

UNITED STATES INTERNATIONAL TRADE COMMISSION

PORTLAND HYDRAULIC CEMENT, OTHER THAN WHITE  
NONSTAINING CEMENT, FROM MEXICO

Negative Determination of "No Reasonable Indication of  
Injury" in Inquiry No. AA1921-Inq. -3  
Under the Antidumping Act, 1921,  
as Amended



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**UNITED STATES INTERNATIONAL TRADE COMMISSION**

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**COMMISSIONERS**

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Daniel Minchew, Vice Chairman  
George M. Moore  
Catherine Bedell  
Joseph O. Parker  
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United States International Trade Commission  
Washington, D.C.

December 18, 1975

[AA1921-Inq.-3]

PORTLAND HYDRAULIC CEMENT, OTHER THAN WHITE NONSTAINING  
CEMENT, FROM MEXICO

Commission Does Not Determine "No Reasonable  
Indication of Injury"

On November 18, 1975, the United States International Trade Commission received advice from the Department of the Treasury that, in accordance with section 201(a) of the Antidumping Act, 1921, as amended, an antidumping investigation was being initiated with respect to portland hydraulic cement, other than white nonstaining cement, from Mexico, and that, pursuant to section 201(c) of the act, information developed during the preliminary investigation led to the conclusion that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such cement from Mexico into the United States. Accordingly, on November 20, 1975, the Commission instituted inquiry No. AA1921-Inq.-3 under section 201(c)(2) of the act to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on December 5, 1975, in El Paso, Texas. Notice of the institution of the inquiry and hearing was duly given by posting copies of the notice at the Secretary's office in the Commission

in Washington, D.C., and at the Commission's office in New York, and by publishing the original notice in the Federal Register of November 26, 1975 (40 F.R. 54883).

The Treasury Department instituted its investigation after receiving a complaint on October 16, 1975, from Southwestern Portland Cement Co. of El Paso, Texas. Treasury's notice of its antidumping proceeding was published in the Federal Register of November 21, 1975 (40 F.R. 54267).

On the basis of its inquiry with respect to imports of portland hydraulic cement, other than white nonstaining cement, from Mexico-- the subject of the antidumping investigation initiated by the Department of the Treasury--the Commission (Commissioners Leonard, Moore, Bedell, and Parker) 1/ does not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

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1/ Commissioner Ablondi does not determine that "there is no reasonable indication that an industry in the United States . . . is likely to be injured . . . ." Commissioner Minchew determines that "there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established . . . ."

Statement of Reasons of Chairman Will E. Leonard and  
Commissioners Catherine Bedell and Joseph O. Parker

The United States International Trade Commission instituted inquiry No. AA1921-Inq.-3 under section 201(c)(2) of the Antidumping Act, 1921, on November 20, 1975; this is the third such investigation under this new section, which was added to the Antidumping Act by the Trade Act of 1974. The purpose of this inquiry was to determine whether "there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation" into the United States of portland hydraulic cement, other than white nonstaining cement, from Mexico, possibly sold at less than fair value. Such cement from Mexico is the subject of a pending Department of the Treasury investigation under section 201(a) of the Antidumping Act, 1921.

Determination 1/

On the basis of the information developed with respect to this inquiry, we do not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of portland hydraulic cement, other than white nonstaining cement, from Mexico. As a result of this

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1/ Commissioner Leonard considers that before making a determination of "no reasonable indication," an affirmative determination under sec. 201(c)(2), the allegations made by the complainant before the Treasury and the information available as a result of the Commission's inquiry must reveal the issues of injury and causation to be so clearly lacking in substance that the resources of the Government should not be used to any further extent in considering the matter, and that trade should not be disrupted further by such consideration.

determination by the Commission, the Treasury may proceed with its pending investigation.

#### Discussion

U.S. production and shipments of portland cement decreased in 1974 and 1975 after reaching a peak in 1973--a pattern generally parallel to the trend of U.S. building construction over the period. U.S. imports of portland cement from all countries also reached a peak in 1973 and declined thereafter. Imports of portland cement from Mexico reached a high point in 1972 and declined in subsequent periods. However, imports of portland cement from Mexico which entered the United States through the port of El Paso, Texas--the imports which appear to be the focus of the complaint before Treasury--did not follow this pattern; in fact, they increased from about 5,000 short tons in January-September 1974 to about 9,000 short tons in the corresponding period of 1975. These imports were sold in the marketing area of southeastern Arizona, New Mexico, and southwestern Texas.

During January-May 1975, imports of portland cement from Mexico through the port of El Paso, virtually all of which were shipped in sacks, were sold at prices which were about 15 percent less than the prices of U.S. producers. According to the preliminary data reported by Treasury, this margin of underselling could be accounted for by the alleged dumping margins. In May 1975, the U.S. cement producer which supplied the great bulk of total sales in the marketing region in question reduced its price in order to compete with the imports from Mexico. This action may have resulted in a loss in revenue of

approximately \$75,000 for this U.S. cement producer on its sales of cement in sacks during May-November 1975. The Commission also verified that certain customers of U.S. cement producers purchased cement imported from Mexico during January-November 1975.

As stated above, virtually all of the U.S. imports of cement from Mexico through the port of El Paso were shipped in sacks. However, testimony given at the Commission's hearing in connection with this inquiry indicated that a Mexican producer of the cement which is allegedly being sold at less than fair value intends and is making a concerted effort to sell bulk cement in the market area considered here. Sales of bulk cement constitute approximately 90 percent of the total sales of cement in this market. The Mexican producer operates a plant of 115,000 tons annual capacity directly across the U.S. border from El Paso and a larger plant of 261,000 tons annual capacity, both in the State of Chihuahua. 1/

### Conclusion

In our judgment, the evidence developed in this inquiry is sufficient to preclude a determination that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of imports of portland hydraulic cement from Mexico possibly sold at less than fair value.

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1/ Commissioner Ablondi concurs with the Commission opinion as set forth here inasmuch as the U.S. industry in this region may be threatened with injury if the Mexican producer gains entry into the market for bulk cement by means of sales at less than fair value.

## Statement of Reasons of Vice Chairman Daniel Minchew

In accordance with new provisions of the Antidumping Act, 1921, 1/ the United States Department of the Treasury (Treasury) notified the United States International Trade Commission (Commission) on November 18, 1975, that it had "substantial doubt whether" a U.S. industry "is being, or is likely to be, injured or prevented from being established by reason of importation" of portland hydraulic cement, other than white nonstaining cement, from Mexico (portland cement). On November 20, 1975, pursuant to its responsibilities under section 201(c) of the Antidumping Act, 1921, as amended, the Commission instituted a preliminary investigation to determine whether "there is no reasonable indication" that a U.S. industry "is being or is likely to be injured, or is prevented from being established, by reason of the importation" of portland cement from Mexico.

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1/ 19 U.S.C. 160. The relevant amendment to the Antidumping Act was made in sec. 321 of the Trade Act of 1974 (88 Stat. 2044 (1974)), amending sec. 201 of the Antidumping Act. The relevant language reads as follows:

(2) If in the course of making a determination under paragraph (1) the Secretary concludes, from the information available to him, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

Under the statute, the Commission is required to complete its investigation within 30 days from receipt of notification by Treasury and, for purposes of preliminary investigations, to consider only the question of injury or likelihood of injury caused by less than fair value (LTFV) sales. On the basis of the information available from the Treasury, the Commission hearing record, and materials submitted by the parties, and other data obtained during the Commission's investigation, I have concluded that there is no reasonable indication that "an industry in the United States is being or is likely to be injured . . . by the importation" of portland cement from Mexico.

In determining whether "there is no reasonable indication" of injury or likelihood of injury caused by LTFV imports, it is necessary to determine that none of the usual indexes of injury are being met. In making this determination, I will look at the various aspects of injury, including but not limited to such things as idling of productive facilities in the industry, inability of domestic industry firms to operate at a reasonable level of profit, unemployment or underemployment within the industry, decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment in the domestic industry concerned. However, very little guidance is obtained from the statute as to how high or how low the threshold of "reasonable indication" should be. For me, the threshold will have to be higher than one so low that even the weakest cases are returned to Treasury. The legislative intent of the enactment stated at page 171 of Senate Report 93-1298 is as follows:

The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade.

For the purpose of the present investigation, I have looked at the U.S. industry as a whole. However, since the El Paso, Texas, marketing area is very close to the foreign source, and since the imported portland cement cannot be economically transported great distances, I am assuming that if a reasonable indication of injury were to be found anywhere, it would be evident in the El Paso, Texas, marketing area. If this area does not meet the threshold requirements, I have little reason to believe that injury is being sustained elsewhere. Southwestern's El Paso plant has traditionally supplied 90 to 95 percent of the cement consumed in the marketing area and has provided evidence that in order to meet the market threat of Cementos de Chihuahua (CDC) it has been forced to reduce prices, with a resultant net loss of revenue in the months of May-November 1975 in the amount of \$76,916. From the data available to me in the present case, the strongest indication of injury or likelihood of injury is this loss of revenue resulting from meeting the competition's price. Despite this loss of potential revenue, that alone does not establish a "reasonable indication" of injury or likelihood of injury except in instances of an almost meaninglessly low threshold (without indications that profits were seriously reduced).

While Southwestern has been forced to reduce prices, it has succeeded in regaining lost sales at the lower prices without the idling of productive facilities or loss of employment. The petitioner, the dominant producer in the area, enjoys a near-captive market for portland cement in the El Paso, Texas, marketing area, and for me the standard for injury or a likelihood of injury must be more than having to lower the price on a very small portion of the business 1/ when a new competitor enters the marketing area.

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1/ Southwestern was required to lower prices by approximately 10 percent on sack portland cement. This sack portland cement constitutes approximately 10 percent of the production of cement by Southwestern.

The petitioner has produced some evidence that CDC has attempted to penetrate the bulk sales market by actions which might be considered unfair trade practices. Thus far, we have evidence only of attempts which have failed. Without establishing a reasonable indication that CDC can succeed in penetrating the domestic market, I do not feel that we should continue the investigation.

This determination, if it had represented a majority of the vote in the present case, would have resulted in the termination of this investigation. However, there is no statutory prohibition nor any regulation or proposed regulation of Treasury that would prevent the domestic industry from filing a new petition at any time in the future should evidence of injury or its likelihood be developed. Nor would termination of this investigation prejudice the petitioner from filing an unfair trade practice petition under section 337(a) of the Tariff Act of 1930, as amended, should evidence be found that CDC is acting improperly in attempting to enter the market.

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