

### Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish AVISMA's dumping margin, we will instruct CBP to apply a dumping margin of 43.58 percent to all entries of subject merchandise during the POR that was produced and/or exported by AVISMA.

The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

### Cash-Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results

of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash-deposit rate for AVISMA will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered 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, 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 subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation which is 21.01 percent. See *Antidumping Duty Order*. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

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

Dated: March 31, 2009.

**Ronald K. Lorentzen,**

*Acting 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

**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 with respect to two producers/exporters of the subject merchandise to the United States. This is the second period of review (POR), covering March 1, 2007, through February 29, 2008.

We have preliminarily determined that sales to the United States have not 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 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Miriam Eqab, 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) 482-3693, 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 3, 2008, 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, 2007, through February 29, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 11389 (Mar. 3, 2008).

In accordance with 19 CFR 351.213(b)(2), in March 2008, 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 accordance with 19 CFR 351.213(b)(1), also in March 2008, 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 2008, 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*, 73 FR 22337 (Apr. 25, 2008). Also in April 2008, we issued questionnaires to them.

In June 2008, 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 July and September 2008, we issued two supplemental sales questionnaires and one cost questionnaire to Cutrale. We received responses to these supplemental questionnaires in July and October 2008.

On October 9, 2008, the Department extended the deadline for the preliminary results in this review until no later than March 31, 2009. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 59603 (Oct. 9, 2008).

In November 2008, we issued a supplemental cost questionnaire to Fischer. We received a response to this questionnaire in December 2008.

In December and January 2008, we issued a third supplemental sales questionnaire to Cutrale, a second supplemental cost questionnaire to Cutrale, and a supplemental sales questionnaire to Fischer. We received responses to these supplemental questionnaires in January and February 2009.

In February 2009, we issued an additional supplemental cost questionnaire to Fischer. In March 2009, we issued an additional supplemental sales questionnaire to each respondent. Responses to these questionnaires, as well as to the additional cost questionnaire for Fischer, were received in the same month.

### 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 (Cargill), Coinbra-Frutesp, 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.

### 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 Tariff Act of 1930, as amended (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 orange juice to sales of orange juice 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 the 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.

### 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. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act.

Cutrale reported in its U.S. sales listing certain futures contract sales made during the most recently completed review period. Although Cutrale should have reported these transactions during that review period, it did not. In this instance, we have included in our analysis those pre-POR CEP sales with entry dates during the POR because the number of these sales was significant. In future segments of the proceeding, we will require Cutrale to report all sales made during the review period under consideration.

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 reimbursements from the customer), 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 and U.S. customs duties, as well as U.S. drawback, by the amount of brokerage and handling expenses and U.S. customs duties, respectively, 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.

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 (as recalculated), 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 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. We also recalculated indirect selling expenses for Cutrale's U.S. subsidiary Citrus Products, Inc. (CPI) to include financing expenses, offset by interest income. Because Cutrale did not report financing expenses incurred by CPI during the POR as requested in our February 13, 2009, supplemental questionnaire, we used the amount reported for the period October 1, 2006, through December 1, 2007, as facts available, under section

776(a)(2)(A) of the Act. Finally, we recalculated indirect selling expenses for Cutrale's U.S. subsidiary Cutrale Citrus Juices U.S.A., Inc. to include certain bonus payments accrued during the POR and included in the company's 2007 financial statement, as well as financing expenses.

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. affiliates 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 March 31, 2009, memorandum from Miriam Eqab, 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 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 warehouse or 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.

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, and imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

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 Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

#### 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),<sup>1</sup> 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 affiliated resellers) 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: Order Processing; arranging for freight and the provision of customs clearance/brokerage services; packing; and maintaining inventory at

the port of exportation. 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 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: Sales forecasting, strategic/economic planning, engineering services, advertising, packing, inventory maintenance, order input/processing, employment of direct sales personnel, technical assistance, provision of guarantees, and provision of after-sales services. Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, 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 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. 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 an LOT adjustment nor a CEP offset is warranted for Cutrale. We note that, while Cutrale is claiming a CEP offset in this proceeding, Cutrale itself admits that there are no significant differences between its sales process during the POR of the previous administrative review and the current POR, with the exception of an increase in advertising expenses in the home market. *See Cutrale's July 17, 2008, section A supplemental response at page 6.* Consequently, because no compelling evidence exists that Cutrale's sales process materially changed during the POR of this administrative review, we continue to find that no CEP offset is warranted for Cutrale, as we did in the previous administrative review. *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 at Comment 5.

#### 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

<sup>1</sup> 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.

home markets during the POR were made at the same LOT, and as a result, neither an LOT adjustment nor a CEP offset is warranted for Fischer.

### C. Cost of Production Analysis

We found that both Cutrale and Fischer had made sales below the COP in the less-than-fair-value (LTFV) investigation, the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded. See *LTFV Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557, 49563 (Aug. 24, 2005) (*LTFV Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (Jan. 13, 2006) (*LTFV Final Determination*). 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 to reflect the market value of oranges that were purchased from an affiliate.

ii. We revised the financial expense ratio calculation to reduce the denominator by the by-product sales revenue.

iii. We revised the G&A expense ratio calculation to include goodwill expenses in the numerator and to reduce the denominator by the by-product sales revenue.

For further discussion of these adjustments, see the Memorandum from

Gina Lee, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results—Sucocitrico Cutrale Ltda," dated March 31, 2009.

##### b. Fischer

i. We revised Fischer's G&A expense rate calculation to include amortization of goodwill and a loss provision on fruit contract advances.

For further discussion of this adjustment, see the Memorandum from Frederick W. Mines, 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," dated March 31, 2009.

#### 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, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" 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) or 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 and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

### D. Calculation of Normal Value Based on Comparison Market Prices

#### 1. Cutrale

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. 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 *2005–2007 OJ from Brazil* at Comment 7. We also 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 using the formula provided in Cutrale's response. 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.

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. We recalculated packing expenses to state them on a packing-type basis (*e.g.*, drums in varying sizes). For further

discussion of these adjustments, *see* the Cutrale Sales Calculation Memo.

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.

## 2. Fischer

We calculated NV based on delivered prices to unaffiliated customers. 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 deducted foreign inland freight expenses and inland insurance expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). We deducted home market packing costs 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.

## 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.

In its February 2, 2009, submission, Fischer provided exchange rate data to show that the U.S. dollar fell against the Brazilian real during the POR, and it argued that the Department should account for this currency fluctuation in its preliminary results calculations in accordance with the policy set forth in *Notice: Change in Policy Regarding Currency Conversions*, 61 FR 9434 (Mar. 8, 1996) (*Currency Policy Bulletin*). The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see Currency Policy Bulletin*.) *See also Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative*

*Review*, 65 FR 35892 (June 6, 2000), unchanged in *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 65 FR 60406 (Oct. 11, 2000). Because we have used the benchmark rates here where warranted, in accordance with our normal practice, we find that no additional adjustment is necessary.

## Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2007, through February 29, 2008, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A. ....	0.02
Fischer S.A. Comercio, Industria, and Agricultura.	0.00

## 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 appraisement 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 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: March 31, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-7691 Filed 4-3-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are

intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 27, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number: 09-007.* Applicant: University of Utah, Consortium for Astro-Particle Research, 215 South State Street, Suite 200, Salt Lake City, UT 84111. Instrument: Electron Light Source (ELS) accelerator. Manufacturer: University of Tokyo, Japan. Intended Use: The instrument will be used as a component of a large ground Telescope Array, which will allow the scientists to calibrate the telescopes by generating a particle beam that accurately simulates a cosmic ray shower. Justification for Duty-Free Entry: No instruments of the same general category as the foreign instrument begin manufactured in the United States. Application accepted by Commissioner of Customs: March 10, 2009.

Dated: March 31, 2009.

**Christopher Cassel,**

*Acting Director, IA Subsidies Enforcement Office.*

[FR Doc. E9-7689 Filed 4-3-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-849]

#### Commodity Matchbooks from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of commodity matchbooks from India. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty investigation of commodity matchbooks from India.

**EFFECTIVE DATE:** April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3964 and (202) 482-3782, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. See *Commodity Matchbooks from India: Initiation of Countervailing Duty Investigation*, 73 FR 70968 (November 24, 2008) (*Initiation Notice*).

On December 10, 2008, the Department selected as mandatory respondent, Triveni Safety Matches Pvt., Ltd. (Triveni), the only producer/exporter of commodity matchbooks from India identified in the Petition during the period 2005 through 2008. The Department found no information indicating that there were other Indian producers or exporters of commodity matchbooks. See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Commodity Matchbooks from India: Respondent Identification." A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On December 16, 2008, we issued the CVD questionnaire to the Government of India (GOI), requesting that the GOI forward the company sections of the questionnaire to the mandatory respondent company.

On December 19, 2008, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of commodity matchbooks from India. See *Commodity Matchbooks from India: Determinations*, 73 FR 77840 (December 19, 2008); and *Commodity Matchbooks from India (Preliminary)*, USITC Pub. 4054, Inv. Nos. 701-TA-459 and 731-TA-1155 (December 2008).

On January 7, 2009, we postponed the preliminary determination of this investigation until March 30, 2009. See *Commodity Matchbooks from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 683 (January 7, 2009). We received a response from