

administrative review of this order for the period September 1, 1997 through August 31, 1998. On November 30, 1998, Rudong withdrew its request for this review.

#### Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or at a later date if the Department determines that such an extended time is reasonable. Rudong withdrew its request for review within the 90-day period. No other party requested a review for the September 1, 1997 through August 31, 1998 period. Therefore, we are rescinding this review. This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: January 27, 1999.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for AD/  
CVD Enforcement III.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-605]

#### Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil in response to a timely request from the petitioners to review six manufacturers/exporters of the subject merchandise. This review covers the U.S. sales and/or entries of only four manufacturers/exporters because we are rescinding this review with respect to two companies. This is the eleventh period of review, covering May 1, 1997, through April 30, 1998.

We have preliminarily determined that sales have been made below normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess

antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sergio Gonzalez or Shawn Thompson, Office of AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1779 or (202) 482-1776, respectively.

#### *Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On May 12, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (63 FR 26143).

In accordance with 19 CFR 351.213(b)(1), on May 29, 1998, Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. (collectively "the petitioners") requested an administrative review of the antidumping order covering the period May 1, 1997, through April 30, 1998, for the following producers and exporters of FCOJ: Branco Peres Citrus, S.A. (Branco Peres), Cambuhy Citrus Comercial e Exportadora Ltd. (Cambuhy), Citrovia Agro Industrial S.A. (Citrovia), CTM Citrus S.A. (CTM), Frutax Industria e Comercio Ltda. (Frutax), and Sucorrico S.A. (Sucorrico). On June 12, 1998, the Department issued questionnaires to each of these companies. On June 29, 1998, the Department published in the **Federal Register** a notice of initiation of administrative review for Branco Peres,

Cambuhy, Citrovia, CTM, Frutax, and Sucorrico (63 FR 35188).

In July 1998, Cambuhy, CTM, and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed this with information from the Customs Service with regard to CTM and Sucorrico. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations and consistent with the Department's practice, we are rescinding our review for CTM and Sucorrico. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

Regarding Cambuhy, we were informed by the Customs Service that this company exported FCOJ to Puerto Rico during the POR. Consequently, on August 17, 1998, we issued a supplemental questionnaire to Cambuhy in which we again requested that it provide sales information. On September 2, 1998, Cambuhy acknowledged that it had exported to Puerto Rico, but declined to participate further in the administrative review. Because Cambuhy did not respond to the questionnaire, we have preliminarily assigned it a margin based on adverse facts available. For further discussion, see the "Facts Available" section of this notice, below.

In August 1998, we received responses from Branco Peres and Citrovia. We received no response from Frutax. Because Frutax did not respond to the questionnaire, we have also preliminarily assigned a margin to this company based on adverse facts available. For further discussion, see the "Facts Available" section, below.

Also in August 1998, we issued a supplemental questionnaire to Branco Peres. We received a response to this questionnaire in September 1998.

In August and September 1998, the petitioners alleged that Branco Peres and Citrovia were selling at prices below the cost of production (COP) in their third country and home markets, respectively. Based on information submitted by the petitioners, the Department found reasonable grounds to believe or suspect that sales in the foreign markets were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated investigations to determine whether Branco Peres and Citrovia made foreign market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. For further discussion, see the memorandum to Louis Apple from the team entitled

"Initiation of Sales Below the Cost of Production Investigations in the Antidumping Duty Administrative Review of Frozen Concentrated Orange Juice from Brazil," dated October 14, 1998.

In October 1998, we issued a supplemental sales questionnaire to Citrovita.

In November 1998, both Branco Peres and Citrovita informed the Department that they did not intend to submit additional sales or cost information. Consequently, because these companies did not respond to the COP questionnaires, and in the case of Citrovita the supplemental sales questionnaire, we have also assigned them a margin based on adverse facts available. For further discussion, see the "Facts Available" section, below.

### Scope of the Review

The merchandise covered by this review is FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and for U.S. Customs purposes. The Department's written description remains dispositive.

### Partial Rescission of Review

As noted above, in July 1998, CTM and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with information received from the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to CTM and Sucorrico (see, e.g., *Certain Welded Carbon Steel Pipe and Tube from Turkey*; Final Results and Partial Rescission of Antidumping Administrative Review, 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers From Colombia*; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53288 (Oct. 14, 1997)).

### Facts Available

#### A. Use of Facts Available for Branco Peres, Cambuhy, Citrovita, and Frutax

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for the dumping margin for Branco Peres, Cambuhy, Citrovita, and Frutax. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds

information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, both Cambuhy and Frutax failed to respond to the Department's questionnaire, issued in June 1998, while Branco Peres and Citrovita failed to respond to the COP questionnaire. Moreover, Citrovita also failed to respond to a supplemental questionnaire regarding sales information.

Because all four respondents have failed to respond to certain questionnaires and have refused to participate fully in this administrative review, we preliminarily determine that, in accordance with sections 776(a) and 782(e) of the Act, the use of total facts available is appropriate. See, e.g., *Certain Grain-Oriented Electrical Steel From Italy*: Final Results of Antidumping Duty Administrative Review, 62 FR 2655 (Jan. 17, 1997).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. at 870. The failure of each of the four respondents to participate in the review and to respond to the Department's questionnaires demonstrates that each has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737 (Mar. 4, 1997); and *Extruded Rubber Thread From Malaysia*; Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (Mar. 16, 1998).

In situations involving non-cooperating respondents of this type, it is the Department's normal practice to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding. (See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*; Final Results of Antidumping Duty Administrative Review and

*Determination to Revoke in Part*, 64 FR 2173, 2175 (Jan. 13, 1999); and *Brass Sheet and Strip from Germany*; Final Results of Antidumping Duty Administrative Review, 63 FR 42823 (Aug. 11, 1998).) In this case, however, use of this margin, 2.52 percent, would not be appropriate because it is apparent that the respondents would benefit from their lack of cooperation, given that 2.52 percent is much lower than the margins actually calculated based on information submitted by respondents in this segment of the proceeding (see below). Therefore, we do not believe this rate is high enough to encourage participation in future segments of this proceeding.

Consequently, in accordance with section 776(b)(4) of the Act, we have used the data on the record of this proceeding as adverse facts available. Specifically, we used the data supplied by the petitioners in the cost allegation, as well as the sales data provided by the two respondents that submitted partial questionnaire responses (*i.e.*, Branco Peres and Citrovita), to calculate sales-specific dumping margins. We then selected as the facts available rate for each of the four non-cooperating respondents the highest transaction-specific margin calculated in this manner. This rate is 65.20 percent. For the procedures used to determine this rate, see the "Calculation of the Facts Available Rate" section, below.

We find that the methodology described above is appropriate given the particular facts of this case. Specifically, we note that, unlike in many cases, the publicly available cost data submitted by the petitioners in the cost allegation was complete. The petitioners provided cost data for 100 percent of the products sold by Branco Peres and Citrovita. Moreover, this data was contemporaneous with the POR and specific to Brazil. Finally, this methodology results in a facts available rate that is sufficiently high to effectuate the purpose of the facts available rule—which is to encourage the participation of these companies in future segments of this proceeding.

#### B. Calculation of the Facts Available Rate

As noted above, we used the data in the cost allegation to perform the cost test for Branco Peres and Citrovita. The COP information in the cost allegation was obtained from two sources: (1) A U.S. Department of Agriculture Attache Report, dated November 1997, which showed the price and quantity of oranges needed to produce one metric ton of FCOJ; and (2) a study by a University of Florida professor

published in *Citrus & Vegetable Magazine* in December 1997, which showed FCOJ processing and general and administrative costs.

We compared the COP figures derived from the cost allegation to home market/third country prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. We compared product-specific COPs to product-specific foreign market prices, less any applicable movement charges.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. See section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that product were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that more than 20 percent of Branco Peres' and Citrovita's foreign market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and, where available, used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of FCOJ for which there were no comparable foreign market sales in the ordinary course of trade, we compared export price (EP) and constructed export price (CEP) to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV using the COP data referenced above. In accordance with section 773(e)(2)(A) of

the Act, we based profit for Branco Peres on the amounts incurred and realized by this company in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Regarding Citrovita, because: (1) This company made no sales at prices above the COP; and (2) there was no publicly available profit rate on the record of this proceeding, we used a profit rate which was derived from the public financial statements of the sole respondent who participated in the most recent prior administrative review. For further discussion, see the memorandum to the file from Sergio Gonzalez entitled "Calculations Performed for Citrovita for the Preliminary Results," dated February 1, 1999 (the Citrovita Calculation Memorandum).

In accordance with the results of the cost test, we disregarded all foreign market sales made at prices below the COP.

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Company-specific calculations are discussed below.

#### 1. Branco Peres

We calculated EP using the data submitted by Branco Peres in its September 18, 1998, supplemental questionnaire response. We based EP on the gross unit price to the first unaffiliated purchaser in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 772(c)(2)(A) of the Act.

We also calculated NV using the data submitted on September 18, 1998. Based on the results of the cost test described above, we found that Branco Peres made certain third country sales during the POR at prices above the COP.

Consequently, where a contemporaneous comparison existed, we based NV on these above-cost sales. Where no contemporaneous comparison existed, we based NV on CV.

Where NV was based on third country sales, we based NV on the gross unit price to unaffiliated customers. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments,

where appropriate, for differences in commissions and credit expenses.

Where NV was based on CV, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act.

#### 2. Citrovita

We calculated CEP using the data submitted by Citrovita on August 17, 1998. We calculated CEP based on the gross unit price to the first unaffiliated customer in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. We made additional deductions, where appropriate, for commissions, credit, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Because Citrovita did not respond to the supplemental sales questionnaire, we adjusted its U.S. sales data to account for certain discrepancies in its response. Specifically, where the data shown on Citrovita's calculation worksheets differed from the data contained in the U.S. sales listing, we used the highest figure reported as facts available. See the Citrovita Calculation Memorandum.

Pursuant to section 772(d)(3) of the Act, we further reduced gross unit price by an amount for profit, to arrive at CEP. Because there was no publicly available profit rate on the record of this proceeding, we used a profit rate which was derived from the public financial statements of the sole respondent who participated in the most recent prior administrative review. See the Citrovita Calculation Memorandum.

Based on the results of the cost test described above, we found that Citrovita made no home market sales during the POR at prices above the COP. Consequently, we based NV on CV.

For CEP-to-CV comparisons, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses (offset by interest revenue received by Citrovita), in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act. We computed the CV profit rate using the same financial statements referenced above. Furthermore, we recalculated home market credit expenses on the basis of home market price net of Brazilian taxes, in accordance with our practice. See, e.g., *Ferrosilicon from Brazil*; Final Results of Antidumping Duty Administrative

Review, 61 FR 59407 (Nov. 22, 1996). For further discussion, see the Citrovia Calculation Memorandum.

### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1997, through April 30, 1998:

Manufacturer/exporter	Margin percent
Branco Peres Citrus, S.A .....	65.20
Cambuhy Citrus Comercial e Exportadora Ltda .....	65.20
Citrovita Agro Industrial S.A .....	65.20
Frutax Industria e Comercio Ltda .....	65.20

Interested parties may request a hearing within 30 days of the publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days from the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The duty assessment rates for importers of subject merchandise will be those rates listed above. These rates will be assessed uniformly on all entries of FCOJ made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Branco Peres, Cambuhy, Citrovia, and Frutax will be the rates established in the final results of this review; (2) for any previously reviewed or investigated company not listed above, 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, a prior review, or the 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 1.96 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: February 1, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-803]

#### **Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews**

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

**ACTION:** Notice of preliminary results and partial rescission of antidumping duty administrative reviews.

**SUMMARY:** We preliminarily determine that sales of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China were made below normal value during the period February 1, 1997 through January 31, 1998. Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or James Terpstra, AD/CVD

Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-4474 or 482-3965, respectively.

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (1998).

### Background

On February 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (certain heavy forged hand tools or HFHTs), from the People's Republic of China (PRC). On February 5, 1998, the Department published in the **Federal Register** (63 FR 5929) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 24, 1998, three exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Fujian Machinery & Equipment Import & Export Corporation (FMEC) requested that the Department conduct an administrative review of its exports of axes/adzes; hammers/sledges; and picks/mattocks. Shandong Huarong General Group Corporation (Shandong Huarong) and Liaoning Machinery Import & Export Corporation (LMC) requested that the Department conduct administrative reviews of their exports of bars/wedges. On February 27, 1998, another exporter, Shandong Machinery Import & Export Corporation (SMC), requested that the Department conduct an administrative review of its exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks. Also on February 27, 1998, the petitioner, O. Ames Co., requested administrative reviews of FMEC's, Shandong Huarong's, LMC's, SMC's, and Tianjin Machinery Import & Export Corporation's (TMC's) exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks.

We published the notice of initiation of these reviews on March 23, 1998 (63 FR 13837). In its June 23, 1998, Sections C and D questionnaire response,