Dated: May 6, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–12594 Filed 5–11–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

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

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

SUMMARY: On January 14, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers two producers/exporters, Branco Peres Citrus, S.A. and CTM Citrus, S.A. (formerly Citro-pectina). The Department terminated the review with respect to another firm, Citrovita S.A. See Frozen Concentrated Orange Juice from Brazil: Preliminary Results of Administrative Review; Termination in Part; and Intent Not to Revoke in Part, 63 FR 2202 (January 14, 1998). This review covers the period May 1, 1993, through April 30, 1994.

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

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Fabian Rivelis or Irina Itkin, Office 5, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1998, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1993–1994 administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (62 FR 2202). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments only from Branco Peres Citrus S.A. (Branco Peres).

Comment 1: Calculation of Comparison Market Commissions.

For the preliminary results, the Department based foreign market value (FMV) on the applicable minimum export price [1] (MEP) as a third-country offer for sale where no contemporaneous third-country sale existed. In cases where FMV was based on the MEP, we used the weighted average of the charges and adjustments reported for actual third-country sales.

According to Branco Peres, the Department erred in calculating a single average commission amount and applying it to four separate MEPs when calculating FMV. Branco Peres asserts that this methodology understated the amount of the commission that it would have paid if the merchandise had actually been sold at the MEP. Specifically, Branco Peres maintains that the commission amount would have been based on a fixed commission percentage and would have been higher than the average commission used by the Department.

Branco Peres asserts that the calculation of the single average commission amount is inconsistent with the calculation of U.S. commissions, which was based on the fixed commission percentage for each U.S. sale. Branco Peres maintains that the amount of both the third country and U.S. commissions should be exactly the same because, in every comparison, the U.S. price was exactly the same as the MEP. According to Branco Peres, the Department's use of inconsistent methodologies not only results in an unfair comparison, but also generates a dumping margin greater than *de minimis*. Branco Peres asserts that the Department should correct this error by deducting from FMV a commission amount based on the fixed commission percentage.

Branco Peres also argues that the Department's use of a single average commission amount for the period of review (POR) violated long-standing Department policy. Branco Peres states that the Department's practice in the 1993–1994 period for cases from Brazil, as illustrated in Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Brazil, 58 FR 37091, 37093 (July 9, 1993), was to determine expenses on a monthly basis because Brazil's economy experienced hyper-inflation during that period. Therefore, Branco Peres asserts that the Department must calculate expenses based on the actual monthly expenses in effect for each MEP period.

Nonetheless, Branco Peres argues that if the Department continues to use a single average commission, it should revise its calculation to include only those commissions related to sales which were contemporaneous with its U.S. sales, under the Department's usual price-to-price methodology for administrative reviews. Branco Peres notes that the Department calculated a single average commission based on the average commission expenses related to all third-country sales to the Netherlands, even though only four of those sales were contemporaneous with the U.S. sales in question.

DOC Position: We agree. Our review of the record of this case shows that a fixed commission rate was in effect for all of Branco Peres' export sales during the POR and that the payment of a commission based on this rate is Branco Peres' normal business practice. Our calculation of the average POR commissions understated the commissions Branco Peres would have paid if it had made the sale at the MEP. Accordingly, we have calculated commissions by applying the

[1] During the period of review, the minimum export price was a floor price set by the Carteira do Comercio Exterior de Banco do Brasil (CACEX), the export department of the Bank of Brazil. Minimum export prices were based on the price of FCOJ on the New York Cotton Exchange. Because the price movements of FCOJ on the futures market are irregular, the minimum export price may have remained the same or may have changed several times within a month.

commission rate to the MEP. This calculation is consistent with our calculations for Branco Peres in the 1992–1993 review, where the MEP was also used as an offer for sale to calculate FMV. See Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil, 62 FR 5798 (February 7, 1997).

Comment 2: Revocation of the Antidumping Duty Order With Respect to Branco Peres.

Branco Peres argues that, if the Department recalculates its comparison market commissions, the Department should revoke the antidumping duty order against it because its margin in this review (1993–1994) is de minimis. Branco Peres notes that its margin in the 1995–1996 review was zero, and no review was conducted in the intervening year. That review was terminated because both Branco Peres and CTM withdrew their requests for review and there were no other requests for review (see Frozen Concentrated Orange Juice from Brazil: Termination of Antidumping Administrative Review, 60 FR 53163 (October 12, 1995)). Branco Peres cites section 351.222(d) of the Department's new regulations, published on May 19, 1997, which permits revocation after the Department has conducted reviews in the first and third years of a three-year period and has found zero or *de minimis* dumping margins. Branco Peres states that the Department's rationale not to revoke it from the order after the 1995–1996 review period no longer applies because the new regulations are now in effect.

Branco Peres asserts that it is similarly entitled to revocation under section 353.25(a) of the Department's old regulations, because that regulation required only that the company under review has ''sold the merchandise at not less than foreign market value for a period of at least three consecutive years.'' Branco Peres claims that it meets this requirement because in the intervening year its entries were liquidated at a zero duty deposit rate. Branco Peres asserts that revocation now does not contradict the Department's final results in the 1995–1996 review, where the Department stated that it had denied revocation for a respondent which had withdrawn from the second period of review. Branco Peres notes that in that case the Department could not conclude that the respondent in question had exported the merchandise at not less than fair value during the entire three year period because, in the intervening year, it had entered merchandise at deposit rates that were greater than de minimis. See Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order, 56 FR 52510, 52512 (October 21, 1991).

DOC Position: We disagree. The new regulations cited by Branco Peres did not take effect until June 19, 1997, well after the initiation of the 1995–1996 review. In addition, although it does not affect the result here, we note that the instant review was initiated prior to the effective date of the new regulations. As stated in the final results of the 1995–1996 review, the Department can conclude that a producer has sold merchandise at not less than fair value for three consecutive years, within the meaning of 19 CFR 353.25(a), only pursuant to administrative reviews actually conducted for each of the three years. See Frozen Concentrated Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 29328 (May 30, 1997) (1995–1996 FCOJ Review). Because no administrative review was conducted for the intervening 1994–1995 period, we cannot make this conclusion. Accordingly, we have determined not to revoke the antidumping duty order with respect to Branco Peres.

Final Results of Review

As a result of the comments received we have revised our preliminary results and determine that the following margins exist for the period May 1, 1993, through April 30, 1994:

Manufacturer/exporter	Review period	Percent margin
Branco Peres	5/1/93–4/30/94	0.18
CTM Citrus S.A.	5/1/93–4/30/94	0.00

The Department has not revoked the antidumping duty order with respect to either Branco Peres or CTM Citrus S.A. (CTM) because neither Branco Peres nor CTM has demonstrated three consecutive years of sales at not less than FMV.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States Price and FMV may vary from the percentages stated above. We have calculated a company-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, 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 by section 751(a)(1) of the Act: (1) Because a subsequent administrative review of Branco Peres has been completed, the cash deposit rate for this company will continue to be the rate calculated in that administrative review (see 1995–1996 FCOJ Review); (2) the cash deposit rate for CTM will be the calculated margin in the final results of this administrative review, as stated above; (3) 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; (4) if the exporter is not a firm covered in this review, a prior review, or the original 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 (5) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 1.96 percent, the ''all others'' rate from the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–12446 Filed 5–11–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part of pure magnesium from Canada.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. Further, we intend not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1279.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations, codified at 19 CFR part 351 (62 FR 27399, May 19, 1997).

Background

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 4, 1997, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on pure magnesium from Canada (62 FR 41925). On August 29, 1997, a producer/exporter, Norsk Hydro Canada Inc. (''NHCI'') requested an administrative review of its exports of the subject merchandise to the United States for the period of review August 1, 1996, through July 31, 1997. In accordance with 19 CFR 351.221, we initiated the review on September 25, 1997. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Verification

As provided in section 751(d) of the Act, we verified information provided by the respondent, NHCI, by using our standard verification procedures, including on-site examination of relevant sales and financial records.

Export Price

For sales to the United States, we used export price (''EP'') as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expense.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based normal value (''NV'') on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A), B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the