

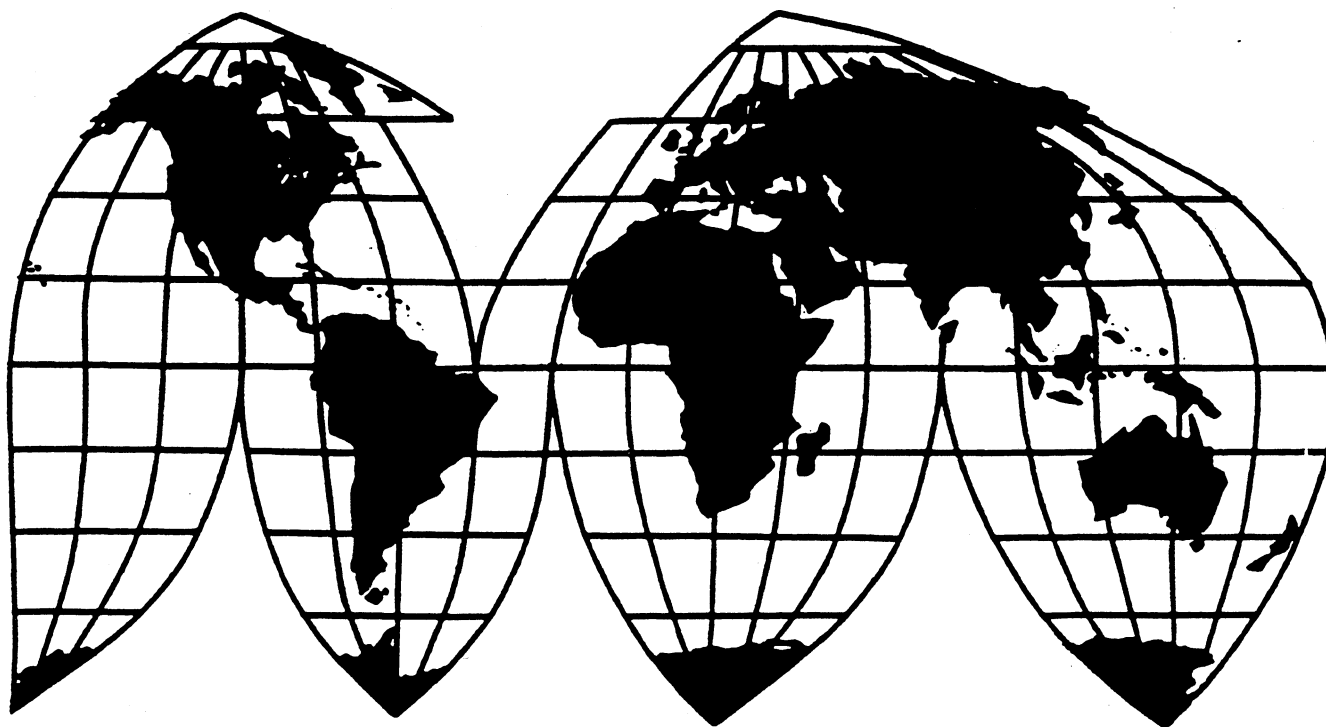
# Calcium Aluminate Flux from France

Investigation No. 731-TA-645 (Final)

Publication 2780

June 1994

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

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## **Calcium Aluminate Flux from France**



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# CONTENTS

	<i>Page</i>
<b>Part I: Determination and views of the Commission .....</b>	<b>I-1</b>
Determination .....	I-3
Views of Chairman Newquist, Commissioner Rohr and Commissioner Nuzum .....	I-5
Dissenting Views of Vice Chairman Peter S. Watson .....	I-17
Dissenting Views of Commissioner Crawford .....	I-21
<b>Part II: Information obtained in the investigation .....</b>	<b>II-1</b>
Introduction .....	II-3
The products .....	II-3
Description and production processes .....	II-3
Substitutes for clinker CA flux .....	II-4
Like product issues examined in the preliminary investigation .....	II-6
U.S. tariff treatment .....	II-6
The nature and extent of sales at LTFV .....	II-6
The U.S. market .....	II-7
Market participants .....	II-7
Channels of distribution of clinker CA flux .....	II-8
Apparent U.S. consumption of clinker CA flux .....	II-8
Consideration of the question of material injury to an industry	
in the United States .....	II-9
U.S. producers' capacity, capacity utilization, production, and	
shipments of clinker CA flux .....	II-9
Shipments of Lehigh's clinker CA flux through NRS	II-9
*** by Lehigh .....	II-10
U.S. producer's inventories of clinker CA flux .....	II-10
U.S. producer's employment for clinker CA flux .....	II-10
Financial experience of Lehigh .....	II-10
Operations on clinker CA flux .....	II-10
Investment in productive facilities .....	II-10
Capital expenditures .....	II-11
Research and development .....	II-11
Capital and investment .....	II-11
Consideration of the question of threat of material injury .....	II-11
Ability of foreign producers to generate exports of subject	
products and the availability of export markets other than	
the United States .....	II-11
U.S. importers' inventories of clinker CA flux .....	II-11
Consideration of the causal relationship between imports of the	
subject merchandise and the alleged material injury .....	II-11
U.S. imports of clinker CA flux .....	II-11
U.S. market shares of clinker CA flux .....	II-12
Pricing and marketing considerations .....	II-12
Purchase considerations .....	II-13
Comparison of suppliers .....	II-16
Pricing strategies and other considerations .....	II-16

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# CONTENTS—Continued

Page

## Part II: Information obtained in the investigation—Continued

### Information obtained in the investigation—Continued

Consideration of the causal relationship between imports of the  
subject merchandise and the alleged material injury—Continued  
Pricing and marketing considerations—Continued

Producer and importer value and quantity trends for clinker CA flux .....	II-16
Sales of product 1 .....	II-17
Sales of product 2 .....	II-17
Sales of product 3 .....	II-17
Sales trends for flux products .....	II-17
Sales of clinker CA flux .....	II-18
Sales of non-clinker CA flux .....	II-18
Sales of blends containing clinker CA flux .....	II-18
Sales of blends containing non-clinker CA flux .....	II-18
Sales of blends containing clinker and non-clinker CA flux .....	II-18
Sales of other flux blends .....	II-18
Purchase trends for flux products .....	II-19
Lost sales and lost revenues .....	II-19
Exchange rates .....	II-19

## Appendixes

A.	Federal Register notices .....	A-1
B.	List of witnesses appearing at the Commission's hearing .....	B-1
C.	Additional information concerning the U.S. market for flux products .....	C-1

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

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**PART I**  
**DETERMINATION AND VIEWS**  
**OF THE COMMISSION**





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# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation No. 731-TA-645 (Final)

### Calcium Aluminate Flux From France

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from France of calcium aluminate (CA) flux,<sup>3</sup> provided for in subheading 2523.10.00 of the

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Vice Chairman Watson and Commissioner Crawford dissenting. Commissioner Bragg did not participate in the Commission's determination.

<sup>3</sup> CA flux is used primarily as a desulfurizer and/or cleaning agent in the steel manufacturing process. Like CA cement (CAC) clinker, the CA flux that is subject to investigation contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica. However, CA flux has a chemical composition distinct from CAC clinker. CAC clinker contains the hydraulic mineral mono-calcium aluminate, which gives it a molar ratio of lime to alumina of approximately 1:1. In contrast, CA clinker sold as a flux does not contain mono-calcium aluminate; it contains the complex mineral  $C_{12}A_7$  ( $12CaO \cdot 7Al_2O_3$ ), which gives it a molar ratio of lime to alumina of approximately 2:1.

Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. § 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

#### Background

The Commission instituted this portion of its investigation effective March 23, 1994, following a final determination by the Department of Commerce that imports of CA flux from France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 28, 1994 (59 FR 14425). The hearing was held in Washington, DC, on March 31, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.



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# VIEWS OF CHAIRMAN NEWQUIST, COMMISSIONER ROHR AND COMMISSIONER NUZUM

Based on the record in this final investigation, we determine<sup>1</sup> that an industry in the United States is threatened with material injury by reason of imports of calcium aluminate flux (hereinafter "clinker CA flux") from France that the U.S. Department of Commerce ("Commerce") has determined are being sold in the United States at less than fair value ("LTFV").<sup>2</sup> We further find, in accordance with 19 U.S.C. § 1673d(b)(4)(B), that the domestic industry would not have been materially injured by reason of imports from France had there not been a suspension of liquidation.

## I. Like Product and Domestic Industry

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, we must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 ("the Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."<sup>3</sup> In turn, the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."<sup>4</sup>

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<sup>1</sup> Vice Chairman Watson and Commissioner Crawford dissenting. They join in the discussion of like product, domestic industry, and condition of the industry. Vice Chairman Watson also joins in the discussion of no material injury by reason of LTFV imports. Commissioner Bragg did not participate in this determination.

<sup>2</sup> 19 U.S.C. § 1673d(b). Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(10). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) customer and producer perceptions, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. *Calabrian Corp. v. United States*, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong. 1st Sess. 90-91 (1979); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991); *Asociacion Colombiana de Exportadores de Flores v. United States*, 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988) ("Asocoflores") ("It is up to [the Commission] to determine objectively what is a minor difference.").

Commerce has defined the scope of this investigation as:

[T]wo classes or kinds of merchandise: (1) CA [calcium aluminate] cement and cement clinker, and (2) CA flux. The products covered by these investigations include CA cement, cement clinker and flux, other than white, high purity CA cement, cement clinker and flux. These products contain by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.<sup>5</sup>

The imported product subject to investigation in this portion of the Commission's investigation is clinker CA flux from France.<sup>6</sup> Clinker CA flux is produced from crude, uncalcined bauxite (as a source of alumina, iron, and silica oxides) and limestone (as a source of calcium oxides).<sup>7</sup> It is used as a fluxing agent in the steel industry to eliminate impurities such as sulfur from the steel batch.<sup>8</sup> Due to its chemical composition, clinker CA flux also aids in the steel production process by reducing the melt temperature of the steel batch and thereby lowering fuel costs.<sup>9</sup> Clinker CA flux may either be used essentially "straight" by steel producers to purify the steel, or it may be used in combination with other products in a flux blend.<sup>10</sup> Although the exact chemical composition of domestic and imported clinker CA flux may \*\*\* due to their different manufacturing processes, the domestic and imported products are largely interchangeable.<sup>11</sup>

As we determined in our preliminary determination, we find that the like product consists of clinker CA flux and the domestic industry is comprised of the domestic producer of clinker CA flux.<sup>12</sup> The evidence does not warrant inclusion of any other flux products in the like product.<sup>13</sup> While we do find that there is a

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<sup>5</sup> See 59 Fed. Reg. 14136 (March 25, 1994).

<sup>6</sup> This final investigation was divided into two portions corresponding to Commerce's two classes or kinds of merchandise: (1) calcium aluminate (CA) cement and calcium aluminate cement (CAC) clinker, and (2) clinker CA flux. The Commission made a negative final determination with respect to CA cement and CAC clinker. *Certain Calcium Aluminate Cement and Cement Clinker from France*, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 (May 1994). The Commission's injury determination with respect to the clinker CA flux portion of the investigation is on a later schedule because Commerce made a preliminary negative determination but a final affirmative determination regarding clinker CA flux. See 19 U.S.C. § 1673d(b)(3).

<sup>7</sup> Confidential Report ("CR") at I-5, Public Report ("PR") at II-4.

<sup>8</sup> CR at I-4-5, PR at II-3-4.

<sup>9</sup> CR at I-5, PR at II-4.

<sup>10</sup> CR at I-5 and I-8, PR at II-4 and II-5.

<sup>11</sup> CR at I-5-6, PR at II-3-4.

<sup>12</sup> The petitioner, Lehigh Portland Cement Company ("Lehigh"), is the only current U.S. producer of clinker CA flux. The only other reported producer of the subject product during the period of investigation, Refractory Materials Inc. (RMI), \*\*\*. CR at I-17 & n.36, PR at II-7 & n.36.

<sup>13</sup> None of the parties contested our preliminary like product finding. CR at I-11 n.29, PR at II-6 n.29. One of the difficulties in analyzing whether other flux products should be included in the like product is that the exact universe of such other products is not clearly defined. Other reported fluxing agents include bauxite, aluminum, vanadium slag, recycled steelmaking slag, calcined alumina, alumina obtained from deoxidized steel, aluminum dross, dolomitic lime, fluorspar, limestone, wollastonite, crushed refractory brick, and slag recovered from catalytic converters. The evidence reveals that steel manufacturers are turning increasingly to blends of different fluxing agents, some of which can be used directly by the steel manufacturers, while others require the addition of certain raw materials. In general, the composition of the final blended product is determined by the end users based on their particular production process and specific characteristics required by the customers of the steel manufacturers. See CR at I-8-11 & nn.20 and 21, PR at II-5-6 & nn.20 and 21 (blenders reported that certain blends may contain from \*\*\* to \*\*\* percent clinker CA flux); Prehearing Economic Memorandum,

certain degree of substitutability in uses between clinker CA flux and other flux products,<sup>14</sup> there are other notable differences among them that we find significant for purposes of our like product analysis. For example, the different fluxing agents have varying physical characteristics and chemical properties, and some contain elements that may be unacceptable for certain end uses.<sup>15</sup> None of the manufacturing facilities or production employees used to produce clinker CA flux are also used to produce any other flux products.<sup>16</sup> The evidence also leads us to conclude that customers and producers perceive the various flux products differently.<sup>17</sup> Finally, the channels of distribution vary,<sup>18</sup> and there is a divergent range of prices.<sup>19</sup>

## II. Condition of the Domestic Industry

In assessing whether the domestic industry is materially injured by reason of the LTFV imports, we consider all relevant economic factors which have a bearing on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that

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<sup>13</sup>—Continued

EC-R-040 (Mar. 30, 1994) at 5-6 & n.4; Respondents' Post-Hearing Brief at 15; Petitioner's Posthearing Brief for CA Cement and CAC Clinker, Attachment A, at 16 (blends produced using petitioner's clinker CA flux by NRS may contain from \*\*\* up to \*\*\* percent clinker CA flux).

<sup>14</sup> Unlike clinker CA flux, however, there is a wide range of other uses for many of these products, in addition to use for steel purification. CR at I-7 n.16, PR at II-4 n.16.

<sup>15</sup> CR at I-8-9 n.22, PR at II-5 n.22. A flux product may retain traces of its original metals and, therefore, may not be viewed as appropriate for certain applications. For example, vanadium slag, recycled slag, and even clinker CA flux contain certain trace elements that are unacceptable for some end uses. Fluorspar may be unacceptable because of its corrosiveness that can cause damage to steel manufacturing facilities. CR at I-7 n.18 and I-10 n.25, PR at II-5 n.18 and II-6 n.25; Hearing Transcript ("Tr.") at 125-127, 218; Prehearing Economic Memorandum, EC-R-040 (Mar. 30, 1994) at 16.

<sup>16</sup> CR at I-9, PR at II-5.

<sup>17</sup> Certain flux products (e.g., vanadium slag) are produced as by-products and may not be in constant supply. This affects purchasers' decisions when choosing among flux products. CR at I-9 n.23 and I-50, PR at II-5 n.23 and II-15. In addition, steel manufacturers decide to buy a specific type of fluxing agent based, *inter alia*, on the quality and characteristics of the different flux products. Another factor that supports the conclusion that customers perceive the various flux products differently is that steel manufacturers must test any new flux product, which may take several months, before it can be used. See generally CR at I-47-50, PR at II-14-15.

<sup>18</sup> Evidence obtained in this final investigation indicates that non-clinker flux agents are distributed through a wide range of channels. For example, certain of these products may be sold directly to end users, others are sold first to blenders, and still others are sold to distributors. In addition, unlike clinker CA flux, many steel mills generate their own flux agents as a by-product of the ladle metallurgy. See generally CR at I-9 and I-43, PR at II-5 and II-12; Table C-2, CR at C-5-6, PR at C-2.

<sup>19</sup> CR at I-9-10, PR at II-5-6. Clinker CA flux tends to be \*\*\* per short ton than the other flux products. CR at I-10, PR at II-6; Prehearing Economic Memorandum, EC-R-040 (Mar. 30, 1994) at 16. For example, during the period investigated vanadium slag was reportedly sold at \$\*\*\* per short ton, whereas domestic clinker CA flux was sold at \$\*\*\* per short ton. CR at I-10, PR at II-6; Tr. at 123-124, 219.

are distinctive to the affected industry.”<sup>20</sup> In evaluating the condition of the domestic industry, we look at the domestic industry as a whole.<sup>21</sup>

Demand for clinker CA flux increased in the 1980s and early 1990s because clinker CA flux provided the chemistry needed to produce high purity steel and it also provided a faster melting time than most other fluxing agents.<sup>22</sup> While overall demand for clinker CA flux has increased over the period of investigation, we note that the nature of that demand has shifted away from the use of “straight” clinker CA flux by steel manufacturers to the increasing use of clinker CA flux as an input in flux blends (produced by flux blenders) which are then sold to steel manufacturers.<sup>23</sup> There is a wide variety of other fluxing agents, however, besides clinker CA flux, that also may be used (either alone or in blends) to purify steel batches to produce high-quality steel.<sup>24</sup> Reportedly, blends are less expensive to use than “straight” clinker CA flux and give flux manufacturers a broader range of alternatives for developing customized products for steel producers.<sup>25</sup>

An additional condition of competition concerns the differences in the marketing and distribution of the subject product. During the period for which data were collected in the investigation, the domestic producer, Lehigh, representing the \*\*\* majority of domestic production, sold all of its production to one unrelated distributor, National Recovery Systems (NRS), under an exclusive distributor agreement. \*\*\*.<sup>26</sup> The sole importer of the subject product, Lafarge CA (“Lafarge”), on the other hand, sold its product \*\*\*.<sup>27</sup> Besides Lehigh and Lafarge, currently there are no other suppliers of clinker CA flux in the domestic market.

Apparent U.S. consumption of clinker CA flux by quantity increased from 1990 to 1992 from \*\*\* to \*\*\* short tons, but then declined in 1993 to \*\*\* short tons, representing a net increase over the period of investigation of \*\*\* percent.<sup>28</sup> Consumption by value increased significantly between 1990 and 1992, and then decreased by \*\*\* percent in 1993, representing a net increase over the period of investigation of \*\*\* percent.<sup>29</sup>

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<sup>20</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>21</sup> “The Commission may take into account the departures from an industry or the unique circumstances of individual companies, but ultimately must assess the condition of the industry as a whole, and not on a company-by-company basis.” *Welded Stainless Steel Pipe from Malaysia*, Inv. No. 731-TA-644 (Preliminary), USITC Pub. 2620 (April 1993) at 19-20.

<sup>22</sup> CR at I-6-7, I-8 n.19, and I-20-21, PR at II-4, II-5 n.19, and II-8. Prior to the use of clinker CA flux, the steel industry generally purchased separate products (e.g., lime, alumina, and fluorspar) to create the necessary chemistry to form a slag which would purify the steel batch. Many steel mills continue to use such products. CR at I-6-7, PR at II-4-5.

<sup>23</sup> The estimated proportion of clinker CA flux sold in blends increased between 1991 and 1993 from \*\*\* percent to \*\*\* percent. The estimated amount of clinker CA flux sold “straight” to steel manufacturers decreased from \*\*\* short tons in 1991 to approximately \*\*\* short tons in 1993. In addition, the estimated overall use of flux blends incorporating clinker CA flux increased from \*\*\* short tons in 1991 to \*\*\* short tons in 1993. Calculated from data presented in Tables 5 and C-3, CR at I-23, I-25, I-39-40, and C-7, PR at II-9, II-12 and C-2.

<sup>24</sup> See, *supra*, note 13; CR at I-8, PR at II-5.

<sup>25</sup> CR at I-8 n.22, PR at II-5 n.22.

<sup>26</sup> CR at I-18-19 & n.40, PR at II-8 & n.40.

<sup>27</sup> CR at I-18-19, PR at II-8.

<sup>28</sup> Tables 4 and C-1, CR at I-20-21 and C-3, PR at II-8 and C-2.

<sup>29</sup> *Id.*

Notwithstanding the overall increase in consumption, the quantity of domestic production of clinker CA flux declined by \*\*\* percent over the period of investigation.<sup>30</sup> From 1990 to 1991 domestic production decreased from \*\*\* to \*\*\* short tons; it increased in 1992 to \*\*\* short tons, and then decreased in 1993 to \*\*\* short tons.<sup>31</sup> Capacity to produce clinker CA flux remained constant from 1990 to 1993 at \*\*\* short tons.<sup>32</sup> The domestic industry's capacity utilization rate for clinker CA flux followed a similar trend as production levels, beginning with a rate of \*\*\* percent in 1990 and decreasing \*\*\* to \*\*\* percent in 1993.<sup>33</sup> The domestic industry's U.S. shipments of clinker CA flux by quantity and value declined steadily from 1990 to 1993 by \*\*\* and \*\*\* percent, respectively.<sup>34</sup>

The domestic industry's year-end inventories of clinker CA flux fluctuated with an overall decline during the period of investigation, beginning with \*\*\* short tons in 1990 and ending with \*\*\* short tons in 1993.<sup>35</sup> Inventories as a percentage of U.S. production decreased from \*\*\* percent in 1990 to \*\*\* percent in 1991, then increased to \*\*\* percent in 1992, and further increased to \*\*\* percent in 1993.<sup>36</sup>

Employment in the domestic clinker CA flux industry also declined \*\*\* by \*\*\* percent over the period of investigation from \*\*\* to \*\*\* production and related workers.<sup>37</sup> Wages and total compensation paid to production and related workers fluctuated over the period of investigation with an overall decline.<sup>38</sup> Although hours worked declined by \*\*\* percent over the period of investigation, hourly total compensation increased by \*\*\* percent. Finally, unit labor costs \*\*\* by \*\*\* percent during this period and productivity \*\*\* by \*\*\* percent.<sup>39</sup>

The financial performance of the domestic clinker CA flux industry \*\*\* over the period of investigation. For example, from 1990 to 1993, the domestic industry experienced \*\*\* declines in net sales— \*\*\* percent by quantity and \*\*\* percent by value.<sup>40</sup> \*\*\*.<sup>41</sup> \*\*\*.<sup>42</sup> The domestic industry also experienced \*\*\*.<sup>43</sup>

<sup>30</sup> Table C-1, CR at C-3, PR at C-2. Both Lehigh and RMI reported production and shipment data. All other data discussed in this section refer to data reported by Lehigh only.

<sup>31</sup> Table 5, CR at I-23, PR at II-9.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Tables 5 and C-1, CR at I-23-24 and C-3, PR at II-9 and C-2. The domestic industry's U.S. shipments of clinker CA flux by quantity were \*\*\* short tons in 1990, \*\*\* short tons in 1991, \*\*\* short tons in 1992, and \*\*\* short tons in 1993. Table 5, CR at I-23-24, PR at II-9.

<sup>35</sup> Table 9, CR at I-39, PR at II-11.

<sup>36</sup> CR at I-28, PR at II-10.

<sup>37</sup> Tables 6 and C-1, CR at I-29 and C-3, PR at II-10 and C-2.

<sup>38</sup> The amount of wages paid in 1990 was \$\*\*\*, decreasing to \$\*\*\* in 1991, then increasing to \$\*\*\* in 1992, and decreasing again in 1993 to \$\*\*\*. Similarly, the amount of total compensation paid in 1990 was \$\*\*\*, decreasing to \$\*\*\* in 1991, increasing in 1992 to \$\*\*\*, and decreasing in 1993 to \$\*\*\*. Table 6, CR at I-29, PR at II-10.

<sup>39</sup> Tables 6 and C-1, CR at I-29 and C-3, PR at II-10 and C-2.

<sup>40</sup> Net sales by quantity for the domestic industry were \*\*\* short tons in 1990, \*\*\* short tons in 1991, \*\*\* short tons in 1992, and \*\*\* short tons in 1993. Net sales by value were \$\*\*\* in 1990, \$\*\*\* in 1991, \$\*\*\* in 1992, and \$\*\*\* in 1993. Tables 7 and C-1, CR at I-31 and C-3, PR at II-10 and C-2.

<sup>41</sup> Table 7, CR at I-31, PR at II-10.

<sup>42</sup> In 1990, the operating \*\*\*. In 1991, the operating \*\*\*. In 1992 to \$\*\*\*, and then \*\*\* in 1993 to \$\*\*\*. Table 7, CR at I-31, PR at II-10.

<sup>43</sup> Table 7, CR at I-30-31, PR at II-10.

The cost of goods sold increased \*\*\* percent from 1990 to 1991, declined \*\*\* percent from 1991 to 1992, and declined still further by \*\*\* percent in 1993.<sup>44</sup> As a share of net sales, however, the cost of goods sold increased from \*\*\* percent in 1991 to \*\*\* percent in 1993, and unit cost of goods sold continually increased from 1990 to 1993.<sup>45</sup> Selling, general, and administrative expenses for the industry fluctuated with an overall decline of \*\*\* percent over the period of investigation.<sup>46</sup>

Finally, we note that the domestic industry's capital expenditures declined \*\*\* by \*\*\* percent from 1990 to 1993.<sup>47</sup> The operating and net returns on total assets were \*\*\*.<sup>48 49</sup>

### III. No Material Injury by Reason of LTFV Imports

In determining whether a domestic industry is materially injured by reason of the imports that Commerce has determined are sold at LTFV, the statute directs the Commission to consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product.<sup>50</sup> Although the Commission may consider causes of injury other than the LTFV imports, it is not to weigh causes.<sup>51</sup> For the reasons discussed below, we find that the domestic clinker CA flux industry is not materially injured by reason of LTFV imports from France.

The volume of subject imports (measured in terms of domestic shipments of those imports) increased from \*\*\* short tons in 1990 to \*\*\* short tons in 1993, an overall increase of \*\*\* percent. At the same time, shipments of domestic clinker CA flux decreased overall by \*\*\* percent, beginning at \*\*\* short tons in 1990 and falling to \*\*\* short tons in 1993.<sup>52</sup> The overall market share of imports of clinker CA flux from France also increased steadily, by \*\*\* percentage points, in terms of quantity, from 1990 to 1993.<sup>53</sup> Correspondingly, the domestic producers' market share declined between 1990 and 1993 by the precise amount that imports gained market share — \*\*\* percentage points.<sup>54</sup>

<sup>44</sup> The domestic industry's cost of goods sold were \$\*\*\* in 1990, \$\*\*\* in 1991, \$\*\*\* in 1992, and \$\*\*\* in 1993. Table 7, CR at I-31, PR at II-10.

<sup>45</sup> Table 7, CR at I-31, PR at II-10.

<sup>46</sup> Tables 7 and C-1, CR at I-31 and C-3, PR at II-10 and C-2.

<sup>47</sup> The domestic industry's capital expenditures were \*\*\*. Tables 9 and C-1, CR at I-34 and C-3, PR at II-11 and C-2.

<sup>48</sup> Table 8, CR at I-33, PR at II-11. Lehigh reported that \*\*\* expenditures were made for research and development during the period of investigation. CR at I-34, PR at II-11.

<sup>49</sup> Based on the foregoing, Chairman Newquist and Commissioner Rohr conclude that the domestic clinker CA flux industry is experiencing material injury.

<sup>50</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." *Id.*

<sup>51</sup> See, e.g., *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). The Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." Rather, a finding that imports are a cause of material injury is sufficient. See S. Rep. No. 249 at 57, 74; *Metallwerken Nederland B.V. v. United States*, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. at 1101.

<sup>52</sup> Tables 2 and C-1, CR at I-16 and C-3, PR at I-7 and C-2.

<sup>53</sup> Lafarge's market share for clinker CA flux was \*\*\* percent in 1990, \*\*\* percent in 1991, \*\*\* percent in 1992, and \*\*\* percent in 1993. Table C-1, CR at C-3, PR at C-2.

<sup>54</sup> The domestic industry's market share for clinker CA flux was \*\*\* percent in 1990, \*\*\* percent in 1991, \*\*\* percent in 1992, and \*\*\* percent in 1993. Table C-1, CR at C-3, PR at C-2.



The Commission collected value and quantity data from the parties and purchasers of the subject product and calculated the weighted average prices of the domestic and imported products for comparison purposes.<sup>55</sup> A direct comparison between Lehigh's and Lafarge's sales of unprocessed clinker CA flux to blenders demonstrated \*\*\* by the subject imports, as Lehigh's prices \*\*\* the period examined, and Lafarge's prices were \*\*\*.<sup>56</sup> Thus, we do not find any significant underselling by the subject imports.

Lehigh was not able to demonstrate that it lost any sales to the higher-priced subject imports given that Lehigh's exclusive distribution agreement prohibited it from selling to anyone other than NRS. Lehigh alleged that \*\*\* because NRS was facing intense price competition for its sales of clinker CA flux from the subject imports. We note, however, that Lehigh's argument relies on a different level of price comparison, *i.e.*, NRS and the subject imports, not Lehigh and subject imports.<sup>57</sup>

Nevertheless, we recognize that comparisons at that level reflect significant price competition. Lafarge's prices for bulk, processed clinker CA flux sold to end users demonstrated \*\*\* from 1991 to 1993.<sup>58</sup> Comparisons of NRS' and Lafarge's sales of clinker CA flux to end users show \*\*\* by Lafarge in 1993, as well as \*\*\* for NRS.<sup>59</sup> This suggests that the substantial and increased volumes of dumped subject imports were indeed putting downward pressure on domestic prices of clinker CA flux, albeit as sold by NRS, not Lehigh.<sup>60</sup>

With regard to the impact of subject imports on the domestic industry producing clinker CA flux, we find that the volume and market share of subject imports have not had an adverse impact on the domestic industry. We attribute Lafarge's ability to increase market share, \*\*\*, to the fact that Lafarge marketed its product \*\*\*.<sup>61</sup>

As noted above, demand for blended flux products that contain clinker CA flux by steel manufacturers increased, while demand for "straight" clinker CA flux declined. Thus, there was an increasing need for clinker CA flux as an input by manufacturers of flux blends. Lehigh was unable to take advantage of the shift in demand for clinker CA flux as an input for blended flux products because it was prohibited from doing so pursuant to its exclusive contract with NRS.<sup>62</sup> Because of Lehigh's exclusive marketing arrangement, the only source of clinker CA flux for blenders other than NRS was subject imports, \*\*\*. Although NRS purchased

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<sup>55</sup> In calculating weighted average prices (average unit values), the Commission relied on product-specific quarterly sales based on the quantities and values of the subject product. All references to domestic unit values are based on data reported by Lehigh.

<sup>56</sup> See Table 13, CR at I-55-57, PR at II-17.

<sup>57</sup> See Tables 14 and 15, CR at I-58-62, PR at II-17.

<sup>58</sup> Tables 14, CR at I-59, PR at II-17.

<sup>59</sup> Table 14, CR at I-59, PR at II-17.

<sup>60</sup> In addition, while Lafarge's prices for bulk, unprocessed clinker CA flux sold to blenders were \*\*\* than Lehigh's prices, the record showed that Lafarge's prices had \*\*\* from 1992 to 1993. Moreover, quantities of these particular sales \*\*\* from 1992 to 1993. Table 13, CR at I-56, PR at II-17.

<sup>61</sup> CR at I-18-19 & n.40, PR at II-8 & n.40.

<sup>62</sup> Indeed, there is evidence on the record that \*\*\*. Other manufacturers of flux blends were reportedly unwilling to buy Lehigh's product from NRS because NRS is their competitor. CR at I-20 & n.43, PR at II-8 & n.43.

clinker CA flux from Lehigh, its purchases \*\*\* as NRS began to focus more on producing flux blends that incorporated variable amounts of clinker CA flux compared to other cheaper flux products (e.g., vanadium slag).<sup>63</sup> \*\*\*<sup>64</sup>

While the condition of the domestic industry is poor, the evidence fails to establish a causal connection between its condition and LTFV imports.<sup>65</sup> Although we find that the above-noted increases in the volume of subject imports is significant in both absolute terms as well as relative to domestic consumption,<sup>66</sup> because Lehigh contractually restricted its sales to only one customer, it limited its own ability to increase its sales volumes or market share further. We therefore determine that the U.S. industry producing clinker CA flux is not materially injured *by reason of* the imports of clinker CA flux from France.

## IV. Threat of Material Injury by Reason of the Subject Imports

Section 771(7)(F) of the Act directs us to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."<sup>67</sup> We do not make such a determination "on the basis of mere conjecture or supposition."<sup>68</sup> In making our determination, we have considered all of the statutory factors that are relevant to these investigations.<sup>69</sup>

As a preliminary matter, we note that the domestic industry is currently in a different position than it was during most of the period of investigation because it is no longer limited by an exclusive distributorship agreement. However, as discussed above, the condition of the domestic industry is poor and, therefore, very vulnerable to continued adverse volume and price effects of dumped imports. The

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<sup>63</sup> In 1990, NRS sold \*\*\* short tons of "straight" clinker CA flux, \*\*\* short tons in 1993. In contrast, NRS' sales of blends containing clinker CA flux \*\*\* from \*\*\* short tons in 1990 to \*\*\* short tons in 1993. Thus, over the period of investigation, NRS' total sales of "straight" clinker CA flux \*\*\* from over \*\*\* percent of its total flux sales to \*\*\* percent, whereas its sales of blends containing clinker CA flux \*\*\* from \*\*\* percent in 1990 to \*\*\* percent in 1993 of its total flux sales. CR at I-25-27, PR at II-9-10.

<sup>64</sup> CR at I-25 & n.52, PR at II-9 & n.52.

<sup>65</sup> Thus, although Chairman Newquist and Commissioner Rohr find that the domestic industry is materially injured, they do not find subject imports to be a cause of that injury.

<sup>66</sup> See 19 U.S.C. § 1677(7)(C)(i).

<sup>67</sup> 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

<sup>68</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." *Metallwerken Nederland B.V. v. U.S.*, 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990)(citing *American Spring Wire*, 8 CIT at 28, 590 F.Supp. at 1280). Congress acknowledged that "a determination of threat will require a careful assessment of identifiable current trends and competitive conditions in the market place." *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387, 388 (Ct. Int'l Trade 1992)(citing, H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984)).

<sup>69</sup> 19 U.S.C. § 1677(7)(F)(i). In addition, the Commission must consider whether antidumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii). Counsel for respondents testified at the hearing that he was unaware of any antidumping remedies imposed on the subject product in any other countries. Tr. at 208.

Two of the statutory threat factors have no relevance to this investigation and need not be discussed. Factors I and IX are not applicable because there are no subsidy allegations and the investigation does not involve raw and processed agriculture products.

domestic industry's production, shipments, and capacity utilization rate declined \*\*\*. Inventories as a percentage of U.S. production increased in 1992 and 1993. Employment declined \*\*\* as did wages and total compensation paid to production and related workers. Unit labor costs \*\*\* while productivity \*\*\*. In short, the domestic industry's financial performance is \*\*\*, and it is therefore particularly susceptible to the adverse effects of unfairly traded imports which currently hold a \*\*\* in the U.S. market.<sup>70</sup>

The reported data concerning imports of clinker CA flux from France show \*\*\* in production, shipments, and production capacity of the French producer, Lafarge Fondu, over the period of investigation. There was \*\*\* in Lafarge Fondu's production capacity \*\*\*, which is projected to \*\*\* in 1994 and 1995.<sup>71</sup> Utilization of this capacity \*\*\* over the period of investigation, but is projected to \*\*\* in 1994 and 1995 to \*\*\*.<sup>72</sup> Domestic shipments of imported clinker CA flux from France increased \*\*\*, by \*\*\* percent from 1990 to 1993, and exports to the United States of clinker CA flux from France in 1994 and 1995 are projected to be \*\*\* than in 1990, 1991 and 1993.<sup>73</sup> Thus, the projected \*\*\* in capacity utilization and projected \*\*\* in exports to the United States, coupled with the trend of \*\*\* exports of clinker CA flux from France to the United States over the period of investigation, supports the conclusion that the \*\*\* of subject imports of CA flux to the United States will be significant.<sup>74</sup>

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<sup>70</sup> Table 4, CR at I-21, PR at II-8.

<sup>71</sup> Capacity \*\*\* between 1990 and 1993. Reported data on French capacity for clinker CA flux include capacity for CAC clinker which is manufactured on the same machinery and equipment used to produce clinker CA flux. See Table 10, CR at I-36-37, PR at II-11.

<sup>72</sup> Capacity utilization levels of the French producer \*\*\* in 1990 to \*\*\* in 1992, and then \*\*\* in 1993 to \*\*\* percent. Capacity utilization is projected to be \*\*\* percent in 1994 and \*\*\* percent in 1995. Table 10, CR at I-37, PR at II-11.

We note that the statute directs us to take into account the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under 19 U.S.C. § 1671 or 1673 or to final orders under 19 U.S.C. § 1671e or 1673e, are also used to produce the merchandise under investigation. The sole French manufacturer of clinker CA flux, Lafarge Fondu, can use the same production facilities to produce CAC clinker which was a product subject to an antidumping duty investigation until recently when the Commission made its final determination in *Certain Calcium Aluminate Cement and Cement Clinker from France*, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 (May 1994). However, since the Commission made a final negative determination with respect to CAC clinker, the potential for product shifting (i.e., from CAC clinker to clinker CA flux) in the specific terms of the statute does not arise. Nonetheless, we note that capacity utilization rates are not complete restraints in this industry since it is possible that Lafarge Fondu could allocate more capacity to the production of clinker CA flux instead of CAC clinker.

<sup>73</sup> In 1990, shipments of clinker CA flux from France in the United States were \*\*\* short tons, in 1991 they were \*\*\* short tons, in 1992 they were \*\*\* short tons, and in 1993 they \*\*\* to \*\*\* short tons. Tables 4 and C-1, CR at I-21 and C-3, PR at II-8 and C-2. In 1994 and 1995, exports of clinker CA flux from France to the United States are projected to be \*\*\* and \*\*\* short tons, respectively. Table 10, CR at I-37, PR at II-11. We note that the level of exports of clinker CA flux from France to the United States during 1992 and 1993, and the projected levels for 1994 and 1995, \*\*\* the 1993 level of U.S. producers' shipments of domestic clinker CA flux, which amounted to \*\*\* short tons. See Table 4, CR at I-21, PR at II-8.

<sup>74</sup> The projected \*\*\* in export shipments of subject imports to the United States in 1994 is \*\*\* short tons, or \*\*\* short tons \*\*\* 1993 levels, which represents \*\*\* of \*\*\* percent. Table 10, CR at I-36-37, PR at II-11. This \*\*\* of \*\*\* short tons \*\*\* total U.S. shipments of domestic clinker CA flux reported in 1993. Table C-1, CR at C-3, PR at C-2. Although a somewhat \*\*\* short tons is projected for 1995, we still find the projected 1995 levels to represent a \*\*\*. Table 10, CR at I-36-37, PR at II-11.

In addition, there has been a rapid increase in United States market penetration of clinker CA flux from France as measured by the quantity of U.S. shipments of subject imports, between 1990 to 1993.<sup>75</sup> Lafarge's share of domestic consumption increased from \*\*\* percent in 1990 to \*\*\* percent in 1993.<sup>76</sup> Given the above-noted projections for \*\*\* imports of clinker CA flux in 1994 and 1995, we find that there is a likelihood that the market penetration of subject imports will \*\*\* to an injurious level. In that connection, the domestic producer, Lehigh, has the ability to increase its market share significantly based on its current \*\*\* capacity utilization level of \*\*\* percent and the current availability of inventories.<sup>77</sup> Indeed, Lehigh supplied \*\*\* of domestic consumption of clinker CA flux in 1990.<sup>78</sup>

U.S. inventories of the French product \*\*\* over the period of investigation.<sup>79</sup> Nonetheless, in 1993, the quantity of inventories of the French product in the United States was \*\*\* in that year.<sup>80</sup> Thus, despite some \*\*\* in inventory levels, we consider the most current reported inventory levels significant.

As discussed earlier, prices for the subject imports generally \*\*\* in 1992 and 1993, as the market share held by Lafarge increased \*\*\*. We noted that the subject imports appeared to impose downward pressure on prices in the domestic clinker CA flux market overall. Given Lafarge's projection of \*\*\* of at least \*\*\* percent in its imports of the subject merchandise in 1994 over 1993 levels, we conclude that this downward pricing pressure is likely to continue in the imminent future.<sup>81</sup>

Lehigh, meanwhile, \*\*\*. Lehigh's financial position deteriorated \*\*\* during the period examined. As noted earlier, Lehigh was \*\*\*, although its costs of production, including its variable costs, increased.<sup>82</sup> In order for Lehigh to improve its position, it will have to be able to \*\*\*. The most recent price levels for Lafarge's clinker CA flux, which are the most relevant for purposes of our threat analysis, are \*\*\*. We conclude from this evidence that Lehigh will likely be unable to raise its prices sufficiently due to the downward pressure on prices in the market being exerted by the subject imports. In sum, the subject imports are likely to enter at prices that will have significant price suppressing effects on the domestic industry.

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<sup>74</sup>—Continued

We also note that despite projections that Lafarge Fondu's home market shipments will \*\*\* in 1994 and 1995, the U.S. market is \*\*\*, and is projected to account for over \*\*\* percent of Lafarge Fondu's total shipments in 1994 and 1995. Table 10, CR at I-36-37, PR at II-11.

<sup>75</sup> Tables 4 and C-1, CR at I-21 and C-3, PR at II-8 and C-2.

<sup>76</sup> Table C-1, CR at C-3, PR at C-2.

<sup>77</sup> Table 5, CR at I-23 and I-28, PR at II-9 and II-10.

<sup>78</sup> Table 4, CR at I-21, PR at II-8.

<sup>79</sup> In 1990, Lafarge's end-of-period inventories amounted to \*\*\* short tons, \*\*\* in 1991 to \*\*\* short tons, subsequently \*\*\* in 1992 to \*\*\* short tons, and \*\*\* to \*\*\* short tons in 1993. CR at I-38, PR at II-11.

<sup>80</sup> In 1993, domestic production was \*\*\* short tons, whereas Lafarge's inventories of clinker CA flux from France was \*\*\* short tons. Cf. Table 5, CR at I-23, PR at II-9; CR at I-38, PR at II-11.

<sup>81</sup> Commissioner Nuzum also notes that the dumping margin found by Commerce in this investigation is substantial — almost 40 percent. In the context of this market, dumping margins of this magnitude, coupled with the evidence of \*\*\* import prices in sales of bulk, unprocessed product to blenders (where subject imports compete most directly with the domestic like product), the very large and increasing share of the market accounted for by the subject imports and the likelihood of further increases in import volumes, present persuasive evidence that the subject imports are likely to enter the United States at prices that will have a suppressing effect on domestic prices.

<sup>82</sup> Table 7, CR at I-30-31, PR at II-10.

Another demonstrable adverse trend that we take into account is that the quantity of U.S. consumption of clinker CA flux decreased from 1992 to 1993 by \*\*\* percent.<sup>83</sup> This decrease in consumption coupled with projected \*\*\* in subject imports is further indication that imports will be the cause of actual injury.<sup>84</sup>

Finally, imports are likely to have a negative effect on existing development and production efforts of the domestic industry as indicated by the fact that the domestic industry's capital expenditures have already declined \*\*\* by \*\*\* percent during the period of investigation.<sup>85</sup>

In light of the vulnerable condition of the domestic industry, the \*\*\* increase in shipments of subject imports and market penetration, projected exports of subject imports from France to the United States, the \*\*\* unit values of LTFV imports of unprocessed, bulk clinker CA flux, the \*\*\* amount of inventories in the United States of subject imports, and existing unused capacity in France, we conclude that the domestic clinker CA flux industry is threatened with material injury by reason of LTFV imports from France.

## V. Effect of Suspension of Liquidation of Entries

When the Commission makes a final affirmative determination on the basis of threat, we must make an additional finding as to whether material injury by reason of subject imports would have been found but for the suspension of liquidation of entries of such imports pursuant to 19 U.S.C. § 1673d(b)(4)(B). This finding determines the date of the imposition of duties — either the date of suspension of liquidation or the date of the publication of the final order.

In this investigation, Commerce made a preliminary negative determination with respect to clinker CA flux. Suspension of liquidation did not occur until March 25, 1994, the date of publication of Commerce's final affirmative determination.<sup>86</sup> Consequently, there is only slightly more than a two-month period in 1994 between suspension of liquidation (March 25, 1994) and our final determination (May 31, 1994). The data we considered in making our negative material injury determination covered the period from 1990 to 1993, and were unaffected by suspension of liquidation which occurred several months after this time frame. Therefore, we determine that the domestic industry would not have been materially injured by reason of imports from France had there not been a suspension of liquidation.

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<sup>83</sup> Table 4, CR at I-21, PR at II-8.

<sup>84</sup> For example, if U.S. consumption of clinker CA flux continues to decrease at this same rate in 1994, the projected subject imports would account for over \*\*\* percent of total U.S. consumption.

<sup>85</sup> The domestic industry's capital expenditures were \*\*\*. Tables 9 and C-1, CR at I-34 and C-3, PR at II-11 and C-2.

<sup>86</sup> 59 Fed. Reg. 14136, 14147-14148 (March 25, 1994).



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# DISSENTING VIEWS OF VICE CHAIRMAN PETER S. WATSON

## No Threat of Material Injury by Reason of LTFV Imports

Based on the record evidence in this investigation, I determine that the domestic industry producing calcium aluminate flux (hereafter "clinker CA flux") is not threatened with material injury by reason of LTFV imports from France.

Section 771 (7) (F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."<sup>1</sup>

While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."<sup>2</sup>

Of the 10 statutory threat factors, I find the following relevant to this case and shall discuss each in turn.

\* Factor II: any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States;

\* Factor III: any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

\* Factor IV: the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

\* Factor V: any substantial increase in inventories of the merchandise in the United States;

\* Factor VI: the presence of underutilized capacity for producing the merchandise in the exporting country;

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

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<sup>1</sup> 19 U.S.C. §§ 1673d (b) and 1677 (7) (F) (ii).

<sup>2</sup> 19 U.S.C. § 1677 (7) (F) (ii). See e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); see also *Metallwerken Nederland B.V. v. United States*, 744 F. supp. 281, 287 (Ct. Int'l Trade 1990).

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

Threat factor VIII — regarding the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers can be used to produce products subject to investigation — is not relevant here. The sole French producer of clinker CA flux can use the same production facilities to produce Calcium Aluminate Cement (“CAC”) clinker which was a product subject to investigation until recently when the Commission made its final determination in *Certain Calcium Aluminate Cement and Cement Clinker from France*, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 (May 1994). However, since the Commission made a final negative determination with respect to CAC clinker, the potential for product shifting (i.e., from CAC clinker to clinker CA flux) in the specific terms of the statute does not arise.<sup>3</sup>

## Conditions of Competition

Two central features of the market for clinker CA flux during the period of investigation were the sole distributor relationship between Lehigh and National Recovery Systems (“NRS”) and the dramatic shift away from the use of “pure” clinker CA flux to blends, containing some or no clinker CA flux. In combination, they explain why Lehigh is not threatened with imminent injury by reason of subject clinker CA flux imports from France. I will discuss each briefly before turning to the relevant statutory threat factors.

### *A. Lehigh and NRS*

Lehigh’s decision to make NRS the sole distributor of its product was damaging for two reasons. First, it placed the fate of Lehigh’s clinker CA flux operations in the hands of another firm (NRS) whose primary interest lay in maximizing its own profits, not those of Lehigh. (NRS processed a portion of the clinker CA flux it bought from Lehigh and blended it with \*\*\* slag-based fluxes and other sources of alumina.) This error was recognized by Lehigh \*\*\*.<sup>4</sup> The second reason this business decision hurt Lehigh was that it prevented any flexibility in marketing to alternate sources once it became clear that steel firms were increasingly using blended compounds for their fluxing needs.

### *B. Blends*

During the period of investigation, the composition of the various types of flux products changed. As a result of the general improvement in the demand for high-quality U.S.-produced steel and the increased use in ladle metallurgy technologies, the overall consumption of flux products increased. Much of the growth in demand for fluxing agents was accounted for by alternatives to straight clinker CA flux. As steel manufacturers gained experience with the

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<sup>3</sup> In addition, pursuant to 19 USC § 1677 (7) (F) (iii), the Commission must consider whether dumping findings or remedies in the markets of foreign countries suggest a threat of material injury to the domestic industry. No such findings or remedies exist here. Hearing Transcript at 208.

<sup>4</sup> Lehigh and NRS \*\*\*. \*\*\*. PR at II-8, Footnote 40.



use of these products and continued to adjust their production processes, an increasing number of these firms shifted to products containing decreasing amounts of clinker CA flux or products containing no clinker CA flux at all. Steel manufacturers shifted to these alternative products in order to lower their overall operating costs and/or to improve the quality of their final products.<sup>5</sup> This was and remains a dynamic process with steel firms experimenting with new flux blends to meet changing needs.

Thus, except through the efforts of only one of the several blenders, Lehigh was shut out from participating in the changing flux market at the same time that the fate of its clinker CA flux operations was in the hands of a firm with conflicting independent profit motives. Since its sole distributor relationship with NRS was terminated in December 1993, Lehigh has been free to market its product to a variety of blenders and end-users. Indeed, this new-found freedom to market to a wide range of potential clinker CA flux customers is likely to result in improved operating performance for Lehigh.

## Statutory Threat Factors

Factors II and VI. There was no increase in production capacity or existing unused capacity in France that is likely to result in a significant increase in imports of clinker CA flux to the United States. The \*\*\* capacity of Lafarge similarly cannot be seen as presenting a real and imminent threat of material injury. The capacity of Lafarge Fondu to produce clinker products (including clinker CA flux) \*\*\*. \*\*\*. \*\*\*.<sup>6</sup>

Factor IV. A direct comparison between Lehigh's and Lafarge's sales of unprocessed clinker CA flux to blenders demonstrated \*\*\* by the subject imports, as Lehigh's prices \*\*\* throughout the period examined, and Lafarge's prices were \*\*\*.<sup>7</sup> There is no evidence to suggest that future imports of clinker CA flux would enter the U.S. market at prices that would depress or suppress domestic prices.

Factor V. There has been no substantial increase in inventories of subject clinker CA flux in the United States over the POI. In fact, inventories fluctuated \*\*\*.<sup>8</sup>

Factor X. There is no evidence to suggest that subject imports would impede the efforts of the domestic industry to develop new or more advanced products. Clinker CA flux is essentially a commodity product, any "innovation" would more likely come in the area of marketing to blenders and/or end-users. Indeed, absent the Commission's final affirmative threat determination Lehigh would have faced the healthy effects of competition and been forced to develop new marketing strategies and customers to meet the increasing demand for flux blends. A new exposure to market forces would likely have been healthy for Lehigh.

Factor III. The final threat factor to be considered is whether there will be any rapid increase in market penetration by LTFV imports and the likelihood that the penetration will increase to an injurious level. Lafarge has stated that its U.S. shipments of clinker CA flux will \*\*\* by \*\*\* percent in 1994, and then \*\*\* by \*\*\*

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<sup>5</sup> EC-R-057 at 9 and Table 1 at 10. Note also the comments of representatives from \*\*\*.

<sup>6</sup> See Table 10, PR at II-11.

<sup>7</sup> See Table 13, PR at II-17.

<sup>8</sup> PR at II-11.

percent in 1995. Such \*\*\* would put 1994 shipments at some \*\*\* and 1995 shipments at \*\*\*. Both levels would be \*\*\* the 1993 level of \*\*\* but \*\*\*.<sup>9</sup>

I do not find the projected \*\*\* in Lafarge's clinker CA flux shipments to pose an imminent threat of material injury to the domestic industry. Subject imports have had a large share of the domestic market throughout the period of investigation. This large market share did not materially injure the domestic industry then because of Lehigh's business decision to make NRS the sole distributor of its clinker CA flux and the shift in the market away from straight clinker CA flux to blends. I fail to see how \*\*\* in French shipments from 1993 levels \*\*\* will now threaten Lehigh with material injury. Also, I do not see that the volume of subject imports put downward pressure on prices. Rather, any downward pressure on clinker CA flux prices was most likely the result of shifting to less expensive blended flux compounds.

Again, if anything, Lehigh's new-found ability to compete in the market — and sell to blenders and end-users alike — should result in improved operating performance. Lehigh's clinker CA flux operations are certainly in \*\*\* condition now — a result due largely to \*\*\*. \*\*\*, Lehigh has been free to compete in a dynamic marketplace as an active, rather than a passive, participant. Thus, if LTFV imports were not causing material injury to Lehigh when its hands were tied by the sole distributor relationship with NRS, I find it illogical to say they are threatened now that they are free to sell to other blenders.

For the reasons noted above, I find that LTFV imports of clinker CA flux from France do not pose a threat of material injury that is real nor do they make actual injury imminent.

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<sup>9</sup> See Table 10, PR at II-11.

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# DISSENTING VIEWS OF COMMISSIONER CRAWFORD

## Calcium Aluminate Flux from France

### Inv. No. 731-TA-645 (Final)

On the basis of information obtained in these final investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of clinker calcium aluminate flux (clinker CA Flux) found by the Department of Commerce to be sold at less-than-fair-value (LTFV).

I concur in the conclusions of my colleagues in the majority with respect to like product, domestic industry and condition of industry. These dissenting views provide an explanation of my determination of no material injury or threat of material injury by reason of LTFV imports of clinker CA flux from France.

## I. Analytical Framework

The statute directs that the Commission determine whether there is "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they have caused material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not direct us to weigh causes, only to determine if the *dumping* is causing material injury to the domestic industry. It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the domestic industry to the industry conditions that would have existed had imports been fairly priced.<sup>1</sup> I then determine whether the change in conditions constitutes material injury.

In my analysis of material injury, I evaluate and seek to isolate the effects of the dumping on the domestic industry. Specifically, I look at the effect of dumping on prices, sales, and revenues of the domestic industry. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if

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<sup>1</sup> 19 U.S.C. § 1677(7)(C)(iii).

the imports had been priced fairly. Similarly, to evaluate the effects of dumping on domestic sales, I compare the domestic sales that existed when the imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and sales effect translate into an overall revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, I find that the domestic industry is materially injured by reason of dumped imports. For the reasons discussed below, I find that the domestic industry is not materially injured by reason of imports of clinker CA flux from France.

## II. Background And Conditions Of Competition

Evaluating the effects of LTFV imports on domestic prices, sales, and revenues requires an understanding of the economic factors affecting the domestic market. It is necessary to understand how purchasers of the product react to an increase or decrease in the price of the product they purchase (i.e., the elasticity of demand). It is also necessary to understand how the imported and domestic products are differentiated from each other and how that affects purchasers' decisions to buy the products. When purchasers can choose between imports and domestic products, differences between those products will affect the price purchasers pay for each. The extent of those differences determines whether purchasers buy more of the domestic product when the price of the imported product increases (i.e., the elasticity of substitution). Similarly, when evaluating the impact of LTFV imports on the domestic industry, it is necessary to understand whether the industry could increase the volume of its production as a result of an increase in the price of the domestic product (i.e., the elasticity of domestic supply). It is also necessary to understand other relevant economic factors, such as the composition of the industry and the availability of non-subject imports, that affect domestic prices and sales.

### *Elasticity of Demand*

The elasticity of demand measures how purchaser demand responds to product price changes. It varies with several factors, including the product uses, cost as a percentage of total cost of the finished product, availability of substitute products, and alternative finished goods.

The demand for clinker CA flux is derived from the demand for steel, in which it is used as a processing agent. The cost of clinker CA flux is an extremely small share of the overall production cost of steel.<sup>2</sup> In addition, record evidence indicates that nonprice factors such as quality, availability, and delivery capability are of primary importance to users in making their purchasing decisions. These factors suggest a low elasticity of demand.

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<sup>2</sup> EC-R-057 at 28.

In contrast, the availability of several good substitute products, such as vanadium slag, suggests a high elasticity of demand.<sup>3</sup> Shipments of these substitutes, which include non-clinker CA flux products and blends of clinker CA flux and non-clinker CA flux products, have been increasing while shipments of "straight" clinker CA flux have been decreasing during the POI.<sup>4</sup> Domestic consumption of straight clinker CA flux decreased from 1992 to 1993, despite the fact that the consumption of all flux products has increased during the POI.<sup>5</sup> Thus substitutes for clinker CA flux have become increasingly important in the marketplace.

In light of these factors, I determine that purchasers are somewhat sensitive to price increases. The staff estimated a range of -1.0 to -1.5,<sup>6</sup> and I conclude that the demand elasticity is probably even higher, in light of the availability of and increasing demand for good substitutes for clinker CA flux. Therefore, I find that purchasers are likely to reduce their purchases if prices increase.

## Elasticity of Substitution

The elasticity of substitution measures how the relative demand for two alternative products responds to relative price changes in these products. If the two products are close substitutes, purchasers will tend to respond more readily to relative price changes. Thus a price increase in one product will *decrease* demand for that product and *increase* demand for the close substitute. In these investigations, the LTFV imports and the domestic products are similar in quality. However, they are not otherwise close substitutes in the marketplace; that is, an increase in the price of the subject import product will not readily increase demand for the domestic product, and vice-versa.

The record demonstrates that purchasers are influenced by a variety of nonprice factors, including quality, availability, delivery capability, and consistency of the product. The record indicates that purchasers place a value on traditional supplier relationships, infrequently changing from suppliers of domestic products to suppliers of imported products, and vice versa, as a result of short-run differences in the relative prices of the products. These supplier relationships limit the switching between LTFV imports and the domestic products, and therefore reduce the degree of substitutability between the two. Moreover, purchasers of clinker CA flux for use in direct sales of clinker CA flux or in blends of clinker CA flux and other flux materials reported that they were not able to purchase from the domestic supplier during the period examined due to an exclusive contract the domestic supplier negotiated with National Recovery Systems (NRS), a bulk purchaser/blender.<sup>7</sup> Because of the exclusive marketing arrangement, the only source of clinker CA flux for blenders other than NRS was subject imports. For these reasons, the staff estimates the elasticity of substitution in the range of 2 to 3, indicating a somewhat low elasticity of substitution.<sup>8</sup>

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<sup>3</sup> PR at II-4, II-5 and Table 17, II-19.

<sup>4</sup> PR at Table 16, II-18 and Table C-3, C-2.

<sup>5</sup> EC-R-057 at 9.

<sup>6</sup> EC-R-057 at 28.

<sup>7</sup> EC-R-057 at 24.

<sup>8</sup> EC-R-057 at 22.

## Elasticity of Domestic Supply

The elasticity of supply measures the ability of producers to increase production in response to price increases in the market. It depends on capacity utilization rates, cost and time of adding capacity, ability to shift sales from export to domestic markets, and the availability of inventories.

I evaluated the domestic industry's capacity and capacity utilization in producing finished clinker CA flux to understand how domestic output of clinker CA flux would have been affected if LTFV imports had been fairly priced. Capacity utilization was \*\*\* low in 1993, and unused capacity represented a significant portion of domestic consumption.<sup>9</sup> The domestic industry had \*\*\* inventories available for sale in the market. Moreover, the domestic industry can easily shift production capacity from CA cement clinker to produce clinker CA flux; the desirability of such a shift would depend on the relative benefits from producing one product or the other. Also, at least one former domestic producer \*\*\*. For these reasons, the staff estimates an elasticity of domestic supply in the range of 4 to 6, which I find to be reasonable.<sup>10</sup> Therefore, I find that the domestic industry would have been readily able to increase its output in response to an increase in prices.<sup>11</sup>

## Conditions of Competition

The channels of distribution for delivery of domestic product to end users were constrained by an exclusive contract between the major domestic producer and the purchaser/blender NRS. Record evidence shows that, in contrast to LTFV import prices, NRS' clinker CA flux prices were not responsive to changes in market conditions. For example, prices of subject imports changed with changes in apparent levels of consumption. However, NRS' prices \*\*\* with changes in apparent consumption. The exclusive contract between the domestic producer and its sole customer, NRS, limited the domestic producer's ability to respond to changes in market conditions. Thus the exclusive nature of the NRS contract effectively resulted in less responsiveness by the domestic producer to changes in demand. As a result, the elasticity of domestic supply was effectively lower. A lower elasticity of supply would mean, *ceteris paribus*, that the elimination of LTFV imports would have a smaller effect on domestic sales.

Another important condition of competition has been the shift in the composition of demand for flux products. During the 1980s, clinker CA flux came into increasing use because it provided the necessary chemistry to produce high-purity steel and it provided a faster melting time than other fluxing agents.<sup>12</sup> However, the record indicates a significant shift in demand from pure clinker CA flux to non-clinker CA flux products and blends of non-clinker CA flux and clinker CA flux during the POI. I note that despite an improvement in the steel industry market during the POI, the apparent domestic consumption of clinker CA flux fell from 1992 to 1993, while demand for non-clinker CA flux and blends increased.<sup>13</sup> These alternative products were reportedly less expensive and had

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<sup>9</sup> The 1993 reported available capacity was more than \*\*\* percent of reported domestic consumption. PR at Table C-1, C-2.

<sup>10</sup> EC-R-057 at 20.

<sup>11</sup> See "Conditions of Competition" section below for an explanation of why the effective elasticity of supply was lower.

<sup>12</sup> PR at II-4.

<sup>13</sup> PR at II-5, II-6, II-8 and II-18.

certain properties desired by users. Therefore, purchasers of flux products increasingly turned to the alternative products as a substitute for clinker CA flux throughout the POI.

Record evidence demonstrates that, during the period of investigation, users could have purchased the like product from \*\*\* sources, one of which exited the market in 1993. No non-subject imports were available.

## **II. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS**

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States. . . .<sup>14</sup>

In assessing the effect of LTFV imports, I compare the current condition of the domestic industry to that which would have existed had imports been fairly priced. Then, taking into account the condition of the industry, I determine whether the resulting change of circumstances constitutes material injury. For the reasons discussed below, I find that the domestic industry is not materially injured by reason of LTFV imports.

### ***A. No Material Injury by Reason of LTFV Imports***

#### **1. Volume of the LTFV Imports**

As discussed in the condition of industry section, *supra*, the volume of LTFV imports increased during the POI from an already large share. I find this volume of LTFV imports to be significant.

#### **2. Effect of LTFV Imports on Domestic Prices**

To analyze the effect of LTFV imports on domestic prices of the like product, I consider a number of factors relating to the industry and the nature of the products. These factors include the availability of substitute products in the market, the degree of substitutability between the LTFV imports and the domestic like product, and the presence of fairly traded imports. I find the LTFV imports had no significant price effects.

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<sup>14</sup> 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

The size of the dumping margins and the elasticity of substitution suggest that at least some subject imports would have entered the domestic market if they had been fairly priced. As a result, purchasers of some but not all of the unfairly traded product would have sought alternative products or sources of supply. Reduced LTFV import supply of clinker CA flux would have caused, *ceteris paribus*, upward pressure on prices. The domestic industry consists of only one producer.<sup>15</sup> Under some circumstances the sole producer would have been able to increase its prices if LTFV imports were reduced or eliminated. However, any attempt by domestic industry here to raise prices significantly would have been unsuccessful for several reasons. First, the market experienced excess domestic capacity and available inventories. The ready availability of supply reduces the possibility of price increases.<sup>16</sup> Second, purchasers had substitute products readily available to replace any reduction in LTFV import supply. Had there not been any good substitutes to pure clinker CA flux, then the sole domestic producer would have been able to increase prices had the subject import prices increased. However, any efforts by the sole domestic producer here to raise its prices would have been restrained or prevented by the availability of these good substitute products. In other words, purchasers would have bought other products to avoid paying a higher price for the domestic product. Third, as discussed above, the sole domestic producer had an exclusive contract with one distributor of the domestic product, NRS. Therefore the domestic producer could not independently respond to changes in market conditions. Thus if subject imports had been fairly traded, the domestic producer's ability to respond would have been constrained.<sup>17</sup> As a result of consideration of these and other factors, I find that the effect of LTFV imports on domestic prices has only been minimal.

### 3. Impact on the Domestic Industry

In assessing the impact of LTFV imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.<sup>18</sup> These factors either encompass or reflect the volume and price effects of the dumped imports, and so I must gauge the impact of the dumping through those effects.

As discussed above, it is likely that at least some subject imports would have entered the domestic market at fairly traded prices. However, because of the availability of close substitutes in the U.S. market, it is unlikely that domestic prices would have increased even had the supply of LTFV imports in the U.S. market been reduced. As a result, any impact of LTFV imports on the domestic industry would have been on the volume of the domestic industry's output and sales.

Domestic sales, and therefore revenues, may have increased somewhat if LTFV imports had been priced fairly. Purchasers would likely have purchased some combination of domestic product, higher priced subject imports, and substitute

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<sup>15</sup> Another U.S. producer, RMI, exited the market in 1993.

<sup>16</sup> I note that producers only make use of excess capacity and sell inventories if they benefit from doing so. In this case, competition from alternative products would have provided an incentive for the domestic producer to increase capacity utilization and sell from inventories, if LTFV imports had been restricted.

<sup>17</sup> NRS showed \*\*\* to changes in consumption, changes in the level of imports and other changes in market conditions.

<sup>18</sup> 19 U.S.C. § 1677(C)(iii).



products. As described above, the LTFV imports and the domestic products are not good substitutes. This indicates that purchasers would be less likely to replace LTFV imports with domestic product. Purchasers have, however, turned increasingly to blends and to non-clinker CA flux products as substitutes for clinker CA flux.<sup>19</sup> It is particularly noteworthy that NRS, exclusive distributor of the domestic product during the period examined, actively shifted its product sales away from clinker CA flux and toward blends containing clinker and non-clinker CA flux products.<sup>20</sup> Given the low substitutability between the domestic like product and subject imports, the availability of close substitutes, and users' shift away from pure clinker CA flux to alternative products, I conclude that users would not have increased significantly their purchases of the domestic product. As a result, the domestic industry's sales and revenues would not have increased materially. Therefore, I conclude that the domestic industry would not have been materially better off if LTFV imports had been fairly priced.

### III. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

I have considered the enumerated statutory factors that I am required to consider in my determination.<sup>21</sup> A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."<sup>22</sup>

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence<sup>23</sup> that I am required by law to evaluate in making my determination.

The information indicates that there was \*\*\* in the production capacity for LTFV clinker CA flux from \*\*\*.<sup>24</sup> In addition, there has been only a \*\*\* in unused capacity during the POI. Although LTFV imports are projected to \*\*\* in 1994,<sup>25</sup> I note that the market for steel, which consumes flux products, has been improving and that the 1994 import projections of clinker CA flux from France are \*\*\* actual 1992 shipments. As a result, I find that there has been \*\*\* in production capacity or sufficient increase in unused capacity to result in a significant increase in LTFV imports in the United States. Furthermore, the overall French capacity utilization for clinker CA flux is \*\*\*, \*\*\*. Thus I do not believe that the unused French production capacity constitutes evidence of a real threat or imminent and actual injury.

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<sup>19</sup> PR at Table 16, II-18 and Table C-3, C-2.

<sup>20</sup> PR at II-9.

<sup>21</sup> 19 U.S.C. § 1677(7)(F)(i).

<sup>22</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>23</sup> See *American Spring Wire Corporation v. United States*, 590 F. Supp. 1273 (Ct. Int'l Trade 1984).

<sup>24</sup> PR at Table 10, II-11. \*\*\*, \*\*\*, PR at II-11.

<sup>25</sup> PR at II-11.

With respect to market penetration of subject imports, LTFV clinker CA flux increased \*\*\* during the period of investigation.<sup>26</sup> However, this is in large part a result of the exclusive contract between the domestic producer and its sole purchaser/blender.<sup>27</sup> Thus I do not believe that the increase in market penetration constitutes evidence of a real threat or imminent and actual injury. There is no evidence that French producers of the subject imports are likely to divert shipments to the U.S. from other markets. French shipments to third markets have been \*\*\* during the POI and are projected to \*\*\* further. French home market shipments have been \*\*\* since 1991 and are projected to \*\*\* further.<sup>28</sup>

With respect to inventories of LTFV imports in the United States, there has been no increase that would provide evidence of a threat of material injury. To the contrary, U.S. inventories of French clinker CA flux decreased between 1992 and 1993.<sup>29</sup> Therefore, I find that U.S. inventories of LTFV clinker CA flux do not constitute evidence that any threat of material injury is real or that actual injury is imminent.

In my determination that there is no material injury by reason of dumped imports, I demonstrated that LTFV imports have had no significant effect on domestic prices. I find no positive evidence that this will change in the immediate future.<sup>30</sup> Therefore, I conclude that there is a very low probability that dumped imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

I find no evidence of any other demonstrable adverse trends that indicate the probability that LTFV imports will be the cause of actual injury. In addition, I find no positive evidence to support a conclusion that the potential for product-shifting represents a threat that material injury is real or that actual injury is imminent.<sup>31 32</sup>

For the reasons stated above, I find that the domestic industry is not threatened with material injury by reason of LTFV imports of clinker CA flux from France.

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<sup>26</sup> PR at Table C-1, C-2.

<sup>27</sup> \*\*\*.

<sup>28</sup> PR at II-11.

<sup>29</sup> PR at II-11.

<sup>30</sup> I have considered the recent termination of the exclusive contract between the domestic industry and NRS. This should improve the domestic industry's ability to sell its product.

<sup>31</sup> I note that CA cement clinker can be made on the same production line as clinker CA flux. However, since the Commission made a final negative determination with respect to CA cement clinker, the subject import producer would not have an incentive on these grounds to engage in product shifting from CA cement clinker to clinker CA flux.

<sup>32</sup> I note that statutory threat factors I (regarding subsidies) and IX (regarding agricultural products) are not applicable to this investigation. In addition, I did not find any significant evidence of actual and potential negative effects on the existing development and production efforts of domestic industry. Finally, pursuant to 19 U.S.C. § 1677(7)(F)(iii), the Commission considers whether antidumping findings or remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. There is no evidence of any such findings or remedies with respect to subject imports. See Hearing Transcript at 208.

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# **PART II**

# **INFORMATION OBTAINED IN THE**

# **INVESTIGATION**



## Introduction

Following a final determination by the U.S. Department of Commerce (Commerce) that imports of calcium aluminate (CA) flux from France are being, or are likely to be, sold in the United States at less than fair value (LTFV) (59 F.R. 14136, Mar. 25, 1994), the U.S. International Trade Commission, effective March 23, 1994,<sup>1</sup> instituted the CA flux portion of investigation No. 731-TA-645 (Final)<sup>2 3</sup> under section 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register*

<sup>1</sup> The Commission instituted the CA flux portion of the investigation effective Mar. 23, 1994, two days before publication of Commerce's *Federal Register* notice, because the Commission received official notification of Commerce's final determination on CA flux by letter on Mar. 23.

<sup>2</sup> The Commission had previously instituted inv. No. 731-TA-645 (Final) covering imports of certain CA cement and cement clinker from France (58 F.R. 67809, Dec. 22, 1993). Both the flux and cement portions of the investigation result from a petition filed by Lehigh Portland Cement Co. (Lehigh) on March 31, 1993, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain CA cement products (including CA flux) from France. In response to that petition, the Commission instituted investigation No. 731-TA-645 (Preliminary) and, on May 17, 1993, determined that there was a reasonable indication of such material injury by reason of allegedly LTFV imports.

In its preliminary (and, subsequently, in its final) investigations, Commerce found that the products constitute two separate classes or kinds of merchandise: (1) CA cement (ordinary CA cement) and CA cement clinker (ordinary CAC clinker) and (2) CA flux (58 F.R. 58683, Nov. 3, 1993, and 58 F.R. 14136, Mar. 25, 1994). Commerce made an affirmative preliminary LTFV determination with respect to ordinary CA cement and ordinary CAC clinker from France. However, Commerce made a negative preliminary determination regarding imports of CA flux from France.

<sup>3</sup> As defined by Commerce in its "scope of investigation" statement, CA flux is used primarily as a desulfurizer and/or cleaning agent in the steel manufacturing process. Like CAC clinker, CA flux contains by weight more than 32 percent but less

on March 28, 1994 (59 F.R. 14425).<sup>4</sup> The hearing was held in Washington, DC, on March 31, 1994.<sup>5</sup> Because Commerce's preliminary determination was negative, the Commission is directed by statute to make its final determination on clinker CA flux within 75 days after the date of Commerce's final affirmative determination, or by June 6, 1994. There have been no previous Commission investigations concerning clinker CA flux.

## The Products

### *Description and Production Processes*

The subject product, clinker CA flux, is used as a fluxing agent by the steel industry to remove undesirable sulfur and other impurities in order to produce higher quality steel. Clinker CA flux and (usually) lime are mixed with molten steel during ladle metallurgy processing<sup>6</sup> to form a slag (or vitreous residue) which is then removed from the steel batch. Due to the chemistry of the flux, the

#### <sup>3</sup>—*Continued*

than 65 percent alumina and more than one percent each of iron and silica. However, CA flux has a chemical composition distinct from CAC clinker. CAC clinker contains the hydraulic mineral mono-calcium aluminate, which gives it a molar ratio of lime to alumina of approximately 1:1. In contrast, CA clinker sold as a flux does not contain mono-calcium aluminate; it contains the complex mineral  $C_{12}A_7$  ( $12CaO \cdot 7Al_2O_3$ ), which gives it a molar ratio of lime to alumina of approximately 2:1.

Although it might be inferred from its use of CAC clinker as a point of comparison, Commerce's scope does not explicitly describe CA flux as a clinker product. There are other types of fluxing agents not produced as a clinker which contain CA. However, in its petition, petitioner identified the subject product as that "CA clinker sold as flux" (second amendment to the petition, June 29, 1993.) In its questionnaires, the Commission specifically stated that "Non-clinker flux produced as a by-product or co-product of other operations or recovered from slag piles or from catalytic converters is not included within this investigation." Subject CA flux is, for the purposes of this report, referred to as "clinker CA flux."

Clinker CA flux is provided for in subheading 2523.10.00 of the *Harmonized Tariff Schedule of the United States* (HTS).

<sup>4</sup> Copies of cited *Federal Register* notices are presented in app. A.

<sup>5</sup> The list of participants in the Commission's hearing is presented in app. B.

<sup>6</sup> Clinker CA flux generally is not used during other steelmaking processes.

sulfur and other impurities within the steel are chemically absorbed into the slag and are removed with it. The chemical ingredients within the flux also serve to lower the melt temperature of a steel batch, reducing the quantity of fuel required in the steel production process.<sup>7</sup> In addition, clinker CA flux is purchased for use as an ingredient or source of alumina in a wide range of other flux products that are prepared by a number of blenders.<sup>8</sup> These fluxing agents are further discussed in the section of this report entitled "Substitutes for Clinker CA Flux."

Lehigh and the manufacturer in France (Lafarge Fondu International) each produce clinker CA flux using the same line on which ordinary CAC clinker is produced.<sup>9</sup> <sup>10</sup> Clinker CA flux is produced from a raw material mixture of crude, uncalcined bauxite (the source of alumina, iron, and silica oxides) and limestone (the source of calcium oxide)). The exact chemical composition of the clinker CA flux produced by Lehigh and by Lafarge Fondu \*\*\*.<sup>11</sup> However, according to a blender that purchases both products, imported clinker CA flux is largely interchangeable with the domestically-produced product.<sup>12</sup> Imported clinker CA flux is manufactured using a fusion process in which the components are actually melted together.<sup>13</sup> This

<sup>7</sup> R.K. Sinha, *Industrial Minerals*, 2nd ed., (Rotterdam: A.A. Balkema, 1986), p. 241, and petitioner's prehearing brief, exhibit 6.

<sup>8</sup> Respondent states: \*\*\*. Respondent's prehearing brief, pp. 5-6, citing its Jan. 24, 1994 questionnaire response.

<sup>9</sup> The production process for clinker CA flux (and for ordinary CAC clinker) is described in detail in the Apr. 15, 1994 final staff report to the Commission for investigation No. 731-TA-645 (Final).

<sup>10</sup> Clinker CA flux cannot be ground into ordinary CA cement and the clinker used to produce ordinary CA cement cannot be used for flux. Testimony of Johnny Love, Manager of Technical Assistance, Lafarge CA, Conference transcript, p. 69, and respondent's postconference brief, exhibit 2.

<sup>11</sup> Individual batches produced by the same producer \*\*\*.

<sup>12</sup> There are no general specifications for clinker CA flux sold as a desulfurizer; each steel mill has its own specifications depending on its process. Affidavit of \*\*\*, attached as exhibit 6 to the petitioner's prehearing brief.

<sup>13</sup> In contrast, the Lehigh product is manufactured using a sintering process. There is no precise data on the record as to how differing production methods affect the overall cost of production. On the basis of its general knowledge of the two production processes, Lehigh "believes that fuel consumption is greater for the melt or fusion process than for the sintering process, because

apparently results in a more stable product that is somewhat easier to blend than the petitioner's sinter-produced flux.<sup>14</sup> The benefit to the blender, however, is minor in most circumstances and any difference is reportedly unimportant to the end user, or the steel mill.

## *Substitutes for Clinker CA Flux*

Clinker CA flux theoretically can compete with a wide range of fluxing products. Historically, steel mills desulfurized their steel using lime,<sup>15</sup> typically using it in conjunction with a wide variety of other separately purchased agents that improve performance and provide the necessary chemistry to form the slag. (For example, alumina, fluorspar, or other agents may be added to the ladle to reduce the reaction time, the amount of such additives determining the speed with which the flux melts. The amount of alumina also determines the purity levels which can be achieved in the steel.)<sup>16</sup> During the 1980s, an alumina-containing flux produced as a cement clinker (or clinker CA flux) came into increasing use. Used at first for low-hydrogen applications in very high-end steel, clinker CA flux sales rose in conjunction with the rise in demand for "clean" steel (that is high-purity steel) produced by ladle metallurgy. While comparatively expensive, flux in this form is easily dissolvable and brings about a faster melting time than that achieved from using alumina in a pure form.<sup>17</sup> As is discussed

### <sup>13</sup>—Continued

the melt process requires higher temperatures to melt the raw materials in the furnace. On the other hand, the raw materials and the preparation of the raw materials for introduction into the kiln in a sintering process are believed to be more expensive than the raw materials and the preparation of the raw materials for introduction into the furnace in a melt process." Posthearing brief, exhibit A, p. 15.

<sup>14</sup> Staff conversation with \*\*\*.

<sup>15</sup> It is the lime that actually absorbs the sulfur.

<sup>16</sup> The various input products and alumina and lime substitutes have a wide variety of uses other than as fluxing agents. For example, bauxite (a source of alumina) is used in aluminum production and in refractories. Calcined aluminas have chemical refractory, abrasive, and ceramic applications. Fluorspar is used in aluminum and glass manufacturing and lime is also used in environment and building products and to treat water. Responses by blenders to the May 5, 1994, questionnaire.

<sup>17</sup> Outside of the possibility of introducing new impurities (sometimes referred to as "tramp elements"), there is reportedly no difference in the final result achieved from using alumina in either the

in greater detail in the section of this report on "Pricing and Marketing Considerations," many steel mills continue to source directly some of the agents they use for fluxing in the form of raw materials, and at least a portion of such products (in particular, fluorspar) may be said to substitute for the subject product.<sup>18</sup> Other steel mills turned to the purchase of subject clinker CA flux which, as discussed earlier, they use in conjunction with lime.

However, there are also alternatives other than clinker CA flux that reportedly increased in importance as substitutes for the earlier fluxing practices.<sup>19</sup> A number of firms (referred to as "blenders") blend lime and various sources of alumina and/or fluorspar with at times numerous other additives to create customized, sometimes patented, products for their customers. The blends may incorporate clinker CA flux<sup>20</sup> or CA in

<sup>17</sup>—Continued

form of clinker CA flux or in another form. However, melting time can, depending upon the structure of a user's production line, represent a significant cost to the user and dictate whether, in fact, various fluxing practices can be practically substitutable.

<sup>18</sup> However, fluorspar (unlike clinker CA flux) is corrosive and can damage the refractory infrastructure. During the 1990-93 period, several mills (specifically, \*\*\*) turned from the use of blends with fluorspar to blends with a form of alumina because of such concerns. \*\*\*. Alumina-based slags (formed with the use of alumina-based fluxes) are also more stable than are those based on fluorspar, a factor which is relevant as slag can be itself reused as a flux.

<sup>19</sup> William West, vice president and general manager of West Minerals, testified at the hearing that "there has been a trend towards the use of blended fluxes, as opposed to pure flux products such as CA flux or lime. Blending has allowed manufacturers of fluxing agents to improve their formulas, provide a broader range of alternatives to customers, and reduce costs." Hearing transcript, p. 163. \*\*\* states that the growth in blended products was most evident from 1989 to 1992, as fluxing practices changed in response to increased demand for high-quality steel. He added that customers became more cost-conscious towards the end of the 1990-93 period examined by the Commission as the recession forced steel mills to reexamine fluxing costs. Staff conversation with \*\*\*, May 19, 1994.

<sup>20</sup> In response to a Commission inquiry, blenders reported that \*\*\* to \*\*\* percent of the weight of these types of blends consist of clinker CA flux. Lime is the component most frequently added. The actual amount of clinker CA flux incorporated depends largely upon the desired melting rate, product chemistry, and price.

another form, or may utilize alumina and lime from a number of other sources.<sup>21</sup>

Those forms closest to clinker CA flux in chemistry<sup>22</sup> (and thus which may substitute for it with a lesser degree of chemical manipulation by blenders or end users) are \*\*\*. In addition, there are other forms of agents that contain CA (for example, \*\*\*'s ferrovanadium slags and recycled slag from the ladle), but differ enough in chemistry from that required by steel mills that they must be purified and chemically adjusted prior to use. Products that are like clinker CA flux in that they contain "CA" are further referred to in this report as non-clinker CA flux. Unlike clinker CA flux, they are manufactured as by-products of a variety of other manufacturing processes.<sup>23</sup>

The extent to which non-clinker CA fluxes (or blends containing them) can practically substitute for the subject product varies according to the specific requirements of the individual purchaser.<sup>24</sup> <sup>25</sup> Also, there are differences in

<sup>21</sup> William West, vice president and general manager of West Minerals, further testified that "To meet the needs of their customers on as low a cost basis as possible, producers of fluxing agents have begun blending such different ingredients as vanadium slag, dolomitic lime, fluorspar, aluminum, limestone, wollastonite, aluminum dross, bauxite, crushed refractory brick, slag recovered from catalytic converters, as well as CA flux." Hearing transcript, p. 163. \*\*\* makes \*\*\* different blends from \*\*\* input products or "feedstocks"; \*\*\* produces \*\*\* or \*\*\* products from \*\*\* feedstocks.

<sup>22</sup> However, as noted earlier in this report, there are no chemical specifications for clinker CA flux (or, for that matter, for "flux" per se). Rather there are a series of input products of varying chemistries which are modified by blenders and/or end users to produce a wide variety of fluxing agents whose chemistry will depend upon that needed by the steel mill for a specific task. The chemistry of clinker CA flux is close to that required by many users and, as noted above, provides a fast melting time. \*\*\* and both, in turn, are almost always modified by the user (by the addition of lime) either before or during use.

<sup>23</sup> Because they are a by-product, users cannot be assured of a constant supply. Such concerns affect purchase decisions and customers' perception of the product. \*\*\*.

<sup>24</sup> William West, vice president and general manager of West Minerals, testified that "Vanadium slag can be substituted to some degree for CA flux in a vast majority of applications. I would estimate at least 80 percent of the applications." Hearing transcript, p. 165. Petitioner disagrees, stating that "Most steel producers desire "straight" clinker CA flux or clinker CA flux blends, not vanadium slag CA flux blends, due to the chemical consistency and

costs among such products. In 1993, Lehigh sold \*\*\* clinker CA flux to National Recovery Systems (NRS) for \$\*\*\* per short ton; in contrast, NRS \*\*\* vanadium slag \*\*\* for \$\*\*\* per short ton.<sup>26</sup>

Staff notes that it may be appropriate in any final assessment of the substitutability of other products with clinker CA flux to examine first whether clinker CA flux is to be viewed as an end product (fluxing agent) or viewed as an ingredient to an end product. Steel mills which desire a close substitute for clinker CA flux (without blending) should turn to a product with a chemistry comparable with that of flux. The most likely candidates appear to be \*\*\*. Historically, \*\*\* was sold directly to steel mills, presumably as a substitute for "straight" clinker CA flux. However, \*\*\* was not so sold—instead, \*\*\*.<sup>27</sup> The field of substitution candidates becomes much larger if clinker CA flux is to be viewed as an ingredient to a blend. Although there may or may not be an advantage to using a close-chemical substitute for clinker CA flux in a blend (as NRS has done with vanadium slag), other blenders sold products using substitutes such as fluorspar (which does not contain alumina, much less CA) during the period examined. And, as will be discussed later in this report, purchase patterns of fluxes with fluorspar appeared to have as much impact on demand for clinker CA flux as did vanadium slag products during the period examined. Staff further comments that any analysis is complicated

#### <sup>24</sup>—Continued

purity of clinker CA flux versus vanadium slag and other potential substitutes." Petitioner's supplemental posthearing brief, p. 3. There appears to be some gap, however, between what can be substituted in theory and what purchasers historically have been willing to do. \*\*\*. Further views of purchasers of flux products concerning substitutability are discussed in the section of this report entitled "Purchase Considerations."

<sup>25</sup> With reference to the question of melting time, the product that will melt fastest is one composed of a 50-50 mix of lime and alumina (which typically matches the chemistries of clinker CA flux). Most vanadium slags (which contain CA) are much higher in alumina and thus will melt less rapidly than clinker CA flux, unless chemically modified. Recycled slags (which can also contain CA) will melt even faster than clinker CA flux. However, they can be used only in limited quantities due to high impurity levels. Staff conversation with \*\*\*, May 19, 1994.

<sup>26</sup> \*\*\*.

<sup>27</sup> \*\*\* and May 5, 1994 questionnaire response of NRS.

by the change in the portion of clinker CA flux sold "straight" as opposed to that sold in a blend during the period examined.

## *Like Product Issues Examined in the Preliminary Investigation*

During its preliminary investigation the Commission examined several like product issues, including (1) whether CA cement clinker manufactured for sale as flux (clinker CA flux) constitutes a separate like product from CA cement clinker manufactured for grinding into CA cement (CAC clinker); and (2) whether non-clinker CA flux is like clinker CA flux.<sup>28</sup> The Commission found that CA cement clinker manufactured for use as flux is a like product separate from CAC clinker. It further determined not to include non-clinker CA flux in the CA clinker flux like product.<sup>29</sup>

## *U.S. Tariff Treatment*

U.S. imports of clinker CA flux from countries entitled to the column 1-general duty rate (including France) enter free of duty under HTS subheading 2523.10.00.<sup>30</sup>

## *The Nature and Extent of Sales at LTFV*

On March 24, 1994, Commerce notified the Commission of its final affirmative LTFV determination with respect to imports of clinker CA flux from France.<sup>31</sup> <sup>32</sup> The following tabulation provides the corrected LTFV margins (in percent):

Firm	Weighted-average margin
Lafarge Fondu .....	37.93
All others .....	37.93

<sup>28</sup> See *Certain Calcium Aluminate Cement and Cement Clinker from France*, inv. No. 731-TA-645 (Preliminary), USITC publication no. 2637, May 1993, p. 6.

<sup>29</sup> *Ibid.*, p. 8 and p. 11. Neither petitioner nor respondent contests these determinations.

<sup>30</sup> This subheading also covers all ordinary CAC clinker, white CAC clinker, and gray and white portland cement clinker.

<sup>31</sup> On Apr. 21, 1994, Commerce further notified the Commission of certain ministerial errors in its original LTFV calculations.

<sup>32</sup> In a letter of May 13, 1994, respondent requested that Commerce issue a redetermination of



In order to obtain the estimated dumping margins of product imported from France, Commerce compared the U.S. price (USP) of clinker CA flux with its foreign market value (FMV) during the period of investigation (POI), October 1, 1992 through March 31, 1993.

**Calculation of USP.**—Since all of Lafarge's U.S. sales to the first unrelated purchaser occurred after importation into the United States, Commerce based USP on exporter's sales prices (ESP). USP was calculated from packed or bulk, ex-U.S. warehouse or delivered prices to unrelated U.S. customers (with appropriate deductions for transportation costs and selling expenses). Commerce also adjusted inventory carrying costs to reflect the period between production of the flux in France and shipment of the "processed" flux to the U.S. customer and deducted all value added in the United States, including the profit attributable to that value. In addition, it adjusted the USP for the (18.6) percent value-added tax paid on the comparison sale in France.

**Calculation of FMV.**—Commerce based FMV on home market sales using packed, ex-factory or delivered prices to unrelated customers.

In response to a request from Commission staff, Commerce provided the following information (in a letter dated April 1, 1994)<sup>33</sup> for its antidumping duty investigation on clinker CA flux:

1. The quantity and value of total U.S. sales of the merchandise from France during the POI: \*\*\* short tons, \$\*\*\*;
2. The quantity and value of sales examined: \*\*\* short tons, \$\*\*\* (gross), \$\*\*\* (net);
3. Of the sales examined, the quantity and value found to be at LTFV: \*\*\* short tons, and \$\*\*\*; and

<sup>32</sup>—Continued

the final LTFV margins, alleging that it erroneously compared the price of Lafarge's sales of bulk shipments of raw flux in the well-established U.S. market to the prices of processed, prepacked clinker CA flux sold in test quantities in the new French market. Respondent's posthearing brief, exhibit 5. In its preliminary determination, Commerce calculated the dumping margin using constructed value and found de minimis margins for subject CA flux.

<sup>33</sup> Since these data have not been updated to reflect Commerce's corrections, they must be viewed as approximate.

4. The range of affirmative margins found: \*\*\* to \*\*\* percent.

## The U.S. Market<sup>34</sup>

### Market Participants

Firms that supply flux products into the U.S. market are identified in table 1; the quantity of their domestic shipments is provided in table 2.<sup>35</sup>

Table 1

Clinker CA flux: U.S. suppliers, locations, positions on the petition, and type and source of product

\* \* \* \* \*

Table 2

Clinker CA flux and other flux products: U.S. suppliers' domestic shipments, by firms, 1993

\* \* \* \* \*

Lehigh, the petitioner in this investigation, is the only current domestic producer of the subject CA flux. A second firm (RMI) produced subject CA flux (and other CA cement products) for the U.S. market during 1990-93.<sup>36</sup> Lafarge CA, the other major U.S. supplier, imports subject CA flux manufactured by its parent company in France.<sup>37</sup>

<sup>34</sup> The data for the following section on the U.S. market (and for the other sections of this report) are based primarily on the responses of industry participants to Commission questionnaires. A producers' questionnaire was sent to (and completed by) the only current U.S. producer of clinker CA flux (Lehigh). Another firm, Refractory Materials, Inc. (RMI), which produced \*\*\* amounts of clinker CA flux, provided shipment data on its producing operations.

A total of 25 importers' questionnaires were sent to producing firms and to those firms that reported more than insignificant imports into the United States from all sources under the HTS classifications that include clinker CA flux. All firms, except three that imported non-subject clinker products, responded to the Commission's questionnaires.

A "producers'/importers'/purchasers'" questionnaire was also sent to 13 firms identified as blenders of other flux products by respondent and by purchasers of flux products. \*\*\*. All firms, except \*\*\*, responded to the Commission's questionnaire.

Summary data on the U.S. market for clinker CA flux are presented in tabular form in app. C.

<sup>35</sup> Information concerning suppliers of other flux products (primarily blends) in the U.S. market is provided in table C-2 in app. C. (Data on the quantity of their shipments are also incorporated in table 2.)

<sup>36</sup> \*\*\*.

<sup>37</sup> \*\*\*.

## Channels of Distribution of Clinker CA Flux

Table 3 presents data on the channels of distribution of U.S. shipments of clinker CA flux.

**Table 3**  
Clinker CA flux: Channels of distribution of U.S. shipments, by products and by firms, 1992

\* \* \* \* \*

As described earlier, clinker CA flux is manufactured using cement-producing techniques by firms whose focus of expertise is in the cement industry. However, unlike cement, it is exclusively marketed to customers located within the steel industry. \*\*\*.<sup>38</sup>

\*\*\* Lehigh \*\*\* clinker CA flux (which it labels "\*\*\*\*" product)<sup>39</sup> to an unrelated distributor, NRS, in East Chicago, IN, under the terms of an exclusive contract (i.e., no other distributor or user of clinker CA flux may purchase the product directly from Lehigh).<sup>40</sup> NRS further processes a portion of the clinker CA flux purchased from Lehigh, blending it with \*\*\* slag-based fluxes and other sources of alumina (e.g., \*\*\*).<sup>41</sup>

\* \* \* \* \*

Therefore, \*\*\* of the clinker CA flux sold by Lafarge CA is sold to or through distributor/blenders which are in some form of competition with NRS (the distributor of the

<sup>38</sup> Information on the degree of such marketing by Lafarge CA supplied by counsel for respondent. Staff conversation, May 20, 1994.

<sup>39</sup> Petitioner's prehearing brief, p. 14, n. 14.

<sup>40</sup> Lehigh and NRS \*\*\*. \*\*\* attached as exhibit 12 to petitioner's posthearing brief. Lehigh \*\*\*. Petitioner's supplemental posthearing brief, p. 3.

Roy Bottjer, National Marketing Manager, Calcium Aluminate Cements & Special Cement Products, testified that Lehigh decided to market its product through NRS because "They had great knowledge among the industry that they were serving, plus they were already serving the industry with other products, so the transformation would make a rapid penetration into that market with a firm such as National Recovery Systems." Hearing transcript, p. 72.

<sup>41</sup> Petitioner's prehearing brief, exhibit 6. \*\*\*. Petitioner's prehearing brief, p. 14, n. 14 and exhibit 11, p. 4; petitioner's supplemental posthearing brief, p. 8, n. 8; and additional information received from NRS dated May 20, 1994 (as clarified by \*\*\* in a telephone conversation of May 23, 1994).

entire quantity of Lehigh product shipped during the period examined). \*\*\*.<sup>42</sup> \*\*\*.<sup>43</sup>

## Apparent U.S. Consumption of Clinker CA Flux

Table 4 presents apparent U.S. consumption of clinker CA flux.<sup>44</sup>

**Table 4**  
Clinker CA flux: Domestic shipments of U.S. product, domestic shipments of French product, and apparent U.S. consumption, 1990-93

\* \* \* \* \*

As shown, both the quantity and value of U.S. consumption increased from 1990 to 1992, then declined in 1993. As discussed earlier, the rise in consumption during the first years of the period examined reflects the increasing demand for high-purity steel produced with ladle metallurgy. Such demand has grown over the last 10 years as the number of end uses requiring such steel has expanded. At the same time (and contributing to the rise in demand for flux), raw materials contain higher amounts of impurities. Also, more steelmakers now use ladle metallurgy, a technology where steel can be refined outside a traditional steelmaking furnace.<sup>45</sup> The 1993 dip in consumption reflects the decrease in purchases by end users (steel mills) of "straight" or unblended clinker CA flux.<sup>46</sup> In its January 24, 1994 questionnaire response, Lafarge CA states

<sup>42</sup> \*\*\*.

<sup>43</sup> \*\*\*.

<sup>44</sup> As stated earlier, the scope of the investigation consists of clinker CA flux which contains by weight more than 32 percent but less than 65 percent alumina and more than 1 percent each of iron and silica. The specifications are based on data presented in the petition and a subsequent amendment to the petition. Petitioner believed itself to be the only producer of clinker CA flux and stated in its June 29, 1993 amendment (p. 2) that "calcium aluminate clinker produced for sale as calcium aluminate flux ... falls within these specifications for ordinary CA cement and clinker." However, as discussed in footnote 2 to table 2, a portion of RMI's shipments \*\*\*. The shipment data for clinker CA flux presented in this report include that \*\*\* amount of clinker CA flux.

<sup>45</sup> Affidavit of \*\*\*, submitted as exhibit 1 to the respondent's prehearing brief.

<sup>46</sup> In its May 5, 1994 questionnaire response, Lafarge CA reported \*\*\*. (Some of Lafarge CA's shipments to distributors are also re-shipped as "straight" clinker CA flux to steel mills; not all of those shipments are blended. These quantities \*\*\*. \*\*\*. NRS (the distributor of Lehigh's product) reported \*\*\*.

that "\*\*\*\*."<sup>47</sup> Data on the quantity and value of domestic shipments of blends (and non-clinker CA flux) reported by suppliers of such products are reported in table C-3 in appendix C. As shown, the quantity of such domestic shipments increased by \*\*\* percent from \*\*\* short tons in 1991 to \*\*\* short tons in 1993.

## Consideration of the Question of Material Injury to an Industry in the United States

### *U.S. Producers' Capacity, Capacity Utilization, Production, and Shipments of Clinker CA Flux*

Table 5 presents data on the capacity to produce<sup>48</sup> and actual production of clinker CA flux. Detailed data on shipments are also provided.

**Table 5**  
**Clinker CA flux: U.S. capacity, production, capacity utilization, and shipments, by products and by firms, 1990-93**

\* \* \* \* \*

### **Shipments of Lehigh's Clinker CA Flux through NRS**

Lehigh did not increase its capacity to manufacture the product during 1990-93. However, utilization of that capacity dropped \*\*\*,

<sup>47</sup> NRS indicates that \*\*\*. NRS response to May 5, 1994 questionnaire.

<sup>48</sup> Practical capacity was defined as the greatest level of output a plant can achieve within the framework of a realistic work pattern. Producers were asked to consider, among other factors, a normal product mix and an expansion of operations that could be reasonably attained in their industry and locality in setting capacity in terms of the number of shifts and hours of plant operations.

particularly in the last year.<sup>49</sup> The decrease in production is a result of the decline in shipments to NRS (the firm that purchases and markets the clinker CA flux produced by Lehigh). Domestic shipments to NRS decreased \*\*\* from 1990 to 1991, decreased by \*\*\* percent from 1991 to 1992, then \*\*\* by \*\*\* percent from 1992 to 1993.

NRS reported to the Commission that its purchases from Lehigh \*\*\* due to \*\*\*. \*\*\*.<sup>50</sup> Rather, \*\*\*.

The following tabulation presents domestic shipments of the specific flux products sold by NRS for the periods 1991 through 1993:<sup>51</sup>

\* \* \* \* \*

\* \* \* \* \*<sup>52</sup>

53

In its May 5, 1994 questionnaire response, NRS reported that its blends consist of varying combinations of clinker CA flux (purchased from Lehigh), vanadium slag (\*\*\*),<sup>54</sup> and ceramic alumina (\*\*\*). \*\*\*.<sup>55</sup> In a letter dated May 3, 1994 to Commission staff, \*\*\* reported:

\* \* \* \* \*<sup>56</sup>

<sup>49</sup> Lehigh produces clinker CA flux using the same systems and kiln in which it manufactures the clinker that is ground into cement. The following tabulation presents data for Lehigh's combined clinker CA flux and ordinary CAC clinker operations:

\* \* \* \* \*

As shown, if the data for ordinary CAC clinker are factored in, capacity utilization at Lehigh is still low and declining.

<sup>50</sup> Petitioner's prehearing brief, exhibit 6.

<sup>51</sup> The firm was unable to provide data for 1990.

<sup>52</sup> \*\*\*, domestic sales of other U.S. blenders of blends containing some form of CA rose from \*\*\* short tons in 1992 to \*\*\* short tons in 1993 (calculated from data presented in table C-3). Such sales increased throughout the 4-year period examined, with a sharp increase in blends containing clinker CA flux particularly evident. Trends for clinker CA flux blends (which pertain to imported product) are examined further in the section of this report entitled "U.S. Imports of Clinker CA Flux."

<sup>53</sup> Lafarge CA alleges that \*\*\*. Respondent's supplemental posthearing brief, p. 8, n. 7. \*\*\*. Blending is a mechanical process. \*\*\*.

<sup>54</sup> \*\*\*.

<sup>55</sup> It should be noted that the quantity data for vanadium slag is not directly comparable to that for clinker CA flux. NRS states that \*\*\*. NRS' May 5, 1994 questionnaire response.

<sup>56</sup> \*\*\*. Exhibit 13 to petitioner's supplemental posthearing brief.

There is a \*\*\* between \*\*\* (shown in the above tabulation) and the price it pays for clinker CA flux from Lehigh (table 5).<sup>57</sup> Staff also notes that \*\*\*.<sup>58</sup>

\*\*\* by Lehigh

\* \* \* \* \*<sup>59</sup>  
60 61

## U.S. Producer's Inventories of Clinker CA Flux

Lehigh's inventories as of December 31 of clinker CA flux are presented in the following tabulation:

\* \* \* \* \*

## U.S. Producer's Employment for Clinker CA Flux

Lehigh reduced the number of workers producing clinker CA flux by \*\*\*; the number of hours worked by the \*\*\* workers and the wages paid to them decreased by \*\*\* percent and \*\*\* percent, respectively, from 1990 to 1993 (table 6). Lehigh's productivity improved in 1991 and 1992, then dropped \*\*\* in 1993; unit labor costs \*\*\*. Lehigh's workers producing clinker CA flux are represented by the United Steelworkers of America.

Table 6

Lehigh's average number of production and related workers producing clinker CA flux, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, 1990-93

\* \* \* \* \*

<sup>57</sup> James Kelly, vice president of NRS, testified at the Commission's hearing that \*\*\*. Confidential transcript, pp. 128-129.

Respondent, in its posthearing brief on CA flux, p. 5, contended that NRS has been able to \*\*\* by replacing its clinker CA flux sales with sales of bulk and blended vanadium slag. In a May 20, 1994 telephone conversation with staff, \*\*\* of NRS stated that NRS' \*\*\*. \*\*\*.

<sup>58</sup> James Kelly, vice president of NRS, testified \*\*\*. Confidential transcript, p. 126.

<sup>59</sup> Telephone conversation with counsel for Lehigh, Feb. 16, 1994.

<sup>60</sup> \*\*\*.

<sup>61</sup> Staff conversation with counsel for Lehigh, Mar. 1, 1994.

## Financial Experience of Lehigh

### Operations on Clinker CA Flux

Lehigh, which accounted for approximately \*\*\* percent of U.S. producers' sales of clinker CA flux in 1993, supplied income-and-loss data on its operations on clinker CA flux. These data are presented in table 7. Lehigh's net sales of clinker CA flux dropped by about \*\*\* percent from \$\*\*\* in 1990 to \$\*\*\* in 1993. During the same period, total net sales in short tons also declined by \*\*\* percent. The decline in net sales started in 1992 but \*\*\* was in 1993.

Table 7

Income-and-loss experience of Lehigh on its operations producing clinker CA flux, calendar years 1990-93

\* \* \* \* \*

Lehigh reported \*\*\* in each year since 1991 compared with \*\*\* in 1990. \*\*\*.

The average per-short-ton sales value of clinker CA flux \*\*\* at about \$\*\*\* the period of investigation. The average per-unit cost of goods sold rose in each year since 1990 because of increases in variable and fixed costs, except in 1992, when fixed costs declined slightly due to the increase in production, as shown in the following tabulation:

\* \* \* \* \*

Average selling, general, and administrative (SG&A) expenses per short ton ranged between \$\*\*\* and \$\*\*\* during 1990-93. The average per-short-ton \*\*\*.

Lehigh utilizes the same equipment and machinery to manufacture both clinker CA flux and ordinary CAC clinker. The grinding facilities are used only to produce ordinary CA cement from ordinary CAC clinker. Another product produced in the same establishment is \*\*\*. \*\*\*. Key total establishment income-and-loss data are presented in the following tabulation:

\* \* \* \* \*

### Investment in Productive Facilities

Investment in property, plant, and equipment and return on investment are shown in table 8. The operating return and net return on assets generally followed the same trend as did the ratio of operating and net income to net sales for clinker CA flux operations during the reporting periods.

**Table 8**  
Value of assets and return on assets of Lehigh, by products, calendar years 1990-93

\* \* \* \* \*

## Capital Expenditures

The capital expenditures for clinker CA flux incurred by Lehigh are shown in table 9.

**Table 9**  
Capital expenditures of Lehigh, by products, calendar years 1990-93

\* \* \* \* \*

## Research and Development

Lehigh reported that "substantially all, if not all, funds expended for research and development were for ordinary CA cement and ordinary CAC clinker, as opposed to CA flux" during 1990-93.

## Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of clinker CA flux from France on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or more advanced version of these products). Lehigh's response is presented below:

\* \* \* \* \*

## Consideration of the Question of Threat of Material Injury

### *Ability of Foreign Producers to Generate Exports of Subject Products and the Availability of Export Markets Other Than the United States*

According to petitioner and counsel for Lafarge CA and Lafarge Fondu, Lafarge Fondu is the only producer of clinker CA flux in France.<sup>62</sup>

<sup>62</sup> This information was confirmed by the U.S. Embassy in Paris (U.S. Department of State, telegram No. 10166, Apr. 1993).

Lafarge Fondu manufactures the subject product at \*\*\*. (\*\*\*) Counsel for Lafarge Fondu submitted data on its client's manufacturing operations in France; they are presented in table 10.<sup>63</sup>

**Table 10**  
Clinker CA flux: French capacity, production, inventories, capacity utilization, and shipments, 1990-93 and projected 1994-95

\* \* \* \* \*

As shown, the capacity of Lafarge Fondu to produce clinker products (including clinker CA flux) \*\*\*, \*\*\*.

\*\*\* of the clinker CA flux produced by Lafarge Fondu is exported, \*\*\* to the United States. The firm anticipates that U.S.-destined shipments will \*\*\* by \*\*\* in 1994, then \*\*\* (by \*\*\* percent) in 1995.

## *U.S. Importers' Inventories of Clinker CA Flux*

As stated above, Lafarge CA was the only importer of CA flux clinker from France during the period of investigation. The following tabulation presents data on Lafarge CA's end-of-period inventories of product imported from France:

\* \* \* \* \*

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

### *U.S. Imports of Clinker CA Flux*

All reported imports of clinker CA flux into the United States were by Lafarge CA from France. Data on such imports are shown in the following tabulation.

\* \* \* \* \*

<sup>63</sup> Sales of CA cement products (including clinker CA flux) represented \*\*\* percent of Lafarge Fondu's total sales in its most recent fiscal year.

As shown, there is no consistent trend in the amount of imported clinker CA flux entering the United States. Imports increased irregularly from 1990 to 1992, then declined in 1993. However, as shown in the above section, the amount of product that is inventoried at any one time can vary \*\*\*. Table 4 presents information on the actual flow of shipments into the U.S. market: U.S. shipments of imported clinker CA flux consistently rose during the period examined, more than \*\*\* from \*\*\* short tons in 1990 to \*\*\* short tons in 1993. The unit values of such shipments \*\*\* from 1990 to 1993 and are presented below, along with the values of Lehigh's domestic shipments of clinker CA flux (from table 5):

\* \* \* \* \*

However, a simple comparison of the two firm's unit values is not particularly meaningful. As stated earlier in this report, all of Lehigh's shipments are of clinker CA flux in \*\*\* to NRS, which then markets and distributes the product. A more complete discussion of the valuation and pricing of clinker CA flux is presented in the section of this report entitled "Pricing and Marketing Considerations."

The following tabulation presents purchases of clinker CA flux from Lafarge CA, by firm, and domestic shipments by Lafarge CA to distributors and to end users (in short tons):

\* \* \* \* \*

As shown, shipments to end users \*\*\* by \*\*\* from 1990 to 1993 than did shipments to distributors (\*\*\*). Further, shipments to end users \*\*\* by \*\*\* percent from 1992 to 1993.<sup>64</sup> The \*\*\* in distributor shipments made by Lafarge CA is \*\*\* due to \*\*\* purchases by \*\*\*. The below tabulation (drawn from the May 5, 1994 questionnaire response of \*\*\*) presents \*\*\*'s shipments of flux products (in short tons):

\* \* \* \* \*

<sup>64</sup> In its May 5, 1994 questionnaire response, Lafarge CA attributes the 1993 \*\*\* in end-user sales to the increasing use by steel mills of blended fluxing agents, a portion of which are blended and sold by the distributors which purchase clinker CA flux from Lafarge CA. As shown by table C-3, domestic shipments of U.S. suppliers (other than NRS, which did not report data for 1990) of clinker CA flux blends and clinker CA flux/non-clinker CA flux blends increased from \*\*\* short tons in 1990 to \*\*\* short tons in 1993.

As shown, \*\*\*. \*\*\*.<sup>65</sup>

## U.S. Market Shares of Clinker CA Flux

The share of shipments into the U.S. market by domestic manufacturers (\*\*\* Lehigh) and by Lafarge CA are presented in table 11. During the 1990-93 period, Lafarge CA increased its share of the market (in terms of quantity) from somewhat under \*\*\* (\*\*\* percent) to over \*\*\* (\*\*\* percent).

Table 11  
Clinker CA flux: Apparent consumption and market shares of domestic shipments of U.S. product and domestic shipments of French product, 1990-93

\* \* \* \* \*

## Pricing and Marketing Considerations

As noted earlier, the market for clinker CA flux essentially is limited to the steel industry. Steel manufacturers generally use flux products such as clinker CA flux to desulfurize and condition steel in the ladle (prior to casting). Possible material sources of the flux products used by the steel manufacturers include (1) *raw materials* such as bauxite and various sources of lime, (2) *manufactured products* such as clinker CA flux and non-clinker CA flux recovered from catalytic converters, and (3) various *blended products* that are produced from some combination of raw materials, manufactured products, and recycled materials such as vanadium slag, ladle metallurgy furnace (LMF) slag, and used refractory products. The steel producers may source some raw materials (in particular, lime) directly. Some steel producers also purchase certain manufactured products directly (e.g., \*\*\* and flux produced from \*\*\*). In addition, steel manufacturers frequently purchase flux products (clinker CA flux, blends made with clinker CA flux, blends made with non-clinker CA flux, and other blends made with a variety of different materials) from companies that distribute and/or manufacture products for the steel industry.

<sup>65</sup> Staff conversation with \*\*\*, May 17, 1994. \*\*\*.

Factors affecting the demand for clinker CA flux include (1) macroeconomic factors that influence overall production trends in the steel industry; (2) changes in steel production technologies and end-product grades that affect the formulation requirements for flux products (e.g., chemical composition and solubility); and (3) the development, marketing, and relative price differences of the various combinations of alternative flux products.

During the course of the investigation, the Commission sent two different questionnaires to purchasers of clinker CA flux and other flux products.<sup>66</sup> Both questionnaires were sent to blenders<sup>67</sup> and steel manufacturers. The first questionnaire focused on clinker CA flux. Firms that did not purchase the subject product were not required to complete the questionnaire. The Commission sent this questionnaire to 34 firms and received 17 usable responses.<sup>68</sup> In quantity terms, these purchasers accounted for \*\*\* of clinker CA flux, respectively.

The second questionnaire focused on clinker CA flux and other flux products. Firms asked to complete the questionnaire either shipped or purchased products falling into one or more of the following categories:

- clinker CA flux;
- non-clinker CA flux;
- blends containing clinker CA flux;
- blends containing non-clinker CA flux;
- blends containing clinker and non-clinker CA flux; and
- other flux blends.<sup>69</sup>

<sup>66</sup> The first questionnaire was due to be returned to the Commission on January 25, 1994; the second on May 5, 1994.

<sup>67</sup> Some of these firms also distribute clinker CA flux that is manufactured or imported by other firms.

<sup>68</sup> The 34 firms represent a portion of the total number of firms that received the Commission's purchaser questionnaire during the CA cement phase of this investigation. Of the 34 firms, 12 reported no purchases of clinker CA flux during the period for which data were requested in the investigation.

<sup>69</sup> These categories are mutually exclusive and were designed to measure the consumption of clinker CA flux versus all other flux products used to refine steel in the ladle. For example, blends containing clinker CA flux were defined to exclude products containing non-clinker CA flux. Similarly, blends containing non-clinker CA flux exclude products containing clinker CA flux.

In addition to these categories, end users (steel manufacturers) that blend raw materials for use as fluxing agents were requested to complete the questionnaire. The Commission sent the second questionnaire to 45 firms that (1) produced clinker or non-clinker CA flux, (2) imported French-produced clinker CA flux, (3) produced blended flux products, or (4) purchased flux products and received 31 responses.<sup>70</sup>

Information presented in the following sections is derived, in part, from a review of these responses. These sections review pricing and marketing trends in terms of overall U.S. demand for clinker CA flux and other flux products. In addition, responses from intermediate users (i.e., blenders) and end users are treated separately when appropriate.

## Purchase Considerations

In interviews with staff and in response to the Commission's questionnaire, the majority of purchasers identified quality or product performance as the most important factor influencing their firm's purchasing decisions. Price (or product value) also was identified as an important factor, although steel producers reported that it was of secondary importance. Other factors frequently cited include relying on traditional suppliers, availability, and delivery capability. Table 12 lists the factors influencing purchasing decisions identified by respondents to both of the Commission's purchaser questionnaires. Responses to the first questionnaire were those provided by blenders/ distributors and steel manufacturers. Only steel manufacturers were requested to provide this information in the second questionnaire.<sup>71</sup>

<sup>70</sup> Of the 13 blenders on the Commission's mailing list, 11 provided usable responses. The 11 firms accounted for all of Lehigh's sales of clinker CA flux and over \*\*\* percent of Lafarge's imports of clinker CA flux in 1993. Sixteen end users provided usable responses, 8 end users reported no purchases of the various flux products during the period for which data were requested, and 2 did not return the questionnaire. In addition, the Commission received usable responses from 3 firms that produce clinker and non-clinker CA flux (\*\*\*, \*\*\*, and \*\*\*) and \*\*\* importer, \*\*\*. \*\*\* firms that produced small quantities of clinker CA flux during the period of investigation did not return the questionnaire.

<sup>71</sup> In the second questionnaire, blenders/distributors were asked to only complete sections regarding the production of CA flux products and were not asked questions concerning their purchases of various inputs.

**Table 12**  
**Factors affecting purchases of CA flux products, levels of importance, and frequency of responses**  
*(In percent, except as noted)*

Factor	First questionnaire	Second questionnaire
<i>Most important</i>		
Quality/performance .....	40	56
Price .....	27	6
Traditional supplier .....	13	19
Prearranged contract .....	13	0
Technical support .....	0	13
Other .....	7	6
Total .....	100	100
No. of responses .....	15	16
<i>Second most important</i>		
Price/product value .....	25	38
Quality .....	25	25
Availability .....	17	25
Other .....	33	13
Total .....	100	100
No. of response .....	12	16
<i>Third most important</i>		
Availability .....	25	0
Price/product value .....	25	47
Delivery capability/service .....	8	27
Service/technical support .....	17	13
Other .....	25	13
Total .....	100	100
No. of responses .....	12	15

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

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

For the most part, steel manufacturers determine the chemical specifications and other requirements of the flux products used to produce clean steel. The flux specifications of the manufacturer depend on the impurities contained in the steel when it is melted, the amount of furnace slag poured into the ladle, and the desired characteristics of the final product.<sup>72</sup> For

<sup>72</sup> For example, \*\*\* reported that the use of calcium carbide and carbonaceous slag treatment allows mills, under certain conditions, to modify furnace slag already present to make it a CA type slag. This treatment (which reduces harmful oxides) is possible if the furnace slag reducible residuals are low enough for the grades produced. It is much cheaper and results in a similar CA slag to that achieved by using clinker CA flux. \*\*\* also noted that if the furnace slag had been eliminated from the ladle, either by furnace tapping practice or ladle skimming, CA flux products would be the "natural choice" to form the artificial slag.

example, firms seeking to eliminate impurities such as vanadium are less likely to introduce fluxing agents made with vanadium slag into the steel. Similarly, firms producing bearings may avoid the use of clinker CA flux given the possibility of residual titanium. One firm mentioned that it phased out blends containing fluorspar because of damage to refractory linings.<sup>73</sup>

Solubility and ease of handling are also of concern to end users. The degree of solubility affects energy use and may also be a limiting factor depending on the time allowed for ladle treatment between heats and the continuous casting process. Steel manufacturers also set sizing and packaging requirements depending on the nature of the firms' storage and handling systems and production processes. Manufacturers

<sup>73</sup> \*\*\*.



that utilize bulk storage and feeder systems generally require flux products with low levels of dust (i.e., products that have been screened to remove fines). Manufacturers that use powdered fluxing materials buy the products in bags (either 50- or 100-pound bags or super sacks that hold 2,500 to 3,500 pounds). According to industry sources, the majority of steel manufacturers have invested in bulk storage systems.<sup>74</sup>

After satisfying the requirements discussed above, steel manufacturers select a specific type of flux depending on the product's cost. In some cases, a steel producer's flux requirements may dictate that a particular source of flux is optimal, given chemical specifications, solubility requirements, and handling and storage limitations. In this instance, the steel manufacturer's decision to purchase the product from a particular supplier may be a function of the delivered cost of the product, product availability, ongoing supplier relationships, inventory management concerns, etc. However, for some manufacturers, flux requirements may be met by various combinations of different materials.<sup>75</sup> As a result, firms that distribute clinker CA flux and produce various other flux products may change the sources and composition of the fluxes that they sell to their customers depending on the relative cost of the various materials that can be used in the flux blends. Thus, steel manufacturers may evaluate a number of products from a given supplier as well as different suppliers.<sup>76</sup>

<sup>74</sup> \*\*\*. Telephone conversation with staff, May 13, 1994. \*\*\*. Telephone conversation with staff, May 11, 1994.

<sup>75</sup> Blenders responding to the second questionnaire reported a number of material inputs that were potential substitutes for those currently used in the specific flux products manufactured by their firms, depending on customer requirements.

A number of the steel manufacturers that responded to the Commission's questionnaire encountered difficulties with respect to questionnaire sections that requested they classify their purchases into the six product types. Steel mills are concerned with chemical specifications and performance requirements and do not necessarily know the source of the material inputs. Blenders and other suppliers of flux products do not always identify the source of all of the component materials in the products to their customers.

<sup>76</sup> Purchasers reported a wide variety of responses to Commission questions regarding the costs involved with switching. The majority of the firms indicated that switching products was possible, but

In response to both questionnaires sent to purchasers, the majority of firms reported switching suppliers infrequently. Six of the 16 firms reported changing suppliers during the period for at least some of their firms' purchases of flux products. \*\*\* of the firms specifically cited changing from a product made from \*\*\*'s clinker CA flux to alternative products.<sup>77</sup>

Although a number of the steel manufacturers reported long-term arrangements with one or more "traditional" suppliers, the majority reported contacting multiple suppliers with respect to the bidding process and/or for spot purchases. Eighty-seven percent of the steel manufacturers responding to the second questionnaire reported purchasing at least 50 percent of their flux products under contract.

Virtually all of the steel manufacturers responding to the second questionnaire reported having some type of qualification process or quality control program. The steel manufacturers require that their suppliers provide a product that consistently meets their specifications. Firms generally reported requiring statistical process control data and testing lots of the flux products upon delivery (assuming that the product had already been run through trials). Prior to changing suppliers (or product types) the firms subject the material(s) to chemical analysis and run a series of production trials that may take 2 to 6 months. Only 5 out of 16 steel producers reported qualification failures. Three of the firms reported some failures (of specific products) from a number of suppliers.<sup>78</sup> One firm reported that the French-produced clinker CA flux supplied by \*\*\* had failed because it was too expensive. One firm reported that a blended product manufactured by \*\*\* did not perform satisfactorily during trials.<sup>79</sup>

<sup>76</sup>—Continued

not without testing and running trials. Six out of 16 purchasers reported changes in overall purchases from one type of flux product to another during 1990-93. \*\*\*.

<sup>77</sup> \*\*\*'s purchasing trends are discussed below in the section regarding lost sales and lost revenues. In addition, \*\*\* reported that its trials are ongoing. "Our steelmake practices continue to change. Therefore, slag must be adjusted. No one material fits all applications."

<sup>78</sup> For example, \*\*\* reported that "All suppliers have had some failures. Duration of reaction, desired results (FeO levels), volume of smoke, etc."

<sup>79</sup> A number of the blenders responding to the second questionnaire reported having some type of quality control process in place in order to evaluate at least some of the material inputs used in the flux products.

## Comparison of Suppliers

In the first questionnaire, the Commission asked purchasers a series of questions regarding differences between suppliers of the U.S.- and French-produced clinker CA flux. Because \*\*\*, \*\*\*, were not able to supply much comparative information regarding Lehigh and Lafarge CA or the U.S. and French-produced products. Steel manufacturers responding to the questionnaire were also limited in their ability to make comparisons. For example, one firm, \*\*\*, rated the French-produced product higher, but in comparison to a blend containing the U.S. product rather than to the U.S. product itself.<sup>80</sup> In general, the steel manufacturers focused on the quality and cost effectiveness of products and services provided by their suppliers, which frequently are blenders or other firms that distribute these products.<sup>81</sup>

## Pricing Strategies and Other Considerations

Clinker CA flux and other flux products are priced, in part, on the basis of their constituent materials and the degree of processing required by the end user. \*\*\*.

Blenders/distributors responding to the Commission's second questionnaire generally indicated that their firms did not have standard minimum quantity requirements, did not charge price premiums for subquantity shipments, and did not provide quantity discounts for large shipments.<sup>82</sup> The firms generally reported being able to ship product within one week of an order.

The Commission also requested purchasers to describe the types of contractual and pricing agreements common to this industry as well as any differences between the suppliers. Thirteen of the 16 steel manufacturers reported that purchasing terms were negotiable, 1 firm indicated that it set the terms, and 2 firms indicated that the supplier set the terms. For the most part, the firms reported that prices changed, at most, on an annual basis (generally when the firms renegotiated contracts with suppliers). With

<sup>80</sup> In addition, \*\*\*.

<sup>81</sup> Limited comparative information regarding \*\*\* is also discussed in the section of this report entitled "Lost Sales and Lost Revenues."

<sup>82</sup> \*\*\* reported passing along freight savings for large shipments. \*\*\* noted that "every product is different and is quoted separately. Large volume lots may result in reduced prices through economies of scale."

the exception of \*\*\*, purchasers indicated that suppliers of flux products did not provide any special discounts or terms.<sup>83</sup>

As with CA cement, transportation costs can account for a variable but significant percentage of the total cost of the various flux products (in particular, blended products that contain high percentages of lime), with estimates from steel manufacturers ranging from 2 to 30 percent. Firms that responded to the Commission's questionnaires generally reported that transportation costs were not a major factor in purchasing decisions. However, blenders and distributors of the materials generally locate operations in proximity to their customers. Some of these firms reported that geographic location had an effect on their firm's ability to compete for certain customers.<sup>84</sup>

## Producer and Importer Value and Quantity Trends for Clinker CA Flux

The Commission requested quarterly value and quantity data from U.S. producers and importers for their overall bulk and packaged sales of clinker CA flux during 1990-93. The firms were requested to disaggregate their quarterly sales on the basis of whether the transactions were (1) shipped directly from the plant or from regional warehouses, (2) made on a delivered or f.o.b. basis, and (3) sold to blenders and or distributors or to end users. The Commission requested value and quantity data for the following product types:

- Product 1:* Clinker CA flux, 2 1/2 inches (or larger) by down;
- Product 2:* Clinker CA flux, 2 1/2 inches by 1/4 inch; and
- Product 3:* Clinker CA flux, 3/8 - 1/4 inch by down.

The Commission asked firms to further differentiate sales of product 1 depending on whether the product was sold on an "as is" basis or was subjected to further processing (screening).<sup>85</sup> Products 2 and 3 both require further processing (crushing and/or screening).

<sup>83</sup> In the first questionnaire sent to purchasers, purchasers of clinker CA flux reported few differences in terms or other discounts provided by suppliers.

<sup>84</sup> \*\*\*. Telephone conversation with \*\*\*, May 13, 1994.

<sup>85</sup> \*\*\*.

The primary U.S. producer (Lehigh) and the only known importer of the French-produced product (Lafarge CA) reported usable value and quantity data. The reported quantity data from these companies for the products listed above accounted for approximately \*\*\*<sup>86</sup> and \*\*\* percent of their U.S. shipments of U.S. and French-produced clinker CA flux, respectively, during 1993. In addition, the Commission requested \*\*\* to provide similar pricing data for its sales of CA flux to end users. This information was requested in order to compare pricing of the \*\*\*.

During 1990-93, Lehigh's sales to \*\*\* were limited to \*\*\*. \*\*\*. Lafarge CA reported \*\*\* sales of \*\*\* during 1990-93. In addition, the firm reported sales of both \*\*\*.

### Sales of product 1

Table 13 shows \*\*\*. \*\*\* (figure 1).<sup>87 88</sup>

Table 13

Clinker CA flux (*product 1*): U.S. producer's and importer's average unit values (f.o.b. plant) and quantities of bulk and packaged sales to blenders and end users, by quarters, Jan. 1990-Dec. 1993

\* \* \* \* \*

Figure 1

Quarterly average unit values of clinker CA flux (*product 1*), by levels of distribution, processing, and packaging, 1990-93

\* \* \* \* \*

### Sales of product 2

\*\*\* reported \*\*\* (table 14 and figure 2). \*\*\*.

Table 14

CA flux (*product 2*): U.S. producer's and importer's average unit values (f.o.b. plant) and quantities of bulk and packaged sales to blenders and end users, by quarters, Jan. 1990-Dec. 1993

\* \* \* \* \*

Figure 2

Quarterly average unit values of clinker CA flux (*product 2*), by levels of distribution, processing, and packaging, 1990-93

\* \* \* \* \*

<sup>86</sup> \*\*\*.

<sup>87</sup> \*\*\*.

<sup>88</sup> \*\*\*.

### Sales of product 3

\*\*\* reported \*\*\* (table 15 and figure 3). \*\*\*.

\* \* \* \* \*

Table 15

Clinker CA flux (*product 3*): U.S. producer's and importer's average unit values (f.o.b. plant) and quantities of bulk and packaged sales to blenders and end users, by quarters, Jan. 1990-Dec. 1993

\* \* \* \* \*

Figure 3

Quarterly average unit values of clinker CA flux (*product 3*), by levels of distribution, processing, and packaging, 1990-93

\* \* \* \* \*

### Sales Trends for Flux Products

The Commission also requested that producers and blenders of clinker CA flux, non-clinker CA flux, and various types of blended products provide annual quantity and value data for their U.S. sales of flux products. The Commission requested these data in order to evaluate the production of the various types of flux products that compete with clinker CA flux. The firms were asked to disaggregate their sales by whether the products were produced or distributed by their firms. Firms were asked to provide data for the following product categories:

- clinker CA flux;
- non-clinker CA flux;
- blends containing clinker CA flux;
- blends containing non-clinker CA flux agents;
- blends containing clinker and non-clinker CA flux; and
- other flux blends.

Fifteen firms (including Lehigh and Lafarge CA) reported data for sales of these products (table 16). Because the composition of blended products vary (both for individual firms and across all firms) and are likely to have changed from year to year, it is difficult to make direct comparisons regarding the relationship between changes in the average unit values reported by firms for the various blended products. In particular, comparisons of blends containing clinker CA flux may contain a variety of other

materials in varying amounts. Thus, the component cost of the clinker CA flux may vary because of changes in quantities utilized in the blended products and not necessarily because of changes in the price of the clinker CA flux.

Table 16

Flux products: U.S. producers', U.S. importer's, and U.S. blenders' average unit values and quantities of sales, by types of product, levels of distribution, and years, 1990-93

\* \* \* \* \*

### *Sales of clinker CA flux*

As shown in table 16, the quantity and value data reported by Lehigh and Lafarge CA for sales of clinker CA flux are consistent with data reported elsewhere in this report. Sales of Lehigh's product declined \*\*\* percent between 1990 and 1993; in contrast, sales of the Lafarge product \*\*\* percent during the period. Quantity data reported by \*\*\* for its sales of the unblended \*\*\* product reflect \*\*\* during the 1991-93 period (\*\*\* percent), with the largest \*\*\*. Sales of the unblended Lafarge product reported by firms responding to the questionnaire fluctuated during the period, but \*\*\* percent from 1990 to 1993.

Average unit values of sales reported by Lehigh and NRS \*\*\*. In contrast, Lafarge CA's reported average unit values for sales of clinker CA flux \*\*\* by \*\*\* percent and sales by distributors \*\*\* by \*\*\* percent. Because of potential differences in the level of processing (i.e., crushing and screening) that is required by different end users, it is difficult to make direct comparisons between the average unit values reported by distributors of Lafarge CA's product and those reported by NRS.

### *Sales of non-clinker CA flux*

Sales of vanadium slag \*\*\* during 1990-93. Sales of non-clinker flux agents produced by \*\*\* increased during the period (\*\*\* percent). However, data reported by \*\*\* for its sales of non-clinker CA flux \*\*\*.<sup>89</sup> \*\*\* was the only firm that reported sales of non-clinker flux agents that were purchased from other firms. Its reported sales \*\*\* between 1991 and 1992 and then \*\*\* in 1993.

<sup>89</sup> \*\*\*.

The reported average unit values for the various non-clinker CA flux materials differ significantly, reflecting differences in the quality of the products and level of processing. \*\*\*. In contrast, \*\*\*'s product is sold directly to steel manufacturers.

### *Sales of blends containing clinker CA flux*

The number of firms reporting sales of blends containing clinker CA flux increased from \*\*\* during 1990-93. Total sales reported by these firms increased substantially during 1990-93, with the largest increase (\*\*\* percent) occurring in 1992. The reported average unit values for sales of these blends declined by \*\*\* percent during the 4-year period.<sup>90</sup>

### *Sales of blends containing non-clinker CA flux*

The number of firms reporting sales of blends containing non-clinker CA flux also increased during 1990-93 (from \*\*\*). Reported quantities declined somewhat between 1990 and 1992 and then grew in 1993, with an overall increase of 39 percent (1990-93). Reported average unit values fluctuated during 1990-93, but increased by \*\*\* percent overall.

### *Sales of blends containing clinker and non-clinker CA flux*

\*\*\* was the primary supplier of this type of flux blend. The firm reported sales of the product during 1991-93. The firm's sales \*\*\* between 1991 and 1992 and then \*\*\* in 1993. \*\*\* reported \*\*\* in average unit values during 1991-93.

### *Sales of other flux blends*

Sales of other blends accounted for the largest portion of total sales of all flux products. The number of firms reporting sales of these products increased from 3 in 1990 to 7 in 1992-93. Reported sales of these products increased 45 percent, in terms of quantity, during 1990-93. During the same period, reported average unit values increased 9 percent.

<sup>90</sup> \*\*\* did not report sales of this product.

## Purchase Trends for Flux Products

The Commission also requested purchasers (i.e., end users) of clinker CA flux, other types of CA flux, and various types of blended products to provide annual quantity and value data for their purchases of flux products. The firms were asked to disaggregate their sales by the product categories defined above. In addition, the Commission asked purchasers to provide data regarding purchases of raw materials that are used by the firms to create flux blends. Sixteen firms reported data for purchases of these products (table 17).

Table 17

Flux products: U.S. steel producers' average unit values and quantities of purchases, by type of product and year, 1990-93

\* \* \* \* \*

In terms of quantity, trends in the reported purchases of the various types of flux products generally are similar to those reported by manufacturers and distributors of the products.<sup>91</sup> In particular, reported purchases of clinker CA flux declined steadily over the 4-year period, while purchases of blends containing clinker CA flux and those containing non-clinker CA flux \*\*\*. \*\*\*.<sup>92</sup> Trends in reported average unit values for the various product categories also are generally similar to those reported by suppliers. As table 17 illustrates, 4 firms responding to the questionnaire reported purchases of raw materials for fluxing agents. These firms' purchases changed little during 1990-93.

<sup>91</sup> However, reported overall purchases of "other flux blends" declined during 1990-93, despite an increase in the number of firms that reported purchasing products within this category.

<sup>92</sup> \*\*\*.

## Lost Sales and Lost Revenues

The Commission received one lost revenue allegation from \*\*\* regarding its sales of clinker CA flux. However, \*\*\* related to this allegation. Instead, \*\*\*.

\*\*\*, in an affidavit included in the petitioner's supplemental posthearing brief, alleged that \*\*\*.

Commission staff contacted all of these firms.<sup>93</sup> \*\*\*.<sup>94</sup> \*\*\*.

\* \* \* \* \* \* \* \* \*95

\* \* \* \* \* \* \* \* \*96

## Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1990 through October-December 1993 the nominal value of the French franc fluctuated, depreciating 1.7 percent overall relative to the U.S. dollar (figure 4). Adjusted for movements in producer price indices in the United States and France, the real value of the French currency showed an overall depreciation of 11.7 percent during the same period.

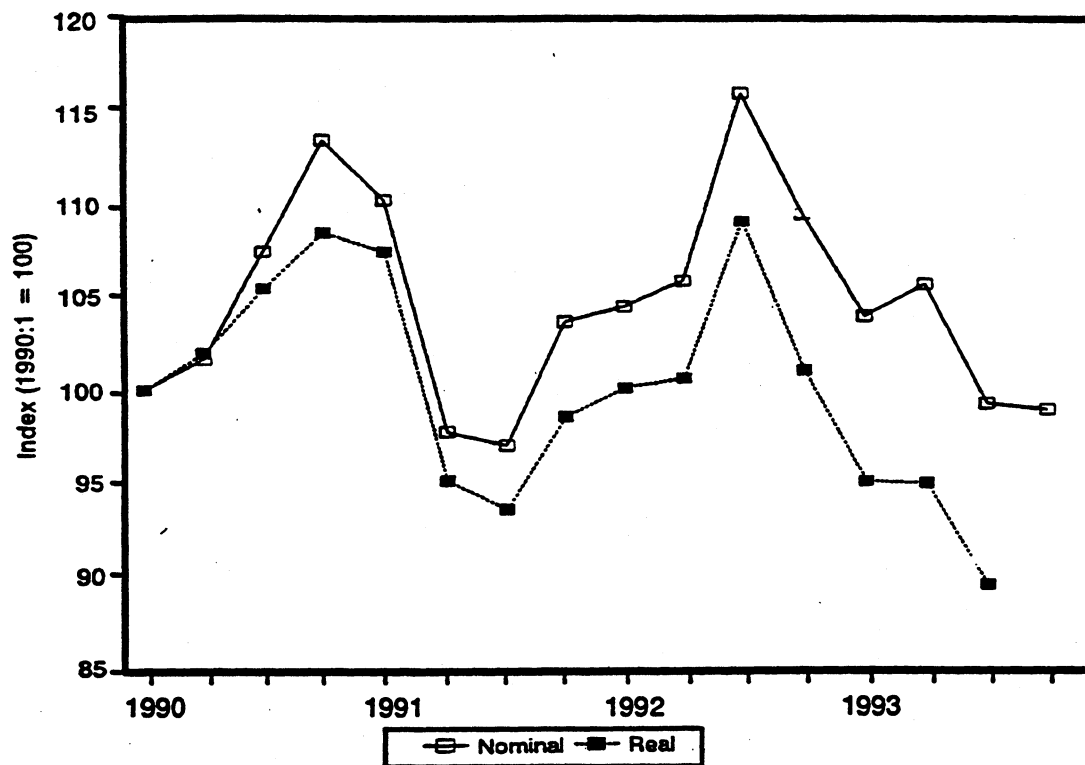
<sup>93</sup> \*\*\*.

<sup>94</sup> Telephone conversation with staff, May 16, 1994.

<sup>95</sup> Telephone conversation with staff, May 17, 1994.

<sup>96</sup> Telephone conversation with staff, May 19, 1994.

**Figure 4**  
**Indexes of nominal and real exchange rates of the French franc relative to the U.S. dollar, by quarters, Jan. 1990-Dec. 1993**



Source: International Monetary Fund, *International Financial Statistics*, Feb. 1994.

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**Appendix A**  
***Federal Register* Notices**

**International Trade Administration  
[A-427-812]**

**Final Determinations of Sales at Less  
Than Fair Value: Calcium Aluminate  
Cement, Cement Clinker and Flux  
From France**

**AGENCY:** Import Administration,  
International Trade Administration,  
Commerce.

**EFFECTIVE DATE:** March 25, 1994.

**FOR FURTHER INFORMATION CONTACT:** V.  
Irene Darzents or Katherine Johnson,  
Office of Antidumping Investigations,  
Import Administration, U.S. Department  
of Commerce, 14th Street and  
Constitution Avenue NW., Washington,  
DC 20230; telephone (202) 482-6320 or  
482-4929, respectively.

**Final Determinations**

We determine that calcium aluminate (CA) cement, cement clinker and flux from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Scope of Investigations**

The products subject to these investigations constitute two classes or kinds of merchandise: (1) CA cement and cement clinker, and (2) CA flux. The products covered by these investigations include CA cement, cement clinker and flux, other than white, high purity CA cement, cement

clinker and flux. These products contain by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA cement/cement clinker and CA flux have significantly different physical characteristics and end uses. CA cement is a specialty hydraulic non-portland cement used for construction purposes. CA cement clinker is the primary material used as a binding agent in the production of CA cement. CA flux is used primarily as a desulfurizer and/or cleaning agent in the steel manufacturing process. CA clinker produced for sale as flux cannot be used to produce CA cement, and CA clinker used to produce CA cement cannot be used as a flux in the production of steel.

CA flux has a chemical composition distinct from CA cement clinker. CA cement clinker contains the hydraulic mineral mono-calcium aluminate, which gives it a molar ratio of lime to alumina of approximately 1:1. In contrast, CA clinker sold as a flux does not contain mono-calcium aluminate; it contains the complex mineral  $C_{12}A_7$  ( $12CaO \cdot 7Al_2O_3$ ), which gives it a molar ratio of lime to alumina of approximately 2:1. This higher lime to alumina ratio gives the CA clinker sold as a flux a lower melting point than CA cement, and also results in extra lime which can bond with sulfur and other impurities in molten steel. Although CA clinker sold as flux has some hydraulic properties, it hydrates too quickly to be used for those properties.

These products are currently classifiable under the following



Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2523.30.0000 (for aluminous cement) and 2523.10.0000 (for cement clinker and flux). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations remains dispositive.

#### Period of Investigations

The period of investigation (POI) is October 1, 1992, through March 31, 1993.

#### Case History

Since the publication of the notice of preliminary determinations on November 3, 1993 (58 FR 58683), the following events have occurred.

On October 29, 1993, the respondent, Lafarge Fondu International (LFI) and Lafarge Calcium Aluminates, Inc. (LCA) (collectively Lafarge), and the petitioner, Lehigh Portland Cement Company (Lehigh), both requested that the Department postpone the final determinations in these investigations. Pursuant to these requests, the Department postponed the final determinations until March 18, 1994 (58 FR 60843, November 18, 1993).

On November 8, 1993, Lafarge submitted supplemental responses to the Department's questionnaire for CA flux sales.

On November 15, 1993, petitioner requested that the Department collect data on respondent's home market sales of CA flux, objecting to respondent's use of constructed value (CV) based on differences-in-merchandise (difmer) adjustments calculated inclusive of home market bagging costs. (See Comment 11 in the "Interested Party Comments" section of this notice.) Subsequently, on November 24, 1993, the Department requested that respondent provide such data.

On November 15 and 24, 1993, respectively, Lafarge and Lehigh requested a public hearing. On December 14, 1993, the Department issued a second set of supplemental questionnaires for sales of both classes or kinds of merchandise. Respondent submitted home market sales data for flux and responses to the Department's second set of supplemental questionnaires on December 23 and 29, 1993, respectively. On January 3, 1994, respondent submitted certain corrections to the cost and sales data reported in its previous questionnaire responses.

The Department conducted verification of the cost and sales responses of LFI and LCA from January

10 through January 20, 1994, in Paris, France and Chesapeake, Virginia.

Petitioner and respondent filed case and rebuttal briefs on February 14 and 18, 1994, respectively. On February 16, 1994, the parties withdrew their requests for a public hearing which was scheduled to take place on February 18, 1994.

#### Such or Similar Comparisons

Regarding the CA cement and cement clinker class or kind of merchandise, we have determined that the products covered by this investigation constitute two "such or similar" categories of merchandise: CA cement and CA cement clinker. We made fair value comparisons on this basis. Since this investigation was initiated during a period in which certain simplification procedures were in effect (see the preliminary determination), we conducted the home market viability test based on the class or kind of merchandise, rather than on the such or similar category. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of CA cement and cement clinker to the volume of third country sales of CA cement and cement clinker, in accordance with section 773(a)(1)(B) of the Act, and determined that the home market was viable for the CA cement and cement clinker class or kind. During the POI, CA cement clinker was the only product within the cement class or kind which was imported into the United States from France. Because there were no sales of such or similar merchandise (i.e., clinker) in the home market during the POI to compare to U.S. sales, we made comparisons on the basis of CV (see the "Fair Value Comparisons" section of this notice), in accordance with section 773(a)(2) of the Act.

Regarding the CA flux class or kind of merchandise, we determined that the products covered by this investigation comprise a single "such or similar" category of merchandise and that the home market was viable. Where there were no sales of identical merchandise in the home market during the POI to compare to U.S. sales, we made similar merchandise comparisons on the basis of size (i.e., degree of crushing/screening), in accordance with section 773(a)(1) of the Act (see the "Fair Value Comparisons" section of this notice). We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

#### Fair Value Comparisons

To determine whether sales of CA cement and cement clinker, and CA flux from France were made at less than fair value, we compared United States Price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We made revisions to respondent's reported data, where appropriate, based on verification findings. For those unreported U.S. cement sales which respondent claimed were made pursuant to certain graduated requirements contracts effective prior to the POI, but for which respondent could not provide documentary evidence substantiating its claim, we based our analysis on best information available (BIA), in accordance with 19 CFR 353.37. As BIA, we used the highest, non-aberrational margin calculated for any of respondent's reported U.S. sales of cement. (See Comment 1 in the "Interested Party Comments" section of this notice.)

#### United States Price

All of Lafarge's U.S. sales to the first unrelated purchaser took place after importation into the United States. Therefore, we based USP on exporter's sales prices (ESP), in accordance with section 772(c) of the Act.

For ESP sales of cement, we included in our final analysis certain reported sales allegedly made under an exclusive supply contract, using the reported, verified date of purchase order as the date of sale. (See Comment 2 in the "Interested Party Comments" section of this notice.) For ESP sales of flux, we included in our final analysis certain reported sales made under a contract which expired but which respondent claimed had been subsequently renewed prior to the POI, but for which respondent could not provide documentary evidence substantiating that claim. For these sales, we used the verified date of purchase order (or date of invoice where the purchase order date was unavailable) as the date of sale. (See Comment 9 in the "Interested Party Comments" section of this notice.) Furthermore, we excluded certain reported flux shipments made in October 1992 pursuant to a contract effective prior to the POI, the price terms of which were modified in November 1992. (See Comment 10 in the "Interested Party Comments" section of this notice.)

We calculated USP based on packed or bulk, ex-U.S. warehouse or delivered prices to unrelated customers in the United States. For sales of both classes or kinds of merchandise, we made

deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling (including harbor maintenance and customs processing fees), unloading costs, and U.S. inland freight charges (including loading, freight to processors' warehouses/transfer freight to warehouses, demurrage and freight to customer charges, where applicable). For sales of CA flux, we recalculated foreign inland freight, foreign brokerage and handling, ocean freight and U.S. inland freight expenses to correct minor clerical errors found at verification.

For sales of both classes or kinds of merchandise, we also deducted direct selling expenses including credit and product liability premiums. We recalculated credit expenses to account for discounts, where applicable, and to correct minor clerical errors found at verification with respect to the reported weighted-average short-term interest rate and the reported payment or shipment dates for certain transactions. We also recalculated credit for those sales that had missing payment dates. For those missing payment dates, we used, as BIA, the date of the final determination as the date of payment. In addition, we reclassified premiums for product liability insurance as direct selling expenses, and deducted them from USP accordingly. (See Comment 15 in the "Interested Party Comments" section of this notice.)

For sales of both classes or kinds of merchandise, we also deducted indirect selling expenses (including pre-sale warehousing costs incurred in the United States and selling expenses incurred in France on the merchandise exported to the United States for further manufacturing). U.S. indirect selling expenses were recalculated to exclude certain administrative expenses which were determined to be more appropriately classified as general and administrative (G&A) expenses. (See Comment 18 in the "Interested Party Comments" section of this notice.) We also deducted imputed inventory carrying costs for the period between production of the clinker/flux in France and shipment of the finished cement/processed flux to the customer in the United States. For sales of CA cement, we recalculated inventory carrying costs for the period between production of the clinker in France and the start of production of the finished cement in the United States, using the verified weighted-average short-term interest rate in France for the POL (See Comment 4 in the "Interested Party Comments" section of this notice.)

For sales of CA cement, we also deducted rebates, discounts and warranty expenses, where applicable. For sales of CA flux, we also deducted commissions, where appropriate.

In addition, for both classes or kinds of merchandise, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported products, including a proportional amount of any profit related to further manufacturing. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured products. We then allocated the total profit proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. In determining the costs incurred to produce the further manufactured products, we included: (1) The costs of manufacture (COM); (2) movement and packing expenses; (3) selling, general and administrative (SG&A) expenses; and (4) interest expenses.

For both classes or kinds of merchandise, we relied on the submitted further manufacturing costs except in certain instances where the costs were not appropriately quantified or valued. We reclassified certain administrative expenses which were reported as indirect selling expenses as G&A expenses. We also recalculated financial expenses to exclude the claimed adjustment for short-term interest income. (See Comments 18 and 19, respectively, in the "Interested Party Comments" section of this notice.)

For CA flux sales, we made an adjustment to U.S. price for the value-added tax (VAT) paid on the comparison sale in France. In *Federal-Mogul Corporation and The Torrington Company v. United States*, Slip Op. 93-194 (CIT October 7, 1993), the Court of International Trade (CIT) rejected our revised implementation of the Act's instructions on taxes and prohibited us from applying a purely tax neutral margin calculation methodology. Accordingly, we have again changed our practice, as instructed by the CIT, and adjusted USP for tax by multiplying the home market tax rate by the U.S. price at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

In this investigation, the tax levied on the subject merchandise in the home

market is 18.6 percent. We calculated the appropriate tax adjustment to be 18.6 percent of USP net of adjustments reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax), and added this amount to the USP. We also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base (i.e., 18.6 percent of the sum of any adjustments, expenses and charges that were deducted from the tax base). We deducted this amount from the net USP after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

#### Foreign Market Value

For CA cement and cement clinker, we based FMV on the CV data submitted for cement clinker because cement clinker was the only such or similar product within the cement and clinker class or kind which was imported into the United States during the POL, and there were no sales of this product in the home market or to unrelated customers in third countries during the POL. (See the "Such or Similar Comparisons" section of this notice.) For CA flux, we based FMV on home market sales prices because we found the home market to be viable for flux sales during the POL, and because the difference-in-merchandise adjustments between the flux products sold to the United States and those sold in the home market do not exceed 20 percent. (See Comment 12 in the "Interested Party Comment" sections of this notice.)

#### CV-to-Price Comparisons

We calculated CV for cement clinker based on the sum of Lafarge's cost of materials, fabrication, general expenses, U.S. packing costs and profit. We relied on the submitted CV information, except in the following instances where the costs were not appropriately quantified or valued:

- (1) We adjusted material costs for minor errors presented at verification. We also increased material costs for foreign exchange losses incurred when reporting raw materials. (See Comment 21 in the "Interested Party Comments" section of this notice.)
- (2) We adjusted variable overhead to correct minor errors found at verification.

(3) We did not allow the recalculation of fixed costs as we had done in the preliminary determination because respondent incorrectly reported labor costs as part of annualized fixed costs, rather than as variable costs for the POI in accordance with the Department's instructions; and because respondent failed to provide an itemization of fixed and variable costs that would allow us to appropriately reclassify labor costs from annualized fixed costs to POI variable costs. As BIA, we used the fixed costs, including the labor costs, incurred during the POI. (See Comment 22 in the "Interested Party Comments" section of this notice.)

(4) We revised the COM reported to include an amount for depreciation on research and development (R&D) assets which was not originally reported. (See Comment 20 in the "Interested Party Comments" section of this notice.)

(5) We recalculated financial expenses to exclude the claimed adjustment for short-term interest income. (See Comment 19 in the "Interested Party Comments" section of this notice.)

(6) We also recalculated home market selling expenses on a class or kind basis. (See Comment 6 in the "Interested Party Comments" section of this notice.) In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we included in CV the recalculated general expenses since these expenses were greater than the statutory minimum of ten percent of the COM. We revised respondent's reported profit calculation to reflect verification findings. (See Comment 8 in the "Interested Party Comments" section of this notice.) Since this amount was greater than the statutory minimum of eight percent of the sum of the COM and general expenses, we used the recalculated profit for CV purposes.

We deducted from CV home market direct selling expenses. We also deducted home market indirect selling expenses capped by the amount of U.S. indirect selling expenses attributable to the cement clinker imported into the United States and further manufactured into finished cement, in accordance with 19 CFR 353.56(b)(2).

#### Price-to-Price Comparisons

For sales of flux, we calculated FNV based on packed, ex-factory or delivered prices to unrelated home market customers. We excluded from our analysis those sales made to home market customers on a test basis because they were in unusually small quantities, rather than in the usual commercial quantities, in accordance with 19 CFR 353.46(a)(1). We also excluded from our analysis those sales to a home market customer which were destined for a third country market. (See Comment 16 in the "Interested Party Comments" section of this notice.) We made deductions, where appropriate, for rebates. We also deducted home market packing costs which were recalculated to exclude the costs of bagging and C&A expenses. (See Comments 11 and 12 in

the "Interested Party Comments" section of this notice.)

Pursuant to section 773(e)(4)(B) and 19 CFR 353.56(a)(2), we also deducted direct selling expenses including bagging costs, credit, technical services expenses and product liability premiums. (See Comments 11, 13 and 15 in the "Interested Party Comments" section of this notice.) We recalculated credit expenses to exclude VAT from the gross unit prices and to correct minor clerical errors found at verification with respect to the credit periods reported for certain transactions. (See Comment 14 in the "Interested Party Comments" section of this notice.) We revised respondent's reported technical services expenses calculation, treating the verified travel expense portion of the calculation as a direct expense and the verified salary portion as an indirect selling expense. (See Comment 13 in the "Interested Party Comments" section of this notice.) In accordance with the decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gamy Portland Cement v. United States*, Slip Op. 93-1239 (Fed. Cir., January 5, 1994), we made a circumstance-of-sale adjustment for post-sale home market movement expenses, namely inland freight and loading charges. We also deducted from FNV home market indirect selling expenses, including inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. indirect selling expenses and U.S. commissions attributable to the flux imported into the United States and further manufactured, in accordance with 19 CFR 353.56(b) (1) and (2). Where there was no U.S. commission applicable to a particular U.S. flux sale, we offset the indirect selling expenses in the United States with a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the manner described above. We included in FNV the amount of the VAT collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., 16.6 percent of the sum of any adjustments, expenses, charges and offsets that were deducted from the tax base). We deducted this amount after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

We also made an adjustment for physical differences in the merchandise,

in accordance with 19 CFR 353.57. We revised the reported dollar amount to reflect only the verified variable COM, excluding the reported costs of bagging associated with the home market products, and associated C&A expenses and profit. (See Comments 11 and 12 in the "Interested Party Comments" section of this notice.)

#### Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by Lafarge by using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

#### Currency Conversions

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

#### Interested Party Comments

##### Comment 1

Petitioner argues that certain unreported U.S. CA cement sales alleged by Lafarge to have been made under graduated requirements contracts effective prior to the POI should be included in the Department's final analysis. Petitioner notes that at verification respondent could not provide the Department with any contemporaneous documentation regarding the acceptance of the essential terms of sale by the customers associated with these contracts. Petitioner contends that, despite the fact that respondent believes that these shipments were based on contracts entered into before the POI, the Department could not verify the existence or terms of these alleged contracts. Petitioner also maintains that respondent refused to provide the relevant data requested by the Department with regard to this issue. Petitioner further argues that respondent never demonstrated that the alleged contracts governing these CA cement shipments were made prior to the POI. According to petitioner, the alleged contracts cover time periods much earlier than the POI and in fact constitute unilateral sales proposals made by Lafarge which are not evidence of a binding commitment between the parties as to quantity and price. According to petitioner, Lafarge also has not demonstrated that these shipments were not in excess of the quantity requirements stipulated in the alleged contracts.

Petitioner believes that, as BLA, the Department should apply a rate of 198.10 percent, the highest margin alleged in the petition, to account for these sales.

Respondent maintains that for these CA cement sales the Department should use the date of the customers' acceptance of the graduated requirements pricing proposals as the date of sale and exclude these sales from its final analysis. Respondent believes its pricing proposals were accepted by the customers when the customers placed initial purchase orders at the prices specified in the proposals. At the time these orders were placed, respondent claims the parties had already orally reached an agreement with LCA regarding the percentage of their requirements they were committed to purchase from LCA in order to qualify for each price level specified in the proposals; the orders provided confirmation of each customer's prior acceptance of LCA's pricing proposal. Because these initial orders were dated prior to the POI, respondent argues that the date of sale for the shipments made during the POI pursuant to these proposals also fall outside the POI and, therefore, these shipments were properly not reported to the Department.

Respondent notes, however, that, should the Department disagree with its reasoning and determine that the shipments pursuant to graduated requirements contracts should be included in its analysis, there is no basis for the Department to make adverse inferences or use "punitive" BLA. Respondent asserts that it fully disclosed the nature of its graduated requirements contracts to the Department from the start of this case, and it had no reason to believe that it should provide further information about those shipments in the form of a sales listing. Respondent further notes that it provided a summary of the quantity and value of the shipments made during the POI under the graduated requirements contracts in its December 29, 1993, supplemental questionnaire response, and that, at verification, Department verifiers retained as an exhibit a listing of all the POI invoices generated under these contracts with related pricing and other sales data. Respondent argues that, if the Department decides to include these sales in the final determination, the sales data examined at verification should be used to allow proper analysis of these sales.

#### DOC Position

We agree with petitioner in part. Despite several requests for information in our questionnaires, Lafarge did not provide documentation regarding customers' acceptance of the graduated requirements pricing proposals. For example, Lafarge did not provide any of the "initial" orders allegedly placed pursuant to these graduated requirements pricing proposals. In addition, respondent did not offer any indication of the date on which these "initial" orders were placed for purposes of establishing date of sale for these sales. Furthermore, respondent could not provide at verification any contemporaneous documentation or other sufficient evidence regarding acceptance of the terms of sale by customers associated with the subject graduated requirements contracts or indicating a "meeting of the minds" between the parties with respect to price and quantity, despite the Department's repeated requests for such evidence. The POI invoice that we examined at verification that were allegedly generated pursuant to the pricing proposals and "initial" orders gave no indication of association with the pricing proposals or "initial" orders, and respondent provided no other documentation that would establish such a connection.

Lafarge submitted in its December 29, 1993, response sample pricing proposals associated with the graduated requirements customers in question. At verification, we were able to examine in detail only one of those pricing proposals. This proposal, dated January 9, 1991, was specifically for 1991 (all the prices and discounts mentioned referenced 1991 only) and was silent on the effective period of the terms it quoted. We also reviewed a letter that was dated January 20, 1994, the last day of verification, and was faxed to the respondent on that day by the customer in question. This letter attempted to show that the January 9, 1991, pricing proposal constituted the date of the agreement regarding the essential terms of sale for all sales made to that customer after that date. This letter also discussed renewal of the pricing arrangement. However, not only was this letter unclear as to exactly what kind of agreement the parties had reached pursuant to the proposal, but it also did not indicate when renewal was discussed. In accordance with the Department's practice, the date of any such renewal would constitute a new date of sale. Also in accordance with our practice, we required some form of documentation attesting to the date of

renewal, yet no documentation apart from the faxed letter was provided.

Lafarge was also unable to provide any such documentation for the other customers in question.

Without some documentary evidence of a renewal prior to the POI, we cannot assume that the terms of the January 1991 pricing proposal were in effect during the POI. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28172 (July 28, 1987) (Crankshafts from the FRG); and Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244, 29248 (July 18, 1990) (Gray Portland Cement from Mexico). Because we have no such evidence, we have determined that the dates of sale for the shipments at issue are within the POI. Accordingly, we have included them in our final dumping analysis. We do not think, however, that the pricing information contained in the invoice listing referred to by respondent is appropriate for use in our dumping analysis. This data was only submitted at verification to support the reconciliation of Lafarge's reported POI sales with its financial statements (information previously submitted in its responses). For purposes of making CV-to-price comparisons in our dumping analysis, this listing constitutes new information under 19 CFR 353.31(e)(i), and was therefore not timely submitted. It is not the Department's practice to accept new information at verification, because it leaves no opportunity for petitioners to analyze the sales reporting and provide deficiency questions, and no opportunity for petitioners to analyze and comment on these sales. In addressing this issue previously, we have stated:

The untimely submission of key information . . . precluded the Department from conducting a reasonable and thorough analysis of this information prior to the verification, just as petitioners were unable to comment on the new [information] . . . The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department.

Final Result of Sales at Less Than Fair Value: Light-Walled Welded Rectangular Carbon Steel Tubing from Argentina, 54 FR 13913 (April 6, 1989); Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58 FR 37199, 37203 (July 9, 1993).

Even if this listing had been submitted seven days prior to

verification, in accordance with 19 CFR 353.31(a)(4), it did not contain sufficient data for purposes of dumping analysis. Therefore, because we did not have complete sales information on the record to properly analyze these sales, we used BIA.

However, we do not think that use of the petition rate as BIA for these sales, as suggested by petitioner, is warranted. In this case, we are using partial BIA because Lafarge has provided responses to our questionnaires. When we resort to partial BIA, it is our practice to use the highest non-observational margin based on respondent's reported sales. This is an adverse figure, yet it is based on the respondent's calculated margin. Therefore, we have used as BIA for these sales the highest, non-observational margin calculated for any of respondent's reported U.S. sales of cement.

#### Comment 2

Petitioner contends that certain reported U.S. cement sales alleged to have been made under an exclusive supply contract dated outside the POI should be included in the Department's analysis. Petitioner argues that the Department was unable to verify that these sales were in fact made pursuant to a Master Agreement that Lafarge claims was an exclusive supply contract. Accordingly, petitioner maintains that respondent failed verification with respect to these sales. Furthermore, petitioner contends that, even if the Department had been able to verify these sales, respondent never had an exclusive supply contract with this particular customer. Petitioner asserts that the Master Agreement is neither "exclusive" nor a "contract." Therefore, petitioner argues that the Department should determine that the appropriate date of sale for these particular sales is the date of invoice, which is within the POI, and the Department should include these sales in its dumping calculation.

Respondent maintains that the Department should consider the date of the Master Agreement as the date of sale for the subject sales. Respondent argues that the blanket purchase orders issued by the customer prior to the POI indicates the customer's commitment to purchase its requirements from the respondent for specific products at the specific prices set by the Master Agreement.

#### DOC Position

We agree with petitioner. In our deficiency questionnaire of December 14, 1993, the Department specifically asked the respondent to support its assertion regarding the "exclusivity" of

the Master Agreement. Respondent, in its December 20, 1993, response, could neither demonstrate that the Master Agreement was "exclusive," nor what quantity of the subject merchandise the respondent was agreeing to sell. Further, Lafarge merely stated that the customer purchased all its requirements for certain cement products from it and that the "volume commitment" mentioned in the Master Agreement had been agreed to beforehand. Since we have no documentation demonstrating that a "meeting of the minds" regarding both quantity and price occurred before the POI, we cannot assume, based on respondent's word, that the Master Agreement is a requirements contract for purposes of establishing date of sale. (See Crankshaft from the FRC and Cery Portland Cement from Mexico.) Accordingly, we have determined the appropriate date of sale for these particular sales to be the date of purchase order, and we have included them in our final dumping calculations.

#### Comment 3

Petitioner argues that the Department should reverse its preliminary determination that CA cement and CA cement clinker constitute two such or similar categories. According to petitioner, the Department's determination was based on the incorrect premises that: (1) CA cement is not like CA cement clinker in the purposes for which used, and (2) in all past cases involving intermediate and finished products the Department has determined that there should be two such or similar categories. Petitioner contends that there is no question that CA cement and CA cement clinker constitute *exactly* one such or similar category pursuant to section 1677(19)(C) of the antidumping statute. According to petitioner, CA cement clinker is like the CA cement it is used to produce, and the difference-in-merchandise adjustment that would be required to make fair value comparisons between home market sales of CA cement and U.S. sales of clinker would be well below the Department's 20 percent *differ* guideline. Petitioner further argues that because there is no data on the record for home market sales of CA cement to calculate FNV, the Department should use BIA to determine a margin for Lafarge's sales of both CA cement and CA cement clinker. Petitioner believes that, as BIA, the Department should use 41.23 percent, which is the lowest margin alleged in the petition.

Respondent does not believe that there is any reason for the Department to revisit its decision that CA cement

and CA cement clinker are different such or similar categories at this late stage in the investigation. Respondent argues that it would be unfair for the Department to penalize it for failing to report information that the Department decided not to request. Furthermore, respondent contends that the statute does not allow the Department to use BIA when the information at issue was never requested.

#### DOC Position

We agree with respondent. It was decided early on in these investigations that CA cement and cement clinker constituted two such or similar categories of merchandise in accordance with the definition of similar merchandise under section 771(16)(B)(ii) and (C)(ii) of the Act, which states that the component materials and uses of the products must be "like." (See June 75, 1993, Memorandum from Richard W. Moreland to Barbara R. Stafford Re Such or Similar Categories and attached Memorandum from Stafford to Moreland). In this case, while cement and clinker may be made of similar materials, they are not used for the same purpose. Clinker is used to make cement, and cement is used to bind things together or to create some structure or form. Clinker requires further processing to be like cement in the purposes for which it is used. For these reasons we have held cement and clinker to constitute different such or similar merchandise categories in this and past cement cases. Moreover, contrary to petitioner's assertion, the component materials and uses of products within the class or kind of merchandise subject to investigation are the determinants in establishing categories of such or similar merchandise. The 20 percent *differ* rule is not considered by the Department in establishing such or similar categories.

#### Comment 4

Respondent maintains that in the preliminary determination the Department incorrectly deducted from the USP as an indirect selling expense, inventory carrying costs (ICC) based on an inventory period including the time between clinker production in France and production of the finished cement in the United States. Respondent claims that it did not sell clinker to an unrelated party in the United States, but rather to its U.S. subsidiary for further processing into cement. Therefore, the clinker in this case is work-in-process inventory, and the period between the production of the intermediate clinker

product and the completion of the finished cement product is part of the production period. Respondent maintains that the Department ordinarily imputes an ICC for finished goods inventory and almost never imputes ICC on work-in-process inventory, except for large, made-to-order goods that are produced as discrete projects. To support its arguments, respondent cites among other cases the Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea (58 FR 15467, March 23, 1993) (DRAMs from Korea) and Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review (55 FR 26,255, June 27, 1990) (CTVs from Korea). Furthermore, citing Final Determination of Sales at Less Than Fair Value: Offshore Platform Jacks and Piles from Japan (51 FR 11786, April 7, 1986) (OPIPs from Japan) and the Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan (55 FR 335, January 4, 1990) (MTPs from Japan), respondent maintains that in the rare instances in which the Department has imputed ICC on work-in-process inventory, it classifies those costs as part of the COM, not as selling expenses.

Petitioner contends that ICC must be calculated to include the time CA cement clincher is produced in France until the time it is further manufactured into cement in the United States. Petitioner argues that both CA clincher and cement will be subject to the scope of any order that may be issued in this case and, therefore, CA clincher cannot be considered work-in-process, as respondent suggests.

#### DOC Position

We agree with petitioner. The Department's general practice in all further manufacturing cases has been to begin the inventory carrying period from the time that the product comes off of the production line. (See e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from France (58 FR 68665, December 29, 1993) (Wire Rods from France). In this case, we are calculating ICC for the imported product, which is the clincher that is further manufactured into finished cement. We distinguish this case from that of CTVs from Korea, where the product imported into the United States was the finished merchandise; and OPIPs from Japan and MTPs from Japan, where the products were large and made-to-order, unlike

the subject merchandise in the instant investigation; and from DRAMs from Korea, where we made no adjustment regarding the imported merchandise only where it merely constituted parts of larger and considerably more complicated modules. Therefore, we have imputed ICC in this case inclusive of the period between production of the clincher in France and shipment to the first unrelated customer in the United States, and have adjusted USP accordingly. Moreover, for the portion of the ICC costs which reflect the period between production of the clincher in France and the start of production of the finished cement in the United States, we recalculated the reported ICC using the short-term interest rate prevailing in France during the FOL.

#### Comment 5

Respondent argues that the Department should use the U.S. warehousing costs included in the reported U.S. indirect selling expenses for CA cement sales. Contrary to what is suggested in the sales verification report, Lafarge maintains that the reported pre-sale warehousing costs for one warehouse are consistent with the prices shown in the warehousing contract examined at verification, and the pre-sale warehousing costs included in the reported indirect selling expenses were based on the actual costs incurred and paid by Lafarge, not on the per ton cost stated in the contract.

#### DOC Position

We agree. Upon further examination of the documentation reviewed at verification, we noted that the verified per unit U.S. indirect selling expenses, reported inclusive of pre-sale warehousing costs, were based on actual costs incurred. Thus, we have deducted from USP the reported pre-sale warehousing costs as indirect selling expenses.

#### Comment 6

Petitioner maintains that indirect selling expenses included in the CV of CA clincher should be recalculated to include indirect selling expenses allocated to CA cement as shown in Exhibit 6 of petitioner's case brief because clincher is of the same class or kind of merchandise as cement.

Respondent argues against such a recalculation because the channels of distribution and sales process for CA clincher differ substantially from those of CA cement. Because the CV of clincher is intended to provide a surrogate for a home market sales price for clincher based on the costs and expenses that would be incurred in producing and

selling clincher in the home market, Lafarge appropriately included in CV only the selling expenses that would be incurred in selling clincher.

#### DOC Position

We disagree with respondent. Section 773(e)(1)(B) of the Act provides that CV should include, among other things, "an amount for general expenses . . . equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration." We have recalculated indirect selling expenses to include home market indirect selling expenses for cement using verified information on the record. We consider cement indirect selling expenses to be representative of selling expenses of the general class or kind of merchandise, i.e., all CA products sold within the home market country.

#### Comment 7

Petitioner asserts that the Department should make an adjustment to the C&A expense reported in the CV for clincher to include the amortization of patents and trademarks which respondent had not included in the reported C&A amount.

Respondent argues that the amortization of patents and trademarks was included in the reported C&A expense.

#### DOC Position

We agree with respondent. Upon review of the verification exhibits we found that the reported depreciation costs included the amortization of patents and trademarks. (See Exhibit 14 and Cost Verification Report at 12).

#### Comment 8

Petitioner argues that, for purposes of calculating the CV for clincher in the final determination, the Department should use the BIA profit ratio that the Department calculated for the preliminary determination. Petitioner does not believe the Department should use the reported profit ratio because this calculation includes data on sales of non-subject merchandise. Petitioner argues that this profit ratio expands beyond the CA cement and cement clincher class or kind and, therefore, should not be used. Petitioner further maintains that in past cases the Department has consistently rejected the use of profit based on merchandise other than of the class or kind subject to investigation.

Respondent contends that the antidumping statute does not require the Department to use the profit on the "class or kind" of merchandise in its CV



calculations. Rather, respondent states that the statute directs the Department to use the profit rate on the "general class or kind," indicating an intent that the Department have flexibility in choosing the appropriate profit rate, and not be limited solely to the profit on the merchandise comprising the "class or kind."

#### *DOC Position*

We agree with respondent. In accordance with section 773(e)(1)(B), we have used the verified profit rate for all CA products, including the subject merchandise, sold in France because it represents the profit experience on sales of the general class or kind of merchandise in the home market.

#### *Comment 9*

Petitioner contends that certain reported U.S. flux sales made under an expired master order allegedly renewed prior to the POI should be included in the Department's analysis as sales made during the POI. Petitioner argues that the master order expired prior to the POI and was not renewed prior to the POI as respondent claims. Despite respondent's claim that prior to the POI the parties "evidenced a clear intent to continue the contract under the terms specified in the expired master order" but failed to renew the contract due to internal delays, there is no evidence on the record to support respondent's position. Petitioner argues that implicit renewal of the contract is not legally binding (i.e., there was no binding agreement between the parties as to any essential terms of sale at the time shipments of CA flux were made to this customer during the POI). According to petitioner, any shipments made to this customer during the POI were individual spot sales with dates of sale established by the date of the invoices issued for particular shipments.

Respondent argues that the Department should use the date of the master order as the date of sale for sales made pursuant to this contract (which it claims was renewed prior to the POI), and exclude them from the dumping analysis in the final determination. Although the original contract expired prior to the POI, Lafarge claims that the customer continued to purchase from LCA after that date in accordance with the sales terms set in the original contract. Moreover, respondent maintains that the orders placed by the customer during the POI continued to reference the purchase order numbers from the expired master order. According to respondent, the customer indicated its intent to re-issue the master order, but had not yet done so

because of internal delays. Based on these facts, respondent maintains that the shipments to this customer during the POI continued to be governed by the terms of the original master order even if there was no formal written agreement to that effect.

#### *DOC Position*

We agree with petitioner. The effective date of the subject master order was prior to the POI. At verification, LCA could not provide any documentation indicating renewal of the subject master order prior to the POI. Without some documentary evidence of a renewal of the master order prior to the POI, we cannot assume, based on respondent's word, that the essential terms enumerated in the original master order (which expired three months prior to the POI) governed the subject flux shipments made during the POI. (See Cramshaws from the FRG and Gray Portland Cement from Mexico.) Therefore, we have included these sales in the final determination, using the verified date of purchase order (or date of invoice where the date of purchase order was unavailable) as the date of sale.

#### *Comment 10*

Respondent argues that certain reported flux shipments made in October 1992 pursuant to a contract claimed to be effective prior to the POI, but the price terms of which were modified in November 1992, should not be included in our final dumping analysis. Respondent claims that the date of the November 1992 price modification notice should be used as the date of sale for subsequent sales made to this customer during the POI. Therefore, respondent asserts that all shipments made after the November price modification should be included in the Department's final dumping calculations, while those POI shipments made prior to the November price modification should be excluded from the final determination.

#### *DOC Position*

We agree. Respondent reported all sales/shipments of flux to the customer in question pursuant to purchase orders issued during the POI, because (1) it was unable to locate the original master order for that customer allegedly dated prior to the POI and (2) the original price terms changed in November 1992. At verification, although we were unable to locate the original master agreement or blanket purchase order for the subject customer, we did find a "change order" dated November 2, 1992, which stipulated a change in price

terms effective on that date. We also examined invoices issued to this customer shortly before and after the November 2 change order date. Based on our examination of these invoices, we found that the invoices confirmed LCA's acceptance of the November 2 change order, because the price per ton LCA charged the customer changed after that date. In accordance with these verification findings, we have included in our final dumping analysis only those shipments made after the November 1992 price modification, using the November 2, 1992, change order date as the date of sale for these shipments.

#### *Comment 11*

Respondent argues that CV should be the basis for FMV because including home market bagging costs in variable COM would cause the difmer adjustment to exceed 20 percent. Respondent states that the bags used in the home market are not merely packing for shipment, but rather consumer required packaging; therefore, their costs must be treated as part of COM. Respondent argues that it would be contrary to the Department's past practice to classify these bags as packing "incidental" to the shipment of the merchandise. To support its arguments, respondent cites the FMV Calculations performed pursuant to the 1992 Suspension Agreement in the antidumping duty investigation on gray portland cement and clinker from Venezuela; Final Determination of Sales At Less Than Fair Value: Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 36425, October 10, 1986) (Porcelain-on-Steel Cooking Ware from Taiwan); Final Determination of Sales At Less Than Fair Value: Certain Stainless Steel Cooking Ware from the Republic of Korea (51 FR 42873, November 26, 1986) (Stainless Steel Cooking Ware from Korea); and *Washington Red Raspberry Commission v. United States* (859 F.2d. 898, 905 (Fed. Cir. 1988)).

Furthermore, respondent argues that the bags used for home market packing have a number of special features unrelated to shipment: (1) they have built-in handles that facilitate use of a crane to lift the bag into the ladle or furnace of a steel mill; (2) they are constructed of non-permeable polymer material that protects the flux from contaminants in the steel mill environment and can vaporize in the steel melt without toxic emissions or undesirable residues; and (3) they come in varying sizes which allows the customer to control the amount of flux introduced into the steel melt. Respondent claims that its home market customers specifically order the bagged

product, and they willingly pay more for it because they perceive that it provides additional value.

In addition, respondent maintains that, because the bags are part of the merchandise purchased by home market customers and their costs are significant relative to the overall manufacturing costs of the product, it must set prices taking into account the SG&A and profit attributable to the bagging which are also significant. However, because the Department does not normally include SG&A and profit in packing or difmer adjustments, respondent contends that the Department's comparison of prices for bagged flux sold in the home market and bulk flux exported to the United States will not account for these factors and will therefore be distortive. Therefore, respondent argues that CV should be used instead of home market prices for purposes of calculating FMV for flux sales.

Petitioner argues that bagging costs associated with home market flux sales should not be included in the calculation of the difmer adjustment because they represent packing costs related to shipment of the merchandise to the home market customer, rather than variable COM. Petitioner contends that such an inclusion is contrary to Department policy which states that the difmer adjustment is limited only to costs directly attributable to differences in the physical characteristics of the merchandise and that in this case all physical differences in the CA flux occur before the bagging/packing stage. Petitioner further claims that, contrary to respondent's assertion, the bagging/packing at issue is not consumer packing which serves an advertising, promotional and educational function at the point of sale to the retail end-user. Rather, using bags is another way of handling and shipping flux in bulk quantities. To buttress its argument, petitioner cites Final Determination of Sales at Less Than Fair Value: Pads for Woodwind Instrument Keys from Italy (58 FR 42295, August 9, 1993) (Pads from Italy); Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Israel (52 FR 25440, July 7, 1987) (Phosphoric Acid from Israel); and Preliminary Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Venezuela (56 FR 56390, November 4, 1991) (Gray Portland Cement and Clinker from Venezuela). Petitioner claims that both respondent's CA flux marketing expert in France and petitioner's CA flux marketing expert in the United States agree that when a customer does not have a dedicated bulk storage silo system, the CA flux

must be shipped to that customer in bags. Petitioner also contends that respondent's claims that the design of its bags adds value to the customer are not relevant to the determination of whether the bagging costs can be deducted as a packing expense.

Petitioner further argues that respondent's cite to the suspension agreement concerning Gray Portland Cement and Clinker from Venezuela where the Department treated bagging costs as part of COM for purposes of calculating an FMV at or over which a Venezuelan cement producer/exporter would have to sell in the United States is not relevant because calculation of a difmer adjustment was not at issue in that investigation. Petitioner points out that in the Venezuelan cement investigation the Department made fair value comparisons of bulk cement sold to the United States with cement sold in Venezuela in 50 to 100 pound sacks, but did not make a difmer adjustment for packing/bagging. Instead, it adjusted for home market bagging costs by deducting them from FMV and adding the U.S. packing costs to FMV pursuant to its normal practice.

In addition, petitioner notes that the normal packing adjustment in this case would include all fixed costs as well as variable costs of bagging/packing and thus would not distort fair value comparisons as would the inclusion of only variable bagging/packing costs in the difmer adjustment, as respondent suggests. According to petitioner, any claimed price distortions attributable to SG&A and profit associated with bagging/packing will be minimal because Lafarge subcontracts these services (i.e., the fees it pays to subcontractors would cover fixed costs such as G&A expenses, and any selling costs would be included in normal circumstance-of-sale adjustments). Petitioner concludes that, even if packing costs are included in the difmer adjustment, the Department should still use the home market sales data submitted by Lafarge after the preliminary determination rather than CV for fair value comparisons because the U.S. and home market flux products sold during the POI are comparable and the 20 percent difmer guideline is not an inflexible rule.

#### DOC Position

We agree with petitioner in part. At verification, respondent explained that flux is placed in special bags pursuant to customer orders because home market customers do not have the appropriate facilities for handling and measuring flux for use in their steel production process. Bagged flux is not

sold from inventory. Flux can be sold in bulk form without the specialty bags, and is sold as such to the United States and the majority of third country markets. The fact that customers (in the home market or otherwise) have the choice to buy the flux without the special bagging strongly suggests that the bagging is not an integral part of the product covered by the scope of the investigation and, therefore, should not be considered part of variable COM and included in the difmer adjustment. This is in contrast to the situation in *Washington Red Raspberry Commission v. United States*, where the subject merchandise (raspberries) would be unrecognizable and completely unusable without the containers in which it was sold.

Characterizing the bagging costs as variable COM as suggested by respondent is not justifiable in this case. Respondent has not been able to explain to our satisfaction how bagging costs contribute to differences in the physical characteristics of the merchandise, as directed by 19 CFR 353.57. (See also the Department's July 29, 1992 Policy Bulletin (No. 92.2), which states that any difmer adjustment must be tied to such differences.)

The 1986 less than fair value determinations cited by respondent are inapposite. Stainless Steel Cooking Ware from Korea reflected our prior practice regarding the inclusion of difference in consumer packing in making difmer adjustments, which was changed in the 1992 Policy Bulletin cited above. Likewise, in Porcelain-on-Steel Cookware from Taiwan, we merely said that consumer packaging was not a cost incidental to shipment. We did not say that it constituted an integral physical part of the merchandise under investigation.

As noted above, in difmer analysis, we focus only on the differences in physical characteristics of the merchandise. The merchandise in this instance is CA flux. Bagging does not change the physical characteristics of flux and, therefore, it was not included in the difmer calculation. In the FMV Calculations performed pursuant to the Suspension Agreement in Venezuelan cement, we were not examining the differences in the physical characteristics per se of the subject merchandise. Therefore, respondent's reliance on Venezuelan cement is inapposite.

We also do not consider bagging costs as representative of normal packing costs. Rather, it appears to us that Lafarge could not sell the flux to the home market customers without incurring these special bagging costs.



While we agree with petitioner that Pads from Italy is applicable here (in that difmer adjustments are based on the variable cost of manufacture only), petitioner's reliance on Phosphoric Acid from Israel is misplaced, because the bagging for flux is clearly distinguishable from the drums used for packing (and accounted for in packing costs) in Phosphoric Acid from Israel. Therefore, we do not consider bagging in this case to be a pre-shipment expense, but rather a condition of sale. For these reasons, we have treated these bagging costs as direct selling expenses, rather than as part of variable COM or packing for purposes of the final determination. (See March 9, 1994, Memorandum from V. Irene Darzenta to Richard W. Moreland Re. Treatment of Bagging Costs Associated with Home Market Sales of Flux.) Because the difmer that resulted from exclusion of these costs from variable COM was less than 20 percent, we used the reported, verified home market flux sales as the basis for FMV and deducted bagging costs as direct selling expenses from FMV accordingly.

#### *Comment 12*

Petitioner states that the difmer adjustment is also incorrect because respondent included fixed costs (i.e., G&A) and profit in its calculation. Petitioner asserts that if the Department includes bagging in the difmer adjustment, it should recalculate the amount of the difmer to include only variable costs. Finally, petitioner maintains that the reported packing expenses, inclusive of bagging costs, should be adjusted to avoid double-counting G&A expenses.

#### *DOC Position*

For the reasons stated in the DOC Position to Comment 11 above and in accordance with the Department's normal methodology, we have recalculated the difmer adjustment to exclude bagging costs and include only variable COM. However, upon further review of the documentation examined at verification, we note that the G&A expenses included in the reported packing expenses were not double-counted. Notwithstanding this fact, we have also excluded from the packing adjustment the reported G&A expenses.

#### *Comment 13*

Petitioner believes that the claimed adjustment for home market technical service expenses should be denied or reduced. Petitioner maintains that the Department should deny the claimed direct adjustment for home market technical service expenses, because

these expenses cannot be directly tied to specific sales made during the POI. According to petitioner, services such as those provided by respondent for purposes of determining new uses for a product in future production aimed at increasing future sales levels constitute goodwill or sales promotion, and as such are not directly related to the sales under consideration. Petitioner also argues that technical service expenses attributable to test sales made during 1992 that are considered to be outside of the ordinary course of trade should be excluded from the adjustment; however, because the Department did not verify data that would permit their exclusion, the Department should deny the adjustment in toto. Nonetheless, if the Department determines that an adjustment is warranted, petitioner urges that it should only deduct the reported travel expenses and not the reported salary expenses comprising respondent's technical service expense calculation because salaries are considered fixed costs which are incurred whether or not the services are provided.

Respondent contends that technical service expenses should be treated as direct selling expenses in accordance with past Department and court decisions. Respondent notes that the technical services performed by LFI in France consist of visits to customers to review and help analyze the customers' test data and to work with the customer to make more efficient use of flux in its steel operations. Lafarge emphasizes that the customer needs to know from the time he makes his purchase that LFI's technical staff will be available to provide this analysis for him on an ongoing basis. According to respondent, these types of services are not provided by LCA in the United States because LCA's U.S. flux customers perform this technical service using their own personnel. Respondent argues further that an adjustment for technical service salaries is appropriate where the technical service personnel provide functions that the customer would otherwise have to perform himself.

#### *DOC Position*

We agree with respondent in part. Lafarge provides the technical support to its home market customers because they have not yet developed the systems required to perform these services themselves. Without Lafarge's technical support, the customers cannot analyze and make appropriate adjustments in their steel production processes to optimize performance of CA flux in their operations. Given the nature of the steelmaking industry, it is reasonable to

believe that, while these technical service expenses could not be directly tied to specific sales of flux, they would not otherwise have been incurred but for the sale of flux.

It is the Department's practice to allow, as a direct selling expense, claims for services rendered in assisting the customer in solving problems with products purchased during the POI to the extent that the variable costs can be segregated from the fixed costs. In general, variable technical service costs include travel expense, while fixed technical service costs include salaries. (See e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Italy, 52 FR 816, January 9, 1987; and Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, May 3, 1989.) Therefore, in accordance with our practice, we have treated travel expenses associated with technical services as direct selling expenses, and we have treated salary expenses as indirect selling expenses and deducted them from FMV accordingly. We made no adjustment to these amounts for expenses related to test sales that may have been made in 1992, because we did not have sufficient information on the record to allow us to do so accurately.

#### *Comment 14*

Petitioner claims that the adjustment for home market credit expenses should be denied or reduced. Petitioner believes that an adjustment for this expense should not be permitted because, of the sales verified, over one-quarter had incorrect shipment/payment dates. If the Department allows this expense, petitioner argues that it should be recalculated exclusive of VAT because Lafarge did not incur any credit expense for payment of the VAT.

Respondent maintains that the Department should not deny or reduce home market credit expenses. It argues that the errors found at verification with respect to shipment/payment dates were minor and clerical in nature, and do not have a significant effect on the Department's analysis. According to respondent, by extending credit, Lafarge agrees to forego immediate payment of the total invoice amount which includes the price for the goods and applicable VAT taxes. It, therefore, loses the interest that could have been earned on the total invoice amount. Respondent asserts that the foregone interest represents the opportunity cost of extending credit. Respondent further asserts that, because this opportunity

cost includes foregone interest on VAT, the foregone interest on VAT must be included in the credit adjustment.

#### *DOC Position*

We disagree in part with both petitioner and respondent. We have determined that a credit adjustment in general is warranted in this case. The errors found at verification with respect to the credit period reported for two home market transactions were clerical and minor in nature and related to sales made either out of the ordinary course of trade or to a third country which we have excluded from our analysis. (See the "Foreign Market Value" section of this notice.) However, we have also determined that there is no statutory or regulatory basis for including VAT in the credit adjustment. While there may be an opportunity cost associated with extending credit on the payment of invoice value inclusive of VAT, that fact alone is not a sufficient basis for the Department to make an adjustment. We note that virtually every expense associated with less than fair value comparisons is paid for at some point after the cost is incurred. Accordingly, for each post-service payment, there is also an opportunity cost. Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost of every freight charge, rebate, and selling expense for each sale reported in respondent's database. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department. (See e.g., *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 3253, January 8, 1993.) Consequently, we have recalculated home market credit expenses to exclude the VAT included in the gross unit prices used in the original calculation.

#### *Comment 15*

Petitioner argues that home market product liability costs are indirect rather than direct selling expenses because they are not directly related to sales made during the POI. Respondent disagrees, stating that these premiums are directly related to sales because the premium is assessed on sales value. According to respondent, each additional sale results in an additional product liability premium expense.

#### *DOC Position*

Because these premiums are assessed based on sales value, we have determined that these expenses are characteristic of direct expenses. We note that the U.S. product liability premium rates reported for U.S. sales of flux and cement were also based on sales value. Therefore, we have treated both home market and U.S. product liability expenses as direct selling expenses for purposes of the final determination, and have adjusted FMV and USP accordingly.

#### *Comment 16*

Petitioner claims that those sales made to a home market customer that were destined for export should not be included as home market sales in the Department's analysis. Petitioner states that the Department verified that Lafarge knew that certain sales of CA flux were to be exported to a third country at the time of sale to the home market customer. Accordingly, petitioner argues that these sales should not be included in the Department's FMV calculation.

#### *DOC Position*

We agree and have excluded these sales from our analysis.

#### *Comment 17*

Petitioner believes that for purposes of calculating profit related to the value added in the United States, U.S. brokerage and handling (including merchandise processing and harbor maintenance), U.S. unloading, U.S. loading and U.S. freight to processors costs, where applicable, should be attributed to the COM of CA clinker and flux in the United States because these expenses are incurred only after the product has arrived in the United States. Petitioner further believes that certain U.S. selling expenses (e.g., credit, warranty, indirect selling expenses, inventory carrying costs and product liability expenses) should also be included as part of U.S. further manufacturing costs.

Respondent does not believe that the Department should consider these charges and expenses to be part of U.S. further manufacturing costs, as petitioner requests. Lafarge contends that petitioner's argument is inconsistent with the antidumping statute and was put forth by petitioner solely to increase the profit allocated to further manufacturing and, as a result, the adjustment to USP.

#### *DOC Position*

We disagree with petitioner. Because U.S. brokerage and handling, and U.S.

unloading and loading costs, are incurred on the imported merchandise prior to the commencement of further manufacturing in the United States, we find that they do not form part of the value added in the United States. Regarding the costs of freight to processors' warehouses associated with flux sales, we find that they do form part of the costs of further manufacturing the imported flux in the United States because these costs are incurred to transport the imported flux to and among the processors' warehouses for further manufacture. For U.S. cement sales, however, such transfer freight costs represent costs incurred to transport the already further manufactured clinker (i.e., the finished cement) to the warehouses from which the finished product is ultimately sold to U.S. customers. No freight to processors costs are incurred on U.S. cement sales because the further processing occurs at Lafarge's plant which is located at the U.S. port of importation. Regarding U.S. selling expenses, these expenses are incurred to sell both the imported and further manufactured products. Therefore, adding these expenses to U.S. further manufacturing costs, as petitioner suggests, would disproportionately increase the U.S. value added for purposes of calculating profit. (See e.g., *Wire Rods from France*.) Of the expenses at issue, we have only included costs of freight to processors associated with U.S. flux sales as part of U.S. value added in our final profit calculation.

#### *Comment 18*

Petitioner claims that the Department should recalculate respondent's U.S. indirect selling and G&A expenses for both cement and flux sales. Petitioner argues that, based on the Department's instructions, LCA's administration costs should have been reported as G&A (rather than indirect selling expenses), allocated based on cost of sales and included in the U.S. COM. According to petitioner, the Department should reduce the reported indirect selling expenses and the corresponding ESP cap.

Respondent maintains that LCA's calculation correctly assigned its administrative expenses to its operations. According to Lafarge, because LCA's administrative staff supports LCA's sales operations as well as factory operations, a portion of LCA's administrative expenses should be considered sales administration and treated as an indirect selling expense. Respondent notes, however, that it would not object if the Department

reduces the amount of administrative expenses assigned to the products under investigation under petitioner's proposal. Respondent contends that if the Department accepts petitioner's argument that U.S. indirect selling expenses and G&A should be recalculated, it should revise petitioner's calculations to use the correct, verified figures.

#### *DOC Position*

We agree with petitioner on the need to reclassify LCA's administrative expenses. Because these expenses are more appropriately characteristic of G&A expenses, we have reclassified them from indirect selling to G&A expenses based on verified data on the record.

#### *Comment 19*

Petitioner argues that no offset to financial expenses should be allowed for the short-term interest income claimed by Lafarge for purposes of calculating clinker CV and clinker and flux further manufacturing costs. Petitioner contends that the Department was unable to verify that the interest income reported was short-term in nature. Nor could the Department verify whether the reported interest income was related to the manufacture of the subject merchandise, according to petitioner.

Respondent asserts that the Lafarge corporate policy is not to invest in assets which produce other than short-term interest income. Accordingly, respondent maintains that all interest income earned by respondent's parent company Lafarge Copee was short-term in nature, and an offset to interest expense should be allowed for the entire reported short-term interest income amount.

#### *DOC Position*

We agree with petitioner. The Department normally allows an offset to financial expenses for interest income earned on short-term investments of working capital related to the production of the subject merchandise. The Department does not offset interest expense with interest income earned on long-term investments related to activities unrelated to the manufacturing process. Because we were unable to verify the nature of the interest income reported, we have disallowed the financial expense offset claimed by Lafarge.

#### *Comment 20*

Petitioner notes that the Department discovered at verification that the depreciation of R&D assets was not

included in the R&D expenses reported for purposes of calculating clinker CV. Petitioner states that the Department should include this depreciation in the reported R&D expenses.

#### *DOC Position*

We agree and have adjusted the R&D expenses reported for purposes of calculating clinker CV to reflect the inclusion of depreciation for R&D assets. We note that this adjustment also affected the total reported COM of the imported clinker and flux used in the calculation of U.S. value added profit.

#### *Comment 21*

Petitioner asserts that exchange rate gains and losses should be added to raw material costs for purposes of calculating clinker CV. According to petitioner, during verification the Department discovered that Lafarge had not reported the foreign exchange gains and losses related to the importation of raw materials used to produce the subject merchandise.

#### *DOC Position*

We agree, based on our findings at verification, that Lafarge did not report these foreign exchange gains and losses. Accordingly, we have added these gains and losses to the reported raw material costs for purposes of calculating clinker CV for the final determination. We note that this adjustment also affected the total reported COM of the imported clinker and flux used in the calculation of U.S. value added profit.

#### *Comment 22*

Petitioner argues that, because LFT repeatedly refused to separately report its labor costs and classify them according to Department practice as variable costs for purposes of calculating clinker CV and total flux and clinker COM used in the calculation of U.S. value added profit, the Department must resort to BIA to determine these costs. As BIA, petitioner asserts that the Department should not annualize any fixed costs but rather use only the fixed costs reported for the POL. Petitioner argues that this is a reasonable BIA methodology given the Department's inability to break out the labor costs from fixed costs and properly treat the labor costs as variable costs.

Respondent contends that LFT's labor costs have the characteristics of fixed costs since the number of workers working at LFT's plants is generally constant and the total pool of labor costs tends not to vary with production levels. LFT also asserts that labor costs are discovered by fluctuations in monthly production volumes as a result of plant

shut-downs for maintenance. According to respondent, the use of fixed costs for the POL would distort the Department's CV and further manufacturing cost calculations. LFT states that, under the logic of the preliminary determination, fixed labor costs should be based on the reported annual period.

#### *DOC Position*

We agree with petitioner. Lafarge normally records labor costs for clinker and flux as a fixed cost. Respondent followed its normal accounting system for the response and reported labor as a fixed cost for the year 1992. This methodology differs from the Department's normal practice where labor is considered a variable cost and as such would be reported on a weighted-average basis for the POL.

In the preliminary determination the Department accepted the annualization of fixed costs because LFT claimed that periodic shut-down expenses incurred for maintaining its furnaces created significant aberrations in monthly production costs. In order to eliminate the effect of these distortions, we allowed LFT to report fixed costs on an annual weighted-average basis.

However, it was not until verification that the Department first discovered that labor costs were included in the reported annualized fixed costs. The Department's Section D and E questionnaires for clinker and flux identified direct and indirect labor as costs that should be reported as variable costs for response purposes. The questionnaires also specifically requested that LFT itemize the expenses included in fixed and variable costs. LFT did not itemize its variable or fixed costs or otherwise identify how it treated its labor costs in response to the Department's requests. Because LFT was not responsive to the Department's requests for information and incorrectly classified labor costs as fixed costs, and since there was no information on the record to permit the accurate reclassification of labor costs, we have disallowed the annualization of fixed costs and have used only the reported fixed costs for the POL as BIA for purposes of the final determination.

#### *Suspension of Liquidation*

In accordance with section 734(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CA cement and cement clinker from France and to begin the suspension of liquidation of all entries of CA flux from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in

the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP, as shown below. The less than fair value margins for CA cement and cement clinker are as follows:

Dated: March 18, 1994.  
 Paul L. Jaffe,  
 Acting Assistant Secretary for Import  
 Administration.  
 [FR Doc. 94-7122 Filed 3-24-94; 8:45 am]  
 GSA:GPO CODE 5010-06-9

Producer/manufacturer/ex- porter	Weighted-av- erage margin percentage
Lafarge _____	18.91
All Others _____	18.91

The less than fair value margins for CA flux are as follows:

Producer/manufacturer/ex- porter	Weighted-av- erage margin percentage
Lafarge _____	31.08
All Others _____	31.08

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determinations. As our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CA cement, cement clinker and flux from France entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

#### Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of certain calcium aluminate flux, provided for in subheading 2523.10.00 of the Harmonized Tariff Schedule of the United States. For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** March 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted as a result of an affirmative final determination by the Department of Commerce that imports of certain calcium aluminate flux from France are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 31, 1993, by Lehigh Portland Cement Company, Allentown, PA.

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

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will

make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in this investigation has already been prepared, and a public version was issued thereafter, pursuant to section 207.21 of the Commission's rules.

**Hearing**

The Commission will hold a hearing on CA flux in connection with its hearing on the other section of the CA cement/CAC clinker investigation beginning at 9:30 a.m. on March 31, 1994, at the U.S. International Trade Commission Building. The Commission, by a unanimously vote, has determined that the 7-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1), and (d)(2), as amended (19 C.F.R. 201.35(a), (c)(1), and (d)(2), as amended.). Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 29, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 24, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

**Written Submissions**

Each party is encouraged to submit a prehearing brief on CA flux to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is March 29, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-645 (Final)]

**Certain Calcium Aluminate Flux From France**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a final antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of the remaining portion of final antidumping investigation No. 731-TA-645 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is

conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 7, 1994; witness testimony must be filed no later than two (2) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 7, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI 4 service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: March 23, 1994.

Donna R. Keshake

Secretary

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description of the scope of this investigation remains dispositive.

#### Case History and Amendment of Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on March 25, 1994, the Department of Commerce (the Department) published its final determinations that CA cement, cement clinker and flux from France were being sold at less than fair value (59 FR 14136). Subsequent to the final determinations, we received ministerial error allegations by both petitioner and respondent in these investigations.

On April 8, 1994, Lafarge Fondu International and its U.S. subsidiary Lafarge Calcium Aluminates, Inc. (collectively Lafarge), the sole respondent in these investigations, alleged that the Department made a ministerial error in the final margin calculation for CA cement and clinker. Respondent alleged that the Department "inadvertently" used the wrong fixed costs for the period of investigation (POI) to calculate the constructed value (CV) of CA clinker and the foreign manufacturing cost of CA clinker used to allocate profit on U.S. sales of further manufactured CA clinker (i.e., U.S. sales of CA cement). Specifically, respondent claimed that the Department "inadvertently" used the POI fixed costs that Lafarge reported in its initial response to Section D of the Department's questionnaire submitted on August 19, 1994, for its clinker CV and further manufacturing profit calculation. Respondent argued that the Department should have used the revised POI costs that were submitted in a subsequent supplemental questionnaire response dated September 28, 1993, and ultimately verified by the Department after some minor corrections were made based on the information contained in a relevant cost verification exhibit.

On April 20, 1994, we rejected respondent's allegation on the grounds that the alleged error did not constitute a "ministerial error" as defined in the Department's regulations. (See April 20, 1994, Memorandum to Barbara R. Stafford from The Team Re. Ministerial Error Allegations.) We stated in the Federal Register notice announcing our final determinations that we were "us[ing] only the reported fixed costs for the POI as [best information available] BIA." (emphasis added) (See 59 FR 14136, March 25, 1994.) That is, we explicitly chose the cost data that we used. Moreover, respondent alleged a "ministerial" error based on our choice of fixed costs used in the final

determination. These are not "ministerial" actions. 19 CFR 353.28(d) defines "ministerial error" as "an error in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." Contrary to respondent's allegation, the alleged error was neither "clerical" nor "unintentional" in nature. As our choice of BIA is a methodological issue, this is not an issue of ministerial error properly raised under 19 CFR 353.28. On April 12, 1994, we received an allegation from the petitioner, Lehigh Portland Cement Company (Lehigh), that the Department made a ministerial error in the final margin calculation for CA flux. Lehigh alleged that the Department erred by double counting the cost of raw materials used to calculate the foreign manufacturing cost of CA flux for purposes of allocating profit on U.S. sales of further manufactured flux. Specifically, Lehigh alleged that the Department's computer program for calculating the weighted-average dumping margin for CA flux contained an instruction which overstated the cost of foreign manufacture used to calculate profit associated with U.S. further manufacturing because it double counted the cost of raw materials. Petitioner requested that the Department correct this clerical error by deleting the extraneous field from the computer program.

We agree that this alleged error is a ministerial one. Upon re-examination of the final computer program relevant to CA flux, we noted that raw material costs had indeed been inadvertently double counted in the manner described above. Therefore, we have corrected the data in question, and have recalculated the margin in our final determination for CA flux to reflect this correction in accordance with 19 CFR 353.28(c). The corrected margin is 37.93 percent.

Based on the foregoing, the cash deposit or bonding rate for Lafarge is now 37.93 percent. The cash deposit or bonding rate for the "All Others" category is also now 37.93 percent.

#### Suspension of Liquidation

We are directing the Customs Service to suspend liquidation of all entries of CA flux from France that are entered, or withdrawn from warehouse, for consumption on or after March 25, 1994, at the revised cash deposit or bonding rates specified above.

#### International Trade Administration

[A-427-812]

#### Amendment of Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Flux From France

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

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-6320 or (202) 482-4929, respectively.

#### Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of calcium aluminate (CA) flux from France to reflect the correction of a ministerial error made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

#### Scope of Investigation

The merchandise subject to this investigation is CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written

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**Notification of International Trade  
Commission (ITC)**

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), we have notified the ITC of our amended final determination.

This amended determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: May 9, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import  
Administration.*

[FR Doc. 94-11870 Filed 5-13-94; 8:45 am]

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**Appendix B**  
**List of Witnesses Appearing**  
**at the Commission's Hearing**

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

**Subject : CERTAIN CALCIUM ALUMINATE  
CEMENT, CEMENT CLINKER, AND  
FLUX FROM FRANCE**

**Inv. No. : 731-TA-645 (Final)**

**Date and Time : March 31, 1994 - 9:30 a.m.**

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

**In Support of the Imposition of  
*Antidumping Duties:***

**King & Spalding  
Washington, DC  
*On behalf of—***

**Lehigh Portland Cement Company, Allentown, PA**

**Roy J. Bottjer, National Marketing Manager, Calcium Aluminate  
Cements & Special Cement Products**

**Adam G. Holterhoff, Jr., Manager, Technical Services, Calcium  
Aluminate Cements**

**Paul A. Pachapa, Plant Manager**

**Bruce P. Malashevich, President, Economic Consulting  
Services, Inc., Washington, DC**

**Jerrie Mirga, Senior Economist, Economic Consulting Services,  
Inc., Washington, DC**

**James J. Kelly, Vice President, National Recovery Systems,  
E. Chicago, IN**

**Joseph W. Dorn —OF COUNSEL  
Gregory C. Dorris**

**In Opposition to the Imposition of  
*Antidumping Duties:***

**Shearman & Sterling  
Washington, DC  
*On behalf of—***

**Lafarge Fondu International (LFI)**

**Lafarge Calcium Aluminates, Inc. (LCA)**

**Alain Bucaille, General Director, LFI**

**Gary Gauthier, President, LCA**

**Thomas W. Green, National Sales Manager, LCA**

**William J. West, Vice President/General Manager,  
West Minerals**

**Grant E. Finlayson —OF COUNSEL  
Wendy E. Ackerman**

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## **Appendix C**

# **Additional Information Concerning the U.S. Market for Flux Products**

**Table C-1**  
**Clinker CA flux: Summary data concerning the U.S. market, 1990-93**

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**Table C-2**  
**Other flux products: U.S. suppliers and description of firms' operations**

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**Table C-3**  
**Other flux products: Domestic shipments of U.S. suppliers, 1990-93**

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