	Period
The Ukraine:	
Titanium Sponge, A–823–803	8/1/98–7/31/99
Uranium, A–823–802	8/1/98–7/31/99
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/98–7/31/99
Turkey: Aspirin, A–489–602	8/1/98–7/31/99
Suspension Agreements	
Japan: Color Negative Photographic Paper, A–588–832	8/1/98–7/31/99
The Netherlands: Color Negative Photographic Paper, A–421–806	8/1/98–7/31/99
The People's Republic of China: Honey, A–570–838	8/1/98–7/31/99
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/98–12/31/98
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/98–12/31/98
Canada:	
Live Swine, C–122–404	4/1/98–3/31/99
Pure Magnesium, C–122–815	1/1/98–12/31/98
Alloy Magnesium, C–122–815	1/1/98–12/31/98
France: Corrosion-Resistant Carbon Steel, C–427–810	1/1/98–12/31/98
Germany:	
Cold-Rolled Carbon Steel Flat products, C–428–817	1/1/98–12/31/98
Corrosion-Resistant Carbon Steel, C–428–817	1/1/98–12/31/98
Cut-to-Length Carbon Steel Plate, C–428–817	1/1/98–12/31/98
Israel: Industrial Phosphoric Acid, C–508–605	1/1/98–12/31/98
Italy:	
Seamless Pipe, C–475–815	1/1/98–12/31/98
Oil Country Tubular Goods, C–475–817	1/1/98–12/31/98
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/98–12/31/98
Republic of Korea:	
Cold-Rolled Carbon Steel Flat Products, C–580–818	1/1/98–12/31/98
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/98–12/31/98
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/98–12/31/98
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/98–12/31/98
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/98–12/31/98

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, US Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 1999. If the Department does not receive, by the last day of August 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–20735 Filed 8–10–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

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

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

SUMMARY: On February 5, 1999, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of

the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers the U.S. sales and/or entries of four manufacturers/exporters. We are rescinding this review with respect to two additional companies. This is the eleventh period of review, covering May 1, 1997, through April 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. We have considered the comments we received in our analysis and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Sergio Gonzalez or Shawn Thompson, Office of AD/CVD Enforcement, DAS Group I, 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 of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1999, the Department published in the **Federal Register** its preliminary results of the 1997–1998 administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (64 FR 5767). The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

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 customs purposes. The Department's written description remains dispositive.

Partial Rescission of Review

As noted in the preliminary results, in July 1998, two companies to whom the Department issued the questionnaire, CTM Citrus S.A. (CTM) and Sucorrico S.A. (Sucorrico), informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR) (*i.e.*, May 1, 1997, through April 30, 1998). 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

In accordance with section 776(a)(2)(A) of the Act, we have based the dumping margin for Branco Peres Citrus S.A. (Branco Peres), Cambuhy Citrus Comercial e Exportadora Ltd. (Cambuhy), Citrovita Agro Industrial S.A. (Citrovita), and Frutax Industria e Comercio Ltda. (Frutax) on facts available. 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 cost of production (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 find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China,* 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review,* 62 FR 2655 (Jan. 17, 1997) (affirming *Certain Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 36551 (July 4, 1996)).

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 (SAA) accompanying the URAA, H.R. Doc. 103–316, Vol. 1, 870 (1994). The failure of each of the four respondents to participate in the review or to respond completely to the Department's questionnaires demonstrates that each has failed to act to the best of its ability in complying with the Department's request for information 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) (*Rebar from Turkey*); and *Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review,* 64 FR 12967 (Mar. 16, 1999).

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. *See, e.g., Steel Wire Rope from the Republic of Korea; Final*

Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 63 FR 17986, 17987 (April 13, 1998).

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 rates for Branco Peres and Citrovita the highest company-specific and transaction-specific margins calculated in this manner. The highest company-specific rates are 39.18 and 63.55 percent, respectively. In addition, we assigned the higher of these rates to the two remaining respondents who did not submit questionnaire responses (*i.e.*, Cambuhy and Frutax). For the procedures used to determine the rates, *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. (*See Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States,* 865 F. Supp. 857, 858 (CIT 1994), where the Court affirmed that the best information available provisions encourage compliance with the Department's requests for information, in view of the Department's lack of subpoena power.)

B. Calculation of the Facts Available Rates

As mentioned above, we calculated margins based on the information on the record using the following methodology:

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 June 1998, which showed the price and quantity of oranges needed to produce one metric ton of FCOJ in Brazil; 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 in Brazil.

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 normal value (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 constructed value (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 *Comment 2* in the ''Analysis of Comments Received'' section of this notice.

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 sections 773(a)(6)(C)(iii) and (a)(8) of the Act. Because it was unclear whether the processing costs included in CV contained commission expenses, as facts available we assumed that these costs were exclusive of commissions.

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 expenses, 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 memorandum to the file from Sergio Gonzalez entitled ''Calculations Performed for Citrovita for the Preliminary Results,'' dated February 1, 1999.

We made no adjustment to the price for CEP profit, pursuant to section 772(d)(3) of the Act, because Citrovita operated at a loss with respect to its sales of FCOJ during the POR. *See Comment 3.*

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 sections 773(a)(6)(C)(iii) and (a)(8) of the Act. We computed the CV profit rate using the public financial statements of the sole respondent who participated in the most recent prior administrative review. (*See Comment 2.*) 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).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from two respondents, (*i.e.,* Branco Peres and Citrovita). We received rebuttal comments from the petitioners, (*i.e.,* Florida Citrus Mutual, Caulkins Indian Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp).

Comment 1: Use of Adverse Facts Available

Both Branco Peres and Citrovita contend that the Department's decision to use adverse facts available to calculate the margins in this review is not supported by evidence on the record, is contrary to law, and is in violation of application of the Agreement on Application of Article VI of GATT 1994, Annex II (use of best information available) (GATT 1994).

Specifically, these companies argue that, in order to apply adverse facts available, the Department must first make a finding that the companies did not act to the best of their ability. *See Borden, Inc., et al.,* versus *United States,* F. Supp. 2d 1221, 1246–47 (CIT 1998). Both companies argue that the Department cannot make such a finding in this review, because each respondent submitted complete, or almost complete, sales data, and the failure to provide cost data was caused by factors beyond their control. Branco Peres asserts that it did not possess the cost information required by the Department (due to circumstances of a business proprietary nature which cannot be discussed here), while Citrovita maintains that it did not possess personnel resources sufficient to complete the review (due to an economic crisis in Brazil).

According to Branco Peres, Congress intended the Department to take these types of circumstances into account when evaluating a respondent's data. In support of this assertion, Branco Peres cites the SAA, which states that the Department ''may take into account the circumstances of the party including (but not limited to) the party's size, its accounting systems, and computer capabilities, as well as the prior success of the same firm, or other similar firms, in providing requested information in antidumping and countervailing duty proceedings.'' Branco Peres asserts that, not only does it have a history of being a cooperative respondent in prior segments of this proceeding, but it also would have supplied all of the data requested in this segment had it been able to do so. According to Branco Peres, the circumstances surrounding its inability to supply cost data are precisely the type of circumstances envisioned by Congress.

Branco Peres asserts that the courts have made clear that the Department may not use adverse facts available to penalize companies for failing to provide information that does not exist. Branco Peres maintains that the courts have similarly held that the Department may not characterize a party's failure to provide such information as a ''refusal'' to provide information. *See Olympic Adhesives, Inc.* versus *United States,* 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic Adhesives*).

According to Branco Peres and Citrovita, given the fact that the Department erred with respect to finding that each did not act to the best of its ability, the Department's use of adverse facts available is contrary to law and to GATT 1994.[1] Branco Peres and Citrovita cite to section 782(e) of the Act (19 U.S.C. 1677m(e)), which states that the administering authority shall not decline to use information that is submitted by an interested party if that information is verifiable, submitted on time, is not so incomplete that it cannot be used, has been provided to the best of the party's ability, and can be used without difficulty. Branco Peres and Citrovita also assert that their information meets each of the above three criteria: it was submitted on time, it can be used without difficulty (since the Department did, in fact, use it to some extent for purposes of the preliminary results); and it has been provided to the best of the respondents' abilities. Moreover, while they acknowledge that the Department would be justified in using facts available to determine COP for both companies (and selling expenses for Citrovita), they argue that there is no basis for applying total facts available.

According to Citrovita, the Department has discretion in deciding whether to make adverse inferences. As support for this position, Citrovita cites the preamble to the Department's

[1] The language in Annex II of the Agreement on Implementation of Article VI of GATT (1994) to a large extent mirrors that in 19 USC 1677m(e).

regulations (*see Final rule*, 62 FR 37296, 27340 (May 19, 1997)), which states that ''if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department, in reaching its determination, 'may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.' ''

Citrovita argues that the Department has consistently distinguished between respondents who do not cooperate at all and those who attempt to respond to the Department's information requests but cannot do so completely. As support for this assertion, Citrovita cites the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996) (*Pasta from Italy: LTFV Investigation*); *Roller Chain, Other Than Bicycle from Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 63671, 63674 (Nov. 16, 1998) (*Roller Chain from Japan*); and *Certain Cut-to-Length Carbon Steel Plate from Sweden: Final Results of Administrative Review*, 62 FR 46947, 46948 (Sept. 5, 1997). Citrovita notes that in the former two cases the Department assigned less adverse facts available rates based upon a finding of partial cooperation, while in the latter case the Department assigned a higher rate to a respondent who failed to cooperate at all. Consistent with these findings, Citrovita contends that the Department should assign it and Branco Peres facts available margins which are lower than the one assigned to Cambuhy and Frutax, given that they fully participated in this review by submitting responses to the Department's sales questionnaire, while Cambuhy and Frutax did not respond to any requests for information.

Moreover, both respondents argue that, not only was the decision to use adverse facts available unsupported by law or Department practice, but also the method used to select the facts available margin was completely arbitrary. According to the respondents, the Department should reconsider its decision because the courts have held that the power to use facts available against recalcitrant parties cannot be used arbitrarily. *See AK Steel Corp., et al.*, v. *United States*, 34 F. Supp. 2d 756, 771 (CIT 1998).

Specifically, the respondents note that the Department deviated from its normal practice of applying the highest margin ever found in the current or any prior segment of the same proceeding, based on a finding that the respondents would benefit from such a policy. Branco Peres argues that in order to make this finding, however, the Department treated the respondents' data inconsistently, in that it deemed it reliable for certain purposes but not others. For example, Branco Peres asserts that, while the Department used the data to: (1) Determine the extent of the respondents' below-cost sales; (2) determine the fact that the calculated margin would be higher than the highest margin calculated in any prior segment (*i.e.*, 2.52 percent); and (3) calculate transaction-specific margins, it did not deem it reliable enough to calculate the weighted-average dumping margin. According to Branco Peres, the Department failed to explain why the respondents' information was sufficiently reliable to justify departure from normal procedures, but not sufficiently reliable to calculate weighted-average margins.

Furthermore, Branco Peres argues that the Department failed to explain why Citrovita's price information is a more reliable indicator of Branco Peres' margin than Branco Peres' own data, especially given that Branco Peres submitted a response to the Department's supplemental questionnaire, while Citrovita did not. Indeed, Branco Peres argues that the Department in three separate instances disregarded manifestly better information that was on the record in favor of inferior information. Specifically, Branco Peres asserts that the Department: (1) Used Citrovita's, rather than Branco Peres', prices to establish the dumping margins for Branco Peres; (2) calculated the adverse facts available margin using CEP methodology (because Citrovita made CEP sales), although Branco Peres had no CEP sales; and (3) calculated profit using Branco Peres' pre-POR profits when the information on the record showed that neither Branco Peres nor Citrovita was operating at a profit during the POR. Branco Peres asserts that the use of Citrovita's information is impermissible in this instance, because courts have held that the Department may not disregard acceptable information in favor of what is demonstrably inferior information. *See Rautaruukki Oy* v. *United States*, Consol. Ct. No 97–05–00864, Slip Op. 98–112, 1998 CIT LEXIS 109 (Aug. 4, 1998) (*Rautaruukki*).

Branco Peres argues that, for purposes of the final results, the Department should determine its margin by comparing net U.S. prices to the cost information submitted by the petitioners (*i.e.*, costs without profit). According to Branco Peres, the margin resulting from this comparison is sufficiently punitive, because it is more than twice the highest rate calculated in any prior review. Alternatively, the respondents assert that the Department should apply the weight-averaged rates calculated, but not used, for each respondent for purposes of the preliminary results. These rates are 18.33 percent for Branco Peres and 22.09 for Citrovita.[2] The respondents argue that these rates would not in any way reward them for not supplying information, because they were calculated using the cost data submitted by the petitioners. According to the respondents, because this cost information is overstated, the extent of the dumping margins is overstated as well.

According to the petitioners, the Department was justified in using adverse facts available for purposes of the preliminary results because neither respondent acted to the best of its ability in this proceeding. Regarding Branco Peres, the petitioners state that this company should have known that a cost investigation was likely to be initiated because: (1) The information used in the cost allegation was public information based on Brazilian industry data, which showed that the Brazilian FCOJ industry was experiencing losses during the POR; and (2) Branco Peres had been involved in cost investigations in previous segments of this proceeding and, therefore, was familiar with the procedures. The petitioners assert that Branco Peres intentionally planned not to respond to a COP questionnaire in hopes of obtaining a minimal facts available rate. Moreover, the petitioners assert that Branco Peres' reliance on *Olympic Adhesives* is misplaced, because in *Olympic Adhesives*, the court found that the Department incorrectly applied total facts available to a respondent who did not provide information which had never been directly requested; here, on the other hand, Branco Peres failed to respond to the Department's specific request for cost information.

The petitioners argue that Citrovita's claim that it failed to submit a complete response because of the current economic crisis in Brazil is similarly without merit. According to the petitioners, if the Department were to allow a respondent to refuse to answer questionnaires on the basis on national economic problems, the entire process of administrative reviews would be compromised.

Moreover, the petitioners note that the Act contains a provision designed to aid

[2] The respondents argue that these rates should be adjusted to incorporate the calculation changes identified below.

companies who encounter difficulties in responding to the questionnaire. Specifically, section 782(c) of the Act affords interested parties in a review the opportunity to notify the Department when they are unable to submit the information requested, and requires them to provide suggested alternatives for submitting the information. The petitioners note that Citrovita not only failed to inform the Department of any difficulties in responding to the questionnaires prior to withdrawing from the review, but it also suggested no alternatives for completing the responses. Furthermore, the petitioners assert that Citrovita did not explain why it had sufficient staff to complete the initial sales questionnaire response, but not the supplemental and COP questionnaires.

The petitioners state that the Department acted completely within its discretion in selecting the rate to use as adverse facts available for Branco Peres and Citrovita. Regarding Branco Peres' argument that the Department should have used its own information in order to calculate a margin, the petitioners note that the SAA at page 869 does not require the Department to prove that the facts available margin is based on the best alternative information. Rather, the petitioners state that this section of the SAA merely requires that the information or inferences used as facts available be reasonable under the circumstances. Further, the petitioners note that both the GATT and the URAA direct the Department to consider the extent to which a party may benefit from its own lack of cooperation. The petitioners argue that in this case the respondents' failure to respond to the Department's cost questionnaire could be due in part to the respondents' expectations that they would receive a lower rate by not cooperating. According to the petitioners, the information selected for facts available should take this possibility into account.

Regarding Branco Peres' assertion that its information is reliable since the Department used it in part, the petitioners assert that the Department never made a determination that this information was fully accurate. Rather, the petitioners maintain that the Department simply used this information to determine if there were reasonable grounds to initiate a cost investigation. According to the petitioners, the level of the reliance on accuracy and detail of information for margin calculation purposes is much greater than for the purpose of determining the extent of sales below the COP. Finally, the petitioners assert that the use of information for one purpose does not necessarily make it reliable for a completely different purpose. Consequently, the petitioners argue that, even if Branco Peres' sales information were somehow more reliable than Citrovita's, the Department was still well within its discretion in this case to choose which facts available rate to apply and to make an adverse inference in doing so.

DOC Position

We disagree with the respondents, in part. We find that our determination to rely on adverse facts available is reasonable, supported by evidence on this record, and otherwise in accordance with law (as discussed below). Nonetheless, we have reconsidered the methodology used to select the adverse facts available margin for Branco Peres. For purposes of the final results, we assigned this company the highest transaction-specific margin generated using its own data.

According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

(1) Necessary information is not available on the record, or

(2) An interested party or any other person—

(A) Withholds information that has been requested by the administering authority or the Commission under this title,

(B) Fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

(C) Significantly impedes a proceeding under this title, or

(D) provides such information but the information cannot be verified as provided in section 782(i).

In this proceeding, both Branco Peres and Citrovita submitted an apparently complete response to the initial sales questionnaire. However, neither responded to the Department's request for COP and CV information. Moreover, Citrovita also did not respond to the supplemental sales questionnaire. While we may have been able to ''fill in the gaps'' in Citrovita's sales data without a supplemental response, we were unable to do so with respect to the COP/CV data. This information is vital to our dumping analysis, because: (1) It provides the basis for determining whether comparison market sales can be used to calculate normal value; and (2) in certain instances (*e.g.*, when there are no comparison market sales made at prices above the COP), it is used as the basis of NV itself. In cases involving a sales-below-cost investigation, as in this case, lack of COP/CV information renders a company's response so incomplete as to be unuseable. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (Mar. 31, 1999) (*Plate from Canada*); *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 82 (Jan. 4, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43664 (Aug. 14, 1998) (*Pineapple from Thailand*); *Rebar from Turkey*, 62 FR at 9737–3738; and *Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*, 62 FR 18396, 18401 (Apr. 15, 1997).

Accordingly, because both companies failed to submit information which was not only specifically requested by the Department but was also fundamental to the dumping analysis, we find that they withheld information necessary to reach a determination and/or significantly impeded the proceeding. Consequently, we have assigned these companies margins based on total facts available, as required by sections 776(a)(2)(A) and (C) of the Act.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. We have determined that the respondents did not act to the best of their ability in this proceeding, as required by section 776(b) of the Act, because we find that the failure to provide the information requested was not beyond either respondent's control.

Regarding Branco Peres, we note that this company possessed the information necessary to complete the review at the time that the review was initiated. At initiation, the information was within Branco Peres' control. Although Branco Peres subsequently maintained control of the sales data only, there is no evidence to indicate that it was outside Branco Peres' ability to maintain control over the data necessary to respond to the cost questionnaire. As with its sales data, the company could have made an adequate provision to retain this cost data. Not only was Branco Peres aware that the possibility of a cost investigation existed (in light of its participation in cost investigations in previous segments of this proceeding),

but it should have been aware that such an investigation was likely, given that the information used in the cost allegation was public information based on Brazilian industry data.

Furthermore, although Branco Peres' factual circumstances changed during the course of the review, this does not relieve Branco Peres of the obligation to attempt to comply, to the best of its ability, with the request for information. In this case, Branco Peres provided no evidence that it attempted to obtain the cost information necessary to complete the review. Finally, we note that section 782(c) of the Act affords interested parties in a review the opportunity to notify the Department when they are unable to submit the information requested, and requires them to provide suggested alternatives for submitting the information. Although Branco Peres notified the Department of its purported inability to submit the information, it provided no suggestions for submitting alternative information. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68429 (December 11, 1998); and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6616 (Feb. 10, 1999) (*Pasta from Italy*). Consequently, we find that Branco Peres did not act to the best of its ability in this proceeding.

For the foregoing reasons, we find that Branco Peres' reliance on *Olympic Adhesives* is misplaced. In *Olympic Adhesives*, the respondent failed to provide information which had never been directly requested by the Department and had never existed. Here, there is no dispute that the information exists. Moreover, the information was directly requested by the Department; Branco Peres simply did not provide it; nor did it attempt to provide reasonable alternative information.

Regarding Citrovita, we note that this company possessed the sales and cost information requested by the Department, but it opted to withdraw from the review rather than to submit this information. In its withdrawal letter, Citrovita stated:

> [t]he Department's recent decision to initiate a sales below cost investigation will make it extremely difficult, if not impossible, for Citrovita to complete the required responses within the time frame allotted. The current economic crisis in Brazil has forced us to maintain the bare minimum of staff and we simply do not have the personnel resources to dedicate to completing the review.

It is clear from this statement that Citrovita made a conscious decision not to allocate any more resources to participating in this review. Although Citrovita cites the deadlines for submitting its responses, it did not request an extension of these deadlines. Indeed, had Citrovita requested such an extension, the company could have reasonably expected that the Department would grant it, given that Citrovita had requested and received extensions for filing both its initial and supplemental sales responses in this review.

Moreover, we find Citrovita's concerns related to staffing unpersuasive. We note that Citrovita was able to submit its initial questionnaire response without raising similar staffing concerns. Acceptance of Citrovita's argument in this proceeding would be tantamount to giving companies the option not to dedicate their resources to response preparation, which would have the practical effect of waiving the requirement that companies submit cost responses at all. The Department has a long-standing practice of denying these types of administrative burden arguments. *See, e.g., Pasta from Italy*, *Plate from Canada*, *Roller Chain from Japan*, and *Pineapple from Thailand*.

Nonetheless, Congress recognized that on occasion respondents may experience legitimate difficulties in collecting information. The SAA indicates that the Department has the discretion to modify its request for information if promptly asked to do so by an interested party, to avoid imposing an unreasonable burden on the party. Specifically, the SAA states that the Department:

> Will take due account of difficulties experienced by parties, particularly small companies, in supplying information, and will provide such assistance as [the Department considers] practicable * * * Section 782(c)(1) is intended to alleviate some of the difficulties encountered by small firms and firms in developing countries, particularly with regard to the submission of data in computerized form. *It is not intended to exempt small firms from the requirements of the antidumping and countervailing duty laws.*

SAA at 864 and 865 (emphasis added). As noted in the SAA, section 782(c) of the Act directs the Department to mitigate the burden imposed on respondents under certain circumstances (*e.g.*, when a company is unable to submit data in the appropriate computer format). It is clear from the SAA, however, that Congress did not intend the Department to exempt firms from submitting questionnaire responses because the preparation of these responses would place an unreasonable administrative burden on respondents.

Although section 782(c)(1) of the Act allows the Department to consider the ability of the respondent to submit information, Citrovita did not attempt to invoke this provision. Specifically, Citrovita did not request that the Department modify its reporting requirements to alleviate its administrative burden, nor did it provide any alternative solutions. It merely withdrew from the proceeding. Thus, we find that Citrovita was not unable to respond to our information requests; it was simply unwilling to do so. Consequently, we also find that Citrovita did not act to the best of its ability in this review.

Accordingly, we have made an adverse inference in selecting the margins for both respondents for purposes of the final results. Section 776(b) of the Act provides that the Department may use the following sources of information in making adverse inferences:

(1) The petition,

(2) A final determination in the investigation under this title,

(3) Any previous review under section 751 or determination under section 753, or

(4) Any other information placed on the record.

In this case, in accordance with section 776(b)(4) of the Act, we have continued to use 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 Branco Peres and Citrovita, to calculate sales-specific dumping margins. We then selected as the facts available rate for each company the highest transaction-specific margin generated using its own data.

We disagree with the respondents that the methodology used to select the facts available margins is arbitrary. In choosing these margins, we looked to the SAA for guidance. Specifically, the SAA states:

> Where a party has not cooperated, Commerce and the Commission may employ adverse inferences about missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, *one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.*

SAA at 870 (emphasis added).

As noted in the ''Facts Available'' section of this notice, the data on the record indicates that the respondents were dumping during the POR at rates higher than the highest rate ever

determined in any other segment of this proceeding. For this reason, we find that assigning them the highest rate ever determined would allow the respondents to benefit from their lack of cooperation.

Similarly, we find that using the data in the cost allegations to calculate company-specific weighted-average dumping margins potentially would allow the respondents to benefit. Contrary to the respondents' assertions, there is no evidence on the record that the costs in these allegations were overstated. Rather, we find that it is equally likely that these costs are understated with respect to Branco Peres and Citrovita, because they are based on average data from the Brazilian FCOJ industry, which is comprised of both high-and low-cost producers. Thus, we find that the use of this information is not adverse to the respondents.

According to the SAA, at 869, there is no requirement that the information used as facts available be the best alternative information. Rather, the SAA merely requires that the facts available be reasonable to use under the circumstances. As we discussed above, the highest company-specific margin is a reasonable use of facts available.[3]

We disagree with Branco Peres that the Department may not disregard its sales information because the Department has not only deemed this information reliable, but this information meets the requirements of section 782(e) of the Act. We find that Branco Peres' arguments are without merit, because, in situations involving the application of total facts available, it is the Department's practice to evaluate whether a respondent's data *in toto* should be disregarded under section 782(e) of the Act. Given the fact that Branco Peres did not submit a complete questionnaire response, the five requirements of section 782(e) of the Act were not met. Therefore, the Department is not required to use this information. *See, e.g., Pineapple from Thailand* and *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (Oct. 16, 1997).

Moreover, although we have ultimately reached the same conclusion, we also disagree with Branco Peres' rationale as to why the Department should not base its margin on Citrovita's data in this review. We note that in certain cases it may be appropriate to base the facts available rate for one respondent on another company's margin. However, in such instances the Department does not attempt to assign rates of companies who are similarly situated to the non-cooperating respondent, nor do we take into account whether these companies primarily made EP or CEP sales. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12763 (Mar. 16, 1998). Furthermore, we find that Branco Peres' citation to *Rautaruukki* equally does not apply here, because the court in that case merely held that the Department may not continue to use as facts available any rates which were subsequently invalidated on remand. Rather, the court mandated that the Department must use the updated rates when choosing margins in proceedings involving facts available.

Nonetheless, we agree that we should base Branco Peres' margin on its own data. This data has probative value and is sufficiently adverse.

Finally, we disagree with Citrovita's argument that the Department should assign it a rate which is less adverse than the margins assigned to those companies who did not respond at all. While we acknowledge that the Department has, in other proceedings, assigned less adverse rates in instances where a respondent has made a sufficient effort to cooperate (*see, e.g., Pasta from Italy: LTFV Investigation*), we do not consider it appropriate to do so here. Citrovita essentially terminated its participation in the review, failing to respond at all to the COP/CV section of the questionnaire. Moreover, in order to assign different rates to the ''less cooperative'' respondents in this case, the Department would be required to either: (1) Assign lower margins than we consider suitable to Branco Peres and Citrovita; or (2) select a more adverse rate for Cambuhy and Frutax. Neither of these options is appropriate.

Although there are more adverse rates available to the Department, use of these rates would require us to resort to the data in the petition. Given the facts that: (1) The data on the record is more probative of current conditions than is the data contained in the petition; (2) unlike in many cases, this data can actually be used to calculate dumping margins;[4] and (3) we have determined that the rates calculated using the facts available are sufficiently high to encourage participation in future segments of the proceeding, we find that there is no need to resort to the petition in this segment.

Comment 2: CV Profit Calculation for Citrovita

For purposes of the preliminary results, the Department based the CV profit rate on information contained in the 1995 public financial statements of Branco Peres, because these were the most recent financial statements available to the Department showing a profit on the sale of FCOJ. Citrovita argues this methodology is not in accordance with the statute because the Department ignored Citrovita's own income statement in favor of another producer's pre-POR data.

In support of its position, Citrovita cites section 773(e)(2)(B) of the Act, which provides the following three alternatives for calculating CV profit when there are no home market sales in the ordinary course of trade:

(i) The actual amounts incurred and realized by the specific exporter or producer being examined * * * in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise;

(ii) The weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the * * * review (other than the exporter or producer described in clause (i)) * * * in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or

(iii) the amounts * * * based on any other reasonable method, except that the amount of profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

According to Citrovita, the Department correctly did not invoke subsection (i) above, because it found that Citrovita made all of its home market sales at prices below the COP. However, Citrovita maintains that the Department erred in using Branco Peres' financial statements because Branco

[3] We disagree with Branco Peres that we should calculate this dumping margin without incorporating an element for CV profit. Because our calculations show that Branco Peres made comparison market sales in the ordinary course of trade during the POR, we have used the profit derived from these sales in the computation of CV for Branco Peres. For further discussion, see *Comment 2* below.

[4] Although the respondents failed to respond to the cost questionnaire, complete cost information exists on this record. Specifically, the cost allegation contains costs for 100 percent of the products sold by Branco Peres and Citrovita.

Peres did not have home market sales of FCOJ, as required by both subsections (ii) and (iii). Moreover, Citrovita notes that these financial statements reflected worldwide sales which were made two years prior to the instant period of review.

Citrovita asserts that, because the requirements of subsections (ii) and (iii) cannot be met due to the absence of appropriate data on the record, the Department should calculate the CV profit rate based on the combined income statement of Citrovita and Votorantrade, Citrovita's affiliated exporter. Alternatively, Citrovita argues that, should the Department disregard these statements because they reflect a combined loss, the Department should use only Votorantrade's income statement because this statement shows a profit. According to Citrovita, the Department would be justified in using Citrovita's own experience to calculate the CV profit rate because the SAA, at 841, states that ''in situations where the producer and exporter are separate companies, the Administration intends that Commerce may continue to calculate constructed value based on the total profit and total SG&A expenses realized and incurred by both companies.''

The petitioners disagree, asserting that the Department acted within its discretion in selecting the CV profit rate. According to the petitioners, section 776(b) of the Act authorizes the Department to use information derived from previous administrative reviews when drawing adverse inferences. Furthermore, the petitioners assert that there was no reason for the Department to rely on secondary information from one of Citrovita's affiliated parties when it had an actual profit figure from another respondent engaged directly in FCOJ production.

DOC Position

We disagree with Citrovita and as part of our adverse facts available determination we have continued to base CV profit on the 1995 financial statements of Branco Peres. Based on the results of our analysis, we found that Citrovita made no home market sales in the ordinary course of trade during the POR. According to section 773(e)(2)(B) of the Act, the Department has three alternatives for calculating CV profit in these circumstances. Specifically, section 773(e)(2)(B) directs the Department to use: (1) The respondent's own profits earned on home market sales, made in the ordinary course of trade, of the same general category of merchandise; (2) another respondent's profits earned on home market sales, made in the ordinary course of trade, of the foreign like product; or (3) profits based on any other reasonable method, as long as they do not exceed the amount normally realized on home market sales by other exporters or producers of the same general category of merchandise. However, the Department is not required to follow any of these approaches, given that we have made a determination to base the respondents' margins on adverse facts available.

Moreover, contrary to Citrovita's assertion, the Department has interpreted section 773(e)(2) of the Act as requiring a positive amount for profit in the calculation of CV. Although the URAA and the subsequent revisions to U.S. law eliminated the use of a minimum profit, it did not eliminate the presumption of a profit element altogether. For a discussion of the reasoning behind our interpretation in this area, see *Silicomanganese from Brazil, Final Results of Antidumping Administrative Review*, 62 FR 37877–37878 (July 15, 1997). Consequently, contrary to Citrovita's assertions, the Department cannot use the combined income statements of Citrovita and Votorantrade to determine Citrovita's profit, because these statements show a loss.

We also disagree with Citrovita that we can base profit on the income statement of Votorantrade alone. As Citrovita correctly noted, the SAA states:

> In situations where the producer and exporter are separate companies, the Administration intends that Commerce may continue to calculate total profit and total SG&A expenses realized and incurred by both companies.

SAA at 841. Thus, the SAA directs the Department to use combined data in cases where the producer and exporter are separate. In any event, however, we find that it would be inappropriate to use Votorantrade's data, because this company appears to function as a middle man between Citrovita and its U.S. affiliate. Thus, the profit shown on this income statement is merely an intra-corporate profit, because it is derived in large part from transactions between affiliated parties.

Because we are precluded from determining profit under the methodology advocated by Citrovita, we have continued to base the amount of profit on the facts available under the methodology used for purposes of the preliminary results. Specifically, we have continued to use the most recent financial statements available to the Department showing a profit on the sale of FCOJ. We find that this method is reasonable, because these financial statements are for the sale of the foreign like product in question. Moreover, we find that these financial statements continue to have probative value, because the profit percentage computed from them is comparable to the profit percentage computed using the proprietary data submitted by Branco Peres in this administrative review. *See* the memorandum to the file from Sergio Gonzalez regarding this topic, dated August 4, 1999. Finally, we find that this method does not conflict with the intent of the Act, because: (1) This alternative does not require that profit be determined on home market sales; and (2) there is no information available to use in determining the profit ''cap.'' *See* the SAA at 841.

Comment 3: CEP Profit Calculation for Citrovita

For purposes of the preliminary results, the Department also based the CEP profit rate for Citrovita on the 1995 financial statements of Branco Peres. According to Citrovita, this methodology is contrary to law, as well as a direct contradiction of Department policy as set forth in the SAA. Specifically, Citrovita notes that the SAA states, at 155, that ''if there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States and foreign markets) Commerce will make no adjustment under section 772(d)(3)'' of the Act. In addition, Citrovita cites to section 772(f) of the Act, which requires the Department to use total actual profit in calculating the CEP profit deduction.

Citrovita asserts that its own financial statements show that the company operated at a loss during 1997. Therefore, Citrovita argues that the Department should make no adjustment to U.S. price for CEP profit for purposes of the final results.

DOC Position

Section 772(f)(1) of the Act states that the Department will calculate CEP profit by multiplying the total actual profit by the applicable percentage of U.S. expenses to total expenses. According to section 772(f)(2)(D) of the Act, ''total actual profit'' is defined as the total profit earned by the foreign producer, exporter, and affiliated parties with respect to the sale of the same merchandise for which total expenses are determined.

Because the data on the record shows that Citrovita operated at an aggregate loss in its home and U.S. markets during the POR, we have made no adjustment for CEP profit for purposes of the final

results, in accordance with section 772(f)(1) of the Act.

Comment 4: CEP Offset

Citrovita argues that the Department improperly denied it a CEP offset for purposes of the preliminary results. Citrovita maintains that it is entitled to a CEP offset in accordance with 19 CFR 351.412(f) because: (1) It does not sell in the home market at a level of trade that is comparable to the CEP level of trade; and (2) it cannot quantify a level of trade adjustment. According to Citrovita, this offset should equal total home market indirect selling expenses, capped by the amount of indirect selling expenses incurred on U.S. sales.

DOC Position

We disagree. Section 351.412(f) states that the Department will grant a CEP offset only under the following conditions: (1) NV is compared to CEP; (2) NV is determined at a more advanced level of trade than the level trade of the CEP; and (3) despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in level of trade affects price comparability. In this case, we find that neither of the second two criteria has been met. Specifically, we note that there is no information on the record to establish that NV is at a more advanced level of trade than the CEP. Moreover, we have found that Citrovita has not cooperated to the best of its ability in this administrative review. (*See Comment 1.*) Consequently, we find that Citrovita is not entitled to a CEP offset for purposes of the final results.

Final Results of Review

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

Manufacturer/exporter	Margin percent
Branco Peres Citrus, S.A	39.18
Cambuhy Citrus Comercial e Exportadora Ltda	63.55
Citrovita Agro Industrial S.A	63.55
Frutax Industria e Comercio Ltda	63.55

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 appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of frozen concentrated orange juice 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 the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies 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, or the 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 final 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 notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: August 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–20738 Filed 8–10–99; 8:45 am]

BILLING CODE 3510–DS–P

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; Final Results and Partial Recission of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs), from the People's Republic of China (PRC) in the **Federal Register** on February 5, 1999 (64 FR 5770). These reviews cover the time period, February 1, 1997 through January 31, 1998. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have made changes to the margins and the margin calculations presented in the preliminary results of the reviews. The final weighted-average dumping margins are listed below in the section entitled Final Results of Review. We will instruct the U.S. Customs Service (Customs) to assess antidumping duties accordingly.

EFFECTIVE DATE: August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3601 or 482–3965, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act