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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Gray Portland Cement and Clinker From Mexico – August 31, 2001, through July 31, 2002

Summary

We have analyzed the comments and rebuttals of interested parties in the 2001-02 administrative review of the antidumping duty order covering gray portland cement and clinker from Mexico. As a result of our analysis, we have made changes to the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttals by interested parties:

1. Revocation
2. Sales-Below-Cost Test
3. Arm's-Length Test
4. Regional Assessment
5. Bag vs. Bulk
6. Adverse Facts Available
7. Swap Sales
8. Difference-in-Merchandise Adjustment
9. Selling Expenses

10. Cash Deposits
11. Interest Rate for Credit Expenses
12. Ministerial Errors

Background

On May 12, 2003, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 68 FR 25327 (Preliminary Results)). The merchandise covered by this review is gray portland cement and clinker. The period of review (POR) is August 1, 2001, through July 31, 2002.

We invited parties to comment on our preliminary results of review.

Discussion of the Issues

1. Revocation

Comment 1: GCC Cemento, S.A. de C.V. (GCCC), argues that the Department should terminate this review and revoke the underlying antidumping duty order because the regional producers did not demonstrate support for the petition in this case. According to GCCC, the Department lacks the authority to impose antidumping duties on the basis of petitions that are not filed "on behalf of" the relevant industry. GCCC contends that, due to the statutory linkage of the statements "on behalf of" with "industry," the Department recognizes that the definition of industry is integral to resolving issues of standing. GCCC argues that a petitioner's standing to request antidumping relief and the Department's authority to give the relief depend in large part on how "industry" is defined.

According to GCCC, the statute provides two distinct definitions of "industry" – one for normal or national investigations and the other for special or regional investigations, such as this case. GCCC asserts that for national investigations the statute defines "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. GCCC contends that those producers accounting for either all or a major proportion of domestic production may qualify as the "industry." GCCC argues that the use of the disjunctive "or" confirms that the statute intends that either group of producers can be considered the national industry. GCCC asserts that, in contrast, the statutory provision defining the "industry" in regional markets does not include alternative definitions. GCCC asserts that, unlike the definition of national industry, there is no word such as "or" introducing an alternative definition. GCCC asserts further that, when dealing with the extraordinary exception of a regional industry, the Department is authorized only to treat the producers within each market as if they are a separate industry. According to GCCC, the word "they" in the statute can only mean all of the producers within each market; it does not mean "some" or "part" or a "major" or "minor proportion."

GCCC argues that the language in the statute is consistent with the statutory provision setting out the requirements for finding material injury in a regional-industry case. According to GCCC, the plain language of section 771(4)(C) of the Tariff Act of 1930, as amended (the Act), requires petitions in regional-industry cases to be filed on behalf of the producers that account for "all, or almost all, of the production in the region." Because the antidumping duty order covering cement from Mexico was based on a petition that was unsupported by producers accounting for all or almost all of the region's production, GCCC contends, the Department issued the order in violation of U.S. law. GCCC disputes the Department's assertion in the 1999/2000 review that it lacked authority to rescind the antidumping duty order on the basis that the petitioner's standing had not been challenged in connection with the original investigation such that the issue could not be reviewed in the context of an administrative review. GCCC asserts that this view conflicts with both case law and the Department's own precedent. GCCC argues that the lack of standing to file an antidumping duty petition is a "jurisdictional" defect which parties may raise at any time. GCCC contends that the Department has the authority to revoke an order that never had the requisite level of industry support, citing Zenith Electronics Corp. v. United States, 872 F. Supp. 992 (CIT 1994) (Zenith Electronics), Gilmore Steel Corp. v. United States, 585 F. Supp. 670 (CIT 1984) (Gilmore Steel), and Oregon Steel Mills, Inc. v. United States, 862 F.2d 1541 (CAFC 1988) (Oregon Steel Mills).

Citing Oil Country Tubular Goods From Argentina and Cold-Rolled Carbon Steel Flat Products from Argentina: Preliminary Results of Countervailing Duty Administrative Reviews/Intent to Terminate Administrative Reviews, 61 FR 68713 (December 30, 1996) (OCTG from Argentina), GCCC argues that the Department's position is also contradicted by its decisions in other administrative reviews where the Department found a fundamental defect in its authority to collect duties. According to GCCC, the Department acknowledged in such cases its lack of authority in the context of an administrative review, terminated the review, and ordered the liquidation of the merchandise subject to review without regard to the duties in question.

The Southern Tier Cement Committee (the petitioner) comments that GCCC has raised this argument in prior reviews. The petitioner asserts that, considering the North America Free Trade Agreement (NAFTA) binational panel decisions pertaining to the 1992/1993, 1994/1995, and

1996/1997 administrative reviews that rejected GCCC's claims for revocation, it is long past time for GCCC to stop making this argument.

The petitioner also argues that GCCC's claim is barred by the statute of limitations, which, according to the petitioner, required any appeal of the decision to initiate the antidumping investigation to be filed within 30 days of the publication of the antidumping duty order. The petitioner argues further that GCCC's claim is barred by failure to exhaust available administrative remedies because the issue was not raised before the Department in the original investigation. The petitioner contends that GCCC's claim is barred by the doctrine of res judicata because it could have been raised, but was not raised, in an appeal to the Court of International Trade (CIT) from the Department's final determination in the original investigation. The petitioner argues that, to the extent that GCCC's claim is based on the unadopted recommendation of a General Agreement on Trade and Tariffs (GATT) panel, that recommendation does not constitute binding international law and there is no basis for applying the rule of statutory construction in Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804) (Charming Betsy). The petitioner cites Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 2765 (March 16, 1998) (1995-96 Final Results), Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 64 FR 13149, 13150 (March 17, 1999) (1996-97 Final Results), and Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 66 FR 14889 (March 14, 2001), in which the Department commented that panel reports under the 1947 GATT were not self-executing and had no legal effect under U.S. law and that neither the 1947 GATT nor the 1979 GATT antidumping code obligated the United States to establish industry support in regional-industry cases.

The petitioner concludes that the Department lacks authority under the statute to rescind its decision to initiate or to re-examine the issue of industry support in a review. Citing Suramerica de Aleaciones Laminda, C.A. v. United States, 966 F.2d 660 (CAFC 1992) (Suramerica), and the 1995-96 Final Results, the petitioner asserts that the court has affirmed the Department's presumption of industry support.

Department's Position: The issue of whether a petitioner has the necessary support to file a petition is an investigation issue. The statutory deadline for parties to challenge the industry support for the petition was 30 days after the antidumping duty order was issued in 1990 (see 19 U.S.C. 1516a). No party did so. As a result, the Department will not reconsider its industry-support determination. Further, the Uruguay Round Agreements Act (URAA) amended the statute to prohibit the Department from revisiting the issue of industry support once the Department has initiated a less-than-fair-value (LTFV) investigation. See section 732(c)(4)(E) of the Act. The bulk of GCCC's argument is a statutory argument that the Department applied the wrong standard for determining industry support in the investigation.[1] Because the statutory time limit to challenge this issue has passed and cannot be properly raised in this review, we have not addressed that argument.

Of the cases cited by GCCC, none of them supports the argument that the Department has the authority, in an administrative review under section 751(a) of the Act, to reach back over ten years and

[1]GCCC cites, in footnote 82 of its administrative case brief, a GATT Panel Report on Mexican Cement to support its argument pertaining to regional-industry provisions of the statute. That report was never adopted, however, by the GATT General Council.

reexamine the issue of industry support for the original petition. In Gilmore Steel, 585 F. Supp. at 673, the plaintiff contended that the Department lacked the authority to rescind the investigation based upon insufficient industry support for the petition after the 20-day period established in section 732(c) of the Act had elapsed. In Zenith Electronics, 872 F. Supp. at 994, the plaintiff alleged that the petitioner was no longer a domestic "interested party" with standing to request an administrative review. Nothing in Zenith Electronics or Gilmore Steel supports GCCC's argument that a party may challenge industry support for a petition over ten years after the fact and in the context of an administrative review under section 751(a) of the Act.

The case GCCC cites, Oregon Steel Mills, involved a challenge to the Department's authority to revoke an antidumping duty order based upon new facts, i.e., the industry's affirmative expression of no further support for the antidumping duty order. It was not based upon reexamination of the facts as they existed during the original LTFV investigation. The Court of Appeals for the Federal Circuit (CAFC) held that it was lawful for the Department to revoke an order, in the context of a "changed circumstances" review pursuant to section 751(b) of the Act, over the objection of one member of the industry. See Oregon Steel Mills, 862 F.2d at 1544-46. The CAFC did not state that industry support for an order must be established affirmatively throughout the life of an order. Indeed, the CAFC went to lengths to explain that it was not ruling on the claim that “loss of industry support for an existing order creates a 'jurisdictional defect.'” Id. at 1545 n. 4. As courts explained subsequently, the holding in Oregon Steel Mills is limited to the proposition that the Department may, but need not, revoke an order when presented with record evidence which demonstrates a lack of industry support for the continuation of the order. See, e.g., Suramerica, 966 F.2d at 666, and Citrosuco Paulista, S.A.

v. United States, 704 F. Supp. 1075, 1085 (CIT 1988) (Citrosuco).

We also find GCCC's reliance on the administrative decision in OCTG from Argentina to be misplaced. Although GCCC states correctly that the Department terminated these administrative reviews based on the Department's lack of authority to assess countervailing duties on subject merchandise entered after a certain date, this decision was necessitated by a decision by the CAFC which held that, once a country becomes entitled to an injury determination by virtue of its status as a "country under the Agreement" pursuant to the countervailing duty statute, the Department could not assess countervailing duties in the absence of an injury test. See Ceramica Regiomontana v. United States, 64 F.3d 1579, 1583 (CAFC 1995). The Department stated in OCTG from Argentina that, "at the time . . . Argentina qualified as {a country} under the Agreement, the assessment of countervailing duties on subsequent entries of dutiable merchandise became dependent upon a finding of subsidization and injury in accordance with section 701 of the Act." OCTG from Argentina, 61 FR at 68715. Thus, the Department concluded that it could not assess duties on entries after the date on which Argentina qualified for an injury determination. The issue of Argentina's entitlement to an injury determination after the issuance of the original order is in no way relevant or related to the petitioner's standing to file a petition.

In short, the cases GCCC cites are inapposite. None of them supports GCCC's argument that the Department has the authority, in an administrative review under section 751 of the Act, to reach back ten years and reexamine the issue of industry support for the original petition.

Therefore, we reject GCCC's arguments that we lack the authority to assess antidumping duties pursuant to these final results of review and that we must revoke the underlying antidumping duty order.

2. Sales-Below-Cost Test

Comment 2: CEMEX, S.A. de C.V. (CEMEX), argues that, while it agrees with the Department's preliminary finding that it had no sales below cost, it was improper for the Department to require that the respondent bear the expense, both monetary and administrative, of complying with the Department's cost questionnaire.

According to CEMEX, the statute requires the Department to have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating a "sales below cost" investigation and provides two bases for finding "reasonable grounds:" (1) the Department has excluded below-cost sales of the exporter or producer from the determination of normal value in the most recently completed segment of the proceeding; or (2) an interested party provides specific information indicating that sales in the foreign market are at below-cost prices. CEMEX argues that neither decisions in prior administrative reviews of this case nor the petitioner's sales-below-cost allegation in the current administrative review provided grounds for the Department to determine that the statutory requirements for initiating a sales-below-cost investigation were met.

CEMEX argues further that, in light of the Department's findings in the seven previous reviews not to disregard any below-cost sales, the Department should have been skeptical of the petitioner's allegation in this review. Furthermore, according to CEMEX, the petitioner's past behavior suggests that it will continue to make allegations of sales below cost in future reviews. In conclusion, CEMEX asserts that the Department should determine that its initiation of a below-cost investigation in this review was improper.

The petitioner contends that the Department should reject the CEMEX's arguments on the ground that they do not relate to any issue relevant to the final results of this review. The petitioner argues that, as it is too late for the Department to reverse its decision to initiate a cost investigation in this review, this issue is no longer relevant to these final results and, thus, the Department should reject CEMEX's arguments on that ground alone. The petitioner argues further that, as long as there is sufficient information that home-market sales were made below cost in this current review, it is irrelevant whether the Department excluded below-cost sales in prior reviews. According to the petitioner, the antidumping law indicates explicitly that, in deciding whether to initiate a cost investigation, the Department may not disregard below-cost sales on the ground that they are purportedly de minimis and the statute does not establish any minimum quantity of sales that must be demonstrated to be below cost. Citing Huffy Corp. v. United States, 632 F. Supp. 50, 57-58 (CIT 1986), the petitioner argues that the statute requires only a showing that sales have been made at below-cost prices, but there is no requirement to show such sales were in substantial quantities. Rather, the petitioner asserts, the Department is to investigate and determine whether substantial below-cost sales were made.

Department's Position: Section 773(b)(1) of the Act requires that the Department have "reasonable grounds" to believe or suspect that below-cost sales occurred before initiating a below-cost investigation. See Statement of Administrative Action of the Uruguay Round Agreements Act, H.R. Doc.103-316, vol I, at 807 (1994) (SAA). Reasonable grounds exist when an interested party provides information indicating that sales have been made in the foreign market in question at below-cost prices. See section 773(b)(2)(A) of the Act. Based on our analysis of the information the petitioner provided to support its allegation of sales below cost, we found reasonable grounds to believe or suspect that below-cost sales occurred. The petitioner made use of the respondent's data on the record, employed a reasonable methodology, and provided evidence of below-cost sales of CPO 40 cement. Upon examining the allegation, we found that the petitioner's analysis was consistent with our practice of examining sales below cost and determined that the petitioner had provided a reasonable basis to believe or suspect that CEMEX was selling CPO 40 cement in Mexico at prices below the cost of production (COP). See Memorandum from Laurie Parkhill to Susan Kuhbach, Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the 2001/2002 Review (February 3, 2003).

In Connors Steel Company v. United States, 527 F. Supp. 350 (CIT 1981) (Connors Steel), the CIT determined that, when a petitioner provides reasonable evidence that home-market sales are being made below cost, the Department has a statutory duty to inquire further to determine the validity of such an allegation. Further, in that decision, the CIT stated that the statutory "duty could not be avoided except for the most compelling reasons." See Connors Steel, 527 F. Supp. at 356. In this case, based on the petitioner's submissions, we found reasonable grounds to believe or suspect that below-cost sales of CPO 40 cement occurred. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a model-specific COP investigation to determine whether the respondent made home-market sales of CPO 40 cement during the period of review at below-cost prices. We reject CEMEX's assertions that the petitioner's allegation is insufficient based on the number of below-cost sales identified. Section 773(b)(2) of the Act does not establish a threshold quantity of sales below cost in order for the Department to initiate a cost investigation. There is no threshold quantity of below-cost sales in order to initiate a sales-below-cost investigation because petitioners, as a general matter, do not have access to a respondent's cost data in order to be able to demonstrate minimum percentages. If, based on available data, the petitioner can provide the Department with a reasonable basis to believe or suspect that any sales are being made below cost, the only way to determine whether the sales are being made at below-cost prices is to collect the data from the respondents and perform the calculations.

For the above reasons, we find that we initiated a model-specific below-cost investigation on CEMEX's home-market sales properly.

3. Arm's-Length Test

Comment 3: CEMEX argues that the Department's exclusion of affiliated-party sales that did not pass the Department's 99.5 percent arm's-length test from the calculation of normal value in the preliminary results was contrary to law. According to CEMEX, the Department's regulations specify that the Secretary may rely upon an affiliated party's sales to calculate normal value "only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." CEMEX asserts that the statute and the regulations are silent, however, with respect to how the Department is to determine whether the sales price to an affiliated party is "comparable" to the sales price to an unaffiliated party.

CEMEX states that, on February 28, 2001, a World Trade Organization (WTO) dispute-settlement panel determined that the Department's use of the 99.5 percent arm's-length test in the Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-

Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Hot-Rolled Steel Products from Japan), was contrary to Article 2.1 of the GATT Antidumping Code in that the Department's test was an impermissible interpretation of the term "sales in the ordinary course of trade." Thus, CEMEX argues, the Department's continued use of the arm's-length test can no longer be considered a permissible interpretation of the U.S. antidumping duty law and cannot be used in the Department's determinations. Moreover, citing Charming Betsy, CEMEX contends that, if the statute is silent or ambiguous with respect to a specific issue, as it is in this case, the statute must be interpreted, if at all possible, in a manner that is consistent with international law.

Furthermore, citing Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) (New Arm's-Length Test), CEMEX asserts that, in response to an adverse WTO decision, the Department formally adopted a new methodology in performing its affiliated-party-arm's-length test. CEMEX contends that, according to the Department's New Arm's-Length Test, if the overall ratio of the price calculated for an affiliate is between 98 percent and 102 percent of the weighted average of non-affiliated prices, the affiliated sales will be deemed to satisfy the arm's-length test and be considered within the ordinary course of trade. As the modified methodology was adopted prior to the issuance of the Department's preliminary results, CEMEX argues that the Department's continued use of its old arm's-length test can no longer be considered a permissible interpretation of the U.S. antidumping duty law and that the application of this test in the preliminary results was unreasonable and contrary to law. Thus, CEMEX concludes, for the final results the Department should recalculate its margins using the price band reflected in the notice of change in practice.

The petitioner refutes CEMEX's argument that the Department's established arm's-length test is now contrary to law because of findings made in WTO dispute-settlement proceedings regarding a different United States antidumping duty order, asserting instead that a decision not to apply the Department's established test for affiliated-party sales would be contrary to law because the Department is required by United States law to apply it in this review.

The petitioner contends that CEMEX overreaches by claiming that the Appellate Body's decision in Hot-Rolled Steel Products from Japan prohibits use of the 99.5 percent arm's-length test. The petitioner argues instead that the Appellate Body upheld the WTO panel's finding that the application of the 99.5 percent test was not based upon a permissible interpretation of the term "sales in the ordinary course of trade" in Article 2.1. The petitioner states that the Appellate Body recommended only that the United States be requested to bring the measures that were found to be inconsistent with WTO requirements into conformity with U.S. obligations. In fact, the petitioner argues, not only was the Department's use of the arm's-length test not found to be inconsistent with WTO obligations, but the decision as to how to implement the decision was left up to the United States.

The petitioner maintains that, according to U.S. statute, the Department's authority to implement a new decision is limited to the particular proceeding that was at issue before the panel and Appellate Body, not other antidumping proceedings. Additionally, the petitioner comments, no implementation of the WTO report can affect any prior entries or any entries of merchandise other than the subject merchandise that was at issue in the WTO proceeding. Thus, according to the petitioner, any obligation imposed on the United States by a WTO decision goes no further than the specific measures at issue and does not apply to the Department's established practice regarding arm's-length sales with respect to reviews under this particular antidumping order.

Nevertheless, while the petitioner acknowledges the Department's modification to its arm's-length methodology in response to the Appellate Body's decision, it emphasizes that the application of the proposed test will only have prospective effect. Citing the New Arm's-Length Test, the petitioner argues that the Department's application of the modified test only applies to investigations and reviews initiated on or after November 23, 2002. Therefore, as this review was initiated on September 25, 2002, the petitioner contends that the Department's modification to the arm's-length test does not apply for this review.

The petitioner argues that the Department's decision to modify its traditional 99.5 arm's-length test does not imply that the traditional test is improper. In fact, the petitioner states, the traditional test complies fully with U.S. law.

Furthermore, the petitioner asserts that the Department's decision to revise the arm's-length test only prospectively is consistent with statutory requirements. Citing 19 U.S.C. 3538(c)(1), the petitioner argues that, upon request by the Office of the U.S. Trade Representative (USTR), the Department must issue a determination in connection with the particular proceeding that would render the administering authority's action not inconsistent with the findings of the WTO panel or the Appellate Body. That determination, the petitioner asserts, may only apply to unliquidated entries of the subject merchandise made on or after the date that USTR orders implementation of the determination. Moreover, the petitioner contends that the SAA at page 1026 explains that the implementation of a determination based on the recommendation of a GATT panel have prospective effect only.

Moreover, the petitioner holds that, contrary to CEMEX's theory based on Charming Betsy, U.S. courts have consistently upheld a permissible agency construction of a silent or ambiguous statute notwithstanding an actual or potential conflict with an international trade agreement. Citing NTN Bearing Corp. Of America v. United States, 248 F.Supp. 2d 1256, 1284 (CIT 2003), and NSK Ltd. v. United States, 245 F.Supp. 2d 1335, 1357 (CIT 2003), the petitioner asserts that, even since the publication of the modification to the Department's arm's-length test, the CIT has affirmed that the Department's use of the 99.5 percent test as reasonable and in accordance with law. Thus, according to the petitioner, there is no legal basis for the Department to alter its application of the traditional 99.5 percent arm's-length test in this review.

Department's Position: Our exclusion of CEMEX's affiliated-party sales that did not pass the 99.5 percent arm's-length test from the calculation of normal value was not contrary to law. The regulations at 19 CFR 351.403(c) state that, "{i}f an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." The preamble to the regulations states that "{t}he Department's current policy is to treat prices to an affiliated purchaser as 'arm's-length' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 10, 1997). Thus, pursuant to our regulations and our practice as explained in the regulations, for this administrative review we interpret the term "comparable" to mean that the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers.

The CIT has repeatedly upheld the Department's application of the 99.5 percent arm's-length test where there was no evidence that the test distorted price comparability. See, e.g., NTN Bearing Corp. V. United States, 248 F.Supp. 2d 1256, 1284 (CIT 2003); SSAB Svenskt Stal AB v. United States, 976 F.Supp. 1027, 1030-31 (CIT 1997); Micron Tech., Inc. V. United States, 893 F.Supp. 21, 38 (CIT 1995), aff'd 117 F.3d 1386 (CAFC 1997); Usinor Sacilor v. United States, 872 F.Supp. 1000, 1004 (CIT 1994). Moreover, in a recent case that considered the 99.5 percent arm's-length test after the Department resolved to change its practice in accordance with the WTO rulings, the Court upheld the use of the 99.5 percent test, finding:

> It may be that Commerce's application of the 99.5 percent arm's length test could, in another case, lack even-handedness and disadvantage the exporters so as to be inconsistent with international obligations under the Anti-Dumping Agreement. In this case, however, we do not find, nor does {the respondent} argue, that the application of the 99.5 percent arm's length test results in the inclusion of sales outside the ordinary course of trade in the calculation of {the respondent's} normal value. Accordingly, because in this case investigated parties control the data at issue, we uphold Commerce's application of its statutes and regulations as a reasonable interpretation of "ordinary course of trade."

Timken v. United States, 240 F.Supp. 2d 1228. 1242 (CIT 2002). No such distortion has been alleged in this case. See, e.g., CEMEX's June 11, 2003, administrative case brief at 5-10.

While CEMEX is correct that, subsequent to a WTO dispute-settlement ruling, the Department has published a modification to its arm's-length methodology, the new methodology is only applicable in investigations and reviews initiated on or after November 23, 2002. See New Arm's-Length Test, 67 FR at 69197. This administrative review was initiated on September 25, 2002.

4. Regional Assessment

Comment 4: GCCC argues that the Department should terminate this review and revoke the underlying antidumping duty order. GCCC contends that, during the instant review, it sold cement both inside and outside the Southern Tier region, as defined by the U.S. International Trade Commission (ITC) in the original antidumping investigation. GCCC asserts that, in the preliminary results, the Department calculated duties on sales both inside and outside the Southern Tier region. According to the GCCC, the Department has no authority to assess duties on imports that do not affect the Southern Tier region and the Department has an international obligation to limit its assessment of antidumping duties in regional cases only to the imports consigned for final consumption in that region.

Citing the WTO Antidumping Code, the respondent argues that the Department must distinguish between sales inside and outside the relevant region. GCCC asserts that, because the Antidumping Code did not impose on the regional industry the burden of showing injury or causation with respect to a producer outside the region, it followed that merchandise destined for consumption outside the region could not be affected by the antidumping measure. According to the respondent, the exception to the general rule in Article 4.2 of the 1979 Tokyo Round Antidumping Code (Article 4.2) allowed the importing country to collect duties on all subject imports entering the country only if three conditions were met: 1) "the constitutional law of the importing country does not permit the levying of antidumping duties on such a basis . . . ." (i.e., on the basis of their consumption within the defined area); 2) "the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 7 of this Code, and adequate assurances in this regard have not been promptly given;" and 3) "such duties cannot be levied on specific producers which supply the area in question." The respondent contends that, if these three conditions are satisfied, then the Antidumping Code permits the member country to impose antidumping duties on all subject imports regardless of whether they affect the relevant region.

According to the respondent, Article 4.2 compels the Department to refrain from assessing duties on its subject merchandise destined for consumption outside the Southern Tier region. GCCC contends that the exception to Article 4.2 (when the constitutional law of the importing country does not permit levying of antidumping duties on a regional basis) does not apply because none of the conditions necessary to justify an exception to Article 4.2 are satisfied in this case. First, GCCC contends that deciding to assess duties on its imports consigned for consumption outside the Southern Tier region would not violate any provision of the U.S. Constitution. GCCC contends further that the lack of any Constitutional prohibition creates an obligation for the Department to adhere to the general assessment rule in Article 4.2. The respondent asserts that neither the port-preference clause of the Constitution, which prohibits Congress from regulating commerce or revenue of ports in a discriminatory manner that would confer preferential treatment for the ports of one state over the ports of another state, nor the uniformity clause, which requires the uniform imposition of taxes throughout the United States, render the regional assessment of antidumping duties unconstitutional. GCCC asserts that the Department can comply with its international obligation by making a simple adjustment to its assessment methodology in this review.

Second, GCCC argues that, if a member's constitutional law prohibits implementing the general assessment rule of Article 4.2, then the member must satisfy two additional conditions before levying antidumping duties on all imports of subject merchandise. According to GCCC, the first of these enumerated conditions requires the member to have given exporters an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8. GCCC contends that adequate assurances in this regard have not been promptly given. GCCC argues that the Department has not satisfied the second condition in this case, either generally or specifically, with respect to the respondent. According to GCCC, the Department did not permit it to enter into a suspension agreement at the time of the original investigation because, at the time of the investigation, the Department's policy was one of refusal to enter into suspension agreements. In addition, GCCC maintains that the Department's decision to collapse CEMEX and GCCC in the original investigation diminished GCCC's opportunity further to enter into a suspension agreement. GCCC also argues that the U.S. implementation of the Article 4.2 assessment rules included no provisions by which these rules could apply to orders predating the URAA.

Third, according to GCCC, the final condition precedent to using the Article 4.2 exception is that the antidumping duties cannot be levied only on products of specific producers which supply the area in question. GCCC argues that this condition has not been met. GCCC maintains that the language of Section 218 of the URAA and the Department's regulations demonstrate that assessment on less than a national basis is possible. GCCC contends that the fact that Congress enacted Section 218 of the URAA with language calling for the regional assessment of duties attests to the absence of a U.S. constitutional prohibition against regional assessment. GCCC asserts, however, that Section 218 falls short of implementing the regional- industry rule because it does not address producers or exporters which, like GCCC, export merchandise both into and outside the region.

Furthermore, GCCC contends that, in the 2000/2001 review, the Department avoided the issue of whether it can, and should, limit its assessment of duties to only those imports consumed in the Southern Tier region. GCCC argues that the Department's view that no inconsistency exists between the U.S. antidumping law and GATT as stated in the 2000/2001 review would require the opposite result in the case of GCCC. GCCC maintains that, if this holds true, the Department must yield to Article 4.2, which states clearly that antidumping duties may be assessed only on products imported for consumption in the relevant, or Southern Tier, region. GCCC argues, therefore, that the Department should terminate this review and revoke the underlying antidumping duty order. GCCC states that, if the Department determines not to terminate this review, then, alternatively, it should assign a zero margin to all sales made outside the Southern Tier region.

The petitioner argues that GCCC's claims have no merit. The petitioner asserts that GCCC does not allege that the assessment of duties on a nationwide basis is in any way contrary to U.S. law but relies exclusively upon international trade agreements that date back to 1968. The petitioner asserts that, contrary to GCCC's argument, Congress has declared that the collection of antidumping duties on a region-specific basis is unconstitutional. According to the petitioner, Congress has crafted a set of statutory provisions that provides for the assessment of antidumping duties in regional-industry cases in a manner that is in accord with both the constitutional constraints and U.S. international obligations. In addition, the petitioner contends that these provisions and only these provisions form the body of law that governs the Department's antidumping determinations. The petitioner asserts that, even if these international agreements cited by GCCC were applicable, they would not prevent the Department from assessing antidumping duties on all entries of cement from Mexico sold to the United States during the review period. The petitioner emphasizes that neither CEMEX nor GCCC appealed the Department's affirmative determination in the LTFV investigation to the appropriate court and within the statutory time limit for appeals with respect to the definition of “industry” in a regional case or the Department’s alleged failure to offer an opportunity for a suspension agreement during the original investigation.

The petitioner asserts that GCCC’s arguments are based on a fundamental misconception regarding the role of international law, specifically the role that international agreements play in the legal framework of the United States. The petitioner argues that it is the implementing legislation, rather than the agreement itself, that is given effect as law in the United States. The petitioner also argues that GCCC’s reliance on Article 4.2 is misplaced because the Tokyo Antidumping Code was superseded by the WTO Antidumping Agreement. According to the petitioner, thus, the Code can no longer give rise to any obligation whatsoever on the part of the United States.

The petitioner asserts that the Department must act within its authority under sections 736(d)(1) and 734(m)(1) of the Act, which were amended by the URAA to conform to the regional-industry provisions of the Antidumping Agreement. The petitioner contends, however, that these provisions are not applicable to GCCC in this review and thus confer no authority upon the Department to refrain from assessing antidumping duties on sales outside the Southern Tier region. The petitioner asserts further that these sections of the Act only apply in investigations and not reviews. Moreover, the petitioner contends that, because GCCC exported cement into the Southern Tier region during the period of investigation, it is subject to antidumping duties on all of its exports to the United States.

The petitioner contends that the Department has no obligation under sections 736(m)(1)(2) and 734(m)(1)(2) of the Act to offer GCCC a suspension agreement because the Department may only accept a suspension agreement during the pendency of an investigation or within 60 days after the publication of the antidumping duty order. The petitioner reiterates the fact that no respondent appealed the Department's final LTFV determination in 1990 based on an alleged lack of an opportunity for a suspension agreement. In sum, the petitioner asserts that the statute requires the Department to assess antidumping duties on all of GCCC's exports to the United States, not just those entering the Southern Tier region, and does not permit the Department to offer GCCC a suspension agreement. For these reasons, the petitioner concludes that the Department has complied fully with U.S. law.

Department's Position: As it has in prior reviews, GCCC continues to challenge the consistency of the Department's regional-assessment methodology with the GATT and Uruguay Round Agreements. An administrative review conducted under the U.S. antidumping duty law is not the appropriate forum in which to raise such arguments. Pursuant to U.S. law, in conducting an antidumping duty administrative review, the Department must, first and foremost, make a determination supported by substantial evidence and in accordance with U.S. law. The appropriate topics of discussion in an administrative review concern the consistency of the Department's actions with respect to U.S. law and interpretations of facts on the record. Having utterly failed to make any such arguments, GCCC has raised nothing to which the Department may respond appropriately. As a general matter, however, we observe that the URAA was promulgated to implement the obligations of the United States pursuant to the Uruguay Round Agreements. We believe that the U.S. government has implemented its obligations properly.

5. Bag vs. Bulk

Comment 5: Both CEMEX and GCCC argue that, in matching U.S. and home-market sales, the Department should not compare sales of bulk cement in one market with sales of bagged cement in the other market. Both CEMEX and GCCC agree, however, that the Department's decision in the preliminary results to match sales of CPO 40 cement produced and sold in Mexico (all of which were made in bulk) to sales of all types of cement sold in the United States, which included virtually all bulk cement, renders this issue moot in the instant review. Thus, CEMEX and GCCC submit that the Department need not address this issue in this review unless the Department changes its product-matching methodology for purposes of the final results of review.

The petitioner agrees that the issue of matching bulk and bagged cement is moot given the Department's selection of CEMEX's sales of CPO 40 cement, all of which were in bulk, as the foreign like product for matches with sales of all cement types sold in the United States by CEMEX and GCCC. According to the petitioner, because no party contests the Department's choice of matching methodology in this review, there is no reason for the Department to consider this issue. In any event, the petitioner reinforces its arguments in previous administrative reviews that the Department's practice of matching cement types sold in the United States and the home market without regard for packaging is consistent with the statute and the Department's longstanding, consistent practice in other cases.

Department's Position: While we continue to find our practice of matching the U.S. merchandise to the foreign like product by cement type to be appropriate and maintain that there is no basis for the use of form of presentation (i.e., packaging) as a matching criterion, we agree with the respondent and petitioner that this is not an issue in the instant review.

In this review, the cement types the respondents sold in the United States were Type V LA and Type II LA. They sold types CPC 30 R, CPC 40, CPO 20, and CPO 40 cement in Mexico during the review period. As discussed in the Preliminary Results, we determined that CPO 40 cement produced and sold in the home market is, for purposes of comparison matching, the identical match to Type V LA sold in the United States and a similar match to Type II LA sold in the United States.

Consequently, in this review, we compared monthly average normal values of cement model CPO 40 sold in the home market, which included only bulk cement, with sales of Type V LA in the United States, which also included only bulk cement, and compared monthly average normal values of CPO 40 bulk cement sales in Mexico to each individual U.S. transaction of Type II LA, which primarily consisted of bulk cement. Thus, the Department preliminarily compared sales of bulk cement in the home market to sales of bulk cement in the U.S. market as a result of matching the products. The presentation of the cement (in bags or bulk) was not a factor in the matching methodology.

Therefore, as we have not altered our matching methodology from the Preliminary Results and because no party contested our matching methodology in this review, we find no reason to consider this issue for purposes of the final dumping calculation.

6. Adverse Facts Available

Comment 6: GCCC argues that the Department's application of facts available for the calculation of a dumping margin on sales made by GCCC's U.S. affiliate, Rio Grande Materials (RGM), was inappropriate. Additionally, GCCC argues that it cooperated to the best of its ability in providing information regarding RGM's cement sales and, thus, the Department should not have applied an adverse inference in selecting from among the facts otherwise available.

GCCC asserts that the Department's claim in the Preliminary Results that it was unable to obtain detailed source documentation supporting the quantity and value and reporting sales and expenses for RGM is belied by the evidence on the record. According to GCCC, although original source documentation could not be obtained readily from GCCC's El Paso terminal for the Department's verification in Albuquerque, New Mexico, a review of the verification exhibits and the verification report, dated April 25, 2003 (GCCC Verification Report), demonstrates that GCCC devoted significant time in preparing source documentation to verify the items on the Department's verification outline relevant for RGM's cement sales. GCCC asserts further that it provided to the Department at verification an explanation of and documentation supporting the corrections GCCC made to RGM's cement sales listing. Furthermore, according to GCCC, the Department acknowledged in its verification report that it was able to review detailed source documentation supporting the expenses incurred on and the corrections made to RGM's sales in the pre-selected sales traces.

GCCC contends that, even though RGM's assets were sold prior to the due date for GCCC's response to the Department's questionnaire and despite the fact that RGM sold only a relatively small amount of cement during the period of review, GCCC spent significant time to ensure that it reported all of the information required by the Department regarding RGM's cement sales. According to GCCC, the Department confirmed in its verification report that it was able to trace the quantity and value of RGM's sales to RGM's financial statements and to reports generated by the computer system, but that it could not select items from the reports to obtain detailed source documentation since this information was not easily accessible. GCCC argues that, in acknowledging that original source documentation was not easy to obtain, the Department recognized that GCCC was prepared for verification. Moreover, GCCC comments that, at past verifications, the Department did not request additional original source documents for RGM's cement sales. GCCC claims that, at any verification, it is difficult to obtain original source documentation from a separate company in a different location and that, because RGM no longer operated and had no employees to gather the information, it was even more difficult to obtain additional information at short notice. GCCC argues further that the Department has confused legal custody of the boxes with a capability to identify and retrieve the information contained in the boxes readily. Despite this difficulty, however, GCCC argues that it prepared as thoroughly as possible for the verification because it knew that further documentation would be difficult to obtain at the verification.

GCCC also contends that the Department did not explain what information RGM did not provide that was essential to its dumping analysis. Citing China Steel Corp. v. United States, Slip Op. 2003-52 (CIT May 14, 2003) (China Steel), GCCC asserts that the Department was provided with a complete database with all of RGM's cement sales and related expenses and that there is no information missing that the Department requires in order to calculate margins for RGM's cement sales. Citing Branco Peres Citrus v. United States, 173 F. Supp. 2d 1363 (CIT 2001) (Branco Peres Citrus), GCCC argues that the CIT has determined that, where a party states that it is unable to comply with a request, in order to take an adverse inference, the Department "must find that {such} party could comply, or would have had the capability of complying if it knowingly did not place itself in a condition where it could not comply." GCCC contends that it behaved as a reasonable respondent by spending considerable time preparing verification document packages for RGM's information related to the items on the Department's verification outline and, thus, asserts that the Department's decision in the Preliminary Results to apply an adverse inference to RGM's sales of subject merchandise does not satisfy the CIT's standard.

The petitioner rebuts GCCC's argument, stating that the Department applied facts available to RGM's sales of subject merchandise properly and determined correctly that it was necessary to make an adverse inference in selecting from the facts available as it could not verify RGM's sales data. According to the petitioner, section 776(a)(2)(D) of the Act provides that the Department shall rely upon facts otherwise available if an interested party or other person provides information that cannot be verified. The petitioner argues that, because the Department was unable to obtain detailed source documentation supporting the quantity and value of RGM's sales of subject merchandise, the Department was required to apply facts available.

According to the petitioner, nowhere in GCCC's argument did it demonstrate that it actually provided source documentation allowing the Department to verify the quantity and value of RGM's sales. Instead, the petitioner argues, GCCC tried to disguise its failure to provide such source documentation by asserting that it devoted significant time in preparation for verification. The petitioner argues that, because GCCC was in control of RGM's source documentation at one of its facilities, in light of the obvious need to demonstrate the accuracy of RGM's quantity and value data, GCCC should have devoted time and attention to making the source documents available to the Department during verification.

Furthermore, according to the petitioner, although GCCC disputes the Department's finding that the reported information and the corrections to that information could not be verified, GCCC did not demonstrate that it actually provided such documentation. On the contrary, the petitioner asserts, GCCC confirms that it was unable to provide original source documents at verification. The petitioner also argues that GCCC attempts to blame the Department for GCCC's failure to provide source documents by claiming that the Department was on notice prior to verification that RGM was no longer in operation and that the Department chose the location of the verification and could have chosen to spend a day of the verification in El Paso. The petitioner contends that, as an experienced respondent, GCCC was aware of the Department's verification procedures and knew that the Department would seek to verify RGM's quantity and value data. Thus, the petitioner argues, the fact that source documentation was kept at a different location is no excuse for failing to have such documents available.

With regards to GCCC's reliance on the Court's finding in China Steel that the Department should not use facts available in an "unrestrained" manner if the respondent uses its best efforts to cooperate with the Department, the petitioner argues that, in China Steel, the Court found that the Department applied facts available properly where a respondent did not provide supporting documentation for all expenses and adjustments. Had GCCC used its best efforts in this review, the petitioner asserts, it would have provided the Department with the source documentation under its control that served as the basis for the reported RGM sales data. The petitioner argues that GCCC provided no justifications for why it did not prepare adequately for verification by ensuring that source documentation would be available, considering that it was aware that the Department was required to verify GCCC's response under section 782(i)(3)(B) of the Act.

The petitioner also rebuts GCCC's assertion that, pursuant to the Court's ruling in Branco Peres Citrus, the Department should not apply an adverse inference because, according to GCCC, the Department is not missing information necessary to calculate a dumping margin for RGM's sales. The petitioner argues that the Court's finding in Branco Peres Citrus supports the Department's use of adverse facts available in this case, as it affirmed the Department's determination that the respondent did not act to the best of its ability by not providing information over which it had control at the outset of the administrative review despite prior notice that such information might be requested by the Department at a later date in the review.

Thus, the petitioner supports both the Department's finding in the Preliminary Results that GCCC failed verification with respect to RGM's sales of subject merchandise and its decision to make an adverse inference in selecting from the facts available.

Department's Position: As detailed in the Preliminary Results and in the preliminary results analysis memorandum, we could not verify the quantity and value of RGM's sales, as well as the claimed expenses incurred by RGM on those sales, as provided in section 782(i)(3) of the Act. As we indicated in the GCCC Verification Report, although we were able to trace the quantity and value amounts to reports generated by RGM's sales maintenance system, we were unable to select items from the reports to obtain detailed source documentation. If we are unable to tie sales information as reported in a company's books and records to individual transactions, then we cannot attest to the validity of the books and records themselves. As discussed in Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and in accompanying Issues and Decision Memorandum at comment 1, "the verification process is highly dependent upon the accurate and comprehensive characterization by respondents of the facts supporting their books and records, and the information contained therein."

The verification process involves multiple steps and traces in order to confirm the reliability of the totality of the information provided by a respondent. In this case, although we were able to review detailed source documentation for the two pre-selected sales traces pertaining to RGM's sales which confirmed the reported sales price and quantity, we were unable to verify certain expenses incurred on those sales, including indirect selling expenses and freight amounts paid for the shipment of cement from GCCC's U.S. affiliate and importer of record, GCC Rio Grande Inc (GCCRG), to RGM. Even if we were able to verify all expenses incurred in the pre-selected sales, however, the sales traces alone do not provide a sufficient basis for us to make a determination on the reliability of the totality of the information provided by GCCC.

Because we were neither able to trace information GCCC reported regarding the total quantity and value of RGM's sales of subject merchandise to detailed source documentation nor were we able to conduct tests to ensure that all of RGM's sales of subject merchandise were reported properly, we are unable to rely upon that information in the calculation of a dumping margin. Therefore, we are guided by section 776(a)(2)(D) of the Act to apply facts available to RGM's sales of subject merchandise.

With respect to GCCC's assertion that we should not use an adverse inference in selecting from facts available, we continue to find that GCCC did not act to the best of its ability in providing RGM-related sales information. As discussed in the GCCC Verification Report, although RGM was sold prior to the date of the verification, GCCC was in control of all of RGM's records because GCCRG stored RGM's records in one of its facilities and therefore had access to the necessary source documentation during the verification. More importantly, GCCC claims repeatedly that, in order to ensure that it reported all of the information required by the Department regarding RGM's cement sales, it spent a significant amount of time in the El Paso terminal reviewing the documentation for each RGM sale manually. See GCCC's case brief at page 4. Even after it reviewed every RGM sale manually in order to satisfy itself that it reported all of the required information and made all of the proper pre-verification corrections, however, GCCC was still unable to locate that same documentation so that we could review it at verification.

Considering the CAFC's determination in Nippon Steel Corporation v. United States, 2003 U.S. App. LEXIS 16316 (CAFC August 8, 2003) (Nippon Steel), that "{i}t is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think – through inadvertence, neglect, or otherwise – to look beyond the files immediately available," we are unswayed by GCCC's assertion that we have confused legal custody of the boxes with a capability to identify and retrieve the information contained in the boxes readily.

As we discussed in the Preliminary Results, GCCC has been involved in numerous prior reviews of this order which indicates that it has experience with the antidumping proceeding. Furthermore, pursuant to section 782(i)(3)(B) of the Act, the Department was required to verify the information provided by GCCC in this period of review, as GCCC had not been verified during the two immediately preceding reviews. Thus, GCCC was aware that all documentation supporting the information it reported for this period of review was subject to Departmental verification. The CAFC found in Nippon Steel that "{c}ompliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping." Because GCCC was both aware of our statutory obligation to verify its responses and was in control of all necessary documentation, we continue to conclude that GCCC did not cooperate to the best of its ability in this review and have applied partial adverse facts available for these final results of review.

Comment 7: The petitioner asserts that, in the Preliminary Results, the Department did not apply its selection of adverse facts available to all of RGM's sales and that, for purposes of the final results of review, the Department should apply adverse facts available to all sales, including RGM's further-manufactured sales of ready-mix concrete. The petitioner contends that the quantity and value data for RGM's concrete sales were taken from the same unverifiable documentation as the quantity and value data for RGM's cement sales. Because the Department lacks source documents to confirm the quantity and value of any of the products sold through RGM, the petitioner argues that the Department could not verify the extent to which RGM's sales were of subject merchandise and the extent to which they were of non-subject merchandise and, consequently, should not have used the data for either RGM's cement sales or its ready-mix concrete sales. The petitioner argues further that it appears as though most of the documents the Department examined in the context of verifying RGM's further-manufactured sales were not created and used by GCCC in the ordinary course of business and that none demonstrates that the quantity and value information concerning RGM's sales is reliable and accurate.

GCCC rebuts the petitioner's allegation pertaining to the documentation examined by the Department in the context of verifying RGM's sales of ready-mix concrete, arguing that the documents were in fact generated in the ordinary course of business and maintained in RGM's accounting and sales maintenance systems and that they demonstrate that the quantity and value of RGM's concrete sales are reliable and accurate. GCCC argues further that, for RGM's sales of concrete, it prepared separate and distinct documentation to support the quantity and value of concrete sales in order to demonstrate that the value added in the United States is likely to exceed substantially the value of the subject merchandise. This supporting documentation, GCCC contends, was verified by the Department without difficulties. Thus, GCCC concludes, the Department should reject the petitioner's claim that an adverse facts-available rate should be applied to RGM's sales of concrete.

Department's Position: We have reviewed the record of this review and, given our inability to verify the quantity and value of any of the products sold through RGM, we are unable to determine the reliability of the value-added information GCCC provided regarding RGM's further-manufactured sales.

In its November 6, 2002, questionnaire response, GCCC asserted that the value added to the subject merchandise due to further manufacturing into concrete "substantially exceeds the value of the cement" and requested that the Department use the weighted-average constructed export price (CEP) calculated on sales of subject merchandise sold to unaffiliated customers instead of deducting the value added from the concrete sales to determine U.S. price. Although GCCC prepared documentation to support the percentage of value added and the quantity and value of further-manufactured sales, we were unable to trace that documentation to detailed source documentation at verification.

Further, because RGM is the only U.S. subsidiary of GCCC identified as a further-manufacturer of the subject merchandise, there is no reliable information on the record to support the claimed value-added amounts in the United States as a result of further-manufacturing activities. Without such support and/or evidence, we are unable to determine that the value added in the United States is likely to exceed substantially the value of the subject merchandise. Absent the information to make that determination, we are unable to apply the special rule at section 772(e) of the Act.

GCCC took a calculated risk by not submitting a response to section E of the Department's September 19, 2002, questionnaire, which solicited information regarding further manufacturing of the subject merchandise in the United States, presumably based on its assumption that the special rule would apply (see GCCC's November 6, 2002, questionnaire response at page 55). Had this further-manufacturing information been provided and subsequently verified, we would have been able to calculate a CEP for the sales of the further-manufactured products. Without the detailed further-manufacturing data, however, the only information on the record is a value-added percentage which we could not verify. Because we do not have information with which to calculate the U.S. price net of the further-manufacturing costs, we have applied the adverse facts-available rate to all sales of cement and concrete by RGM.

Comment 8: The petitioner argues that the Department erred in choice of what to use as adverse facts available. According to the petitioner, the 73.74 percent rate that the Department applied to RGM's sales of subject merchandise in the Preliminary Results is not the highest published rate. Citing the Final Results of Redetermination Pursuant to Court Remand (September 27, 1996), aff'd, Cemex, S.A. v. United States, 20 CIT 1272 (1996), aff'd, 133 F.3d 897 (CAFC 1998), the petitioner argues that the highest published rate is the 109.43 percent rate the Department determined on remand in the 1991/1992 administrative review. The petitioner argues further that the Department applied this rate as adverse facts available in the 1993/1994 administrative review. Accordingly, the petitioner submits that the Department should review the selection of adverse facts available.

GCCC maintains that the Department should not have applied facts available, let alone adverse facts available, to RGM's cement sales.

Department's Position: We have reviewed our selection of the 73.74 percent rate that we applied to RGM's sales of subject merchandise as adverse fact available in the Preliminary Results. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998). Considering that the weighted-average margin we calculated on the collapsed entity's U.S. sales without an adverse inference approaches the same percentage as the adverse rate we used in the Preliminary Results, i.e., 73.74 percent, we find that the rate we applied in the Preliminary Results is not adverse.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Id. As discussed in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. We examined the 109.43 percent rate suggested by the petitioner but were unable to corroborate that rate. See the final results analysis memorandum, dated September 9, 2003.

Therefore, we relied on primary sources (i.e., actual margins calculated for sales made during the instant period of review) to determine an appropriate adverse facts-available rate. We selected the rate – 105 percent – which is the highest calculated rate in this review, excluding outliers. See the final results analysis memorandum, dated September 9, 2003. As this rate was determined based on the information reported by the collapsed entity, CEMEX/GCCC, for the current administrative review, it serves as an inherently reliable and reasonable rate to apply as adverse facts available. Therefore, for purposes of these final results, we have applied a rate of 105 percent to all of RGM's sales during the period of review.

7. Swap Sales

Comment 9: CEMEX argues that the Department understated the U.S. price for transactions involving exchanges of cement with one of its unaffiliated U.S. customers during the period of review. According to CEMEX, the Department assumed incorrectly that it made a sale to one of its unaffiliated U.S. customers in the transactions in question. CEMEX argues that, as the CEMEX Verification Report, dated May 6, 2003 (CEMEX Verification Report), makes clear, the Department reviewed its accounting records and confirmed that it did not make a sale in the transactions in question during the period of review; rather, it simply made an arrangement to exchange cement.

Citing sections 772(a) and 772(b) of the Act, CEMEX argues that the statute provides that U.S. price be based on the price at which the subject merchandise is first sold to an unaffiliated purchaser. CEMEX asserts that, in the absence of a sale between CEMEX and its unaffiliated customer, there is no selling price that satisfies the statutory definition of U.S. price as set forth under section 772 of the Act. CEMEX argues further that the price the Department used to value the cement that it exchanged with its unaffiliated customer was not a price based on sales of the subject merchandise during this review period. Rather, according to CEMEX, it was a price established between CEMEX and its unaffiliated customer for actual sales made prior to the period of review.

CEMEX argues that the prices at which it sold Mexican cement in Arizona represents a more appropriate basis for calculating U.S. price than the prices used by the Department in the Preliminary Results. CEMEX contends that the prices for these sales are of the subject merchandise, they are prices for sales in the same geographic market, and the Department verified the adjustments to these sales prices. For these reasons, CEMEX requests that the Department use the prices at which it sold Mexican cement in Arizona for calculating U.S. price for the transactions in question.

The petitioner argues that CEMEX's assertion that a sale did not take place with regard to the transactions in question is not supported by the law and the evidence on the record. The petitioner asserts that the statute defines CEP as the price at which the subject merchandise is first "sold" in the United States to an unaffiliated purchaser. Citing NSK Ltd. v. United States, 115 F.3d 965, at 974-975 (CAFC 1997) (NSK), the petitioner argues that the CAFC held that the terms "sale" and "sold" as used in the antidumping law should be construed in accordance with their commonly understood meaning. According to the petitioner, drawing upon both the dictionary meaning and the meaning as interpreted in earlier judicial decisions, the CAFC held that the term "sold" requires both a transfer of ownership to an unrelated party and consideration.

The petitioner argues that both elements of a sale are present in this case with respect to the transactions in question. According to the petitioner, CEMEX transferred property (i.e., cement) to its unaffiliated customer and it also received consideration in exchange for transferring the cement to its unaffiliated U.S. customer.

The petitioner also asserts that there is no question that a sale occurred every time CEMEX exchanged cement with its unaffiliated U.S. customer. The petitioner states that the only question is the price CEMEX received for these sales. According to the petitioner, the only information CEMEX provided with respect to the price it received for these transactions is the price it reported in its U.S. sales database. The petitioner argues that this is the price CEMEX reported in its internal financial records and it reflects the actual price that was established between CEMEX and its unaffiliated U.S. customer for past sales. The petitioner asserts that there is no evidence that this amount does not represent a price that would have prevailed between these parties during the period of review.

In addition, the petitioner argues that the Department verified that CEMEX used the price in question in its internal records consistently. The petitioner states that the Department also verified that the quantity and value of U.S. sales reported by CEMEX, including the transactions in question, reconciled to the audited financial statement of CEMEX's U.S. subsidiary, CEMEX Cement. For these reasons, the petitioner requests that the Department continue to use the price it used in the Preliminary Results for the transactions in question in its final calculations.

Department's Position: In NSK, 115 F.3d at 974-975, the Court held that the term "sold" requires both a transfer of ownership to an unrelated customer and consideration. In this case, the record evidence indicates clearly that both a transfer of ownership to an unrelated party and consideration were present with respect to the transactions in question. In its March 7, 2003, supplemental questionnaire response, CEMEX indicated that, during the period of review, it entered into an arrangement whereby it would exchange cement with an unaffiliated customer. We confirmed this arrangement during our verification and verified that CEMEX exchanged cement with its unaffiliated U.S. customer during the period of review. See CEMEX Verification Report at page 9. Thus, we find that, when CEMEX transferred cement to its unaffiliated U.S. customer, it transferred ownership of the subject merchandise and received consideration in the process. Therefore, contrary to CEMEX's assertion, we find that, with regard to these transactions, an actual sale did occur between CEMEX and its unaffiliated customer during the period of review.

With regard to price, during verification we found that the price CEMEX reported in its questionnaire responses for these transactions was the same price it reported in its internal financial records. We verified the appropriateness of this figure and found no discrepancies. At verification, CEMEX explained that this amount reflects a price established between CEMEX and its unaffiliated customer for actual sales made between the parties in the past. See CEMEX Verification Report. Given that we verified this price, it is a price CEMEX reported in its internal financial records, and it is the only price that CEMEX reported for these transactions, we find that it is reasonable to use the verified figure for the transactions in question in our final results.

8. Difference-in-Merchandise Adjustment

Comment 10: The petitioner raises three arguments regarding the difference-in-merchandise (DIFMER) adjustment for GCCC's sales of Type II LA cement. First, the petitioner argues that Department used an average variable cost for CEMEX's CPO 40 cement based on costs during the period of review but used separate cost figures for GCCC's Type II LA cement for 2001 and 2002. The petitioner asserts that the Department should use a consistent methodology comparing variable costs across the period of review for both types of cement.

Second, the petitioner argues that the Department's calculation of the DIFMER adjustment is distorted because the Department compared variable costs across all plants and companies. According to the petitioner, this distortion is due to variations in plant efficiency and differences in operations and cost structure between CEMEX and GCCC. The petitioner argues that the

Department should base the DIFMER calculation on the variable production costs for GCCC's Samalayuca plant because the Samalayuca plant is the only cement plant GCCC operated during the period of review that produced both Type II LA cement and Type V LA cement. According to the petitioner, by basing the DIFMER adjustment entirely on data from the Samalayuca plant, the Department would eliminate the distortions that are due to differences in plant efficiency and differences in CEMEX's and GCCC's cost-accounting methodologies. Citing the 1997/1998 and 1998/1999 administrative reviews, the petitioner argues that basing the DIFMER adjustment solely on the Samalayuca cost data is also consistent with the Department's precedent in prior administrative reviews.

Finally, the petitioner argues that, if the Department decides not to revise its DIFMER calculation, it should correct a ministerial error in the calculation of the DIFMER adjustment for GCCC's U.S. sales of Type II LA cement. The petitioner contends that the Department overlooked the fact that, while CEMEX's cost data was reported in pesos per metric ton, GCCC's cost data was reported in pesos per short ton. For the final results, the petitioner requests that the Department correct this discrepancy by converting GCCC's cost data to a metric-ton basis.

GCCC states that it agrees with the petitioner's assertion that the Department should use a consistent methodology comparing period-wide variable cost for both cement types (i.e., CPO 40 and Type II cement). GCCC states that the Department should use an average cost for Type II LA cement based on the period of review rather than costs for each year.

With regard to the petitioner's second argument, GCCC argues that the Department should reject the petitioner's assertion that the calculation of the DIFMER adjustment is distorted. GCCC argues that in the past two reviews the Department has based the DIFMER adjustment on the difference in variable costs between GCCC's Type II and CEMEX's CPO 40 cement. GCCC argues further that the petitioner did not challenge this treatment in those reviews. GCCC states that the Department should not alter the variable cost comparisons it used as the basis for the DIFMER calculation in the Preliminary Results. According to GCCC, this approach compares the costs for the products actually used in the Department's matching calculation and is consistent with the Department's practice in the 1999/2000 and 2000/2001 administrative reviews, which involved the same product comparisons.

GCCC asserts that, if the Department does not compare the variable costs for Type II and Type V cement produced at the Samalayuca plant, then the Department should correct the ministerial error in the DIFMER calculation. GCCC states that it agrees with the petitioner's claim that the Department should correct the discrepancy between the basis on which the variable costs were reported by GCCC and CEMEX.

Department's Position: We have reviewed information on the record and find that differences in CEMEX's and GCCC's plant efficiencies and cost structures with regard to the production of cement at different plants may result in distortions in the DIFMER calculation. See GCCC's March 7, 2003, submission at Exhibits 33 and 34 and CEMEX's February 24, 2003, submission at Exhibit 11. Therefore, we find it appropriate to explore an alternative DIFMER calculation in this case.

The record evidence indicates that GCCC produced both Type V LA and Type II LA cement at the Samalayuca cement plant during the period of review. Therefore, in order to isolate variable cost differences due strictly to the differences in the physical characteristics between the two cement types being compared (i.e., Type V LA and Type II LA), for these final results of administrative review we used the production costs incurred at the Samalayuca cement plant because it produced commercial quantities of both Type V LA and Type II LA cement during the period of review. Because we have changed our DIFMER calculation from that we used in the Preliminary Results, we do not need to address the ministerial error alleged by the petitioner.

9. Selling Expenses

Comment 11: The petitioner argues that the Department should deduct the losses incurred on CEMEX's factoring agreement for U.S. accounts receivable as a direct selling expense. The petitioner states that CEMEX sold its U.S. accounts receivable for cash and recorded the losses on the sale as a selling expense. According to the petitioner, CEMEX has not reflected this expense anywhere in the adjustments it reported to the Department for this review. The petitioner asserts that the Department should quantify this expense and deduct it as a direct selling expense in determining the CEP of CEMEX's U.S. sales.

Citing Certain Hot-Rolled Flat Rolled Carbon Quality Steel Products from Brazil; Final Results of Antidumping Administrative Review and Termination of Suspension Agreement, 67 FR 6226 (February 11, 2002), the petitioner argues that, under the Department's two-part analysis, this expense is a direct selling expense because it results from and bears a direct relationship to the sales at issue and is traceable in CEMEX's financial records to the sales of the goods under review. In addition, according to the petitioner, such losses directly affected the price CEMEX otherwise would have received in making each of these sales.

The petitioner asserts that the Department has more than one option for quantifying this expense. The petitioner suggests that the Department either capture the difference between the invoiced price and the cash received by CEMEX on a transaction-specific basis or calculate a direct selling expense by allocating the total loss CEMEX incurred on the factoring arrangement over total U.S. sales. The petitioner suggests changes to the Department's calculations to make the changes for which it argues.

CEMEX disputes the petitioner's claim that it has not reflected this expense anywhere in the adjustments it reported to the Department in this review. According to CEMEX, the expenses are reflected in the reported U.S. indirect selling expenses as part of the corporate expenses reflected in Exhibit C-12 of its November 22, 2002, Section C questionnaire response and the petitioner's suggested changes to the calculations would have the effect of double- counting the selling expense as part of indirect selling expenses and as an unwarranted additional adjustment.

CEMEX asserts that the petitioner's argument that the losses attributable to the sale of its account receivables should be treated as a direct selling expense is also unfounded. CEMEX states that its activities in the United States encompass a range of activities including the sale of cement imported from Mexico and third countries as well as cement produced in the United States. According to CEMEX, its U.S. operations also include sales of aggregate materials and the production and sale of cement and concrete. CEMEX contends that, to assume, as petitioner would have the Department do, that the account receivables that were sold related directly to sales of subject merchandise is simply unfounded speculation.

CEMEX states that it has substantial interests in the United States. Therefore, according to CEMEX, the petitioner's assertion that the losses on the sales of CEMEX's account receivables were related directly to CEMEX's U.S. sales because they would not have occurred in the absence of such sales has no factual basis. CEMEX contends that, contrary to the petitioner's claims, the administrative record provides substantial support for treatment of the losses associated with the sale of the U.S. account receivables as part of indirect selling expenses.

Finally, CEMEX contends that, even if the Department were to accept the petitioner's argument, the petitioner's suggested changes to the calculations are incorrect because they do not take into account rebate expenses. CEMEX requests that the Department reject the petitioner's argument and make no changes for the final results with regard to this issue.

Department's Position: We find no evidence on the record to suggest that CEMEX did not account for this expense anywhere in the adjustments it reported in its submissions for this review.

With regard to the petitioner's argument that we should quantify this expense and deduct it as a direct selling expense, there is not enough information on the record to quantify expenses related directly to sales of subject merchandise under review, and therefore we have not made any changes with respect to this issue for these final results of review.

We intend to investigate this issue further in the subsequent administrative review.

Comment 12: The petitioner argues that the Department should recalculate the indirect selling expenses incurred on GCCC's U.S. sales in order to account for a discrepancy between the indirect selling expenses GCCC reported to the Department and those reported in its audited financial statement. Citing Aramide Maatschappij V.o.F. v. United States, 901 F. Supp. 353, 360 (CIT 1995) (Aramide), the petitioner argues that, because GCCRG is a sales company, GCCC's reported U.S. indirect selling expenses should capture all of GCCRG's general and administrative expenses as well as its selling expenses. The petitioner states that there is a discrepancy between the selling, general, and administrative (SG&A) figures in GCCRG's audited income statement and the amounts reported by GCCC for U.S. indirect selling expenses.

Notwithstanding this discrepancy, the petitioner asserts, GCCC claims that its reported U.S. indirect selling expenses include GCCRG's SG&A expenses as well as its terminal operating costs. The petitioner contends that GCCC has offered no explanation for this discrepancy and requests that the Department recalculate the indirect selling expense ratio directly from GCCRG's audited financial statement for the final results.

GCCC refutes the petitioner's allegation of a discrepancy between the indirect selling expenses it reported to the Department and those reported in its audited financial statement. GCCC argues that the petitioner misclassifies GCCRG as a sales company although it has been identified repeatedly as a manufacturer of portland cement with a plant in Tijeras, New Mexico. According to GCCC, because GCCRG is a cement producer as well as a seller of cement, the general and administrative expenses in GCCRG's financial statements reflect the expenses associated with production as well as selling. Accordingly, GCCC argues that using the numbers provided in the financial statements would distort and unreasonably overstate the SG&A expenses related to GCCRG's selling operations.

Department's Position: We find no indication that GCCC omitted from the record any indirect selling expenses incurred on sales of subject merchandise in the United States. The Court determined in Aramide that, "{f}or purposes of calculating indirect selling expenses, Commerce generally will include {general and administrative (G&A)} expenses incurred by the United States selling arm of a foreign producer." See Aramide, 901 F. Supp. at 360. In this case, GCCC reported and we verified the indirect selling expenses incurred by GCCRG on sales of subject merchandise. Specifically, as stated in the GCCC verification report at page 19, GCCC's "{indirect selling expenses} incurred in the United States include selling, general, and administrative (SG&A) expenses and terminal operating costs." As such, we find that GCCC reported the SG&A expenses incurred by GCCRG on U.S. sales of subject merchandise properly.

With respect to the petitioner's argument that GCCRG is a sales company and, as such, all of its SG&A expenses, as provided in its financial statements, should be included in the reported U.S. indirect selling expenses, we have reviewed the information contained on the record of this review and find that GCCRG has been identified as both a seller and producer of cement. As we stated in the GCCC Verification Report, however, GCCRG "acts as the importer of record on all sales to the Unites States (including sales to RGM), produces its own cement, and maintains sales offices in El Paso, Texas, and Albuquerque, New Mexico" (emphasis added). See GCCC Verification Report at page 4. Because the cement GCCRG produced in the United States does not constitute subject merchandise and because GCCRG incurs SG&A expenses on the sale and production of that cement, we find that it would be inappropriate to recalculate the indirect selling expense ratio directly from GCCRG's audited financial statements.

Comment 13: The petitioner argues that the Department should revise GCCC's reported U.S. indirect selling expenses to account for the expenses of GCCRG's corporate parent, GCC of America, Inc. (GCC of America). The petitioner states that, although GCCRG is a wholly owned subsidiary of GCC of America, GCCC did not include in its reported indirect selling expenses the SG&A expenses incurred by GCC of America in the United States. Citing Aramide, the petitioner asserts that the Department's longstanding practice is to include the parent corporation's expenses incurred on behalf of subsidiaries in the reported indirect selling expenses. In the absence of any information from GCCC regarding the SG&A expenses incurred by GCC of America on behalf of GCCRG, the petitioner argues that the Department must resort to facts available.

GCCC asserts that GCC of America is the affiliated holding company that owns GCCRG and that, as a result, it does not incur any expenses on behalf of GCCRG. GCCC maintains that the SG&A expenses identified in GCC of America's consolidated audited financial statements are those of GCCRG and the two other companies that GCC of America owned during the period of review, RGM and GCC Dacotah. Thus, GCCC argues, the Department should reject the petitioner's request to include SG&A expenses incurred by GCC of America and apply facts available in this case.

Department's Position: In this review, GCCC has identified GCC of America as an affiliated holding company in each of its questionnaire responses. In addition, at verification, we reviewed the activities of GCCC's U.S. affiliates and found that GCC of America is a "wholly owned holding company {which} owns three affiliated companies in the United States, GCCRG, RGM, and GCC Dacotah." See GCCC Verification Report at page 4. We also examined GCC of America's consolidated financial statements and found no discrepancies with the information GCCC reported regarding its affiliates in the United States. We have reviewed the record in light of the petitioner's allegation that GCCC did not account for the SG&A expenses incurred by GCC of America in the reported indirect selling expenses incurred in the United States, and we find that there is no evidence indicating that GCC of America incurred any indirect selling expenses on behalf of GCCRG. Therefore, we find that it would be inappropriate to revise GCCC's reported U.S. indirect-selling expenses to account for GCC of America's SG&A expenses.

<u>Comment 14</u>: According to the petitioner, in light of GCCRG's role in the sale of subject merchandise in the United States, the Department should, at the very least, recalculate the indirect selling expense factors applied to sales made by GCCRG. The petitioner contends that GCCC should not have removed amounts pertaining to depreciation of the marketing and traffic departments from the pool of indirect selling expenses for GCCRG. According to the petitioner, these amounts do not appear to be captured anywhere else in GCCC's reported data even though, because the depreciation expenses are incurred by a sales entity and involve sales-related assets, they are indirect selling expenses. The petitioner also disagrees with GCCC's removal of G&A expenses from GCCRG's terminal-specific indirect selling expenses when it has provided no reason why the G&A expenses of the sales-related entity should be excluded from its indirect selling expenses.

Other than maintaining that GCCRG both produces and sells cement in the United States, GCCC did not comment on these issues.

Department's Position: With respect to the petitioner's argument that GCCC should not have removed amounts pertaining to depreciation of the marketing and traffic departments from the pool of indirect selling expenses for GCCRG, we agree that, as GCCRG's marketing and traffic departments are involved in the sale of subject merchandise in the United States, depreciation of the machinery and equipment in those departments should be included as an expense incurred on such sales. Based on information provided in GCCC's November 6, 2002, questionnaire response at page A-15 and in Exhibit A12, GCCRG provides numerous services on sales of subject merchandise to the unaffiliated U.S. customer, including inventory maintenance, freight and delivery arrangements, market research, advertising, after-sales service, customer approval, sales promotion, strategic and economic planning, solicitation of orders, and sales forecasting. Thus, as expenses incurred in GCCRG's marketing and traffic departments would be attributable to sales of subject merchandise, we have included amounts pertaining to depreciation of equipment maintained by the marketing and traffic departments in the calculation of indirect selling-expense factors.

With respect to the petitioner's argument that GCCC should not have removed G&A expenses from GCCRG's terminal-specific indirect selling expenses, we find that, although GCCRG is involved in both the production and sale of non-subject merchandise and the sale of subject merchandise in the United States, we cannot disregard G&A expenses from the terminal-specific allocation of indirect selling expenses. Based on GCCC's description of the services performed by GCCRG on sales of subject merchandise in the United States, it is clear that GCCRG incurred G&A expenses on those sales. There is not enough information on the record, however, to distinguish expenses incurred on sales of subject merchandise from sales of non-subject merchandise. As such, we find that it is appropriate to include GCCRG's terminal-specific G&A expenses in the indirect selling expenses and to allocate the indirect selling expenses over the total tons handled at all terminals during the period of review. We find that this methodology will result in the least amount of distortion to our calculation of CEP because, by doing so, we have allocated terminal-specific expenses incurred on sales of both subject and non-subject merchandise over all merchandise handled by the terminals.

Comment 15: The petitioner argues that in the Department's May 6, 2003, verification report concerning CEMEX at Exhibit 16, the indirect selling-expense data for 2001 and 2002 are inconsistent in that the indirect selling-expense factors for 2002 do not include certain expenses. The petitioner asserts that there is no apparent reason why CEMEX incurred such expenses in 2001 but not in 2002. According to the petitioner, the absence of these expenses results in a distortion of CEMEX's indirect selling-expense factor for 2002 compared to 2001. The petitioner contends that, in order to correct this omission, the Department should assign these expenses to 2002 sales based on the ratio of such expenses to sales in 2001.

The petitioner also asserts that the Department's normal methodology is to allocate indirect selling expenses relative to sales value and not on the per-short-ton basis provided by GCCC and CEMEX. According to the petitioner, a value-based allocation is more accurate because it assigns high selling expenses to higher-valued products and lower selling expenses to lower-valued products. The petitioner suggest changes to the Department's calculations to reflect its argument.

CEMEX argues that it explained during verification that, following its acquisition of Southdown Cement, CEMEX reorganized its U.S. structure and expenses. As a result of this reorganization, according to CEMEX, expenses that were captured previously by offices in Arizona were now captured at the headquarters in Houston, Texas.

CEMEX argues that the Department conducted a thorough verification of CEMEX's reporting of its indirect selling expenses. CEMEX asserts that the Department's verification report provides overwhelming evidence that the Department reviewed CEMEX's records and confirmed that it reported indirect selling expenses for both 2001 and 2002 accurately.

GCCC did not comment on the petitioner's argument that the Department should reallocate indirect selling expenses relative to sales value. CEMEX rebuts the petitioner's argument on this point, asserting instead that CEMEX reports its indirect selling expenses on a per-ton basis in the normal course of business and that it has done so in every review since the 1994/1995 administrative review. CEMEX submits that its current reporting method assigns the indirect selling expenses to the subject merchandise more accurately than would the petitioner's proposed percentage-of-sales approach and argues that the petitioner has not offered any argument why CEMEX's reporting methodology is distortive. CEMEX maintains that the Department should dismiss the petitioner's claim that it recalculate the indirect selling expenses as a percentage of sales value.

<u>Department's Position</u>: At the U.S. verification, CEMEX officials explained that, due to the reorganization of its U.S. operations, expenses that were captured previously by offices in Arizona were now captured at the headquarters in Texas. During verification we examined CEMEX's indirect

selling and warehousing expenses and verified that expenses (marketing and selling and general administrative) incurred in earlier reviews at the offices in Arizona were now allocated under CEMEX's corporate expenses. Thus, these expenses are being captured under CEMEX's corporate expenses. See May 6, 2003, CEMEX Verification Report at page 6. Therefore, we find no reason to adopt the petitioner's suggested changes for these final results of review.

With respect to the petitioner's second argument, we find no evidence that the respondent's per-ton methodology for reporting indirect selling expenses is less accurate than the value-based allocation methodology proposed by the petitioner. While our normal practice is to allocate indirect selling expenses relative to sales value, we may accept an alternative methodology if we determine that the methodology is reasonable and non-distortive. Based on information on the record we find that the respondent's per-ton methodology for reporting indirect selling expenses is reasonable and not distortive because there is no significant difference in the values of the products. As such, there is no significant difference between allocating indirect selling expenses using a value-based methodology or on a per-short-ton basis. Therefore, for these final results we have accepted the respondent's methodology for reporting indirect selling expenses.

10. Cash Deposits

In the Preliminary Results, we indicated that we were considering whether it would be appropriate to establish a per-unit cash-deposit requirement for future entries of subject merchandise from CEMEX/GCCC. We invited interested parties to comment on this issue. The petitioner in its case brief indicates that it supports establishing a per-unit cash-deposit requirement for

CEMEX/GCCC. The respondent opposes any change to the Department's established cash-deposit calculation methodology. We have summarized their comments and responses below.

Comment 16: The petitioner asserts that, as indicated by the Department in the Preliminary Results, there is a consistent and significant discrepancy in this administrative review and other recent reviews between the percentage rate of cash deposits of estimated antidumping duties and the percentage rate of assessed duties determined by the Department. According to the petitioner, the cause of this discrepancy is the understatement of entered customs values on the respondent's U.S. sales, all of which are CEP sales to affiliated U.S. importers. More specifically, the petitioner alleges that the respondent and its affiliated U.S. importer have distorted the transfer price in a way that yields an undercollection of estimated antidumping duty deposits. The petitioner contends that the purpose of the respondent's understatement of entered values is to deflate its cash deposits artificially which, according to the petitioner, provides the respondent and its affiliate U.S. importer with an improper economic benefit. Citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Administrative Review, 67 FR 63877, 63886 (October 16, 2002) (Freshwater Crawfish), the petitioner argues that the Department has used alternative methods in other cases for calculating cash-deposit rates where it found it to be appropriate.

The petitioner argues that the *ad valorem* methodology that the Department used to determine the weighted-average margin in this case does not produce a reasonably accurate estimate of the final, assessed antidumping duties. The petitioner argues further that the resulting undercollection of cash deposits does not serve the fundamental purpose of the cash- deposit requirement of providing security for final assessment and immediate relief from dumped imports. The petitioner asserts that the Department has ample authority to remedy the inadequacy of the cash deposits by calculating a per-ton cash-deposit dollar amount. According to the petitioner, when applied against the tons that are entered, this methodology will achieve an accurate estimate of the final antidumping duties to be collected. For these reasons, the petitioner requests that the Department establish a deposit requirement for future entries of subject merchandise using the dollars-per-metric-ton methodology as discussed in the Department's preliminary results analysis memorandum.

CEMEX and GCCC assert that the petitioner relies on the same arguments it has used in the past and offers nothing new. CEMEX and GCCC argue that, in Freshwater Crawfish, the Department decided to direct the U.S. Bureau of Customs and Border Protection (Customs) to collect cash deposits and assess antidumping duties on a per-kilogram basis because there was not only a substantial difference between the U.S. sales price for crawfish and the average entered value but several of the respondents did not report the entered value for their sales. CEMEX and GCCC claim that, in reaching its determination in that case, even the Department stated, "the facts in this case are unusual, and thus require a different method of collecting cash deposits and assessment of duties." Thus, according to CEMEX and GCCC, the facts of this case are distinguishable from the facts found in Freshwater Crawfish.

With regard to the petitioner's transfer-price argument, CEMEX contends that the petitioner does not acknowledge that the Department verified the transfer prices the respondent reported to

Customs. In addition, CEMEX asserts, the U.S. Internal Revenue Service discourages importers from overstating transfer prices since it would result in reducing income tax liability. CEMEX argues that, by changing its longstanding practice, the Department would encourage importers to overstate the entered value, thereby forcing importers to choose the lesser of two evils. For these reasons, the respondent requests that the Department continue to adhere to its normal *ad valorem* methodology in determining the cash-deposit rate for implementation upon publication of the final results.

CEMEX and GCCC argue that the statute only requires that the calculation of cash- deposit rates be reasonable, not absolutely accurate. CEMEX and GCCC argue that the law recognizes that cash deposits are nothing but estimates of future dumping liabilities. According to CEMEX and GCCC, the antidumping statute provides specifically for the collection of the underpayment of duties, together with interest, upon assessment. CEMEX and GCCC contend that any difference between deposited and assessed duties will be collected or refunded with interest. CEMEX contends that, because of this, the courts have rejected arguments that the cash-deposit rate be precise, and have described them as "nothing but estimates...," citing

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36554 (July 12, 2001).

CEMEX and GCCC contend that, as a result of the prior eleven administrative reviews, the Department has consistently applied its normal methodology and calculated an *ad valorem* cash-deposit rate. According to CEMEX, in the 1997/1998 administrative review, the Department concluded that the entered values used to transfer the product to the United States were in some instances incorrect and calculated assessment rates based on a per-unit methodology. Significantly, according to CEMEX, even in that review, the Department did not deviate from its normal methodology of calculating the prospective cash-deposit rate on an *ad valorem* basis. CEMEX asserts that the factual concern in the 1997/1998 review regarding incorrect transfer prices and entered values are not present in this review. CEMEX asserts that the Department verified the transfer prices and determined them to have been reported to the Department correctly with only a insignificant discrepancy.

The petitioner rebuts that CEMEX and GCCC provide no reason why the Department should not rely on the dollars-per-ton methodology, rather than an *ad valorem* methodology, to determine the cash-deposit rate in light of the great discrepancy in this review and in prior reviews between the cash-deposit rate and the assessment rate and between the entered value and the U.S. sales price. The petitioner argues that the fact that the Department was able to confirm that the respondent reported the same entered values to Customs that it reported to the Department is irrelevant. According to the petitioner, it does not mean that the reported values represent the correct values for customs purposes. Moreover, the petitioner argues that it also does not explain the great discrepancy between the entered values and the reported U.S. net sales price or the discrepancy between the cash-deposit rate and the assessment rate. The petitioner contends that, even assuming that these discrepancies were not the result of CEMEX's and GCCC's understatement of entered values, they necessarily must be remedied in order to provide a reasonably accurate estimate of the assessed duties. For these reasons, the petitioner requests that the Department calculate cash-deposit rates for future entries of subject merchandise using the dollars-per-metric-ton methodology as discussed in the Department's preliminary results analysis memorandum.

Department's Position: As we stated in the Preliminary Results, in conducting recent administrative reviews of the respondent, we have observed a pattern of significant differences between the weighted-average margins and the assessment rates. See preliminary analysis memorandum dated May 5, 2003, at attachment 3. This pattern of differences indicates that the collection of estimated antidumping duties using a rate based on net U.S. price results in the undercollection of estimated antidumping duties at the time of entry. Consequently, the undercollection of estimated antidumping duties does not serve the fundamental purpose of the statutory cash-deposit requirement of providing security for final assessment and immediate relief from dumped imports. Therefore, in order to estimate the antidumping duties in this case accurately, we find it appropriate to apply a per-unit cash-deposit amount of $61.60 per metric ton to entries of subject merchandise from CEMEX/GCCC following the publication of these final results of review. See final results analysis memorandum dated September 9, 2003.

While we agree with the respondent that our normal practice is to calculate the cash- deposit rate on an *ad valorem* basis, we find that this pattern of differences between the weighted-average margin and the assessment rates warrants a deviation from our standard practice. While the statute is silent with respect to the methodology by which we will calculate assessment rates (see Federal Mogul Corp. v. United States, 918 F. Supp. 386, 404 (CIT 1996)), the application of a different methodology as a result of this review does not render our methodology inconsistent with the statute. The per-unit assessment figure we have calculated represents a more accurate reflection of the estimated antidumping duties and, upon completion of this review, we will direct Customs to apply the resulting quantity-based amount against the quantity of subject merchandise entered by the importer to satisfy the cash-deposit requirement. 11. Interest Rate for Credit Expenses

Comment 17: The petitioner argues that, because CEMEX did not report its U.S.-denominated short-term borrowings, the Department should base the interest rate on facts available. According to the petitioner, contrary to CEMEX's claim that it had no short-term borrowing during the review period, the evidence on the record demonstrates that CEMEX did have short-term U.S. dollar loans during the review period. The petitioner asserts that, as a result, CEMEX was obligated by the Department's practice and the instructions in the Department's questionnaire to report its weighted-average interest rate on those loans.

According to the petitioner, contrary to the Department's instructions, CEMEX did not provide information in its November 25, 2002, questionnaire response with respect to whether it had any short-term borrowings in U.S. dollars during the period of review and, if it did, what the interest rate was. The petitioner asserts further that, although CEMEX used published London Interbank Offering Rates (LIBOR) as the basis for calculating credit expenses for its U.S. sales, it did not provide information to establish that it had received or was qualified to receive the LIBOR rate.

The petitioner contends that CEMEX's assertion in its March 7, 2003, supplemental questionnaire response that neither it nor its United States affiliates had any short-term U.S. dollar borrowings during the instant review contradicts information provided in the verified financial statements in CEMEX's 2001 Annual Report, which, according to the petitioner, show clearly that CEMEX had short-term debt denominated in dollars in 2001 and 2002.

The petitioner asserts that, in the 2000/2001 administrative review, the Department found that the short-term debt in CEMEX's financial statements includes the current maturities of long-term debt and that it is the Department's practice to exclude long-term loans from the calculation of interest rates for U.S. credit expenses. According to the petitioner, this finding was the sole basis for the Department's conclusion in the 2000/2001 administrative review that CEMEX did not have U.S.-denominated, short-term borrowings during the period of review. The petitioner states that the Department's reliance on this statement to find that CEMEX had no short-term debt in dollars reflects a misunderstanding by the Department of CEMEX's statement, interpreting it to mean that all of CEMEX's short-term debt in 2001 represented the current maturities of long-term debt. The petitioner claims that CEMEX's 2001 Annual Report indicates that the information on the total amounts of CEMEX's short-term debt by currency includes the current maturities of long-term debt. Thus, the petitioner asserts, only a portion of the total amount of short-term debt denominated in dollars listed in the 2001 Annual Report consisted of the current maturities of long-term debt. The petitioner states that the rest must have consisted of actual short-term debt denominated in dollars. The petitioner states that these facts establish that CEMEX had short-term debt denominated in dollars during the period of review.

The petitioner argues that, because CEMEX did not cooperate in providing information that the Department requested and that was available to CEMEX with respect to the interest rate for its dollar-denominated loans, the Department should use the rate GCCC reported as its source of facts available. The petitioner contends that this rate would not affect CEMEX adversely and, because CEMEX and GCCC are closely related companies that the Department has collapsed for purposes of determining the dumping margin, GCCC's reported rate would be the closest surrogate for the rate that CEMEX did not provide.

The petitioner argues further that, even if the Department does not use GCCC's interest rate as facts available, the Department must still reject CEMEX's reported LIBOR rate. Instead, the petitioner contends, precedent dictates that the Department should use the Federal Reserve's interest rate for the period of review.

CEMEX disputes the petitioner's arguments, asserting instead that CEMEX informed the Department in its supplemental questionnaire, which the Department verified, that it had no short-term dollar loans. CEMEX contends that, contrary to the petitioner's assertions, the Department's verification report states expressly that the Department examined CEMEX's financial statements and found no indication that CEMEX had U.S. dollar short-term borrowings. CEMEX argues that, in the absence of short-term dollar loans, it calculated imputed credit costs and inventory carrying costs based on the interest rate it paid to a financial institution when it sold its account receivables.

CEMEX claims that the petitioner's arguments are based upon a strained reading and a misunderstanding of the administrative record and the company's questionnaire responses. CEMEX argues that its 2001 Annual Report indicates clearly that the short-term debt in CEMEX's financial statements includes the current maturities of long-term debt. According to CEMEX, for the final results of the 1994/95, 1995/96, and 2000/01 administrative reviews, the Department rejected the use of an interest-rate calculation that included the current portion of long-term loans. Thus, CEMEX contends, contrary to the petitioner's assertion, there is no evidence on the record indicating that CEMEX had short-term dollar loans and, in fact, the Department has substantial evidence supporting its determination that CEMEX reported correct information pertaining to the interest rate for its U.S. credit expenses.

Department's Position: In our February 14, 2003, supplemental questionnaire we asked CEMEX to confirm whether it had any short-term U.S. dollar borrowings during the period of review. In its March 7, 2003, supplemental questionnaire response at page 52, CEMEX stated that it did not have any short-term U.S. dollar borrowing during the review period. While at our U.S. verification we examined the financial statement of CEMEX Cement Inc. (CEMEX's U.S. subsidiary) and confirmed that CEMEX's U.S. subsidiary had no short-term borrowings during the period of review. See May 6, 2003, CEMEX Verification Report at page 6. After examining the record more closely, however, we find evidence that indicates CEMEX did have short-term U.S. dollar borrowings during the period of review. See CEMEX's November 6, 2002, Section A questionnaire response at Exhibit 12. Footnote 10 of CEMEX's 2001 Annual Report and consolidated financial statements indicates that short-term debt in U.S. dollars includes the current maturities of long-term debt. While our normal practice is to exclude long-term loans from the calculation of interest rates for U.S. credit expenses, this evidence on the record indicates that only a portion of CEMEX's short-term borrowings represents current maturities on long-term loans. See CEMEX's November 6, 2002, Section A questionnaire response at Exhibit 12, footnote 11. Based on this information, we determine that CEMEX did have short-term

U.S. dollar loans during the period of review apart from current maturities of long-term debt. Therefore, because CEMEX did not provide specific information on its short-term loans, we determine that, in accordance with section 776(a)(2)(A)of the Act, the use of facts available is appropriate. We also determine that, in accordance with section 776(b) of the Act, an adverse inference is appropriate in determining the interest rate for CEMEX's imputed credit expenses and inventory carrying costs on U.S. sales because it did not act to the best of its ability to comply with the request we made concerning short-term loans in the supplemental questionnaire. As we stated above, we asked CEMEX to confirm whether it had any short-term U.S. borrowings during the period of review. Even though CEMEX indicated in its financial statements that it did have short-term debt apart from the current maturities of long-term debt, it claimed in its supplemental questionnaire response that it did not have any short-term debt during the period of review. Because this information originated from CEMEX's own published and audited financial statements, we find that CEMEX could have provided the requested information but did not do so. Therefore, for the final results of review, as adverse facts available, we have used the weighted-average interest rate reported by CEMEX's affiliated party, GCCC, in lieu of the LIBOR-based interest rate CEMEX provided in the calculation of credit expenses and inventory carrying cost for CEP. GCCC's weighted-average interest rate is the best surrogate rate to use in this case because we have verified its accuracy and it is the only rate on the record.

12. Ministerial Errors

a. <u>Arm's-Length Test</u>

Comment 18: CEMEX asserts that, in its March 7, 2003, supplemental response, it provided a concordance table to identify unique customers for each individual customer code reported in the home-market sales file. CEMEX contends that, in the Preliminary Results, the Department inadvertently did not use the new field (CUSUNIQH) it created when conducting the arm's-length-test. CEMEX requests that the Department use for the final results the unique customer code field when conducting the arm's-length test.

The petitioner agrees with CEMEX that the unique customer code variable is the more appropriate customer code for the Department to use in applying the arm's-length test. The petitioner asserts that the Department must recognize that the reported customer codes are not unique by selling company (i.e., CEMEX and GCCC). As a result, according to the petitioner, different customers are designated by the same customer code and the Department should ensure that it does not treat sales transactions to different customers as if they were made to the same affiliated customer.

Department's Position: We agree and have made the appropriate changes to our calculations. For more information, see final results analysis memorandum dated September 9, 2003.

b. Pre-Sale Warehousing and Indirect Selling Expenses

Comment 19: GCCC argues that the Department's deduction of pre-sale warehousing expenses from all U.S. sales instead of only for inventoried sales was in error and requests that the Department alter its calculations accordingly.

According to the petitioner, GCCC provides no explanation as to why this should be considered a ministerial error and that the Department's approach is an unavoidable consequence of

GCCC's expense allocation methodology for U.S. pre-sale warehousing expenses. The petitioner asserts that GCCC allocated terminal warehousing expenses over the total sales quantity for each terminal, including both sales from inventory and sales that were not stored in inventory. The petitioner asserts further that, in order to avoid a distortion in the calculation, any calculated factor or expenses must be applied on the same basis on which it was allocated. Should the Department adopt GCCC's proposed change to the calculation, the petitioner argues that it must also reallocate the expenses over a denominator that excludes sales not from inventory. According to the petitioner, however, the necessary information needed to perform this alternative allocation does not exist on the record of this review and, thus, the Department must continue to assign warehousing expenses in GCCC's U.S. sales database on the same basis on which such expenses were allocated.

Department's Position: We have reviewed the information on the record of this review and find that there is no evidence indicating that, contrary to GCCC's description of its U.S. sales process and to our findings at verification, merchandise sold to GCCC's direct-ship customers was ever stored in GCCRG's inventory. As GCCC stated in its November 22, 2002, questionnaire response, "GCCRG does not provide warehousing services to specific customers. Instead, other than the customers that receive direct shipments of cement from the Samalayuca plant, all sales of GCCC cement to U.S. customers are made out of inventory" (emphasis added). Further, we also confirmed at verification that, for direct-ship sales, the merchandise went from the Samalayuca plant to the border and then directly to the unaffiliated U.S. customer. At no time did the merchandise associated with direct-ship sales go to a GCCRG warehouse or into its inventory. Thus, the "Total Tons Handled by Terminals" figures GCCC used in its calculation of pre-sale warehousing expenses did not include merchandise sold to its direct-ship customers.

As such, contrary to the petitioner's assertion, we have allocated pre-sale warehousing expenses only to GCCC's sales from inventory without causing a distortion in our calculation of the margin.

Comment 20: GCCC argues that, in applying recalculated U.S. indirect selling expenses, the Department did not add RGM's indirect selling expenses to cement sales by RGM and requests that the Department alter its calculation accordingly.

The petitioner agrees with GCCC that the Department made an inadvertent error in this instance but indicated that correction of this error would be irrelevant if the Department applies adverse facts available in the manner urged by the petitioner.

Department's Position: Due to our application of adverse facts available to all of RGM's sales, we have not addressed this issue.

Comment 21: According to GCCC, in the Preliminary Results, the Department recalculated GCCRG's indirect selling expenses and applied them to sales made from the El Paso and Albuquerque terminals and did not assign values for indirect selling expenses for sales from the Tijeras plant, presumably because the Tijeras plant is only a warehouse for bag cement with no selling functions provided at the warehouse location. As a result, GCCC contends, the Department used the amounts for indirect selling expenses that GCCRG reported in the U.S. sales database as the expenses for the Tijeras plant. GCCC requests that the Department alter its calculations so that it does not apply the indirect selling expenses to sales from the Tijeras plant.

The petitioner states that, while it agrees with GCCC's observation that the Department inadvertently assigned indirect selling expenses to sales from the Tijeras plant, it does not agree with GCCC's proposed changes to the calculations. According to the petitioner, such changes would assign zero indirect selling expenses to the Tijeras plant. The petitioner argues that GCCC's U.S. sales are CEP sales and that all such sales, including those from Tijeras, necessarily incur indirect selling expenses. The petitioner requests that the Department capture all SG&A expenses in the calculated indirect selling expenses.

Department's Position: All CEP sales necessarily incur indirect selling expenses and, as such, GCCRG's sales of subject merchandise through the Tijeras plant are not exempt from these expenses. Upon reviewing the record, we determine that there is not enough information upon which we can rely to allocate terminal-specific indirect selling expenses without causing a distortion in the calculation. Therefore, we find that it is more appropriate to allocate indirect selling expenses incurred in all of GCCRG's terminals to the total amount of merchandise handled by those terminals by year and we have altered our calculations accordingly.

Comment 22: According to GCCC, in the Preliminary Results, the Department applied GCCRG's pre-sale warehousing expenses and indirect selling expenses on an annual basis by terminal/business-unit instead of using the consolidated expenses incurred by all terminals. GCCC argues that the Department should either use GCCC's reported pre-sale warehousing expenses and indirect selling expenses or recalculate them to allocate them only to subject merchandise.

GCCC argues that, in the instant review, it reported its pre-sale warehousing and U.S. indirect selling expenses consistently with its approach in previous reviews. GCCC asserts that the Department has verified GCCC's approach and accepted the calculation of these expenses consistently and, as such, should accept GCCC's approach to reporting these expenses in this review. GCCC asserts further that, if the Department uses GCCC's reported indirect selling expenses instead of its recalculated expenses for the terminals only, it avoids the above-mentioned potential ministerial errors.

Nevertheless, if the Department determines that it is appropriate to recalculate GCCC's indirect selling and pre-sale warehousing expenses to allocate them on a narrower basis, GCCC argues that the Department should revise its calculations. GCCC asserts that, in order to allocate these expenses as specifically as possible, the expenses should be separated not only by year and terminal/business unit but also on the percentage of subject merchandise handled by the relevant terminal/business unit.

The petitioner rebuts GCCC's assertions, arguing that, other than observing that the Department did not recalculate its U.S. pre-sale warehousing and indirect selling expenses similarly in past reviews, GCCC provides no reason why the Department should use GCCC's suggested methodology for these expenses rather than the Department's approach. The petitioner argues further that GCCC's argument that the Department should recalculate the expenses to reflect only subject merchandise makes no sense in light of the methodology used by GCCC. The petitioner restates its argument that, because GCCC's U.S. warehousing and indirect selling expenses were allocated across total sales, including both subject and non-subject merchandise, the factors derived from this allocation should also be applied across all sales. If the Department were to adopt the methodology urged by

GCCC, the petitioner argues, a significant portion of GCCC's warehousing and indirect selling expenses would disappear from the calculation. Thus, the petitioner maintains, the Department should continue to apply the factors to all sales as it did in the Preliminary Results.

Department's Position: With respect to GCCC's argument regarding the manner in which we allocated its indirect selling expenses incurred in the United States, based on the information available to us on the record of this review, we are unable to allocate these expenses on a terminal-specific basis properly. Although we have incorporated additional expenses in the calculation of a yearly indirect selling-expense factor for purposes of these final results of review, we find that it is more appropriate to allocate the indirect selling expenses over sales made by all terminals, as GCCC reported originally.

With respect to GCCC's argument regarding our allocation of its pre-sale warehousing expenses, there is enough information on the record for us to calculate an annual terminal-specific factor without causing a distortion in the calculation. Because GCCC did not maintain in the normal course of business its warehousing expenses incurred on sales of subject merchandise and therefore allocated them across total sales, including both subject and non-subject merchandise, we have applied the factors derived from this allocation across all sales. Thus, using this methodology, we have allocated warehousing expenses based on the percentage of subject merchandise handled by the relevant terminal/business unit.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)