

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-357-818]

**Suspension of Antidumping Duty Investigation: Lemon Juice From Argentina**

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

**SUMMARY:** The Department of Commerce (“the Department”) has suspended the antidumping duty investigation involving lemon juice from Argentina. The basis for this action is an agreement between the Department and S.A. San Miguel A.G.I.C. y F. (“San Miguel”) and Citrusvil, S.A. (“Citrusvil”) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

**DATES:** *Effective Date:* September 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sally Gannon or James Kemp at (202) 482-0162 and (202) 482-5346, respectively, Bilateral Agreements Unit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On October 11, 2006, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended, (“the Act”) to determine whether imports of lemon juice from Argentina are being, or are likely to be sold in the United States at less than fair value (71 FR 61710 (October 19, 2006)). On November 3, 2007, the United States International Trade Commission (“ITC”) notified the Department of its affirmative preliminary injury determination in this case *See Lemon Juice from Argentina and Mexico*, Inv. Nos. 731-TA-1105-1106 (Preliminary), USITC Pub. No. 3891 (November 2006). On April 19, 2007, the Department preliminarily determined that lemon juice is being, or is likely to be sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Act (*Lemon Juice from Argentina*:

*Preliminary Determination of Sales at Less than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 72 FR 20820 (April 26, 2007) (“*Preliminary Determination*”). On May 17, 2007, the Department postponed the final determination in this investigation until no later than September 10, 2007 (*Lemon Juice from Argentina and Mexico: Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures*, 72 FR 28953 (May 23, 2007)).

The Department, San Miguel, and Citrusvil, initialed a proposed agreement suspending this investigation on August 10, 2007. On August 13, 2007, we invited interested parties to provide written comments on the proposed suspension agreement. On August 24, 2007, the Department also invited interested parties to provide written comments on an issue related to the draft suspension agreement with respect to purchase orders and/or long-term contracts entered into prior to September 10, 2007. In response to our requests for comment, on August 30, 2007, we received comments from the petitioner Sunkist Growers Inc., and respondents San Miguel, and Citrusvil. We have taken these comments into consideration for the final version of the suspension agreement.

The Department, San Miguel, and Citrusvil signed the suspension agreement on September 10, 2007.

**Scope of Investigation**

For a complete description of the scope of the investigation, *see, Agreement Suspending the Antidumping Investigation on Lemon Juice from Argentina*, Appendix A, signed September 10, 2007, attached hereto in Annex 1.

**Suspension of Investigation**

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with sections 734(b) and (d) of the Act, we have determined that the agreement will completely eliminate sales at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. *See, Public Interest and Effective Monitoring Memorandum*, dated September 10, 2007. *See also, Percentage of Exports Memorandum*, dated September 10, 2007. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement,

signed September 10, 2007, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of lemon juice from Argentina entered, or withdrawn from warehouse, for consumption, as directed in the *Preliminary Determination* is hereby terminated. Any cash deposits on entries of lemon juice from Argentina pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: September 10, 2007.

**Michelle O’Neill,**

*Deputy Under Secretary for International Trade.*

**Annex 1—Agreement Suspending the Antidumping Investigation on Lemon Juice from Argentina**

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the “Act”), and 19 CFR 351.208 (the “Regulations”), the U.S. Department of Commerce (the “Department”) and the signatory producers/exporters of Lemon Juice from Argentina (the “Signatories”) enter into this suspension agreement (the “Agreement”). On the basis of this Agreement, on the effective date of this Agreement, the Department shall suspend its antidumping investigation initiated on October 19, 2006 (17 FR 61710) with respect to Lemon Juice from Argentina, subject to the terms and provisions set forth below.

## (A) Product Coverage:

For purposes of this Agreement, the merchandise covered is Lemon Juice, as described in Appendix A.

## (B) U.S. Import Coverage:

The signatory producers/exporters collectively are the producers and exporters in Argentina that accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department’s regulations at 19 CFR 351.208(c). The Department may, at anytime during the period of the Agreement, require additional producers/exporters in Argentina to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the

Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: Volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement:

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act. For details of the Department's calculation methodology under this Agreement, see Appendix B.

(1) For the period from the effective date of this Agreement through the release of the first NVs, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement in the United States.

However, during this period and subsequent periods, as relevant, a signatory producer/exporter may proceed with deliveries of subject merchandise made pursuant to purchase orders or long-term contracts entered into prior to September 10, 2007, if the Department determines, in accordance with its regulations, that the signatory producer's/exporter's appropriate date of sale is the date of the purchase order or long-term contract (see Section I(4) below). At any time, should the Department determine that the purchase order or long-term contract date was not the appropriate date of sale for a signatory producer/exporter making such deliveries, the Department may consider such deliveries to be in violation of this Agreement (see Section F below). Any signatory producer/exporter making such deliveries under this Agreement must provide a one-time report to the Department, within 30 days of these deliveries having been completed, which contains a listing of the contract or purchase order dates, the delivery quantities, the dates of delivery, the entry dates, and the prices at which the subject merchandise was sold. This information will be subject to verification in accordance with Section D(4) of this Agreement.

(2) For all sales occurring on or after the date of issuance of the first NVs, through April 30, 2008 ("First Interim Period"), each signatory producer/exporter issued NVs by the Department agrees not to sell its merchandise subject to this Agreement to any

purchaser in the United States at prices that are less than the NVs of the merchandise, as determined by the Department on the basis of the sales and cost information submitted by the signatory producer/exporter in the course of the underlying antidumping duty investigation. The Department will issue the final NVs to a signatory producer/exporter for the First Interim Period within 14 days after the preliminary NVs are issued pursuant to Section E(2) of this Agreement.<sup>1</sup> The NVs shall be valid for these particular signatory producer/exporters during both the First Interim Period and the Second Interim Period (as defined in Section C(3) below), *i.e.*, those signatory producer/exporters issued NVs for the First Interim Period will only be eligible to request new NVs for periods subsequent to the Second Interim Period in accordance with Section D of this Agreement.

(3) For all sales occurring from May 1, 2008 through December 31, 2008 ("Second Interim Period"), each signatory producer/exporter issued NVs by the Department agrees not to sell its merchandise subject to this Agreement to any purchaser in the United States at prices that are less than the NVs of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of this Agreement. The final NVs for a signatory producer/exporter during the Second Interim Period shall be issued no later than April 1, 2008, and, at the Department's discretion, may become effective prior to May 1, 2008.

(4) For all sales occurring after the Second Interim Period, each signatory producer/exporter issued NVs by the Department agrees not to sell its merchandise subject to this Agreement to any purchaser in the United States at prices that are less than the NVs of the

<sup>1</sup> The issuance of the NVs for any given signatory may be delayed depending on the following: (1) Issues related to the underlying antidumping duty investigation; (2) to allow sufficient time for signatories to respond to the Department's request for sales and cost data; and/or (3) to resolve issues raised in comments from interested parties or by the Department. In accordance with section 773(f) of the Act, the Department will examine relevant prices and costs and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barter transactions, as well as items that are not recognized by the home country's generally accepted accounting principles.

merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of this Agreement and provided to the signatory producer/exporter no later than December 2 of the previous year.<sup>2</sup> These NVs shall apply to sales occurring during the annual period (*i.e.*, January through December) beginning 30 days following the date on which the Department provides the NVs, as stated in this paragraph.

(D) Monitoring:

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.<sup>3</sup>

(1) Sales Information:

The Department will require each producer/exporter to report, in electronic form in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, as well as sales in the comparison market (home or third country market, as appropriate), including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data, for the Second Interim Period pursuant to Section C(3) of this Agreement, shall be submitted to the Department, in electronic form (*e.g.*, on diskette, zip disk, or CD ROM) in the prescribed format and using the prescribed method of data compilation, not later than October 1, 2007, and shall contain the specified sales information covering the period January 1, 2006, through December 31, 2006. Subsequent reports of sales data shall be submitted to the Department not later than May 1 of each

<sup>2</sup> For example, on December 2, 2008, the Department will provide to each producer/exporter being issued NVs the final calculated NVs for the first ensuing annual sales period, from January 1, 2009, through December 31, 2009.

<sup>3</sup> As noted in Section C(2) of this Agreement, the first NVs issued for certain signatory producer/exporters may be based on sales and cost information submitted by those signatories in the underlying antidumping duty investigation, and the resulting NVs issued will apply to sales occurring between the issuance date of the NVs and December 31, 2008 (*i.e.*, during both the First Interim Period and the Second Interim Period, as provided for in Section C(2) of this Agreement).

year, and each report shall contain the specified sales information for the annual period ending on December 31 of the previous year,<sup>4</sup> except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a more frequent basis.

(2) Cost Information:

Producers/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report, in the prescribed format and using the prescribed method of data compilation, the following: Its actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on an annual basis. As indicated in Appendix B to this Agreement, profit will be reported by the producers/exporters on an annual basis. Each such producer/exporter also must report anticipated increases in production costs in the annual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data, for the Second Interim Period pursuant to Section C(3) of this Agreement, shall be submitted to the Department not later than October 15, 2007, and shall contain the specified cost data covering the period January 1, 2006, through December 31, 2006. Each subsequent report shall be submitted to the Department not later than May 15 of each year, and each report shall contain the specified information for the annual period ending on December 31 of the previous year.<sup>5</sup>

(3) Special Adjustment of Normal Value:

If the Department determines that the NV it determined for a previous annual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification:

Each producer/exporter agrees to permit full verification of all cost and sales information annually, or more

frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements:

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in Section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such an arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with Section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F of this Agreement.

(6) Rejection of Submissions:

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion, or is not fully verifiable, the Department may calculate the NV, and/or U.S. price, based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F of this Agreement applies.

(E) Disclosure and Comment:

(1) The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the

reporting period as well as the results of its analysis under section 777 of the Act.

(2) For sales during the First Interim Period, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs on or after the effective date of this Agreement.<sup>6</sup> At that time, the Department may also make available such information to the interested parties to the proceeding in accordance with this section.

(3) For sales during the Second Interim Period, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs no later than March 2, 2008. At that time, the Department may also make available such information to the interested parties to the proceeding in accordance with this section.

(4) Not later than November 2 of the year prior to each ensuing annual sales period, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs.<sup>7</sup> At that time, the Department may also make available such information to the interested parties to the proceeding, in accordance with this section.

(5) Not later than 7 days after the dates of disclosure under Sections E(2), E(3), and E(4), respectively, of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its final NVs, as provided in Sections C(2), C(3), and C(4), respectively, of this Agreement. In addition, the Department may provide such information to interested parties, as specified in this section.

(F) Violations of the Agreement:

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of sections 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provisions:

<sup>6</sup> The Department will endeavor to issue the preliminary NVs for the First Interim Period within 30 days after the effective date of this Agreement, subject to the possible constraints noted in footnote #1 of Section C(2) of this Agreement.

<sup>7</sup> For example, on November 2, 2008, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs for the first ensuing annual sales period, from January 1, 2008, through December 31, 2009.

<sup>4</sup> For example, on May 1, 2008, sales data for the period January 1, 2007, through December 31, 2007, shall be submitted to the Department.

<sup>5</sup> For example, on May 15, 2008, cost data for the period January 1, 2007, through December 31, 2007, shall be submitted to the Department.

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal: Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.218 of the Department's regulations.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions:

For purposes of the Agreement, the following definitions apply:

(1) "U.S. price" means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) "Normal value" means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix B to this Agreement.

(3) "Producer/Exporter" means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) "Date of sale" means the date of the invoice as recorded in the exporter's or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is September 10, 2007.

For Argentine Producers/Exporters

Dated: September 10, 2007.

Gregory J. Spak, S.A. San Miguel A.G.I.C. y F.

Dated: September 10, 2007.

Lizbeth R. Levinson, Citrusvil, S.A.

For U.S. Department of Commerce

Dated: September 10, 2007.

Joseph A. Spetrini,  
Acting Assistant Secretary for Import Administration.

Dated: September 10, 2007.

Michelle O'Neill, Deputy Under Secretary for International Trade.

#### Appendix A: Product Coverage

For purposes of this Agreement, the merchandise covered 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 Agreement is dispositive.

#### Appendix B: Principles of Cost

##### General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:<sup>8</sup>

- Comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards that can be tied to the audited financial statements);
- Calculated on an annual weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products;
- If the signatory grows and/or harvests its own lemons and sells them, the Department will normally allocate the agricultural and/or harvesting costs between fresh lemons and lemons for processing in accordance with the company's normal books and records, as historically kept in the normal course of business; and
- If the signatory produces multiple products from the processed lemon, the

Department will normally allocate the lemon and common processing costs using ratios/methods consistent with those historically used by the company in its normal books and records, and such allocation ratios/methods will be recalculated for each cost reporting period.

Additionally, a separate figure should be reported for each major cost component making up the cost of production.

##### Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the product's cost at each facility and relative production quantities.

Direct materials costs include the acquisition costs of all materials that are identified as part of the finished product and may be traced to the finished product in an economically feasible way. In contrast to indirect materials, direct materials are applied and assigned directly to a finished product. Direct materials costs should include transportation charges, import duties, and other expenses normally associated with obtaining the materials that become an integral part of the finished product.

Direct labor costs are the labor costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost.

Variable manufacturing overhead costs include those production costs, other than direct materials or direct labor, that generally vary in total with changes in the volume of merchandise produced at a given level of operations. Variable manufacturing overhead costs may include indirect materials (*e.g.*, supplies used in the manufacturing process), indirect labor (*e.g.* supervisory labor paid on an hourly basis), utilities (*e.g.*, energy), and other variable overhead costs. Because variable overhead costs are typically incurred for an entire production line or factory, the costs must be allocated to the products produced using a reasonable basis.

Fixed manufacturing overhead costs include those production costs that generally do not vary in total with changes in the volume of merchandise produced at a given level of operations. Fixed manufacturing overhead costs may include the costs incurred for building or equipment rental, depreciation, supervisory labor paid on a salary basis, plant property taxes, and factory administrative costs. In addition, fixed manufacturing overhead costs include research and development (R&D) costs which relate specifically to the subject merchandise.

##### Cost of Production (COP)

COP is equal to the sum of direct materials, direct labor, variable manufacturing overhead, and fixed manufacturing overhead (*i.e.* COM) plus SG&A expenses in the home market (HM).

<sup>8</sup> See footnote #1 in Section C(2) of this Agreement.

SG&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated to COM using a ratio of SG&A costs.

#### Constructed Value (CV)

Constructed value is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

#### Calculation of Suspension Agreement Normal Values

Normal values (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

*“Export Price”*—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

*“Constructed Export Price”*—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect selling expenses.

Home market direct selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct selling expenses are treated individually, including:

- Commission expenses, *i.e.*, payments to unaffiliated parties for sales in the HM.
- Credit expenses, *i.e.*, expenses incurred for the extension of credit to HM customers.

- Movement expenses, *e.g.*, foreign inland freight and insurance expenses, warehousing, and foreign brokerage, handling and port charges.

U.S. direct selling expenses are the same as HM direct selling expenses except that they are incurred for sales in the United States. Movement expenses are additional expenses associated with importation into the United States, which typically include: U.S. inland freight and insurance expenses; U.S. brokerage, handling and port charges; U.S. Customs duties, U.S. warehousing; and international freight and insurance.

U.S. indirect selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States and may also include a portion of indirect expenses incurred in the HM for export sales.

The EP and CEP NVs are calculated as follows:

#### For EP Transactions

- + Direct Materials.
- + Direct Labor.
- + Factory Overhead.
- = Cost of Manufacturing (COM).
- + Home Market SG&A.
- = Cost of Production (COP).
- + U.S. Packing.
- + Profit.
- = Constructed Value.
- + U.S. Direct Selling Expense.
- + U.S. Commission Expense.
- + U.S. Movement Expense.
- + U.S. Credit Expense.
- HM Direct Selling Expense.
- HM Commission Expense.<sup>1</sup>
- HM Credit Expense.
- = NV for EP Sales.

<sup>1</sup> If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

#### For CEP Transactions

- + Direct Materials.
- + Direct Labor.
- + Factory Overhead.
- = Cost of Manufacturing (COM).
- + Home Market SG&A.
- = Cost of Production (COP).
- + U.S. Packing.
- + Profit.
- = Constructed Value.
- + U.S. Direct Selling Expense.
- + U.S. Indirect Selling Expense.
- + U.S. Commission Expense.
- + U.S. Movement Expense.
- + U.S. Credit Expense.
- + U.S. Further-Manufacturing Expenses (if any).<sup>1</sup>
- + CEP Profit.
- HM Direct Selling Expense.
- HM Commission Expense.<sup>2</sup>
- HM Credit Expense.

#### For CEP Transactions

= NV for CEP Sales.

<sup>1</sup> The Department will examine any further-manufacturing expenses on value-added products sold to the first unaffiliated purchaser in the United States by a person affiliated with the foreign producer/exporter, and produced from subject merchandise purchased directly from that foreign producer/exporter, on a case-by-case basis and reserves the right to make adjustments to its reporting requirements and calculation methodology for these expenses. For example, in cases where a producer/exporter's affiliate makes sales of products with significant value added to unaffiliated purchasers in the United States, or the range of such products is significant, the Department may adjust its reporting requirements and calculation methodology for the further manufacturing costs associated with the value-added products. Additionally, if the ratio of a producer/exporter's reported sales to unaffiliated purchasers versus its sales to affiliated persons shifts over time, the Department may make further adjustments in its reporting requirements and calculation methodology for the further-manufacturing expenses associated with the value-added products.

<sup>2</sup> If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–201–835]

#### Suspension of Antidumping Duty Investigation: Lemon Juice From Mexico

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

**SUMMARY:** The Department of Commerce (“the Department”) has suspended the antidumping duty investigation involving lemon juice from Mexico. The basis for this action is an agreement between the Department and The Coca-Cola Company and The Coca-Cola Export Corporation, Mexico Branch (collectively “Coca-Cola”) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

**DATES:** *Effective Date:* September 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sally Gannon or James Kemp at (202) 482–0162 and (202) 482–5346, respectively, Bilateral Agreements Unit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 11, 2006, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended ("the Act") to determine whether imports of lemon juice from Mexico are being, or are likely to be sold in the United States at less than fair value (71 FR 61710 (October 19, 2006)). On November 3, 2007, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case. See *Lemon Juice from Argentina and Mexico*, Inv. Nos. 731-TA-1105-1106 (Preliminary) USITC Pub. No. 3891 (November 2006). On April 19, 2007, the Department preliminarily determined that lemon juice is being, or is likely to be sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act (*Notice of Preliminary Determinations of Sales at Less than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico*, 72 FR 20830 (April 26, 2007) ("Preliminary Determination")). On May 17, 2007, the Department postponed the final determination in this investigation until no later than September 10, 2007 (*Lemon Juice from Argentina and Mexico: Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures*, 72 FR 28953 (May 23, 2007)).

The Department and Coca-Cola initialed a proposed agreement suspending this investigation on August 10, 2007. On August 13, 2007, we invited interested parties to provide written comments on the proposed suspension agreement. On August 24, 2007, the Department also invited interested parties to provide written comments on an issue related to the draft suspension agreement with respect to purchase orders and/or long-term contracts entered into prior to September 10, 2007. In response to our requests for comment, on August 30, 2007, we received comments from petitioner Sunkist Growers Inc. and respondent Coca-Cola. We received further comments from petitioner and respondent on September 6, 2007, and again from petitioner on September 7 and 10, 2007. We have taken these comments into consideration for the final version of the suspension agreement.

The Department and Coca-Cola signed the suspension agreement on September 10, 2007.

## Scope of Investigation

For a complete description of the scope of the investigation, see *Agreement Suspending the Antidumping Investigation on Lemon Juice from Mexico*, Appendix A, signed September 10, 2007, attached hereto in Annex 1.

## Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with sections 734(b) and (d) of the Act, we have determined that the agreement will completely eliminate sales at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See, *Public Interest and Effective Monitoring Memorandum*, dated September 10, 2007. See also, *Percentage of Exports Memorandum*, dated September 10, 2007. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement, signed September 10, 2007, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of lemon juice from Mexico entered, or withdrawn from warehouse, for consumption, as directed in the *Preliminary Determination* is hereby terminated. Any cash deposits on entries of lemon juice from Mexico pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: September 10, 2007.

**Michelle O'Neill,**

*Deputy Under Secretary for International Trade.*

## Annex 1—Agreement Suspending the Antidumping Investigation on Lemon Juice From Mexico

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the "Act"), and 19 CFR 351.208 (the "Regulations"), the U.S. Department of Commerce (the "Department") and the signatory producers/exporters of Lemon Juice from Mexico (the "Signatories") enter into this suspension agreement (the "Agreement"). On the basis of this Agreement, on the effective date of this Agreement, the Department shall suspend its antidumping investigation initiated on October 19, 2006 (17 FR 61710) with respect to Lemon Juice from Mexico, subject to the terms and provisions set forth below.

(A) Product Coverage:

For purposes of this Agreement, the merchandise covered is Lemon Juice, as described in Appendix A.

(B) U.S. Import Coverage:

The signatory producers/exporters collectively are the producers and exporters in Mexico that accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations at 19 CFR 351.208(c). The Department may, at anytime during the period of the Agreement, require additional producers/exporters in Mexico to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement:

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act. For details of the Department's calculation methodology under this Agreement, see Appendices B and C.

(1) For the period from the effective date of this Agreement through the release of the first NVs, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement in the United States.

However, during this period and subsequent periods, as relevant, a signatory producer/exporter may proceed with deliveries of subject merchandise made pursuant to purchase orders or long-term contracts entered into prior to September 10, 2007, if the Department determines, in accordance with its regulations, that the signatory producer's/exporter's appropriate date of sale is the date of the purchase order or long-term contract (see Section I(4) below). At any time, should the Department determine that the purchase order or long-term contract date was not the appropriate date of sale for a signatory producer/exporter making such deliveries, the Department may consider such deliveries to be in violation of this Agreement (see Section F below). Any signatory producer/exporter making such deliveries under this Agreement must provide a one-time report to the Department, within 30 days of these deliveries having been completed, which contains a listing of the contract or purchase order dates, the delivery quantities, the dates of delivery, the entry dates, and the prices at which the subject merchandise was sold. This

information will be subject to verification in accordance with Section D(4) of this Agreement.

(2) For all sales occurring on or after the date of issuance of the first NVs, through June 30, 2008 ("Interim Period"), each signatory producer/exporter issued NVs by the Department agrees not to sell its merchandise subject to this Agreement to any purchaser in the United States at prices that are less than the NVs of the merchandise, as determined by the Department on the basis of the sales and cost information submitted by the signatory producer/exporter in the course of the underlying antidumping duty investigation. The final NVs for a signatory producer/exporter during this Interim Period shall be issued within 14 days after the preliminary NVs are issued pursuant to Section E(2) of this Agreement.<sup>1</sup>

(3) For all sales occurring after the Interim Period, each signatory producer/exporter issued NVs by the Department agrees not to sell its merchandise subject to this Agreement to any purchaser in the United States at prices that are less than the NVs of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of this Agreement and provided to the signatory producer/exporter no later than June 1 of each year. These NVs shall apply to sales occurring during the annual period (*i.e.*, July through June) beginning 30 days following the date on which the Department provides the NVs, as stated in this paragraph.

(D) Monitoring:

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.<sup>2</sup>

<sup>1</sup> The issuance of the NVs for any given signatory may be delayed depending on the following: (1) Issues related to the underlying antidumping duty investigation; (2) to allow sufficient time for signatories to respond to the Department's request for sales and cost data; and/or (3) to resolve issues raised in comments from interested parties or by the Department. In accordance with section 773(f) of the Act, the Department will examine relevant prices and costs and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barter transactions, as well as items that are not recognized by the home country's generally accepted accounting principles.

<sup>2</sup> As noted in Section C(2) of this Agreement, the first NVs issued for certain signatory producer/exporters may be based on sales and cost information submitted by those signatories in the underlying antidumping duty investigation, and the resulting NVs issued will apply to sales occurring

(1) Sales Information:

The Department will require each producer/exporter to report, in electronic form in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, as well as sales in the comparison market (home or third country market, as appropriate), including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data, pursuant to Section C(3) of this Agreement, shall be submitted to the Department, in electronic form (*e.g.*, on diskette, zip disk, or CD ROM) in the prescribed format and using the prescribed method of data compilation, not later than October 1, 2007, and shall contain the specified sales information covering the period July 1, 2006, through June 30, 2007. Subsequent reports of sales data shall be submitted to the Department not later than October 1 of each year, and each report shall contain the specified sales information for the annual period ending on June 30 of that year, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a more frequent basis.

(2) Cost Information:

Producers/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report, in the prescribed format and using the prescribed method of data compilation, the following: Its actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on an annual basis. As indicated in Appendix B to this Agreement, profit will be reported by the producers/exporters on an annual basis. Each such producer/exporter also must report anticipated increases in production costs in the annual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data, pursuant to Section C(3) of this Agreement, shall be submitted to the Department not later than October 15, 2007, and shall contain the specified cost data covering the period July 1, 2006, through June 30, 2007. Each subsequent report shall be submitted to the Department not later than October 15 of each year, and each report shall contain the specified information for the annual period ending on June 30 of that year.

(3) Special Adjustment of Normal Value:

If the Department determines that the NV it determined for a previous annual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

between the issuance date of the NVs and June 30, 2008 (Interim Period).

(4) Verification:

Each producer/exporter agrees to permit full verification of all cost and sales information annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements:

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in Section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such an arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with Section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F of this Agreement.

(6) Rejection of Submissions:

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion, or is not fully verifiable, the Department may calculate the NV, and/or U.S. price, based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F of this Agreement applies.

(E) Disclosure and Comment:

(1) The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as the results of its analysis under section 777 of the Act.

(2) For sales during the Interim Period, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs on or after the effective date of this Agreement.<sup>3</sup> At that

<sup>3</sup> The Department will endeavor to issue the preliminary NVs for the Interim Period within five

time, the Department may also make available such information to the interested parties to the proceeding in accordance with this section.

(3) Not later than May 2 of each ensuing annual sales period, the Department will disclose to each producer/exporter being issued NVs the preliminary results and methodology of the Department's calculations of the NVs. At that time, the Department may also make available such information to the interested parties to the proceeding, in accordance with this section.

(4) Not later than 7 days after the dates of disclosure under Sections E(2) and E(3), respectively, of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its final NVs, as provided in Sections C(2) and C(3), respectively, of this Agreement. In addition, the Department may provide such information to interested parties, as specified in this section.

(F) Violations of the Agreement:

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of sections 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provisions:

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal:

Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.218 of the Department's regulations.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions:

For purposes of the Agreement, the following definitions apply:

(1) "*U.S. price*" means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) "*Normal value*" means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix B to this Agreement.

(3) "*Producer/Exporter*" means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) "*Date of sale*" means the date of the invoice as recorded in the exporter's or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is September 10, 2007.

For Mexican Producers/Exporters:

Dated: September 10, 2007.

Mark P. Lunn,

The Coca-Cola Company and The Coca-Cola Export Corporation, Mexico Branch.

For U.S. Department of Commerce:

Dated: September 10, 2007.

Michelle O'Neill,

Deputy Under Secretary for Import Administration.

#### Appendix A: Product Coverage

For purposes of this Agreement, the merchandise covered 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 Agreement is dispositive.

#### Appendix B: Principles of Cost

##### General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:<sup>4</sup>

- Comprehensive in nature and based on a reliable accounting system (i.e., a system based on well-established standards that can be tied to the audited financial statements);

- Calculated on an annual weighted-average basis of the plants or cost centers manufacturing the product;

- Based on fully-absorbed costs of production, including any downtime;

- Valued in accordance with generally accepted accounting principles; and

- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products.

Additionally, a separate figure should be reported for each major cost component making up the cost of production.

##### Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the product's cost at each facility and relative production quantities.

Direct materials costs include the acquisition costs of all materials that are identified as part of the finished product and may be traced to the finished product in an economically feasible way. In contrast to indirect materials, direct materials are applied and assigned directly to a finished product. Direct materials costs should include transportation charges, import duties, and other expenses normally associated with obtaining the materials that become an integral part of the finished product.

Direct labor costs are the labor costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost.

Variable manufacturing overhead costs include those production costs, other than direct materials or direct labor, that generally vary in total with changes in the volume of merchandise produced at a given level of operations. Variable manufacturing overhead costs may include indirect materials (e.g., supplies used in the manufacturing process), indirect labor (e.g. supervisory labor paid on an hourly basis), utilities (e.g., energy), and other variable overhead costs. Because variable overhead costs are typically incurred for an entire production line or factory, the costs must be allocated to the products produced using a reasonable basis.

Fixed manufacturing overhead costs include those production costs that generally do not vary in total with changes in the volume of merchandise produced at a given level of operations. Fixed manufacturing overhead costs may include the costs incurred for building or equipment rental, depreciation, supervisory labor paid on a salary basis, plant property taxes, and factory administrative costs. In addition, fixed manufacturing overhead costs include research and development (R&D) costs which relate specifically to the subject merchandise.

##### Cost of Production (COP)

COP is equal to the sum of direct materials, direct labor, variable manufacturing

days after the effective date of this Agreement, subject to the possible constraints noted in footnote #1 of Section C(2) of this Agreement.

<sup>4</sup> See footnote # 1 in Section C(2) of this Agreement.

overhead, and fixed manufacturing overhead (*i.e.* COM) plus SG&A expenses in the home market (HM).

SG&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated to COM using a ratio of SG&A costs.

#### Constructed Value (CV)

Constructed value is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

#### Calculation of Suspension Agreement Normal Values

Normal values (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

*"Export Price"*—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

*"Constructed Export Price"*—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect selling expenses.

Home market direct selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct selling expenses are treated individually, including:

—Commission expenses, *i.e.*, payments to unaffiliated parties for sales in the HM.

—Credit expenses, *i.e.*, expenses incurred for the extension of credit to HM customers.

—Movement expenses, *e.g.*, foreign inland freight and insurance expenses, warehousing, and foreign brokerage, handling and port charges.

U.S. direct selling expenses are the same as HM direct selling expenses except that they are incurred for sales in the United States. Movement expenses are additional expenses associated with importation into the United States, which typically include: U.S. inland freight and insurance expenses; U.S. brokerage, handling and port charges; U.S. Customs duties, U.S. warehousing; and international freight and insurance.

U.S. indirect selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States and may also include a portion of indirect expenses incurred in the HM for export sales.

The EP and CEP NVs are calculated as follows:

#### For EP transactions

- + Direct Materials.
- + Direct Labor.
- + Factory Overhead.
- = Cost of Manufacturing (COM).
- = Home Market SG&A.
- = Cost of Production (COP).
- + U.S. Packing.
- + Profit.
- = Constructed Value.
- + U.S. Direct Selling Expense.
- + U.S. Commission Expense.
- + U.S. Movement Expense.
- + U.S. Credit Expense.
- HM Direct Selling Expense.
- HM Commission Expense.<sup>1</sup>
- HM Credit Expense.
- = NV for EP Sales.

<sup>1</sup> If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

#### For CEP transactions

- + Direct Materials.
- + Direct Labor.
- + Factory Overhead.
- = Cost of Manufacturing (COM).
- + Home Market SG&A.
- = Cost of Production (COP).
- + U.S. Packing.
- + Profit.
- = Constructed Value.
- + U.S. Direct Selling Expense.
- + U.S. Indirect Selling Expense.
- + U.S. Commission Expense.
- + U.S. Movement Expense.
- + U.S. Credit Expense.
- + U.S. Further-Manufacturing Expense (if any).<sup>1</sup>
- + CEP Profit.
- HM Direct Selling Expense.
- HM Commission Expense.<sup>2</sup>
- HM Credit Expense.

#### For CEP transactions

= NV for CEP Sales.

<sup>1</sup> The Department will examine any further-manufacturing expenses on value-added products sold to the first unaffiliated purchaser in the United States by a person affiliated with the foreign producer/exporter, and produced from subject merchandise purchased directly from that foreign producer/exporter, on a case-by-case basis and reserves the right to make adjustments to its reporting requirements and calculation methodology for these expenses. For example, in cases where a producer/exporter's affiliate makes sales of products with significant value added to unaffiliated purchasers in the United States, or the range of such products is significant, the Department may adjust its reporting requirements and calculation methodology for the further manufacturing costs associated with the value-added products. Additionally, if the ratio of a producer/exporter's reported sales to unaffiliated purchasers versus its sales to affiliated persons shifts over time, the Department may make further adjustments in its reporting requirements and calculation methodology for the further-manufacturing expenses associated with the value-added products.

<sup>2</sup> If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

#### Appendix C: Cost Allocation and NV Methodology

The following provides clarification regarding the methodologies the Department will use in calculating normal values under this Agreement:

(A) For The Coca-Cola Company and The Coca-Cola Export Corporation, Mexico Branch (collectively, "Coexport"):

(1) *Cost Allocation for Life of Agreement:*

Throughout the life of this Agreement, to allocate common costs, the Department will allocate 8.5 percent of the reported lemon fruit costs and common lemon processing costs to lemon juice and 91.5 percent of these same costs to lemon oil for purposes of calculating Coexport's NVs, as detailed in Appendix B to this Agreement.

(2) *All Other Costs and Sales Expenses for Interim Period NVs:*

For the Interim Period only of this Agreement, the Department will use all other reported costs and sales expenses, as adjusted by the Department, where appropriate, for the preliminary determination in the underlying antidumping duty investigation, for purposes of calculating Coexport's NVs, as detailed in Appendix B to this Agreement.

(3) *Monitoring of Value-Added Products after the Interim Period:*

In addition to the stipulations noted in footnote #1 to the calculation for CEP transactions in Appendix B to this Agreement, the Department shall normally choose between two to three products with significant value added, as reported by Coexport pursuant to Section D(1) during each NV cycle, for examination and monitoring of the related costs and sales expenses. For such value-added products, the Department shall set CEP profit to equal CV profit for purposes of the NV calculation.

(4) *Invoice Offsets:*

The Department and signatory producers/exporters agree that an arrangement wherein Coexport bases its lemon oil sales price on its cost which includes an offset for the sales value of lemon juice, and later issues a credit or additional invoice to its customer to take into account the final cost of lemon oil, as offset by the lemon juice revenue, is a normal business practice which would not normally be considered in circumvention of this Agreement as defined in Section D(5) of this Agreement. However, such an arrangement will be subject to the reporting and verification requirements of this Agreement and to consideration by the Department during each NV cycle.

(B) For All Other Signatories to the Agreement:

Throughout the life of this Agreement, the Department will use the signatories' reported costs and sales expenses, as adjusted by the Department, where appropriate, for purposes of calculating the signatories' NVs, as detailed in Appendix B to this Agreement.

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**BILLING CODE 3510-DS-P**

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