A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: March 31, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–8349 Filed 4–6–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part

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

SUMMARY: In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to four producers/exporters of the subject merchandise to the United States. This is the fourth period of review (POR), covering March 1, 2009, through February 28, 2010.

We have preliminarily determined that sales to the United States have been made below normal value (NV), and, therefore, are subject to antidumping duties. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* April 7, 2011.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Blaine Wiltse, 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) 482–0629 or (202) 482–6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil,* 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on March 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period March 1, 2009, through February 28, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 9162 (Mar. 1, 2010).

In accordance with 19 CFR 351.213(b)(2), in March 2010, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from two producers/exporters of the subject merchandise, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale). In Cutrale's request for an administrative review, it also requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b).

In accordance with 19 CFR 351.213(b)(1), also in March 2010, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), also requested that the Department conduct an administrative review for Cutrale and Fischer, as well as for two additional producers/exporters: Montecitrus Trading S.A. (Montecitrus) and Coinbra-Frutesp (SA) (Coinbra-Frutesp). In April 2010, the Department initiated an administrative review for all four companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 22107 (Apr. 27, 2010). Also in April 2010, we issued questionnaires to Coinbra-Frutesp, Cutrale, Fischer, and Montecitrus.

In May 2010, we received statements from Coinbra-Frutesp and Montecitrus that they had no shipments of subject merchandise to the United States during the POR.

From May through July 2010, we received responses to section A of the questionnaire (*i.e.,* the section covering general information) from Cutrale and Fischer, as well as responses to sections B and C of the questionnaire (*i.e.,* the sections covering sales in the home market and United States) and section D (*i.e.,* the section covering cost of production (COP)/constructed value (CV)).

From August through November 2010, we issued supplemental sales and cost questionnaires to Cutrale and Fischer. We received responses to these supplemental questionnaires from September through November 2010.

On November 16, 2010, the Department extended the deadline for the preliminary results of this review until no later than March 31, 2010. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 69917 (Nov. 16, 2010).

From December 2010 through March 2011, we issued Cutrale and Fischer additional supplemental sales and cost questionnaires. We received responses to these supplemental questionnaires from January through March 2011.

Finally, in March 2011, we requested that Cutrale provide additional information regarding its indirect selling expenses. Because this information was not received in time for use in the preliminary results, we expect to consider this information in the final results.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil,* 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Coinbra-Frutesp, Cutrale, Fischer, and Montecitrus.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding

water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

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

Determination Not To Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

On March 31, 2010, Cutrale requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b). This request was accompanied by certification that: (1) Cutrale sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future; and (2) it sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Cutrale 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, subsequent to the revocation, it sold the subject merchandise at less than NV.

In its revocation request, filed in this fourth administrative review, Cutrale argued that the Department found dumping margins below *de minimis* levels in the first administrative review. Although Cutrale acknowledged that the Department found dumping margins in the second administrative review, it argued that the margins were based upon the application of zeroing, which the World Trade Organization (WTO) has found to be inconsistent with international obligations. Cutrale states that there is an ongoing WTO dispute between Brazil and the United States regarding zeroing and that it believes that without zeroing it will have zero dumping margins for all administrative reviews thus far conducted or underway.

After analyzing Cutrale's request for revocation, we preliminarily find that it does not meet all of the criteria under 19 CFR 351.222(b). Pursuant to the regulation, upon receipt of a request for revocation, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

In this case, our preliminary margin calculation for the fourth administrative review shows that Cutrale did not sell the subject merchandise at less than NV during the current review period. *See* "Preliminary Results of the Review" section below. However, in the second and third administrative reviews, Cutrale received antidumping duty margins above *de minimis. See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review,* 74 FR 40167 (Aug. 11, 2009) (*2007–2008 OJ from Brazil*); and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999 (Aug. 18, 2010) (*2008–2009 OJ from Brazil*). Accordingly, while the Department preliminarily finds that Cutrale did not sell the subject merchandise at less than NV in this segment of the proceeding, we have found that Cutrale sold the subject merchandise at less than NV in the two most recently-completed administrative reviews (*i.e.,* the second and third administrative reviews).

Cutrale's speculation as to what antidumping margins might have been calculated in prior reviews had the Department used a different methodology does not provide a basis for revocation. The principles of administrative finality apply to these completed reviews. Cutrale did not successfully challenge the final results of the second administrative review in court and, thus, they are final and conclusive. Although Cutrale has challenged the final results of the third administrative review before the Court of International Trade, unless or until there is a final and conclusive court decision invalidating these results, by statute, these results are presumed to be correct. *See Shandong Huarong Gen. Group Corp.* v. *United States,* 122 F.Supp. 2d 143, 148 (CIT 2000) ("By statute, Commerce's administrative review determinations are presumed to be correct and the burden of proving otherwise rests exclusively upon the party challenging such decision.") (citing 28 U.S.C. 2639a(1)). Because the results of the administrative reviews are presumed to be correct for a court action appealing them, they must also be presumed to be correct in the context of a revocation request. Cutrale's filing of an appeal of the final results of the third administrative review to a court does not render the final results incorrect or unlawful.

With respect to Cutrale's argument that Brazil has challenged zeroing before the WTO, we acknowledge that there is an ongoing WTO dispute between Brazil and the United States regarding zeroing. However, this dispute is yet to be resolved by the WTO, including any potential appeals. More importantly, WTO reports do not provide an independent basis for altering the Department's methodology, except to the extent that they are implemented pursuant to a specified statutory scheme. *See Corus Staal BV* v.

Department of Commerce, 395 F.3d 1343, 1347, 1349 (Fed. Cir. 2005), cert denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006). There have been no WTO reports implemented in any fashion that would necessitate any change in the Department's methodology in this administrative review or prior administrative reviews of this antidumping duty order.

Therefore, we preliminarily determine that Cutrale does not qualify for revocation of the order on OJ pursuant to 19 CFR 351.222(b)(2), and thus, that the order with respect to such merchandise should not be revoked.

Preliminary Determination of No Shipments

As noted in the "Background" section above, Coinbra-Frutesp and Montecitrus indicated that they had no shipments of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by these two companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that neither Coinbra-Frutesp nor Montecitrus had any reviewable transactions during the POR.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Coinbra-Frutesp or Montecitrus, and exported by other parties, at the all-others rate. *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (Sept. 17, 2010). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Coinbra-Frutesp and Montecitrus and issue appropriate instructions to CBP based on the final results of the review. *See* the "Assessment Rates" section of this notice below.

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale and Fischer to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cutrale and Fischer covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making 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, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. *See* section 773(a)(4) of the Act.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's and Fischer's U.S. sales as CEP sales because they were made in the United States by their U.S. affiliates on behalf of the respondents, within the meaning of section 772(b) of the Act.

A. Cutrale

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. Additionally, for certain sales made pursuant to futures contracts which were noticed prior to the POR, but were shipped and invoiced during the POR, we adjusted the reported date of sale for these transactions to base it on the invoice date. We also adjusted the reported data to account for the difference between the reported and actual brix levels, as indicated on the invoice, at which the U.S. product was sold. In a small number of instances where the invoice did not reflect the actual brix level, we used the reported brix data. Where appropriate, we made adjustments for billing adjustments and rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight; U.S. brokerage and handling (offset by customer-specific reimbursements); U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses by the amount of brokerage and handling expenses incurred on the subject

merchandise, in accordance with our practice. *See, e.g, Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (Aug. 11, 2008) (*2005–2007 OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 7; *2007–2008 OJ from Brazil* at Comment 3; and *2008–2009 OJ from Brazil* at Comment 2. We also capped U.S. customs duty reimbursements, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *Id.*

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 (offset by pallet and drum revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue and drum revenue by the amount of repacking expenses, in accordance with our practice. *Id.* In addition, we recalculated inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, below.

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

For further discussion of the changes made to Cutrale's reported U.S. sales data, see the March 31, 2011, memorandum from Blaine Wiltse, Analyst, to the File, entitled "Calculation Adjustments for Sucocitrico Cutrale Ltda. for the Preliminary Results" (Cutrale Sales Calculation Memo).

B. Fischer

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. 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 expenses; foreign warehousing expenses; foreign brokerage and handling expenses; ocean freight expenses; marine insurance expenses; U.S. brokerage and handling expenses; U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback); U.S. inland freight expenses; and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *See 2005–2007 OJ from Brazil* at Comment 7; *2007–2008 OJ from Brazil* at Comment 3, and *2008–2009 OJ from Brazil* at Comment 2. Further, we determined that the international freight expenses provided by Fischer's affiliated freight provider were not at arm's length. Therefore, for all sales shipped by Fischer's affiliate, we assigned the international freight rate charged by Fischer's affiliate to an unaffiliated party to restate them on an arm's-length basis. For further discussion, see the March 31, 2011, memorandum to the file from Hector Rodriguez, Analyst, entitled "Calculations Performed for Fischer S.A. Comercio, Industria, and Agricultura for the Preliminary Results in the 2009–2010 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil" (Fischer Sales Calculation Memo).

In accordance with sections 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.,* additional processing expenses, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, and other indirect selling expenses). In addition, we recalculated inventory carrying costs using the manufacturing costs reported in Fischer's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, below.

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

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

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

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[1] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible.

LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* 62 FR at 61732–33.

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

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.,* sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: order input/processing, freight and delivery, packing, maintaining inventory at the port of exportation, and quality testing.

Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. *See 2008–2009 OJ from Brazil* at Comment 7 and *Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409 (July 13, 2009). Based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.,* direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales and found that Cutrale performed the following selling functions: order input/processing, advertising via sponsorship of a soccer team, freight and delivery, packing, and inventory maintenance at the factory. In addition to these functions, Cutrale also claimed that it offered quality guarantees, engineering services, and after-sales services to home market customers. With respect to engineering services and after-sales services, we disagree that the record supports Cutrale's claims. Rather, the record shows that Cutrale provided no such services other than holding a single meeting with one customer in which certain topics were discussed. Because the specifics of this meeting are business proprietary in nature, they cannot be disclosed here. For further discussion, see the Cutrale Sales Calculation Memo. Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: (1) Cutrale performed limited advertising in the home market (*i.e.,* the sponsorship of a local soccer team in Brazil); (2) Cutrale entered orders into the company's computer system for home market sales based on orders placed by customers, while it generated sales documents for sales to its U.S. affiliate based on a general shipping schedule; (3) Cutrale provided post-sale services consisting of a single meeting with one customer; and (4) Cutrale provided additional quality testing in the home market which was limited to a small number of basic screenings for each batch of orange juice produced.

According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Therefore, because we determine that substantial differences in Cutrale's selling activities do not exist across markets, we determine that sales to the U.S. and home markets during the POR were made at the same LOT. As a result, neither a LOT adjustment nor a CEP offset is warranted for Cutrale. This determination is consistent with findings in previous reviews.[2] *See, e.g., 2005–2007 OJ from Brazil* at Comment 5; *2007–2008 OJ from Brazil* at Comment 2; and *2008–2009 OJ from Brazil* at Comment 7.

2. Fischer

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.,* sales via an affiliated reseller) and, thus, the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Fischer reported that it made sales through one channel of distribution and that the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for home market sales, and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight; cold storage and inventory maintenance; sales and marketing support; and technical assistance. Accordingly, based on the selling function categories listed above, we find that Fischer performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and

[2] This finding is also consistent with Cutrale's statement that there were no significant differences between the sales activities that it performed during the current POR and those which it performed in both markets during the previous segment of the proceeding. *See* Cutrale's supplemental section A response, submitted on September 8, 2010, at page 3.

warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Fischer.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither a LOT adjustment nor a CEP offset is warranted for Fischer.

C. Affiliated-Party Transactions and Arm's-Length Test

During the POR, Cutrale made sales in the home market to an affiliated party, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to the affiliate were made at arm's-length prices, we compared the unit prices of sales to the affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, 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 LOT, we determined that the sales made to the affiliated party were at arm's-length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* section 771(15) of the Act and 19 CFR 351.102(b).

D. Cost of Production Analysis

We found that both Cutrale and Fischer made sales below the COP in the 2007–2008 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded. *See 2007–2008 OI from Brazil,* 74 FR at 40167. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except in the following instances:

a. Cutrale

i. We used Cutrale's home market actual brix level data to adjust Cutrale's home market costs to ensure that these are stated on a pounds-solid basis using actual brix. For further discussion of this adjustment, see the Cutrale Sales Calculation Memo.

ii. We adjusted Cutrale's financial expense ratio by limiting the interest income offset to income earned on short-term investments of its working capital. For further discussion of this adjustment, see the March 31, 2011, Memorandum from Gary Urso, Accountant, to Neal M. Halper, Director Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Sucocitrico Cutrale Ltda."

b. Fischer

i. We revised Fischer's reported per-unit raw material costs to reflect the POR cost of purchases and purchase price adjustments as recorded in Fischer's normal books and records.

ii. We revised Fischer's G&A calculation to include losses on the disposition of fixed assets and the eradication of orange trees.

For further discussion of these adjustments, see the March 31, 2011, Memorandum from Frederick Mines, Accountant, to Neal M. Halper, Director Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Fischer S.A. Comercio, Industria and Agricultura."

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Fischer's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis. We used the remaining sales as the basis for determining NV for Cutrale and Fischer in accordance with section 773(b)(1) of the Act.

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 billing adjustments, in accordance

with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act.

In addition we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses (offset by interest revenue). We recalculated Cutrale's home market credit expenses to base the calculation on the gross unit price net of taxes and billing adjustments. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission. We capped Cutrale's interest revenue by the amount of credit expenses, in accordance with our practice. *See, e.g., 2005–2007 OJ from Brazil* at Comment 7; *2007–2008 OJ from Brazil* at Comment 3, and *2008–2009 OJ from Brazil* at Comment 2. We recalculated home market inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the "Calculation of Cost of Production" section of this notice, above. For further discussion of these adjustments, see the Cutrale Sales Calculation Memo.

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.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Fischer

We calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments and other discounts in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We made deductions for foreign inland freight expenses and inland insurance expenses, in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses (offset by interest revenue). We capped Fischer's interest revenue by the amount of credit expenses, in accordance with our practice. *See, e.g, 2005–2007 OJ from Brazil* at Comment 7; *2007–2008 OJ from Brazil* at Comment 3, and *2008–2009 OJ from Brazil* at Comment 2.

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

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those OJ products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of Cost of Production" section, above. We based SG&A and profit for Fischer on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act.

For comparisons to CEP, we deducted home market direct selling expenses from CV. *Id.* We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions. *See* 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2009, through February 28, 2010, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A.	0.41 (*de minimis*)
Fischer S.A. Comercio, Industria, and Agricultura.	3.96
Coinbra-Frutesp (SA)	*
Montecitrus Trading S.A.	*

* No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of

antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis. See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of NFC, and for FCOJM produced and/or exported by Cargill Citrus Limitada and Coinbra-Frutesp will continue to be 16.51 percent, the all-others rate made effective by the LTFV investigation. *See OJ Order,* 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8324 Filed 4–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews

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

SUMMARY: On November 12, 2010, the Department of Commerce (Department) published preliminary results for the new shipper reviews (NSRs) of fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) November 1, 2008, through October 31, 2009. *See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews and Preliminary Rescission, in Part,* 75 FR 69415 (November 12, 2010) (*Preliminary Results*). The reviews covered three respondents: Jinxiang Chengda Imp & Exp Co., Ltd. (Chengda), Zhengzhou Huachao Industrial Co., Ltd. (Huachao), and Jinxiang Yuanxin Imp & Exp Co., Ltd. (Yuanxin).

As discussed below, we preliminarily found that Yuanxin's and Huachao's sales were *bona fide* and that these sales were made in the United States at prices below normal value (NV). In addition, we found Chengda's sales to be not *bona fide,* and announced our preliminary intent to rescind Chengda's new shipper review. For the final results of this review, we are finding the sales of all three respondents, Chengda, Huachao, and Yuanxin, to be not *bona fide.* Therefore, because there were no other shipments or entries by these three companies during the POR, we are rescinding these new shipper reviews.

DATES: *Effective Date:* April 7, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

Since the *Preliminary Results,* the following events have occurred. On December 2, 2010, surrogate value information was placed on the record by Huachao. On December 30, 2010, the Department extended the time limit for the final results of this new shipper review. On January 26, 2011, the Department issued a supplemental questionnaire to Yuanxin. On January 27, 2011, the Department issued a supplemental questionnaire to Huachao. On February 4, 2011, the Department issued a letter to Yuanxin concerning the business proprietary designation of the company's Web site address.

On February 4, 2011, the Department issued the briefing schedule for briefs addressing all issues except the *bona fides* of Huachao's and Yuanxin's respective sales. On February 8, 2011, Yuanxin requested an extension to the deadlines as established in the February 4, 2011 briefing schedule. On February 9, 2011, the Department issued an extension of this briefing schedule, with briefs due February 17, 2011, and rebuttal briefs due February 22, 2011. On February 14, 2011, the Department placed information related to Jinxiang Hejia Co., Ltd.'s NSR sale to the United States, from the 2007/2008 NSR, on the record of this review. Huachao and Yuanxin submitted supplemental questionnaire responses on February 14, 2011. Yuanxin also submitted its case brief on February 14, 2011. On February 15, 2011, the Department placed memoranda on the record of this review that included information related to