

ATTACHMENT

UNITED STATES' RESPONSE TO QUESTION 20(a):

Data Identified By Mexico	Description of Data	US Response	Could the Data be submitted in Summary, Index or Other Form to Preserve Confidentiality?
Likely Volume Effects			
<p>1. p. 52 n. 263 – ITC Report at I-38, n. 64 – Mexico’s [sic] non-subject imports</p>	<p>The U.S. First Submission (para. 168, p. 52) states: “The record demonstrates that in 1999, CEMEX’s nonsubject imports were significant and larger than its imports from Mexico.”²⁶³ Note 263 cites to “ITC Report at I-38, n. 64.”</p> <p>The ITC Report at I-38, n.64 states: “In 1999, CEMEX’s non-subject imports were ****.”</p>	<p>Mexico does not challenge the US statement nor the ITC’s finding that CEMEX’s nonsubject imports were significant. A CEMEX official explicitly stated at the ITC’s hearing that “CEMEX has control of a significant volume of non-subject imports and would merely rationalize its sourcing by decreasing any Chinese, Thai, or Korean imports under its control to offset increases in Mexican imports.” Hearing Transcript at 160-161 (Exhibit MEX-120).</p> <p>The only deleted data in the identified footnote is for confidential individual firm (CEMEX) data that indicates the actual volume of its non-subject imports.</p>	<p>Non-subject import data is provided in non-confidential aggregate form in Tables I-1A, IV-1A, IV-2A, and C-1, and page IV-1 of the ITC Report (Exhibit MEX-9). The data identified is for an individual firm, Mexican producer CEMEX. CEMEX indicated that its nonsubject imports were “significant,” but also can waive the confidentiality of its non-subject import data to permit its disclosure by the ITC.</p>

<p>2. p. 57 nn. 288, 293 – ITC Report at 57 [sic] [37] n. 221 – Mexican producers’ control of import and export infrastructure during review compared to original investigation [Note U.S. First Written Submission correctly referred to ITC Report at 37]</p>	<p>The U.S. First Submission (para. 183, p. 57) states: “Moreover, the ITC found based on substantial evidence in the record that Mexican producers had more export infrastructure and controlled substantially more import infrastructure in the Southern Tier region than during the original investigation.”²⁸⁸ Note 288 cites to: “ITC Report at 37 (Exhibit MEX-9).”</p> <p>The U.S. First Submission (para. 184, p. 57) states: “Based on CEMEX’s statements and the evidence in the record, the ITC reasonably found that CEMEX likely would substitute imports from Mexico, with their lower transportation costs, for non-subject imports, if the order was revoked.”²⁹³ Note 293 cites to: “ITC Report at 37 (Exhibit MEX-9).”</p> <p>The ITC Report at I-37, n.221 states: “Tr. at 173 and 178-180 (CEMEX official acknowledged that “we do have more [import terminal] capacity than we had ten years ago.”) CEMEX exported from six plants to the Southern Tier during the original investigation, but only exported from two of these plants during the period of review; CEMEX indicated that seven of its plants have the capability to export. CR at IV-25 and n.32. (continued next page)</p>	<p>Mexico does not challenge the US statements nor the ITC’s finding that CEMEX’s export and import infrastructures had increased and that CEMEX would substitute imports from Mexico for nonsubject imports. CEMEX officials made explicit statements at the ITC’s hearing regarding the increased infrastructure and the substitution. Hearing Transcript at 154 and 160-61 (Exhibit MEX-9).</p> <p>The only deleted data in the identified footnote is for confidential individual firm data that indicates the two individual firm’s terminals’ annual throughput capacity.</p>	<p>The data identified is for two individual firms, Mexican producer CEMEX, and U.S. subsidiary (Rio Grande) of Mexican producer GCCC. CEMEX and GCCC/Rio Grande can waive the confidentiality of its terminals’ annual throughput capacity to permit its disclosure by the ITC.</p>
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<p>2. (continued)</p>	<p>CEMEX USA has 12 active and 5 inactive terminals located in California, Arizona, Texas, and Florida; the active terminals reportedly have an annual throughput capacity of *** of unused capacity. Rio Grande has 2 terminals located in New Mexico and Texas, which have an annual throughput capacity of ***. CR at I-49-50; PR at I-38 -41. The record indicates that Apasco, which could only export to the Florida and the Gulf Coast of the United States by sea from its Veracruz terminal on the Gulf Coast of Mexico prior to the order, could now export to California by sea from its new plant in Tecoman and its associated marine terminal at Manzanillo on the Pacific Coast of Mexico. While Cruz Azul did not export to the U.S. market during the original investigation or the period of review, it has a marine terminal at Salina Cruz in southern Mexico that has been used to export to South America in recent years and may be used to export to California by sea. The record also indicates that CEMEX can export by rail from its plants at Ensenada, Campana, Yaqui, Torreon, Hidalgo, and Monterrey; Apasco can export to by rail from its new 1.4 million ton capacity plant at Ramos Arizpe; and GCCC can export by rail from its plants in Ciudad Juarez, Samalayuca, and Chihuahua. CR at I-49, I-50. . .” (Additional cites omitted).</p>		
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<p>3. p. 57 n. 292 – ITC Report at I-38, nn. 64-66 – Volume of CEMEX’s nonsubject imports</p>	<p>The U.S. First Submission (para. 184, p. 57) states: “As discussed above, the evidence demonstrated that CEMEX had imported significant volumes of nonsubject imports into the United States during the period of review.”²⁹² Note 292 cites to “ITC Report at I-38, nn. 64 and 66.”</p> <p>The ITC Report at I-38, n.64 states: “In 1999, CEMEX’s non-subject imports were ****.”</p> <p>The ITC Report at I-38, n.66 states: “The majority of CEMEX USA’s imports are from nonsubject sources. In response to Commissioner Miller’s question at the Commission’s hearing, CEMEX noted: ‘CEMEX imports cement into the United States through two affiliates: CEMEX USA and CEMEX Trading. All CEMEX USA nonsubject cement imports enter the U.S. market via CEMEX-owned terminals. CEMEX Trading sells cement to companies that import cement into their own marine terminals in the United States.’</p> <p>In 1999, *** percent of nonsubject imports were handled by CEMEX USA with the remaining ***percent handled by CEMEX Trading. ***. Mexican respondents’ posthearing brief, volume II, Responses to Commission questions, pp. 9-11.”</p>	<p>As discussed in response to item 1 above, Mexico does not challenge the US statement nor the ITC’s finding that CEMEX’s nonsubject imports were significant.</p> <p>The only deleted data in the identified footnotes is for confidential individual firm (CEMEX) data that indicates the actual volume of its non-subject imports and the distribution of its non-subject imports.</p>	<p>Non-subject import data is provided in non-confidential aggregate form in Tables I-1A, IV-1A, IV-2A, and C-1, and page IV-1 of the ITC Report (Exhibit MEX-9). The data identified is for an individual firm, Mexican producer CEMEX. CEMEX indicated that its nonsubject imports were “significant,” but also can waive the confidentiality of its non-subject import data to permit its disclosure by the ITC.</p>
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<p>4. p. 60 n. 308 – ITC Report at E-1 – U.S. Producers Trade, Employment, and Financial Data, By Plant, By Region</p>	<p>The U.S. First Submission (para. 193, p. 60) states: “The ITC recognized the capacity utilization levels of these facilities [Mexican producers’ regional operations] and indicated that “there are no plans to expand their capacity in the reasonably foreseeable future.”³⁰⁸ Note 308 states: “ITC Report at 37 and at Tables I-7 and E-1 (Exhibit MEX-9).”</p> <p>Table E-1 of the ITC Report contains individual firm data for Southern Tier producers’ production, capacity and capacity utilization.</p>	<p>Mexico does not challenge the accuracy of the US statement. The individual firm data relevant to the US statement are data for the U.S. subsidiaries of the Mexican producers.</p>	<p>Non-confidential aggregate data showing production, production capacity, and capacity utilization for the Southern Tier regional industry are contained in Tables I-1A, III-1A and C-1 of the ITC Report.</p> <p>The data identified is for the regional subsidiaries of Mexican producers CEMEX and GCCC. CEMEX and GCCC/Rio Grande can have their U.S. subsidiaries waive the confidentiality of their capacity plans and capacity utilization levels to permit its disclosure by the ITC.</p>
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Likely Price Effects			
<p>5. p. 62 n. 322 – ITC Report at Tables V-4[,] F-15, F-16, F-17, F-18 – Weighted average delivered prices sold in various markets</p>	<p>The U.S. First Submission (para. 202, p. 62) states: “In considering the pricing data collected in this review, the ITC found that, even with the orders in place with high cash deposit rates (for antidumping duties) and the substantial increases in demand during the period of review, the data showed subject imports underselling in almost half of the possible price comparisons.”³²² Note 322 states: “ITC Report at V-5 and Tables V-4, F-15, F-16, F-17, and F-18 (Exhibit MEX-9). Subject imports from Mexico undersold domestic product in 71 months and oversold domestic product in 85 months, for a total of 156 possible price comparisons.”</p>	<p>Mexico does not challenge the US statements nor the ITC’s finding regarding underselling. In fact, Mexico relies on the ITC’s reported months of overselling/underselling in its first written submission. <i>See</i> Mexico First Written Submission, para. 467.</p> <p>Table V-4 of the ITC Report provides a non-confidential summary of underselling/overselling for sales of imported Mexican type 2 cement, by sales markets of Albuquerque, Phoenix, Tucson, and San Diego from January 1997 to March 2000. Tables F-15 - F-18 provide actual weighted average delivered prices and margins of underselling/overselling by month for the sales markets of Albuquerque, Phoenix, Tucson, and San Diego from January 1997 to March 2000.</p>	<p>A non-confidential summary of the underselling/overselling comparisons is provided in Table V- 4 of the ITC Report. Tables F-15 - F-18 report the data submitted in confidence by 23 U.S. producers and two Mexican importers. The data is confidential because it includes data reported by only two Mexican importers. If the two Mexican importers waive confidentiality, the confidential data in Tables V-4, F-15 - F-18 of the ITC Report could be made non-confidential.</p>

<p>6. p. 63 n. 324 – ITC Report at Tables F-16 - F-17 – Weighted average delivered prices sold in various markets</p>	<p>The U.S. First Submission (para. 203, p. 63) states: “The evidence showed that subject imports from Mexico predominantly undersold the domestic product in the Phoenix, AZ market (36 of 39 months), with consistent underselling from August 1998 to March 2000, and mixed underselling in the Tucson, AZ market (20 of 39 months).³²⁴ Note 324 states: “ITC Report at V-5 and Tables V-4, F-16, and F-17 (Exhibit MEX-9). In the original investigation, underselling also predominated in the Phoenix, AZ market (41 of 48 months). No price comparisons were possible for the Tucson, AZ market in the original investigation. <i>Mexico Cement</i>, USITC Pub. 2305 at A-77 - A-84 and Tables 31-40. (Exhibit MEX-10).”</p>	<p>Mexico does not challenge the US statements nor the ITC’s finding regarding underselling.</p> <p>Table V-4 of the ITC Report provides a non-confidential summary of underselling/overselling for sales of imported Mexican type 2 cement, by sales markets of Albuquerque, Phoenix, Tucson, and San Diego from January 1997 to March 2000. Tables F-16 and F-17 provide actual weighted average delivered prices and margins of underselling/overselling by month for the sales markets of Phoenix and Tucson from January 1997 to March 2000.</p>	<p>A non-confidential summary of the underselling/overselling comparisons is provided in Table V- 4 of the ITC Report. Tables F-16 and F-17 report the data submitted in confidence by 23 U.S. producers and two Mexican importers for the sales markets of Phoenix and Tucson. The data is confidential because it includes data reported by only two Mexican importers. If the two Mexican importers waive confidentiality, the confidential data in Tables V-4, F-16 and F-17 of the ITC Report could be made non-confidential.</p>
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<p>7. p. 63 n. 327 – ITC Report at Table F-15 – Weighted average delivered prices sold in various markets</p>	<p>The U.S. First Submission (para. 205, p. 63) states: “The price underselling data was revealing in another respect. The ITC observed that in Albuquerque, NM, where the subject imports compete with a regional producer, Rio Grande, owned by a Mexican producer, GCCC, subject imports undersold the domestic product in 15 of 39 months, or almost 40 percent of the time.”³²⁷ Note 327 states: “ITC Report at 39, n.234 and V-5 and Tables V-4, and F-15 (Exhibit MEX-9).”</p>	<p>Mexico does not challenge the US statements nor the ITC’s finding that underselling was reported for 40 percent of the comparisons.</p> <p>Table V-4 of the ITC Report provides a non-confidential summary of underselling/overselling for sales of imported Mexican type 2 cement, by sales markets of Albuquerque, Phoenix, Tucson, and San Diego from January 1997 to March 2000. Table F-15 provides actual weighted average delivered prices and margins of underselling/overselling by month for the sales market of Albuquerque, NM from January 1997 to March 2000.</p>	<p>A non-confidential summary of the underselling/overselling comparisons is provided in Table V- 4 of the ITC Report. Table F-15 reports the data submitted in confidence by 23 U.S. producers and two Mexican importers for the sales markets of Albuquerque, NM. The data is confidential because it includes data reported by only two Mexican importers. If the two Mexican importers waive confidentiality, the confidential data in Tables V-4 and F-15 of the ITC Report could be made non-confidential.</p>
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Likely Impact			
<p>8. p. 69-72 nn. 358, 368-72 – ITC Report at Table I-7 – Announced new cement plants and plant modernizations</p>	<p>The U.S. First Submission cited to Table I-7 of the ITC Report in nn. 358, 368-372. The U.S. statements corresponding to these footnotes follow:</p> <p>Para. 220, n. 358 states: “The evidence showed that in order to meet demand the Southern Tier regional producers had undertaken, or had announced plans to begin, a number of production capacity expansion projects.”³⁵⁸”</p> <p>Para. 224, n. 368 states: “Specifically, the ITC stated: ‘We recognize that all announced expansion plans will not necessarily be completed and have considered that those in the construction phase, generally two years in duration, are more certain of completion than those in the planning or permitting phases. In the next two years alone, over 5 million short tons in production capacity is expected to come into service in the Southern Tier region.’”³⁶⁸</p>	<p>Mexico does not challenge the US statements or the ITC’s finding that “[i]n the next two years alone, over 5 million short tons in production capacity is expected to come into service in the Southern Tier region.” ITC Report at 35 and 41, n. 248. Instead, Mexico focuses on the disclosure of the confidential individual firm data regarding expansion plans. Moreover, the non-confidential narrative in the ITC Report at I-29 and I-30 discusses and summarizes the information in Table I-7 and provided during the ITC’s hearing.</p> <p>For example, The narrative in ITC Report at I-29 states: “A number of U.S. companies are in the process or planning stages of upgrading their production facilities to increase production efficiencies and/or overall production capacity. According to producers testifying at the Commission’s hearing in these reviews, expansions generally take from 3 to 5 years from planning, to permitting, to construction, to production. (continued on next page)</p>	<p>There is non-confidential data for aggregate expansion capacity plans and specific firm statements regarding expansion plans at the ITC hearing.</p> <p>The individual firm data contained in Table I-7 however was submitted to the ITC on a confidential basis and specific permission of those submitting it would have to be obtained to disclose it in accord with Article 6.5 of the AD Agreement.</p>

<p>8. (continued)</p>	<p>Para. 225, nn. 369 and 370 states: “In fact, the ITC’s finding is more conservative than the estimate provided by CEMEX in the underlying review regarding the regional expansion projects that CEMEX expected would be completed.³⁶⁹ The ITC only took into account, in making its finding that over 5 million short tons in production capacity was expected to come into service in the region, the additional production capacity announced by Southern Tier regional producers for 2000 and 2001.”³⁷⁰</p> <p>Para. 226, nn. 371 and 372 states: “For example, the evidence shows an expansion project with 800,000 short tons of production capacity in Florida projected for completion in 2002, which already was in construction at the time of the ITC’s August 15, 2000 hearing, but was not included in the 5 million short tons that the ITC took into account because its completion date is 2002, and not 2000 or 2001.³⁷¹ Thus, construction begun in 2000 which will come on line in 2002 was not included in the ITC’s conservative analysis which was based only on the two-year period, 2000 and 2001. The evidence shows that announced production capacity expansions for 2002, if completed, would almost double the announced additional regional production capacity for 2000 and 2001 combined, that would be vulnerable to the likely significant increases in subject imports if the order was revoked.”³⁷²</p>	<p>Projects announced or completed in the Southern-Tier during 1999 that will lead to a capacity increase of more than 14.5 million short tons by 2004 are presented in table I-7. Domestic producers with new plant or expansion plans generally alluded to the presence of the antidumping order(s) and/or suspension agreement(s) as contributing to the healthy state of the industry which, in turn, was a significant factor leading to the decision to move forward with their respective plans and indicated that revocation and/or termination might well lead to a rethinking of their plans. Representatives of five of the companies (Calaveras, Cal Portland, Florida Crushed Stone, Florida Rock, and National of California) mentioned in table I-7 appeared at the Commission’s hearing in these reviews.”</p>	
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“All or Almost All”			
<p>9. p. 74 n. 383 – ITC Report at Tables E-1 - E-8 – U.S. producers trade, employment, and financial data, by plant, by region</p>	<p>The U.S. First Submission (para. 235, p. 74) states: “In this review, the ITC analyzed the aggregate data for the regional industry regarding the U.S. statutory factors likely to have a bearing on the condition of the industry, as discussed above, and “also examined the performance of individual regional producers to look for anomalies as a safeguard ‘to assure that the ‘all or almost all’ standard [was] met.’”³⁸³ Note 383 states: “ITC Report at 41-42, <i>quoting</i>, <i>Cemex</i>, 790 F. Supp. at 296 and, <i>citing</i>, ITC Report at Tables E-1 - E-8 (Exhibit MEX-9).”</p> <p>Tables E-1 - E-8 of the ITC Report contain individual firm data (regarding domestic producers’ production, shipments, capacity, employment, financial performance) from January 1997 to March 2000 submitted to the ITC on a confidential basis by individual firms.</p>	<p>Mexico’s focus on disclosure of confidential individual firm data in Tables E-1 - E-8 of the ITC Report has little relevance to the issues raised before this Panel, specifically, its claims regarding whether the “all or almost all” criteria likely would be satisfied if the order was revoked.</p> <p>The ITC examined this individual firm data to determine whether anomalies – significant deviations from the normal or average – existed that an aggregate analysis would disguise. It did not find any and Mexico nor any party in the underlying proceeding have argued differently.</p>	<p>The non-confidential aggregate data showing the condition of the Southern Tier regional industry are contained in Tables I-1A, III-1A, III-2A, III-4A, III-5A, III-6A, III-7A, III-8A, III-9A, III-10A and C-1 of the ITC Report (Exhibit MEX-9).</p> <p>The confidential individual firm data contained in Tables E-1 - E-8 were submitted to the ITC on a confidential basis and specific permission of those submitting it would have to be obtained to disclose it in accord with Article 6.5 of the AD Agreement.</p>

<p>10. p.76-77 nn. 387, 397 – ITC Report at E-1 – U.S. production, capacity, and capacity utilization within the Southern-Tier, by plants, 1997-1999, January-March 1999, and January-March 2000</p>	<p>The U.S. First Submission (para. 239, p. 76) states: “The ITC recognized that the large capacity of the Mexican cement industry with its low capacity utilization levels and need to meet high fixed costs would provide necessary incentive for the Mexican producers to increase shipments to the Southern Tier region if the order was revoked.”³⁸⁷ Note 387 states: “ITC Report at Tables IV-4 and E-1 (Exhibit MEX-9).”</p> <p>The U.S. First Submission (para. 241, p. 77) states: “ The evidence showed, however, that these regional producers combined accounted for a small percentage of regional production in 1999.”³⁹⁷ Note 397 states: “ITC Report at Table E-1 (Exhibit MEX-9).”</p> <p>Table E-1 of the ITC Report contains individual firm data for Southern Tier producers’ production, capacity and capacity utilization.</p> <p>Table IV-4 of the ITC Report contains confidential individual Mexican producer data.</p>	<p>Mexico does not challenge the accuracy of the US statement. The individual firm data relevant to the first US statement are data for the Mexican producers.</p>	<p>Non-confidential aggregate data showing production, production capacity, and capacity utilization for the Southern Tier regional industry are contained in Tables I-1A, III-1A and C-1 of the ITC Report.</p> <p>The confidential individual firm data contained in Tables IV-4 and E-1 were submitted to the ITC on a confidential basis and specific permission of those submitting it would have to be obtained to disclose it in accord with Article 6.5 of the AD Agreement.</p> <p>The data contained in Table IV-4 is confidential data for Mexican producers which could be disclosed by the ITC if they waived the confidentiality regarding this data.</p>
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<p>11. p. 78-79, paras. 245-46, 248 – ITC Report at Tables E-1 - E-8 – U.S. producers trade, employment, and financial data, by plant, by region</p>	<p>The U.S. First Submission at paragraphs 245-246 and 248 responds to Mexico’s claims that the ITC’s “all or almost all” analysis was inconsistent with Article 6. The U.S. statements indicate that the ITC considered all of the data in the record in making its “all or almost all” finding and that consistent with U.S. obligations under Article 6 of the AD Agreement interested parties were provided ample opportunities to present evidence and comment.</p>	<p>Mexico’s focus on disclosure of confidential individual firm data in Tables E-1 - E-8 of the ITC Report has little relevance to the issues raised before this Panel, specifically, its claims regarding consistency with Article 6 responded to in the identified paragraphs. Consistent with U.S. obligations under Article 6 of the AD Agreement, Mexican respondents and all interested parties were provided ample opportunities to present evidence and provide comments through questionnaires, hearing testimony, prehearing briefs, and posthearing briefs regarding this issue, and any other issue. Mexican respondents took full advantage of these opportunities.</p> <p>The ITC examined this individual firm data to determine whether anomalies – significant deviations from the normal or average – existed that an aggregate analysis would disguise. It did not find any and Mexico nor any party in the underlying proceeding have argued differently.</p>	<p>The non-confidential aggregate data showing the condition of the Southern Tier regional industry are contained in Tables I-1A, III-1A, III-2A, III-4A, III-5A, III-6A, III-7A, III-8A, III-9A, III-10A and C-1 of the ITC Report (Exhibit MEX-9).</p> <p>The confidential individual firm data contained in Tables E-1 - E-8 were submitted to the ITC on a confidential basis and specific permission of those submitting it would have to be obtained to disclose it in accord with Article 6.5 of the AD Agreement.</p>
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