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Dissemination Report

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Background information and chronology of Mexican cement dumping case

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Cemex

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CEMEX

BACKGROUND

Headquartered 100 miles south of the U.S. border in Monterrey, Mexico, Cemex is the largest cement producer and distributor in North America and the fourth largest in the world.

MEXICAN OPERATIONS

With 64 percent of the market, Cemex is Mexico's leading cement producer and distributor of cement and ready-mixed concrete. The company's roots can be traced back to 1906 when cement production began in Mexico. Today, domestic operations, utilizing the most advanced technology, consist of 17 cement production plants and 26 distribution terminals. This system supplies the local markets and serves a network of more than 5,000 distributors throughout Mexico.

Since 1986, Cemex has doubled its production capacity. Its plants are strategically located throughout the nation, enabling the company to hold down transportation costs and better serve its customers.

Cemex wants to protect the environment at each of its facilities by utilizing the best available technology. Indeed, by 1994 the company will have invested $350 million in state-of-the-art equipment to meet the Mexican government's strict environmental protection regulations.

Cemex's main subsidiaries are Cementos Monterrey, Grupo Empresarial Maya, Tolmex and Sunbelt Enterprises, Inc., which manages international operations. Cemex cement is widely recognized in the industry under five leading brand names which have been well established in the Mexican market for the last 30 to 80 years.

MEXICAN EXPORTS

Cemex began exporting to the U.S. in the early 1980s.

- The company purchased Cementos Anahuac to export to the Gulf of Mexico markets, specifically Florida;
- It merged with Cementos Tolteca to export to the southwestern U.S., especially Arizona and California; and
- Cemex purchased Pacific Coast Cement in Los Angeles in 1990 to serve the California region.

U.S. OPERATIONS

Cemex's U.S. operations are located in Arizona, New Mexico, Texas and California, which leads all states in the consumption of cement. Cemex employs more than 2,000 Americans.

- Sunbelt Cement is a major distributor of bulk and bagged cement throughout Arizona; El Paso, Texas; and New Mexico.
- Sunward Materials is a major producer and supplier of concrete, aggregate and block in Arizona.
- Pacific Coast Cement sells cement in northern and southern California.
- C.L. Pharris produces and sells concrete, aggregates and concrete-related products throughout the Inland Empire in southern California.
- Gulf Coast Portland Cement sells cement in the Houston, Texas metro area.
- Houston Shell & Concrete sells concrete in the Houston, Texas metro area.
- Houston Concrete Products sells concrete blocks and products in the Houston metro area and Austin, Texas.
- Southern Material, Inc. sells concrete and aggregates in the Austin and Temple, Texas areas.
- Eagle Cement Corporation rents a terminal to Lafarge Corporation in West Palm Beach, Florida.
- Sunbelt White, Inc. owns 29 percent of a partnership with Lehigh White Cement Company, which sells white cement throughout the U.S. Facilities are located in Waco, Texas, Pennsylvania and California.
- Sunbelt Management, Inc. has a 50 percent joint venture that sells cement in the San Antonio, Corpus Christi and south Texas areas.
- Mexam Trade, Inc. exports supplies and construction materials from the U.S. to Mexico.

OTHER FOREIGN MARKETS

One of the most technologically advanced cement groups in the world, Cemex has expanded its export markets to include the Far East. In 1991, Cemex began exporting to Taiwan, Korea and Thailand. Other new markets include the Caribbean and Central America.

FUTURE INVESTMENT OPPORTUNITIES

Cemex believes its domestic market will continue to grow as the 85 million Mexicans take advantage of their rebounding economy to build and maintain their houses. A change in Mexican legislation, allowing for more housing units to be built, has resulted in a rapid and significant increase in the demand for cement.

Cemex has also responded to the need for cement to build and maintain a large infrastructure to serve Mexicans and foreign visitors. Additional roads, schools, bridges and hospitals are needed to keep pace with the growing population.

A CASE OF UNFAIR TRADE BY THE UNITED STATES

"Anti-dumping laws are supposed to prevent foreigners from unfairly taking over U.S. markets by selling at prices below cost. But the laws are often misused to assist politically muscular American corporations."

-- "Commerce Dumps On The Consumer"
The New York Times, June 8, 1992

SUMMARY

After trying for nearly 30 years to block imports, U.S. cement industry lobbyists won a tariff increase that is driving foreign competition from the American market.

The decision marked a policy reversal. Since 1960, U.S. cement manufacturers have been using antidumping laws to harass foreign competitors. In that time, the industry has filed *eighteen* antidumping cases. The last 12 cases, going back to 1976, were thrown out on the grounds that imports were not the cause of the U.S. industry's problems.

As recently as 1986, the U.S. International Trade Commission (ITC) agreed in a 5-0 vote that there did not exist even a "reasonable indication" that Mexican imports were responsible for the U.S. industry's competitive difficulties.

Yet, in August 1990, the Commerce Department ruled that Cemex and several other Mexican companies were selling cement and cement clinker in the United States at less than fair value, even though their products were often priced higher than cement made domestically.

By a 2-1 vote, the ITC declared that Mexican *and* Japanese sales were injuring domestic producers in an arbitrarily defined "southern tier" of the United States.

Cemex was ordered to pay antidumping duties of 58 percent. Now the Department of Commerce, in violation of its own regulations, is seeking to increase the rate to 60 percent.

Today, Cemex and the government of Mexico are pursuing all legal options in their effort to have the U.S. decision overturned.

WHAT'S WRONG WITH THE U.S. DECISION AGAINST MEXICO

Cement producers in the U.S. southern tier were not injured by imports from Mexico.

- In his dissenting opinion, ITC Commissioner David B. Rohr wrote that "we have an industry that is not materially injured and which is recording its best performance over the period of the investigation in the most recent time period." (See attached chart.)

- Despite the cyclical nature of the cement industry and a decline in overall construction activity, producers in this region turned in a relatively strong performance.

- Between 1986 and 1989, production grew 6.3 percent for cement and 10.4 percent for clinker. (Clinker is made up of several raw materials that are ground into cement.)

- Capacity utilization for portland cement rose from 71.4 percent to 75.1 percent; utilization rates for clinker reached 89.7 percent, up from 80.5 percent in 1986.

- Southern tier shipments of portland cement grew 3 percent. Clinker shipments increased as well.

- Productivity was up, due to the rise of automation, and labor costs were down.

- Net sales rose and so did gross profits.

The U.S. government never determined that Mexican imports alone had injured producers in the southern tier.

- The U.S decision to increase duties against cement from *Mexico* was based in part on unsubstantiated information about *allegedly* dumped imports from *Japan*. Thus, the ITC declared that Mexican and Japanese imports *together* had injured cement producers in the southern region of the United States.

- Between 1986 and 1989, Mexico's share of sales to southern tier states increased by only five percentage points, while Japanese imports leaped more than 300 percent.

The Texas producer that led the antidumping crusade against Cemex actually helped to establish the prices for Mexican cement that it later said had been dumped.

- Until shortly before the antidumping petition was filed, Southdown, Inc. had imported cement from Mexico under a joint-venture with Cemex. This arrangement gave Southdown the right to set prices for imported Mexican cement.

- The U.S. company filed its antidumping petition almost immediately after the two companies parted ways. Yet imports by Southdown during the existence of the joint-venture were used by the Commerce Department in calculating antidumping margins.

- Cemex did not undersell cement producers throughout the United States' southern-tier. Between 1986 and 1989, the period under investigation, cement prices varied across the region. In fact, Cemex was frequently undersold by its U.S. competitors.

The U.S. government made no effort to determine whether anything but imports was responsible for problems confronting the domestic cement industry.

- Demand for cement depends upon general construction activity, which fell from 1986 to 1989 in the U.S. southern tier. Residential housing permits dropped by nearly one-third, while non-residential permits slipped more than 8 percent.

- According to the Interior Department's Bureau of Mines, the "primary issue" facing the cement industry is not import competition, but "a lack of investment capital for new plant construction or capacity modernization and expansion."

- On reason may be the cost of meeting U.S. environmental requirements, which consume an estimated 20 to 25 percent of the industry's capital expenditures.

Under international agreement, the U.S. government should not even have accepted the industry's petition.

- In order to file a regional antidumping petition, domestic manufacturers must represent "all or almost all" of regional production.

- In this instance, however, the Commerce Department's own estimates indicate that petitioners represent less than 62 percent of southern-tier production.

THE IMPACT OF THE U.S. DECISION

- Since the Commerce Department handed down its antidumping order, Cemex's exports to the United States have fallen by nearly two-thirds, and other Mexican cement producers have nearly abandoned the market, depriving Mexico's economy of the jobs, investment capital and tax revenues generated by its previous overseas sales.

- Customers in this nation have lost access to a competitively priced high-quality product.

- As construction activity rebounds, increased tariffs will encourage higher prices. Southdown, the Texas producer that led the effort against Mexican cement imports, boasted in its annual report that the company had achieved a price hike "despite the precipitous drop in cement consumption."

- Taxpayers are likely to face additional costs for large-scale public works projects.

- Cemex has been forced to lay off some 400 of its U.S. workers.

- Among the principal beneficiaries of higher U.S. tariffs are several foreign corporations that together control 70 percent of the domestic cement industry.

HARASSING FOREIGN COMPETITORS

"It should not be a federal crime to charge low prices to American consumers."

-- James Bovard, author of *The Fair Trade Fraud*
"U.S. Dumping Law A National Disgrace"
Legal Times, April 13, 1992

- U.S. cement manufacturers are using antidumping laws to harass foreign competitors. The industry's current complaint against Mexico is its *eighteenth* antidumping case in 30 years. The last 12 cases, going back to 1976, were thrown out on the grounds that imports were not the cause of the U.S. industry's problems.

- As recently as 1986, the U.S. International Trade Commission agreed in a 5-0 vote that there did not exist even a "reasonable indication" that Mexican imports were responsible for the U.S. industry's competitive difficulties.

- A March 1992 GATT report criticized the United States' frequent use of antidumping laws. "Frequent recourse to such provisions generates a considerable degree of uncertainty for exporters," according to the report, which went on to cite the "considerable legal costs invariably incurred in defending cases."

- The practice of "dumping" is defined by the General Agreement on Tariffs and Trade (GATT) as a case in which the "products of one country are introduced into the commerce of another country at less than the normal value." Normal value refers to sales at less than the home-market price or the cost of production.

- Neither the GATT nor U.S. law prohibits dumping. Both simply recognize that dumping may properly be countered if dumped imports cause or threaten to cause material injury to an industry of the importing country.

- "Dumping, as currently commonly defined worldwide, covers a wide range of behavior from predation to normal and accepted pricing practices," according to a 1989 report by the Emergency Committee for American Trade (ECAT), a coalition of major U.S. corporations with substantial overseas business interests.

- Antidumping laws have been hijacked by special interest groups seeking protection from foreign competitors. "Congress and federal bureaucrats have repeatedly expanded the definition of dumping so that almost all investigations lead to a finding of guilt," according to Bovard. Supporting this view is the

March 1992 GATT report, which notes that the Commerce Department found dumping in *all but three* of the 71 cases that were investigated between 1988 and 1990.

- Trade provides consumers with quality, selection and savings. But the U.S. government often penalizes foreign companies for pricing their goods competitively. "According to the Commerce Department," wrote Bovard, "foreign companies are acting unfairly unless they charge Americans the highest prices in the world."

- Although higher duties drive up prices, the government is prohibited by law from taking into account their impact on people who buy imported products.

- Higher tariffs also place U.S. firms at a competitive disadvantage by driving up the cost of imports that are built into final products. According to the ECAT report, "[t]he imposition of antidumping duties, however beneficial to the U.S. industry producing the imported product, necessarily raises prices to those who purchase the product, sometimes across the board since producers often take advantage of the opportunity to raise their own prices. This harm can far outweigh any benefits to the U.S. industry producing the imported product."

- Antidumping laws run contrary to normal business practices. They discourage a foreign company from selling the same product for different prices in different national markets that are thousands of miles apart and subject to distinct economic, legal and cultural factors.

CEMENT: U.S. PRODUCERS AND MARKETS

- Cement, the primary ingredient in concrete, can be broken down into two main categories: clinker and portland cement. Clinker is made up of several raw materials which are ground into portland cement.

- As of 1990, there were 125 cement and cement clinker manufacturing plants operating in 39 states. "[M]any companies have left the cement business or closed plants and began importing finished cement or clinker for grinding into finished cement," according to the Bureau of Mines.

- The top three U.S. manufacturers are (in order) Holnam Inc. of Dundee, Michigan; Lafarge of Chesapeake, Virginia; and Southdown of Houston, Texas; which led the U.S. petition against Mexican imports.

- In order to petition the regional antidumping case against Mexican exports, Southdown assembled other U.S. producers to establish the Ad Hoc Committee of Arizona-New Mexico-Texas-Florida Producers of Gray Portland Cement.

- In addition to Southdown, the committee consists of three other Texas companies -- Gifford-Hill & Co., Inc. and Texas Industries, both of Dallas, and Box Crow Cement of Midlothian -- as well as Ideal Basic Industries of Denver, Colorado, which has a production facility in New Mexico, and Florida Crushed Stone Company of Leesburg, Florida.

- More than two-thirds, or 70 percent, of U.S. cement producers are controlled by foreign owners or operate under joint ventures. The foreign owners represent countries that include Japan, England, Switzerland (Holnam is Swiss-owned), Spain, Belgium, France(Lafarge is French-owned) and Germany.

- As of 1990, the three leading cement exporters to the United States are Canada, Mexico and Japan. Mexico was the largest exporter by 1987 and retained this position through 1989. It dropped to second place as a result of the antidumping duties imposed in 1990. China is the world's largest cement producer.

- Housing, building and infrastructure construction determine the demand for cement. According to the Bureau of Mines, 1990 annual report, in 1982, at the depths of the recession, the demand in the U.S. was at a 20-year low. Mexican exports entered the U.S. about this time.

- From 1986 to 1989, the period of investigation, the U.S. industry turned in a strong performance. Production, capacity utilization and shipments grew. Productivity was up and labor costs were down. Net sales rose and so did gross profits.

- During that time, Mexico's share of the U.S. cement market grew by only four percentage points, from nine to 13 percent.

- In 1989, a small group of U.S. producers filed a petition alleging that Mexico had dumped cement in the United States and injured the domestic industry. In 1990, the investigation concluded and duties of up to 58.4 percent were imposed.

- Until just before the U.S. petition was filed, Southdown had imported cement from Mexico under a joint-venture agreement which gave Southdown the right to set prices for imported Mexican cement.

- Southdown filed the petition almost immediately after the two companies parted. In calculating the antidumping duty, Commerce used the prices set by Southdown while it imported Mexican cement.

- Following imposition of the antidumping duties, Mexican exports to the United States fell 48 percent. In 1991 and 1992, shipments to the U.S. continued to decline. The duties have forced other Mexican cement exporters have nearly abandon the U.S. market, depriving American consumers of low-priced, high-quality cement.

CHRONOLOGY OF DUMPING COMPLAINTS AND INVESTIGATIONS CONCERNING THE U.S. AND MEXICAN CEMENT INDUSTRIES

1960

The U.S. government rejected the domestic cement industry's request to increase duties on imports from Canada.

1961

In three separate cases, the U.S. government rejected the domestic cement industry's request to increase duties on imports from Sweden, Belgium and Portugal.

1962

The U.S. government rejected the domestic cement industry's request to increase duties on imports from the Dominican Republic.

1963

The U.S. government rejected another request to increase duties on cement imports from the Dominican Republic.

1975

The U.S. government rejected the domestic cement industry's request to increase duties on imports from Mexico.

1976

The U.S. government rejected another request to increase duties on cement imports from Mexico.

1978

The U.S. government rejected the domestic cement industry's request to increase duties on imports from Canada.

1983

The U.S. government rejected the domestic cement industry's request to increase duties on imports from Australia and Japan.

1986

The U.S. government rejected the domestic cement industry's request to increase duties on imports from Mexico, Colombia, France, Greece, Japan, Korea, Spain and Venezuela.

1989

Sept. 26 The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement file anti-dumping petition with U.S. Commerce Department and ITC, alleging that sales in the U.S. market of gray portland cement and cement clinker from Mexico were made at less-than-fair value and were injuring, or threatening to injure, a regional industry consisting of two separate regions of (1) Arizona-New Mexico-Texas, and (2) Florida.

Sept. 29 Southdown General Counsel Edgar Marston III contributed $25,000 to the Republican National Committee.

October 11 Southdown, Inc. contributes $5,000 to Texas Senator Phil Gramm and $1,000 each to Texas Congressmen Joe Barton and Michael Andrews.

October 12 Texas Senator Phil Gramm writes to ITC Commissioner Anne Brunsdale and asks that the issue be "investigated subject to the complete array of U.S. trade laws."

October 17 Florida Senator Bob Graham wrote to ITC Commissioner Anne Brunsdale and asked for a full investigation of the trade issues raised by his "constituent," Mr. Edgar J. Marston III, General Counsel for Southdown in Houston, Texas.

October 20 Congressmen Joe Barton, Michael Andrews, Bill Grant and Clifford Stearns join 31 other House members in signing a letter that urges Commerce Secretary Robert Mosbacher to "give this case a fresh look."

Nov. 2 Arizona Senator Dennis Deconcini writes to ITC Commissioner Anne Brunsdale and asked that she examine Southdown's antidumping petition in light of 1988 amendments to toughen U.S. trade law.

Nov. 22 ITC published preliminary determination that there was reasonable indication of material injury, or threat thereof, to a regional U.S. industry consisting of producers located in southern tier of the United States including California.

1990

March/April	Common Cause reported that Southdown General Counsel Edgar Marston III contributed $100,000 to the President's 1988 election campaign.
April 12	Commerce Department issued preliminary determination that imports of gray portland cement and cement clinker from Mexico were being sold in the United States at less-than-fair value.
April 18	Southdown, Inc. contributed $1,200 to Texas Congressman Joe Barton.
May 18	The Ad Hoc Committee of Southern California Producers of Gray Portland Cement, consisting of many of the same members as the petitioner in the case against Mexico, and represented by the same counsel, filed anti-dumping petition with Commerce Department and ITC alleging that less-than-fair value sales of gray portland cement and cement clinker from Japan were causing material injury, or threat thereof, to a regional U.S. industry consisting only of Southern California.
June 7	The Commerce Department launched an antidumping investigation against Japan.
July 11	ITC issued preliminary injury determination in Japanese case.
July 18	Commerce Department issued its final determination of sales at less-than-fair value in Mexican case.
August 13	ITC, by a 2-1 vote, rendered its final determination that the cumulative effect of dumped imports from Mexico, and imports from Japan alleged by the petitioner to be dumped into California, was causing material injury to producers in the southern tier of the United States including California. Following this determination, the Commerce Department issued an antidumping order against cement and clinker from Mexico.
August 20 & August 28	Answers to questionnaires sent out by Commerce Department to begin gathering information for preliminary investigation of alleged Japanese dumping were filed with the Commerce Department.
August 30	The Department of Commerce issued its antidumping order against Mexican cement.

October 24 Mexican government instituted a challenge to the U.S. government under the GATT Antidumping Code on the grounds that the antidumping order against Mexico violated U.S. international obligations.

October 31 The Commerce Department issued its preliminary determination of sales at less-than-fair value in the case against Japan.

December 15 Southdown, Inc. contributed $1,000 to Texas Congressman Joe Barton.

1991

March 22 The Commerce Department issued its final determination of sales at less-than-fair value in case against Japan. Commerce Department amended this determination on May 6, 1991. The final decision demonstrated that the petitioners' allegations had overstated actual dumping margins by 75 percent.

March/April Consultations between the two governments failed to produce a solution to Mexico's GATT challenge.

April 29 The ITC rendered its final affirmative injury determination in Japanese case.

June 20 The Government of Mexico's GATT challenge was referred to the Antidumping Committee for conciliation.

Sept. 23 The Commerce Department initiated its first annual review of the antidumping order against Mexico.

October 21 Government of Mexico requested pursuant to Article 15:5 of the Antidumping Code that the Antidumping Committee establish a panel to determine whether U.S. action was consistent with its GATT obligations.

1992

April 7 The Court of International Trade upheld the ITC's decision.

April Common Cause, the citizens' government-watch association, linked trade relief for the U.S. cement industry to campaign contributions of $125,000 made by Southdown General Counsel Edgar Marston III.

May 10	*The Washington Post's* Outlook section carried a condensed version of the Common Cause magazine article alleging the connection between trade relief and campaign contributions.
June/July	The GATT Antidumping Committee is expected to reach its decision. The Commerce Department is also expected to issue a preliminary determination of its administrative review of the Mexican cement case.
August	The Commerce Department will begin a review of the 1991 duty assessment.