

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-351-605]****Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to a request by the petitioners and one producer/exporter of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers four manufacturers/exporters of the subject merchandise to the United States. This is the thirteenth period of review, covering May 1, 1999, through April 30, 2000.

We have preliminarily determined that sales have been made below the normal value by Citrovita Agro-Industrial Ltda. in this review. In addition, we have preliminarily determined to rescind the review with respect to Branco Peres Citrus S.A., CTM Citrus S.A., and Sucorrico S.A. because they had no shipments of subject merchandise to the United States during the period of review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

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

**EFFECTIVE DATE:** June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-0656.

**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 are to the Department's regulations at 19 CFR part 351 (2000).

**Background**

On May 16, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (65 FR 31141).

In accordance with 19 CFR 351.213(b)(1), on May 12, 2000, one producer and exporter of FCOJ, Citrovita Agro Industrial Ltda. (Citrovita), requested an administrative review of the antidumping order covering the period May 1, 1999, through April 30, 2000. On May 31, 2000, the petitioners, Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp., also requested an administrative review for the following four producers and exporters of FCOJ: Branco Peres Citrus S.A. (Branco Peres); Citrovita and its affiliated parties (Cambuhy MC Industrial Ltda. (Cambuhy) and Cambuhy Citrus Comercial e Exportadora (Cambuhy Exportadora)); CTM Citrus S.A. (CTM); and Sucorrico S.A. (Sucorrico).

On July 7, 2000, the Department initiated an administrative review for Branco Peres, Citrovita and its affiliates Cambuhy and Cambuhy Exportadora, CTM, and Sucorrico (65 FR 41942), and consequently issued questionnaires to them.

On July 12, July 21, and August 24, 2000, respectively, CTM, Branco Peres, and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed this with the Customs Service with regard to CTM and Sucorrico. See the memorandum from Jason M. Hoody to the File, entitled "U.S. Customs Data Query for Entries During the 1999-2000 Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil," dated May 30, 2001 (the Customs memo). Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding our review for CTM and Sucorrico. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

Regarding Branco Peres, we were informed by the Customs Service that there was an entry of subject merchandise during the POR withdrawn from a bonded warehouse, which was produced by Branco Peres. See the Customs memo. Consequently, we asked

Branco Peres to explain the circumstances surrounding this entry. Branco Peres responded that it had reported the sale associated with the entry in question in the prior 1997-1998 administrative review of this proceeding. Because we reviewed the sale associated with this entry in the context of the 1997-1998 administrative review completed August 11, 1999, we have determined that Branco Peres did not have any reviewable entries during this POR. Accordingly, we also are preliminarily rescinding our review of Branco Peres and intend to order liquidation of the entry in question at the rate in effect at the time of entry, in accordance with our practice. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

In August and September 2000, we received a response from Citrovita to sections A through C and section D, respectively, of the our questionnaire. In September 2000, November 2000, January 2001, and March 2001, we issued supplemental questionnaires to Citrovita. We received responses to these questionnaires in October 2000, December 2000, February 2001, and March 2001.

**Scope of the Review**

The merchandise covered by this review is frozen concentrated orange juice 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 written description of the scope of this proceeding is dispositive.

**Period of Review**

The POR is May 1, 1999, through April 30, 2000.

**Partial Rescission of Review**

As noted above, Branco Peres, CTM and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service and with information submitted by Branco Peres from a previous segment of this proceeding. See the memorandum from Jason M. Hoody to the File, entitled "U.S. Sales of Branco Peres in the 1997-1998 Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil," dated May 30, 2001. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Branco Peres, 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).)

#### Affiliated Producers

During the previous administrative review, a sister company to Citroviata's parent company purchased another Brazilian producer of FCOJ and that producer's affiliated trading company (i.e., Cambuhy and Cambuhy Exportadora, respectively). In that segment of the proceeding, we determined that it was appropriate to treat Citroviata and these affiliated parties as a single entity using the criteria outlined in 19 CFR 351.401(f). See *Notice of Final Results of Antidumping Administrative Review: Frozen Concentrated Orange Juice from Brazil*, 65 FR 60406, 60407 (Oct. 11, 2000) (*FCOJ 1998–1999 Final Results*). Because neither Citroviata nor Cambuhy has provided any new evidence showing that this finding no longer holds true, we have continued to treat Citroviata and Cambuhy as a single entity and to calculate a single margin for them.<sup>1</sup> (See e.g., *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 17998, 17999 (April 13, 1999) (unchanged by the final results).) Regarding Cambuhy Exportadora, however, Citroviata provided information demonstrating that this company did not function as a producer of FCOJ during the POR. Accordingly, we have not collapsed Cambuhy Exportadora with Citroviata and Cambuhy for purposes of the preliminary results.

#### Comparison Methodology

To determine whether sales of FCOJ from Brazil to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Citroviata, as specified in the "Export Price" and "Normal Value" sections of this notice, below.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of

determining appropriate product comparisons to U.S. sales. Where there were no sales of merchandise in the home market made in the ordinary course of trade (i.e., sales within the contemporaneous window which passed the cost test), we compared U.S. sales to constructed value (CV) in accordance with section 773(a)(4) of the Act.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, it is also the level of the starting-price sales, which is usually from the exporter to importer.

To determine whether NV sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Citroviata claimed that it made home market and U.S. sales at only one level of trade (i.e., sales to end users). Because Citroviata performed the same selling activities for sales to all customers in the home market and the United States, we determined that these sales are at the same level of trade. Therefore, no level of trade adjustment is warranted for Citroviata.

#### Export Price

For sales by Citroviata, we based the starting price on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because constructed export price methodology was not otherwise applicable.

We based EP on the gross unit price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, and U.S. brokerage and handling expenses, in

accordance with section 772(c)(2)(A) of the Act.

#### Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of Citroviata's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with 19 CFR 351.404(b). Based on this comparison, we determined that Citroviata had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Citroviata had made home market sales at prices below its cost of production (COP) in this review because the Department disregarded sales that failed the cost test for Citroviata in the most recently completed administrative review. (See *Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43652 (August 11, 1999).) As a result, the Department initiated an investigation to determine whether Citroviata made home market sales during the POR at prices below its COP.

We calculated the COP based on the sum of Citroviata's and its affiliated producer's costs of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing costs, in accordance with section 773(b)(3) of the Act.

We used the reported COP amounts to compute a weighted-average COP during the POR, except in the following instances in which the costs were not appropriately quantified or valued:

1. We valued the cost of fruit provided by an affiliated party using the affiliate's COP for Citroviata, and the market price for Cambuhy, in accordance with sections 773(f)(2) and (3) of the Act. We adjusted the reported cost of fresh fruit by allocating the affiliates' costs over only the quantity of good oranges.

2. For Citroviata and Cambuhy, we recalculated the offset for costs related to tolled products to exclude certain items which related solely to the respondent's own production.

3. For Citroviata, we included loss on sale of fixed assets and other operating expenses in the general and administrative (G&A) rate calculation.

<sup>1</sup> Hereinafter, these companies will be referred to collectively as "Citroviata," unless otherwise noted.

For Cambuhy, we included loss on the sale of fixed assets and other operating income in the G&A rate calculation.

4. We recalculated the net financing expense of Citrovia and Cambuhy based on their fiscal year financial statements that most closely related to the POR. We adjusted the financial statement amounts for long-term interest income which is not permitted as an offset to financial expenses. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30359 (June 14, 1996).)

For further discussion of these adjustments, see the cost calculation memorandum from Peter Scholl and Sheikh M. Hannan to Neal Halper, dated May 30, 2001.

We compared the COP to home market 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. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, selling expenses, and packing costs.

In determining whether to disregard home 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 company's sales of a given product are made at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Citrovia's sales of a given product were at prices below the COP, we found that sales of the merchandise were made in "substantial quantities" within an extended period of time, as defined in section 773(b)(2)(B) and (C) of the Act. In this case, we also determine 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. Consequently, we disregarded the below-cost sales in determining NV.

We found that 100 percent of Citrovia's home market sales within an extended period of time were made at prices less than the 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 compared EP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, financing expenses, profit, and U.S. packing costs, adjusted as noted above. Because Citrovia made no sales at prices above the COP during the POR, we calculated profit, SG&A, and financing expenses in accordance with section 773(e)(2)(B)(iii) of the Act. Specifically, we used the profit rate and selling expenses calculated for Citrovia in the most recent prior segment of this proceeding (*see* the memorandum from Jason Hoody to the File, entitled "Placement of Business Proprietary Information from the 1998–1999 Administrative Review on the Record of the 1999–2000 Administrative Review of Frozen Concentrated Orange Juice from Brazil," dated May 30, 2001). We used the general and administrative expenses and net financing expenses as experienced during the fiscal year that most closely corresponded to the POR.

Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments to CV for differences in credit expenses (offset by interest revenue).

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) 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.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. 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 substitute the benchmark for the daily rate, in accordance with established practice.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period May 1, 1999, through April 30, 2000:

Manufacturer/exporter	Percent margin
Citrovia Agro Industrial Ltda/ Cambuhy MC Industrial Ltda	15.98

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. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held seven days after the date rebuttal briefs are filed.

Interested parties may submit case 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 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, as appropriate. These rates will be assessed uniformly on all entries of particular importers made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Citrovia and Cambuhy will be the rate 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, the cash deposit will be zero; (2) for previously reviewed or 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, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent, the all others rate established in the LTFV investigation.

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

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

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

Dated: May 30, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 053001B]

#### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold meetings of its Scientific & Statistical Committee, Shrimp Committee, Executive Committee, Personnel Committee and the Marine Protected Areas Committee. The Council will also hold joint meetings of the Mackerel Committee and Advisory Panel and a joint meeting of the Controlled Access Committee and the Rock Shrimp Advisory Panel. Public comment periods will be held during some of the meetings. There will also be a full Council Session. A Social Science Workshop will be held as part of the meeting.

**DATES:** The meetings will be held in June 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Radisson Ponce de Leon Conference Resort Hotel, 4000 U.S. Highway 1 North, St. Augustine, FL 32095;

Telephone: 904-824-2821, FAX: 904-824-8254. Copies of the documents are available from Kim Iverson, Public Information Officer, and South Atlantic Fishery Management Council.

**Council Address:** South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843-571-4366; fax: 843-769-4520; email: kim.iverson@noaa.gov.

#### SUPPLEMENTARY INFORMATION:

##### Meeting Dates

1. *Social Science Workshop: June 17, 2001, 1:30-5:30 p.m.*

A Social Science Workshop will be held in order to hold discussion on social issues as they relate to the following: New Social Impact Assessment Guidelines from the National Marine Fisheries Service, implementation/evaluation of Marine Protected Areas in the South Atlantic and a review of the current limited entry program in the South Atlantic Snapper Grouper fishery.

2. *Scientific & Statistical Committee Meeting: June 18, 2001, 8:30 a.m.-12 Noon and 1:30-5 p.m.*

The Scientific & Statistical Committee will meet to review and comment on the following: Shrimp Amendment 5 (rock shrimp limited access), Economic Cost & Returns Study, Census Study, Marine Protected Areas public scoping document, Snapper Grouper Amendment 13 (list of options), the Snapper Grouper Assessment Group Report and final guidelines for economic analysis. The Committee will also address mackerel issues including the 2001 stock assessment, framework action, Amendment 15 and Gulf Council actions relative to the Tortugas Sanctuary and charter vessel permits.

3. *Joint Mackerel Committee and Advisory Panel Meeting: June 19, 2001, 8:30 a.m.-12 noon and 1:30-3:30 p.m.*

The Mackerel Committee will meet jointly with the Mackerel Advisory Panel to discuss potential framework actions, review the Amendment 15 options paper, review Gulf Council actions relative to the Tortugas Sanctuary (Amendment 13) and review the Gulf Council's actions on the moratorium on charter vessel permits (Amendment 14).

4. *Shrimp Committee Meeting: June 19, 2001, 3:30-5 p.m.*

The Shrimp Committee will meet to discuss language and/or format modifications to the "Bycatch Reduction Device Testing Protocol Manual" and develop modifications to the protocol manual if appropriate.

*Public Hearings: June 19, 2001, 6 p.m.*

Public hearings will be held beginning at 6 p.m. in the order indicated regarding the following issues: Amendment 5 to the Rock Shrimp Fishery Management Plan (FMP) (rock shrimp limited access); Amendment 13 to the Mackerel FMP and Spiny Lobster Amendment 7 (Gulf Council actions relative to the Tortugas Sanctuary in the Gulf of Mexico); and Amendment 14 to the Mackerel FMP (Gulf Council actions on a moratorium on charter vessel permits in the Gulf of Mexico. Documents regarding these issues are available through the Council office (see **ADDRESSES**).

5. *Executive Committee Meeting: June 20, 2001, 8:30-9:30 a.m.*

The Executive Committee will meet to review Council activities and establish priorities for the remainder of 2001.

6. *Personnel Committee Meeting: June 20, 2001, 9:30-10:30 a.m.*

The Personnel Committee will meet in a closed session to discuss the Executive Director's recommendations for additional staff positions.

7. *Joint Controlled Access Committee and Rock Shrimp Advisory Panel: June 20, 2001, 10:30 a.m.-12 noon and 1:30-5 p.m.*

The Joint Controlled Access Committee and Rock Shrimp Advisory Panel will meet to review public hearing comments on Amendment 5 to the Rock Shrimp FMP (limited access) and formal comments from the National Marine Fisheries Service. The Committee and Advisory Panel will discuss and develop recommendations regarding Amendment 5 to the Rock Shrimp FMP.

8. *Joint Controlled Access Committee and Rock Shrimp Advisory Panel: June 21, 2001, 8:30 a.m.-10:30 a.m.*

The Committee and Advisory Panel will continue to discuss and develop recommendations regarding Amendment 5 to the Rock Shrimp FMP.

9. *Marine Protected Area Committee: June 21, 2001, 10:30 a.m.-12 noon and 1:30-5 p.m.*

The Marine Protected Area Committee will meet to hear an update on the Memorandum Of Agreement (MOU) with Gray's Reef Marine Sanctuary, review the results of scoping meeting and other comments/recommendations, hear a report on the advisory panel meeting and their recommendations, develop committee recommendations and discuss the timing of work for 2001 and 2002.

10. *Council Session: June 22, 2001, 8:30 a.m.-4 p.m.*

From 8:30-8:45 a.m., the Council will have a Call to Order, introductions and roll call adoption of the agenda, and