

COTT CORP /CN/  
Form 10-K  
February 27, 2013  
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**United States**  
**Securities and Exchange Commission**  
Washington, D.C. 20549

**Form 10-K**

x **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**  
For the fiscal year ended December 29, 2012

.. **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-31410

**COTT CORPORATION**

(Exact name of registrant as specified in its charter)

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**CANADA**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**98-0154711**  
(IRS Employer  
Identification No.)

**6525 VISCOUNT ROAD**

**MISSISSAUGA, ONTARIO**

**L4V 1H6**

**5519 WEST ID LEWILD AVENUE**

**TAMPA, FLORIDA, UNITED STATES**  
(Address of principal executive offices)

**33634**  
(Zip Code)

**Registrant's telephone number, including area code: (905) 672-1900 and (813) 313-1800**

**Securities registered pursuant to Section 12(b) of the Act:**

<b>Title of each class</b>	<b>Name of each exchange on which registered</b>
<b>COMMON SHARES WITHOUT NOMINAL OR PAR VALUE</b>	<b>NEW YORK STOCK EXCHANGE TORONTO STOCK EXCHANGE</b>

**Securities registered pursuant to Section 12(g) of the Act: NONE**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

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Non-accelerated filer  (Do not check if a smaller reporting company)  Smaller reporting company   
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-12 of the Act). Yes  No

The aggregate market value of the common equity held by non-affiliates of the registrant as of June 30, 2012 (based on the closing sale price of \$8.21 for the registrant's common stock as reported on the New York Stock Exchange on June 29, 2012) was \$765.2 million.

(Reference is made to the last paragraph of Part II, Item 5 for a statement of assumptions upon which the calculation is made).

The number of shares outstanding of the registrant's common stock as of February 19, 2013 was 95,371,484.

### **Documents incorporated by reference**

Portions of our definitive proxy circular for the 2013 Annual Meeting of Shareowners, to be filed within 120 days of December 29, 2012, are incorporated by reference in Part III. Such proxy circular, except for the parts therein which have been specifically incorporated by reference, shall not be deemed filed for the purposes of this Annual Report on Form 10-K.

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Our consolidated financial statements are prepared in accordance with United States ( U.S. ) generally accepted accounting principles ( GAAP ) in U.S. dollars. Unless otherwise indicated, all amounts in this report are in U.S. dollars and U.S. GAAP.

Any reference to 2012, 2011 and 2010 corresponds to our fiscal years ended December 29, 2012, December 31, 2011, and January 1, 2011, respectively.

**Forward-looking statements**

In addition to historical information, this report, and the reports and documents incorporated by reference in this report, may contain statements relating to future events and future results. These statements are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995 and applicable Canadian securities legislation and involve known and unknown risks, uncertainties, future expectations and other factors that may cause actual results, performance or achievements of Cott Corporation to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such statements include, but are not limited to, statements that relate to projections of sales, earnings, earnings per share, cash flows, capital expenditures or other financial items, discussions of estimated future revenue enhancements and cost savings. These statements also relate to our business strategy, goals and expectations concerning our market position, future operations, margins, profitability, liquidity and capital resources. Generally, words such as anticipate, believe, continue, could, endeavor, estimate, expect, intend, may, will, plan, predict, project, should and similar terms identify forward-looking statements in this report and in the documents incorporated in this report by reference. These forward-looking statements reflect current expectations regarding future events and operating performance and are made only as of the date of this report.

The forward-looking statements are not guarantees of future performance or events and, by their nature, are based on certain estimates and assumptions regarding interest and foreign exchange rates, expected growth, results of operations, performance, business prospects and opportunities and effective income tax rates, which are subject to inherent risks and uncertainties. Material factors or assumptions that were applied in drawing a conclusion or making an estimate set out in forward-looking statements may include, but are not limited to, assumptions regarding management's current plans and estimates, our ability to remain a low cost supplier, and effective management of commodity costs. Although we believe the assumptions underlying these forward-looking statements are reasonable, any of these assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions could prove to be incorrect. Our operations involve risks and uncertainties, many of which are outside of our control, and any one or any combination of these risks and uncertainties could also affect whether the forward-looking statements ultimately prove to be correct. These risks and uncertainties include, but are not limited to, those described in Part I, Item 1A. Risk Factors and elsewhere in this report and those described from time to time in our future reports filed with the Securities and Exchange Commission ( SEC ) and Canadian securities regulatory authorities.

We undertake no obligation to update any information contained in this report or to publicly release the results of any revisions to forward-looking statements to reflect events or circumstances of which we may become aware of after the date of this report. Undue reliance should not be placed on forward-looking statements.

All future written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the foregoing.

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**PART I**

**ITEM 1. BUSINESS**

**Our Company**

Cott Corporation, together with its consolidated subsidiaries ( Cott, the Company, our Company, Cott Corporation, we, us, or our ), is one of the world's largest producers of beverages on behalf of retailers, brand owners and distributors. Our product lines include carbonated soft drinks ( CSDs ), 100% shelf stable juice and juice-based products, clear, still and sparkling flavored waters, energy products, sports products, new age beverages, and ready-to-drink teas, as well as alcoholic beverages for brand owners. Our business operates through five reporting segments: North America (which includes our U.S. operating segment and Canada operating segment), United Kingdom ( U.K. ) (which includes our United Kingdom reporting unit and our Continental European reporting unit), Mexico, Royal Crown International ( RCI ) and All Other.

We incorporated in 1955 and are governed by the Canada Business Corporations Act. Our registered Canadian office is located at 333 Avro Avenue, Pointe-Claire, Quebec, Canada H9R 5W3 and our principal executive offices are located at 5519 W. Idlewild Avenue, Tampa, Florida, United States 33634 and 6525 Viscount Road, Mississauga, Ontario, Canada L4V 1H6.

**Competitive Strengths**

We believe that our competitive strengths will enable us to maintain our position as one of the world's largest beverage companies on behalf of retailers, brand owners and distributors and will allow us to capitalize on future opportunities to drive sustainable and profitable growth.

***Leading Producer of Private-Label Beverages with Diverse Product Portfolio and Contract Manufacturing Capabilities***

We currently have the leading private-label market share in each of the United States, Canada and the United Kingdom by annual volume of cases produced. We also manufacture beverages on a contract basis for certain customers. Our product lines include CSDs, 100% shelf stable juice and juice-based products, clear, still and sparkling flavored waters, energy products, sports products, new age beverages, and ready-to-drink teas, as well as alcoholic beverages for brand owners. We believe our proven ability to innovate and develop our product portfolio to meet changing consumer demand will position us well to continue to serve our customers and their consumers. During 2012, we launched more than 100 new product stock keeping units ( SKUs ), including new flavor profiles, new package types and new product category introductions for our customers.

We market or supply over 500 retailer, licensed and Company-owned brands in our four core geographic segments. We sell CSD concentrates and non-carbonated concentrates in over 50 countries. We believe that our leadership position, our broad portfolio offering and our existing infrastructure will enable us to continue to penetrate the private-label and contract manufacturing markets, whether it is winning new customers, launching new product SKUs with existing customers, or supplying retailers who currently self-manufacture.

***Extensive, Flexible Manufacturing Capabilities***

Our business is supported by our extensive manufacturing network and flexible production capabilities. Our manufacturing footprint encompasses 33 strategically located beverage manufacturing and fruit processing facilities, including 20 in the United States, five in Canada, six in the United Kingdom and one in Mexico, as well as one vertically-integrated global concentrate manufacturing facility in Columbus, Georgia.

We are the only dedicated beverage company producing on behalf of retailers, brand owners and distributors with a manufacturing footprint across North America. Manufacturing flexibility is one of our core competencies and is critical to our success, as our products will typically feature customized packaging, design and graphics for our key customers. Our ability to produce multiple SKUs and packages on our production lines and manage complexities through quick-line changeover processes differentiates us from our competition.

***High Levels of Customer Service and Strong Customer Integration***

Our business requires a high level of coordination with our customers in areas such as supply chain, product development and customer service. In addition to efficiently managing complex product manufacturing, we have a proven track record of maintaining high service levels across our customer base. We also partner closely with customers on supply chain planning and execution to minimize freight costs, reduce working capital

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requirements and increase in-store product availability. We work as partners with our customers on new product development and packaging designs. Our role includes providing market expertise as well as knowledge of category trends that may present opportunities for our customers. A high level of customer integration and partnership coupled with a nationwide manufacturing footprint is critical for the development of successful beverage programs for our customers.

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### ***Strategic Importance to Our Customers***

We have longstanding partnerships with many of the world's leading retailers in the grocery, mass-merchandise and drug store channels, as well as customers for whom we manufacture beverages on a contract basis, giving our customers access to high-quality, affordable beverages. Our competitive advantages include:

beverage manufacturing expertise;

vertically integrated, low-cost production platform;

one-stop sourcing;

category insights and marketing expertise;

supply chain and high quality consistency in products; and

product innovation and differentiation.

For 2012, our top 10 customers accounted for 54.2% of total revenue. Walmart was the only customer that accounted for more than 10% of our total revenue for the period. We have established long-standing relationships with most of our top 10 customers. As a result of our high product quality and commitment to service, coupled with a national manufacturing footprint, we believe we will continue to play a meaningful role in helping our customers develop strategies to build loyalty with consumers.

### **Business Strategy**

Our primary goal is to maintain long-term profitability and enhance our position as the market leader and preferred supplier of beverages on behalf of retailers, brand owners, and distributors in the markets where we operate. Continued leadership in our core markets will enable us to sustain and grow profitability as we drive for increased penetration and share growth within our core product categories. We believe that the following strategies will help us to achieve our goal.

### ***Maintain Customer Focus***

Customer relationships are important for any business, but at Cott, where many of our products bear our customers' brand names, we must maintain particularly close partnerships with our customers. We will continue to provide our customers with high quality products and service at an attractive value that will help them provide quality, value-oriented products to their consumers.

We will continue to focus on our high levels of customer service, as well as innovations through the introduction of new packages, flavors and varieties of beverages. We believe our focus on our customers will enable us to leverage our existing relationships and to develop new ones in existing and new markets. As a fast follower of innovative products, our goal is to identify new products that are succeeding in the marketplace and develop similar products of high quality for our customers to offer their consumers at a better value.

### ***Control Operating Costs***

We understand that our long-term success will be closely tied to our ability to remain a low-cost supplier. Effective management of our operating costs is critical to our success. As part of our ongoing management of costs, we enter into contract commitments with suppliers of key raw materials such as aluminum sheet metal, high fructose corn syrup ( HFCS ), polyethylene terephthalate ( PET ) bottles, caps and preforms, fruit and fruit concentrates. On an ongoing basis we review our fixed overhead and manufacturing costs for opportunities for further reductions. In 2010, we implemented modest cost reductions as we continued to reduce overhead costs, consistent with the cost reduction program



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implemented in 2009. In 2011, we transformed the Company's information technology function from a nearly 100% outsourced, single vendor relationship to a combination of in-house resources and multi-vendor strategy, significantly reducing our total information technology spending. In 2012, we began to vertically integrate our manufacturing capabilities in order to manufacture our products with increased efficiency and at a lower cost.

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### ***Control Capital Expenditures and Rigorously Manage Working Capital***

Consistent with our status as a low-cost supplier, we leverage our existing manufacturing capacity to maintain an efficient supply chain. We are committed to carefully prioritizing our capital investments that provide the best financial returns for Cott and for our customers, while maintaining safety, efficiency and superior product quality. Our manufacturing facilities operate according to the highest standards of safety and product quality. We perform regular third-party audits of our facilities and are subject to quality audits on behalf of our customers. We will continue to evaluate growth and other opportunities, while remaining mindful of our total capital expenditure targets.

In 2012, our capital expenditures were devoted primarily to maintaining existing beverage production facilities, making equipment upgrades and expansion in the United States, the United Kingdom and Canada and expenditures related to vertically integrating our manufacturing capabilities.

### ***Cash Flow Management***

We believe that a strong financial position will enable us to capitalize on opportunities in the marketplace. As a result, we continuously review and improve the effectiveness of our cash management processes. We strive to achieve the most optimal working capital level, rationalize our capital expenditures and continuously drive operating cost improvements to enhance cash flow.

### ***Pursue Select Acquisitions***

We believe that opportunities exist for us to enhance our scale, reduce fixed manufacturing costs and broaden our product portfolio. In August 2010, we completed the acquisition of substantially all of the assets and liabilities of Cliffstar Corporation ( Cliffstar ) and its affiliated companies (the Cliffstar Acquisition ) for an aggregate purchase price of \$552.8 million, which provided us with a foothold in the North America private-label juice market. In March of 2012, our U.K. reporting segment acquired a beverage and wholesale business based in Scotland for approximately \$5.0 million. The business acquisition provided increased product offerings, logistical synergies and access to an additional production line. We intend to continue to evaluate and pursue strategic opportunities to enhance our industry position, strengthen our business and build value for our shareholders.

### **Principal Markets and Products**

We estimate that as of the end of 2012, we produced (either directly or through third party manufacturers with whom we have co-packing agreements) a majority of all retailer brand CSDs and juice sold in the United States, as well as a majority of all retailer brand CSDs and sports and energy products sold in the United Kingdom.

We have a diversified product portfolio across major beverage categories, including beverages that are on-trend with consumer demand. In 2012, CSDs, juice, concentrate, and all other products represented 39.1%, 24.2%, 1.9% and 34.8% as a percentage of revenue, respectively. In 2011, CSDs, juice, concentrate, and all other products represented 40.7%, 25.8%, 1.6% and 31.9% as a percentage of revenue, respectively. In 2010, CSDs, juice, concentrate, and all other products represented 50.4%, 13.1%, 2.2% and 34.3% as a percentage of revenue, respectively.

We believe that opportunities exist to increase sales of beverages in our core markets by leveraging existing customer relationships, capitalizing on cross-selling and up-selling opportunities, obtaining new customers, manufacturing beverages (including alcoholic beverages) on a contract basis for new and existing customers, exploring new channels of distribution and introducing new products.

### **Restructuring Initiatives**

In 2007, we implemented the North American Realignment and Cost Reduction Plan (the North American Plan ) to consolidate the management of our Canadian and U.S. businesses to a North American basis, among other objectives. In 2010, we paid the remaining lease termination costs incurred in connection with the North American Plan.

We did not incur any restructuring charges in 2012 or 2011, and we do not anticipate incurring any additional restructuring charges related to the North American Plan in the future.

### **Financial Information about Segments**

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For financial information about reporting segments and geographic areas, see Note 9 to the consolidated financial statements contained in this Annual Report on Form 10-K.

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### **Manufacturing and Distribution Network**

Substantially all of our beverages are manufactured in facilities that we, or third-party manufacturers with whom we have long-term co-packing agreements, either own or lease. We rely on third parties to produce and distribute products in areas or markets where we do not have our own production facilities, such as in continental Europe, or when additional production capacity is required.

Our products are either picked up by our customers at our facilities or delivered by us, a common carrier, or third-party distributors to our customers' distribution centers or to retail locations.

### **Ingredient and Packaging Supplies**

In addition to water, the principal raw materials required to produce our products are aluminum cans and ends, PET bottles, caps and preforms, labels, cartons and trays, sweeteners, such as HFCS and sugar, fruit concentrates and fruit. The cost of these raw materials can fluctuate substantially over time.

Under many of our supply arrangements for these raw materials, the price we pay fluctuates along with certain changes in underlying commodity costs, such as aluminum in the case of cans and ends, resin in the case of PET bottles, caps and preforms, corn in the case of HFCS, fruit and fruit concentrates. We believe that we will be able to either renegotiate contracts with these suppliers when they expire or find alternative sources for supply. We also believe there is adequate supply of the ingredient and packaging materials used to produce and package our products.

Generally, we bear the risk of increases in the costs of the ingredient and packaging materials used to produce our products, including the underlying costs of the commodities used to manufacture them and, to some extent, the costs of converting those commodities into the materials we purchase.

Aluminum for cans and ends, resin for PET bottles, caps and preforms, corn for HFCS, sugar, fruit and fruit concentrates are examples of underlying commodities for which we bear the risk of increases in costs. In addition, the contracts for certain of our ingredient and packaging materials permit our suppliers to increase the costs they charge us based on increases in their cost of converting the underlying commodities into the materials we purchase. In certain cases those increases are subject to negotiated limits. Changes in the prices we pay for ingredient and packaging materials occur at times that vary by product and supplier, and take place, on a monthly, quarterly or annual basis.

Crown Cork & Seal USA, Inc. ( CCS ) supplies us with aluminum cans and ends under a contract entered into in 2010 with a multi-year term. The contract provides that CCS will supply our aluminum cans and ends requirements worldwide, subject to certain exceptions. The contract contains pricing mechanisms for certain materials and representations, warranties, indemnities and termination events (including termination events related to bankruptcy or insolvency of either party) that we believe to be customary. In 2012, we had fixed price commitments for a majority of our forecasted aluminum requirements for 2012 and entered into fixed price commitments for a majority of our aluminum requirements for 2013 and a portion of our aluminum requirements for 2014.

PET resin prices have fluctuated significantly in recent years as the price of oil has fluctuated and demand for synthetic fibers has increased. Because PET resin is not a traded commodity, no fixed price mechanism has been implemented, and we expect to pay prevailing market prices for our PET resin needs. Although PET resin is not a traded commodity, at times we are able to enter into short-term fixed price commitments. During 2012, we entered into fixed price commitments for a portion of our PET resin requirements for the second and third quarter of the year.

Corn has a history of volatile price changes. We expect that corn market prices will continue to fluctuate as a result of an increase in the demand for corn-related products such as ethanol. In 2012, we had fixed price commitments for all of our HFCS requirements for 2012 and entered into fixed price commitments for all of our HFCS requirements for 2013. We do not have volume commitments for HFCS.

The sugar market is susceptible to volatility as well. In 2012, we had fixed price commitments for all of our sugar requirements for 2012 and entered into fixed price commitments for all of our sugar requirements for 2013.

Fruit and fruit concentrate prices have been, and we expect them to continue to be, subject to significant volatility. While fruit is available from numerous independent suppliers, these raw materials are subject to fluctuations in price attributable to, among other things, changes in crop size and federal and state agricultural programs. In 2012, we had fixed price commitments for a majority of our fruit concentrate and fruit requirements for 2012 and entered into fixed price commitments for a portion of our fruit concentrate and fruit requirements for 2013.



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### **Trade Secrets, Copyrights, Trademarks and Licenses**

We sell the majority of our beverages under retailer brands to customers who own the trademarks associated with those products. We also own registrations, or applications to register, various trademarks that are important to our worldwide business, including *Cott*<sup>®</sup>, *Red Rain*<sup>®</sup> and *Orient Emporium Tea Co.* in the United States, Canada, and the United Kingdom, *Stars & Stripes*<sup>®</sup>, *Vess*<sup>®</sup>, *Vintage*<sup>®</sup>, *So Clear*<sup>®</sup>, *Shanstar*<sup>®</sup>, *Harvest Classic*<sup>®</sup>, *Chadwick Bay*<sup>®</sup> and *Golden Crown*<sup>®</sup> in the United States, *Emerge*<sup>®</sup>, *Red Rooster*<sup>®</sup>, *MacB*<sup>®</sup>, *Carters*<sup>®</sup>, and *Ben Shaws*<sup>®</sup> in the United Kingdom, *Stars & Stripes*<sup>®</sup> in Mexico, and *RC*<sup>®</sup> in more than 100 countries and territories outside of North America. Moreover, we are licensed to use certain trademarks such as *Old Jamaica Ginger Beer* and *Ting* in the United Kingdom. The licenses to which we are a party are of varying terms, including some that are perpetual. Trademark ownership is generally of indefinite duration when marks are properly maintained in commercial use.

Our success depends in part on our intellectual property, which includes trade secrets in the form of concentrate formulas for our beverages and trademarks for the names of the beverages we sell. To protect this intellectual property, we rely principally on registration of trademarks, contractual responsibilities and restrictions in agreements (such as indemnification, nondisclosure and confidentiality agreements) with employees, consultants and customers, and on the common law and/or statutory protections afforded to trademarks, copyrights, trade secrets and proprietary know-how. We also closely monitor the use of our trademarks and when necessary vigorously pursue any party that infringes on our trademarks, using all available legal remedies.

### **Seasonality of Sales and Working Capital**

The beverage market is subject to some seasonal variations. Our beverage sales are generally higher during the warmer months and also can be influenced by the timing of holidays and weather fluctuations. Our purchases of raw materials and related accounts payable fluctuate based upon the demand for our products as well as the timing of the fruit growing seasons. The seasonality of our sales volume combined with the seasonal nature of fruit growing causes our working capital needs to fluctuate throughout the year, with inventory levels increasing in the first half of the year in order to meet high summer demand, and with fruit inventories peaking during the last quarter of the year when purchases are made after the growing season. In addition, our accounts receivable balances decline in the fall as customers pay their higher-than-average outstanding balances from summer deliveries.

### **Customers**

A significant portion of our revenue is concentrated in a small number of customers. Our customers include many large national and regional grocery, mass-merchandise, drugstore, wholesale and convenience store chains, as well as customers for whom we manufacture beverages on a contract basis. For 2012, sales to Walmart accounted for 31.0% (2011 31.6%, 2010 31.0%) of our total revenue, 36.3% of our North America reporting segment revenue (2011 35.9%, 2010 35.3%), 14.9% of our U.K. reporting segment revenue (2011 14.6%, 2010 16.6%) and 21.6% of our Mexico reporting segment revenue (2011 44.7%, 2010 38.9%). Walmart was the only customer that accounted for more than 10% of our total revenue in those periods. Sales to our top ten customers in 2012, 2011 and 2010 accounted for 54.2%, 55.1% and 55.4%, respectively, of our total revenue. We expect that sales of our products to a limited number of customers will continue to account for a high percentage of revenue for the foreseeable future. The loss of any customers that individually or in the aggregate represent a significant portion of our revenue, or a decline in sales to these customers, would have a material adverse effect on our operating results and cash flow.

We supply Walmart and its affiliated companies, under annual non-exclusive supply agreements, with a variety of products in the United States, Canada, the United Kingdom, and Mexico, including CSDs, clear, still and sparkling flavored waters, 100% shelf stable juice, juice-based products, bottled water, energy products, sports products, new age beverages, and ready-to-drink teas. In 2012, we supplied Walmart with all of its private-label CSDs in the United States. In the event Walmart were to utilize additional suppliers to fulfill a portion of its requirements for CSDs, our operating results could be materially adversely affected.

### **Research and Development**

We engage in a variety of research and development activities. These activities principally involve the development of new products, improvement in the quality of existing products, improvement and modernization of production processes, and the development and implementation of new technologies to enhance the quality and value of both current and proposed product lines. Consumer research is excluded from research and development costs and included in other marketing costs. Research and development costs were \$2.8 million in 2012, \$2.5 million in 2011 and \$3.1 million in 2010 and are included as a component of selling, general and administrative expenses.



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### **Competition**

We compete against a wide range of companies that produce, directly and on a contract basis, and sell beverages including CSDs, 100% shelf stable juice and juice-based products, clear, still and sparkling flavored waters, energy products, sports products, new age beverages, and ready-to-drink teas, and alcoholic beverages. While CSDs and CSD concentrate accounted for 63.0% of our 2012 case volume, they accounted for 41.1% of our 2012 revenue. The non-CSD products generated 37.0% of our 2012 case volume and 58.9% of our 2012 revenue.

We compete principally in the non-alcoholic beverages category, which is highly competitive in each region in which we operate. Competition for incremental volume is intense. The brands owned by the four major national soft drink companies, Coca-Cola, Pepsi, Nestle Waters North America and Dr. Pepper Snapple (formerly Cadbury Schweppes), control 69% of the total CSD and alternative beverage category within the United States. These companies have significant financial resources and spend heavily on promotional programs. They also have direct store delivery systems in North America, which enable their personnel to visit retailers frequently to promote new items, stock shelves and build displays. We also face competition in the juice category from juice brands such as Welch's, Ocean Spray and Mott's.

In addition, we face competition in North America, the United Kingdom and Mexico from regional beverage manufacturers who sell aggressively-priced brands and, in many cases, also supply retailer brand products. A few larger U.S. retailers also self-manufacture products for their own needs and continually approach other retailers seeking additional business.

We seek to differentiate ourselves from our competitors by offering our customers efficient distribution methods, high-quality products, category management strategies, packaging and marketing strategies, and superior service.

### **Government Regulation and Environmental Matters**

The production, distribution and sale in the United States of many of our products are subject to the Federal Food, Drug, and Cosmetic Act, the Federal Trade Commission Act, the Lanham Act, state consumer protection laws, federal, state and local workplace health and safety laws, various federal, state and local environmental protection laws and various other federal, state and local statutes and regulations applicable to the production, transportation, sale, safety, advertising, labeling and ingredients of such products. Outside the United States, the production, distribution and sale of our many products and related operations are also subject to numerous similar and other statutes and regulations.

A number of states have passed laws setting forth warning or labeling requirements relating to products made for human consumption. For example, the California law known as Proposition 65 requires that a specific warning appear on any product sold in California containing a substance listed by that state as having been found to cause cancer or reproductive toxicity. This law, and others like it, exposes all food and beverage producers to the possibility of having to provide warnings on their products. The detection of even a trace amount of a listed substance can subject an affected product to the requirement of a warning label, although products containing listed substances that occur naturally or that are contributed to such products solely by a municipal water supply are generally exempt from the warning requirement. From time to time over the past several years, certain of our customers have received notices alleging that the labeling requirements of the relevant state regulation would apply to products manufactured by us and sold by them. There can be no assurance that we will not be adversely affected by actions against our customers or us relating to Proposition 65 or similar failure to warn laws.

We currently offer and use non-refillable recyclable containers in the United States and other countries around the world. We also offer and use refillable containers, which are also recyclable. Legal requirements apply in various jurisdictions in the United States and other countries requiring that deposits or certain ecotaxes or fees be charged for the sale, marketing and use of certain non-refillable beverage containers. The precise requirements imposed by these measures vary. Other types of beverage container-related deposit, recycling, ecotax and/or product stewardship statutes and regulations also apply in various jurisdictions in the United States and overseas. We anticipate that additional, similar legal requirements may be proposed or enacted in the future at local, state and federal levels, both in the United States and elsewhere.

All of our beverage production facilities and other operations are subject to various environmental protection statutes and regulations, including those of the U.S. Environmental Protection Agency, which pertain to the use of water resources and the discharge of waste water. Failure to comply with these regulations can have serious consequences, including civil and administrative penalties. Compliance with these provisions has not had, and we do not expect such compliance to have, any material adverse effect on our Company's capital expenditures, net income or competitive position. However, as discussed below, changes in how the Ontario Ministry of the Environment enforces the Ontario Environmental Protection Act could result in our having to make material expenditures for environmental compliance.



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Subject to the terms and conditions of the applicable policies, we have coverage for product recalls and product liability claims that could result from the injury, illness or death of consumers using our products, contamination of our products, or damage to or mislabeling of our products.

### **The Ontario Environmental Protection Act ( OEPA )**

OEPA regulations provide that a minimum percentage of a bottler's soft drink sales within specified areas in Ontario must be made in refillable containers. The penalty for non-compliance is a fine of \$50,000 per day beginning upon when the first offense occurs and continues until the first conviction, and then increasing to \$100,000 per day for each subsequent conviction. These fines may be increased to equal the amount of monetary benefit acquired by the offender as a result of the commission of the offense.

We, and we believe other industry participants, are currently not in compliance with the requirements of the OEPA. To comply with these requirements we, and we believe many other industry participants, would have to significantly increase sales in refillable containers to a minimum refillable sales ratio of 30%. We do not expect to be in compliance with these regulations in the foreseeable future. Ontario is not enforcing the OEPA at this time, despite the fact that it is still in effect and not amended, but if it chooses to enforce it in the future, we could incur fines for non-compliance and the possible prohibition of sales of soft drinks in non-refillable containers in Ontario. We estimate that approximately 3% of our Canada operating segment sales would be affected by the possible limitation of sales of soft drinks in non-refillable containers in Ontario if the Ontario Ministry of the Environment initiated an action to enforce the provisions of the OEPA against us. Moreover, the Ontario Ministry of the Environment released a report in 1997 stating that these OEPA regulations are outdated and unworkable. However, despite the unworkable nature of the OEPA regulations, they have not yet been revoked.

We believe that the magnitude of the potential fines that we could incur if the Ontario Ministry of the Environment chose to enforce these regulations is such that the costs to us of non-compliance could be, although are not contemplated to be, material. However, our management believes that probability of such enforcement is remote.

### **Employees**

As of December 29, 2012, we had 3,960 employees, of whom 2,731 were in the North America reporting segment, 937 were in the U.K. reporting segment, 277 were in the Mexico reporting segment and 15 were in the combined RCI/All Other reporting segments. We have entered into collective bargaining agreements covering 826 employees in the United States, Canada and Mexico that contain terms that we believe are typical in the beverage industry. As these agreements expire, we believe that they can be renegotiated on terms satisfactory to us. We consider our relations with employees to be generally good.

### **Availability of Information and Other Matters**

We are required to file annual, quarterly and current reports, proxy statements and other information with the SEC and Canadian securities regulatory authorities. The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information in the Public Reference Room may be obtained by calling the SEC at 1-800-551-8090. In addition, the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file with the SEC at [www.sec.gov](http://www.sec.gov). Information filed with the Canadian securities regulatory authorities is available at [www.sedar.com](http://www.sedar.com).

Our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are also available free of charge on our website at [www.cott.com](http://www.cott.com), as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. The information found on our website is not part of this or any other report that we file with, or furnish to, the SEC or to Canadian securities regulatory authorities.

We are responsible for establishing and maintaining adequate internal control over financial reporting as required by the SEC. See Management's Report on Internal Control over Financial Reporting in Item 9A.

### **ITEM 1A. RISK FACTORS**

In addition to the other information set forth in this report, you should carefully consider the following factors, which could materially affect our business, financial condition or future results. The risks described below are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.



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### **We may be unable to compete successfully in the highly competitive beverage category.**

The markets for our products are extremely competitive. In comparison to the major national brand beverage manufacturers, we are a relatively small participant in the industry. We face competition from the national brand beverage manufacturers in all of our markets, from other retailer brand beverage manufacturers and from other contract beverage manufacturers. If our competitors reduce their selling prices, increase the frequency of their promotional activities in our core market or enter into the production of private-label products or expand their contract manufacturing efforts, or if our customers do not allocate adequate shelf space for the beverages we supply, we could experience a decline in our volumes, be forced to reduce pricing, forgo price increases required to offset increased costs of raw materials and fuel, increase capital and other expenditures, or lose market share, any of which could adversely affect our profitability.

### **We may not be able to respond successfully to consumer trends related to our products.**

Consumer trends with respect to the products we sell are subject to change. Consumers are seeking increased variety in their beverages, and there is a growing interest among consumers, public health officials and government officials regarding the ingredients in our products, the attributes of those ingredients and health and wellness issues generally. In addition, some researchers, health advocates and dietary guidelines are encouraging consumers to reduce consumption of sugar-sweetened beverages, including those sweetened with HFCS or other nutritive sweeteners. As a result, consumer demand has declined for full-calorie CSDs and consumer demand has increased for products associated with health and wellness, such as reduced-calorie CSDs, water, enhanced water, teas and certain other non-carbonated beverages. Consumer preferences may change due to a variety of other factors, including the aging of the general population, changes in social trends, the real or perceived impact that the manufacturing of our products has on the environment, changes in consumer demographics, changes in travel, vacation or leisure activity patterns, negative publicity resulting from regulatory action or litigation against companies in the industry, or a downturn in economic conditions. Any of these changes may reduce consumers' demand for our products. There can be no assurance that we can develop or be a fast follower of innovative products that respond to consumer trends. Our failure to develop innovative products could put us at a competitive disadvantage in the marketplace and our business and financial results could be adversely affected.

### **Because a small number of customers account for a significant percentage of our sales, the loss of or reduction in sales to any significant customer could have a material adverse effect on our results of operations and financial condition.**

A significant portion of our revenue is concentrated in a small number of customers. Our customers include many large national and regional grocery, mass-merchandise, drugstore, wholesale and convenience store chains in our core markets of North America, the United Kingdom and Mexico, as well as customers for whom we manufacture beverages on a contract basis. Sales to Walmart, our top customer in 2012, 2011 and 2010 accounted for 31.0%, 31.6% and 31.0%, respectively, of our total revenue. Sales to our top ten customers in 2012, 2011 and 2010 accounted for 54.2%, 55.1% and 55.4%, respectively, of our total revenue. We expect that sales of our products to a limited number of customers will continue to account for a high percentage of our revenue for the foreseeable future.

The loss of Walmart or any significant customer, or customers that in the aggregate represent a significant portion of our revenue, or a material reduction in the amount of business we undertake with any such customer or customers, could have a material adverse effect on our operating results and cash flows. Furthermore, we could be adversely affected if Walmart or any significant customer reacts unfavorably to any pricing of our products or decides to de-emphasize or reduce their product offerings in the categories with which we supply them. At December 29, 2012, we had \$225.0 million of customer relationships recorded as an intangible asset. The permanent loss of any customer included in the intangible asset would result in impairment in the value of the intangible asset or accelerated amortization and could lead to an impairment of fixed assets that were used to service that client.

### **Our ingredients, packaging supplies and other costs are subject to price increases and we may be unable to effectively pass rising costs on to our customers.**

We typically bear the risk of changes in prices on the ingredient and packaging in our products. The majority of our ingredient and packaging supply contracts allow our suppliers to alter the prices they charge us based on changes in the costs of the underlying commodities that are used to produce them. Aluminum for cans and ends, resin for PET bottles, caps and preforms, corn for HFCS, sugar, fruit and fruit concentrates are examples of these underlying commodities. In addition, the contracts for certain of our ingredient and packaging materials permit our suppliers to increase the costs they charge us based on increases in their cost of converting those underlying commodities into the materials that we purchase. In certain cases those increases are subject to negotiated limits. These changes in the prices we pay for ingredient and packaging materials occur at times that vary by product and supplier, and take place, on a monthly, quarterly or annual basis.



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We are at risk with respect to fluctuating aluminum prices. In 2012, we had fixed price commitments for a majority of our forecasted aluminum requirements for 2012, and entered into fixed price commitments for a majority of our aluminum requirements for 2013 and a portion of our requirements for 2014. Because PET resin is not a traded commodity, no fixed price mechanism has been implemented, and we are accordingly also at risk with respect to changes in PET prices. Corn, and thus HFCS, has a history of volatile price changes. In 2012, we had fixed price commitments for all of our HFCS requirements for 2012, and entered into fixed price commitments for all our HFCS requirements for 2013. Sugar also has a history of volatile price changes. We entered into fixed price commitments for all of our sugar requirements for 2012 and 2013. Fruit and fruit concentrate prices have been, and we expect them to continue to be, subject to significant volatility. While they are available from numerous independent suppliers, these raw materials are subject to fluctuations in price attributable to, among other things, changes in crop size and federal and state agricultural programs. In 2012, we had fixed price commitments for a majority of our fruit concentrate and fruit requirements for 2012 and have entered into fixed price commitments for a portion of our fruit concentrate and fruit requirements for 2013. If the cost of commodities for which we have entered into fixed price commitments decreases, we will not be able to take advantage of such decreased costs.

Accordingly, we bear the risk of fluctuations in the costs of these ingredient and packaging materials, including the underlying costs of the commodities used to manufacture them and, to some extent, the costs of converting those commodities into the materials we purchase. We currently do not use derivatives to manage this risk. If the cost of these ingredients or packaging materials increases, we may be unable to pass these costs along to our customers through adjustments to the prices we charge. If we cannot pass on these increases to our customers on a timely basis, they could have a material adverse effect on our results of operations. If we are able to pass these costs on to our customers through price increases, the impact those increased prices could have on our volumes is uncertain.

Our beverage and concentrate production facilities use a significant amount of electricity, natural gas and other energy sources to operate. Fluctuations in the price of fuel and other energy sources for which we have not locked in long-term pricing commitments or arrangements would affect our operating costs, which could impact our profitability.

### **If we fail to manage our operations successfully, our business and financial results may be materially and adversely affected.**

In recent years, we have grown our business and beverage offerings primarily through the acquisition of other companies, development of new product lines and growth with key customers. We believe that opportunities exist to increase sales of beverages in our markets by leveraging existing customer relationships, obtaining new customers, exploring new channels of distribution, introducing new products or identifying appropriate acquisition or strategic alliance candidates. The success of this strategy with respect to acquisitions depends on our ability to manage and integrate acquisitions and alliances into our existing business. Furthermore, the businesses or product lines that we acquire or align with may not be integrated successfully into our business or prove profitable. In addition to the foregoing factors, our ability to expand our business in foreign countries is also dependent on, and may be limited by, our ability to comply with the laws of the various jurisdictions in which we may operate, as well as changes in local government regulations and policies in such jurisdictions. If we fail to manage the geographic allocation of production capacity surrounding customer demand in North America, we may lose certain customer product volume or have to utilize co-packers to fulfill our customer capacity obligations, either of which could negatively impact our financial results.

### **Our geographic diversity subjects us to the risk of currency fluctuations.**

We conduct operations in many areas of the world, involving transactions denominated in a variety of currencies. We are subject to currency exchange rate risk to the extent that our costs are denominated in currencies other than those in which we earn revenues. In addition, because our financial statements are denominated in U.S. dollars, changes in currency exchange rates between the U.S. dollar and other currencies have had, and will continue to have, an impact on our results of operations. While we may enter into financial transactions to address these risks, there can be no assurance that currency exchange rate fluctuations will not adversely affect our results of operations, financial condition and cash flows. In addition, while the use of currency hedging instruments may provide us with protection from adverse fluctuations in currency exchange rates, by utilizing these instruments we potentially forego the benefits that might result from favorable fluctuations in currency exchange rates.

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### **If we are unable to maintain relationships with our raw material suppliers, we may incur higher supply costs or be unable to deliver products to our customers.**

In addition to water, the principal raw materials required to produce our products are aluminum cans and ends, PET bottles, caps and preforms, labels, cartons and trays, sweeteners, such as HFCS and sugar, fruit and fruit concentrates. We rely upon our ongoing relationships with our key suppliers to support our operations.

We typically enter into annual or multi-year supply arrangements with our key suppliers, meaning that our suppliers are obligated to continue to supply us with materials for one-year or multi-year periods, at the end of which we must either renegotiate the contracts with those suppliers or find alternative sources for supply. There can be no assurance that we will be able to either renegotiate contracts (with similar or more favorable terms) with these suppliers when they expire or, alternatively, if we are unable to renegotiate contracts with our key suppliers, there can be no assurance that we could replace them. We could also incur higher ingredient and packaging supply costs in renegotiating contracts with existing suppliers or replacing those suppliers, or we could experience temporary disruptions in our ability to deliver products to our customers, either of which could have a material adverse effect on our results of operations.

With respect to some of our key packaging supplies, such as aluminum cans and ends, and some of our key ingredients, such as sweeteners, we have entered into long-term supply agreements, the remaining terms of which range from 12 to 60 months, and therefore we are assured of a supply of those key packaging supplies and ingredients during such terms. CCS supplies aluminum cans and ends under a contract with a multi-year term. The contract provides that CCS will supply our aluminum can and end requirements worldwide, subject to certain exceptions. In addition, the supply of specific ingredient and packaging materials could be adversely affected by many factors, including industry consolidation, energy shortages, governmental controls, labor disputes, natural disasters, transportation interruption, political instability, acts of war or terrorism and other factors.

### **We have a significant amount of outstanding debt, which could adversely affect our financial health and future cash flows may not be sufficient to meet our obligations.**

As of December 29, 2012, our total debt was \$605.8 million. Our present debt and any future borrowings could have important adverse consequences to us and our investors, including:

requiring a substantial portion of our cash flow from operations to make interest payments on this debt;

making it more difficult to satisfy debt service and other obligations;

increasing the risk of a future credit ratings downgrade of our debt, which would increase future debt costs;

increasing our vulnerability to general adverse economic and industry conditions;

reducing the cash flow available for share repurchases, to pay dividends, and to fund capital expenditures and other corporate purposes and to grow our business;

limiting our flexibility in planning for, or reacting to, changes in our business and the industry;

placing us at a competitive disadvantage to our competitors that may not be as highly leveraged; and

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limiting our ability to borrow additional funds as needed or take advantage of business opportunities, such as acquisitions, as they arise, pay cash dividends or repurchase common stock.

To the extent we become more leveraged, the risks described above would increase. In addition, our actual cash requirements in the future may be greater than expected. We cannot assure you that our business will generate sufficient cash flow from operations, or that future borrowings will be available to us in amounts sufficient to enable us to pay our debt or to fund our other liquidity needs.

If we fail to generate sufficient cash flow from future operations to meet our debt service obligations, we may need to refinance all or a portion of our debt on or before maturity. We cannot assure you that we will be able to refinance any of our debt on attractive terms, commercially reasonable terms or at all. If we cannot service or refinance our indebtedness, we may have to take actions such as selling assets, seeking additional equity or reducing or delaying capital expenditures, strategic acquisitions, investments and alliances, any of which could impede the implementation of our business strategy, prevent us from entering into transactions that would otherwise benefit our business and/or have a material adverse effect on our financial condition and results of operations. Our future operating performance and our ability to service or refinance our debt will be subject to future economic conditions and to financial, business and other factors, many of which are beyond our control.

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**Our asset-based lending ( ABL ) facility, the indenture governing the 2017 Notes, and the indenture governing the 2018 Notes each contain various covenants limiting the discretion of our management in operating our business, which could prevent us from capitalizing on business opportunities and taking some corporate actions.**

Our ABL facility, the indenture governing the \$215.0 million of senior notes that are due on November 15, 2017 (the 2017 Notes ), and the indenture governing the \$375.0 million of senior notes that are due on September 1, 2018 (the 2018 Notes ) each impose significant operating and financial restrictions on us. These restrictions will limit or restrict, among other things, our ability and the ability of our restricted subsidiaries to:

incur additional indebtedness;

make restricted payments (including paying dividends on, redeeming, repurchasing or retiring our capital stock);

make investments;

create liens;

sell assets;

enter into agreements restricting our subsidiaries ability to pay dividends, make loans or transfer assets to us;

engage in transactions with affiliates; and

consolidate, merge or sell all or substantially all of our assets.

These covenants are subject to important exceptions and qualifications. In addition, our ABL facility also requires us, under certain circumstances, to maintain compliance with certain financial covenants as described in th