

portland cement and clinker from Mexico (67 FR 50856). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V. (CEMEX), CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and GCCC requested reviews of their own sales during the period of review. On September 25, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 60210). The period of review is August 1, 2001, through July 31, 2002. Our review of Customs Service import data indicates that there were no entries of subject merchandise produced by Apasco during the period of review. See Memorandum from Analyst to the File, dated March 4, 2003. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to this manufacturer/exporter. We are conducting a review of CEMEX and GCCC pursuant to section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

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

Verification

As provided in section 782(i) of the Act, we verified U.S. sales information submitted by CEMEX and GCCC using standard verification procedures, including an examination of relevant sales and financial record and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, the

regulations describe when the Department will treat two or more affiliated producers as a single entity (*i.e.*, "collapse" the firms) for purposes of calculating a dumping margin (see 19 CFR 357.401(f)). In previous administrative reviews of this order, we analyzed the record evidence and collapsed CEMEX and GCCC in accordance with the regulations.¹

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f).

Having reviewed the current record, we find that the factual information underlying our decision to collapse these two entities has not changed from previous administrative reviews. CEMEX's indirect ownership of GCCC exceeds five percent; therefore, these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition, both CEMEX and GCCC satisfy the criteria for treatment of affiliated parties as a single entity described at 19 CFR 351.401(f)(1): both producers have production facilities for similar and identical products such that substantial retooling of their production facilities would not be necessary to restructure manufacturing priorities. Consequently, any minor retooling required could be accomplished swiftly and with relative ease.

We also find that a significant potential for manipulation of prices and production exists as outlined under 19 CFR 351.401(f)(2). CEMEX indirectly

owns a substantial percentage of GCCC. Also, CEMEX's managers or directors sit on the board of directors of GCCC and its affiliated companies. Accordingly, CEMEX's percentage ownership of GCCC and the interlocking boards of directors give rise to a significant potential for affecting GCCC's pricing and production decisions. See the Department's memorandum from Analyst to File, *Collapsing CEMEX, S.A. de C.V. and GCC Cemento, S.A. de C.V.* for the Current Administrative Review, dated January 14, 2003. Therefore, we have collapsed CEMEX and GCCC into one entity and calculated a single weighted-average margin using the information the firms provided in this review.

Constructed Export Price

Both CEMEX and GCCC reported constructed export price (CEP) sales. We calculated CEP based on delivered prices to unaffiliated customers in accordance with section 772(b) of the Act. Where appropriate, we made adjustments to the starting price for discounts, rebates, and billing adjustments. In accordance with section 772(d) of the Act and 19 CFR 351.402(b), we deducted those selling expenses, including inventory carrying costs, that were associated with commercial activities in the United States and related to the sale to an unaffiliated purchaser. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. warehousing expenses, U.S. brokerage and handling, and U.S. duties, pursuant to section 772(c)(2)(A) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. No other adjustments to CEP were claimed or allowed.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.*, cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject

¹ See, *e.g.*, *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57380 (September 10, 2002). No changes were made in the final results of review (see *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Review*, 68 FR 1816 (January 14, 2003)).