

Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) statement of the issues; and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-840]

Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part

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

SUMMARY: In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil of those two producers/exporters of the subject merchandise to the United States. This is the third period of review (POR), covering March 1, 2008, through February 28, 2009.

We have preliminarily determined that sales to the United States have been made below normal value (NV). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* April 13, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on March 2, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period March 1, 2008, through February 28, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (Mar. 2, 2009).

In accordance with 19 CFR 351.213(b)(2), in March 2009, the

Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from two producers/exporters of the subject merchandise, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale). In Cutrale's request for an administrative review, Cutrale also requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b).

In accordance with 19 CFR 351.213(b)(1), also in March 2009, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), requested that the Department conduct an administrative review for Cutrale and Fischer. In April 2009, the Department initiated an administrative review for each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (Apr. 27, 2009). In May 2009, we issued questionnaires to Cutrale and Fischer.

In June 2009, we received responses to section A of the questionnaire (*i.e.*, the section covering general information) from Cutrale and Fischer, as well as responses to sections B and C of the questionnaire (*i.e.*, the sections covering sales in the home market and United States) and section D (*i.e.*, the section covering cost of production (COP)/constructed value (CV)).

In June, August, and September 2009, we issued four supplemental sales questionnaires to Fischer, three supplemental questionnaires to Cutrale and one cost questionnaire and supplemental each to Cutrale and Fischer. We received responses to these supplemental questionnaires from July through October 2009.

In September and October 2009, the Department verified the U.S. sales data reported by Fischer's U.S. affiliate, Citrusuco North America Inc. (CNA), and the COP/CV data reported by Fischer, respectively.

On October 28, 2009, the Department extended the deadline for the preliminary results in this review until no later than March 31, 2010. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 55540 (Oct. 28, 2009).

In November and December 2009, the Department verified Cutrale's and Fischer's sales information in Brazil and the U.S. sales data reported by Cutrale's U.S. affiliate, Citrus Products Inc (CPI). Also, in November, we issued and

received a final cost supplemental questionnaire from Cutrale.

In January 2010, the Department verified Cutrale's COP/CV data reported by Cutrale. In February 2010, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now April 7, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

In March 2010, at the request of the Department, Cutrale and Fischer submitted revised U.S. and home market sales databases. Also in March 2010, the Department requested that Cutrale report U.S. sales data related to exports of subject merchandise produced by unaffiliated Brazilian producers. In April 2010, Cutrale informed the Department that it did not have any such sales to unaffiliated customers in the United States during the POR.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. See *Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra-Frutesp (SA), Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for

retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Determination Not to Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. See 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise

necessary to offset dumping. See 19 CFR 351.222(b)(2)(i).

On March 31, 2009, Cutrale requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b). This request was accompanied by certification that: (1) Cutrale sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future; and (2) it sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Cutrale also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, it sold the subject merchandise at less than NV.

After analyzing Cutrale's request for revocation, we preliminarily find that it does not meet all of the criteria under 19 CFR 351.222(b). In this case, our preliminary margin calculation shows that Cutrale sold the subject merchandise at less than NV during the current review period. See "Preliminary Results of the Review" section below. Moreover, Cutrale's certification, which predated our final results of the second administrative review, was based on the erroneous belief that it would receive a zero or *de minimis* margin in their second administrative review. However, Cutrale received antidumping duty margins above *de minimis* in the second administrative review. See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009). Therefore, we preliminarily determine that Cutrale does not qualify for revocation of the order on orange juice pursuant to 19 CFR 351.222(b)(2), and that the order with respect to merchandise produced and exported by Cutrale should not be revoked.

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale and Fischer to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cutrale and Fischer covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Product type and organic designation. Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. See section 773(a)(4) of the Act.

Constructed Export Price

For all U.S. sales made by Cutrale and Fischer, we used the CEP methodology specified in section 772(b) of the Act because the subject merchandise was sold for the account of these respondents by their U.S. subsidiaries in the United States to unaffiliated purchasers.

A. Cutrale

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliate, CPI, on behalf of Cutrale, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to

include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. Where appropriate, we made adjustments for billing adjustments and rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight; U.S. brokerage and handling (offset by customer-specific reimbursements); U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses (*i.e.*, freight from port to warehouse); and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject merchandise, in accordance with our practice. See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (Aug. 11, 2008), and accompanying Issues and Decision Memorandum (2005–2007 OJ from Brazil) at Comment 7; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (2007–2008 OJ from Brazil). We also capped U.S. customs duty reimbursements, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking (offset by pallet revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue by the amount of repacking expenses, in accordance with our practice. In addition, we recalculated inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive

at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

For further discussion of the changes made to Cutrale's reported U.S. sales data, see the April 7, 2010, memorandum from Blaine Wiltse, Analyst, to the File, entitled "Calculation Adjustments for Sucocitrico Cutrale Ltda. for the Preliminary Results" (Cutrale Sales Calculation Memo).

B. Fischer

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate, CNA, on behalf of Fischer, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight expenses; bunker fuel surcharges; marine insurance expenses; U.S. brokerage and handling expenses; U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses (*i.e.*, freight from port to customer); and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. See *2005–2007 OJ from Brazil* at Comment 7 and *2007–2008 OJ from Brazil* at Comment 3. Further, we determined that the international freight expenses provided by Fischer's affiliated freight provider were not at arm's length. Therefore, for all sales shipped by Fischer's affiliate, we assigned the international freight rate

charged by Fischer's affiliate to an unaffiliated party to restate them on an arm's-length basis. For further discussion, see the April 7, 2010, memorandum to the file from Hector Rodriguez, Analyst, entitled "Calculations Performed for Fischer S.A. Comercio, Industria, e Agricultura for the Preliminary Results in the 08–09 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil" (Fischer Sales Calculation Memo).

In accordance with sections 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, additional processing expenses, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, other indirect selling expenses, and storage insurance expenses).

We made no adjustment to the price for CEP profit, pursuant to section 772(d)(3) of the Act, because Fischer incurred a loss during the POR and it is the Department's practice to not use "negative profit" rates in its calculations. *See, e.g., Low Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review*, 71 FR 52318 (Sept. 5, 2006), and accompanying Issues and Decision Memorandum at Comment 8; and *Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43653 (Aug. 11, 1999).

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for both respondents was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are

made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* *See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),¹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-

specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: Maintaining weekly contact with the customer; preparing quarterly and annual sales forecasts and corresponding shipping schedules; packing; arranging delivery to the port of exportation and the provision of customs clearance/brokerage services; and maintaining inventory at the port of exportation. *See* the February 25, 2010, memorandum to the file from Elizabeth Eastwood, Senior Analyst, Office 2, entitled "Verification of the Sales Response of Sucocitrico Cutrale Ltda. (Cutrale) in the 2008–2009 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil" (Cutrale home market sales verification report).

Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. *See 2007–2008 OJ from Brazil* at Comment 2 and *Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009). Based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.*, direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales, and found that Cutrale performed the following selling functions: Maintaining weekly contact with customers; visiting the customer and permitting the customer to visit the factory; preparing

¹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

sales estimates five times a year; order processing; advertising via sponsorship of a soccer team and signs placed on tankers; packing; inventory maintenance at the factory; and arranging delivery to home market customers. *See* Cutrale home market sales verification report at pages 7–10. In addition to these functions, Cutrale also claimed that it offered engineering services, technical assistance, and guarantees to home market customers. However, at verification, Cutrale acknowledged that it did not in fact provide any of these services during the POR. *Id.*

Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, and inventory maintenance and warehousing for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: (1) Visits with customers in the home market but not to/from CPI; (2) Cutrale performed limited advertising in the home market (such as the sponsorship of a local soccer team in Brazil and advertising related to the company's fortieth anniversary); and (3) Cutrale input orders into the company's computer system for home market sales (vs. the shipment of merchandise from a quarterly shipping schedule for U.S. sales).

According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Therefore, because we determine that substantial differences in Cutrale's selling activities do not exist across markets, we determine that sales to the U.S. and home markets during the POR were made at the same LOT. As a result, neither an LOT adjustment nor a CEP offset is warranted for Cutrale. This determination is consistent with findings in previous reviews. *See, e.g., 2005–2007 OJ from Brazil* at Comment 5, and *2007–2008 OJ from Brazil*.

2. Fischer

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.*,

sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Fischer reported that it made sales through one channel of distribution and that the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for home market sales, and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight; cold storage and inventory maintenance; sales and marketing support; and technical assistance. Accordingly, based on the selling function categories listed above, we find that Fischer performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Fischer.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither a LOT adjustment nor a CEP offset is warranted for Fischer.

C. Cost of Production Analysis

We found that both Cutrale and Fischer made sales below the COP in the 2005–2007 administrative review, the most recently completed segment of this proceeding as of the date of

initiation of this review, and such sales were disregarded. *See 2005–2007 OJ from Brazil*, 73 FR at 46585. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except in the following instances:

a. Cutrale

i. In accordance with the transactions disregarded rule (*i.e.*, section 773(f)(2) of the Act) we adjusted Cutrale's cost of manufacturing (COM) to reflect the market value of oranges that were purchased from an affiliate as well as the market value of by-products that were sold to affiliated parties;

ii. We adjusted Cutrale's reported COM to remove ICMS taxes from the by-product revenue;

iii. We revised Cutrale's general and administrative expense rate to include the net loss on routine disposals of fixed assets in the numerator and reduce the cost of goods sold (COGS), used as the denominator, by the by-product revenue; and

iv. We revised Cutrale's financial expense rate to reduce the COGS, used as the denominator, by packing expenses and the by-product revenue. For further discussion of these adjustments, see the April 7, 2010, Memorandum from Angie Sepulveda, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Results—Sucocitrico Cutrale Ltda."

b. Fischer

i. We adjusted Fischer's COM to reflect market price for the sale of certain by-products to an affiliated party;

ii. We revised Fischer's G&A calculation to include "other" operating expenses related to provisions and disposal of fixed assets; and

iii. We adjusted Fischer's financial ratio numerator to include long-term interest expense from an affiliated party

and exchange rate variations (net), and we adjusted the financial ratio denominator for selling expenses and by-product sales.

See the April 7, 2010, Memorandum from Christopher J. Zimpo, Accountant, to Neal M. Halper, Director Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Fischer S.A. Comercio, Industria and Agricultura.”

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses and packing expenses. We revised Cutrale’s selling expenses as discussed below under the “Calculation of Normal Value Based on Comparison Market Prices” section.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent’s home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale’s and Fischer’s home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis. We used the remaining sales as the basis for determining NV for Cutrale, in accordance with section 773(b)(1) of the Act. However, because all of Fischer’s home market sales failed the cost test, we based NV on CV for this company.

D. Calculation of Normal Value Based on Comparison Market Prices

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We adjusted the reported prices to account for the difference between the standard and actual brix levels at which the foreign like product was sold, using facts available under section 776(a) of the Act. As facts available, we used the highest actual brix level observed at verification for any reported home market sale. We find that facts available is warranted in this instance because to date Cutrale failed to provide useable data related to its actual brix levels. Nonetheless, we have afforded Cutrale a final opportunity to provide the necessary information, and we will consider this information, if submitted in a timely manner for the final results in this review.

We made adjustments, where appropriate, to the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We made deductions to the starting price for foreign warehousing expenses (offset by warehousing revenue) in accordance with section 773(a)(6)(B)(ii) of the Act. We capped warehousing revenue by the amount of warehousing expenses incurred on home market sales, in accordance with our practice. See 2007–2008 OJ from Brazil at Comment 3. We made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. We recalculated credit expenses to base the home market interest rate on Cutrale’s actual borrowings during the POR. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission. We calculated home market inventory carrying costs using

the manufacturing costs reported in Cutrale’s most recent cost response, adjusted as noted in the “Calculation of Cost of Production” section of this notice, above. For further discussion of these adjustments, see the Cutrale Sales Calculation Memo.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, because Fischer made no home market sales in the ordinary course of trade, we based NV for Fischer on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. We calculated the cost of materials, fabrication and G&A financial expenses based on the methodology described in the “Cost of Production Analysis” section, above. Because Fischer did not have home market sales in the ordinary course of trade, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Fischer does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Moreover, because the only respondent in this administrative review other than Fischer is Cutrale, we are unable to apply alternative (ii) of section 773(e)(2)(B) of the Act (*i.e.*, the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to this review (other than the exporter or producer described in clause (i)), because using Cutrale’s actual amounts would disclose Cutrale’s business proprietary data.

Therefore, we calculated Fischer’s CV profit and selling expenses based on alternative (iii) of this section, in accordance with section 773(e)(2)(B)(iii) of the Act. As a result, we calculated Fischer’s CV profit and selling expenses using its own data for home market

sales in the ordinary course of trade in the most recently completed segment of this proceeding (*i.e.*, the 2007–2008 administrative review). For further discussion, see the Fischer Sales Calculation Memo.

For comparisons to CEP, we deducted home market direct selling expenses from CV. *Id.* We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions. See 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2008, through February 28, 2009, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A.	8.29
Fischer S.A. Comercio, Industria, and Agricultura	5.26

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The

Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all

shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.51 percent, the all-others rate made effective by the LTFV investigation. See *OJ Order*, 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: April 7, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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