

circular welded non-alloy steel pipe from Romania, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. In accordance with section 733(d) of the Act, the suspension of liquidation based on the Department's preliminary determination may not remain in effect for more than six months (including the statutory permissible extension). In accordance with this provision, these suspension of liquidation instructions will remain in effect until May 28, 1996.

The weighted-average dumping margins are as follows:

Exporter	Weighted-average percentage margin
Metagrimes S.A	85.12
Metalexportimport S.A	77.61
Romanian-Wide Rate	85.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: May 6, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

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[A-201-802]

Preliminary Results of Antidumping Duty Administrative Review; Gray Portland Cement and Clinker From Mexico

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period August 1, 1993, through July 31, 1994, and one firm, CEMEX, S.A. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 14, 1996.

FOR FURTHER INFORMATION CONTACT: Nathan Bartholomew or Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On August 3, 1994, the Department of Commerce (the Department) published in the Federal Register (58 FR 41239) a notice of "Opportunity to Request Administrative Review" for the August 1, 1993, through July 31, 1994, period of review (POR) of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the petitioners, the Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement and the National Cement Co. of California, Inc., requested a review for the afore-mentioned period. On September 16, 1994, the Department published a notice of "Initiation of

Antidumping Review" (58 FR 51053). The Department is now conducting a review of this respondent pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

Section 773(a)(1)(A) of the Tariff Act and 19 CFR 353.46(a) provide that foreign market value (FMV) shall be based on the price at which "such or similar merchandise" is sold in the exporting country in the "ordinary course of trade for home consumption." Section 771(15) of the Tariff Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see also 19 CFR 353.46(b)).

In the second administrative review of this order CEMEX reported home market sales of Type I, Type II, and Type V cement. Following their receipt of this information, petitioners alleged that CEMEX's home market sales of Type II and Type V cement were outside the ordinary course of trade. See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47254 (Sept. 8, 1993). Pursuant to this allegation, we compared CEMEX's home market sales of Type II and Type V cement with sales of similar merchandise (namely, Type I cement) in order to analyze certain factors regarding the nature of the sales of the different types of cement, including freight expenses and profit levels. *Id.* at 47255-56. Based on this comparison, and on other factors explained in our

final determination, we concluded in the second review that CEMEX's home market sales of Type II and Type V cement were not made in the ordinary course of trade. Thus, we did not use these sales in the calculation of FMV.

In the third administrative review, the Department again required CEMEX to report sales of subject merchandise in the home market, including Type I cement. We determined that it was necessary to compare Type II and Type V cement sales in the home market with Type I cement sales in the home market in order to make the ordinary-course-of-trade determination. We also determined that the Department needed the data on home market sales of Type I cement in the event CEMEX's home market sales of Type II and Type V cement were found to be outside the ordinary course of trade. As the Department explained in the final results of the third review:

Even if the Department had been able, using the information supplied by CEMEX in this review, to determine that the Types II and V cement sales were outside the ordinary course of trade, we would still have needed the Type I data to conduct our antidumping duty analysis.

Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 60 FR 26869 (May 19, 1995). When CEMEX failed to provide the information on Type I sales in the third review, the Department was required by the statute to base its determination upon the "best information available" (BIA). 19 U.S.C. 1677e(b); 19 CFR 353.37(a)(1). It should be noted that the factors relied upon by the Department in making the BIA determination in the second administrative review, and subsequently in the third review, were upheld by the CIT. Slip Op. 95-72 at 6-14.

In the present administrative review, the Department sent CEMEX a standard antidumping questionnaire on September 30, 1994. It instructed CEMEX to report all U.S. and home market sales of subject merchandise, which includes sales of Type I cement in Mexico. On November 22, 1994, CEMEX responded to the questionnaire. Similar to its response in the third review, CEMEX reported that it only sold Type II cement in the United States during the period covered by the review. CEMEX limited its reporting to Type II sales in the U.S. and home market, and failed to report sales of Type I cement in the home market. CEMEX claimed in its November 22, 1994 response that its home market sales of Type II cement were made in the ordinary course of trade, and that it

was unnecessary for it to report home market sales of Type I cement.

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

CEMEX requested, in a September 5, 1995 letter, an extension of two weeks for its response to the Department's August 23, 1995, supplemental questionnaire and an additional four-week extension for the submission of Type I sales data. In that letter CEMEX also requested a six-week extension for the submission of COP/CV data. The stated reason for the extension request was the "enormous" burden related to the collection and preparation of sales and cost data for Type I cement.

On September 6, 1995, the Department notified CEMEX that its request to extend the deadline for submitting the supplemental response (including the information on Type I cement) was denied, but that it was granted a three-week extension regarding the COP/CV submission.

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

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

Given the Department's determination that CEMEX's sales of Type II and Type V cement in the home market were

outside the ordinary course of trade during the second administrative review, we believe that it is necessary (was the case in the third administrative review) to address the same issue in the fourth administrative review. CEMEX, however, has not provided timely information regarding its Type I sales in the home market. Not having the home market Type I sales information prevents the Department from determining whether CEMEX's sales of Type II cement in the home market were made in the ordinary course of trade.

Best Information Available

CEMEX argues that it should not be required to provide Type I cement sales data. Its failure to provide this essential information in a timely manner has prevented the Department from determining whether home market sales of Type II cement were in the ordinary course of trade. In the instant review, we requested data on sales of such (Type II cement) and similar (Type I) merchandise in order to conduct the same type of analysis that we conducted in the prior review, and to determine whether CEMEX's home market sales of Type II cement during the instant period of review had been made in the ordinary course of trade. CEMEX did not comply with the Department's repeated requests for Type I sales data.

As in the previous review, where CEMEX also failed to provide data pertaining to sales of Type I cement in the home market, we are unable to ascertain conclusively whether or not CEMEX's sales of Type II and Type V cement were within the ordinary course of trade precisely because CEMEX denied us the requisite information regarding sales of Type I cement to arrive at such a decision. Therefore we must resort to the use of BIA in accordance with Section 776(c) of the Tariff Act. See *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 60 FR 26865 (May 19, 1995).

In connection with our use of BIA, we note that we have established a "two-tier" system:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we use as BIA the higher of (a) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative review or (b) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.
2. When a company substantially cooperates with our requests for information, but fails to provide the information requested in a timely manner or in the form required,

we use as BIA the higher of (a) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or (b) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin.

See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28379 (June 24, 1992); see also *Allied-Signal Company v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). In this case, we are using first-tier BIA because CEMEX was uncooperative. The BIA rate is the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation, as amended, i.e., CEMEX's rate of 61.85 percent. Thus, as a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1993, through July 31, 1994, to be 61.85 percent.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit

rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 59.91 percent, as explained below.

On May 25, 1993, the CIT in *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul v. United States*, 839 F. Supp. 864 (CIT 1993), determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for this order will be 59.91 percent, which was the "all others" rate established in the final notice of the LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: April 26, 1996.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96-11939 Filed 5-13-96; 8:45 am]

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[A-570-803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: We are amending our final results of administrative review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs), from the People's Republic of China published on April 4, 1996, to reflect the correction of a ministerial error made in the margin calculation in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c)(1995).

EFFECTIVE DATE: May 14, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Maureen Flannery of the Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

The review covers two resellers of the subject merchandise to the United States, Fujian Machinery & Equipment Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC), and the period February 1, 1993 through January 31, 1994. The Department of Commerce (the Department) published the preliminary results on August 16, 1995 (60 FR 42516), and the final results on April 4, 1996 (61 FR 15028).

Scope of Review

Imports covered by this review are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars