 million in 1988. In 1989, net sales rose by 5 percent to $352.6 million.

The reporting plants earned an aggregate operating income of $55.4 million, or 16.4 percent of net sales, in 1987, compared with $43.3 million, or 12.4 percent of net sales, in 1986. The aggregate operating income declined to $42.9 million, or 12.8 percent of net sales, in 1988 and then rose to $56.5 million, or 16.0 percent of net sales, in 1989. Pre-tax net income margins followed a trend similar to operating income margins. On a per-ton basis, net sales of portland cement and clinker combined declined from $60.89 in 1988 to $58.67 in 1987 and $52.54 in 1988 and then increased to $53.46 in 1989. The average cost of goods sold fell from $49.35 per short ton in 1986 to $45.85 in 1987, $43.56 in 1988, and $42.38 in 1989. In 1988, average net sales per short ton dropped more than the corresponding cost of sales, resulting in a decline in gross profits.

* * * * * * *

The key financial data by plant and firm are presented in table D-6 in appendix D. * * *.

Investment in productive facilities.--The value of property, plant, and equipment and total assets of the reporting plants are shown in table 13. The return on book value of fixed assets and the return on total assets are also presented in table 13. The operating and net return on book value of fixed assets and on total assets followed generally the same trend as did the ratio of operating and net income to net sales during the reporting periods.

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[33] The six plants are * * *.

Table 12
Income-and-loss experience of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1986-89

Item	1986	1987	1988	1989
	Value (1,000 dollars)			
Net sales	349,598	338,583	336,354	352,593
Cost of goods sold	283,304	264,609	278,903	279,524
Gross profit	66,294	73,974	57,451	73,069
Selling, general, and administrative expenses	22,982	18,591	14,504	16,600
Operating income	43,312	55,383	42,947	56,469
Interest expense	***	9,222	15,510	16,141
Other income or (expense), net	***	(4,289)	1,748	9,043
Net income before income taxes	5,539	41,872	29,185	49,371
Depreciation and amortization included above	29,807	28,196	29,297	30,386
Cash-flow[1]	35,346	70,068	58,482	79,757
	Share of net sales (percent)			
Cost of goods sold	81.0	78.2	82.9	79.3
Gross profit	19.0	21.8	17.1	20.7
Selling, general, and administrative expenses	6.6	5.5	4.3	4.7
Operating income	12.4	16.4	12.8	16.0
Net income before income taxes	1.6	12.4	8.7	14.0
	Number of plants reporting			
Data	6	6	6	6
Operating losses	0	0	1	1
Net losses	1	0	2	1
Decreases from previous year in--				
Net sales	-	5	3	0
Operating income	-	2	4	2
Net income	-	2	3	3

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

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

Table 13
Portland cement and cement clinker: Value of property, plant, and equipment of U.S. producers in the Southern California region, accounting years 1986-89

Item	1986	1987	1988	1989
	Value (1,000 dollars)			
Fixed assets:				
Original cost	626,839	638,234	629,505	629,863
Book value	448,132	435,414	454,150	434,197
Total assets[1]	540,685	526,326	540,288	511,671
	Return on book value of fixed assets (percent)[2]			
Operating return[3]	9.7	12.7	9.5	13.0
Net return[4]	1.2	9.6	6.4	11.4
	Return on total assets (percent)[2]			
Operating return[3]	8.0	10.5	7.9	11.0
Net return[4]	1.0	8.0	5.4	9.6

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

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

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

Item	1986	1987	1988	1989
Portland cement and cement clinker	22,984	10,030	16,329	22,962

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

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

State of California.--Nine plants of U.S. producers,[34] accounting for 100 percent of reported production of portland cement in the State of California in 1989, supplied income-and-loss data on their portland cement and cement clinker operations and on their overall establishment operations. Portland cement and cement clinker net sales accounted for an average of 89 percent of total net sales of overall establishment operations during the period covered by the investigation. Hence, only portland cement and cement clinker operations are presented in this section.

Portland cement and cement clinker operations.--Income-and-loss data are shown in table 14. Net sales of portland cement and cement clinker decreased by 3.0 percent from $509.5 million in 1986 to $494.5 million in 1987. Such sales increased by 1.6 percent to $502.6 million in 1988 and further rose by 6.2 percent to $533.8 million in 1989.

Trends in aggregate operating and pre-tax income margins are similar to those for the Southern California region but are somewhat higher. Aggregate operating income increased from $70.0 million, or 13.7 percent of net sales, in 1986 to $86.1 million, or 17.4 percent of net sales, in 1987. Such income declined to $78.4 million, or 15.6 percent of net sales, in 1988 and then rose to $99.6 million, or 18.7 percent of net sales, in 1989. Pre-tax net income margins followed a similar trend as the operating income margins during the period of investigation. Average selling prices and cost of sales per short ton showed a similar trend to that of producers in the Southern California region. The key financial data of each plant and firm are presented in table D-6.

Investment in productive facilities.--The value of property, plant, and equipment and total assets of the reporting plants are shown in table 15. The return on book value of fixed assets and the return on total assets are also presented in table 15. The operating and net return on book value of fixed assets and on total assets followed generally the same trend as the ratio of operating and net income to net sales during the reporting periods.

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[34] The nine plants are * * *.

Table 14
Income-and-loss experience of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1986-89

Item	1986	1987	1988	1989
	Value (1,000 dollars)			
Net sales	509,543	494,490	502,590	533,752
Cost of goods sold	400,735	375,669	397,174	405,970
Gross profit	108,808	118,821	105,416	127,782
Selling, general, and administrative expenses	38,766	32,730	27,049	28,183
Operating income	70,042	86,091	78,367	99,599
Interest expense	***	11,530	16,020	16,153
Other income or (expense),net	***	(13,626)	(7,734)	10,046
Net income before income taxes	24,481	60,935	54,613	93,492
Depreciation and amortization included above	48,136	45,359	41,253	41,981
Cash-flow[1]	72,617	106,294	95,866	135,473
	Share of net sales (percent)			
Cost of goods sold	78.6	76.0	79.0	76.1
Gross profit	21.4	24.0	21.0	23.9
Selling, general, and administrative expenses	7.6	6.6	5.4	5.3
Operating income	13.7	17.4	15.6	18.7
Net income before income taxes	4.8	12.3	10.9	17.5
	Number of plants reporting			
Data	9	9	9	9
Operating losses	0	0	1	1
Net losses	1	0	2	1
Decreases from previous year in--				
Net sales	-	8	3	0
Operating income	-	4	4	2
Net income	-	3	3	3

[1] 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 15
Portland cement and cement clinker: Value of property, plant, and equipment of U.S. producers in the State of California, accounting years 1986-89

Item	1986	1987	1988	1989
	Value (1,000 dollars)			
Fixed assets:				
Original cost	844,877	851,133	844,663	849,360
Book value	616,587	595,483	607,692	582,030
Total assets[1]	747,735	720,849	719,834	682,505
	Return on book value of fixed assets (percent)[2]			
Operating return[3]	10.2	13.2	11.6	15.2
Net return[4]	2.9	9.0	7.7	14.1
	Return on total assets (percent)[2]			
Operating return[3]	8.4	10.9	9.8	13.0
Net return[4]	2.4	7.4	6.5	12.1

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

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

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

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

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

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

Item	1986	1987	1988	1989
Portland cement and cement clinker	25,494	11,453	19,378	27,512

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

Impact of imports on capital and investment.--The Commission requested each plant to describe any actual and/or potential negative effects of imports of portland cement and/or cement clinker from Japan on its existing development and production efforts, growth, investment, and ability to raise capital. 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 any merchandise, the Commission shall consider, among other relevant factors[35]--
>
> (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,

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

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

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

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

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

As mentioned above, CalMat Terminals, Mitsui & Co. (U.S.A.), Inc., and RIC Co. * * *. * * *.

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

According to counsel for Japanese producers, there are 23 producers of portland cement in Japan.[37] At the Commission's conference, counsel on behalf of the Japanese producers submitted selected trade data on the entire Japanese portland cement industry (table 16). The data submitted indicate that Japanese capacity to produce portland cement declined from a high of 142 million short tons in 1983 to 97 million short tons in 1989.

According to counsel for the Japanese, five producers--Mitsubishi Mining & Cement Co., Ltd; Nihon Cement Co., Ltd.; Onoda Cement Co., Ltd.; Osaka Cement Co., Ltd; and Ube Industries, Ltd.--account for virtually all exports of portland cement to the United States. Data on these producers' capacity, production, shipments, and end-of-period inventories are presented in tables 17 and 18.

Petitioner alleges that Japanese producers of portland cement have undertaken acquisitions or projects in import terminals in the Southern California region that, by the end of 1990, will have a combined annual throughput capacity of 1.9 million tons.[38]

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

[38] Petition, pp. 62-63.

Table 16
Portland cement:[1] Japanese capacity, production, capacity utilization, shipments, imports, and apparent consumption, 1983-89, and projected 1990 and 1991

(1,000 short tons, except as noted)

Item	1983	1984	1985	1986	1987	1988	1989	Projected-- 1990	1991
Capacity	142,180	115,006	108,004	108,004	107,893	96,791	96,791	([2])	([2])
Production	88,767	86,456	79,986	78,266	78,705	85,447	87,821	90,389	90,389
Capacity utilization (percent)	62	75	74	72	73	88	91	([2])	([2])
Shipments:									
Home market	77,900	77,979	74,311	74,612	75,189	81,721	82,916	83,665	84,877
Exports	11,006	8,181	5,766	3,667	3,430	3,724	4,834	6,724	5,512
Total	88,906	86,160	80,077	78,280	78,619	85,445	87,750	90,389	90,389
Imports	11	225	642	1,315	2,811	3,965	4,098	3,527	3,968
Apparent consumption	77,911	78,204	74,953	75,927	78,000	85,686	87,014	87,192	88,845

[1] Data include all Japanese producers of portland cement. These companies are Aso Cement Co., Ltd; Chichibu Cement Co., Ltd; Daiichi Cement Co., Ltd; Denki Kagaku Kogyo K.K.; Hachinohe Cement Co., Ltd; Hitachi Cement Co., Ltd; Kanda Cement Co., Ltd.; Mikawa-Onoda Cement Co.; Mitsubishi Mining & Cement Co., Ltd; Mitsui Mining Co., Ltd; Myojo Cement Co., Ltd; Nihon Cement Co., Ltd; Nittetsu Cement Co., Ltd; Nippon Steel Chemical Co., Ltd; Onoda Cement Co., Ltd; Osaka Cement Co., Ltd; Sumitomo Cement Co., Ltd; Ryukyu Cement Co., Ltd; Tohoku Kaihatsu Co., Ltd; Tokuyama Sota K.K.; Toso Co., Ltd; Tsuruga Cement Co., Ltd; and Ube Industries, Ltd.
[2] No data provided.

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

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

Table 17
Portland cement:[1] Selected Japanese producers' capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-89, January-March 1989, and January-March 1990

					January-March--	
	1986	1987	1988	1989	1989	1990
Capacity (1,000 short tons)	61,706	61,706	55,991	53,200	13,299	13,299
Production (1,000 short tons)	39,573	39,869	43,837	44,803	11,098	11,441
Capacity utilization (percent)	64.2	64.6	78.3	84.2	83.4	86.0
Shipments:						
Home-market sales (1,000 short tons)	36,674	37,209	40,759	40,671	10,418	10,597
Exports to the United States:						
Southern California region (1,000 short tons)	540	690	1,323	1,650	239	271
The State of California (1,000 short tons)	540	708	1,345	1,769	239	271
All other States (1,000 short tons)	230	358	548	669	131	146
Total United States (1,000 short tons)	771	1,066	1,893	2,438	370	417
Exports to third countries (1,000 short tons)	2,137	1,811	1,011	1,367	284	346
Total shipments (1,000 short tons)	39,582	40,086	43,662	44,476	11,073	11,359
End-of-period inventories (1,000 short tons)	342	309	359	435	364	439
Exports to the United States as a share of--						
Production (percent)	1.9	2.7	4.3	5.4	3.3	3.6
Total exports (percent)	26.5	37.0	65.2	64.1	56.6	54.6

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

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

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

Table 18
Cement clinker:[1] Selected Japanese producers' capacity, production, capacity utilization, shipments, and end-of-period inventories, 1986-89, January-March 1989, and January-March 1990

	1986	1987	1988	1989	January-March-- 1989	1990
Capacity (1,000 short tons).....	58,768	58,768	53,324	50,667	12,666	12,666
Production (1,000 short tons)....	39,378	36,327	39,586	41,156	10,066	10,560
Capacity utilization (percent)...	67.0	61.8	74.2	81.2	79.5	83.4
Shipments:						
Home-market sales (1,000 short tons)[2].....	36,966	35,172	37,792	38,649	9,533	9,780
Exports to the United States:						
Southern California region (1,000 short tons).....	***	***	***	***	***	***
The State of California (1,000 short tons).....	***	***	***	***	***	***
All other states (1,000 short tons).....	***	***	***	***	***	***
Total United States (1,000 short tons).....	***	***	***	***	***	***
Exports to third countries (1,000 short tons).....	***	***	***	***	***	***
Total shipments (1,000 short tons).....	***	***	***	***	***	***
End-of-period inventories (1,000 short tons).....	305	171	236	311	323	380
Exports to the United States as a share of--						
Production (percent).....	***	***	***	***	***	***
Total exports (percent).....	***	***	***	***	***	***

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

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

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

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

U.S. imports

A majority of total U.S. imports of portland cement from Japan enter the Southern California region.[39] In 1989, 74 percent of such imports entered ports in the Southern California region. An additional 5 percent entered San Francisco in the northern portion of the State. In 1989, 15 percent of total U.S. imports from Mexico entered ports in the Southern California region, with an additional 7 percent entering in San Francisco.

Imports of portland cement from Japan into the Southern California region increased from 349,000 short tons in 1986 to 1.6 million short tons in 1989, representing over a 4-1/2-fold increase (table 19). Imports from Japan rose from 23.7 percent of total imports into the Southern California region in 1986 to 58.4 percent in 1989. During January-March 1990, imports from Japan into the Southern California region were 11 percent higher than in the corresponding period of 1989. In value terms, the imports from Japan into the Southern California region rose from $11.9 million in 1986 to $50.1 million in 1989. During January-March 1990, the value of imports from Japan increased to $9.5 million from $8.3 million during the corresponding period of 1989, or by 14 percent.

Imports of portland cement from Mexico into the Southern California region increased from 586,000 short tons in 1986 to 642,000 short tons in 1988, or by 10 percent. In 1989, imports from Mexico into the Southern California region fell to 595,000 short tons, representing a 7-percent decline. During January-March 1990, imports from Mexico increased to 259,000 short tons from 121,000 short tons during the corresponding period of 1989.

Cumulative imports of portland cement from Japan and Mexico into the Southern California region rose from 935,000 short tons in 1986 to 2.2 million short tons in 1989. Cumulative imports continued to rise during January-March 1990 compared with the corresponding period of 1989.

Imports of cement clinker from Japan and Mexico into the Southern California region fell to zero in 1987 from 26,000 short tons and 81,000 short tons, respectively, in 1986 (table 20). There were no imports of cement clinker from Japan or Mexico into the Southern California region after 1986.

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

Table 19
Portland cement: U.S. imports from Japan,[1] Mexico, and all other sources, by regions, 1986-89, January-March 1989, and January-March 1990

Region and source	1986	1987	1988	1989	January-March-- 1989	1990
	Quantity (1,000 short tons)					
Southern California region:						
Japan	349	486	1,183	1,607	289	320
Mexico	586	624	642	595	121	259
Subtotal	934	1,110	1,825	2,201	410	579
All other sources	535	790	614	552	165	36
All sources	1,470	1,901	2,439	2,753	575	615
State of California:						
Japan	349	486	1,222	1,726	289	320
Mexico	693	857	916	884	186	286
Subtotal	1,042	1,343	2,138	2,611	475	606
All other sources	711	937	614	629	165	69
All sources	1,753	2,280	2,752	3,239	640	675
Total United States:						
Japan	514	686	1,621	2,180	358	420
Mexico	3,118	3,715	4,491	3,898	928	756
Subtotal	3,632	4,401	6,111	6,078	1,286	1,176
All other sources	8,454	9,430	9,114	7,504	1,529	1,072
All sources	12,086	13,831	15,225	13,583	2,815	2,248
	Value (1,000 dollars)[2]					
Southern California region:						
Japan	11,926	17,373	38,756	50,115	8,333	9,489
Mexico	21,046	21,456	21,205	19,303	4,037	7,523
Subtotal	32,972	38,829	59,961	69,418	12,370	17,012
All other sources	18,590	24,232	19,054	21,339	6,079	1,319
All sources	51,562	63,061	79,015	90,757	18,449	18,331
State of California:						
Japan	11,926	17,373	40,361	54,567	8,333	9,504
Mexico	24,525	27,827	28,986	27,476	5,841	8,146
Subtotal	36,451	45,200	69,347	82,043	14,174	17,650
All other sources	25,984	31,552	19,061	23,739	6,086	2,432
All sources	62,436	76,752	88,408	105,782	20,259	20,081
Total United States:						
Japan	17,854	23,864	53,339	71,024	10,796	12,973
Mexico	106,794	127,625	134,615	125,252	28,405	24,271
Subtotal	124,648	151,489	187,954	196,276	39,201	37,244
All other sources	306,000	334,175	336,148	303,940	61,578	43,339
All sources	430,647	485,664	524,102	500,216	100,778	80,583

See footnotes at end of table.

Table 19--Continued
Portland cement: U.S. imports from Japan,[1] Mexico, and all other sources, by regions, 1986-89, January-March 1989, and January-March 1990

Region and source	1986	1987	1988	1989	January-March-- 1989	1990
	Percent of total quantity					
Southern California region:						
Japan	23.7	25.6	48.5	58.4	50.3	52.0
Mexico	39.8	32.8	26.3	21.6	21.0	42.1
Subtotal	63.5	58.4	74.8	80.0	71.3	94.1
All other sources	36.4	41.6	25.2	20.0	28.7	5.9
All sources	100.0	100.0	100.0	100.0	100.0	100.0
State of California:						
Japan	19.9	21.3	44.4	53.3	45.2	47.4
Mexico	39.6	37.6	33.3	27.3	29.1	42.4
Subtotal	59.4	58.9	77.7	80.6	74.2	89.8
All other sources	40.6	41.1	22.3	19.4	25.8	10.2
All sources	100.0	100.0	100.0	100.0	100.0	100.0
Total United States:						
Japan	4.3	5.0	10.6	16.1	12.7	18.7
Mexico	25.8	26.9	29.5	28.7	33.0	33.6
Subtotal	30.1	31.8	40.1	44.8	45.7	52.3
All other sources	69.9	68.2	59.9	55.2	54.3	47.7
All sources	100.0	100.0	100.0	100.0	100.0	100.0

[1] * * *.
[2] Landed duty-paid value.

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

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

Table 20
Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-89, January-March 1989, and January-March 1990

Region and source	1986	1987	1988	1989	January-March-- 1989	1990
	Quantity (1,000 short tons)					
Southern California region:						
Japan	26	0	0	0	0	0
Mexico	81	0	0	0	0	0
Subtotal	108	0	0	0	0	0
All other sources	37	0	33	0	0	0
All sources	144	0	33	0	0	0
State of California:						
Japan	83	0	0	41	0	0
Mexico	81	0	0	0	0	0
Subtotal	164	0	0	41	0	0
All other sources	65	0	33	0	0	0
All sources	229	0	33	41	0	0
Total United States:						
Japan	234	37	137	235	25	28
Mexico	1,095	1,215	437	423	130	87
Subtotal	1,329	1,252	574	658	154	115
All other sources	2,643	2,436	1,345	1,087	207	196
All sources	3,972	3,687	1,919	1,745	361	311
	Value (1,000 dollars)[1]					
Southern California region:						
Japan	693	0	0	0	0	0
Mexico	2,784	0	0	0	0	0
Subtotal	3,477	0	0	0	0	0
All other sources	607	0	891	0	0	0
All sources	4,084	0	891	0	0	0
State of California:						
Japan	1,976	0	0	1,280	0	0
Mexico	2,784	0	0	0	0	0
Subtotal	4,760	0	0	1,280	0	0
All other sources	1,243	0	891	0	0	0
All sources	6,003	0	891	1,280	0	0
Total United States:						
Japan	6,191	1,222	4,281	7,598	838	946
Mexico	23,823	26,241	10,415	13,647	4,119	3,175
Subtotal	30,014	27,463	14,696	21,245	4,957	4,121
All other sources	70,553	68,753	45,401	41,282	8,645	8,991
All sources	100,567	96,216	60,097	62,528	13,601	13,112

See footnotes at end of table.

Table 20--Continued
Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1986-89, January-March 1989, and January-March 1990

Region and source	1986	1987	1988	1989	January-March-- 1989	1990
	Percent of total quantity					
Southern California region:						
Japan	18.1	0	0	0	0	0
Mexico	56.3	0	0	0	0	0
Subtotal	74.3	0	0	0	0	0
All other sources	25.7	0	100.0	0	0	0
All sources	100.0	0	100.0	0	0	0
State of California:						
Japan	36.2	0	0	100.0	0	0
Mexico	35.4	0	0	0	0	0
Subtotal	71.6	0	0	100.0	0	0
All other sources	28.4	0	100.0	0	0	0
All sources	100.0	0	100.0	100.0	0	0
Total United States:						
Japan	5.9	1.0	7.1	13.5	6.9	9.0
Mexico	27.6	33.0	22.8	24.2	36.0	28.0
Subtotal	33.5	34.0	29.9	37.7	42.9	37.0
All other sources	66.5	66.0	70.1	62.3	57.1	63.0
All sources	100.0	100.0	100.0	100.0	100.0	100.0

[1] Landed duty-paid value.

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

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

Market penetration by the alleged LTFV imports[40]

Southern California.--Regional market penetration by imports of portland cement from Japan into the Southern California region increased from 5.6 percent in 1986 to 20.2 percent in 1989 (table 21). During January-March 1990, the ratio increased to 18.0 percent from 15.9 percent in the corresponding period of 1989. Market-penetration ratios by imports from Mexico fell from 9.4 percent in 1986 to 7.4 percent in 1989. During January-March 1990, market penetration by imports from Mexico increased to 14.6 percent from 6.6 percent in the corresponding period of 1989. Cumulative imports of portland cement from Japan and Mexico increased from 14.9 percent in 1986 to 27.4 percent in 1989. Imports of clinker from all sources into the Southern California region dropped to nearly zero (table 22).

State of California.--Market penetration by imports of portland cement from Japan into the State of California increased from 3.6 percent in 1986 to over 10 percent in 1989. Market-penetration ratios by imports from Mexico were in the 7- to 9-percent range during 1986-89. Cumulative imports of portland cement from Japan and Mexico into the State of California increased from 10.8 percent in 1986 to over 20 percent in 1989.

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[40] As noted above, the Commission did not receive useable questionnaire responses from two producers of portland cement in the Southern California region: National and Calaveras/Monolith. According to the Portland Cement Association, these producers accounted for roughly 16 percent of capacity to produce portland cement in the Southern California region and 11 percent of capacity to produce portland cement in the State of California. Consequently, apparent consumption in the Southern California region and the State of California is understated, and market penetration by imports into these regions is overstated.

Table 21
Portland cement: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	Quantity (1,000 short tons)					
Southern California region:						
Apparent consumption....	6,256	6,498	7,594	8,027	1,822	1,774
Imports from--						
Japan.....	349	486	1,183	1,607	289	320
Mexico.....	586	624	642	595	121	259
Subtotal.....	934	1,110	1,825	2,201	410	579
All other sources.....	535	790	614	552	165	36
All sources.....	1,470	1,901	2,439	2,753	575	615
State of California:						
Apparent consumption....	9,664	9,985	11,459	***	***	***
Imports from--						
Japan.....	349	486	1,222	1,726	289	320
Mexico.....	693	857	916	884	186	286
Subtotal.....	1,042	1,343	2,138	2,611	475	606
All other sources.....	711	937	614	629	165	69
All sources.....	1,753	2,280	2,752	3,239	640	675
Total United States:						
Apparent consumption....	89,033	90,458	89,856	89,175	15,872	17,295
Imports from--						
Japan.....	514	686	1,621	2,180	358	420
Mexico.....	3,118	3,715	4,491	3,898	928	756
Subtotal.....	3,632	4,401	6,111	6,078	1,286	1,176
All other sources.....	8,454	9,430	9,114	7,504	1,529	1,072
All sources.....	12,086	13,831	15,225	13,583	2,815	2,248
	Ratio of imports to consumption quantity (percent)					
Southern California region:						
Japan.....	5.6	7.5	15.6	20.2	15.9	18.0
Mexico.....	9.4	9.6	8.5	7.4	6.6	14.6
Subtotal.....	14.9	17.1	24.0	27.4	22.5	32.6
All other sources.....	8.6	12.2	8.1	6.9	9.1	2.0
Total imports.....	23.5	29.3	32.1	34.3	31.6	34.7
State of California:						
Japan.....	3.6	4.9	10.7	***	***	***
Mexico.....	7.2	8.6	8.0	***	***	***
Subtotal.....	10.8	13.5	18.7	***	***	***
All other sources.....	7.4	9.4	5.4	***	***	***
Total imports.....	18.1	22.8	24.0	***	***	***
Total United States:						
Japan.....	1.0	1.0	1.8	2.4	2.3	2.4
Mexico.....	3.5	4.1	5.0	4.4	5.8	4.4
Subtotal.....	4.1	4.9	6.8	6.8	8.1	6.8
All other sources.....	9.5	10.4	10.1	8.4	9.6	6.2
Total imports.....	13.6	15.3	16.9	15.2	17.7	13.0

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

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

Table 22
Cement clinker: U.S. and regional apparent consumption; imports from Japan, Mexico, and all other sources; and ratios of imports to apparent consumption, 1986-89, January-March 1989, and January-March 1990

Item	1986	1987	1988	1989	January-March-- 1989	1990
	Quantity (1,000 short tons)					
Southern California region:						
Apparent consumption....	5,901	5,698	5,749	6,065	1,401	1,459
Imports from--						
Japan.....	26	0	0	0	0	0
Mexico.....	81	0	0	0	0	0
Subtotal.....	108	0	0	0	0	0
All other sources.....	37	0	33	0	0	0
All sources.....	144	0	33	0	0	0
State of California:						
Apparent consumption....	8,620	8,492	8,534	9,167	2,088	2,083
Imports from--						
Japan.....	83	0	0	41	0	0
Mexico.....	81	0	0	0	0	0
Subtotal.....	164	0	0	41	0	0
All other sources.....	65	0	33	0	0	0
All sources.....	229	0	33	41	0	0
Total United States:						
Apparent consumption....	72,608	72,407	72,358	***	(1)	(1)
Imports from--						
Japan.....	234	37	137	235	25	28
Mexico.....	1,095	1,215	437	423	130	87
Subtotal.....	1,329	1,252	574	658	154	115
All other sources.....	2,643	2,436	1,345	1,087	207	196
All sources.....	3,972	3,687	1,919	1,745	361	311
	Ratio of imports to consumption quantity (percent)					
Southern California:						
Japan.....	(2)	0	0	0	0	0
Mexico.....	1	0	0	0	0	0
Subtotal.....	2	0	0	0	0	0
All other sources.....	1	0	1	0	0	0
Total imports.....	2	0	1	0	0	0
State of California:						
Japan.....	1	0	0	(2)	0	0
Mexico.....	1	0	0	0	0	0
Subtotal.....	2	0	0	(2)	0	0
All other sources.....	1	0	(2)	0	0	0
Total imports.....	3	0	(2)	(2)	0	0
Total United States:						
Japan.....	(2)	(2)	(2)	***	(1)	(1)
Mexico.....	2	2	1	***	(1)	(1)
Subtotal.....	2	2	1	***	(1)	(1)
All other sources.....	4	3	2	***	(1)	(1)
Total imports.....	5	5	3	***	(1)	(1)

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

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

Prices

General pricing information.--Portland cement is a primary ingredient in the production of concrete, and, thus, is essential to all types of general construction, particularly residential building, commercial building, and highways. The demand for portland cement tends to be cyclical in nature because it is determined by the level of general construction. However, the cement business cycle is likely to be somewhat less volatile than individual construction markets because cement is used in nearly every type of construction, and cycles among these market segments frequently offset each other. In addition, overall cement consumption benefits because regional business cycles are often localized.[41] The demand for portland cement also tends to be seasonal in nature, with peaks in consumption occurring in the summer months when the level of construction is highest.[42]

One indicator of construction is the number of authorizations for building permits for private nonresidential construction. The following tabulation shows the number of these authorizations in two of the three market areas for which pricing was requested (in units):[43]

	1986	1987	1988	1989
San Diego, CA.....	982.0	1,042.6	1,071.4	1,094.0
San Francisco, CA..	699.0	692.2	807.0	646.6

In San Diego, the number of permits increased by approximately 6 percent from 1986 to 1987, 3 percent from 1987 to 1988, and 2 percent from 1988 to 1989. In San Francisco, the number of authorizations decreased by 1 percent from 1986 to 1987, then increased by 17 percent from 1987 to 1988, and then decreased 20 percent from 1988 to 1989.

Because transportation costs for portland cement are high, shipments are generally made within 200 miles of the plant, and the market for cement tends to be regional in nature.[44] The demand in each region is influenced by many different factors, such as demographic movements, industrial development patterns, public spending levels, and local availability of competitive

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[41] In fact, many producers have cement plants in different regions and can thus take advantage of different regional demands. The U.S. Cement Industry: An Economic Report, 3d ed., January 1984, p. 15.

[42] Because of this seasonality, producers tend to build up inventories of clinker and finished cement in the winter; this buildup allows producers to grind more cement per day during the building season. Ibid., p. 14.

[43] These data were not available for Orange County, the third market area for which pricing data were requested. Source: Construction Review, U.S. Department of Commerce, January/February 1990, vol. 36, No. 1, pp. 29-34.

[44] If water transportation is available, cement can be shipped farther than 200 miles, thus increasing the market area for that supplier.

building materials.[45] Therefore, demand for cement can be growing in one region while declining in another.

In general, there are no substitutes for cement in the production of concrete.[46] There are, however, several substitutes for concrete. In the nonresidential construction market, structural steel is the primary substitute for concrete; and in residential construction wood is the main substitute. Other substitutes for concrete include asphalt (in the paving market), brick, precast concrete panels, and certain products of metal, glass, and plastics.[47]

Since portland cement has a low value-to-weight ratio, inland transportation costs are an important part of the final delivered price to a customer. Prices can differ from location to location, even within a single metropolitan area. However, because cement is a homogeneous product, prices charged by different suppliers to a customer in a given location tend to be similar at any point in time. When changing supply and demand conditions cause prices to decrease, prices tend to equalize among the competing firms within a relatively short time period, as each firm tries to maintain its market share.[48]

Cement prices traditionally have been determined through a "base-point" pricing system. Under this system, the cement mill closest to a particular customer is considered that customer's base point, and that mill effectively sets the price against which other producers must compete. A delivered price for cement consists of an f.o.b. mill price and any freight costs.[49] In areas where freight costs are regulated, a mill may be forced to reduce its f.o.b. price component and its gross revenues in order to compete with the base-point mill. In general, firms trying to enter new markets farther from their plant have to absorb additional freight costs in order to compete with firms closer to the markets. Thus, distance plays an important role in a supplier's willingness and ability to sell to a particular customer.

Shipments of portland cement by mode of transportation in 1988 are shown in table 23. Shipments of portland cement from the U.S. producers' plants to

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[45] For example, California voters recently approved a gasoline tax that is earmarked for transportation projects. Since transportation projects are often cement intensive, it is probable that cement consumption will be positively affected by this tax. U.S. Department of Commerce, A Competitive Assessment of the U.S. Cement Industry, (July 1987), p. 9.

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

[47] Ibid, p. 11.

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

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

Table 23
Portland cement: Bulk shipments from U.S. plants,[1] by types of carriers, 1988

(In thousands of tons)

Type of carrier	Plant to terminal	Terminal to consumers	Plant to consumers	Total to consumers
Railroad.....	9,496	1,479	3,562	5,041
Truck.....	2,333	25,536	47,381	72,917
Barge and boat...	9,289	2,199	334	2,533
Unspecified[2].....	514	419	568	987
Total.....	21,632	29,633	51,845	81,478

[1] Bulk shipments accounted for 95.1 percent of total shipments in 1988.
[2] Includes cement used at the plant.

Source: U.S. Bureau of Mines, Mineral Industry Surveys, "Cement in 1988," July 13, 1989.

their distribution terminals were principally by rail, truck, and barge. Rail (44 percent) and barges and boats (43 percent) carried the majority of the cement to the terminals, and trucks accounted for most of the remainder. The vast majority, 89.5 percent, of all shipments to consumers were made by truck.[50] Most highway transport trucks carry about 25 short tons of cement, whereas a standard rail car hauls about 100 short tons. A standard barge transports approximately 1,500 short tons of dry material.

The actual hauling of cement to end users is generally performed by independent common carriers or by subsidiary trucking firms of ready-mix companies. Many ready-mix companies have trucks and pick up the cement at the plant for their basic needs. Since transportation costs account for a significant portion of the delivered price, shipments are generally made relatively close to the plant. In fact, U.S. producers in California reported that at least 75 percent of shipments of cement are made within 100 miles of their plant or terminal; most of the remainder of shipments are made within 200 miles.

Producers and importers were asked to estimate the transportation costs for sales within specific distances from each firm's plant or storage facility. Average transportation costs reported by U.S. producers for shipments within 50 miles of the plant were $6.22 per ton. Average shipping costs increased to $10.58 for shipments within 51 to 100 miles, $16.21 for 101 to 200 miles, and $18.56 for 201 to 300 miles. For shipments that are 500 or more miles from the plant, transportation costs increased significantly, to

[50] * * * responding U.S. producers stated that at least 99 percent of their 1989 shipments of portland cement to their customers were made by trucks. Similarly, U.S. importers of Japanese cement reported that the majority (i.e., at least 76 percent) of their shipments were made by truck.

$28 per ton.[51] Average transportation costs reported by U.S. importers of Japanese cement were $5.87 for 0 to 50 miles and $8.54 for 51 to 100 miles.[52]

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

The Commission requested price data from U.S. producers and importers of Japanese cement for their sales to three distinct market areas in California.[53] The market areas chosen for price comparisons were San Diego, CA; Orange County, CA; and San Francisco, CA.[54] Producers and importers were requested to provide price data for their total shipments to the ready-mix customer purchasing the largest volume (within a 300 to 700 ton range) in the fourth full week of each month from January 1986 to March 1990. Usable pricing data were reported by six U.S. producers and two importers of Japanese cement. These producers and importers accounted for virtually all of the domestic production and the imports from Japan into Southern California. Pricing data are analyzed on a delivered basis because of the significance of freight costs for cement.

Price trends and comparisons.--Weighted-average delivered prices for domestic cement sold in California fluctuated during the period January 1986-March 1990. Pricing in the three market areas showed different trends during this time. Weighted-average delivered prices for Japanese cement generally declined during the period.[55]

San Francisco, CA.[56]--Weighted-average prices in the San Francisco area were only reported by * * *; these prices * * * during the period January 1986-March 1990 (table 24).[57] Prices in San Francisco * * * during 1986, * * *. Prices were * * *. During 1988, prices in the San Francisco market area * * *. Prices were * * *; prices were approximately * * * in 1990 than they were in January 1986.

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[51] * * *.

[52] * * *.

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

[54] In order to make more accurate price comparisons, producers and importers were requested to provide pricing for three specific metropolitan zones within San Diego and for Escondido. However, no importers provided data for the San Diego area. * * *.

[55] Prices for imported cement were only received for the Orange County market area. Imports into the Los Angeles area accounted for 74 percent of imports from Japan during 1989.

[56] No importers reported prices for sales of portland cement in the San Francisco market area; therefore, no price comparisons can be made.

[57] Construction activity (measured by the number of authorizations for building permits for private nonresidential construction) decreased irregularly during 1986-89 in the San Francisco area.

Table 24
Portland cement: Weighted-average delivered prices reported by U.S. producers for sales in the **San Francisco, CA, and San Diego, CA, market areas**, by months, January 1986-March 1990

(Per short ton)

Period	San Francisco price	San Diego price
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*
*	*	*

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

San Diego, CA.[58]--Domestic prices in the San Diego market area fluctuated during the period of investigation but * * * (table 24). In 1986, these prices * * * from January 1986 to January 1987. In 1987, prices * * *; however, weighted-average prices in January 1988 were * * * than those in January 1987. Domestic prices * * *. Prices were * * * in 1990 than they were at the end of 1989.

Orange County, CA.--Weighted-average prices for domestic cement in the Orange County market area * * * during the period of investigation (table 25). Prices * * * in 1986, * * * in 1987, and * * * in 1988. During 1989, prices in the Orange County market area * * *; however, they * * * in 1990. Domestic prices in Orange County were * * * in March 1990 than they were in January 1986.

Prices for Japanese cement * * * in 1986 and then * * * from December 1986 to August 1987. Prices * * *.

Table 25
Portland cement: Weighted-average delivered prices and margins of under/(over) selling reported by U.S. producers and importers for sales in the **Orange County, CA, market area**, by months, January 1986-March 1990

(Per short ton)

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

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

[58] No importers reported prices for sales in the San Diego market area.

Lost sales and lost revenues

The Commission received allegations of lost sales and revenues from two U.S. producers in California: * * *. The 11 lost sales allegations for which complete data were provided totaled approximately $* * * million and involved * * * tons of portland cement allegedly purchased from Japanese suppliers during January 1986-March 1990. The 11 lost revenue allegations from California producers totaled $* * * and involved * * * tons of portland cement. Staff contacted four of the nine purchasers cited in these allegations; a summary of the information obtained follows.

* * * * * * *

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1986 through March 1990 the nominal value of the Japanese yen appreciated 27 percent overall relative to the U.S. dollar (table 26).[59] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency appreciated 7 percent for the period January 1986 through March 1990.

[59] International Monetary Fund, International Financial Statistics, May 1990.

Table 26
Exchange rates:[1] Indexes of nominal and real exchange rates of the Japanese yen and indexes of producer prices in the United States and Japan,[2] by quarters, January 1986-March 1990

(January-March 1986 = 100)

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index[3]
1986:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	98.2	96.3	110.4	108.3
July-September.....	97.7	93.8	120.6	115.8
October-December....	98.1	92.8	117.2	111.0
1987:				
January-March.....	99.2	92.2	122.7	114.0
April-June.....	100.8	91.5	131.7	119.5
July-September.....	101.9	92.6	127.9	116.2
October-December....	102.3	92.3	138.4	124.8
1988:				
January-March.....	102.9	91.3	146.8	130.1
April-June.....	104.8	90.9	149.6	129.8
July-September.....	106.2	91.8	140.5	121.5
October-December....	106.7	91.0	150.0	128.0
1989:				
January-March.....	109.0	91.5	146.3	122.7
April-June.....	110.9	93.9	136.1	115.3
July-September.....	110.4	94.6	132.0	113.1
October-December....	110.9	94.4	131.3	111.9
January-March 1990....	112.6	94.8	127.0	107.0

[1] Exchange rates expressed in U.S. dollars per Japanese yen.
[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Japan.

Source: International Monetary Fund, International Financial Statistics, May 1990.

APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-461 (Preliminary)]

Gray Portland Cement and Cement Clinker From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-461 (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 threatend with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 511.14 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 2, 1990.

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

EFFECTIVE DATES: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 18, 1990, by the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, of Washington, DC.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in

the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry

Public service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be 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 business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 8, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202-252-1198) not later than June 6, 1990, 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 at the conference.

Written submissions

Any person may submit to the Commission on or before June 12, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due June 13, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 15, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due June 18, 1990.

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 (19 CFR 207.12).

By order of the Commission.

Issued: May 21, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-12185 Filed 5-24-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-815]

Initiation of Antidumping Duty Investigation; Gary Portland Cement (Including Cement Clinker) From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and cement clinker (cement) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of gray portland cement and cement clinker are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 2, 1990. If that determination is affirmative, we will make a preliminary determination on or before October 25, 1990.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On May 18, 1990, we received a petition filed in proper form by The Ad Hoc Committee of Southern California Producers of Gray Portland Cement. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of cement are being, or are 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.

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

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 regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price

Petitioner bases its estimate of United States Price (USP) on official Japanese export statistics, adjusted for export-related charges, and on the February, 1990 per unit Customs value for imports of gray portland cement from Japan under HTS item numbers 2523.1000, 2523.2900 and 2523.9000 as reported in the Department's IM-145 reports. Based on information in the petition, the Department increased USP to reflect the three percent Japanese consumption tax.

Foreign Market Value

Petitioner's estimate of Foreign Market Value (FMV) is based on interviews with sales representatives of cement producers, and the organizations that distribute a majority of cement sold in Japan, as well as interviews with various end-users. Petitioner's investigator determined the actual delivered prices (less estimated distributor's margins) charged by the largest cement producers for high early strength gray portland cement (bulk quantities in excess of 800 metric tons) for March 1, 1990 in the Tokyo and Osaka markets.

Petitioner averaged the delivered prices for the five largest cement producers for each of the two major metropolitan markets to construct a single average value for both markets. Petitioner reduced the average values to reflect an ex-factory price by subtracting charges for freight to the customer, loading/unloading and "other charges." Petitioner then averaged the net prices for the two markets. Based on information in the petition, the Department: 1) increased FMV to offset the three percent added to U.S. Price for the Japanese consumption tax, and 2) reduced FMV by 300 yen per metric ton for inland freight from the production facilities to the metropolitan service stations.

Based on a comparison of United States Price and Foreign Market Value, petitioner has estimated dumping margins ranging from 102 to 136 percent. The Department recalculated estimated dumping margins consistent with the narrative descriptions contained in the USP and FMV sections above, resulting in estimated dumping margins ranging from 98 to 125 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we

will make our preliminary determination by October 25, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered in this investigation include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker is the primary raw material used in the production process. Clinker has no use other than grinding into finished cement.

Gray portland cement is currently classifiable under HTS item number 2523.2900 and cement clinker is classifiable under item number 2523.1000. Gray portland cement has also been entered under item number 2523.9000 as "other hydraulic cements".

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 2, 1990, whether there is a reasonable indication that imports of Gray Portland Cement and Cement Clinker From Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be 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.

Dated: June 7, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-13878 Filed 6-14-90; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject: GRAY PORTLAND CEMENT AND CEMENT CLINKER FROM JAPAN

Investigation No: 731-TA-461 (Preliminary)

Date and Time: June 8, 1990 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room (room 101), United States International Trade Commission, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Kilpatrick & Cody--Counsel
Washington, DC
On behalf of

The Ad Hoc Committee of Southern California Producers of Gray Portland Cement
Washington, DC

Donald Unmacht, President, National Cement Co. of California, Inc.

Stephen R. Miley, Vice President, Southdown, Inc.

Clarence C. Comer, President and CEO, Southdown, Inc.

Andrew R. Wechsler, Senior Vice President, Economists Inc.

Joseph W. Dorn)
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In Opposition to the Imposition of Antidumping Duties:

Steptoe & Johnson--Counsel
Washington, DC
On behalf of

Pacific Coast Cement Corp.
CalMat Terminals, Inc.

John Sweetland, Pacific Coast Cement Corp.

Richard Cunningham)
Susan Esserman) --OF COUNSEL
Robert Fleishman)

CALENDAR OF THE PUBLIC CONFERENCE

In Opposition to the Imposition of Antidumping Duties:--Continued

Arnold & Porter--Counsel
Washington, DC
On behalf of

Calmat Terminals, Inc.

Mervyn Keces, President and CEO, Calmat Terminals, Inc.

Spencer S. Griffith)--OF COUNSEL

Graham & James--Counsel
Washington, DC
On behalf of

Mitsubishi Mining & Cement Co., Ltd.
Nihon Cement Co., Ltd.
Onoda Cement Co., Ltd.
Osaka Cement Co., Ltd.
Ube Industries, Ltd.

Daniel W. Klett, Economic Consultant, ICF Consulting Associates, Inc.

Yoshihiro Saito)
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APPENDIX C

1983-89 DATA

Table C-1
Portland cement: U.S. capacity, production, and capacity utilization, by regions, 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
	Production (1,000 short tons)						
Southern California region:							
Portland cement from--							
Firms' cement clinker...	***	***	***	***	***	***	***
Imported cement clinker.....	***	***	***	***	***	***	***
Purchased cement clinker.....	***	***	***	***	***	***	***
Total.....	4,268	5,009	5,607	5,463	5,204	5,760	6,189
State of California:							
Portland cement from--							
Firms' cement clinker...	***	***	***	***	***	***	***
Imported cement clinker.....	***	***	***	***	***	***	***
Purchased cement clinker.....	***	***	***	***	***	***	***
Total.....	6,392	7,527	8,162	8,193	8,034	8,755	9,344
	End-of-period capacity (1,000 short tons)						
Southern California region..	7,046	7,435	7,435	7,338	7,419	7,122	7,202
State of California.....	10,121	10,510	10,510	10,413	10,514	10,247	10,372
	Capacity utilization (percent)						
Southern California region..	60.6	67.4	75.4	74.4	70.1	80.9	85.9
State of California.....	63.2	71.6	77.7	78.7	76.4	85.4	90.1

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

Table C-2
Portland cement: Shipments of U.S. producers, by types and by regions, 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
	Quantity (1,000 short tons)						
Southern California region:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Total.....	4,275	4,860	5,474	5,475	5,130	5,811	6,106
State of California:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Total.....	6,275	7,232	8,036	8,225	7,896	8,893	9,284
	Value (1,000 dollars)						
Southern California region:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Total.....	241,511	279,656	333,375	339,142	306,387	316,770	338,016
State of California:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Total.....	349,313	425,896	491,747	498,821	441,659	483,307	516,971
	Unit value (per short ton)						
Southern California region:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Average.....	$56.49	$57.54	$60.90	$61.94	$59.72	$54.51	$55.36
State of California:							
Company transfers.....	***	***	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***	***	***
Average.....	55.67	58.89	61.19	60.65	55.93	54.35	55.68

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

Table C-3
Portland cement: U.S. producers' inventories, by regions, as of Dec. 31 of 1983-89[1]

Item	1983	1984	1985	1986	1987	1988	1989
	*	*	*	*	*	*	*

[1] Of the 9 producers reporting inventory data for 1986-89, 7 reported inventory for the period 1983-89. Therefore, data for 1986-89 in this table will not equal the inventory reported in table 10 of the report.
[2] Computed using data from firms providing information on both inventory and production.

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

Table C-4
Income-and-loss experience of U.S. producers in the Southern California region on their operations producing portland cement and cement clinker, accounting years 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
	Value (1,000 dollars)						
Net sales	237,823	276,863	338,156	349,598	338,583	336,354	352,593
Cost of goods sold	226,687	258,345	297,433	283,304	264,609	278,903	279,524
Gross profit	11,136	18,518	40,723	66,294	73,974	57,451	73,069
Selling, general, and administrative expenses	23,381	23,507	25,569	22,982	18,591	14,504	16,600
Operating income or (loss)	(12,245)	(4,989)	15,154	43,312	55,383	42,947	56,469
Interest expense	5,069	8,260	10,652	***	9,222	15,510	16,141
Other income or (expense), net	(4,458)	(1,738)	(1,277)	***	(4,289)	1,748	9,043
Net income or (loss) before income taxes	(21,772)	(14,987)	3,225	5,539	41,872	29,185	49,371
	Share of net sales (percent)						
Cost of goods sold	95.3	93.3	88.0	81.0	78.2	82.9	79.3
Gross profit	4.7	6.7	12.0	19.0	21.8	17.1	20.7
Selling, general, and administrative expenses	9.8	8.5	7.6	6.6	5.5	4.3	4.7
Operating income	(5.2)	(1.8)	4.5	12.4	16.4	12.8	16.0
Net income before income taxes	(9.2)	(5.4)	1.0	1.6	12.4	8.7	14.0

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

Table C-5
Portland cement and cement clinker: Value of property, plant, and equipment of U.S. producers[1] in the Southern California region, accounting years 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
*	*	*	*	*	*	*	

[1] Data are for 4 plants.

Note.--Because not all of the producers reporting asset information for the 1986-89 period reported information for the 1983-89 period, data for 1986-89 in this table will not equal the asset information reported in table 13 of the report.

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

Table C-6
Income-and-loss experience of U.S. producers in the State of California on their operations producing portland cement and cement clinker, accounting years 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
*	*	*	*	*	*	*	

Note.--Because not all of the producers reporting income-and-loss experience data for the 1986-89 period reported data for the 1983-89 period, data for 1986-89 in this table will not equal the income-and-loss data reported in table 14 of the report.

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

Table C-7
Portland cement and cement clinker: Value of property, plant, and equipment of U.S. producers[1] in the State of California, accounting years 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
	*	*	*	*	*	*	*

[1] Data for 6 plants.

Note.--Because not all of the producers reporting asset information for the 1986-89 period reported information for the 1983-89 period, data for 1986-89 in this table will not equal the asset information reported in table 15 of the report.

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

Table C-8
Portland cement: U.S. imports from Japan, Mexico, and all other sources, by regions, 1983-89

Region and source	1983	1984	1985	1986	1987	1988	1989
	Quantity (1,000 short tons)						
Southern California region:							
Japan	0	94	575	349	486	1,183	1,607
Mexico	157	367	245	586	624	642	595
Total	157	461	820	935	1,110	1,825	2,202
All other sources	96	360	565	535	790	614	552
All sources	253	821	1,385	1,470	1,901	2,439	2,753
State of California:							
Japan	(1)	94	592	349	486	1,222	1,726
Mexico	157	367	245	693	857	916	884
Total	157	461	837	1,042	1,343	2,138	2,610
All other sources	96	394	615	711	937	614	629
All sources	253	855	1,453	1,753	2,280	2,752	3,239
Total United States:							
Japan	(1)	94	835	514	686	1,621	2,180
Mexico	630	1,504	1,897	3,118	3,715	4,491	3,898
Total	630	1,598	2,732	3,632	4,401	6,112	6,078
All other sources	2,420	4,759	6,853	8,454	9,430	9,114	7,504
All sources	3,050	6,356	9,585	12,086	13,831	15,225	13,583
	Value (1,000 dollars)[2]						
Southern California region:							
Japan	0	3,651	19,896	11,926	17,373	38,756	50,115
Mexico	7,619	16,685	10,865	21,046	21,456	21,205	19,303
Total	7,619	20,336	30,761	32,972	38,829	59,961	69,418
All other sources	5,222	12,288	29,091	18,590	24,232	19,054	21,339
All sources	12,841	32,623	59,852	51,562	63,061	79,015	90,757
State of California:							
Japan	54	3,651	20,456	11,926	17,373	40,361	54,567
Mexico	7,619	16,685	10,865	24,525	27,827	28,986	27,476
Total	7,673	20,336	31,321	36,451	45,200	69,347	82,043
All other sources	5,222	13,325	30,996	25,984	31,552	19,061	23,739
All sources	12,895	33,660	62,318	62,436	76,752	88,408	105,782
Total United States:							
Japan	73	3,676	28,964	17,854	23,864	53,339	71,024
Mexico	25,800	59,920	68,692	106,794	127,625	134,615	125,252
Total	25,873	63,596	97,656	124,648	151,489	187,954	196,276
All other sources	98,547	176,240	263,850	306,000	334,175	336,148	303,940
All sources	124,420	239,836	361,507	430,647	485,664	524,102	500,216

[1] Less than 500 short tons.
[2] Landed duty-paid value.

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

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

Table C-9
Cement clinker: U.S. imports from Japan, Mexico, and all other sources, by regions, 1983-89

Item	1983	1984	1985	1986	1987	1988	1989
	Quantity (1,000 short tons)						
Southern California region:							
Japan	0	24	77	26	0	0	0
Mexico	1	83	115	81	0	0	0
Total	1	107	192	108	0	0	0
All other sources	0	40	(1)	37	0	33	0
All sources	1	147	192	144	0	33	0
State of California:							
Japan	0	84	210	83	0	0	41
Mexico	1	83	115	81	0	0	0
Total	1	167	325	164	0	0	41
All other sources	0	40	30	65	0	33	0
All sources	1	207	354	229	0	33	41
Total United States:							
Japan	0	84	291	234	37	137	235
Mexico	264	477	581	1,095	1,215	437	423
Total	264	561	872	1,329	1,252	574	658
All other sources	1,288	1,669	3,761	2,643	2,436	1,345	1,087
All sources	1,552	2,230	4,633	3,972	3,687	1,919	1,745
	Value (1,000 dollars)[2]						
Southern California region:							
Japan	0	772	1,901	693	0	0	0
Mexico	34	2,379	3,972	2,784	0	0	0
Total	34	3,151	5,873	3,477	0	0	0
All other sources	0	717	10	607	0	891	0
All sources	34	3,868	5,883	4,084	0	891	0
State of California:							
Japan	0	3,332	5,545	1,976	0	0	1,280
Mexico	34	2,379	3,972	2,784	0	0	0
Total	34	5,711	9,517	4,760	0	0	1,280
All other sources	0	717	745	1,243	0	891	0
All sources	34	6,428	10,263	6,003	0	891	1,280
Total United States:							
Japan	0	3,332	7,840	6,191	1,222	4,281	7,598
Mexico	7,373	13,077	16,387	23,823	26,241	10,415	13,647
Total	7,373	16,409	24,227	30,014	27,463	14,696	21,245
All other sources	31,157	55,254	100,186	70,553	68,753	45,401	41,282
All sources	38,530	71,662	124,413	100,567	96,216	60,097	62,528

[1] Less than 500 short tons.
[2] Landed duty-paid value.

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

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

Table C-10
Portland cement: Average annual mill net prices of U.S. producers and importers of the Japanese product, by regions, 1983-89

(Per short ton)

	1983	1984	1985	1986	1987	1988	1989
U.S. producers:							
Southern California	$56.23	$57.40	$62.59	$62.99	$60.98	$56.53	$56.88
State of California	***	***	***	***	***	***	***
U.S. importers:							
Southern California[1]	***	***	***	***	***	***	***

[1] The majority of total U.S. imports from Japan entered ports in the Southern California region.

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

APPENDIX D

TRADE AND FINANCIAL DATA, BY REGIONS AND BY PLANTS

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APPENDIX E

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

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of portland cement and/or cement clinker from Japan on the producers' existing development and production efforts, growth, investment, and ability to raise capital. The responses by producers are shown below, by plant.

Southern California region:

* * * * * * *

Other California:

* * * * * * *