shipments of HRS by Essar Steel Limited (Essar) to the United States for the period from December 1, 2003, through November 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 4818 (January 31, 2005). The preliminary results are currently due no later than September 2, 2005.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

The Department finds that it is not practicable to complete the preliminary results of this review within this time limit because additional time is needed to fully analyze significant amounts of new data only recently submitted. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until no later than January 3, 2006, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: August 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4632 Filed 8–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil

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

SUMMARY: We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil. The critical circumstances analysis for the preliminary determination is discussed below under the section ''Critical Circumstances.''

Background

Since the initiation of this investigation (*see Notice of Initiation of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 7233 (Feb. 11, 2005) (*Initiation Notice*)), the following events have occurred.

On March 3, 2005, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain orange juice from Brazil are materially injuring the United States industry. *See* ITC Investigation No. 731–TA–1089.

On March 7, 2005, we selected Sucocitrico Cutrale, S.A. (Cutrale), the largest producer/exporter of certain orange juice from Brazil, as a mandatory respondent in this proceeding and issued Cutrale an antidumping questionnaire.

On March 14, 2005, we also selected the two next largest producers/exporters of certain orange juice from Brazil (*i.e.*, Fischer S/A - Agroindustria (Fischer) and Montecitrus Industria e Comercio Limitada (Montecitrus)) as mandatory respondents in this proceeding. *See* the March 14, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Jill Pollack, Nichole Zink, and Ryan Douglas entitled, ''Antidumping Duty Investigation of Certain Orange Juice from Brazil - Selection of Respondents.'' We issued antidumping questionnaires to these exporters on March 14, 2005.

On March 31, 2005, the petitioners[1] requested that the Department ''clarify'' the scope of the instant investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. From April 4 through April 14, 2005, we received comments on the petitioners' request from various Brazilian orange juice producers, as well as additional comments from the petitioners.

On April 11, 2005, Cutrale requested that the Department revise the period of investigation (POI) in this proceeding.

We received section A questionnaire responses from Cutrale and Fischer on April 11, 2005. On April 15 and 18, 2005, respectively, the Department issued supplemental section A questionnaires to Fischer and Cutrale. On April 19, 2005, we received a section A questionnaire response from Montecitrus.

On April 22, 2005, we rejected Cutrale's request to revise the POI. *See* the April 22, 2005, memorandum to Louis Apple, Director, Office 2, from Jill

[1] The petitioners in this investigation are the Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens).

Pollack, Analyst, entitled, ''Request by Sucocitrico Cutrale Ltda. for a Revised Period of Investigation in the Antidumping Duty Investigation of Certain Orange Juice from Brazil.''

We received section B and C questionnaire responses from Cutrale and Fischer on April 27, and 29, 2005, respectively.

On May 5 and 6, 2005, respectively, we issued a second supplemental section A questionnaire to Cutrale, and a supplemental questionnaire regarding sections B and C to Fischer.

On May 6, 2005, Cutrale and Fischer submitted responses to the Department's first supplemental section A questionnaires.

On May 9, 2005, Montecitrus withdrew its participation from this antidumping proceeding and requested that the Department remove from the record of this proceeding all documents containing business proprietary information submitted by or on behalf of Montecitrus. On May 26, 2005, we certified to the destruction of all business proprietary information.

On May 11 and 16, 2005, respectively, the petitioners alleged that Cutrale and Fischer made home market sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales–below-cost investigation of these respondents.

On May 12, 2005, Cutrale submitted its response to the Department's second supplemental section A questionnaire.

On May 23 and 31, 2005, respectively, we initiated sales–below-cost investigations for Cutrale and Fischer and, as a result, requested that Cutrale and Fischer respond to section D of the questionnaire. *See* the May 23, 2005, memorandum to Louis Apple, Director, Office 2, from Nichole Zink, Analyst, entitled, ''Petitioners' Allegation of Sales Below the Cost of Production for Sucocitrico Cutrale Ltda'' (Cutrale Cost Initiation Memo) and May 31, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Senior Analyst, entitled, ''Petitioners' Allegation of Sales Below the Cost of Producti6n for Fischer S/A–Agroindustria'' (Fischer Cost Initiation Memo).

On May 27, 2005, we issued a second supplemental section A questionnaire to Fischer.

On June 2, 2005, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Act. The petitioners stated that a postponement of the preliminary determination was necessary in order to permit the Department and the petitioners to fully analyze the information that had been submitted in the investigation and to analyze cost information.

On June 7 and 9, 2005, respectively, we issued a supplemental questionnaire regarding sections B and C to Cutrale and a supplemental questionnaire regarding section B to Fischer.

On June 10, 2005, Fischer submitted its response to the Department's second supplemental section A questionnaire.

On June 7, 2005, pursuant to sections 733(c)(1)(A) and (b)(1) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than August 16, 2005. *See Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 34086 (June 13, 2005).

On June 21, 2005, Cutrale submitted its response to the Department's section D questionnaire.

On June 24, 2005, we issued a supplemental section C questionnaire to Fischer.

On June 27, 2005, we informed the petitioners that in order for the Department to consider revising the scope of this proceeding, they would need to amend the original petition. For further discussion, see the ''Scope Comments'' section of this notice below.

On June 28, 2005, Fischer submitted its response to the Department's section D questionnaire.

On June 29, 2005, the Department issued its third supplemental section A questionnaire to Fischer.

On July 1, 2005, Fischer responded to the Department's supplemental section B questionnaire. On July 5, 2005, Cutrale responded to the Department's supplemental sections B and C questionnaire.

On July 13, 2005, Fischer submitted its response to the Department's third supplemental section A questionnaire.

On July 14, 2005, we issued a supplemental section D questionnaire to Fischer.

On July 22, 2005, Fischer submitted its response to the Department's supplemental section C questionnaire.

On July 25, 2005, the petitioners alleged that critical circumstances exist with respect to imports of certain orange juice from Brazil. Accordingly, pursuant to section 732(e) of the Act, on July 28, 2005, we requested information from Cutrale and Fischer regarding monthly shipments to the United States during the period June 2001 through June 2005.

On July 26, 2005, and August 4, 2005, respectively, Cutrale and Fischer submitted their responses to the Department's supplemental section D questionnaires.

On August 1 and 2, 2005, respectively, Cutrale and Fischer requested that the Department postpone its final determination in the event of an affirmative preliminary determination, in accordance with section 735(a)(2) of the Act.

On August 3, 2005, we issued a second supplemental questionnaire regarding sections B and C to Cutrale. On August 10, 2005, we issued additional supplemental questionnaires to both respondents. Because the deadline for this information is after the date of the preliminary determination, we will consider it for the final determination.

On August 11, 2005, we received monthly shipment information from Cutrale and Fischer. Because this information was received too late for use in the preliminary determination, we will consider it in the final determination. The critical circumstances analysis for the preliminary determination is discussed below under ''Critical Circumstances.''

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on August 1 and August 2, 2005, respectively, Cutrale and Fischer requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Cutrale and Fischer account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are

postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 2003, through September 30, 2004. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2004).

Scope of Investigation

The scope of this investigation includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as NFC.

At the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Cutrale, Fischer[2], and Montecitrus.

The Department also revoked the pre–existing antidumping duty order on FCOJ with regard to two additional companies, Coopercitrus Industrial Frutesp (Frutesp) and Frutropic S.A. (Frutropic). *See Frozen Concentrated Orange Juice; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (Oct. 21, 1991), and *Frozen Concentrated Orange Juice; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (Oct. 21, 1994). After revocation, both of these companies experienced changes in their corporate organization and are now doing business under the name COINBRA–Frutesp. Therefore, in order to determine whether these companies are subject to this proceeding, the Department must make successor–in-interest findings with respect to each entity. We intend to make such findings no later than the final determination in this case. We note that, should the Department find COINBRA–Frutesp to be the successor–in-interest to one or both of these companies, exports of FCOJM by the successor company will be included in this proceeding. *See* the ''Successor–in-Interest'' section of this notice, below, for further discussion.

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

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

Successor–in-Interest

As noted above, at the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. Therefore, the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Three of the revoked companies, Citrosuco, Frutesp, and Frutropic, informed the Department that they have undergone certain ownership changes since the time of their revocation and are now doing business under different names. In our notice of initiation, we indicated that we intended to make successor–in-interest determinations with respect to these companies in order to determine if the FCOJM exports of the ''new'' companies fall within the scope of this proceeding.

Regarding Citrosuco, prior to the initiation of this investigation, Citrosuco informed the Department that it is now doing business under the name Fischer, and it claimed that Fischer is the successor–in-interest to Citrosuco. On March 8, 2005, we issued a separate questionnaire to Fischer relating to the successor–in-interest issue. On April 11, 2005, Fischer submitted its response. Based on our analysis of this submission, we find that the company's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Fischer has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Fischer operates as the same business entity as Citrosuco. Thus, we find that Fischer is the successor–in-interest to Citrosuco and, as a consequence, its exports of FCOJM are subject to this proceeding. For further discussion, see the August 16, 2005, memorandum to Joseph A. Spetrini, Acting Assistant Secretary, from Barbara E. Tillman, Acting Deputy Assistant Secretary, entitled, ''Successor–In-Interest Determination for Fischer S.A. Agroindustria in the Less–Than-Fair–Value Investigation on Certain Orange Juice from Brazil.''

Regarding Frutesp and Frutropic, these entities were purchased by the Louis Dreyfus group in the early 1990's and they are now producing and exporting FCOJM under the name COINBRA–Frutesp. Because the corporate structure changes for these companies are not recent and involve complex transactions, additional consideration is required to determine their successor–in-interest status. Accordingly, we intend to make our successor–in-interest findings no later than the final determination.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments no later than April 1, 2005. (*See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 70 FR 7234.)

As noted in the ''Background'' section above, on March 31, 2005, the petitioners requested that the Department clarify the scope of the investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on FCOJ from Brazil. We received additional comments from the following interested parties on this issue: Citrovita Agro Industrial Ltda. (Citrovita), COINBRA–Frutesp, Cutrale, Louis Dreyfus Citrus, Inc., and Montecitrus. On June 27, 2005, we notified the petitioners that in order for the Department to consider revising the scope of the instant investigation as requested, the petitioners would need to

[2] At the time of this company's revocation, this company was doing business under the name Citrosuco Paulista S.A. (Citrosuco). See the ''Successor-in-Interest'' section of this notice, below, for further discussion.

amend the original petition. Because the petitioners have not submitted such an amendment, we have continued to define the scope of this investigation as initiated.

On April 1, 2005, Cutrale agreed with the Department's initial treatment of FCOJM and NFC as a single class or kind of merchandise.

On May 10, 2005, U.S. Customs and Border Protection (CBP) raised concerns that the scope as currently drafted could encompass merchandise other than FCOJM and NFC, under the HTSUS subheadings for reconstituted juice and non–orange juice products ''other'' (*i.e.*, 2009.12.45 and 2009.19.00). Therefore, CBP recommended removing these HTSUS subheadings from the scope of the instant investigation. *See* the May 10, 2005, memorandum to the file, from Jill Pollack, Analyst, entitled: ''Conversation with Customs Official Regarding the Harmonized Tariff Schedule (HTS) Codes Included in the Scope of the Antidumping Duty Investigation of Certain Orange Juice from Brazil (A–351–840).'' On May 31, 2005, the petitioners opposed this request on the grounds that both of the HTSUS subheadings cover orange juice products that lack specific HTSUS numbers, but which are included in the written description of the scope. Therefore, the petitioners maintain these subheadings should be retained in order to alleviate circumvention concerns. After considering the petitioners' comments, we find that it is appropriate to continue to include the HTSUS subheadings in question in the scope description set forth above.

Use of Facts Available (FA) for Montecitrus

One of the mandatory respondents in this case, Montecitrus, notified the Department on May 9, 2005, that it no longer intended to participate in the investigation. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant investigation, by withdrawing its information from the record, the Department preliminarily finds that, pursuant to section 776(a)(2)(A), Montecitrus withheld requested information. Further, pursuant to section 776(a)(2)(B), the Department preliminarily determines Montecitrus failed to provide the information requested by the Department within the established deadlines. Finally, by withdrawing from the investigation and ceasing to participate in the proceeding, the Department preliminarily finds that, pursuant to section 776(a)(2)(C), Montecitrus significantly impeded the investigation. Consequently, pursuant to sections 776(a)(2)(A)-(C) of the Act, the Department preliminarily finds that the application of facts available is warranted.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000). In the instant investigation, by ceasing to participate in the investigation, Montecitrus decided not to cooperate and thus did not act to the best of its ability to comply with a request for information. Consequently, we find that an adverse inference is warranted in determining an antidumping duty margin for Montecitrus.

Sections 776(b) and (c) of the Act authorize the Department to use, as adverse facts available (AFA), information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998). The Department applies AFA ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1, at 870 (1994) (SAA).

In accordance with our standard practice, as AFA, we are assigning Montecitrus a rate which is the higher of: (1) The highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005). In this case, the preliminary AFA margin is 60.29 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 70 FR at 7236. We find that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, to encourage participation in future segments of this proceeding).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* 19 CFR 351.308 (c) and (d); *see also* the SAA at 870.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we used information submitted by the two participating respondents (*i.e.*, Cutrale and Fischer) in their questionnaire responses on the record of this investigation. We reviewed the adequacy and accuracy of the information in the petition during our pre–initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the February 7, 2005, Initiation Checklist). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and constructed value (CV) calculation on which the highest margin in the petition was based.

In order to corroborate the petition's EP calculation, we compared the PIERS data for FCOJM provided by the petitioners in their February 3, 2005, petition supplement to the prices of FCOJM reported by Cutrale and Fischer. These prices are comparable to the PIERS data reported by the petitioners, thus corroborating the petition U.S. price data. In addition, the petitioners calculated a net U.S. price by deducting foreign inland freight and insurance, brokerage, handling, and port charges from the PIERS data used to derive U.S. price. We corroborated these expense amounts by comparing them to the expenses reported by Cutrale and Fischer in their questionnaire responses. In order to corroborate the petitioners' CV calculation, we compared the petitioners' CV data for FCOJM, as adjusted in the notice of initiation, to the CV data reported by the respondents for FCOJM. As discussed in the August 16, 2005, memorandum to the file from Nichole Zink, Analyst, entitled, ''Corroboration of Data Contained in the Petition for Assigning Facts Available Rates'' (Corroboration Memo), we find that the figure used by the petitioners is comparable to the information reported by Cutrale and Fischer, thus corroborating the petition cost data. Therefore, we preliminarily determine that the petition EP and CV information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 60.29 percent, is corroborated within the meaning of section 776(c) of the Act. For further discussion, see the Corroboration Memo.

Fair Value Comparisons

To determine whether sales of certain orange juice from Brazil to the United States were made at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted–average CEPs to POI weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Cutrale and Fischer in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using CV.

Constructed Export Price

A. *Cutrale*

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act. We excluded certain U.S. sales made pursuant to futures contracts from our analysis including: 1) sales to the New York Board of Trade (NYBOT) that have not been shipped as of the date of the preliminary determination because the country of origin of the merchandise is not yet known; and 2) sales that were destined for Canada.

For sales made pursuant to futures contracts, we are considering using as date of sale the date of the ''sell'' contract which resulted in the delivery of merchandise. However, although Cutrale reported the date of these ''sell'' contracts in its most recent U.S. sales listing, this information was not received in time for use in the preliminary determination. For purposes of this preliminary determination, as date of sale, we used the date the futures contract was either: 1) noticed for delivery to the NYBOT, in the case of sales to the NYBOT; or 2) the date the NYBOT was notified that certain futures contracts were to be applied in an ''exchange for physicals'' transaction. We intend to further examine the issue of the appropriate date of sale for futures contracts for the final determination. In accordance with our practice, for all other CEP sales, we used the earlier of shipment date from the U.S. affiliate to the customer or the U.S. affiliate's invoice date as the date of sale because these were the dates on which the material terms of sale were finalized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying ''Issues and Decision Memorandum'' at *Comment 2*.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. All other gains and losses related to futures trading activities have been included in indirect selling expenses (*see* discussion on indirect selling expenses below). Where appropriate, we made adjustments for billing adjustments and early payment discounts.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and U.S. warehousing expenses. Regarding U.S. customs duties, Cutrale reported that it received certain ''drawback'' amounts associated with duties paid on U.S. sales and subsequently refunded under a U.S. duty drawback program. However, because Cutrale has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the ''drawback'' amounts reported by Cutrale for the preliminary determination. We have requested

additional information from Cutrale regarding this program and will consider it in our final determination.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, gains and losses on ''rolled over'' futures contracts, and other indirect selling expenses). In instances where the information reported in Cutrale's sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file, from Jill Pollack entitled, ''Calculations performed for Sucocitrico Cutrale Ltda. in the Investigation of Certain Orange Juice from Brazil'' (Cutrale calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. *Fischer*

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate on behalf of Fischer, within the meaning of section 772(b) of the Act. We preliminarily determine that invoice date is the appropriate date of sale because that is the date that the material terms of sale are agreed upon. *See* 19 CFR 351.401(i).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight expenses, bunker fuel surcharges, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse or to customer), and U.S. warehousing expenses. Regarding U.S. customs duties, Fischer also reported that it received certain ''drawback'' amounts related to U.S. sales. However, because Fischer has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the ''drawback'' amounts reported by Fischer for the preliminary determination. We have requested additional information from Fischer regarding the U.S. duty drawback program and will consider it for the final determination.

In accordance with section 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, further manufacturing, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We recalculated Fischer's U.S. credit expenses using the average interest rate reported by Fischer in its July 22 response. Regarding inventory carrying costs, Fischer did not report these expenses in its U.S. sales listing. Therefore, we calculated these expenses using FA. As FA, we based Fischer's inventory carrying period on the information contained in the public version of Cutrale's section C response. Finally, in instances where the information reported in Fischer's sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file from Elizabeth Eastwood entitled, ''Calculations performed for Fischer S/A - Agroindustria in the Investigation of Certain Orange Juice from Brazil'' (Fischer calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. *Home Market Viability*

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 equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. *Affiliated Party Transactions and Arm's–Length Test*

As noted below, Fischer made sales of the foreign like product to affiliated customers during the POI. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (Nov. 15, 2002).

C. *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 LOT as the CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT 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 CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, 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 LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of

the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company–specific LOT findings are summarized below.

Cutrale claimed that it made home market sales at only one LOT (*i.e.*, sales to original equipment manufacturers). Because Cutrale performed the same selling activities for sales to all customers in the home market (*i.e.*, engineering services, packing, inventory maintenance, processing, technical assistance, rebates, cash discounts, guarantees, freight and delivery, and post–sale warehousing), we determine that all home market sales by Cutrale were at the same LOT.

Fischer also claimed that it made home market sales at one LOT, although it reported home market sales to the following customer categories: reconstitutors and/or repackagers, institutional food service providers, and drink producers. Because Fischer performed the same selling activities for sales to all customers in the home market (*i.e.*, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and receipt of payment), we also determine that all home market sales by Fischer were at the same LOT.

Both respondents made only CEP sales during the POI. In order to determine whether NV was established at an LOT which constituted a more advanced stage of distribution than the LOT of the CEP for these companies, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Brazil for both home market and U.S. sales. Therefore, the respondents' sales in Brazil were not at a more advanced stage of marketing and distribution than the constructed U.S. LOT, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in LOT exists between markets, we find that neither an LOT adjustment nor a CEP offset is warranted for either Cutrale or Fischer.

D. *Cost of Production Analysis*

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that Cutrale's and Fischer's sales of certain orange juice in the home market were made at prices below their respective COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether Cutrale's and Fischer's sales were made at prices below their respective COPs. *See* the Cutrale Cost Initiation Memo, and the Fischer Cost Initiation Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for SG&A, and interest expenses. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. We relied on the COP data submitted by Cutrale and Fischer except in the following instances.

A. *Cutrale*

1. We revised the allocation of Cutrale's net by–product revenue between FCOJM and NFC; and
2. We revised Cutrale's general and administrative (G&A) expense to include a write–off of fixed assets and a gain on the sale of fixed assets.

For further discussion of these adjustments, see the memorandums from Ji Young Oh and Laurens van Houten to Neal Halper entitled ''Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Sucocitrico Cutrale Ltda.'' dated August 16, 2005.

B. *Fischer*

1. We revised the per–unit reported costs for NFC and FCOJM to reflect the different brix levels between products;
2. We revised Fischer's G&A expense rate calculation to exclude packing and freight from the cost of goods sold denominator; and
3. We based the COP for one of Fischer's production facilities on AFA. As AFA, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. *See* below for further discussion.

For further details regarding these adjustments, see the Memorandum from Heidi Schriefer and Frederick Mines to Neal M. Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Fischer S/A - Agroindustria'' dated August 16, 2005.

As noted above, in its original section A and D responses, Fischer stated that it owned and operated three production facilities that produced the merchandise under consideration. In the supplemental section A response, Fischer stated that one of the three facilities was actually leased from an affiliated party. Subsequently, in its supplemental section D response, Fischer stated that its previous representations were erroneous and that there were actually no leased facilities. Instead, Fischer claimed that the third facility was wholly owned and operated by its affiliate during three months of the POI and the affiliate produced the merchandise under consideration. We reviewed the record evidence and determined that: (1) These two producers are affiliated under section 771(33)(E) of the Act; and 2) Fischer and its affiliate should be treated as one entity for dumping calculation purposes under 19 CFR 351.401(f). Specifically, both entities have production facilities for similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities and there is significant potential for the manipulation of price or production. Thus, Fischer and its affiliate should be treated as one entity for purposes of this investigation. However, as noted above, the respondent failed to provide the costs associated with the third production facility.

Section 776(a) of the Act provides that, (1) if necessary information is not available on the record, or (2) if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (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) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. As noted above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to

comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000).

In the instant case, Fischer stated in its questionnaire response that it owned and operated three production facilities that produced the merchandise under consideration, indicating that the cost of producing merchandise under consideration for all three facilities was included in the reported costs. However, as mentioned earlier, in the supplemental questionnaire, we discovered that Fischer did not in fact operate one of the three manufacturing facilities but rather that its affiliate operated the facility. Fischer failed to provide the COP related to this facility. As a result, necessary information is not available on the record and Fischer withheld information requested by the Department, warranting the application of facts available pursuant to sections 776(a)(1) and (2)(A) of the Act. Moreover, we preliminarily determine that Fischer did not cooperate to the best of its ability in failing to provide this cost information. Based on the data Fischer was able to provide with respect to this affiliate, it is reasonable to assume that Fischer has access to this affiliate's COP data and could have provided it in response to the Department's requests. However, Fischer failed to do so. Furthermore, Fischer should have known that the affiliate's COP information was required by the Department because it was requested in the general instructions for the Department's antidumping questionnaire. Therefore, to account for the POI production costs related to the affiliate's cost of producing merchandise under consideration, we applied AFA for purposes of the preliminary determination pursuant to section 776(b) of the Act. As AFA, for the per–unit costs of the third facility, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. Subsequent to this preliminary determination, the Department will solicit further information related to the affiliate's cost of producing the merchandise under consideration. However, if the solicited information is not provided, the Department may make additional adverse inferences related to the total reported cost of production for purposes of the final determination.

2. Test of Home Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than its COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below–cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for Cutrale, less than 20 percent of Cutrale's home market sales failed the cost test. Therefore, we did not disregard any home market sales when calculating Cutrale's NV. Regarding Fischer, we found that, for certain specific products, more than 20 percent of Fischer's home market sales during the POI were at prices less than the COP and, in addition, the below–cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining Fischer's NV, in accordance with section 773(b)(1) of the Act. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

E. *Calculation of Normal Value Based on Comparison Market Prices*

1. *Cutrale*

For Cutrale, we calculated NV based on ex–factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for Brazilian taxes and billing adjustments in accordance with section 773(a)(6)(B)(iii) of the Act. We made no adjustment to the starting price for home market rebates for purposes of the preliminary determination because the amounts reported were provisional. Nonetheless, we have requested further information from Cutrale regarding the payment of these rebates and will consider it for the final determination.

We made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. Because Cutrale reported that it had no home market borrowings during the POI, we recalculated home market credit expenses using the SELIC interest rate published by the International Monetary Fund's *International Financial Statistics* (*i.e.*, the ''SELIC'' rate). Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

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

2. *Fischer*

We reclassified certain of Fischer's reported sales to unaffiliated parties as sales to an affiliate because Fischer had an ownership interest in this customer during the POI.

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We deducted foreign inland freight expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). We recalculated home market credit expenses using the ''SELIC'' rate because Fischer did not report home market borrowings during the POI.

Finally, we deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. Regarding sales packed by an affiliated party, we disallowed those packing expenses for purposes of our price–to-price comparisons because Fischer failed to demonstrate that these packing expenses were at arm's length.

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.

Critical Circumstances

On July 25, 2005, the petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of certain orange juice from Brazil. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted their critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (1) the evidence presented in the petitioners' submission of July 25; (2) information obtained from the USITC Interactive Tariff and Trade DataWeb (USITC dataweb); and (3) the ITC preliminary injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain orange juice from Brazil, the petitioners make no specific mention of a history of dumping for Brazil. We are not aware of any antidumping order in any country on certain orange juice from Brazil. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Brazil pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales, or 15 percent or more for CEP transactions, sufficient to impute knowledge of dumping. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Each respondent reported only CEP sales. The preliminary dumping margins calculated for Cutrale and Fischer are greater than 15 percent. Based on the ITC's preliminary determination of material injury, and the preliminary dumping margins calculated for all respondents, we find there is a reasonable basis to impute, to importers, knowledge of dumping and likely injury. *See* the August 16, 2005, memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, from Louis Apple, Director, entitled, ''Antidumping Duty Investigation of Certain Orange Juice from Brazil - Affirmative Preliminary Determination of Critical Circumstances'' (Critical Circumstances Memo) at Attachment II.

For Montecitrus, we have used AFA in the critical circumstances analysis. As AFA in this case, we assigned Montecitrus the highest margin stated in the notice of initiation, 60.29 percent, which exceeds the 15 percent threshold necessary to impute knowledge of dumping. Consequently, we have imputed knowledge of dumping with regard to Montecitrus.

Regarding the companies subject to the ''All Others'' rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (Mar. 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''All Others'' rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''All Others'' rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the ''All Others'' category for the antidumping investigation of certain orange juice from Brazil.

The dumping margin for the ''All Others'' category in the instant case, 27.16 percent, exceeds the 15–percent threshold necessary to impute knowledge of dumping. Therefore, we find there is a reasonable basis to impute, to importers, knowledge of dumping for the companies covered by the ''All Others'' rate. Consequently, we find that knowledge of dumping exists with regard to the companies subject to the ''All Others'' rate.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes

of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

The Department requested and obtained from Cutrale and Fischer monthly shipment data from June 2001 through June 2005. However, because this information was received too close to the date of the preliminary determination, we were unable to consider it for the preliminary determination. Instead, we relied on U.S. import data from the USITC DataWeb for imports through May 2005 (*i.e.*, the latest month for which complete data exists at the time of the preliminary determination). According to these statistics, we found the volume of imports of certain orange juice increased by more than 15 percent. We analyzed the time series data for the three years prior to the filing of the petition to address the issue of seasonality and found no seasonal pattern. As a result, we find that imports of subject merchandise were massive in the comparison period. For further discussion of this analysis, see the Critical Circumstances Memo at Attachments I and III.

In summary, we find that Cutrale, Fischer, Montecitrus, and the companies subject to the ''All Others'' rate satisfy the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act and the massive imports criterion in accordance with section 733(e)(1)(B) of the Act. Given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances exist for imports of certain orange juice produced in and exported from Brazil.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Brazil when we make our final dumping determination in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(e)(2)(A) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the NV exceeds CEP, as indicated in the chart below. The weighted–average dumping margins are as follows:

Exporter/Manufacturer	Weighted–Average Margin Percentage	Critical Circumstances
Cutrale	24.62	Yes
Fischer	31.04	Yes
Montecitrus	60.29	Yes
All Others	27.16	Yes

The ''All Others'' rate is calculated exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports materially injure, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: 1) the party's name, address, and telephone number; 2) the number of participants; and 3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: August 16, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4633 Filed 8–23–05; 8:45 am]

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