DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–818]

Lemon Juice from Argentina: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances

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

SUMMARY: In response to a petition filed by Sunkist Growers, Inc. (Petitioner), the U.S. Department of Commerce (the Department) is conducting an antidumping duty investigation of sales to the United States of lemon juice from Argentina for the period July 1, 2005 through June 30, 2006. *See Notice of Initiation of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico*, 71 FR 61710 (October 19, 2006) (*Initiation Notice*). The Department preliminarily determines that lemon juice from Argentina is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Moreover, we preliminarily determine that critical circumstances exist with regard to imports of lemon juice from Argentina. *See* the ''Critical Circumstances'' section below. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: April 26, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Joshua Reitze, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3148, or (202) 482–0666, respectively.

SUPPLEMENTARY INFORMATION:

Case History

This investigation was initiated on October 19, 2006. *See Initiation Notice*. Since the initiation of the investigation, the following events have occurred. On November 6, 2006, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. *See Lemon Juice from Argentina and Mexico*, 71 FR 66795 (November 16, 2006) (*ITC Preliminary Determination*).

On November 7, 2006, the Department selected Citrusvil, S.A. (Citrusvil) and S.A. San Miguel A.G.I.C.y F. (San Miguel) as the respondents in this investigation. *See* ''Respondent Selection'' section below. On November 7, 2006, the Department issued a letter providing interested parties an opportunity to comment on a proposed set of model–match criteria. We received comments in response to this letter from Petitioner, Citrusvil, and San Miguel on November 13, 2006. Based on our analysis of these submissions, we determined the appropriate model–match characteristics. *See Memorandum to Barbara E. Tillman, Director, Office 6, and Laurie Parkhill, Director, Office 5, ''Antidumping Duty Investigations of Lemon Juice from Argentina and Mexico: Selection of Model Matching Criteria''* (November 20, 2006).

The Department issued sections A - D of the questionnaire to Citrusvil and San Miguel on November 20, 2006.[1] Citrusvil submitted its response to section A on December 18, 2007. Citrusvil submitted its response to sections B and C on January 17, 2007, and its section D response on January 22, 2007. San Miguel submitted its response to section A on December 14, 2006, responses to sections B and C on January 16, 2007, and its response to section D on March 12, 2007.

On January 5, 2007, Petitioner submitted comments on Citrusvil's section A response. The Department issued a supplemental section A questionnaire to Citrusvil on January 16, 2007. We received Citrusvil's supplemental section A response on January 26, 2007. On January 31, 2007, Petitioner submitted a German–specific, sales–below-cost allegation. Citrusvil did not rebut this allegation. On February 1, 2007, we issued a supplemental section D questionnaire to Citrusvil, to which Citrusvil responded on February 23, 2007. On February 9, 2007, and again on March 6, 2007, Petitioner submitted comments on Citrusvil's section D response. On January 30, 2007, Petitioner submitted comments on Citrusvil's section B and C response. The Department issued a supplemental section B and C questionnaire to Citrusvil on February 5, 2007. We received Citrusvil's supplemental section B and C response on March 9, 2007. Citrusvil submitted corrections to its section B and C response on April 4, 2007. On February 9, 2007, Petitioner submitted comments concerning possible affiliation issues between Citrusvil and its German sales agent. On February 16, 2007, the Department sent a general supplemental questionnaire to Citrusvil, to which Citrusvil responded on March 12, 2007. On March 15, we sent Citrusvil a second supplemental section D questionnaire, to which Citrusvil responded on April 5, 2007. On March 23, 2007, we sent Citrusvil a request for additional sales information, to which Citrusvil partially responded on April 9, 2007.

Petitioner submitted its comments on San Miguel's section A response on January 29, 2007. On January 12, 2007, the Department issued a supplemental section A questionnaire to San Miguel. Petitioner filed a sales–below-cost allegation on January 24, 2007 with respect to San Miguel's sales in Argentina. On February 23, 2007, Petitioner submitted comments to San Miguel's section B and C response. The Department issued a supplemental section A to San Miguel on January 16, 2007, supplemental sections B and C on January 31, 2007, and a supplemental section D on March 16, 2007. San Miguel responded to the supplemental section A on January 23, 2007, supplemental sections B and C on

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation.

March 1, 2007, and supplemental section D on April 5, 2007.

On February 1, 2007, Petitioner requested that the Department extend the preliminary determination in this investigation from February 28, 2007 to April 19, 2007. On February 16, 2007, the Department postponed the preliminary determination to April 19, 2007 pursuant to section 733(c) of the Act. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico*, 72 FR 7606 (February 16, 2007).

On March 26, 2007, April 9, 2007, and April 10, 2007, Petitioner submitted comments in anticipation of the preliminary determination. On March 16, 2007, the Department granted Petitioner an extension of time until March 27, 2007 to file its allegation of targeted dumping. On March 27, 2007, Petitioner submitted a targeted dumping allegation for San Miguel. On April 13, 2007, San Miguel submitted comments in response to Petitioner's allegation. Although this allegation was timely, the Department did not have sufficient time to fully analyze it for purposes of this preliminary determination pursuant to section 777A(d)(1)(B) of the Act. We intend to fully consider this issue for purposes of our final determination.

Finally, on March 30, 2007, Petitioner alleged that critical circumstances existed with regard to imports of lemon juice from Argentina and Mexico. On April 4, 2007, the Department issued letters to Citrusvil and San Miguel, requesting that the respondents provide shipment data for purposes of the Department's critical circumstances inquiry. On April 11, 2007, Citrusvil and San Miguel submitted the requested shipment data. For further information on the Department's preliminary critical circumstances determination, *see* ''Critical Circumstances'' section below.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of producers/exporters, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (B) producers/exporters accounting for the largest volume of the merchandise under investigation that can reasonably be examined. In the petition, Petitioner identified nine potential producers and exporters of lemon juice in Argentina: Citrusvil, San Miguel, Vicente Trapani S.A., Citromax S.A.C.I (Citromax), Litoral Citrus S.A., COTA S.A., La Moraleja S.A., Jugos Minerva (Molinos Rio de la Plata), and Jugos Minerva (S.C. Johnson & Son de Argentina S.A.I.C.). The Department determined that it was unable to investigate all nine of these named producers/exporters. *See Memorandum to Barbara E. Tillman, Director, Office 6, ''Antidumping Duty Investigation on Lemon Juice from Argentina - Respondent Selection''*, (November 7, 2006) (*Respondent Selection Memorandum*).

Based on our analysis of import data obtained from U.S. Customs and Border Protection (CBP), we selected two producers/exporters, Citrusvil and San Miguel as the mandatory respondents in this investigation because they were the largest Argentine producers/exporters of lemon juice to the United States, accounting for the vast majority of imports into the United States. For a complete analysis of the respondent selection, *see Respondent Selection Memorandum*. Therefore, pursuant to section 777A(c)(2)(B) of the Act, the Department has calculated individual dumping margins for each of the two selected producers/exporters.

Period of Investigation

The period of investigation (POI) is July 1, 2005 through June 30, 2006. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, September 2006) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (*e.g.*, organic or not), processed form (*e.g.*, frozen or not–from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail–sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and U.S. Customs and Border Patrol purposes, our written description of the scope of this investigation is dispositive.

Scope Issue

In the *Initiation Notice*, the Department set aside a period for parties to submit comments on the scope of the investigations on Argentina and Mexico. On November 1, 2006, Citromax submitted comments stating that organic lemon juice should be excluded from the scope of the investigations. On November 8, 2006, Petitioner responded to Citromax's November 1, 2006, scope comments, arguing that organic lemon juice should remain within the scope of the investigations. On March 21, 2007, the Department issued a decision that organic lemon juice is included within the scope of the investigations on lemon juice from Argentina and Mexico. For a detailed discussion of our decision, *see Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Scope Issue in the Antidumping Duty Investigations on Lemon Juice from Argentina and Mexico''* (March 21, 2007).

Date of Sale

It is the Department's practice to use invoice date as the date of sale. However, the Secretary ''may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–92 (CIT 2001).

Citrusvil reported date of purchase order as the date of sale for all sales in the U.S. market that involved purchase orders; otherwise, it reported invoice date. *See* Citrusvil January 17, 2007, section B and C response at C–7. Citrusvil reported contract date for all sales to Germany[2] that involved short- or long–term contract agreements; for

[2] We have preliminarily determined that Germany is Citrusvil's comparison market. *See* ''Selection of Comparison Market'' section below.

the remaining sales, Citrusvil reported purchase order date as date of sale. *See* Citrusvil January 17, 2007 section B and C response at B–7. Citrusvil reported that these dates were the earliest dates on which the material terms of sale (*i.e.*, price and quantity) were fixed, and that these terms never change after these dates. Because the material terms of sale are established when the purchase order is issued or contracts are signed, and because Citrusvil has stated that the terms of sale never changed after they were established, we are using the dates of sale as reported by Citrusvil.

San Miguel reported invoice date as date of sale for all sales in both markets, stating that the material terms of sale indicated in other documents sometimes change before invoices are issued. It provided two examples of such changes. First, it referred to a purchase order issued by a U.S. customer requiring multiple shipments. This customer later requested that San Miguel cancel some of the shipments ordered. While San Miguel agreed and these shipments were therefore never shipped nor invoiced, the fact that the buyer felt compelled to ask San Miguel to cancel indicates that the parties considered the purchase order binding. In the second example, San Miguel reached an agreement via email regarding the per–unit price of shipments to a U.S. customer, but the price stated in the purchase order, issued subsequent to the exchange of emails, is different from that indicated in the email agreement. However, this change occurred between the date of an email agreement and the resulting purchase order, not between the purchase order and invoice. *See* San Miguel March 1, 2007 supplemental section B and C response, at 2–4. Accordingly, we preliminarily find that the two examples of changes in material terms of sale prior to invoice provided by San Miguel are not sufficient to show actual changes in material terms between purchase order date and invoice date, nor do they support a conclusion that the parties at issue consider purchase orders to be non–binding.

Moreover, San Miguel's description of its production and distribution process indicates that the use of invoice date as date of sale for all sales may be distortive, given the significant lag time between purchase order date and invoice date. The record indicates that invoices can be issued up to several months after purchase orders are received. As such, the material terms of sale are set much earlier in the process than invoice date would indicate.

Thus, for all sales involving purchase orders to the United States and comparison markets, the Department preliminarily determines that purchase order is the appropriate date of sale, as the evidence on the record demonstrates that the material terms of sale set forth in the purchase orders are not subject to change. For sales in which a purchase order is not generated, we will use the earliest of shipment or invoice date. Because purchase order date is not yet on the record for all sales reported by San Miguel, we are using the earliest of shipment or invoice date as date of sale for purposes of this preliminary determination. The Department has requested that San Miguel provide, prior to verification, revised U.S. and comparison market sales databases using purchase order date as date of sale.

Fair Value Comparisons

To determine whether sales of lemon juice to the United States were made at LTFV, we compared export price (EP) or constructed export price (CEP) to normal value (NV) or constructed value (CV), as described in the ''U.S. Price,'' ''Normal Value,'' and ''Constructed Value'' sections below.

U.S. Price

Section 772(a) and (b) of the Act defines EP and CEP:

> The term ''export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).
>
> The term ''constructed export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this investigation, Citrusvil classified all of its U.S. sales as CEP sales. Citrusvil stated that, although it is not affiliated with any companies in the United States, its sales occurred after importation into the United States and are thus CEP sales. The record evidence indicates, however, that, based on purchase order date, Citrusvil's sales to the United States were made prior to importation. Accordingly, we preliminarily determine that all of Citrusvil's U.S. transactions were EP sales.

We calculated the EP for Citrusvil in accordance with section 772(c)(2) of the Act. We made appropriate deductions from gross unit price for Argentine inland freight and warehousing, Argentine brokerage and handling, international freight and insurance, U.S. brokerage and handling, U.S. freight and warehousing, U.S. duties, a fee paid to the regional government of Tucuman, and an export tax paid to the Argentine government. *See Analysis Memorandum for Lemon Juice from Argentina: Citrusvil*, April 19, 2007 (*Citrusvil Analysis Memorandum*).

San Miguel reported that most of its U.S. sales took place prior to importation. It noted, however, that a small number of those sales were made after importation. According to San Miguel, these sales were made to the U.S. customer out of inventory held in a refrigerated warehouse located in the United States. Thus, because these sales were made after importation, they cannot be classified as EP sales and we are treating them as CEP sales.

We calculated the EP for San Miguel in accordance with section 772(c)(2) of the Act. We made appropriate deductions for billing adjustments (or added billing adjustments in some cases), Argentine inland freight and warehousing, Argentine brokerage and handling, international freight and insurance, U.S. brokerage and handling, U.S. freight and warehousing, U.S. duties, a fee paid to the regional government of Tucuman, and an export tax paid to the Argentine government. San Miguel claimed another U.S. price adjustment: a per–sale reimbursement received from the Argentine government under its Reintegro program. In past proceedings involving merchandise from Argentina, we have accounted for these reimbursements by making an adjustment to cost of manufacturing (COM), and will do so here as well. *See, e.g., Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina*, 68 FR 13262, 13263 (March 19, 2003), and accompanying *Issues and Decision Memorandum* at *Comment 5*; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Cold–Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62138 (October 3,

2002), and accompanying *Issues and Decision Memorandum* at *Comment 1*.

We calculated CEP for the small number of San Miguel's sales as discussed above in accordance with section 772(d)(1) of the Act. For CEP, we would normally deduct direct selling expenses and indirect selling expenses related to commercial activity in the United States in accordance with section 772(d)(1) of the Act; however, for San Miguel we only made a deduction for its credit expenses. These credit expenses covered the time between the date of shipment from Buenos Aires until the date payment was received. Deducting U.S. inventory carrying costs would impermissibly double count a portion of these credit expenses, because the number of days between date of shipment from Buenos Aires and payment date includes the number of days the CEP sales spent in U.S. inventory. *See* 19 CFR 351.401(b)(2). Also, because there was no affiliate acting on San Miguel's behalf in the United States, there are no U.S. indirect selling expenses to deduct, except for a few sales involving commissions paid to unaffiliated parties (in which case we deducted commissions from the U.S. price). All expenses related to the U.S. warehousing of these CEP sales are accounted for in the U.S. warehousing expense field reported by San Miguel and deducted from price as a movement expense. *See Analysis Memorandum for Lemon Juice from Argentina: San Miguel*, April 19, 2007 (*San Miguel Analysis Memorandum*).

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is first sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the export price. Under the statute, the Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* section 773(a)(1)(C) of the Act.

Citrusvil's sales in Argentina were less than five percent of its sales to the United States; therefore, we found that Citrusvil did not have a viable home market for lemon juice to serve as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Citrusvil reports that it makes sales throughout Europe either to exclusive sales agents who then sell to unaffiliated customers (channel 1) or through the same exclusive agents to unaffiliated customers (channel 2). *See* Citrusvil December 18, 2006 section A response at 2, 11. In both sales channels, Citrusvil controls the terms of sale which normally are made on a Free Carrier (FCA) Rotterdam basis. Under FCA sales terms, title and risk transfer from Citrusvil to the agent who collects payment from (and releases the merchandise to) the ultimate customer in sales designated as channel 1 by Citrusvil. In sales designated as channel 2 sales by Citrusvil, title and risk transfer directly to the unaffiliated customers after that customer pays Citrusvil. *See* Citrusvil January 17, 2007, section B and C response, at B–8. In both sales channels, it appears that the customer (rather than Citrusvil) is responsible for any inland delivery within Europe.

To determine the most appropriate third country market for comparison purposes, the Department examined the record evidence, including statements by Citrusvil. Initially Citrusvil claimed that it does not know with certainty to which European country its product is ultimately delivered. However, Citrusvil also stated that it believes the address on its invoice is the best indication of where the merchandise is ultimately delivered, and that customers with facilities in more than one country request that the invoice be issued to the address where the product is delivered. *See* Citrusvil December 18, 2006 section A response, at A–2. Because the information we have gathered with respect to Citrusvil and its agents indicates that at the time of price and quantity negotiations, Citrusvil has knowledge of the first unaffiliated customer and the country in which such customer is located, we believe that it is appropriate to classify the sales shipped to Rotterdam based on the customer and its country of location.

Classifying the sales as described above, we find that Germany is Citrusvil's largest third country market for sales of foreign like product. We further find that there are no significant differences in product comparability with respect to Citrusvil's sales to Germany and sales to other third country markets and merchandise sold to the United States. As such, we preliminarily determine that Germany is the appropriate comparison market. *See* ''Calculation of Normal Value Based on Comparison Market Prices'' and ''Calculation of Normal Value Based on Constructed Value'' sections below.

San Miguel's sales of lemon juice in Argentina were sufficient to find the home market a viable for comparison purposes. Accordingly, we calculated NV for San Miguel based on sales prices to Argentine customers. *See* ''Calculation of Normal Value Based on Comparison Market Prices'' and ''Calculation of Normal Value Based on Constructed Value'' sections below.

B. Cost of Production Analysis

In the petition, Petitioner alleged that Argentine producers/exporters made sales in the comparison market at less than the cost of production (COP). In the allegation, Petitioner used the Netherlands as the comparison market, arguing that Argentina was not a viable market. Based on these allegations, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that lemon juice sales were made in the comparison market at prices below the COP and initiated a country–wide sales–below-cost investigation. *See Initiation Notice*.

After reviewing Citrusvil's section A response, we determined that Citrusvil's sales to Argentina did not meet the viability threshold. Based on the section A response, however, it was unclear what the appropriate third–country comparison market was. As reported by Citrusvil, virtually all of its sales to Europe are shipped FCA Rotterdam. It claimed Germany as the proper comparison market based on the volume of sales to customers located in Germany. As discussed above, the Department has now determined that Germany is the most appropriate third–country market for comparison purposes. Although the sales–below-cost allegation from the petition involved shipments to the Netherlands–including, presumably, merchandise subsequently shipped to Germany–we informed the parties that the sales–below-cost allegation in the petition was still viable. *See Letter from the Department to Citrusvil* (December 22, 2007) stating that the ''allegation was made using shipment data to Rotterdam. The Rotterdam data did not exclude transhipments to other points in Europe, and thus should have included any transhipments to Germany.'' Citrusvil did not object to this request and submitted section D of its questionnaire response on January 22, 2007. Further, as noted above in the ''Case History'' section of this notice, on January 31, 2007, Petitioner submitted a German–specific, sales–below-cost allegation, which Citrusvil did not rebut.

The petition compared COP to the FOB Rotterdam value of shipments to

the Netherlands. Citrusvil reports that it ships virtually everything sold to all countries in Europe to the Netherlands, on an FCA basis, at which point the product is claimed by customers and transported to different countries in Europe. Germany is the location of the customer for most of these shipments. Thus, because sales to Germany are subsumed in any shipments to the Netherlands, the petition allegation covered sales to Germany. As such, there was sufficient evidence on the record to continue our sales–below-cost investigation once we had determined that Germany was the appropriate comparison market.

This decision is consistent with Department precedent. *See, e.g.*, *Preliminary Determination of Sales at Less Than Fair Value; Aramid Fiber Formed of Poly–Phenylene Terephthalamide From the Netherlands*, 58 FR 65699 (December 16, 1993) unchanged in the final determination, (*Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly–Phenylene Terephthalamide From the Netherlands*, 59 FR 23684 (May 6, 1994)), in which the Department ''reanalyzed petitioner's sales below cost allegation in light of our determination'' that the Netherlands was not the proper comparison market, and determined that there was ''sufficient evidence on the record to continue our sales below cost investigation.''

After reviewing San Miguel's section A response, we determined that Argentina was in fact a viable market for that company, and notified parties that the previous sales–below-cost allegation was no longer viable for San Miguel. *See Letter from the Department to San Miguel* (December 20, 2007). Petitioner subsequently filed a timely new sales–below-cost allegation on January 24, 2007 with respect to San Miguel's sales in Argentina. After determining that the new allegation demonstrated reasonable grounds to believe that San Miguel's sales in Argentina were below cost, we initiated a new sales–below-cost investigation of that company. *See Memorandum to Barbara E. Tillman, Director, Office 6, ''Petitioner's Allegation of Sales Below the Cost of Production for S.A. San Miguel A.G.I.C.I.y F.''* (February 12, 2007).

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, including interest expenses and packing expenses. For Citrusvil, we relied on the COP data submitted in its cost questionnaire responses, except as noted below:

- We adjusted the fresh lemon input costs to value the lemons transferred from the packing to processing plant at the average fresh lemon cost actually incurred or paid based on the company's normal books and records.
- For reporting to the Department, Citrusvil allocated fresh lemon costs to lemon co–products using a net realizable value (NRV) methodology. We note that an NRV methodology relies upon relative sales values at the split off point (*i.e.*, when separate products are first identifiable in the production process) as a means of allocating joint costs when multiple products are processed simultaneously from the same raw material. However, because the fresh lemon cost allocation is based on sales values and because the Petitioner has alleged that Citrusvil's POI sales values may not represent a fair value for the merchandise under consideration, we revised the company's reported allocation to rely upon sales data prior to the POI, *i.e.*, a period for which no allegation of dumping has been lodged (in this case, July 1, 2004 to June 30, 2005).
- We revised the reported G&A expense rate to include other operating expenses.

For further details regarding these adjustments, *see Memorandum to Neal M. Halper, Director, Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Citrusvil, S.A.''* (April 19, 2007) (*Citrusvil COP Memo*).

For San Miguel, we relied on the COP data submitted in its cost questionnaire responses, except as noted below:

- We revised San Miguel's reported lemon costs. For self–grown lemons, we allocated the growing costs to the lemons based on volume. For self–grown and purchased lemons harvested by San Miguel, we valued the harvesting costs at the actual costs incurred by San Miguel. For purchased lemons either harvested by San Miguel or delivered by the suppliers, we used the actual POI average purchase price.
- We recalculated the by–product offset amount by using the POI production quantities instead of the POI sales quantities
- For reporting to the Department, San Miguel allocated fresh lemon costs to lemon co–products using an NRV methodology. Because the fresh lemon cost allocation is based on sales values and because the Petitioner has alleged that San Miguel's POI sales values may not represent a fair value for the merchandise under consideration, we revised the company's reported allocation of fresh lemon costs and indirect processing costs to co–products, which was based on the POI sales data, to reflect sales data prior to the POI (in this case, July 1, 2004 to June 30, 2005).
- We used San Miguel's company–wide G&A and net financial expense rates instead of the industrial division's G&A and net financial expense rates.
- We revised the company–wide G&A and net financial expense rates by deducting by–product revenues and packing expenses from the cost of sales denominator.
- We made a deduction to COM for estimated Reintegro rebates received by San Miguel.

For further details regarding these adjustments, *see Memorandum to Neal M. Halper, Director, Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - San Miguel''* (April 19, 2007) (*San Miguel COP Memo*).

2. Test of Comparison Market Sales Prices

We compared the weighted–average COPs for both companies to their comparison market sales prices of the foreign like product, under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the COP to the German (for Citrusvil) and Argentine (for San Miguel) market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses (excluding imputed expenses), commissions, and packing.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below–

cost sales of that product, because we determine that in such instances the below–cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below–cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that more than 20 percent of Citrusvil's comparison market sales of a given product during the POI were at prices below the COP, and, in addition, the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

We also found that more than 20 percent of San Miguel's comparison market sales of a given product during the POI were at prices below the COP, and, in addition, the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

Citrusvil

Citrusvil has an exclusive sales agreement with its agent in the German market. Due to the nature of the arrangement between the two companies, pursuant to section 771(33)(g) of the Act, we preliminarily find that Citrusvil and its agent are affiliated via an agent–principle agreement/relationship. *See*, *e.g.*, *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying *Issues and Decision Memorandum* at *Comment 23*, upheld in *Chia Far Industrial Factory Co. v. United States*, 343 F. Supp. 2d 1344, 1356 (CIT 2004) (''when there exists a principal who has the potential to control pricing and/or the terms of sale through the end–customer, Commerce will find agency and thus affiliation''). Thus, the appropriate sales for comparison purposes in this investigation are the sales from Citrusvil to the first unaffiliated customers in Germany. Since much of our analysis with respect to the relationship between Citrusvil and its agent involves business proprietary information, a full discussion of the bases for our finding of affiliation is set forth in the *Citrusvil Analysis Memorandum*.

For those sales made directly to the customer, with Citrusvil's agent acting as intermediary (the channel 2 sales described in the ''Selection of Comparison Market'' section above), the price charged by Citrusvil to the customer is the starting price. Pursuant to section 773(a)(6)(B) of the Act, we deducted home market freight, warehousing and insurance expenses. We also made circumstances of sale (COS) adjustments reflecting differences between direct selling expenses (credit expense) incurred on third–country and U.S. sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments for any differences in packing between domestic and U.S. sales, pursuant to section 773(a)(6)(B)(ii) of the Act, and any differences between the variable costs of the U.S. product and the matching home market product (the ''DIFMER'' adjustment), pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For sales made by Citrusvil to its affiliated agent (the channel 1 sales described in the ''Selection of Comparison Market'' section above), which in turn sells to the first unaffiliated customer, we find that Citrusvil failed to provide the correct downstream sales information. Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002).

With respect to adverse inferences, our practice, as reflected in the Statement of Administrative Action, is ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, (1994) (''SAA'') at 870. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1377 (Fed. Cir. 2003); *Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

With respect to Citrusvil's channel 1 sales to Germany, we preliminarily find that the application of facts otherwise available is appropriate. The Department's original questionnaire, issued to Citrusvil on November 20, 2006, states that ''if you sold to an affiliate that resold the merchandise to an unaffiliated party in the comparison market, report the affiliate's resales during the POI to unaffiliated customers rather than your sales to the affiliate.'' *See* Department November 20, 2006, questionnaire, at B–2. On February 9, 2007, Petitioner argued that it appeared that Citrusvil might be affiliated with its German agent. On February 16, 2007, we issued a supplemental questionnaire in which we requested more detailed information on the relationship between Citrusvil and its German agent. *See* Department February 16, 2007, General Supplemental questionnaire, at 1–3. Based on Citrusvil's response and our analysis of the agreement, there was sufficient information to indicate affiliation. On March 23, 2007, in an additional supplemental questionnaire to Citrusvil, the Department specifically requested that Citrusvil report the downstream sales of its German sales agent. On April 6, 2007, Citrusvil responded that it was not able to obtain the requested information from its agent. Citrusvil explained that it made several attempts (including phone calls and e–mails) to convince its agent to supply the requested information. However, Citrusvil reported that its agent was not willing to open its books to foreign authorities. *See* Citrusvil

April 6, 2007, third supplemental section B and C response, at Exhibit 1. The use of facts available is warranted under 776(a)(2)(A) of the Act as Citrusvil and its affiliated agent have withheld information requested by the Department.

Moreover, in accordance with section 776(b) of the Act, we have applied an adverse inference for purposes of calculating Citrusvil's channel 1 prices in Germany. The record of this investigation shows that Citrusvil has sufficient control over its agent and the sales at issue to comply with our request for channel 1 sales information. *See* Citrusvil March 12, 2007, Second Supplemental section B and C response, at Exhibit 2. These parties are bound through an exclusive principle–agent relationship, and Citrusvil has indicated on the record that it controls the final terms of all sales involving its agent, including channel 1 sales. *See* Citrusvil January 26, 2007, Supplemental section A response, at Exhibit 5. Moreover, while Citrusvil argues that it made every effort to obtain the necessary information, it failed to submit any documentary evidence to support its claims. For example, in its April 6, 2007, submission Citrusvil states that it sent e–mails to its agent regarding the need for this information, but did not submit copies of any such e–mails on the record of this proceeding.

The Department has consistently demonstrated willingness to accommodate Citrusvil's difficulties in collecting requested information in a timely manner throughout the course of this proceeding. In fact, the Department granted Citrusvil an extension to submit the downstream sales at issue. *See Letter from the Department to Citrusvil* (April 2, 2007). Citrusvil, however, failed to provide the downstream sales information by the extended deadline and failed to substantiate its claims that it made significant efforts to obtain the information.

Therefore, we conclude that Citrusvil has not cooperated to the best of its ability with respect to channel 1 sales, and thus, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting among the facts available with respect to such sales. Specifically, we have used the highest net price per control number (CONNUM) as the basis for normal value for all channel 1 sales. Because much of our analysis involves business proprietary information, a full discussion of the bases for our finding of affiliation and the specific application of partial adverse facts available is set forth in the *Citrusvil Analysis Memorandum*.

As a result, for such sales, the Department has relied on facts available with an adverse inference. As AFA, to determine NV for these sales, the Department has used the highest NV per CONNUM in lieu of the price paid to Citrusvil's agent. The Department intends, however, following this preliminary determination, to provide an additional opportunity to Citrusvil to submit the requested sales information to the first unaffiliated customer in Germany.

San Miguel

For San Miguel, starting with prices paid by its Argentine customers, we added or subtracted billing adjustments, where appropriate, and subtracted early payment discounts, Argentine inland freight, warehousing, and insurance expenses, and a fee paid to the regional government of Tucuman. For home market sales compared to EP sales, we made COS adjustments for differences between credit expenses incurred on Argentine and U.S. sales in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In accordance with section 772(c)(2) of the Act, for home market sales compared to CEP sales, we only deducted Argentine credit expenses from home market price, because U.S. credit expenses were deducted from U.S. price, as noted above. We also made adjustments for any differences in packing between domestic and U.S. sales and for DIFMER pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison market sales, NV may be based on constructed value (CV). Accordingly, for sales of lemon juice for which we could not determine the NV based on comparison market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above. We based SG&A, interest expense, and profit on the actual amounts incurred and/or realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For comparison with EP sales, we made adjustments to CV for differences in COS in accordance with section 773(a)(6)(C)(iii) and 773(a)(8) of the Act and 19 CFR 351.410. For CV compared to CEP sales, we only deducted domestic direct selling expenses from home market price, as U.S. direct selling expenses were deducted from U.S. price, as noted above.

E. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as U.S. sales. *See* 19 CFR 351.412. The NV or CV LOT is the level of the starting–price sale in the home market or comparison market. For EP, the U.S. LOT is based on the starting price, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the home market in accordance with 19 CFR 351.412(c). *See, e.g., Light–Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004), and accompanying *Issues and Decisions Memorandum* at *Comment 14*. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the current investigation, Citrusvil claimed one LOT in the German market and one similar LOT in the U.S. market. Citrusvil did not request an LOT adjustment. Citrusvil maintains that its selling functions do not vary by market. Citrusvil's narrative description of its sales and distribution process indicate that its sales functions involve inventory maintenance, freight service arrangements, advertising, negotiating sales terms, and arranging for domestic and foreign warehousing. It did not indicate a significant variance, however, among these common expense items according to market, channel of distribution, customer, or some other variable, nor do we see any reason to conclude that there is such variance. *See* Citrusvil December 18, 2006 section A response, at A–13. Based on the

selling functions performed, we preliminarily determine that Citrusvil did not sell at different LOTs in the German and U.S. markets. After examining the selling functions for the one LOT reported in the United States, and the one reported LOT reported in the German market, we determine that these sales were all made at the same LOT.

San Miguel claimed one LOT in the Argentine market and one LOT in the U.S. market. San Miguel did not request an LOT adjustment. Given the selling functions chart submitted by San Miguel and its narrative description of its sales and distribution process, it would appear its significant sales functions involve negotiating sales and delivery, providing customer–specific packaging, arranging transportation, and arranging for domestic and foreign warehousing. It did not indicate a significant variance, however, among these common expense items according to market, channel of distribution, customer, or some other variable, nor do we see any reason to conclude that there is such variance. *See* San Miguel December 14, 2006, section A response, at A–15 - A–19. After examining the selling functions for the one LOT reported in the United States, and the one reported LOT reported in the Argentine market, we determine that these sales were all made at the same LOT.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Critical Circumstances

On March 30, 2007, Petitioner filed a timely allegation pursuant to section 733(e) of the Act that critical circumstances exist in the antidumping duty investigations of lemon juice from Argentina and Mexico. In addition, Petitioner requested that the Department request CBP to compile information on an expedited basis regarding entries of subject merchandise. *See* 19 CFR 351.206(g). In its allegation, Petitioner contends that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to lemon juice from Argentina because the importers in this case knew or should have known that exporters were selling lemon juice at less than fair value and that there was likely to be material injury by reason of such sales; and that there have been a massive imports of lemon juice over a relatively short period. Since this allegation was filed at least 20 days prior to the deadline for the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the date of the preliminary determination. *See* 19 CFR 351.206(c)(2)(i); *see also* Policy Bulletin 98.4; ''Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations'' (63 FR 55364 (October 15, 1998)) for a further discussion of our practice.

Petitioner contends that, in determining whether there is a reasonable basis to believe or suspect that an importer should have known that the exporter was selling lemon juice from Argentina at less than fair value, the Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP transactions sufficient to impute knowledge of dumping. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072, 71076–77 (December 22, 2003) unchanged in the final determination, (*Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 69 FR 11834 (March 12, 2004)). Petitioner contends that the estimated dumping margin from the initiation of 102.46 for Argentina is well above the 25 percent sufficient to impute knowledge. *See Initiation Notice*.

Petitioner contends that, in determining whether there have been massive imports, the Department normally considers imports during the comparison period that have increased 15 percent or more compared to the base period to be massive. *See* 19 CFR 351.206(h)(2). The petition for this case was filed on September 21, 2006. Petitioner provided import data from the ITC's ''Dataweb'' (http://dataweb.usitc.gov/) comparing subject imports in July through September 2006 to subject imports in the period October through December 2006. Petitioner calculated that subject imports from Argentina surged 147 percent. *See* Petitioner's March 30, 2007 Critical Circumstances Allegation at 5, Exhibit 1.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during a ''relatively short period'' of time may be considered ''massive.'' Further, 19 CFR 351.206(i) defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–To-Length Carbon Quality Steel Plate Products from Indonesia*, 64 FR 41206 (July 29, 1999) unchanged in the final determination, (*Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon–Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999)). With regard to imports of lemon juice from Argentina, Petitioner makes no specific mention of a history of dumping for Argentina. There have been no dumping orders issued by the United States or by any other country on lemon juice from Argentina. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Argentina pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there

was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales, or 15 percent or more for CEP transactions, sufficient to impute knowledge of dumping. *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia*, 71 FR 15162 (March 27, 2006) unchanged in the final determination, (*Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006)).

For Citrusvil and San Miguel, we determine that there is a sufficient basis to find that the importer should have known that the exporter was selling the subject merchandise at less than its fair value pursuant to section 733(e)(1)(A)(ii) of the Act, because the calculated margins are greater than 25 percent for both companies' sales. Consequently, we have imputed knowledge of dumping with regard to both respondents.

Regarding the companies subject to the ''all others'' rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (March 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''all others'' rate. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the ''all others'' category for the antidumping investigation of certain lemon juice from Argentina.

The dumping margin for the ''all others'' category in the instant case exceeds the 25 percent threshold necessary to impute knowledge of dumping. Therefore, we find there is a reasonable basis to impute to importers, knowledge of dumping for the companies covered by the ''all others'' rate. Consequently, we preliminarily find that knowledge of dumping exists with regard to the companies subject to the ''all others'' rate.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC. *See*, *e.g.*, *Stainless Steel from Japan*, 64 FR at 30578. On November 16, 2006, the ITC preliminarily found material injury to the domestic industry due to imports of lemon juice from Argentina and Mexico, which are alleged to be sold in the United States at less than fair value and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See ITC Preliminary Report*.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

The Department requested and obtained from both respondents monthly shipment data from June 2006 through March 2007 in order to determine whether imports were massive. We also relied on U.S. import data found on the ITC's Dataweb for imports through January 2007 (*i.e.*, the latest month for which complete data exist at the time of this preliminary determination).

We have used a period of four months as the period for comparison in preliminarily determining whether imports of the subject merchandise have been massive. We believe that a four-month period is most appropriate as the basis for analysis because using four months captures all data available at this time, based on October 2006 as the beginning of the comparison period. Additionally, a four-month period properly reflects the ''relatively short period'' set forth in the statute for determining whether imports have been massive. *See* section 733(e)(1)(B) of the Act. It is our practice to base the critical–circumstances analysis on all available data, using base and comparison periods of no less than three months. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111 (Aug. 4, 2004) unchanged in the final determination, (*Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004)); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (Apr. 16, 2004), and accompanying *Issues and Decision Memorandum* at *Comment 3*. Therefore, we have used all available data in our critical–circumstances analysis for the preliminary determination.

San Miguel provided shipment data from June 2006 through January 2007. San Miguel's shipment data indicate that its shipments increased by more than 15 percent between the four-month base and comparison periods. However, San Miguel argued that this increase is due largely to issues of ''timing.'' Our analysis of San Miguel's 2005 and 2006 monthly shipment data leads us to reject this argument. However, because the details of our analysis are business proprietary, complete discussion can be found in the *Memorandum to Barbara E. Tillman, Director, Office 6, ''Critical Circumstances Allegation*,'' (April 19, 2007) (*Critical Circumstances Memorandum*). Based on our analysis of San Miguel's shipment data for 2005 and 2006, we have determined that San Miguel's shipments increased by more than 15 percent between the four-month base and comparison periods. *See Critical Circumstances Memorandum*.

Citrusvil reported shipment data for June 2006 through March 2007. Citrusvil's reported shipment data do not indicate that its shipments increased by more than 15 percent between the four-month base and comparison periods. However, our analysis of Citrusvil's reported shipment data leads us to question the reliability of that data.[3] For a discussion of the BPI details

[3] We intend to issue a supplemental questionnaire to Citrusvil requesting that it correct the deficiencies and resubmit its data in time for verification and use in the final determination. For

of this analysis, *see Critical Circumstances Memorandum*. Because we have determined that Citrusvil's shipment data are unreliable, we have relied on ITC data to determine whether Citrusvil's imports increased by more than 15 percent between the four-month base and comparison periods. *See Critical Circumstances Memorandum*; *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557, 49565–66 (August 24, 2005) (*Orange Juice from Brazil*) (basing the evaluation of massive imports on ITC Dataweb information for all companies because company–specific information was not submitted with sufficient time to use in the analysis). We adjusted the ITC data to account for shipments of lemon juice exported by San Miguel, because San Miguel's information is the only reliable company–specific information on the record with which we could make a relevant adjustment. After adjusting the data to account for shipments of lemon juice exported by San Miguel, the data indicate an increase in imports greater than 15 percent. *See Critical Circumstances Memorandum*. As such, we find that imports have increased by more than 15 percent between the four-month base and comparison periods.

We have examined the information on the record to determine whether the increase in San Miguel's and Citrusvil's imports into the United States during the comparison period are consistent with seasonal patterns related to the growing season for lemons and the corresponding production cycle for lemon juice. We analyzed import data for the relevant base and comparison periods for 2003 through 2006 and find that imports do not show a pattern of seasonality. *See Critical Circumstances Memorandum*. As such, we preliminarily determine that the surge in imports is not due to seasonality.

As noted above, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''all others'' rate. Therefore, with respect to whether imports were massive in this case for the ''all others'' category, we considered the experience of Citrusvil and San Miguel. As discussed above, we preliminarily find that imports from Citrusvil and San Miguel have been massive over a relatively short period of time. Since our normal practice of conducting the critical circumstances analysis of companies in the all–others category is based on the experience of the investigated companies, we determine that there have been massive imports of lemon juice in the all–others category. In addition, we also examined ITC data for the four-month base and comparison periods noted above. *See Orange Juice from Brazil*, 70 FR at 49565–66. As explained above, we adjusted the ITC data to account for shipments of lemon juice exported by San Miguel. After this adjustment, the ITC data indicate an increase in imports greater than 15 percent. *See Critical Circumstances Memorandum*.

In summary, we preliminarily find that Citrusvil, San Miguel and the companies subject to the ''all others'' rate satisfy the imputed knowledge of injury and dumping criteria under section 733(e)(1)(A)(ii) of the Act and the massive imports criterion under section 733(e)(1)(B) of the Act. Given the analysis summarized above, we preliminarily determine that critical circumstances exist for all imports of lemon juice into the United States produced in and exported from Argentina.

the final determination, we will reevaluate our critical circumstances determination for Citrusvil and the companies subject to the ''all others'' rate in light of Citrusvil's revised shipment data.

Verification

In accordance with section 782(i) of the Act, we will verify the questionnaire responses of Citrusvil and San Miguel before making our final determination.

Preliminary Determination

We preliminarily determine that the following weighted–average dumping margins exist for the period July 1, 2005 through June 30, 2006:

Producer/Exporter	Weighted–Average Margin (Percentage)
Citrusvil	128.50%
San Miguel	85.64%
All Others	113.52%

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of lemon juice from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Additionally, because we have made an affirmative preliminary determination of critical circumstances, we will instruct CBP to suspend liquidation of entries made on or after 90 days prior to the date of publication of this notice in accordance with section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margin, as indicated in the chart above, as follows: (1) the rates for exports from the mandatory respondents will be the rates we have determined in this preliminary determination as outlined above; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 113.52 percent. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties the calculations performed in this preliminary determination within five days of the date of the public announcement.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs either 50 days after the date of publication of this notice or ten days after the issuance of the verification reports, whichever is later. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2), (d)(2). Executive summaries should be limited to five pages total, including footnotes. *See id.*

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name,

address, and telephone number; 2) the number of participants; and 3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). Unless the Department receives a request for a postponement pursuant to section 735(a)(2) of the Act, the Department will make its final determination no later than 75 days after the date of this preliminary determination. *See* section 735(a)(1) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of lemon juice from Argentina materially injure, or threaten material injury to, the U.S. industry. *See* section 735(b)(2) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 19, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–8015 Filed 4–25–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–835]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico

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

SUMMARY: We preliminarily determine that imports of lemon juice from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the imports of lemon juice from Mexico for one respondent. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: George Callen or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0180 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2006, the Department of Commerce (the Department) initiated antidumping investigations of lemon juice from Argentina and Mexico. See *Initiation of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico*, 71 FR 61710 (October 19, 2006) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. The Department encouraged all interested parties to submit such comments within 20 days from publication of the initiation notice, that is, by November 8, 2006. See *Initiation Notice*; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19,1997) (*Final Rule*).

On November 6, 2006, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of lemon juice from Argentina and Mexico are materially injuring the U.S. industry and the ITC notified the Department of its findings. See *Lemon Juice From Argentina and Mexico, Investigation Nos. 731–TA–1105 1106 (Preliminary)*, 71 FR 66795 (November 16, 2006) (*ITC Preliminary Report*).

On February 8, 2007, we postponed the deadline for the preliminary determinations under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), by 50 days to April 19, 2007. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico*, 72 FR 7606 (February 16, 2007).

On March 30, 2007, Sunkist Growers Inc. (the petitioner) alleged that, in accordance with 19 CFR 351.206, critical circumstances existed with regard to imports of lemon juice from Argentina and Mexico.

Period of Investigation

The period of investigation (POI) is July 1, 2005, through June 30, 2006. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The merchandise covered by this investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not–from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail–sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (see *Final Rule*), we set aside a period of time for parties to raise issues regarding product coverage in the Initiation Notice and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive comments from any interested parties in the Mexico investigation. On November 1, 2006, we received comments from Citromax S.A.C.I. (Citromax), an interested party in the Argentina investigation. On November 8, 2006, the Department received rebuttal comments from the petitioner on the Citromax submission. As discussed further in the March 21, 2007, memorandum entitled ''Scope Issue in the Antidumping Duty Investigations on Lemon Juice from Argentina and Mexico'' on file in Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230, we are continuing to include organic lemon juice in the scope of the antidumping duty investigations of lemon juice from Argentina and Mexico.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted–average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act also gives the Department discretion to examine a reasonable number of such exporters and producers when it is not practicable to examine all exporters and producers. In order to identify the universe of producers/exporters in Mexico to investigate for purposes of this less–than-fair–value investigation on lemon juice, we analyzed information from various sources, including data from U.S. Customs and Border Protection (CBP).

Using information obtained from the petition, an internet search, and a request to the U.S. Embassy in Mexico in addition to CBP statistical information on U.S. imports of lemon juice during the POI, we identified three respondents accounting for approximately 95 percent of the POI imports from Mexico: Citrofrut Veracruz (Citrofrut), Citrotam Internacional S.P.R. de R.L. (Citrotam), and Coca–Cola FEMSA, S.A. de C.V.[1] For a detailed analysis of our respondent–selection procedure, see ''Antidumping Duty Investigation on Lemon Juice from Mexico Respondent Selection,'' dated November 7, 2006, on file in the CRU.

Citrofrut

On November 20, 2006, we issued a questionnaire to Citrofrut requesting that it respond to section A of the questionnaire by December 11, 2006. Because Citrofrut did not respond by this due date, we sent a letter on December 13, 2006, in which we informed the company that we had not received a response from it despite confirmation from FedEx that Citrofrut had received the questionnaire. We informed Citrofrut further that, if it intended to respond to the questionnaire, it should do so by December 20, 2006. On December 14, 2006, Citrofrut submitted documentation demonstrating that it exports lime juice but not lemon juice from Mexico to the United States. The petitioner did not comment.

We find that the supporting documentation submitted by Citrofrut is sufficient to demonstrate its assertion that it only exports lime juice. On August 6, 2006, before the petition was filed, Citrofrut's broker in the United States filed post–summary adjustment documents with CBP to address the incorrect classification it had used on certain entries at the time of entry. We have confirmed that CBP has accepted the reclassification claim with respect to imports from Citrofrut. Therefore, we preliminarily determine that Citrofrut is no longer a mandatory respondent in the investigation of lemon juice from Mexico. If it begins to export lemon juice, its exports will be subject to the all–others cash–deposit rate.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Citrotam.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties. On November 7, 2006, we mailed a package to Citrotam via Federal Express (FedEx) containing a copy of the respondent–selection memorandum and a request for model–match comments. Based on information we found on the internet we addressed the package to Citrotam's general manager (GM). FedEx reported that it was not able to deliver the package to Citrotam because it had been told that the company had moved from the location for which we had provided an address. We continued our efforts to locate Citrotam, including working with the U.S. Embassy in Mexico City, as well as obtaining contact information for Citrotam from the Embassy of Mexico in Washington, DC. We obtained information indicating that Citrotam is out of business and has been replaced by a new firm, Productos Naturales de Citricos (Pronacit), which may be using the former location of Citrotam to do business and has the same GM as Citrotam.

On November 21, 2006, after many attempts, when we finally contacted the GM, he confirmed that the new name for Citrotam is Pronacit. He also confirmed to the Embassy of Mexico in Washington, DC, that Citrotam had changed its name to Pronacit. See e–mail message dated December 12, 2006, attached to the Memorandum to the File entitled ''Efforts to Contact Citrotam Internacional, S.P.R. De R.L.,'' dated February 20, 2007 (Citrotam Memo). As discussed in detail in the Citrotam Memo, we made additional efforts to contact the GM to obtain an address for Pronacit. When FedEx was unable to deliver the package to the address provided by the GM to the Embassy of Mexico, we attempted to contact the GM again and spoke with the GM's assistant. On January 12, 2007, at the suggestion of the GM's assistant, we sent a letter to the assistant's residence containing questions pertaining to successor–in-interest status, as well as our antidumping duty questionnaire and other documents requesting that Citrotam/Pronacit respond by January 26, 2007. We confirmed that the package was delivered to the assistant's residence on January 16, 2007. We have received no response. See Citrotam Memo.

Citrotam/Pronacit failed to respond to our detailed requests for information regarding successorship. Pursuant to section 776(a) of the Act, we find that Citrotam/Pronacit withheld information that we requested, failed to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, and significantly impeded a

[1] In an entry of appearance, dated November 15, 2006, The Coca-Cola Company and a subsidiary, The Coca-Cola Export Corporation, Mexico Branch (collectively Coca-Cola), clarified that it, rather than Coca-Cola FEMSA, S.A. de C.V., was the foreign producer and exporter of the subject merchandise under investigation.

proceeding under this title. Therefore, we are resorting to the use the facts otherwise available in reaching the applicable determination. We preliminarily find that the facts available, including statements from the GM, U.S. Embassy officials in Mexico, and Embassy of Mexico officials, support the conclusion that Pronacit is the successor to Citrotam. Moreover, because Citrotam/Pronacit failed to respond to any of our requests for information, we are relying on facts otherwise available to assign a dumping margin to Citrotam/Pronacit.

B. Application of Adverse Inferences for Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon–Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand From Mexico*, 68 FR 42378 (July 17, 2003).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 870 (1994) (SAA). Furthermore, ''affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference.'' See *Final Rule*.

Because we have preliminarily determined under section 776(a) of the Act that Pronacit is the successor to Citrotam and because, in refusing to respond to our requests for information, Citrotam/Pronacit has failed to cooperate to the best of its ability, we find that the application of an AFA rate for Citrotam/Pronacit is warranted in this preliminary determination.

The Department finds that Citrotam/Pronacit failed to cooperate to the best of its ability because it continued to be non–responsive despite numerous attempts to obtain information. See Citrotam Memo. Consequently, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. See section 776(b) of the Act; see also *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000), where the Department applied total AFA because the respondents failed to respond to the antidumping questionnaire.

If, however, within 30 days after issuance of this preliminary determination, Pronacit is able to demonstrate on the record of the investigation that it is not the successor to Citrotam and cooperates fully during the remainder of the investigation, the Department may reconsider this issue for purposes of the final determination.

C. Selection of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 829–831. In this case, because we are unable to calculate a margin for Citrotam/Pronacit and because an adverse inference is warranted, we have assigned to Citrotam/Pronacit the highest product–specific margin, 205.37 percent, which we have calculated in this investigation based on the data reported by a respondent.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The Department may use a date other than the date of invoice if the alternative better reflects the date on which the material terms of sales (*e.g.*, price and quantity) are established.

Coca–Cola stated in its responses that the essential terms of sale did not change once it accepted a purchase order but indicated that sometimes it received the purchase order after shipment had occurred. In its U.S. sales database, Coca–Cola reported sales based on invoice dates during the POI and, when shipment dates preceded invoicing, on shipment dates. Based on its comment that the essential terms of sale do not change once a purchase order is accepted, we asked Coca–Cola to report sales based on the purchase–order date or, when a shipment preceded the purchase–order date, the shipment date as date of sale. Because we did not receive this information in time for inclusion in this preliminary determination, we have used Coca–Cola's reported invoice date or, where the shipment preceded invoicing, the shipment date as the date of sale for the preliminary determination.

We will examine the information submitted by Coca–Cola with respect to its purchase order; we will also examine this issue at verification and incorporate our findings in our analysis for the final determination.

Fair–Value Comparisons

To determine whether Coca–Cola's sales of lemon juice from Mexico to the United States were made at less than fair value during the POI, we compared the export price or constructed export price (CEP) to normal value, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the weighted–average export prices and CEPs to normal value which, in this case, is constructed value (CV). In our comparisons, we offset the average–to-average comparisons of U.S prices and constructed values by any non–dumped comparisons. This approach comports with the methodology for investigations that we set forth in *Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

U.S. Price

Section 772(a) of the Act defines export price as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter outside the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). During the POI, Coca–Cola produced and sold subject merchandise to the first unaffiliated purchaser in the United States prior to importation. For sales of this merchandise, we have applied the export–price methodology.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). In addition to export–price sales, Coca–Cola also had CEP sales because it sold some subject merchandise to the first unaffiliated purchaser in the United States after the date of importation of the merchandise. Thus, we have applied the CEP methodology to these sales.

We based export price and CEP on the packed price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for billing adjustments. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. Accordingly, we made deductions for foreign inland freight from the processing plant to the Mexican border and brokerage expenses incurred in Mexico for all sales. For CEP sales, we also made deductions for U.S. brokerage expenses, U.S. warehousing expenses, and inland freight from the central warehouse to the point of distribution.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP further by deducting selling expenses associated with economic activities occurring in the United States, which consisted of credit expenses. In accordance with section 772(d)(1) of the Act, we also deducted indirect selling expenses associated with economic activities occurring in the United States, which consisted of inventory carrying costs and the profit allocated to expenses deducted under section 772(d)(1) in accordance with sections 772(d)(3) and 772(f) of the Act. Because Coca–Cola reported expenses incurred on U.S. but not home–market sales, we calculated a CEP profit rate based on the expense information provided in its 2005 financial statement for sales of merchandise in all markets, pursuant to section 772(f)(2)(C)(iii) of the Act. We applied this rate to those selling expenses associated with economic activities occurring in the United States to obtain the profit amount we deducted from the sales price.

During the POI, Coca–Cola sold lemon juice to a U.S. affiliate that further processed the merchandise into beverage or beverage–base products in the United States prior to sale to unaffiliated customers. Coca–Cola requested that it not be required to respond to section E of our questionnaire concerning its further–processed merchandise and submitted data to support its claim that the U.S. value added for such sales is likely to exceed substantially the value of the imported subject merchandise. After reviewing its request, we found that the value added in the United States is likely to exceed substantially the value of the subject merchandise and that there is a sufficient quantity of U.S. sales of non–further-processed merchandise to provide a reasonable basis for comparison to normal value. Accordingly, we have implemented the special rule for value–added sales pursuant to section 772(e) of the Act and have not included the sales of further–processed merchandise in our margin calculations. See Memorandum from Minoo Hatten to Laurie Parkhill regarding the reporting of further–manufactured merchandise, dated March 19, 2007.

Normal Value

A. Home–Market Viability and Comparison–Market Selection

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home–market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Coca–Cola's volume of home–market sales of the foreign like product to its volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Because the volume of its home–market sales did not meet the five–percent threshold, we found that Coca–Cola's home market was not viable for price–comparison purposes. Moreover, Coca–Cola did not sell the foreign like product to any other country during the POI. Consequently, pursuant to section 773(a)(4) of the Act, we have based normal value on CV for all sales.

B. Level of Trade

As discussed in the ''Calculation of Normal Value Based on Constructed Value'' section below, we based CV selling expenses and profit on Coca–Cola's home–market sales of orange juice during the POI and CV general and administrative (GNA) expenses on its 2005 home–market sales of soft–drink concentrates. Coca–Cola has not provided level–of-trade information on any of its home–market sales and, thus, the record has insufficient information for us to perform a level–of-trade analysis for this preliminary determination.

C. Calculation of Normal Value Based on Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which states that CV shall be based on the sum of a respondent's cost of materials and fabrication for the subject merchandise, plus amounts for selling, GNA expenses, profit, and U.S. packing costs. We relied on the submitted CV information for Coca–Cola except in certain instances. First, we have determined for the preliminary determination that lemon juice and lemon oil are co–products in Coca–Cola's processing of lemons. Thus, we have revised Coca–Cola's reported cost of manufacture for lemon juice to include a portion of the lemon–purchase costs and a portion of the common lemon–processing costs incurred before the split–off point in the production of lemon juice and lemon oil. In addition, we have revised Coca–Cola's reported costs for the production of lemon juice to include an allocable portion of the company's GNA expenses. For further discussion of these adjustments, see the Memorandum to Neal Halper from Mark Todd, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated April 19, 2007.

Because we have determined for purposes of this preliminary determination that Coca–Cola does not have a viable home market or third–country market, we have calculated Coca–Cola's selling expenses and profit based on section 773(e)(2)(B)(i) of the Act, which states that selling expenses and profit may be calculated based on ''actual amounts incurred by the specific exporter or producer. . . in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.'' We have determined for the preliminary determination that Coca–Cola's production and sale of orange juice in Mexico is merchandise in the same general category of products as lemon juice. Thus, we have revised the CV figures for Coca–Cola's lemon juice to include selling expenses and profit amounts that are based on Coca–Cola's production and sale of orange juice for consumption in Mexico.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S.

sales, as certified by the Federal Reserve Bank.

All–Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight–average margins other than the zero, *de minimis*, or AFA margins to establish the all–others rate.

When the data does not permit the weight–averaging of such other margins, the SAA provides that the Department may use any other reasonable method. See SAA at 873. Coca–Cola is the only respondent in this investigation for which we have calculated a company–specific rate that is not based entirely on facts available. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the dumping margin we have calculated for Coca–Cola as indicated in the ''Preliminary Determination'' section below.

Critical Circumstances

A. Citrotam/Pronacit and Coca–Cola

On March 30, 2007, the petitioner requested that the Department make a finding that critical circumstances exist with respect to imports of lemon juice from Mexico. The petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise.

Since this allegation was filed earlier than the deadline for the preliminary determination, we must issue our preliminary critical–circumstances determination not later than the preliminary determination. See 19 CFR 351.206(c)(2); see also Policy Bulletin 98/4 regarding *Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether the relevant statutory criteria have been satisfied, the Department considered the evidence presented in the petitioner's March 30, 2007, submission, exporter–specific shipment data submitted by Coca–Cola on April 9, 2007, and the ITC Preliminary Report.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). See also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006). The petitioner has made no statement concerning a history of dumping of lemon juice from Mexico. Moreover, we are not aware of any antidumping duty order on lemon juice from Mexico in any other country. Therefore, the Department finds no history of injurious dumping of lemon juice from Mexico pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value, in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export–price sales or 15 percent or more for CEP transactions sufficient to impute knowledge of dumping. See *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). For the reasons explained above, we have assigned a margin of 205.37 percent to Citrotam/Pronacit. Based on this margin, we have imputed importer knowledge of dumping for Citrotam/Pronacit. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR 71077 (December 22, 2003) (TTR from Japan). With respect to Coca–Cola, because the preliminary dumping margin for Coca–Cola is 146.10 percent, we preliminarily determine that the knowledge criterion has been met.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, 64 FR 30574, 30578 (June 8, 1999) (Stainless Steel from Japan). The ITC preliminarily found material injury to the domestic industry due to imports of lemon juice from Mexico, which are alleged to be sold in the United States at less than fair value, and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. See ITC Preliminary Report. Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Because Citrotam/Pronacit has met the first prong of the critical–circumstances test, according to section 733(e)(1)(A)(i) of the Act we must examine whether imports from Citrotam/Pronacit were massive over a relatively short period of time. Section 733(e)(1)(B) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least

three months later. The Department's regulations also provide, however, that, if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Because there is no verifiable information on the record with respect to Citrotam/Pronacit's import volumes, we must use facts available in accordance with section 776(a) of the Act. Moreover, because Citrotam/Pronacit failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, we have used an adverse inference in applying facts available and determine that there were massive imports from Citrotam/Pronacit over a relatively short period. *See TTR from Japan*, 68 FR at 71077.

Accordingly, because all of the necessary criteria have been met, in accordance with section 733(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect lemon juice imported from Citrotam/Pronacit.

On April 9, 2007, Coca–Cola filed monthly import data for shipments of subject merchandise to the United States for June 2006 through March 2007. Coca–Cola's reported shipment data show that its volume of shipments of lemon juice is greater than the Department's 15–percent threshold for finding that imports have been massive. Coca–Cola contends that its increase in imports can be explained by seasonal trends. We have examined the information on the record and find that the increase in Coca–Cola's shipments during the comparison period is consistent with seasonal patterns related to the growing season for lemons and the corresponding production cycle for lemon juice. We analyzed import data for the relevant base and comparison periods for 2003 through 2006 and find that shipments show a consistent pattern of seasonality. For a detailed discussion see memorandum from Minoo Hatten to Laurie Parkhill entitled ''Antidumping Duty Investigation on Lemon Juice From Mexico - Preliminary Determination of Critical Circumstances'' dated April 18, 2007. Therefore we determine that there were no massive imports from Coco–Cola over a relatively short period. We preliminarily find that critical circumstances do not exist with respect to lemon juice imported from Coca–Cola.

B. All Others

It is the Department's normal practice to conduct its critical–circumstances analysis of companies in the all–others group based on the experience of investigated companies. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997), where the Department found that critical circumstances existed for the majority of the companies investigated and concluded that critical circumstances also existed for companies covered by the all–others rate. As we determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999), applying that approach literally could produce anomalous results in certain cases. Thus, in deciding whether critical circumstances apply to companies covered by the all–others rate, the Department also considers the traditional critical–circumstances criteria.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling lemon juice at less than fair value, we look to the all–others rate. See *TTR from Japan*, 68 FR at 71077. The dumping margin for the all–others category, 146.10 percent, is greater than the 25–percent threshold necessary to impute knowledge of dumping consistent with section 733(e)(1)(A)(ii) of the Act. Second, based on the ITC's preliminary material–injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise consistent with 19 CFR 351.206. See ITC Preliminary Report.

Finally, in determining whether imports from the all–others category have been massive, where possible, we have followed our normal practice of conducting the critical–circumstances analysis of companies in this category based on the experience of the investigated companies. We are unable to base our determination on our findings for Citrotam/Pronacit because our determination for Citrotam/Pronacit was based on AFA. Consistent with *TTR from Japan*, we have not inferred adverse facts, that massive imports exist for all–others companies, because, unlike Citrotam/Pronacit, the all–others companies have not failed to cooperate to the best of their ability in this investigation. Therefore, an adverse inference with respect to shipment levels by the all–others companies is not appropriate.

In this case, we have considered the experience of Coca–Cola. As discussed above, we preliminarily find that imports from Coca–Cola have not been massive over a relatively short period of time. Since our normal practice of conducting the critical–circumstances analysis of companies in the all–others category is based on the experience of the investigated companies, we determine that there have been no massive imports of lemon juice from companies in the all–others category. In addition, to ensure that relying upon the experience of the investigated companies did not cause anomalous results, we also reviewed the import statistics. In the case of lemon juice we are able to rely on information on the ITC's website because, in this investigation, the HTSUS categories for merchandise within the scope of the investigation (except for one) include only subject merchandise. The import statistics for Mexico support the conclusion that there have not been massive imports from Mexico.

Consequently, the criteria necessary for determining affirmative critical circumstances with respect to the all–others category have not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports of lemon juice from Mexico for companies in the all–others category.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Mexico when we make our final antidumping determination in this investigation.

Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination for Coca–Cola.

Preliminary Determination

We preliminarily determine that the following weighted–average dumping margins exist for the period July 1, 2005, through June 30, 2006:

Manufacturer/Exporter	Weighted–Average Margin (percent)
The Coca–Cola Export Corporation, Mexico Branch	146.10
Citrotam Internacional S.P.R. de R.L.(Citrotam)/ Productos Naturales de Citricos (Pronacit)	205.37
All Others	146.10

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of lemon juice from Mexico that are entered, or

withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Additionally, for Citrotam/Pronacit, we will instruct CBP to suspend liquidation of entries made on or after 90 days prior to the publication of this notice in accordance with section 733(e)(2) of the Act. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margin, as indicated in the chart above, as follows: (1) the rates for the mandatory respondents will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 146.10 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the ITC's determination will be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline for the submission of case briefs. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide us with a copy of the public version of such briefs on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 19, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration.

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