

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

CERTAIN ORANGE JUICE FROM BRAZIL

Dismissal of Request for Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) investigation concerning the Commission's affirmative determination in investigation No. 731-TA-1089 (Final), Certain Orange Juice from Brazil.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)) and Commission rule 207.45, that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review in less than 24 months the Commission's final affirmative determination in investigation No. 731-TA-1089 (Final). Certain orange juice is provided for in subheadings 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States.

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BACKGROUND INFORMATION: On January 6, 2006, the Department of Commerce determined that imports of certain orange juice from Brazil are being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act (19 U.S.C. § 1673) (71 FR 2183, January 13, 2006); and on March 3, 2006, the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. § 1673d(b)(1)), that an industry in the United States was materially injured by reason of imports of such LTFV merchandise. Accordingly, Commerce ordered that antidumping duties be imposed on such imports (71 FR 12183, March 9, 2006).

On June 13, 2007, the Commission received a request to review its affirmative determination in investigation No. 731-TA-1089 (Final) pursuant to section 751(b) of the Act (19 U.S.C. § 1675(b)). The request was filed by Tropicana Products, Inc., Bradenton, FL. Tropicana alleges that shortfalls in the Florida juice orange crop and depleted inventories; significant price increases and a greatly constricted supply; and disruption of the alternative sources of Brazilian supply following imposition of the antidumping duty order have resulted in the domestic orange juice producers being harmed by the order.

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,¹ the Commission published a notice in the *Federal Register* on July 25, 2007,² requesting comments as to whether the changed circumstances alleged by the petitioner were sufficient to warrant an investigation to

¹ 19 U.S.C. § 1675 (b).

² 72 FR 40896.

review in less than 24 months the Commission's final affirmative determination. On September 24, 2007, the Commission received comments in support of the request from: (1) counsel on behalf of Tropicana, the party requesting the review; (2) counsel on behalf of Louis Dreyfus Citrus Inc. ("Louis Dreyfus"), a domestic packager, merchant, and manufacturer of orange juice; (3) counsel on behalf of Cutrale Citrus Juices, Inc., a U.S. producer; Citrus Products, Inc., a U.S. importer; and Sucocitrico Cutrale Lta., a Brazilian exporter (collectively, "Cutrale Citrus"); (4) counsel on behalf of Fischer S/A Agroindustria, a Brazilian producer, and Citrosuco North America, Inc., a U.S. producer/importer, (collectively, "Fischer"); (5) Silver Springs Citrus, Inc., a U.S. producer; (6) Cargill Juice N.A., a U.S. producer/importer; and, (7) Vitality Foodservice, Inc., a U.S. purchaser.

A joint response in opposition to the request was received from counsel on behalf of Florida Citrus Mutual ("FCM"), A. Duda & Sons, Inc. (doing business as "Citrus Belle"), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as "Southern Gardens") (collectively, "domestic producers").

ANALYSIS: In considering whether to institute a review investigation under section 751(b), the Commission will not institute such an investigation unless it is persuaded there is sufficient information demonstrating:

- (1) that there are significant changed circumstances from those in existence at the time of the original investigations,
- (2) that those changed circumstances are not the natural and direct result of the imposition of the antidumping and/or countervailing duty order, and
- (3) that the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to continuation or recurrence of material injury to the domestic industry, warrant a full investigation.³

Additionally, in the case of determinations issued less than 24 months before the request for a review, such as the determination at issue here, the Commission can only institute a changed circumstances review on a showing of "good cause."⁴ The Commission has previously stated that:

By enacting the good cause provision, Congress intended to create a tougher standard for instituting a review investigation when a request is filed within 24 months. The language used in section 751 indicates that good cause will be found only in an unusual case. . . . What constitutes good cause will necessarily depend on the facts of a particular case. As a general matter, some situations clearly would fall within the purview of the good cause provision such as: (1) fraud or misfeasance in the original investigation; (2) acts of God, as exemplified in the FCOJ case where a severe freeze after the order was imposed sharply reduced U.S. producers' shipments of frozen concentrated orange juice; and (3) a mistake of law or fact in the original proceeding which renders the original proceeding unfair. This list, of course, is by no means exhaustive.⁵

³ See Gray Portland Cement and Cement Clinker from Mexico, 66 FR 657400 (December 20, 2001)

⁴ 19 U.S.C. § 1675(b)(4).

⁵ Porcelain-on-Steel Cooking Ware from Taiwan, Views of the Commission Concerning its Determination to Not Institute a Review of Inv. No. 731-TA-299, USITC Publication 2117, Aug. 1988, pp. 7-8.

1. Tropicana Has Not Shown “Good Cause”

As a threshold matter, while Tropicana argues that “good cause” exists for the Commission to institute a changed circumstances review even though the statutorily required 24-month period since publication of the Commission’s final determination has not passed, it cites no facts specific to its “good cause” argument other than those alleged to show sufficient changed circumstances. As explained above, the Commission has stated that “good cause” implies a “tougher standard” for instituting reviews within the 24-month period and will be found only in an “unusual case,” such as (but not limited to): fraud or misfeasance in the original investigation; acts of God; or a mistake of law or fact in the original proceeding which renders the original proceeding unfair.⁶

The facts alleged by Tropicana are not of the type that would meet this higher standard. Tropicana does not allege fraud, misfeasance, or mistake of law or fact in the original investigation. Although Tropicana alleges that the effects of the 2004/2005 hurricanes that reduced the domestic producers’ supply of oranges were not fully known until after the Commission’s determination, the Commission took the hurricanes and reduced supply into account in its original decision.⁷ This case is thus distinguishable from the 1984 case on Frozen Concentrated Orange Juice from Brazil, Inv. No. 751-TA-10 (Review), where the Commission found “good cause” and instituted a changed circumstances review on the basis of a severe freeze in Florida that occurred *after* the Commission’s determination and sharply reduced domestic production, contributing to a surge in demand for the Brazilian product.⁸

Moreover, as explained below, the facts alleged by Tropicana do not even show sufficient changed circumstances to warrant a review, much less “good cause.”

2. Tropicana Has Not Shown Sufficient Changed Circumstances

The information available, including that provided by Tropicana in its request, does not demonstrate, as it must:

- (1) that there are significant changed circumstances from those in existence at the time of the original investigation;
- (2) that those changed circumstances are not the natural and direct result of the imposition of the antidumping duty order; and
- (3) that the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to the continuation or recurrence of material injury to the domestic industry, warrant a full investigation.⁹

With respect to the first factor – significant changed circumstances from those in existence at the time of the original investigation – many of the facts alleged by Tropicana and others supporting review

⁶ Porcelain-on-Steel Cooking Ware from Taiwan, USITC Pub. 2117 (Aug. 1998) at 7-8.

⁷ Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006), at 14-15.

⁸ Frozen Concentrated Orange Juice from Brazil, USITC Pub. 1623 (Dec. 1984). The Commission decided on review that the short-term effects of the freeze would dissipate and that the domestic industry remained vulnerable to the effects of imports from Brazil.

⁹ Silicon Metal from Argentina, Brazil, and China, 63 Fed. Reg. 52289 (Sept. 30, 1998). *See, generally, A. Hirsh, Inc. v. United States*, 737 F. Supp. 1186 (Ct. Int’l Trade 1990); Avesta AB v. United States, 724 F. Supp. 974 (Ct. Int’l Trade 1989), *aff’d*, 914 F.2d 232 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 1308 (1991).

do not even constitute changes or differences from circumstances that existed during the original investigation and were considered by the Commission in its final determination. For example, the hurricanes and citrus canker disease that allegedly reduced the supply of juice oranges to the domestic producers occurred during the original period of investigation and were noted by the Commission, as was the decline in domestic orange juice production.¹⁰ That these effects may have continued after the Commission's determination is not evidence of new circumstances but of a continuing trend.¹¹ Because orange trees take between 4 and 12 years from planting to bear fruit,¹² it is not surprising or unexpected that domestic production would not quickly return to pre-hurricane levels. In addition, there is evidence that this trend has begun to reverse itself in that Florida juice orange production for 2007/2008 is estimated to increase substantially over the previous year.¹³ Moreover, even if the alleged circumstances represented changes since the original period of investigation, they are not significant changes, but merely the normal fluctuations that occur in agricultural production due to factors such as weather and disease.

Another alleged change is the decline in U.S. retail demand for orange juice, which Tropicana and others attribute to the rise in retail orange juice prices since the Commission's original determination due to short supply of both juice oranges and orange juice. However, the Commission noted in its original determination that the parties all agreed that the popularity of low carbohydrate diets during the period examined had reduced the demand for orange juice.¹⁴ Thus, the alleged change is not a change at all, but a circumstance already in existence at the time of the original investigation.

Parties in favor of instituting a review also point to a shortfall in domestic orange juice production, due to the effects of weather and disease on orange crop production. However, reduced orange juice production had already begun to manifest itself during the original investigation period, and is therefore not a change.¹⁵ We also note that increased imports and drawdown of burdensome inventories have compensated for any shortfall in U.S. production since the original determination.¹⁶

With respect to the second factor – that the changed circumstances are not the natural and direct result of the imposition of the antidumping duty order – Tropicana and others allege that, in contrast to what would be expected under the order, domestic production has continued to decline and imports have increased. Contrary to these allegations, however, the evidence indicates that changes that have occurred in the U.S. market are expected results of the order. That is, while domestic production continued to decline, U.S. prices have increased.¹⁷ Higher prices, including higher import prices, are expected and positive effects of the order for domestic producers.

Given these results, the increase in imports since the order does not constitute a changed circumstance not resulting from the order sufficient to warrant a review. The purpose of an antidumping duty order is not to curtail or disrupt import supply into the U.S. market, but to ensure that import prices

¹⁰ Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006), at 14-15.

¹¹ Stainless Steel Plate from Sweden, 50 Fed. Reg. at 43614 (review petition denied where, *inter alia*, petitioner's asserted changed circumstance was based on "merely a continuation of a trend" which was discussed in the Commission's determination resulting in the imposition of the order).

¹² Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006) at III-4, n.13.

¹³ Domestic Producers' Comments at 6.

¹⁴ Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006) at 16.

¹⁵ Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006) at 20, n.143.

¹⁶ Domestic Producers' Comments at 16.

¹⁷ Domestic Producers' Comments at 16-17.

reflect fair market value. The Commission recognized in its original determination that imports help meet U.S. demand for orange juice when U.S. supply is temporarily affected by short orange crop years due to weather, disease and other factors.¹⁸ As the Commission stated in its original determination in this case, and in denying a similar request for a changed circumstances review in Polychloroprene Rubber from Japan,

[W]hile short supply conditions are a relevant condition of competition, . . . there is no short supply provision in the statute and the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports.¹⁹

Finally, with respect to the third factor, neither Tropicana nor the other parties supporting review have put forth sufficient evidence to show that the alleged changed circumstances indicate that revocation of the order would not be likely to lead to the continuation or recurrence of material injury to the domestic industry. In fact, the evidence they have cited would indicate the opposite. The fact that U.S. production has continued to decline, would indicate if anything, that the industry has not fully recovered from the adverse effects of subject imports, as well as adverse weather and disease conditions, and is vulnerable to continued injury if the order were revoked. In addition, imports have increased since the order was imposed, and there is no indication or allegation that Brazil has less capacity or incentive to increase its shipments to the United States absent the order. Record evidence in fact suggests that from 2005/2006 to 2006/2007, Brazilian orange juice production, exports, and end-of-period inventories grew.²⁰ Moreover, data also show that after the order was imposed the average customs value per SSE liter of imports from Brazil rose.²¹ Likewise, there is no indication or claim that Brazilian prices would not return to pre-order levels if the order were revoked.

In sum, Tropicana has not provided adequate evidentiary support for its allegations that sufficient changed circumstances and “good cause” exist for the Commission to institute a review. The circumstances allegedly fail to satisfy these requirements because they (1) do not constitute changes since the original determination or are not significant changes; (2) do not constitute circumstances that are not a direct and natural result of the order; and (3) do not indicate, so as to justify proceeding to a full review, that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to the domestic industry.

¹⁸ Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006) at 20-21.

¹⁹ Polychloroprene Rubber from Japan, 71 Fed. Reg. at 17140; see also Certain Orange Juice from Brazil, USITC Pub. 3838 (March 2006) at 20, n.143.

²⁰ Domestic Producers’ Comments at 27-29.

²¹ Domestic Producers’ Comments at 17.

In light of the above analysis, the Commission under section 751(b) of the Act determines that institution of an investigation to review in less than 24 months the Commission's final affirmative determination in investigation No. 731-TA-1089 (Final), *Certain Orange Juice from Brazil*, is not warranted.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

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