

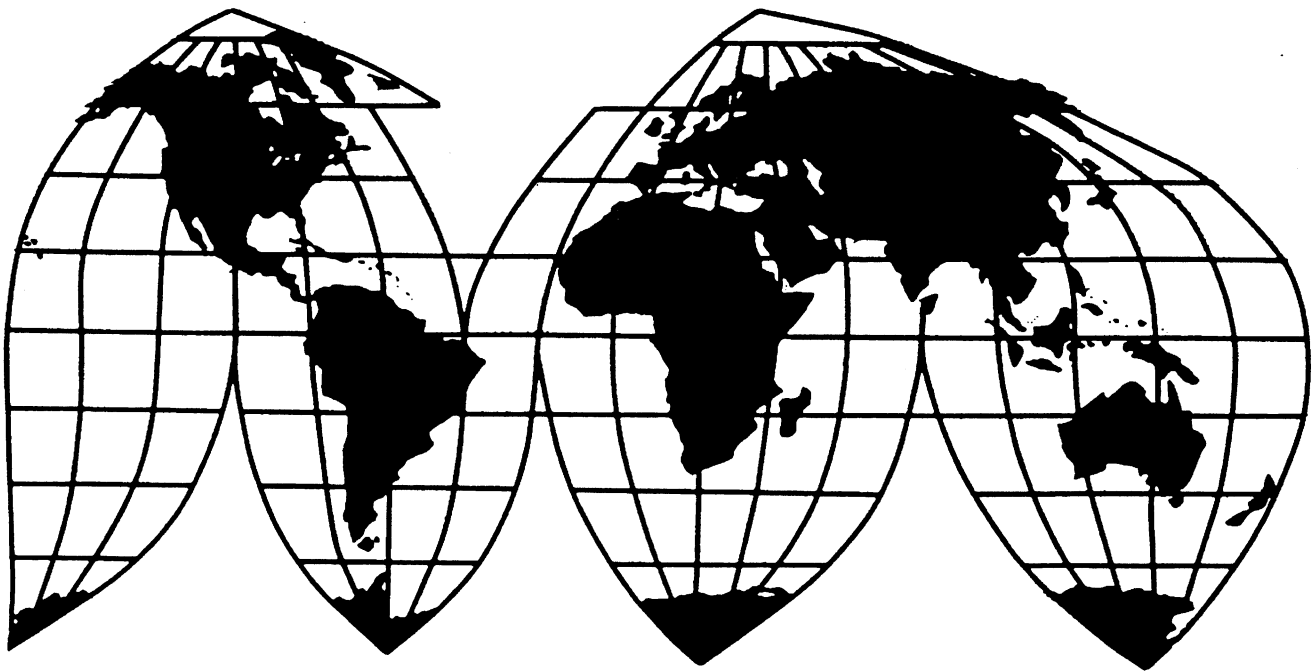
# **Frozen Concentrated Orange Juice From Brazil**

Investigation No. 731-TA-326 (Review)

Publication 3195

May 1999

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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# **U.S. International Trade Commission**

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## **Frozen Concentrated Orange Juice From Brazil**



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## CONTENTS

	<i>Page</i>
Determination .....	1
Views of the Commission .....	3
Dissenting views of Commissioners Carol T. Crawford and Thelma J. Askey .....	15
Information obtained in the review .....	I-1
Introduction .....	I-3
The original investigation .....	I-3
Commerce's final results of expedited sunset review .....	I-5
The product .....	I-5
Scope .....	I-5
Description and uses .....	I-5
The industry in the United States .....	I-7
U.S. producers .....	I-7
U.S. bearing acreage, production, inventories, and shipments .....	I-7
U.S. imports and consumption .....	I-10
U.S. importers .....	I-10
U.S. imports .....	I-10
Apparent U.S. consumption .....	I-13
The industry in Brazil .....	I-13

### Appendix

A. <i>Federal Register</i> notices .....	A-1
B. Statement on adequacy .....	B-1

### Figure

I-1. FCOJM: U.S. imports from Brazil, by quantity, crop years ended Nov. 30, 1977-98 .....	I-11
--	------

### Tables

I-1. Oranges: Bearing acreage, production, and amount processed, crop years ended Nov. 30, 1983-86 and 1997-98 .....	I-8
I-2. FCOJ: Production, ending inventory, and total shipments, crop years ended Nov. 30, 1983-86 and 1997-98 .....	I-9
I-3. FCOJM: U.S. imports, by sources, crop years ended Nov. 30, 1983-86 and 1997-98 .....	I-12
I-4. FCOJ: Production from Florida crop, U.S. imports, carryover stock, and total available FCOJ, crop years ended Nov. 30, 1983-86 and 1997-98 .....	I-14
I-5. Oranges and FCOJM: Certain salient data on Brazil's operations, crop years ended June 30, 1983-86 and 1997-98 .....	I-15
I-6. FCOJM: Brazil's exports, by markets, calendar years 1983-86 and 1997 .....	I-16

**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been replaced by asterisks (\*\*\*)**.

## GLOSSARY

AMCONGEN .....	American Counsel General (of Sao Paulo)
BAR .....	Brix acid ratio measurement for level of sweetness
Branco .....	Branco Peres Citrus, S.A.
Brix .....	Measurement unit (in degrees) for the level of concentration of fruit juices
Cambuhy .....	Cambuhy Citrus Comercial e Exportadora Ltda.
Cargill .....	Cargill Citrus Ltda.
C.i.f. ....	Cost, insurance, freight
Citrosuco .....	Citrosuco Paulista, S.A.
Citrovita .....	Citrovita Agro Industrial, S.A.
Commerce .....	U.S. Department of Commerce
Commission .....	U.S. International Trade Commission
Coopercitrus .....	Coopercitrus Industrial Frutesp, S.A.
Crop year .....	Crop year from December 1 through November 30, unless otherwise specified
Customs .....	U.S. Customs Service
Cutrale .....	Sucocitrico Cutrale, S.A.
Domestic shipments .....	U.S. commercial shipments
English-metric conversions .....	3.785 liters = 1 gallon; 1 metric ton (65 degrees Brix) = 1,405.88 gallons
FAS .....	Foreign Agricultural Service
FCM .....	Florida Citrus Mutual
FCOJ .....	Frozen concentrated orange juice
FCOJM .....	Frozen concentrated orange juice for manufacturing
FCPA .....	Florida Citrus Processors Association
F.o.b. ....	Free on board
FR .....	<i>Federal Register</i>
Frutax .....	Frutax Industria e Comercio Ltda.
Frutropic .....	Frutropic, S.A.
FY .....	Fiscal year ended September 30
HTS .....	Harmonized Tariff Schedule of the United States
LTFV .....	Less than fair value
Montecitrus .....	Montecitrus Trading, S.A.
<i>Response</i> .....	Response to the Commission's Notice of Institution
SSE .....	Single-strength equivalent
TSUSA .....	Tariff Schedules of the United States (Annotated)
USDA .....	U.S. Department of Agriculture

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

Investigation No. 731-TA-326 (Review)

**FROZEN CONCENTRATED ORANGE JUICE FROM BRAZIL**

**DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**BACKGROUND**

The Commission instituted this review on December 2, 1998 (63 F.R. 66572) and determined on March 5, 1999 that it would conduct an expedited review (64 F.R. 12351, March 12, 1999).

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Chairman Bragg not participating. Commissioners Crawford and Askey dissenting.





## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering frozen concentrated orange juice (“FCOJ”) from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In April 1987, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of FCOJ from Brazil that were being sold at less than fair value.<sup>2</sup> On May 5, 1987, Commerce issued an antidumping duty order on imports of FCOJ from Brazil.<sup>3</sup> The Commission instituted this five-year review on December 2, 1998.<sup>4</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>5</sup> If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, the Commission received a single joint response from Florida Citrus Mutual, a trade association of approximately 11,000 citrus growers, and from six processors of FCOJ.<sup>6</sup> The participating producers accounted for approximately 62 percent of the oranges delivered for processing into FCOJ during the October 1997 - September 1998 growing season and 24 percent of the domestic production of FCOJ during December 1997 to November 1998.<sup>7</sup> These processors and growers also filed joint comments on adequacy, arguing that the review should be expedited because no respondent interested party responded to the Commission’s notice of institution.<sup>8</sup>

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<sup>1</sup> Chairman Bragg not participating. Commissioners Crawford and Askey dissenting. See their Dissenting Views. Commissioners Crawford and Askey join in Sections I, II, and III.A - III.B of these views, except as otherwise noted.

<sup>2</sup> Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970, April 1987 (hereinafter “Original Determination”) at 1.

<sup>3</sup> 52 Fed. Reg. 16426 (May 5, 1987).

<sup>4</sup> 63 Fed. Reg. 66572 (Dec. 2, 1998).

<sup>5</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>6</sup> The responding FCOJ processors are Caulkins Indiantown Citrus Co.; Citrus Belle; Citrus World, Inc.; Orange Co. of Florida, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processors Corp. Domestic interested parties’ submission of Jan. 20, 1999, at 2-3.

<sup>7</sup> Confidential Report (“CR”) at I-3 n.2; Public Report (“PR”) at I-3 n.2.

<sup>8</sup> See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review).

The Commission determined that the domestic interested party group response to the Commission's notice of institution was adequate.<sup>9</sup> The Commission also determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of the subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.<sup>10</sup>

The domestic interested parties filed comments arguing that the revocation of the antidumping duty order on FCOJ from Brazil would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>11</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."<sup>12</sup> The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."<sup>13</sup> In its final five-year review determination, Commerce defined the subject merchandise as "frozen concentrated orange juice from Brazil."<sup>14</sup> Commerce indicated that "pulpwash, a by-product of FCOJ which is composed of water-extracted soluble orange solids, [is] outside the scope of the order."<sup>15</sup> The subject merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2009.11.00.<sup>16</sup> As Commerce explained in its original investigation, FCOJ is "in a highly concentrated form for transport and further processing, sometimes referred to as frozen concentrated orange juice for manufacturing" ("FCOJM").<sup>17 18</sup>

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope and unchanged from the determination of the Commission majority in the original investigation, *i.e.*, FCOJM.<sup>19</sup>

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<sup>9</sup> Commissioner Crawford dissented as to the adequacy of the domestic interested party group response. Explanation of Commission Determinations on Adequacy in Frozen Concentrated Orange Juice from Brazil, CR and PR at Appendix B. *See also* 64 Fed. Reg. 12351 (March 12, 1999).

<sup>10</sup> 19 U.S.C. § 1675(c)(3)(B); *see* 64 Fed. Reg. 12351 (March 12, 1999).

<sup>11</sup> Domestic interested parties' submission of April 22, 1999, at 2. *See* 19 C.F.R. § 207.62(d).

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> 19 U.S.C. § 1677(10). *See Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 96-249 at 90-91 (1979).

<sup>14</sup> 64 Fed. Reg. 16901, 16902 (April 7, 1999).

<sup>15</sup> *Id.* at 16902 n.1.

<sup>16</sup> *Id.* at 16902.

<sup>17</sup> 52 Fed. Reg. 8324, 8326 (March 17, 1987).

<sup>18</sup> Although Commerce defined the scope as "frozen concentrated orange juice" in its final five-year review determination without specifying as it did in the antidumping duty order that such FCOJ is "in a highly concentrated form . . . referred to as frozen concentrated orange juice for manufacturing," we understand Commerce not to have expanded the scope beyond FCOJ for manufacturing to include the less concentrated FCOJ for retail. Our understanding is based on the lack of evidence in the record of a notice of a change in scope or an anti-circumvention action to broaden the scope, and the fact that FCOJ for manufacturing has accounted for virtually all imports of FCOJ both during the years examined in the original investigation and the recent years now examined in this review. Original Determination at 7; CR at I-13 & nn. 31-33, and PR at I-10 & nn. 31-33.

<sup>19</sup> Original Determination, at 7 and 84-87.

## B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”<sup>20</sup> As in the original investigation, we find in this review that the domestic industry includes all domestic producers of FCOJM.<sup>21</sup>

We also include growers of round oranges in the domestic industry, as we did in the original investigation.<sup>22 23</sup> Section 771(4)(E) of the Act provides that, where the industry at issue produces a processed agricultural product from a raw agricultural product,

the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if -- (I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and (II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product.<sup>24</sup>

As in the original determination, we find that a high proportion of round oranges are processed into FCOJM.<sup>25</sup> We therefore find that FCOJM is produced from round oranges through a single continuous line of production. In the original investigation, the Commission also found a substantial coincidence of economic interest between the growers of round oranges and the processors of FCOJM, based on grower and processor membership in cooperatives and other arrangements effectively linking grower and processor proceeds, as well as the strong correlation between the prices of FCOJM and round oranges.<sup>26</sup> The limited additional evidence gathered in this review indicates that the same conditions exist today, and thus we find, from the evidence available on the record, a substantial coincidence of economic interest between the growers of round oranges and the processors of FCOJM.

## III. REVOCATION OF THE ORDER ON FROZEN CONCENTRATED ORANGE JUICE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>27</sup>

### A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to

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<sup>20</sup> 19 U.S.C. § 1677(4)(A).

<sup>21</sup> Original Determination at 10, 36, 49-51, and 87 & n.28.

<sup>22</sup> The vast majority of round oranges are processed into juice. Oranges consumed without processing are known as “specialty” or “eating” oranges. Original Determination at R-3 and R-4.

<sup>23</sup> *Id.* at 10-16, 36-40, 49-51, and 88-90.

<sup>24</sup> 19 U.S.C. § 1677(4)(E).

<sup>25</sup> Original Determination at 11, 37-38, 50, and 87 n.27; and CR at I-11 and PR at I-9.

<sup>26</sup> Original Determination at 11-15, 38-40, 50, 88-90.

<sup>27</sup> Commissioners Crawford and Askey determine that revocation of the order is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. However, they join in the majority’s discussion of the relevant legal standard and the conditions of competition in sections III. A & B of these views.

continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>28</sup> The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>29</sup> Thus, the likelihood standard is prospective in nature.<sup>30</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>31</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>32 33</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>34</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>35 36</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance

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<sup>28</sup> 19 U.S.C. § 1675a(a).

<sup>29</sup> URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

<sup>30</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>31</sup> 19 U.S.C. § 1675a(a)(5).

<sup>32</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>33</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>34</sup> 19 U.S.C. § 1675a(a)(1).

<sup>35</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>36</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in this matter. 64 Fed. Reg. 16901, 16903 (April 7, 1999).

with section 776.<sup>37</sup> 38 As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by the domestic respondents.

For the reasons stated below, we determine that revocation of the antidumping duty order on FCOJM would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>39</sup>

## B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>40</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for FCOJM.

In its original determination, the Commission found that subject FCOJM is a commodity-type product that is generally fungible or substitutable with domestic FCOJM, and that competition is often largely on the basis of price.<sup>41</sup> We find that this condition of competition is unchanged.

Domestic orange-bearing acreage fell from the crop years ended November 30 of 1983 to 1986, but by the crop years 1997 and 1998, orange-bearing acreage was at least ten percent higher than in crop year 1983.<sup>42</sup> During the crop years ended November 30 of 1983 to 1987, the number of processor firms<sup>43</sup>

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<sup>37</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

<sup>38</sup> Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." URAA SAA at 869 (emphasis added). Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." *Id.*

<sup>39</sup> Commissioners Crawford and Askey determine that revocation of the order is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. See their Dissenting Views.

<sup>40</sup> 19 U.S.C. § 1675a(a)(4).

<sup>41</sup> Original Determination at 6 & n.17, 45, 67-68, 101, and R-15 to R-16.

<sup>42</sup> Table I-1, CR at I-10 and PR at I-8.

<sup>43</sup> These are firms that extract juice from oranges and process it into FCOJM. Original Determination at R-17.<sup>7</sup>

in Florida fell from 36 to 29, and there were at least four California processors.<sup>44</sup> There are currently 27 extractor-processors -- 26 in Florida and one in California.<sup>45</sup> Despite the smaller number of extractor-processors at present, the production of FCOJM from oranges grown in Florida was 42 percent higher in crop year 1997 than in crop year 1983, and it was 50 percent higher in crop year 1998 than in crop year 1983.<sup>46</sup>

The Commission did not derive apparent consumption figures in this review or in the original investigation because producers blend domestic and imported orange juice at various points in the production process.<sup>47</sup> The Commission instead determined the total available FCOJM by adding together FCOJM produced from the Florida crop, imports of FCOJM, and carryover stock.<sup>48</sup> These data show that total available FCOJM was relatively constant during crop years 1983-86, at 1.2 billion to 1.3 billion single strength equivalent (“SSE”) gallons per year.<sup>49</sup> Total available FCOJM was slightly higher at 1.4 billion SSE gallons in crop year 1997, and higher still at 1.6 billion SSE gallons in 1998.<sup>50</sup> In crop year 1998, production from Florida crop accounted for 63.7 percent of total available FCOJM, while all Brazilian imports accounted for 12.0 percent, imports from all other sources accounted for 6.7 percent, and carryover stock accounted for the remaining 17.5 percent.<sup>51</sup> Moreover, although there are no data on subject imports on a crop year basis, information on the value of annual fiscal year imports that are subject to the antidumping duty order reviewed by the Customs Service reveals that less than five percent of all imports from Brazil during the 1993-97 period were subject imports.<sup>52</sup>

In contrast to the conditions existing during the original investigation, the domestic industry is not currently experiencing the effects of severe freezes that destroyed orange crops and trees.<sup>53</sup> Since the original investigation, new orange grove investments have shifted to the south out of traditional freeze zones, and investment in smaller groves has been encouraged by tax incentives.<sup>54</sup> Also in contrast to the original investigation, domestic orange growers now employ more advanced irrigation and planting techniques, permitting more efficient use of available acreage.<sup>55</sup>

A number of conditions of competition relate to imported FCOJM. Brazil remains the world’s largest supplier of FCOJM, accounting now for over one-half of world production of round oranges and orange juice.<sup>56</sup> Although the overall volume of FCOJM imports fell after the institution of the original investigation in 1986, the volume of non-subject imports is significant and increasing.<sup>57</sup> Brazil accounts for the bulk of the non-subject imports, but other countries, including Mexico, have accounted for an increasing share of the imports.<sup>58</sup> A relatively high per-liter general duty rate applies to imports from

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<sup>44</sup> CR at I-9 and PR at I-7.

<sup>45</sup> CR at I-9 and PR at I-7.

<sup>46</sup> CR at I-11 and PR at I-9. By crop years 1997 and 1998, Florida accounted for 95 percent of all processed oranges and processed over 95 percent of its oranges. CR at I-11 and PR at I-9.

<sup>47</sup> CR at I-16 and PR at I-13.

<sup>48</sup> CR at I-16 and PR at I-13.

<sup>49</sup> CR at I-16 and at Table I-4 at I-17, and PR at I-13 and Table I-4 at I-14.

<sup>50</sup> Table I-4, CR at I-17 and PR at I-14.

<sup>51</sup> Table I-4, CR at I-17 and PR at I-14.

<sup>52</sup> CR at I-14, PR at I-11.

<sup>53</sup> See Original Determination at 17, 41-42, 72-73, and 94-95 regarding the effects of freezes.

<sup>54</sup> Domestic interested parties’ submissions of Jan. 20, 1999, at 31 and April 22, 1999, at 6.

<sup>55</sup> Domestic interested parties’ submission of Jan. 20, 1999, at 31.

<sup>56</sup> CR at I-16 to I-17 and PR at I-13.

<sup>57</sup> Table I-3, CR at I-15 and PR at I-12.

<sup>58</sup> Table I-3, CR at I-15 and PR at I-12.

Brazil and other countries. The rate is somewhat lower currently than in the years considered in the original investigation, but it remains equivalent to nearly 30 percent of the unit value.<sup>59</sup>

Based on the record evidence, we find that these conditions of competition in the FCOJM market are not likely to change significantly in the reasonably foreseeable future.<sup>60</sup> Accordingly, in this review, we find that current conditions in the FCOJM market provide us with a reasonable basis from which to assess the effects of revocation of the order within the reasonably foreseeable future.<sup>61</sup>

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>62</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>63</sup>

The record from the original investigation indicates that the Brazilian FCOJM industry had the ability and willingness to establish quickly a significant presence in the U.S. market. The market penetration of imports into the United States of subject FCOJM from Brazil increased from \*\*\* percent of the total available FCOJM<sup>64</sup> in crop year 1983 to \*\*\* percent of the total available FCOJM in crop year 1986.<sup>65</sup> Orange production and FCOJM production in Brazil increased from crop years 1983 to 1986.<sup>66</sup> Brazilian production was oriented almost entirely towards exports, which accounted for approximately 98 percent of all shipments.<sup>67</sup> Exports to the United States accounted for between 47 and 63 percent of total Brazilian exports during calendar years 1983 to 1986.<sup>68</sup>

Several factors support the conclusion that subject import volume is likely to be significant if the order is revoked. First, the volume of subject FCOJM imported from Brazil fell sharply after the entry of

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<sup>59</sup> The general rate of duty was 9.25 cents per liter during the years covered in the original investigation. Original Determination at R-16. The per-liter rates were lower in the years examined in this review: 8.32 cents in 1998, 8.08 cents in 1999, and 7.85 cents in 2000 and in subsequent years. CR at I-6 n.14 and PR and I-5 n.14 and 60 Fed. Reg. 1007, 1451 (Jan. 4, 1995).

<sup>60</sup> We are cognizant, of course, that future weather conditions are unpredictable. However, we note that orange groves are in the aggregate located somewhat more southerly at present than during the years examined in the original investigation. With regard to weather-related conditions, our findings are limited to the fact that the industry is not currently experiencing significant effects of adverse weather conditions.

<sup>61</sup> Commissioners Crawford and Askey make negative determinations and thus do not join the remainder of this opinion. See their dissenting views.

<sup>62</sup> 19 U.S.C. § 1675a(a)(2).

<sup>63</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little information pertaining to existing inventories of the subject merchandise or the existence of barriers in other countries with respect to importation of FCOJM. Product shifting is not an issue due to a lack of alternative products.

<sup>64</sup> The Commission has not derived apparent consumption figures in this review or in the original investigation because producers blend domestic and imported orange juice at various points in the production process. CR at I-16; PR at I-13. As a proxy, the Commission has instead determined the total available FCOJM, by totaling FCOJM produced from the Florida crop, imports of FCOJM, and carryover stock. CR at I-16; PR at I-13.

<sup>65</sup> Table 48, Original Confidential Report of April 6, 1987, at R-100 and Original Determination at R-79.

<sup>66</sup> CR at I-17 to I-19 and PR at I-13 to I-15.

<sup>67</sup> Table I-5, CR at I-18 and PR at I-15.

<sup>68</sup> CR at I-19, PR at I-13.

the order. In crop years 1997 and 1998 the volume was approximately one-third as high compared with the peak in crop years 1984-86.<sup>69</sup> Because the current conditions of competition are similar to those in existence prior to issuance of the order, we find it likely in these circumstances that the exporters who ceased or reduced shipping FCOJM to the United States following issuance of the order would reenter the U.S. market and that the subject import volume would rise significantly if the discipline of the order were removed.<sup>70</sup> We recognize that the order was revoked as to several Brazilian producers in the course of Commerce's administrative reviews and that, as a consequence, their production of FCOJM is not subject merchandise.<sup>71</sup> Nevertheless, the order still applies to a number of Brazilian producers and, in the absence of contrary evidence, we infer that these producers account for a significant portion of Brazilian production.<sup>72</sup> <sup>73</sup> Thus, the order continues to impose a restraint on the export of subject merchandise to the United States, despite the order's partial revocation.

Second, the information available in the record indicates that Brazilian capacity to produce FCOJM is up sharply since the period of the original investigation. The number of orange bearing trees in the State of Sao Paulo, which accounts for the vast majority of Brazilian orange production, increased from 107 million in crop year 1986 to 178 million in crop year 1998.<sup>74</sup> The number of boxes of oranges produced rose similarly, from 239 million in crop year 1986 to 420 million in crop year 1998.<sup>75</sup> FCOJM production followed the same path, climbing from 1.2 billion SSE gallons in crop year 1986 to 1.9 billion SSE gallons in crop year 1998.<sup>76</sup> While these figures relate to the entire Brazilian industry, including those companies that are no longer subject to the order, they are indicative of the likely increases in capacity of the subject Brazilian producers.

Third, the Brazilian industry remains almost entirely export oriented. The home market consumes only about one percent of production.<sup>77</sup> Even after the entry of the order, Brazilian production shifted sales not to the home market but rather to other export markets, largely Europe and Japan.<sup>78</sup> We find that the increased production capacity and emphasis on export markets is evidence of the Brazilian producers' willingness and ability to export significant volumes of FCOJM to the U.S. market in the absence of the order.

Thus, based on the record in this review, and in the absence of contrary evidence or argument, we find that significant volumes of subject FCOJM from Brazil are likely to be exported to the United States within the reasonably foreseeable future if the antidumping duty order is revoked. Consequently, we conclude that subject imports would likely increase to a significant level, and would regain significant U.S. market share, absent the restraining effect of the order.

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<sup>69</sup> Table I-3, CR at I-15 and PR at I-12.

<sup>70</sup> See SAA at 890.

<sup>71</sup> CR at I-5 and PR at I-5.

<sup>72</sup> Compare domestic interested parties' submission of Jan. 20, 1999, at 23-25 (listing Brazilian manufacturers that have exported FCOJM since 1982) with 64 Fed. Reg. 16901, 16902 (April 7, 1999) (listing Brazilian manufacturers and exporters excluded from the order or as to which the order has been revoked).

<sup>73</sup> Commissioner Koplan did not base his finding on this inference.

<sup>74</sup> Table I-5, CR at I-18 and PR at I-15.

<sup>75</sup> Table I-5, CR at I-18 and PR at I-15.

<sup>76</sup> Table I-5, CR at I-18 and PR at I-15.

<sup>77</sup> Table I-5, CR at I-18 and PR at I-15.

<sup>78</sup> Domestic interested party respondents' submission of Jan. 20, 1999, at 30. The United States accounted for 47 to 63 percent of Brazilian exports in the calendar years 1983 to 1986, but only 18 percent in 1997. CR at I-19<sub>10</sub> and PR at I-13.



#### D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>79</sup>

The record in this expedited review contains a limited amount of pricing data for the U.S. market. In the original determination, the Commission found that FCOJM imports from Brazil undersold the domestic like product during months in which the price of the domestic product fell.<sup>80</sup> The Commission also noted in the original determination that adverse price effects of subject imports coincided with those increased volumes.<sup>81</sup> Although the unit value of Brazilian FCOJM imports increased in the early period examined in the original investigation, it fell overall during those years, from \$1.23 per SSE gallon in crop year 1983 to \$1.15 per SSE gallon in crop year 1986.<sup>82</sup> In crop years 1997 and 1998 prices fell further, from \$1.10 to \$1.05 per SSE gallon.<sup>83</sup>

As discussed above, FCOJM is a commodity-type product that trades largely on the basis of price. Based on the limited record, we find it likely that the Brazilian producers would offer attractively low prices to U.S. purchasers in order to regain market share if the antidumping duty order is revoked. Thus, we conclude that prices for domestically produced FCOJM would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.

Accordingly, in the absence of contrary evidence or argument, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, in the reasonably foreseeable future.

#### E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>84</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>85</sup> As instructed by the statute, we have considered the

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<sup>79</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>80</sup> Original Determination at 27 and 45.

<sup>81</sup> *Id.* at 27.

<sup>82</sup> Table I-3, CR at I-15 and PR at I-12.

<sup>83</sup> Table I-3, CR at I-15 and PR at I-12.

<sup>84</sup> 19 U.S.C. § 1675a(a)(4).

<sup>85</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews

(continued...)

extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>86</sup>

In the original determination, one Commissioner found that the domestic industry was experiencing material injury by reason of increased volumes of low-priced LTFV imports of FCOJM that were gaining an increasing share of the FCOJM market.<sup>87</sup> He found that the subject merchandise placed a significant downward pressure on domestic prices, evidenced by a strong correlation between the price of the domestic product and the subject merchandise, the latter appearing to lead both upward and downward trends in domestic price.<sup>88</sup> He also found that purchasers reported that prices of Brazilian FCOJM were lower than prices of the domestic product in 1984 and 1986, which price difference took on additional importance in a price-sensitive market.<sup>89</sup>

Two Commissioners found in the original determination that the domestic industry was threatened with material injury by reason of increasing volumes of low-priced LTFV imports of FCOJM that were gaining an increasing share of the market in which the domestic product directly competed.<sup>90</sup> They noted increases in the capacity of the Brazilian processors and in the number of orange trees in Brazil, which they found indicated an ability to further increase production in the imminent future.<sup>91</sup> They also found that the subject merchandise had caused in part observed price declines; these declines coincided with increased volumes of subject imports.<sup>92</sup> They noted further the export orientation of the Brazilian industry.<sup>93</sup> These factors formed the basis for their determination that the domestic industry was threatened with material injury by reason of the subject merchandise.<sup>94</sup>

After imposition of the antidumping duty order, the domestic industry's share of total available FCOJM increased as subject imports exited the market.<sup>95</sup> The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Total available FCOJM (a proxy for apparent consumption) is relatively confined within a steady range, and demand is unlikely to be significantly increased by product development or new technology. Thus, it is likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry.<sup>96</sup>

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<sup>85</sup> (...continued)

as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce's expedited determination in its five-year review covered imports from all manufacturers and exporters of FCOJM from Brazil, other than imports produced by six companies that were either excluded from the order or as to which the order was revoked. 64 Fed. Reg. 16901, 16902 (April 7, 1999). Commerce found that revocation of the antidumping duty order would likely lead to a margin of dumping of 1.96 percent. 64 Fed. Reg. at 16904.

<sup>86</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>87</sup> Original Determination at 44-46.

<sup>88</sup> *Id.* at 45.

<sup>89</sup> *Id.* at 45-46.

<sup>90</sup> *Id.* at 25.

<sup>91</sup> *Id.* at 26.

<sup>92</sup> *Id.* at 27.

<sup>93</sup> *Id.* at 30.

<sup>94</sup> *Id.* at 30.

<sup>95</sup> Table I-4, CR at I-17 and PR at I-14.

<sup>96</sup> We view the evidence as insufficient to find that the industry is in a "weakened state," as contemplated by the vulnerability criterion of the statute. Unlike in the original investigation, the domestic industry is not currently in  
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(continued...)

As discussed above, we conclude that if the order is revoked the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. Given the substitutable nature of the product and subject imports' ability to compete directly with the domestic product for the same end uses, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, and in the absence of contrary evidence or argument, we conclude that subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the antidumping duty order is revoked.

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering FCOJM from Brazil would be likely to lead to continuation or recurrence of material injury to the domestic FCOJM industry within a reasonably foreseeable time.

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<sup>96</sup> (...continued)

a weakened state as a result of damage inflicted by adverse weather conditions. In addition, although the domestic parties urge the Commission to find that the domestic industry is vulnerable to subject imports due to reportedly small profit margins, we find that the limited information on the record is inconclusive. 13



**DISSENTING VIEWS OF COMMISSIONERS  
CAROL T. CRAWFORD AND THELMA J. ASKEY**

Section 751(d) requires that Commerce revoke an antidumping or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that, in the event of revocation, dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> In this review of the antidumping duty order on FCOJM from Brazil, we find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.<sup>2</sup>

We join our colleagues’ discussion regarding the domestic like product, domestic industry, conditions of competition, and in their explanation of the relevant legal standard. As a preliminary matter, and as previously noted in the majority opinion, the Commission received one jointly filed response to its notice of institution from a domestic trade association and certain processors of the domestic like product. No respondent interested parties chose to participate in this review. We therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>3</sup>

**A. General Considerations**

The statute directs the Commission to take into account several general considerations.<sup>4</sup> In accordance with the statute, we have taken into account the Commission’s prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.

Based on the facts available in this review, the record indicates that the domestic industry has improved its position in the U.S. market since the issuance of the order. Both domestic production and domestic market share have increased since imposition of the order.<sup>5</sup> Although the domestic industry’s market share has improved during the twelve years that the order has been in effect, it does not automatically or necessarily follow that revocation of the order will result in the continuation or recurrence of material injury within the reasonably foreseeable future.

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

<sup>2</sup> In analyzing whether revocation of an order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

<sup>3</sup> Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. *See Genentech Inc. v. United States Int’l Trade Comm’n*, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

<sup>4</sup> 19 U.S.C. § 1675a(a)(1). The Commission is to consider its prior injury determinations, whether any improvement in the state of the industry is related to the order, whether the industry is vulnerable to material injury in the event of revocation, and whether any duty absorption finding is made by the Department of Commerce. *Id.* Commerce made no duty absorption finding in this case. 64 Fed. Reg. 16901, 16903 (April 7, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce has reported likely margins of 1.96 percent in the event of revocation for all Brazilian manufacturers and exporters other than those excluded from the order or for which the order has been revoked. *Id.* at 16904.

<sup>5</sup> CR and PR at Tables I-2 and I-4.

As previously stated in the conditions of competition section of the majority opinion, apparent domestic consumption figures for FCOJM are not available for this review. Instead, a substitute calculation approximating U.S. consumption, total available FCOJM, was used. In crop year 1984, total available FCOJM decreased slightly, but remained essentially unchanged between 1.2 billion and 1.3 billion SSE gallons during crop years 1983-86. The market share accounted for by domestic production decreased during crop years 1983-85 from 53.6 percent to 37.0 percent. In crop year 1986, that figure climbed to 41.9 percent. On the other hand, the market share accounted for by all imports from Brazil increased during crop years 1983-85 from 27.3 percent to 44.6 percent. In crop year 1986, that figure dropped to 39.2 percent.<sup>6</sup> However, in crop years 1997 and 1998, the market share accounted for by domestic production was five to six times greater than the share accounted for by all imports from Brazil. In crop year 1998, domestic production accounted for 63.7 percent of the domestic market, while all imports from Brazil accounted for 12.0 percent, other sources accounted for 6.7 percent, and carryover stock supplied 17.5 percent of the market.<sup>7</sup>

Additionally, the record demonstrates a general decline in the volume of Brazilian imports since imposition of the order. During the period covering the original investigation, U.S. imports of FCOJM from Brazil increased from 349 million SSE gallons in crop year 1983 to their highest volume of 578 million SSE gallons in crop year 1985. Since crop year 1986, imports of FCOJM from Brazil have decreased erratically through crop year 1998, when they were about one-third of the volume of the crop year 1985 imports.<sup>8</sup>

Domestic interested parties argue that they are vulnerable to material injury because the U.S. industry operates on very thin profit margins and Brazilian growers enjoy “tremendous potential” for increasing production by means of increasing investments in the cultivation of existing groves and additional acreage. The domestic interested parties also assert that the domestic industry lacks the capability to expand based on the amount of land suitable for planting, availability and costs of labor, costs of irrigation and cultivation, and difficulties in obtaining credit.<sup>9</sup> Thus, it would appear that the domestic interested parties argue that they are vulnerable to material injury based upon the fact that they are at full production capacity.

The record reveals that there have been certain improvements in production that suggest the domestic industry is not vulnerable to material injury in the event of a revocation. As noted in the conditions of competition, since the original order, the invention of microsprinkler irrigation and the introduction of innovative new production methods such as high density planting, have permitted higher utilization of available grove acreage. Moreover, certain tax incentives have created an environment that has enabled the industry to move orange groves south and away from traditional freeze areas, thus insulating the industry from adverse weather conditions.<sup>10</sup> Moreover, the mere fact that the domestic industry is operating at or near full capacity is not an indication that it is vulnerable to material injury. Based on the foregoing, we conclude that the domestic industry is not vulnerable to material injury if the order is revoked.<sup>11</sup>

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<sup>6</sup> CR and PR at Table I-4.

<sup>7</sup> CR and PR at Table I-4.

<sup>8</sup> See CR and PR at Figure I-1 and Table I-3.

<sup>9</sup> See Final Comments of Domestic Interested Parties, April 22, 1999, at 6-7.

<sup>10</sup> We note that the original affirmative injury determination found threat to the domestic industry due in large part to certain adverse weather conditions. “Our determination is based on the fact that the domestic industry is experiencing financial difficulties due, in part, to the series of recent freezes which have affected the Florida orange crop.” Original Determination at 3.

<sup>11</sup> Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. She finds that the domestic industry in this review is not particularly vulnerable to injury if the order is revoked.

## B. Volume

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the order under review is revoked.<sup>12</sup> In so doing, the Commission shall consider “all relevant economic factors,” including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting of production facilities in the foreign country, which can be used to produce the subject merchandise, and are currently being used to produce other products.<sup>13</sup>

The information available on the record regarding the Brazilian industry is insufficient to provide any reasonable basis for an assertion that a revocation of the existing order would likely result in a significant volume of the Brazilian imports subject to the existing order. All of the general information available in this review pertains to the Brazilian industry as a whole. The record indicates that total Brazilian production of FCOJM has increased nearly 60 percent since 1986, growing from 1.2 billion SSE gallons in crop year 1986 to 1.9 billion SSE gallons in crop year 1998. Similarly, total Brazilian inventories were about 24 percent higher over the same period, rising from 284 million SSE gallons in crop year 1986 to 351 million SSE gallons in crop year 1998.<sup>14</sup> However, exports to markets other than the United States are the most significant outlet for Brazilian merchandise, rising from 48.6 percent of Brazilian exports in calendar year 1986 to 81.6 percent of such exports in calendar year 1997. More important, several Brazilian firms have been excluded from the antidumping duty order, and the record reveals that less than 5 percent of all imports from Brazil during 1993-97 were subject imports.<sup>15</sup> Given the fact that the subject imports were only a very small portion of total Brazilian imports,<sup>16</sup> it is not reasonable to attribute significant portions of the increase in Brazilian production and inventories to the subject producers.

We have no reliable information regarding the likelihood or willingness of the subject Brazilian exporters to increase their U.S. market share. Given their extremely small market share, there is no reasonable justification to conclude that the absence of the order would likely lead to a significant volume of subject Brazilian imports. Therefore, we conclude that the likely volume of subject imports would be not significant either in absolute terms or relative to production or consumption in the United States in the reasonably foreseeable future if the order under review is revoked.

## C. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the

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<sup>12</sup> 19 U.S.C. § 1675a(a)(2).

<sup>13</sup> 19 U.S.C. § 1675(a)(2)(A)-(D). The Statement of Administrative Action to the Uruguay Round Agreements Act (“SAA”) indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. *See* SAA at 886.

<sup>14</sup> CR and PR at Table I-5.

<sup>15</sup> CR at I-14 and PR at I-11. Since the original duties were imposed, and as a result of several administrative reviews, the existing order has already been revoked as to five of the original 10 named firms that had been subject to the order. CR and PR at I-4 n.8.

<sup>16</sup> Subject imports comprised only 0.6 percent of the domestic market in 1997. *See* CR at I-14 and Table I-4 17 and PR at I-11 and Table I-4.

domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>17</sup>

The record in this review contains very limited pricing data. However, even if subject imports were to enter the United States at prices that undersold the domestic like product following revocation of the order, we conclude that the likely volume of those imports would be too minimal to have any discernible impact on prices in the U.S. market. Thus, we determine that imports of FCOJM from Brazil are not likely to have a price suppressing or depressing effect within a reasonably foreseeable time in the event of revocation.

#### **D. Impact**

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.<sup>18</sup>

Subject imports are not likely to have a significant adverse impact on the domestic industry if the order is revoked. First, the U.S. industry is not vulnerable to injury if the order is revoked. Second, in light of the extremely small percentage of the domestic market currently accounted for by subject Brazilian imports, the volume of the subject imports in the absence of the existing order would not be significant, either in absolute terms or relative to domestic production or consumption. We have also determined that subject import volume is not likely to have price suppressing or depressing effects.

We therefore find that subject imports would not be likely to have a significant impact on domestic producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment, within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusions regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, or productivity. We therefore find that revocation is not likely to have a significant impact on the domestic industry within a reasonably foreseeable time.

### **CONCLUSION**

We find that if the antidumping duty order is revoked, the volume of subject imports is not likely to be significant and the subject imports are not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Therefore, we determine that revocation of the order in this review would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>17</sup> 19 U.S.C. § 1675a(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation or termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>18</sup> 19 U.S.C. § 1675a(a)(4).



**INFORMATION OBTAINED IN THE REVIEW**



## INTRODUCTION

On December 2, 1998, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on FCOJ from Brazil would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>1</sup> On March 5, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>2</sup> the Commission also determined that the respondent interested party response was inadequate because no response was received. The Commission found no other circumstances that would warrant a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).<sup>3</sup> The Commission voted on this review on May 10, 1999, and notified Commerce of its determination on May 17, 1999.

### The Original Investigation

The Commission completed the original investigation<sup>4</sup> in April 1987, determining that an industry in the United States was materially injured or threatened with material injury by reason of imports of FCOJM from Brazil that were being sold at LTFV.<sup>5</sup> The Commission found the relevant like product to be FCOJM<sup>6</sup> and the relevant domestic industry to consist of the U.S. extractors of orange juice that produce FCOJM and

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<sup>1</sup> 63 FR 66572, Dec. 2, 1998. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. This notice also instituted a review concerning a suspended countervailing duty investigation of FCOJ from Brazil. Commerce received no domestic interested party response to its notice of initiation, and published notice that it was terminating the suspended countervailing duty investigation (64 FR 9473, Feb. 26, 1999). Subsequently, the Commission published notice that it was terminating the subject review (64 FR 14266, Mar. 24, 1999).

<sup>2</sup> Commissioner Crawford dissenting. FCM (a voluntary co-op organization with 11,000 member growers of citrus fruit for processing into FCOJ and other processed citrus products and for fresh consumption), which reportedly accounted for 62 percent of the oranges delivered for processing into FCOJ during the October 1997-September 1998 growing season, and six processors (Caulkins Indiantown Citrus Co.; Citrus Belle; Citrus World, Inc.; Orange Co. of Florida, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processors Corp.), which reportedly accounted for 24 percent of the production of FCOJ during December 1997-November 1998, responded to the Commission's notice of institution. *Response* by domestic producers, pp. 25-26, and telephone conversation with counsel for FCM, Feb. 26, 1999.

<sup>3</sup> 64 FR 12351, Mar. 12, 1999. The Commission's notice of expedited review appears in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review. The Commission's statement on adequacy is presented in app. B.

<sup>4</sup> The investigation resulted from a petition filed by FCM on May 9, 1986.

<sup>5</sup> Commissioners Eckes and Lodwick found the domestic industry was threatened with injury by reason of LTFV imports from Brazil; Commissioner Rohr found the domestic industry was injured by reason of such imports, and Chairman Liebler and Vice Chairman Brunsdale found that the domestic industry was neither injured nor threatened with injury by reason of LTFV imports from Brazil. *Frozen Concentrated Orange Juice from Brazil, USITC Pub. 1970*, Apr. 1987, pp. 3, 31, 47, and 77.

<sup>6</sup> Vice Chairman Brunsdale and Commissioners Eckes and Lodwick found the domestic like product to be FCOJM; Chairman Liebler found the domestic product to be FCOJ (both for retail and for manufacturing); and Commissioner Rohr found all orange juice, whether or not concentrated and whether or not frozen, to be the domestic like product. *Ibid.*, pp. 7, 35, 48, 87, and 90. 1-3

U.S. growers of round oranges.<sup>7</sup> After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of FCOJM from Brazil.<sup>8</sup>

Subsequently, the Commission's determination was appealed to the U.S. Court of International Trade and remanded to the Commission for further consideration with respect to re-evaluation of the evidence concerning certain fair value inventories in Brazil and a reconsideration of inventories in the United States. After re-evaluation of the evidence concerning fair value inventories, the Commission again determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports of FCOJM from Brazil that were being sold at LTFV.<sup>9</sup>

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<sup>7</sup> All Commissioners included growers of round oranges within the domestic industry, but Vice Chairman Brunsdale and Commissioners Eckes and Lodwick included only those extractors producing FCOJM, whereas Chairman Liebelier included all extractors of FCOJ and Commissioner Rohr included all processors of orange juice. *Ibid.*, pp. 16, 40, 50-51, and 90.

<sup>8</sup> 52 FR 16426, May 5, 1987. This order, which excluded Cutrale since it was not found to be dumping, required the posting of a cash deposit equal to the estimated weighted-average antidumping duty margins which were 1.96 percent for Citrosuco and for all other firms. In determining the weighted-average antidumping duty margins, Commerce used a comparison between U.S. price and foreign market value. U.S. price for Cutrale was based on packed c.i.f. prices to unrelated purchasers in the United States, as adjusted, and the U.S. price for Citrosuco was based on exporter's sales price (for sales made after importation) and purchase price (for sales made prior to importation) on packed, duty-paid, f.o.b. or c.i.f. delivered prices to unrelated purchasers in the United States, as adjusted. Foreign market value for Cutrale was constructed value based on the costs of production, as adjusted, since there were no home market prices above cost of production, and foreign market value for Citrosuco was based on its sales to Canada, as adjusted, since these sales were above cost of production (52 FR 8324, Mar. 17, 1987).

In Commerce's final determination of sales at LTFV and in its antidumping order, the subject product was FCOJM. Commerce stated that imports covered were "frozen concentrated orange juice (FCOJ) in a highly concentrated form for transport and further processing, sometimes referred to as frozen concentrated orange juice for manufacturing" (this product is referred to as FCOJM in this report). Beginning with Commerce's first administrative review (55 FR 26721, June 29, 1990) and continuing to its scope in the final results of expedited sunset review, the subject product was FCOJ; Commerce stated that imports covered were "frozen concentrated orange juice (FCOJ)" and the references to (1) concentration for transport and (2) further processing or manufacturing did not appear. Also in the first administrative review, Commerce excluded pulpwash from the scope of the antidumping order; subsequent reviews were silent with respect to pulpwash, but the exclusion was retained in Commerce's final results of expedited sunset review.

Since the imposition of the antidumping order, Commerce conducted eight final administrative reviews covering 10 named firms that resulted in weighted-average margins ranging from zero to 2.52 percent. See Commerce's web site at ([http://www.ita.doc.gov/import\\_admin/records/sunset](http://www.ita.doc.gov/import_admin/records/sunset)) for *Case History and Scope Information*. As a result of these administrative reviews, the antidumping duty order has been revoked with respect to 5 of the 10 named firms that were found to have no sales at LTFV for 3 consecutive years.

A preliminary administrative review (64 FR 5764, Apr. 7, 1999), resulted in dumping margins of 65.20 percent, based on adverse facts available, for four named firms, Branco, Cambuhy, Citrovita and Frutax; retained the last-published company-specific rate for all other previously reviewed or investigated firms (including manufacturers, if the exporter has not been reviewed); and retained the 1.96 percent "all others" rate established in the original investigation. Of these four specified firms, only Branco had been named in previous administrative reviews.

<sup>9</sup> Acting Chairman Brunsdale dissenting. Commissioners Eckes, Lodwick, and Newquist determined that the U.S. industry was threatened with injury by reason of LTFV imports from Brazil; Commissioner Rohr determined that the U.S. industry was injured by reason of LTFV imports from Brazil. Commissioner Cass stated that if he were to consider all of the issues that the Commission is required to address in a Title VII investigation, he would have dissented with respect to injury and threat of injury by reason of the subject imports. See *Frozen Concentrated Orange Juice from Brazil, Views on Remand in Investigation No. 731-TA-326 (Final)*, USITC Pub. 2154, Feb. 1989. 1-4

## Commerce's Final Results of Expedited Sunset Review

On April 1, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning FCOJ from Brazil.<sup>10</sup> The review covered all manufacturers and exporters of FCOJ from Brazil other than imports produced by Cutrale, which was excluded from the original order; Cargill, Citrosuco, Coopercitrus, and Montecitrus, for which the order was revoked in 1991 (56 FR 52510, Oct. 21, 1991); and Frutropic, for which the order was revoked in 1994 (59 FR 53137, Oct. 21, 1994).<sup>11</sup> Commerce determined that dumping is likely to continue if the antidumping duty order is revoked. The margin of dumping that Commerce found would likely prevail if the antidumping duty order is revoked is 1.96 percent.<sup>12</sup>

### THE PRODUCT

#### Scope

The imported merchandise covered by this review is FCOJ from Brazil. Pulpwash, a by-product of FCOJ that is composed of water-extracted soluble orange solids, was found to be outside the scope of the order.<sup>13</sup> FCOJ is classifiable in HTS subheading 2009.11.00 and is dutiable at a general rate of 8.08 cents per liter<sup>14</sup> in 1999. The HTS subheading is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

#### Description and Uses

Unless otherwise indicated, all discussion in this section is from the original investigation.<sup>15</sup> No information has been supplied that the same product descriptions, production methods, and uses would not apply today.

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<sup>10</sup> The notice, as it appeared in the *Federal Register* (64 FR 16901, Apr. 7, 1999), is presented in app. A.

<sup>11</sup> The order was revoked for these firms after they had demonstrated 3 consecutive years of sales at not LTFV.

<sup>12</sup> Commerce determined that the margins calculated in the original investigation reflect the behavior of exporters without the discipline of the order and are probative of the behavior of the Brazilian producers/exporters of FCOJ.

<sup>13</sup> 55 FR 26721, June 29, 1990.

<sup>14</sup> In the HTS, and the former TSUSA, the volume (i.e., liter or gallon) of the FCOJ, both for data purposes and for duty purposes, is on a SSE basis. Therefore, the volume, and duty on that volume, attributable to the imports are determined by the amount of single-strength juice that can be reconstituted from the FCOJ. At the time of the original investigation, processors that both import and export FCOJ were eligible to obtain an up-to-99-percent refund or drawback of certain import duties paid, including any antidumping or countervailing duties paid, on imports that were reprocessed and subsequently exported provided the further processing was done within 3 years (and exportation occurred within 5 years) of importation. Additionally, the exact same product that was imported did not have to be re-exported, as long as both imported and domestic product of the same kind and quality were used to produce a product that was then exported. The drawback provision still applies today and enables processors to import foreign FCOJ, blend it with domestic product and then re-export it more competitively than if the drawback provision did not apply. The import duty on FCOJ is relatively high; e.g., in 1998, the import duty was 8.32 cents per liter, or 31.49 cents per gallon, which amounted to almost 30 percent of the unit value of Brazilian imports in 1998.

<sup>15</sup> See *Staff Report of Apr. 6, 1987*, pp. R-4 through R-20.

Orange juice is manufactured directly from oranges, almost exclusively round oranges.<sup>16</sup> Although smaller quantities of some specialty oranges, e.g., tangerines, are processed into juice, orange juice may not contain more than 10 percent of juice from specialty oranges according to Florida regulations, but would instead be marketed as mixed citrus juice or other non-orange juice product. The color, flavor, fragrance, and juice content of fresh oranges are affected by not only the type of orange but also the growing conditions and time harvested.

At the processing plant, the fruit is inspected, random samples are taken to test for Brix level, color, juice yields, etc., and the fruit is stored<sup>17</sup> if enough fruit is not available to run the plant. When enough fruit is available, the processor will generally mix the fruit from different bins based on the color, sweetness, etc., to get a blended orange juice. The oranges are then washed and sized, the juice is extracted, and then seeds, pulp, peel, and other extraneous matter are filtered or otherwise separated from the orange juice. The orange juice is now what is known as single-strength and generally has a concentration of 9 to 19 degrees Brix; the average Brix value of single-strength orange juice is 11.8 degrees.<sup>18</sup> The orange juice is then concentrated by water removal<sup>19</sup> to reduce it to the desired level of concentration, generally about 65 degrees Brix,<sup>20</sup> and then cooled until it is partially frozen; samples of the concentrate are taken and the characteristics recorded. The FCOJM is placed in storage/transport vessels such as 55 gallon drums or bulk storage tanks, which are then labeled based on factors such as color, flavor, defects, and BAR and are stored at about 0°F.

FCOJM is the principal product stored at processing and storage facilities and is also the principal product shipped in bulk since it saves space and weight compared with FCOJ of lower concentration levels. FCOJM is reconstituted in a mixing tank by adding water; oils, essences, and other ingredients may also be added. Reconstituting, which does not require the extraction or concentration equipment, may be done by the extractors, but is generally accomplished near the marketplace for reasons of economies in transportation. FCOJM is reconstituted to either single strength for sale as juice or FCOJ for retail sale and the product(s) are then packaged in retail or institutional containers in the same facility.

Orange juice is blended to obtain optimal characteristics, e.g., color, sweetness, BAR, etc.; this is termed blending for quality and may involve both domestic and imported juice. Orange juice is also blended for quantity, e.g., by supplementing domestic orange juice with imported orange juice. Blending may be done at any stage in the production of FCOJM, single-strength orange juice, or FCOJ for retail sale.

The only improvements in production that have been reported during this review pertain to orange production: the invention of microsprinkler irrigation and innovative new productive methods, e.g., high-density planting, which permits maximum utilization of the available grove acreage. Additionally, the imposition of the antidumping order and changes in the U.S. tax code reportedly gave investors increased confidence and incentive to invest in planting new groves south of the freezing zones in Florida. The ability

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<sup>16</sup> There are two economically important types of oranges: specialty oranges and round oranges (navel, Hamlin, Parson Brown, Pineapple, and Valencia oranges); there are also insignificant quantities of sour or bitter oranges produced. During the original investigation, the bulk of the round oranges were processed into juice with most of the remainder (mainly navel oranges) sold fresh for eating; most of the non-round specialty oranges, such as tangerines, tangelos, and temples, were also sold into the fresh market.

<sup>17</sup> Various shipments of fruit are generally stored separately, since they will have different characteristics depending on the grove harvested, the variety of orange, the time of harvest, etc.

<sup>18</sup> If the plant is producing single-strength orange juice from fruit (as opposed to reconstituting it from FCOJM), it will then possibly pasteurize the orange juice and then package it in retail containers. Such single-strength orange juice may also be frozen and stored.

<sup>19</sup> The water is removed by evaporation. During evaporation, much of the volatile essence which gives the taste and fragrance to fresh juice evaporates; the essence can be recovered from the vapors and returned to the concentrate before it is frozen, or at a later date.

<sup>20</sup> If the plant is producing FCOJ for retail sale directly from fruit (as opposed to reconstituting it from FCOJM), it will concentrate the orange juice to only about 42 degrees Brix and then package it directly into retail-sized containers.

of the U.S. industry to expand further, however, is reportedly limited by the amount of land suitable for planting, availability and cost of labor, costs of irrigation and cultivation, and difficulties obtaining credit.<sup>21</sup>

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

In the Commission's notice of institution, interested parties were asked to comment on the definitions of the domestic like product and the domestic industry. The domestic producers concur with the Commission's determination in the original investigation that the domestic like product is FCOJM and the domestic industry comprises the extractors of FCOJM and the growers of round oranges.<sup>22</sup>

In the original investigation U.S. growers were almost exclusively located in Florida, California, Arizona, and Texas; Florida accounted for about 90 percent of the oranges that were used for processing; almost all of the oranges processed in Florida were used to produce FCOJM; and it was estimated that there were over 10,000 growers in Florida.<sup>23</sup> Orange production is still almost exclusively in the same four States, but now there are at least 11,000 growers in Florida,<sup>24</sup> Florida accounts for about 95 percent of the oranges used for processing,<sup>25</sup> and virtually all of the processed orange juice goes through the FCOJM stage before reprocessing for consumer product concentration and packaging for retail.<sup>26</sup>

The number of extractor-processor firms in Florida declined from 36 to 29 during crop years ended November 30, 1983-87; during the original investigation there were also at least four California extractor-processor firms. In 1986, 25 of the 31 Florida extractor-processor firms were corporations; the number of cooperative extractor-processors had declined as major corporations acquired their plants. The corporations had more latitude to choose between buying oranges or FCOJM based on price and quality decisions, whereas extractor-processors that were cooperatives were viewed as extensions of their members' growing operations.<sup>27</sup> There are currently 26 extractor-processor firms in Florida and one in California. Several of these extractor-processors have relationships with Brazilian orange-processing firms: Alcoma Packing Co. (owned by Citrosuco), Berry Citrus Products (owned by Cargill), Cargill Citro-America, Cutrale Citrus Juice USA, and Winter Garden Citrus (owned by Louis Dreyfus Co., which also owns Coopercitrus, a Brazilian FCOJ producer).<sup>28</sup>

### U.S. Bearing Acreage, Production, Inventories, and Shipments

All data provided in this section of the report are on the basis of crop years ended November 30 of the year specified. Data on orange-bearing acreage, orange production, and oranges processed are available from official USDA statistics and are presented in table I-1. Data for crop years 1983-86 closely approximate the data presented in the original report; however, minor variations exist because USDA continually adjusts its time series data. Although such changes are minor and do not distort the trends, data presented in the tables that do not match that presented in the original staff report have been so noted. Data on production, stocks, and total shipment of FCOJM are available from FCPA statistics and are presented in table I-2.

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<sup>21</sup> *Response* by domestic producers, p. 31.

<sup>22</sup> *Response* of domestic producers, pp. 33 and 35.

<sup>23</sup> *Staff Report of Apr. 6, 1987*, p. R-25.

<sup>24</sup> *Response* by domestic producers, p. 1.

<sup>25</sup> *Citrus Fruits*, USDA, Sept. 1998.

<sup>26</sup> *Response* by domestic producers, p. 35.

<sup>27</sup> *Staff Report of Apr. 6, 1987*, p. R-32.

<sup>28</sup> *Response* by domestic producers, pp. 19-22.

Table I-1 Oranges: Bearing acreage, production, and amount processed, crop years ended Nov. 30, 1983-86 and 1997-98						
Item	1983	1984	1985	1986	1997	1998
Bearing acreage (1,000 acres)						
Florida	536.8	<sup>1</sup> 474.2	420.1	<sup>1</sup> 367.6	624.9	609.2
California <sup>2</sup>	177.4	177.1	175.3	174.6	200.0	196.2
Arizona <sup>2</sup>	12.6	12.6	10.9	11.0	9.2	9.2
Texas	24.0	24.3	11.4	<sup>1</sup> 8.3	8.7	9.5
Total	<sup>1</sup> 750.8	<sup>1</sup> 688.2	<sup>1</sup> 617.7	<sup>1</sup> 561.5	842.8	824.1
Oranges produced (million boxes, 90 pound equivalent)						
Florida	139.6	116.7	103.9	<sup>1</sup> 119.2	226.2	244.0
California	63.4	40.4	43.7	<sup>1</sup> 44.9	53.3	61.7
Arizona	3.2	<sup>1</sup> 1.4	<sup>1</sup> 1.7	<sup>1</sup> 1.7	.8	.8
Texas	5.4	2.4	0	.3	1.3	1.4
Total	211.6	<sup>1</sup> 160.9	<sup>1</sup> 149.3	<sup>1</sup> 166.1	281.6	307.9
Oranges processed (million boxes, 90 pound equivalent)						
Florida	129.3	109.1	97.2	<sup>1</sup> 110.2	215.5	232.8
California	27.4	<sup>1</sup> 9.1	10.0	<sup>1</sup> 8.6	10.4	11.3
Arizona	<sup>1</sup> 1.0	<sup>1</sup> 2	.4	.3	.1	.1
Texas	2.2	<sup>1</sup> 1.1	0	<sup>(3)</sup>	.4	.4
Total	<sup>1</sup> 159.9	<sup>1</sup> 119.5	107.6	<sup>1</sup> 119.1	226.4	244.6
<p><sup>1</sup> Because USDA is continually revising the data in its time series, the figures presented differ slightly from those on pp. R-42 or R-44 of the <i>Staff Report of Apr. 6, 1987</i>; however, the general trends remain unchanged from those presented in the original staff report.</p> <p><sup>2</sup> Data for California and Arizona were combined on p. R-44 of the <i>Staff Report of Apr. 6, 1987</i>; the totals of the California and Arizona figures presented here differ slightly from data presented in the original staff report for crop years ended Nov. 30, 1983-85, but the general trends remain unchanged.</p> <p><sup>3</sup> Less than 50,000 boxes.</p>						
<p>Source: Bearing acreage from official USDA statistics presented in <i>Fruit and Tree Nuts, FTS-278</i>, Oct. 1996 issue, p. 39, for crop years 1983-86 and via internet at <a href="http://www.econ.ag.gov">http://www.econ.ag.gov</a> for crop years 1997-98; oranges produced and processed from official USDA statistics presented in <i>Citrus Fruits</i>, Sept. of 1987, 1990, 1993, 1996, and 1998.</p>						



Table I-2 FCOJ: Production, ending inventory, and total shipments, crop years ended Nov. 30, 1983-86 and 1997-98						
Item	1983	1984	1985	1986	1997	1998
Quantity (1,000 SSE gallons)						
Production from Florida crop	684,898	489,576	478,492	534,769	976,599	1,024,798
Ending inventory <sup>1</sup>	172,960	219,794	195,270	<sup>2</sup> 149,419	281,377	422,646
Total shipments <sup>1</sup>	965,203	922,118	870,885	914,711	1,106,403	1,065,353
<p><sup>1</sup> There are no data available on inventories or shipments of FCOJ that is either purely Florida product or purely U.S. product. The inventory and shipment data reflect not only FCOJ from Florida crop, but also the following other supplies: fresh concentrated tangerine and chilled orange juices used in FCOJ; receipts of nonmember Florida product, non-Florida domestic and imported product received by members, product received in fulfillment of futures contracts, and net gains and losses during processing. These other supplies are substantial, ranging from about one-half to about equal to the production from Florida crop during crop years 1983-86 and amounting to one-fourth and one-fifth the size of production from Florida crop during crop years 1997 and 1998. Imports make up the bulk of these other supplies, accounting for 83-92 percent in crop year 1983-86 and 75-86 percent in crop years 1997 and 1998.</p> <p><sup>2</sup> Ending inventories were not provided for crop year 1986 in the original staff report.</p> <p>Note.--Corresponding rounded data were presented in the <i>Staff Report of Apr. 6, 1987</i>: production and inventories, i.e., carryover stock to the next crop year (p. R-24), and total shipments (p. R-47).</p> <p>Source: FCPA statistics presented in <i>FCPA Statistical Summary</i>, 1992-93 Season, p. 17A, for crop years 1983-86, and 1997-98 Season, p. 17A, for crop years 1997-98.</p>						

Orange-bearing acreage (i.e., where the trees are mature enough to bear fruit) decreased during crop years 1983-86, chiefly in Florida and Texas. In crop years 1997 and 1998, bearing acreage exceeded the crop year 1983 level for Florida and California, the two largest producing States, by at least 10 percent, whereas Arizona and Texas acreage generally remained below the levels of the original investigation.

Orange production and the amount of oranges for processing decreased during crop years 1983-85 and then increased in crop year 1986; in crop years 1997 and 1998, oranges produced and processed were at about twice the level of the crop year 1985 low. Florida, which processes over 92 percent of its oranges, accounted for 88 percent of the total processed oranges during crop years 1983-86; by crop years 1997 and 1998, Florida processed over 95 percent of its oranges and accounted for 95 percent of all processed oranges.

Production of FCOJ from Florida crop decreased during crop years 1983-85 and then increased in crop year 1986, but still remained below the crop year 1983 level. During crop years 1997 and 1998, production of FCOJ from Florida crop was 42 percent and 50 percent above the crop year 1983 level. There are no inventory or shipment data available for just-Florida FCOJ or for just-U.S. FCOJ. Inventory and shipment data include sizeable quantities of imports and other supplies added to the production of FCOJ from Florida crop.

## U.S. IMPORTS AND CONSUMPTION

### U.S. Importers

During the original investigation, the largest quantities of imports of Brazilian FCOJM were imported by three major trading companies (Citrus Products, Juice Farms, and Cargill) and by the largest Florida processors (Coca Cola Foods, Tropicana, Citrus Hill, and Lykes Pasco). Two other trading companies, Conagra and Citram, were also identified as importers in the original investigation, and small processors and larger reconstitutors also imported FCOJM.<sup>29</sup>

FCOJM is currently reportedly imported by Citrus Products, Juice Farms, Cargill, Dreyfus, Ardmore Farms, Minute Maid, McCann, and Publix Super Markets, as well large juice processors and non-juice processing entities, including food and beverage processors. Seven processors, \*\*\*, are reportedly importers of "significant" quantities of FCOJM from Brazil. An additional 11 processors were reportedly "occasional" importers of FCOJM from Brazil.<sup>30</sup>

### U.S. Imports

During the original investigation, the subject imports were FCOJM from Brazil and virtually all concentrated orange juice imported from Brazil was considered to be FCOJM.<sup>31</sup> Although the imports were reported and dutiable based on SSE volume, they are really imported in concentrated form--most often at 65 degrees Brix.<sup>32</sup> Such remains the case today.<sup>33</sup>

As shown in figure I-1 and table I-3, U.S. imports of FCOJM from Brazil increased from crop year 1977<sup>34</sup> to their highest volume of 578 million SSE gallons in crop year 1985. Following the initiation of the antidumping investigation in May 1986, imports of FCOJM from Brazil have decreased erratically through crop year 1998, when they were about one-third of the volume of the crop year 1985 imports. Both the shares of total imports accounted for by Brazilian FCOJM and the unit values of such imports increased during crop years 1983-85 and then fell in crop year 1986. During crop years 1997-98, Brazilian FCOJM accounted for 62-64 percent of total imports, down from its 92-97 percent share during crop years 1983-86; and unit values (per SSE gallon) for Brazilian FCOJM, at \$1.10 in crop year 1997 and \$1.05 in crop year 1998, were 4-35 percent below the \$1.15 - \$1.62 unit values during crop years 1983-86.

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<sup>29</sup> *Staff Report of Apr. 6, 1987*, p. R-35.

<sup>30</sup> *Supplemental Response* by domestic producers, pp. 7-9.

<sup>31</sup> *Staff Report of Apr. 6, 1987*, pp. R-12, and R-97-98. During the original investigation, and until the time of the conversion from the TSUSA to the HTS in January 1989, imports of FCOJM were believed to comprise virtually all of the imports in the basket classification covering concentrated and reconstituted orange juice.

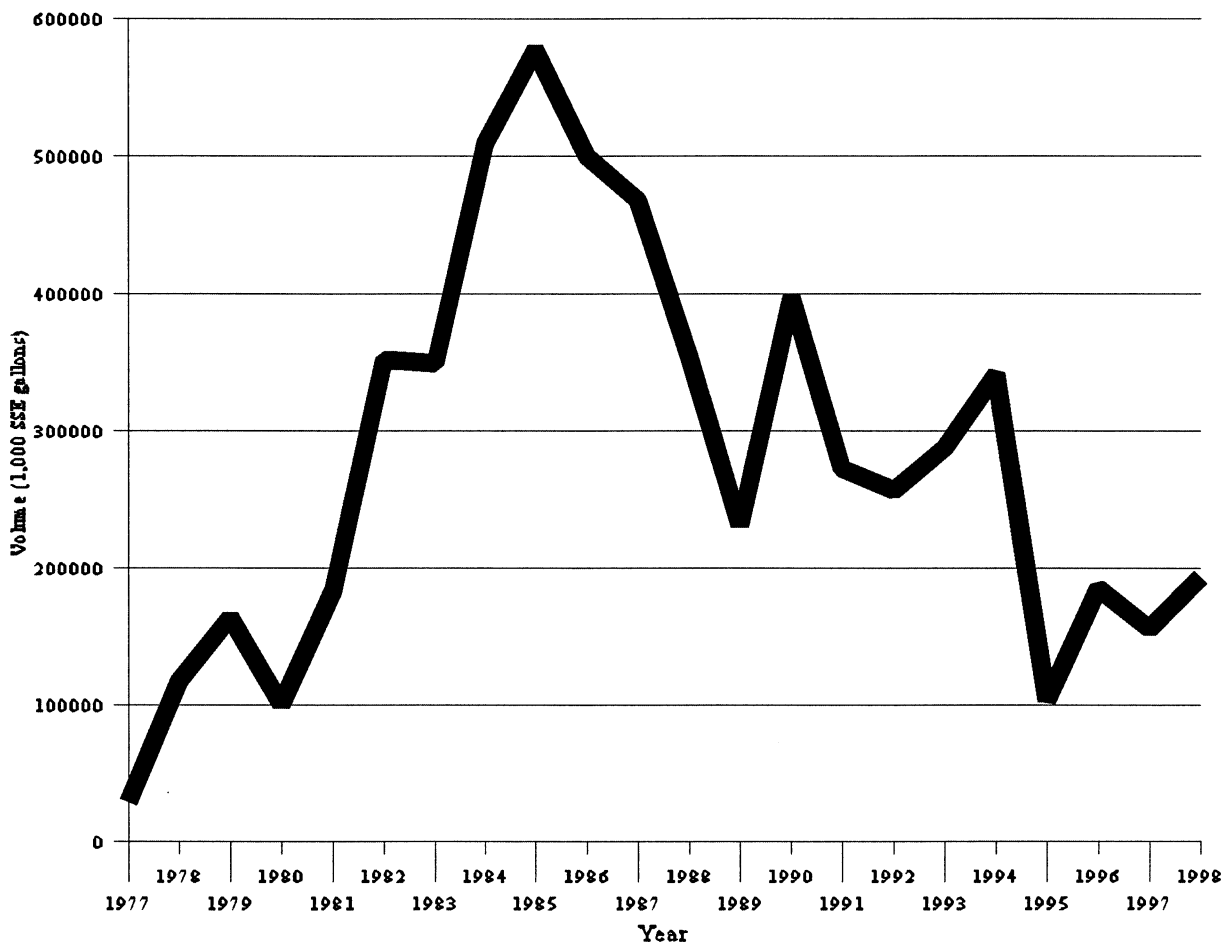
<sup>32</sup> *Staff Report of Apr. 6, 1987*, p. R-12.

<sup>33</sup> *Response* by domestic producers, p. 32. Since the implementation of the HTS in January 1989, there has been a separate subheading for FCOJ and this has been further broken out into the size of the container. Imports from Brazil in containers of more than 3.785 liters are virtually all FCOJM, and these accounted for 99 percent of all imports of FCOJ in calendar years 1989-98. Although it is probably correct that imports of FCOJ in containers less than 3.785 liters are likely not for further manufacture, the data presented in this section are for all FCOJ in order to more closely correlate with the import data presented in the original investigation when there were no distinctions in import classifications regarding size of the container.

<sup>34</sup> Prior to 1977, imports of FCOJM from Brazil were 30 million SSE gallons or less per crop year. *Staff Report of Apr. 6, 1987*, p. R-122 (original page).

Figure I-1

FCOJM: U.S. imports from Brazil, by quantity, crop years ended Nov. 30, 1977-98



Source: Official Commerce statistics.

As previously mentioned, there are several firms excluded from the antidumping duty order. There are no data on subject imports available on a crop year basis; however, data on the value of annual FY imports reviewed by Customs that are subject to the antidumping duty order are listed in the *Case History and Scope Information*, available on Commerce's web site. These data reveal that less than 5 percent of the imports from Brazil during 1993-97 were subject imports.<sup>35</sup>

Four of the processors responding to the Commission's notice of institution imported FCOJM from Brazil during the most recent season. Their imports during October 1997-September 1998 were: \*\*\* SSE

<sup>35</sup> See Commerce's web site ([http://www.ita.doc.gov/import\\_admin/records/sunset](http://www.ita.doc.gov/import_admin/records/sunset)). These data list the value of subject imports at \$9,802,137 for FY 1993; \$3,760,300 for FY 1994; \$11,051,588 for FY 1995; \$16,111,866 for FY 1996; and \$9,009,809 for FY 1997. Information received from Customs indicates that deposits on antidumping duties amounted to \$0 in FY 1993, \$3,034 in FY 1994, \$29,947 in FY 1995, \$1,141,530 in FY 1996, and \$140,331 in FY 1997. *Antidumping/Countervailing Duty Annual Report*.

Table I-3 FCOJM: <sup>1</sup> U.S. imports, by sources, crop years ended Nov. 30, 1983-86 and 1997-98						
Item	1983	1984	1985	1986	1997	1998
Quantity (1,000 SSE gallons)						
Brazil	349,084	510,056	578,133	500,510	155,912	193,384
Other sources <sup>2</sup>	28,006	23,473	18,454	45,660	96,208	108,155
Total	377,090	533,529	596,587	546,170	252,119	301,539
Value (1,000 dollars)						
Brazil	429,980	742,287	938,602	574,449	171,535	203,296
Other sources <sup>2</sup>	33,142	34,920	30,256	47,569	96,135	122,292
Total	463,122	777,207	968,858	622,018	267,670	325,588
Share of total quantity (percent)						
Brazil	92.6	95.6	96.9	91.6	61.8	64.1
Other sources <sup>2</sup>	7.4	4.4	3.1	8.4	38.2	35.9
Total	100.0	100.0	100.0	100.0	100.0	100.0
Unit value (per SSE gallon)						
Brazil	\$1.23	\$1.45	\$1.62	\$1.15	\$1.10	\$1.05
Other sources <sup>2</sup>	1.18	1.49	1.64	1.04	1.00	1.13
Total	1.23	1.46	1.62	1.14	1.06	1.08
<sup>1</sup> Includes negligible amounts of FCOJ that are probably not for further manufacturing. <sup>2</sup> The primary other sources during crop years 83-86 were Mexico, Belize, and Canada. The primary other sources during crop years 97-98 were Mexico, Costa Rica, Belize, and Honduras.						
Note.--Because of rounding, figures may not add to the totals shown.						
Source: <i>Staff Report of Apr. 6, 1987</i> , p. R-98 for crop years 1983-86 (which were from official Commerce statistics), and official Commerce statistics 1997-98; values are landed, duty paid, but do not included any antidumping duty.						

gallons imported by \*\*\*, \*\*\* SSE gallons imported by \*\*\*, \*\*\* SSE gallons imported by \*\*\*, and \*\*\* SSE gallons imported by \*\*\*. Although \*\*\*,<sup>36</sup>

<sup>36</sup> *Supplemental Response* by domestic producers, pp. 9 and 11. The period October 1997-September 1998 was reportedly chosen because it was the last full one-year period available when the *Supplemental Response* was filed. The share of total imports of FCOJM from Brazil accounted for by these four processors is about \*\*\* percent, on the basis of quantity. *Supplemental Response* by domestic producers, p. 11.

## Apparent U.S. Consumption

Because of the blending of domestic and imported orange juice at any of several steps in the production process, apparent U.S. consumption was not derived during the original investigation, nor has it been for this review. Instead, total available FCOJ (derived by adding production from Florida crop, imports, and carryover stock reported by the FCPA) is presented in table I-4; the data presented are for the crop years ended November 30. Total available FCOJ dipped slightly in crop year 1984 but remained essentially constant at between 1.2 billion and 1.3 billion SSE gallons during crop years 1983-86. The share of available FCOJ accounted for by production from the Florida crop decreased during crop years 1983-85 and then increased in crop year 1986, but to a level still below crop year 1983; the share of available FCOJ accounted for by imports from Brazil exhibited the opposite trends, and exceeded the share of available FCOJ accounted for by production from Florida crop during crop years 1984-85. In crop years 1997 and 1998, the share of available FCOJ accounted for by production from Florida crop was five to six times greater than the share accounted for by imports from Brazil.

## THE INDUSTRY IN BRAZIL

Brazil is the world's largest producer of processing oranges, accounting for 53 percent, compared with 36 percent for the United States and 11 percent for all other countries in crop year 1997.<sup>37</sup> Brazil is also reportedly the world's largest producer of orange juice, although it consumes only about 1 percent of its production.

Orange bearing trees in Sao Paulo increased during crop years<sup>38</sup> 1983-86 (table I-5). Although orange production and FCOJM production dipped in crop year 1984, they generally increased during the original period of investigation, and exports, although peaking in crop year 1985, ended the original period of investigation at one and one-half times the 1983 level. In crop years 1997 and 1998, all of these indicators (Sao Paulo bearing trees, Sao Paulo production of oranges, production of FCOJM, and exports) were up substantially from their levels during the original investigation.

The United States was the primary market for Brazilian FCOJM during the original investigation, accounting for 47-63 percent of total Brazilian exports during calendar years 1983-86 (table I-6). In calendar year 1997, the United States accounted for only 18 percent of Brazil's FCOJM exports, and the level of exports to the United States was lower than in any calendar year during 1983-86.

There are no data available on the Brazilian industry with respect to those producers that were not found to be dumping or for which the antidumping duty order has been revoked. During the original investigation, U.S. imports from Brazil found to be dumped amounted to 59 percent of the total imports from Brazil during the crop years ended November 30, 1982-86.

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<sup>37</sup> Response by domestic producers, p. 10 (citing FAS, USDA, *World Horticultural Trade and U.S. Export Opportunities*, July 1998).

<sup>38</sup> Crop years for the Brazilian orange industry are for the period July 1 through June 30. All further references to the Brazilian industry data are on the basis of crop years ended June 30, unless otherwise specified.

Table I-4  
FCOJ: Production from Florida crop, U.S. imports, carryover stock, and total available FCOJ, crop years ended Nov. 30, 1983-86 and 1997-98

Item	1983	1984	1985	1986	1997	1998
Quantity (1,000 SSE gallons)						
Production from Florida crop	684,898	489,576	478,492	534,769	976,599	1,024,798
U.S. imports:						
Brazil	349,084	510,056	578,133	500,510	155,912	193,384
Other sources	28,006	23,473	18,454	45,660	96,207	108,155
Total	377,090	533,529	596,587	546,170	252,119	301,539
Carryover stock	215,592	172,960	219,794	195,270	176,162	281,377
Total available FCOJ	1,277,580	1,196,065	1,294,873	<sup>1</sup> 1,276,209	1,404,880	1,607,714
Share of total available FCOJ (percent)						
Production from Florida crop	53.6	40.9	37.0	41.9	69.5	63.7
U.S. imports:						
Brazil	27.3	42.6	44.6	39.2	11.1	12.0
Other sources	2.2	2.0	1.4	3.6	6.8	6.7
Total	29.5	44.6	46.1	42.8	17.9	18.8
Carryover stock	16.9	14.5	17.0	15.3	12.5	17.5

<sup>1</sup> Differs slightly from the rounded figure presented on p. R-24 in the original report.

Note.--See *Staff Report of Apr. 6, 1987*, pp. R-24, R-98, and R-100.

Source: Imports from official Commerce statistics; production from Florida oranges and carryover stocks from the *FCPA Statistical Summary*, 1992-93 season, p. 17A, for crop years 1983-86, and 1997-98 season, p. 17A, for crop years 1997-98.

Table I-5  
Oranges and FCOJM: Certain salient data on Brazil's operations, crop years ended June 30, 1983-86 and 1997-98

Item	1983	1984	1985	1986	1997	1998
<i>Orange trees in Sao Paulo<sup>1</sup> (million trees)</i>						
Bearing trees	88	94	100	107	173	178
Non-bearing trees	19	18	17	18	30	22
Total	108	113	117	125	203	200
<i>Sao Paulo<sup>1</sup> oranges (million boxes, except where specified)</i>						
Production	195	180	<sup>2</sup> 205	<sup>2</sup> 239	366	420
Fresh consumption	33	33	<sup>2</sup> 18	<sup>2</sup> 17	95	97
Exports	2	2	2	2	2	3
Processed: Quantity	160	145	<sup>2</sup> 185	<sup>2</sup> 220	269	320
Share of production ( <i>percent</i> )	82	80	90	92	73	76
<i>FCOJM (million SSE gallons, unless otherwise specified)</i>						
Production: Sao Paulo	<sup>2</sup> 773	<sup>2</sup> 714	<sup>2</sup> 1,080	<sup>2</sup> 1,209	1,577	1,898
Other	<sup>(3)</sup>	<sup>(3)</sup>	22	21	42	52
Total	773	714	1,102	1,230	1,620	1,950
Home market consumption: Quantity	22	22	<sup>2</sup> 14	21	24	22
Share of production ( <i>percent</i> )	3	3	1	2	1	1
Exports: Quantity	<sup>2</sup> 635	<sup>2</sup> 821	<sup>2</sup> 1,075	<sup>2</sup> 987	1,660	1,753
Share of production ( <i>percent</i> )	82	115	98	80	102	90
Ending inventories	<sup>2</sup> 143	14	<sup>2</sup> 62	<sup>2</sup> 284	177	351

<sup>1</sup> During the time of the original investigation, the State of Sao Paulo produced approximately 80 percent of Brazil's orange crop and about 96 percent of its FCOJM; in crop year 1998, Sao Paulo produced 97 percent of Brazil's FCOJM.

<sup>2</sup> Figure changed since original investigation because of the constant revision of the data series, but the trends are not altered.

<sup>3</sup> Not available, but believed to be negligible.

Note.--See *Staff Report of Apr. 6, 1997*, pp. R-38-39 and R-126.

Source: Trees data from AMCONGEN Foreign Attache Reports; other data *Horticultural Products Review*, Apr. 1986, Mar. 1990, June 1991, and July 1993, and *World Horticultural Trade & U.S. Export Opportunities*, Oct. 1994 and July 1998.

Table I-6 FCOJM: Brazil's exports, by markets, calendar years 1983-86 and 1997 <sup>1</sup>					
Item	1983	1984	1985	1986 <sup>2</sup>	1997
Quantity ( <i>million SSE gallons</i> )					
United States	365.5	791.2	399.1	583.5	304.8
Other markets <sup>3</sup>	404.6	468.9	276.0	552.8	1,353.5
Total	770.1	1,260.1	675.1	1,136.3	1,658.3
Share of total exports ( <i>percent</i> )					
United States	47.5	62.8	59.1	51.4	18.4
Other markets	52.5	37.2	40.9	48.6	81.6
<sup>1</sup> Data are not available for 1998. <sup>2</sup> Data were not available at the time of the original investigation, but are presented for comparison with the crop year ended November 30, 1986, data that are shown for U.S. imports. At the time of the original investigation, January-June 1986 data were presented and they accounted for 45 percent, 51 percent, and 48 percent, respectively, of the calendar year 1986 exports to the United States, to other markets, and total exports. <sup>3</sup> Principal export markets were Europe and Canada during 1983-86 and Europe, Japan, and Korea in 1997.					
Source: <i>Staff Report of Apr. 6, 1997</i> , p. R-127, for 1983-85 data (which were from USDA data and Banco do Brazil/Cacex), USDA data for 1986, and official United Nations statistics for 1997.					



**APPENDIX A**  
***FEDERAL REGISTER NOTICES***



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**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-326 (Review)]

**Frozen Concentrated Orange Juice  
From Brazil**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Scheduling of an expedited five-  
year review concerning the antidumping  
duty order on frozen concentrated  
orange juice from Brazil.

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**SUMMARY:** The Commission<sup>1</sup> hereby  
gives notice of the scheduling of an  
expedited review pursuant to section  
751(c)(3) of the Tariff Act of 1930 (19  
U.S.C. § 1675(c)(3)) (the Act) to  
determine whether revocation of the  
antidumping duty order on frozen  
concentrated orange juice from Brazil  
would be likely to lead to continuation  
or recurrence of material injury within  
a reasonably foreseeable time. For  
further information concerning the  
conduct of this review and rules of  
general application, consult the  
Commission's Rules of Practice and  
Procedure, part 201, subparts A through  
E (19 CFR part 201), and part 207, .  
subparts A, D, E, and F (19 CFR part  
207). Recent amendments to the Rules  
of Practice and Procedure pertinent to A-3

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<sup>1</sup> Chairman Bragg is not participating in this  
review.

five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

**EFFECTIVE DATE:** March 5, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 5, 1999, the Commission determined that the domestic interested party group response to its notice of institution (63 F.R. 66572, Dec. 2, 1998) of the subject five-year review was adequate.<sup>2</sup> The Commission also determined that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>3</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

**Staff Report**

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on April 16, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written Submissions**

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of

institution,<sup>4</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before April 21, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by April 21, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination**

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority**

This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 9, 1999.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-6159 Filed 3-11-99; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>2</sup> Commissioner Crawford dissenting.

<sup>3</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

<sup>4</sup> The Commission has found responses submitted by Florida Citrus Mutual; Caulkins Indiantown Citrus Co.; Citrus Belle; Citrus World, Inc.; Orange Co. of Florida, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processors Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-351-605]****Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice from Brazil****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**ACTION:** Notice of Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice (FCOJ) from Brazil.

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**SUMMARY:** On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on frozen concentrated orange juice from Brazil (63 FR 66527) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of the Review section of this notice.**FOR FURTHER INFORMATION CONTACT:** Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-3207 or (202) 482-1560, respectively.**EFFECTIVE DATE:** April 7, 1999.**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues

relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

#### Scope

The merchandise subject to this antidumping order is frozen concentrated orange juice from Brazil.<sup>1</sup> Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2009.11.00. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of frozen concentrated orange juice from Brazil, other than imports produced by Sucocitrico Cutrale, S.A., which was excluded from the order (52 FR 16426, May 5, 1987), as well as Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A., for which the order was revoked (56 FR 52510, October 21, 1991) and Frutropic, for which the order was also revoked (59 FR 53137, October 21, 1994).

#### Background

On December 2, 1998, the Department initiated a sunset review of the antidumping order on frozen concentrated orange juice from Brazil (63 FR 66527), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange Co. of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. (collectively "the domestic interested parties") on December 17, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to 19 USC § 1677(9)(G)(iii), the domestic interested parties claimed interested party status as a coalition representative of growers and processors of oranges and orange juice. In addition, Florida Citrus Mutual, a trade association representing growers of oranges used in the production of FCOJ, was the original petitioner in the antidumping duty investigation of FCOJ from Brazil. We received a complete substantive

response from the domestic interested parties on January 4, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order. On February 8, 1999, the domestic interested parties submitted a copy of the preliminary results of the latest administrative review of FCOJ from Brazil, covering the period between May 1, 1997 and April 30, 1998.<sup>2</sup>

#### Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

#### Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that

determinations of likelihood will be made on an order-wide basis (see section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping order on FCOJ from Brazil was published in the **Federal Register** on May 5, 1987 (52 FR 16426). Since that time, the Department has conducted several administrative reviews.<sup>3</sup> On October 21, 1991, the Department revoked the order with respect to imports produced by Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A. (56 FR 52510, October 21, 1991). On October 21, 1994, the Department also revoked

<sup>3</sup> See *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 26721 (June 29, 1990); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 55 FR 47502 (November 14, 1990); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (October 21, 1991); *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 57 FR 12910 (April 14, 1992); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (October 21, 1994); *Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil*, 62 FR 5798 (February 7, 1997); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 29328 (May 30, 1997); *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 63 FR 26145 (May 12, 1998).

<sup>1</sup> Pulpwash, a by-product of FCOJ which is composed of water-extracted soluble orange solids, was found to be outside of the scope of the order (55 FR 26721, June 29, 1990).

<sup>2</sup> See *Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 5767 (February 5, 1999).

the order for Frutropic (59 FR 53137, October 21, 1994). The order remains in effect for all other manufacturers and exporters of the subject merchandise.

In its substantive response, the domestic interested parties argued that the actions taken by producers and exporters of FCOJ during the life of the order indicate that the likely effect of revocation of the order in this case would be that dumping of FCOJ would continue or resume, and that margins would increase (see Substantive Response of the Domestic Interested Parties, January 4, 1999, at 3). With respect to whether dumping continued at any level above de minimis after the issuance of the order, the domestic interested parties stated that while there have been determinations of de minimis or zero margins for certain producers in the past, in the current administrative review (covering entries during the period June 1997–May 1998), the Department has found enough evidence of sales in home or third country markets below cost of production of FCOJ to initiate a cost investigation (see Substantive Response of the Domestic Interested Parties, January 4, 1999, at 4–5).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, the domestic interested parties maintained that since FCOJ is a commodity product, the fact that import volumes have risen or declined in absolute terms since the imposition of the order is of lesser probative value (see *id.*). They went on to argue that agricultural commodities, such as FCOJ, require additional analysis, due to the perishable nature of the article and its production cycles (see *id.*).

In conclusion, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because dumping margins have existed throughout the life of the order for some Brazilian exporters/producers of FCOJ.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above de minimis continues to exist for shipments of the subject merchandise from Branco Peres Citrus S.A.<sup>4</sup>

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. The Department's statistics on imports of FCOJ from Brazil between 1985 and 1998, demonstrate that in 1987, the year the order was imposed, imports of FCOJ fell sharply (from approximately 2.2 billion liters in 1986 to approximately 2 million liters in 1987).<sup>5</sup> Since the imposition of the order, imports of FCOJ have not reached the pre-order level; however, imports of subject merchandise have not consistently decreased either.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, the Department finds no reason to consider the domestic interested parties' argument that additional analysis is required for antidumping orders on agricultural products. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by at least one known Brazilian manufacturer/exporter. Therefore, given that dumping has continued over the life of the order, respondent interested parties waived participation in this sunset review, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

#### Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption

determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value ("LTFV"), published a weighted-average dumping margin for one Brazilian producer/exporter, Citrosuco Paulista, of frozen concentrated orange juice (52 FR 8324, March 17, 1987). As discussed above, the order with respect to Citrosuco Paulista has been revoked. The final LTFV determination also contained an "all others" rate. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the domestic interested parties recommended that the Department deviate from its stated policy of selecting rates from the original investigation. Specifically, the domestic interested parties suggested that, because it is a commodity product, FCOJ should not be treated as other industrial products, where pricing may vary considerably from one producer to another. Rather, they suggested that current market conditions will dictate the level of dumping if there were no order. Therefore, the domestic interested parties requested that the Department apply the new, higher, dumping margin of 65.2 percent found in the preliminary results and partial rescission of the most recent antidumping duty administrative review (64 FR 5767, February 5, 1999).

Because the results of the ongoing administrative review have not yet been finalized, the Department believes it is not appropriate to rely on those results for the purpose of this determination. Further, we note that, although FCOJ is a commodity product, the magnitude of any margin of dumping is determined based on factors other than market price alone, for example, cost of production. Therefore, absent persuasive evidence to the contrary, the Department continues to believe that as noted in the *Sunset Policy Bulletin*, the margins from the original investigation are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

The Department finds no reason to deviate from its stated policy of reporting the margins from the original investigation. The Department finds the margins calculated in the original investigation are probative of the behavior of Brazilian producers/exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. Therefore, the Department will report to the Commission all other rates from the original investigation as

<sup>4</sup> See *Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping*

*Administrative Review*, 63 FR 26145 (May 12, 1998).

<sup>5</sup> See U.S. Census Bureau Report IM146.

contained in the *Final Results of Review* section of this notice. The Department has not reported the calculated margin for Citrosuco Paulista, S.A., the only company with a calculated margin in the investigation, because the order with respect to Citrosuco Paulista has been revoked.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
All Others .....	1.96

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

**Robert S. LaRussa,**  
*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**



**APPENDIX B**  
**STATEMENT ON ADEQUACY**



## EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

*Frozen Concentrated Orange Juice from Brazil*, Inv. No. 731-TA-326 (Review)

On March 5, 1999, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Act, 19 U.S.C. § 1675(c)(3)(B).<sup>1</sup> The Commission determined that the domestic interested party group response was adequate.<sup>2</sup> In this regard, the Commission received a joint response from Florida Citrus Mutual, a trade association representing 11,000 growers, and six producers of frozen concentrated orange juice for manufacturing.<sup>3</sup> The joint response included company specific data from companies accounting for a substantial percentage of the domestic production of frozen concentrated orange juice for manufacturing and of round oranges.

Each domestic interested party that responded to the notice stated its willingness to participate in the review and provide information requested by the Commission. The Commission found that these statements meet the statutory requirement that interested parties demonstrate a willingness to participate in the review. We note that Florida Citrus Mutual, like all trade associations, represents and speaks on behalf of its members and that such a form of

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<sup>1</sup>Chairman Bragg is not participating in this review.

<sup>2</sup>Commissioner Crawford dissenting.

<sup>3</sup>Commissioner Crawford determined that the joint domestic interested party response was filed as a coalition pursuant to section 771(9)(G)(iii) of the Act, 19 U.S.C. § 1677(9)(G)(iii). The coalition consists of one large trade association of orange growers and six processors of frozen concentrated orange juice for manufacturing. She determined that the coalition response was adequate as an individual response. Commissioner Crawford does not join the remainder of the majority discussion regarding the domestic interested party group response. *See infra*.

representation is not uncommon in our experience, especially in a highly fragmented industry, as is the case here.

Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant a full review. The Commission therefore determined to conduct an expedited review.

Commissioner Crawford dissents from her colleagues in their determination regarding domestic interested party group adequacy. With respect to such determination, Commissioner Crawford has identified two problems with the form of response in this case. First, as she has previously stated, Commissioner Crawford believes that a trade association responding on behalf of its members, in lieu of the members responding directly, must provide the Commission with some statement that allows the Commission to make a statutory determination regarding the willingness among interested parties to participate in a review and to provide information requested throughout the proceeding. In this particular review, the trade association purporting to represent domestic growers provided no such statement or other proxy to satisfy the statutory criterion regarding their willingness to participate and to provide information requested throughout the proceeding. The general statement provided in the response that trade association members will participate in this review by providing requested information “to the fullest extent possible” does not satisfy the statutory intent underlying the Commission’s adequacy determinations.

Second, the trade association itself did not file a response to the notice of institution in this review. Rather, the only response was filed by a coalition on behalf of domestic interested parties. The trade association is only one member of that coalition. Therefore individual growers

were not directly represented in the response, and grower representation was even more attenuated than if the trade association had filed directly on their behalf. Thus, the Commission is *twice* removed from the growers, and there is no statement or other discussion regarding member intent from the growers themselves. Such circumstances further reduce the ability of the Commission to make the necessary assessment of a willingness and intent to participate.

Without an effective means to assess grower willingness and intent to participate in this review, and given the small percentage of processors joining in the coalition response to the notice of institution, Commissioner Crawford determined that the domestic interested party group response was inadequate. She therefore determined to conduct an expedited review based upon both domestic and respondent party group inadequacy.



