ACTION: Notice of Inquiry, Correction.

SUMMARY: This notice corrects a transposition error in the address for submitting comments to a notice of inquiry published on March 19, 2007 (73 FR 14769). The reference to room H–7205 should have read H–2705. As corrected, the final sentence of the addresses paragraph reads:

ADDRESSES: * * * Comments may also be submitted by e-mail directly to BIS at *publiccomments@bis.doc.gov* or on paper to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, Room H–2705, Washington DC 20230.

Dated: March 20, 2008

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. E8–6175 Filed 3–25–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–602–806)

Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia

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

SUMMARY: We preliminarily determine that imports of electrolytic manganese dioxide from Australia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). 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: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of antidumping duty investigations of electrolytic manganese dioxide from Australia and the People's Republic of China. *See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 72 FR 52850 (September 17, 2007) (*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 October 9, 2007. *See Initiation Notice*, 72 FR at 52851; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Final Rule).

On October 24, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of electrolytic manganese dioxide from Australia are materially injuring the U.S. industry and the ITC notified the Department of its findings. See *Electrolytic Manganese Dioxide from Australia and the People's Republic of China, Investigation Nos. 731–TA–1124 1125 (Preliminary)*, 72 FR 60388–60389 (October 24, 2007) (*ITC Preliminary Notice*).

On January 15, 2008, we postponed the deadline for the preliminary determinations under section 733(c)(1)(A) of the Act by 50 days to March 19, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China*, 73 FR 2445 (January 15, 2008).

Period of Investigation

The period of investigation (POI) is July 1, 2006, through June 30, 2007.

Scope of Investigation

The merchandise covered by this investigation includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form (EMD). Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, 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*. See *Final Rule*, 62 FR at 27323. We did not receive comments from any interested parties in this investigation.

Respondent Identification

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 Australia to investigate for purposes of this less–than-fair–value investigation on EMD, 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 CBP statistical information on U.S. imports of EMD during the POI, we identified one respondent, Delta Australia Pty Ltd (Delta). For a detailed analysis of our respondent–identification procedure, see Memorandum to Laurie Parkhill, ''Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification,'' dated October 25, 2007, on file in the Central Records Unit (CRU) in room 1117.

Delta

On October 31, 2007, we issued a questionnaire to Delta and requested that it respond by December 7, 2007. On November 27, 2007, we granted Delta an extension until December 28, 2007, to respond to all sections of the questionnaire. On December 28, 2007, we received Delta's sections A and C responses. We granted Delta an extension until February 8, 2008, to respond to sections B and D of the questionnaire. On January 31, 2008, we received a letter from Delta explaining that, due to the closing of its plant facility in Australia, it did not have resources to provide adequate responses to the questionnaire or to continue active participation in this investigation. Thus, Delta did not submit any further questionnaire responses, including sections B and D due on February 8, 2008, or a response to the Department's supplemental questionnaire (sections A and C) due on February 14, 2008.

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 Delta.

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(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; and (5) the information can be used without undue difficulties.

On January 31, 2008, forty–eight days before the Department's preliminary determination, Delta informed the Department that it did not have resources to continue active participation in the instant investigation. See Letter from Delta, ''Notification of Intent Not to Participate Due to Closure of Australian EMD Facility'' (January 31, 2008). Because Delta ceased participation in the instant investigation, Delta did not provide pertinent information necessary to calculate an antidumping margin for the preliminary determination. Specifically, Delta did not respond to sections B and D of the Department's questionnaire and did not respond to the January 30, 2008, supplemental questionnaire concerning its already–filed responses to sections A and C. Thus, by not providing the pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination, Delta has failed to cooperate to the best of its ability. Therefore, we find that the application of total facts available for Delta is warranted in this preliminary determination.

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 Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*CSSSHP Final Determination*) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

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, *e.g., 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 *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). Although the Department provided Delta with 58 days to respond to sections A and C of the questionnaire and 93 days to respond to sections B and D of the questionnaire, Delta did not respond adequately to the Department's questionnaire. While Delta has provided a reason for not participating in this investigation, this constitutes a failure on the part of Delta to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of sections 776(b) and 782(d) of the Act. Because Delta did not provide the information requested, section 782(e) of the Act is not applicable. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is warranted. See, *e.g., CSSSHP Final Determination*, 65 FR at 42986.

C. Selection and Corroboration 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). It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in final determination, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned Delta a rate of 120.59 percent based on the rate alleged in the petition, as recalculated in this preliminary determination and discussed below. See *Antidumping Duty Petitions on Electrolytic Manganese Dioxide from Australia and the People's Republic of China* (August 22, 2007) (*Petition*), September 4, 2007, Supplements to the Petition (addressing the Department's requests for additional information and clarification on certain areas in the *Petition), Initiation Notice*, 72 FR at 52854, and the Preliminary Determination Analysis Memorandum (March 19, 2008).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The *SAA* clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. See *SAA* at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in final results, 62

FR 11825, 11843 (March 13, 1997)). The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d).

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre–initiation analysis and again for purposes of this preliminary determination. See *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from Australia* (September 11, 2007) (Australia Initiation Checklist). We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre–initiation analysis, we examined the key elements of the export–price and normal–value calculations used in the *Petition* to derive margins. During our pre–initiation analysis, we also examined information from various independent sources provided either in the Petition or in the supplements to the *Petition* that corroborates key elements of the export–price and normal–value calculation used in the *Petition* to derive an estimated margin.

U.S. Price

The petitioner calculated a single U.S. price using the POI–average unit customs values (AUVs) for U.S. import data, as reported on the ITC's Dataweb for the POI. The petitioner deducted an amount for foreign inland–freight costs. See *Petition*, at Exhibit 11, Supplemental Responses at Exhibit R, and *Australia Initiation Checklist*, at 5–6. The petitioner provided an affidavit from an individual attesting to the validity of the inland–freight costs it used in the calculation of net U.S. price. See *Petition*, at Exhibit 13. In calculating the export price, the petitioner relied exclusively on AUV data with respect to U.S. imports from Australia under the HTSUS number 2820.10.00.00. This HTSUS number is a ''basket category'' as it includes both subject EMD and non–subject CMD and NMD. The petitioner used PIERS data to demonstrate that the imports under HTSUS number 2820.10.00.00 are, in fact, overwhelmingly subject merchandise because PIERS provides more specific product–identification information than official U.S. Census data as reported on the ITC's Dataweb import statistics. See *Petition*, at Exhibit 10. U.S. official import statistics are sources that we consider reliable and thus require no further corroboration. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' at 3, August 11, 2005 (*Chromium from Japan*) (unchanged in final determination, 70 FR 65886 (November 1, 2005)). In addition, the petitioner provided information that indicates that there are no producers of CMD or NMD in Australia and that the majority of imports under this HTSUS number are from a company that only produces EMD. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices to be reliable and relevant. Because the rate is both reliable and relevant it is corroborated.

On February 19, 2008, the petitioner provided comments with respect to U.S. price. Specifically, the petitioner requests that the Department adjust the petition rate by using information in Delta's U.S. database to calculate net U.S. price. The petitioner argues that the Department should use Delta's U.S. database to derive U.S. price because it is more accurate than the information contained in the petition. According to the petitioner, using this information will ensure that Delta is not unfairly rewarded for its failure to cooperate in this investigation.

Because we have not had an opportunity to confirm that we would be relying upon accurate information for purposes of calculating a dumping margin as accurately as possible in the instant case, we find information contained in Delta's U.S. database to be unreliable in this investigation. See sections 776(a)(2) and 782(i) of the Act. As such, we have preliminarily determined not to use any data submitted by Delta in this proceeding.

Normal Value

With respect to normal value, the petitioner provided information that there were no sales in commercial quantities of EMD in the home market during the POI and that home–market prices were not reasonably available. The petitioner proposed Japan as the largest third–country comparison market and demonstrated that Japan is a viable third–country market. See *Petition*, at Exhibit 15. The petitioner provided Global Trade Atlas EMD import data for exports from Australia into Japan and compared them with U.S. EMD import data for imports from Australia. According to these figures, the sales volume to Japan was greater than five percent of the sales volume to the United States. The petitioner compared third–country prices with an estimate of the cost of producing EMD in powder form by Delta. Because these data indicated that sales of EMD were made at prices below the product's cost of production (COP), pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner based normal value for sales of EMD in Japan on constructed value.

Pursuant to section 773(b)(3) of the Act, the COP consists of the cost of manufacturing (COM), selling, general, and administrative expenses (SG&A), and packing expenses. To calculate the COM, the petitioner relied on its own costs during the 2006 fiscal year, adjusted for known differences between the costs in the United States and the costs in Australia. The petitioner obtained all of the cost differences between the United States and Australia that were used to calculate the COM from public sources. The petitioner used its own factory–overhead costs (FOH) as a conservative estimate of the Australian FOH. This is because the petitioner's facilities are older than Delta's and would thus likely have lower depreciation because more of the assets making up the petitioner's facilities would likely have reached the end of their service lives and, thus, have no book value. Because Delta's unconsolidated financial statements were not reasonably available, the petitioner used the financial statements of an Australian zinc producer because, it asserted, zinc undergoes a production process similar to EMD. For purposes of the *Initiation Notice*, we adjusted the petitioner's calculation of SG&A and profit ratios by using information from Delta PLC's consolidated financial statement pertinent to the Australian EMD segment of its business. We used Delta PLC's financial records because these records included Delta's actual costs of producing the merchandise under consideration. See *Australia Initiation Checklist* for a full description of the petitioner's methodology and the adjustments we made to those calculations for the initiation decision.

In the *Australia Initiation Checklist*, we stated that the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of EMD were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act. See *Australia Initiation Checklist*, at 7. Consequently, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, we initiated a country–wide, sales–below-cost investigation.

With regard to profit, we stated in our *Australia Initiation Checklist* that we did not include an amount for profit in our calculation of constructed value because the manganese segment of Delta PLC had a net loss for the year ending 2006. See *Australia Initiation Checklist*, at 9. We also stated that we would examine different options for calculating a profit later in this proceeding if it becomes necessary to calculate a constructed value from the *Petition* information. *Id*. at 9.

Section 773(e)(2)(B)(iii) of the Act requires the Department to use the amounts incurred and realized for SG&A and for profits based on any other reasonable method if actual data are not available with respect to SG&A and profit. In accordance with our practice, to determine an appropriate profit rate we have considered several factors in the instant case: 1) the similarity of the potential surrogate company's business operations and products to Delta's; 2) the contemporaneity of the surrogate data to the POI. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and the accompanying *Decision Memorandum* at Comment 8. The greater the similarity in business operations and products, the more likely that there is a greater correlation in the profit experience of the two companies. Contemporaneity is important because markets change over time and the more current the data the more reflective it would be of the market in which the respondent is operating. *Id*.

In its February 19, 2008, comments the petitioner requested that the Department adjust the petition rate by adding an amount for profit to the calculation of constructed value. The petitioner asserts that, in situations such as those found in this case, the Department's general practice is to assign to the non–cooperating respondent the highest margin alleged in the petition, as an adverse inference, in accordance with section 776(b) of the Act. The petitioner argues that, although the petition rate was based on constructed value, in its notice of initiation of the investigation the Department did not apply an amount for profit in its constructed–value recalculation and indicated explicitly that it would correct this deficiency if it became necessary to apply adverse inferences using the petition rate. The petitioner asserts that, because Delta is the only EMD producer in Australia and because Delta PLC's 2007 interim report indicates that its EMD division is still generating an operating loss, the Department has essentially two options for identifying a usable profit rate for recalculating constructed value. Specifically, the petitioner argues, the Department can either use the profit rate of Zinifex Limited, an Australian producer of merchandise comparable to EMD, or use the profit rate of a non–Australian EMD producer. The petitioner contends that, if the Department decides to use the profit rate of an Australian producer of comparable merchandise, it recommends that the Department use the profit rate contained in the 2007 Annual Report of Zinifex Limited. See Petitioner's Submission, ''Electrolytic Manganese Dioxide from Australia; Application of Facts Available for Preliminary Determination'' at 5 (February 19, 2008). Citing *Certain Steel Nails from the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 72 FR 38816, 38820 (July 16, 2007), the petitioner argues that the Department has an established practice of accepting surrogate financial ratios of comparable companies in the same country for purposes of initiation.

The petitioner asserts that, if the Department decides to apply the surrogate profit rate of an EMD producer, then the Department must look to contemporaneous information for a company located outside Australia. The petitioner claims that it is aware of only one EMD producer in India that had a positive profit during the relevant period.

Based on the information on the record, we have preliminarily determined to use Zinifex Limited as a surrogate company from which to select a reasonable profit rate for use in the calculation of constructed value. For purposes of contemporaneity, we derived the surrogate profit rate from Zinifex Limited's 2006 financial statement. Using this statement as a source for a profit rate ensures that the data is contemporaneous with the data used in the *Petition*, which was based solely on 2006 cost experience. Our decision to use Zinifex Limited was based on the fact that it is an Australian zinc producer with similar production processes to that of EMD production, which involves electrolysis. Specifically, both production processes use the electrolytic process to produce zinc. See *Petition* at page 21 and Exhibit 8. Using Zinifex Limited's financial statements yields a profit rate of 44.27 percent. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Because the petitioner had demonstrated, and we confirmed, the validity of the input–usage quantities it used in its COP/constructed value build–up, used public sources of information, such as official import statistics that we confirmed were accurate to value inputs of production, and used Delta PLC's (Delta's consolidated parent company) audited financial statements, which are publicly available, to compute Delta's finance expense that we confirmed were accurate, we consider the petitioner's calculation of normal value, based on constructed value, to be reliable. With regard to SG&A, as stated above, we recalculated the petitioner's calculation using Delta PLC's audited financial statements. In addition, with regard to profit, we calculated a profit rate using Zinifex Limited's audited financial statements, which are publicly available. Zinifex Limited is an Australian producer of comparable merchandise and thus its business operations and products are similar to that of the respondent's in the instant case. Further, we consider the petitioner's calculation of normal value corroborated because the bulk of the calculations relied on publicly available information or import statistics that do not require further corroboration. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of the margin we have calculated in this preliminary determination by examining source documents as well as publicly available information, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR

6812, 6814 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In Am. *Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre–initiation stage of this investigation, we confirmed that the calculation of the margin in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information.

As such, we preliminarily determine that the margin based on the rate alleged in the *Petition*, as recalculated in this preliminary determination, is relevant as the AFA rate for Delta in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in final results, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Delta, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre–initiation stage of this investigation and preliminarily determined to be relevant to Delta in this investigation, we have corroborated the AFA rate ''to the extent practicable.'' See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that ''pursuant to the to the extent practicable' language...the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 120.59 percent we have calculated in this preliminary determination has probative value. Consequently, in selecting AFA with respect to Delta, we have applied the margin rate of 120.59 percent, the highest estimated dumping margin set forth in this investigation. See Preliminary Determination Analysis Memorandum (March 19, 2008).

Delta filed comments on the application of AFA and selection of a profit rate on March 11, 2008. We considered those comments for purposes of this preliminary determination. We will address comments parties raise in their case briefs in our final determination.

Targeted Dumping

On January 17, 2008, Tronox LCC (the petitioner) filed a targeted–dumping allegation concerning Delta under section 777A(d)(I)(B) of the Act. Because Delta decided not to participate in this investigation for the reasons stated above and, therefore, we have applied AFA to its exports, we find the issue of targeted dumping to be moot and have not addressed it in this preliminary determination.

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* margins 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, if the data do not permit weight–averaging margins other than the zero, *de minimis*, or total facts–available margins, the Department may use any other reasonable methods. See also *SAA*, at 873. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available with which to create the all–others rate. Therefore, we are using the preliminary determination margin of 120.59 percent as the all–others rate. In addition, because Delta provided incomplete information on the record that we were unable to verify, we were unable to calculate a margin for the all–others rate.

Critical Circumstances

A. Delta

On February 19, 2008, the petitioner requested that the Department make a finding that critical circumstances exist with respect to imports of EMD from Australia. The petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise. The petitioner based its allegation on evidence of massive imports of subject merchandise for the post–petition period of September through December 2007.

Because 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).

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 February 19, 2008, submission and the *ITC Preliminary Notice*.

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, 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) (unchanged in final determination, 71 FR 45012 (August 8, 2006)). The petitioner has made no statement concerning a history of dumping of EMD from Australia. Moreover, we are not aware of any antidumping duty order on EMD from Australia in any other country. Therefore, the Department finds no history of injurious dumping of EMD from Australia 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 constructed export–price (CEP) transactions sufficient to impute knowledge of dumping. See, *e.g., Final Determination of Sales at Less Than*

Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997)). For the reasons explained above, we have assigned a margin of 120.59 percent to Delta. Based on this margin, we have imputed importer knowledge of dumping for imports from Delta.

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, normally the Department will look to the preliminary injury determination of the ITC. 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, 30578 (June 8, 1999) (*Stainless Steel from Japan*). The ITC preliminarily found a reasonable indication of material injury to the domestic industry due to imports of EMD from Australia 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 this respondent. See *ITC Preliminary Notice*, 72 FR at 60388. Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Because Delta has met the first prong of the critical–circumstances test, according to section 733(e)(1)(A) of the Act we must examine whether imports from Delta 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 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 we do not have verifiable data from Delta, we must base our ''massive imports'' determination on the facts available, pursuant to section 776(a) of the Act.[1] Because Delta failed to cooperate by not acting to the best of its ability to respond fully to our questionnaires, we may make an adverse inference in selecting the facts available, pursuant to section 776(b) of the Act.

The Department's long–standing practice is to rely on respondent–specific shipment data to determine whether imports were massive in the context of critical–circumstance determinations. Where such information does not exist because of the respondent's failure to cooperate to the best of its ability in the course of the investigation, the Department normally makes an adverse inference that imports were massive during the relevant time period. We do not normally rely on publicly available import data as facts available in such circumstances because such data are imprecise and often reflect the activity of multiple exporters and products, *i.e.*, subject merchandise may have entered the United States during the relevant period under a broad HTSUS category. In this case, however, we are presented with unique circumstances such that Delta is the only known exporter of EMD from Australia and public information indicates that imports under the respective HTSUS category are of subject merchandise. Moreover, the data demonstrate that imports of merchandise produced and exported by Delta were massive over a relatively short period. Thus, under these unique circumstances, the Department believes it appropriate to rely on import data, as facts available with an adverse inference, in determining whether the massive–imports requirement for the critical–circumstances determination has been met with respect to Delta.

Based on our determination that there is a reasonable basis to believe or suspect that the importer knew or should have known that Delta was selling EMD from Australia at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of EMD from Delta over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Australia of EMD produced by Delta.

Delta filed comments on critical circumstances on March 10, 2008. We considered those comments for purposes of this preliminary determination. We will address any comments parties raise in their case briefs in our final determination.

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, *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), 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, 24338 (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 EMD 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, 120.59 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 determination that there is a reasonable indication of material injury, we also find that importers knew or should have known that there would be material

[1] Because Delta did not respond fully to our questionnaires, we consider Delta a non-cooperating respondent and, accordingly, we did not request monthly shipment data from Delta, consistent with our practice. 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 at 71078 (December 22, 2003) (TTR from Japan) (unchanged in final determination, 69 FR 11834 (March 12, 2004)).

injury from the dumped merchandise, consistent with 19 CFR 351.206. See *ITC Preliminary Notice*, 72 FR at 60388.

Finally, with respect to massive imports, we are unable to base our determination on our findings for Delta because our determination for Delta was based on AFA. We have not inferred, as AFA, that massive imports exist for companies under the all–others category, because, unlike the uncooperative company in question, the all–others companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to finding a massive surge in imports by the all–others companies is not appropriate. In addition, the record indicates that the only producer of EMD from Australia is Delta. See ''Antidumping Duty Investigation on Electrolytic Manganese Dioxide from Australia Respondent Identification,'' October 25, 2007. Thus, we determine that there were no massive imports from companies in the all–others category.

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 EMD from Australia for companies in the all–others category, as there were no shipments of the foreign like product from any other companies during the relevant period.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period July 1, 2006, through June 30, 2007:

Manufacturer or Exporter	Margin (percent)
Delta	120.59
All Others	120.59

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of EMD from Australia 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 Delta 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 margins, as indicated in the chart above, as follows: (1) the rate for Delta will be 120.59 percent; (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 120.59 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

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 Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, consistent with 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

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. See 19 CFR 351.310(d)(1). 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. See 19 CFR 351.310(c). 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 not be conducting a verification of Delta's responses because it has failed to file responses to all of our questionnaires, as discussed above in the Use of Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

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

Dated: March 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–6167 Filed 3–25–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–919

Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

EFFECTIVE DATE: March 26, 2008.

SUMMARY: We preliminarily determine that electrolytic manganese dioxide (''EMD'') from the People's Republic of China (''PRC'') 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 Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to a request from an interested party, we are postponing the final determination and extending the provisional measures from a four–month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution