

FROZEN CONCENTRATED ORANGE JUICE FROM BRAZIL

**Determination of the Commission
in Investigation No. 751-TA-10
Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation**



USITC PUBLICATION 1623

DECEMBER 1984

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information which would disclose confidential operations of individual concerns may not be published and therefore has been deleted from this report. Deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

Investigation No. 751-TA-10

FROZEN CONCENTRATED ORANGE JUICE FROM BRAZIL

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)), that an industry in the United States would be threatened with material injury by reason of imports of frozen concentrated orange juice (FCOJ) from Brazil if the suspension agreement regarding such merchandise were to be modified or revoked.

Background

On July 11, 1983, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of FCOJ which had been found by the Department of Commerce to be subsidized by the Government of Brazil (48 F.R. 34150, July 27, 1983). 3/ As a result of this determination the suspension agreement signed by Commerce and the Government of Brazil on February 24, 1983, 4/ under which Brazil agreed to offset completely the amount of the net subsidy determined by Commerce to exist with respect to FCOJ, remained in effect.

On May 31, 1984, the Commission received a request, filed pursuant to to section 751(b) of the Tariff Act of 1930, to review its affirmative injury

1/ The record is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

2/ Chairwoman Stern and Vice Chairman Liebler dissenting.

3/ Frozen Concentrated Orange Juice from Brazil: Determination of the Commission in Investigation No. 701-TA-184 (Final) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation, USITC Publication 1406, July 1983.

4/ 48 F.R. 8839, Mar. 2, 1983.

determination in light of changed circumstances. The request was filed on behalf of three Brazilian producers and exporters of FCOJ, 1/ who alleged that the major freeze in Florida in December 1983 and the subsequent decline in the 1983/84 Florida crop, as well as the surge in demand for Brazilian juice in light of lower-than-projected Brazilian production in 1983/84, are sufficient factors to warrant a review. 2/

The Commission requested comments from the public regarding the proposed institution of a review investigation in a notice published in the Federal Register on June 20, 1984, (49 F.R. 25319). The only comments received were those from Florida Citrus Mutual (Mutual), the original petitioner, in opposition to the request.

Mutual argued that the changed circumstances alleged by the Brazilian firms were insufficient to warrant a review, contending that the long-term trend in production and exportation of FCOJ from Brazil is unaffected by any temporary fluctuations in Brazilian supplies, and that the December 1983 Florida freeze created a "near-term" shortage which does not amount to a "changed circumstance" within the meaning of section 751. 3/

On the basis of the request for review and the comments filed concerning the request, the Commission instituted investigation No. 751-TA-10 on August 21, 1984. 4/ Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith

1/ These producers and exporters are Sucocitrico Cutrale, SA; Citrosuco Paulista, SA; and Cargill Industries, Ltda.

2/ "Petition for a Changed Circumstances Review Under Section 751(b) of the Tariff Act of 1930 of the Commission's Final Affirmative Threat Determination in Investigation No. 701-TA-184 (Frozen Concentrated Orange Juice From Brazil)," May 31, 1984.

3/ "Statement of Florida Citrus Mutual in Opposition to the Initiation of a "Changed Circumstances Review," July 20, 1984.

4/ Commissioners Eckes and Lodwick dissenting.

was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on August 29, 1984 (49 F.R. 34312). The hearing was held in Washington, DC, on November 5, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS ECKES, LODWICK, AND ROHR

On the basis of the record developed in this investigation, we determine that an industry in the United States would be threatened with material injury by reason of subsidized imports of frozen concentrated orange juice from Brazil if the suspension agreement reached between the Department of Commerce and the Government of Brazil regarding such merchandise were to be modified or revoked.

Based on recent trends in Brazilian production, exports, and changing conditions in the U.S. market, we predict that revocation of the suspension agreement would not have a significant effect on the behavior of foreign producers, exporters, and importers of Brazilian FCOJ. Consequently, we predict a continuation of current trends in imports of Brazilian FCOJ, with the exception of a possible decline in the price of the imports. Brazilian FCOJ would continue to have a significant and possibly increasing presence in the U.S. market, and to exert a suppressive effect on prices. Such imports are presumed to be subsidized in the event of revocation. In view of the extremely vulnerable condition of the domestic industry, we determine that these predicted levels of subsidized imports would threaten the domestic industry with material injury if the suspension agreement were revoked or modified.

Background

On July 11, 1983, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of frozen concentrated orange juice (FCOJ) which were found by the U.S. Department of Commerce (Commerce) to be subsidized by the Government of

Brazil. As a result of this determination, the suspension agreement signed by Commerce and the Government of Brazil on February 24, 1983, pursuant to which Brazil agreed to offset completely the amount of the net subsidy by means of an export tax, remained in effect. 1/

On May 31, 1984, the Commission received a request, filed on behalf of three Brazilian producers and exporters of FCOJ, pursuant to section 751(b) of the Tariff Act of 1930, 2/ to review its affirmative injury determination in light of changed circumstances. 3/ In response to its request for comments from the public concerning the proposed institution of a section 751 investigation, the Commission received a submission from Florida Citrus Mutual (FCM), petitioner in the original investigation, opposing institution. On August 21, 1984, the Commission determined to institute the instant investigation. 49 Fed. Reg. 34312 (1984). 4/

I. Introduction

The purpose of section 751 is to provide an opportunity for the review of affirmative title VII determinations. Section 751(b) provides a mechanism through which outstanding antidumping or countervailing duty (CVD) orders (or, as in this case, a suspension agreement agreed to in lieu of such an order)

1/ See Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Final), USITC Pub. 1406 at A-1-A-2 (1983) for a discussion of the procedural history.

2/ 19 U.S.C. § 1675(b).

3/ The petition alleged that the major freeze in Florida in December 1983 and the subsequent decline in the 1983/84 Florida crop, as well as the surge in demand for Brazilian 1983/84 crop juice in light of lower than projected Brazilian production, constituted changed circumstances sufficient to warrant review.

4/ Commissioners Eckes and Lodwick dissented from this determination. See C059-H-040, dated Aug. 17, 1984.

may be revoked if the Commission determines that such revocation will not result in material injury or the threat thereof to the domestic industry. 5/

Section 751(b) provides only that the Commission shall "review" its determinations. It does not provide any explicit standard for the Commission's determination in this review investigation. Rather, the Commission has provided such standard in its rules. 6/ In previous investigations the Commission has concluded that it is appropriate to:

consider the relevant facts and circumstances as they currently exist, assess the intentions of the exporters and importers as to the prospective revocation or modification of the order, and project those factors into the future, to determine whether an industry in the United States would suffer material injury, or the threat thereof, or whether the establishment of an industry would be materially retarded, 7/

The determination the Commission must make in a section 751 investigation differs from that in other title VII cases in that it is entirely prospective and predictive. In a section 701 or section 731 investigation, the Commission determines whether a domestic industry is materially injured or threatened with material injury by reason of dumped or subsidized imports. Section 751 determinations require the Commission to predict the impact of revocation of

5/ Section 751(a), which is administered by Commerce, provides for the revocation of dumping or CVD orders if the dumping or subsidization is no longer occurring.

6/ 19 C.F.R. § 207.45(a) provides in pertinent part:

the Commission shall institute an investigation to determine . . . whether an industry in the United States would be materially injured, or would be threatened with material injury, . . . by reason of imports of the merchandise covered by the [order].

7/ Television Receiving Sets from Japan, Inv. No. 751-TA-2, USITC Pub. 1153 at 7 (1981), reversed on other grounds, Matsushita Electric Industrial Co., Ltd. v. United States, 569 F. Supp. 853 (Ct. Int'l Trade 1983), reh. denied, 573 F. Supp. 122 (Ct. Int'l Trade 1983), reversed, Nos. 84-693 and 84-694, slip op. (Fed. Cir. Dec. 13, 1984).

an existing CVD or antidumping duty order (or, as in this case, a suspension agreement reached in lieu of such an order) on imports, and then determine whether the domestic industry would be materially injured or threatened with material injury by reason of those imports. 8/

The Court of Appeals for the Federal Circuit recently commented on the "inherently predictive nature of a review investigation":

In no case will the Commission ever be able to rely on concrete evidence establishing that, in the future, certain events will occur upon revocation of an antidumping order. Rather, the Commission must assess, based on currently available evidence and on logical assumptions and extrapolations flowing from that evidence, the likely effect of revocation of the antidumping order on the behavior of the importers. (Emphasis in original). 9/

Congress has recently had occasion to address the question of the legal standards applicable to section 751 investigations. 10/ The Trade and Tariff Act of 1984 (the 1984 Act) amends section 751(b) to require that "the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order." Pub. L. 98-573, § 611(a)(2)(B)(iii)

8/ Commissioner Rohr notes, for purposes of clarification, that the methods used to analyze how imports impact upon the domestic industry does not differ substantially in a section 751 investigation. The essential difference between a section 751 and section 701 and 731 investigations is that in a section 751 the imports whose impact is being assessed are future imports as affected by the revocation.

9/ Matsushita, supra, slip op. at 15-16.

10/ Commissioner Rohr notes that the legal standards for section 751 investigations in the Trade and Tariff Act of 1984 do not, because of the effective date of that legislation, apply to this investigation. He reserves his opinion on the application of those standards until they are presented in an appropriate case. Similarly, the decision of the Court of Appeals in the Matsushita case technically does not apply since that decision was reached after our decision was made in this case. He notes, however, that the decision in this case does not depend upon the allocation of "burdens of persuasion" but rather on a weighing of evidence that was submitted by the parties.

(Oct. 30, 1984) (emphasis added). 11/ Prior to the enactment of this section, the Court of International Trade had suggested that the burden of persuasion was on the domestic industry. Matsushita, supra, 569 F. Supp. at 860.

The Conference Report accompanying the 1984 Act indicates that Congress believed Matsushita to have been wrongly decided and intended to overrule it. H.R. Rep. No. 1156, 98th Cong., 2d Sess. 182. The Report distinguishes between a burden of proof and a burden of persuasion. We believe that the burden the new provision places upon a petitioner is basically that of producing all the evidence within its control that is relevant to the subject matter of the investigation. This does not relieve the Commission of the obligation to conduct a thorough investigation. However, should a petitioner fail to provide information on matters within its control, it is reasonable to assume that the information would not be favorable to their position, and the Commission may draw an adverse inference from the failure to provide it. We interpret the "burden of persuasion" provision of the 1984 Act to support the conclusion that the failure of a petitioner to come forward with information in support of its position justifies a determination that revocation of the

11/ This provision is technically not applicable to the instant investigation, which was instituted prior to the effective date of the 1984 Act. Moreover, the provision, by its terms, applies only to section 751 investigations of antidumping orders. Nonetheless, the Commission has taken cognizance of the intent of Congress, and makes its determination in light of the new provision. The parties to this investigation had the opportunity to express their views in both the hearing and written submissions regarding the applicability and their interpretation of this provision.

The new provision does refer specifically, and exclusively, to section 751 investigations of antidumping orders; this may be because the instant investigation is the first section 751 investigation involving a CVD order. There is no apparent policy reason why Congress would have chosen deliberately to differentiate between antidumping and CVD investigations in this regard. In addition, the Conference Report suggests that Congress concentrated on section 751 investigations of antidumping orders because of its concern with the Court of International Trade's decision in Matsushita, which involved an antidumping determination.

order would cause material injury or the threat thereof to the domestic industry. 12/

Petitioners in the instant investigation have provided the Commission with evidence in support of their position. Thus, the Commission does not need to base its determination on an allocation of burdens, but instead can rely on a weighing of the evidence of record.

This interpretation of the law is also consistent with the view of the Court of Appeals for the Federal Circuit in reversing the Court of International Trade's decision in Matsushita. The court stated:

Further, we do not agree that a review investigation begins on a clean slate just as though it were an original investigation to determine whether an antidumping order should be put into effect. The applicable regulation, 19 C.F.R. § 207.45(a), correctly provides that in a review investigation the Commission must be persuaded that an existing order could be modified or revoked without material injury to the U.S. industry. (Emphasis in original) (footnote omitted). 13/

Thus, the Commission in a section 751 investigation must predict the effect on imports of revocation of the outstanding order or suspension agreement. This entails predicting the behavior of foreign producers, exporters, or importers in the event of revocation, and forecasting the effects of their actions on imports of the product under investigation. Then the Commission must forecast whether imports, as affected by the revocation, would cause material injury or the threat thereof to the domestic industry, given its current condition.

12/ This interpretation is consistent with the analysis of the Court of Appeals for the Federal Circuit in Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556 (Fed. Cir. 1984), interpreting the "best information available" provision, 19 U.S.C. §1677e(b). The court there noted, "[n]oncooperation by parties or other persons may, in the absence of ITC time to pursue judicial compliance, be penalized . . . by the ITC's mandatory use of whatever other best information it may have available." Id. at 1560.

13/ Matsushita, supra, slip op. at 13-14.

II. Like product and domestic industry

In both its preliminary and final determinations in the original CVD investigation, 14/ the Commission concluded that the appropriate domestic industry included both growers of round oranges and processors involved in the production of FCOJ. Both parties to the instant investigation have proceeded on the assumption that the Commission would continue so to define the domestic industry. Petitioners, however, have suggested that the Commission reexamine the "automatic inclusion of round orange growers" in the domestic industry, based on the Wine Equity and Export Expansion Act of 1984. We conclude that the factors which led us to define the domestic industry in the original investigations as including both growers of round oranges and processors of FCOJ have remained unchanged. 15/ We therefore have adopted that definition in this investigation. 16/

14/ Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Preliminary), USITC Pub. 1283 (1982) and (Final), USITC Pub. 1406 (1983).

15/ There is nothing in the Wine Equity Act which would mandate a different result in this investigation. The Wine Equity Act was Congress' response to the particular situation involving grape growers and the wine industry, and does not, in our opinion, reflect dissatisfaction on the part of Congress with the Commission's domestic industry analysis in general.

16/ We have considered whether this case presents appropriate circumstances for the application of the related parties provision of title VII, 19 U.S.C. § 1677(4)(B).

In the instant investigation, analysis of the related parties issue is complicated by the fact that since most of the domestic processors import the Brazilian product, their exclusion would leave a domestic industry almost entirely composed of growers. The exclusion of related domestic producers would thus not only skew the economic data, but also the definition of the domestic industry. In addition, it does not appear that processors have imported FCOJ from Brazil in order to benefit from the subsidies found to exist or to shield themselves from domestic competition. While some processors may import FCOJ from Brazil regularly in order to reduce their costs, most processors import FCOJ from Brazil in order to blend for quality, and when necessary to supplement domestic supplies, for instance after crop-damaging freezes such as have occurred in three of the past five years. The record in this investigation does not indicate that the financial position of domestic producers who also import FCOJ from Brazil is any different from that of those who import less or no FCOJ. We therefore conclude that appropriate circumstances for the exclusion of domestic companies which also import FCOJ from Brazil do not exist.

Condition of the domestic industry

The condition of the domestic FCOJ industry has declined over the period under investigation, due in large part to the effects of back-to-back freezes in the 1980/81 and 1981/82 Florida crop years, 17/ and the severe Christmas 1983 freeze. Florida growers account for 85-90 percent of the oranges used in processing, and almost all of the Florida crop is used in producing FCOJ. 18/ Thus, Florida production trends provide an accurate measure of overall trends in the domestic industry.

The Florida round orange crop has declined steadily, with the exception of 1982/83, since the record crop of 1979/80. 19/ The 1983/84 crop of 109.1 million boxes was the smallest since 1967/68. Despite gloomy predictions of the continuing effects of the Christmas 1983 freeze, the 1984/85 crop is forecast to improve somewhat to 119.0 million boxes. Production of oranges normally does not recover fully to prefreeze levels until three to five years after a freeze. The current situation, with freezes in three out of the past four crop years, including the exceptionally severe 1983 freeze, is unprecedented, and has left the growers of round oranges in an extremely vulnerable situation.

Production of FCOJ from the Florida crop has followed a similar trend, with production declining from 1,012.9 million gallons single strength equivalent (s.s.e.) in 1979/80, to 538.4 million gallons s.s.e. in 1981/82, following two successive freezes. 20/ Production improved in 1982/83, following a successful growing season, to 684.9 million gallons s.s.e.

17/ The Florida crop year runs from December 1 through November 30 of the following year.

18/ Report of the Commission (Report) at A-7.

19/ Id. at A-10-A-11.

20/ Id. at A-11.

However, production dropped sharply in 1983/84, following the 1983 Christmas freeze, to 489.6 million gallons s.s.e. 21/

Domestic shipments have paralleled the trends in the round orange crop and FCOJ production. 22/ U.S. exports have exhibited an increase overall since 1979/80, despite a decline between 1980/81 and 1981/82. 23/ Interim data for the period December–September 1983/84, however, show a decline of 7.14 percent as compared with the corresponding period of 1982/83.

Operating income of 10 U.S. corporate producers of FCOJ, representing about 44 percent of the total shipments of the domestic industry, declined by more than 50 percent from 1981 to 1983, and the ratio of operating income to net sales declined from 8.1 in 1981 to 3.4 in 1983. 24/ One corporation's sales accounted for a large percentage of the net sales of the corporations providing information to the Commission. That corporation reported higher than average operating income margins for the period. When that corporation's data are excluded, the ratio of operating income to net sales is significantly lower, showing a negative ratio in 1982 and 1983. 25/

The trend for cooperatives differed slightly, in that the ratio of net proceeds resulting from member and non-member sales before income taxes to net sales declined from 44.8 in 1981 to 39.7 in 1982, and then improved somewhat to 42.6 in 1983. 26/ Data for the interim period ending June 30, 1984, indicates that ratio has declined to 37.7 as compared with 40.0 during the corresponding period of 1983.

21/ The processing year generally runs from September through June, with the main season beginning in December. Thus, the 1983/84 crop can be expected to have been processed by Sept. 30, 1984. Id. at A-11.

22/ Id. at A-12.

23/ Id. at A-13.

24/ Id. at A-15.

25/ Id. at A-16.

26/ Id. at A-15. The four cooperatives account for about 19 percent of shipments.

The domestic industry is clearly suffering from the effects of the unprecedented adverse growing conditions during three of the past four growing seasons. The industry has not been able to recover to previous performance levels and is vulnerable to competition from subsidized imports.

III. Likely effect of revocation on imports

In section 751 investigations of antidumping determinations, the Commission is required to assume that less than fair value sales will continue or resume if the antidumping duty order is revoked. Matsushita, supra, 569 F. Supp. at 856. A similar assumption is required in the case of a section 751 investigation of a CVD determination. The Commission has no authority to change the existing determination of Commerce that subsidization exists. Similarly, the amount of subsidization is determined by Commerce, and the Commission has no authority to review that determination or make findings as to the present amount of the subsidies granted. Therefore, the Commission is required to assume, in this investigation that subsidy practices will continue if the suspension agreement is revoked. 27/

27/ Respondent FCM has argued that the Commission need not limit this assumption to the conclusion that resumed subsidized sales will be at the same level previously found to exist. FCM suggests that the Commission consider whether the Government of Brazil has the ability and intent to subsidize at a higher rate in making its predictions of the effect of revocation on the domestic industry. In addition, FCM argues that the overall regime of government control over Brazilian FCOJ production, including export price controls, export quotas, and minimum grower prices, intended to ensure the long-term growth of the export-oriented FCOJ industry, should be factored into the Commission's analysis. While the Commission may consider the nature of the subsidy, as indicated above, the Commission cannot make an independent evaluation of the existence or amount of any subsidies granted. Such determinations are solely the responsibility of Commerce. Thus, in making our predictions, we have assumed that subsidies of 3.51 percent, the level currently being offset by an export tax pursuant to the suspension agreement signed by Commerce and the Brazilian government, will continue if the suspension agreement is revoked.

In previous section 751 investigations, the Commission has considered a number of factors in making its predictions of the impact of revocation on the behavior of foreign producers, exporters and importers, and the consequent effect on imports entering the U.S. market. Among the factors which the Commission has considered in previous investigations are: capacity utilization; supplies of the product; share of the U.S. market; marketing network and strategy; conditions in the U.S. market; corporate planning; ability of the foreign producer to respond rapidly to shifts in U.S. demand; performance in other export markets; past behavior; and the intentions of the foreign producer, exporter, or importer. 28/

The volume of imports of FCOJ from Brazil has increased rapidly during the period under investigation. 29/ Traditional measures of market share, i.e., the ratio of imports to apparent U.S. consumption, are less meaningful in this industry, since most imported FCOJ is used at the processor level for blending with domestic FCOJ. Some of the resulting blended FCOJ is subsequently exported, and it is not possible to determine the proportion of imported FCOJ which is present in the blend and re-exported. As a ratio of total available FCOJ (U.S. production plus imports plus carryover stock), imports from Brazil have increased from 7.8 percent in 1979/80 to 27.3 percent in 1982/83. It is estimated that imports will constitute 40 percent of total available FCOJ in 1983/84. 30/ Also significant, the ratio of imports from

28/ The Court of International Trade has noted that "[t]he judgment of present intentions is a proper, and possibly controlling element of a [section 751] review by the ITC." Matsushita, supra, 569 F. Supp. at 857, citing City Lumber Co. v. United States, 457 F.2d 991 (CCPA 1972).

29/ It is noted that imports from Brazil decreased slightly from 1981/82 to 1982/83. Report at A-21, Table 12.

30/ Id. at A-23-A-24.

Brazil to FCOJ production from the Florida orange crop increased from 9.9 percent in 1979/80 to an estimated 95.3 percent in 1983/84. 31/

Brazilian producers of FCOJ have both the capacity and incentives to continue their exports and increase their market share in the United States. Brazilian production of FCOJ declined from 816 million gallons s.s.e. in 1981/82 to 707 million gallons s.s.e. in 1983/84. However, the U.S. Department of Agriculture now predicts a dramatic increase in Brazilian production in 1984/85, to 954 million gallons s.s.e. 32/ Exports followed a similar trend, and are expected to be 933 million gallons s.s.e. in 1984/85, as compared with 813 million gallons s.s.e. in 1983/84. 33/

Estimated inventories of Brazilian FCOJ in bonded warehouses in the United States are at the highest level on record, 195 million gallons s.s.e., for the interim period December-September 1983/84. 34/ This interim figure already exceeds the previous record high level set in 1980/81 of 185 million gallons s.s.e. The Brazilians have not traditionally maintained large carryover stocks in inventory in Brazil, preferring to keep only the relatively small amounts necessary for blending with the following year's crop. Brazilian carryover stocks at the end of the 1983/84 crop year are predicted to be only 14 million gallons s.s.e. 35/ Since Brazilian consumption of FCOJ is minimal 36/, the Brazilians are expected to export over 800 million gallons s.s.e. in 1983/84.

31/ Id. at A-24.

32/ Id. at A-9, A-33, Table 19. Estimates for the 1985/86 crop year predict a further increase to 958 million gallons.

33/ Id. at A-33.

34/ Id. at A-32.

35/ Id. at A-33.

36/ Id. at A-9.

The United States' historical share of Brazilian exports has been approximately one-half. By contrast, Brazilian exports to its second largest market, Europe, have declined by 11 percent since 1981, accounting for 34 percent of total exports in 1983. Based on the foregoing, we predict that approximately one-half of Brazil's 1983/84 exports will continue to be directed at the U.S. market, to add to the already record high inventory levels.

An additional factor we note is that Brazilian orange juice is priced and sold in U.S. dollars. The United States is Brazil's largest export market, accounting for 48 percent of total exports in 1981/83. 37/ The Brazilian minimum export price requires a certain amount of hard currency, earned from the sale of FCOJ, to be repatriated to Brazil. 38/ Current economic conditions, particularly the strength of the dollar abroad, will continue to make the United States increasingly attractive as a source of dollar earnings.

Petitioners have argued that Brazilian imports serve to supplement domestic supplies which have been negatively affected in three of the past four crop years by adverse weather conditions in Florida. While it appears to be true that, in the past, Brazil has served primarily as a supplementary source of supply to the U.S. market, this pattern appears to be changing. 39/ The domestic industry does not now have the capacity of filling the entire U.S. demand for FCOJ. Thus, imports from Brazil have become an integral part of the U.S. market for FCOJ. In addition, the export oriented FCOJ industry is clearly important to the Brazilian economy, as indicated by the degree of

37/ Id. at A-34.

38/ Id. at A-29.

39/ Moreover, the fact of being a supplementary source of supply does not eliminate the possibility of imports causing or threatening material injury to the domestic industry.

government involvement and control, including export price controls, exports quotas, and minimum grower prices, intended to ensure the long-term growth of the Brazilian FCOJ industry. 40/ Brazil is the world's largest producer of FCOJ, with an abundance of fresh oranges, an ability to increase orange production, and an efficient processing sector with modern equipment. 41/ We therefore consider it unlikely that the Brazilians would be willing to allow imports to the U.S. market to decline significantly even in the face of recovering domestic production. The high levels of imports from Brazil, and the importance of the U.S. market, undermine the argument that Brazilian producers will be content in the future to merely supplement U.S. production when needed. Moreover, we are unwilling to assume that the attitudes and intentions of Brazilian producers towards the U.S. market are the same now that Brazilian FCOJ has become such a major factor in the U.S. market, as they were previously, when Brazilian imports were far less significant.

Recent shifts in marketing patterns in the United States support the prospect of a continued significant Brazilian presence in the U.S. market. 42/ "Chilled" orange juice, which is predominantly produced from reconstituted FCOJ, 43/ is the most rapidly growing sector of the market. In recent years, "chilled" juice has generally been a blend of the imported product and the domestic product. Recent changes in import patterns suggest there is a possibility that domestic FCOJ will be increasingly displaced by the Brazilian FCOJ in the production of "chilled" orange juice. Imports into

40/ See testimony of Dulio Bento, Transcript of the Hearing (Tr.) at 103-06 and Exhibit B to Pre-hearing Brief on behalf of ABBRASUCOS for a description of the regulatory programs involving the FCOJ industry in Brazil.

41/ Report at A-9.

42/ Id. at A-22.

43/ "Chilled" juice may also be freshly squeezed or produced from frozen single strength juice.

areas outside of Florida, including ports serving the Northeast, have increased significantly. 44/ The Northeastern United States is the major consuming area for orange juice. 45/ Much of the imports entered through non-Florida ports is consumed by reconstituters and repackers in the production of "chilled" orange juice. Available data indicate that Brazilian FCOJ is already underselling the domestic product, providing an incentive for these reconstituters and repackers to purchase imports from Brazil. 46/ If the price of Brazilian FCOJ declines, increased imports could displace Florida production in this growing segment of the market. Increased storage capacity outside of Florida, at bulk terminal points, also increases the ability of Brazilian imports to suppress the U.S. price. 47/ The increasing trend of imports to facilities outside of Florida underlines the changing role of imports from Brazil in the U.S. market. Purchasers of these imports are increasingly independent of Florida crop production. Thus, it is increasingly unlikely that imports will follow historical patterns and decline if Florida production increases.

The Court of Appeals for the Federal Circuit, in reversing the Court of International Trade' decision in Matsushita, stated:

Since the importers chose not to provide any direct evidence on their intent, the Commission had no choice but to rely on circumstantial evidence from which to infer

44/ Report at A-22. The proportion of imports of Brazilian FCOJ entered through Florida ports has declined from 80 percent in 1979 to 64 percent in 1983.

45/ Tr. at 37.

46/ Report at A-29.

47/ It is alleged that at least one major storage facility is owned by Citrosuco, one of the major Brazilian producers of FCOJ. Tr. at 26. See also id. at 30. Blending facilities are available for the use of local producers at these storage facilities. Because these storage facilities are so new, we do not have significant data on which to determine the level of use of these facilities.

likely intent, namely, production capacity, domestic and foreign demand, and incentives or motivations to increase imports. Such factors are always relevant and, indeed, may be more reliable than self-serving declarations. (Emphasis added). 48/

Thus, in this investigation, data on production trends in Brazil, coupled with the inventory levels in the United States and the obvious importance of the U.S. market, provide reliable and persuasive evidence regarding Brazilian incentives to continue imports. Further, Brazilian imports are taking advantage of more direct access to major U.S. markets via recently developed storage and blending facilities in the Northeast. The motivation for the Brazilian government to continue and expand the presence of these imports is apparent. The international financial position of Brazil makes it imperative that these exports continue if not increase, and earn foreign exchange for debt repayments.

With this analytical framework in mind, we can make certain projections concerning future imports in the event of revocation of the suspension agreement regarding Brazilian FCOJ. As noted above, we are required to assume that future imports of FCOJ from Brazil, whatever their volume or price, will be subsidized.

In our projection we assume that revocation of the suspension agreement will not cause Brazilian importers to change their current behavior towards the U.S. market. In this event, we would predict the continuation of current import trends. The level of subsidization offset by the export tax is small and does not appear to have had a measurable effect on the price of Brazilian FCOJ in the U.S. market or in the volume of Brazilian FCOJ exported to the U.S. market.

48/ Matsushita, supra, slip op. at 16.

Revocation of the suspension agreement is likely to be absorbed by Brazilian producers rather than passed on in the form of lower prices. The amount of the subsidy, and hence the amount of the export tax imposed pursuant to a suspension agreement, is determined by the policies of the government of the country in which the imports originate. ^{49/} In these circumstances, revocation of the suspension agreement is less likely to be followed by an adjustment of U.S. prices, as the Brazilian producers are equally likely to simply absorb as additional profit the amount of the duty (or in this instance, the export tax) no longer paid. Nevertheless we predict that Brazilian producers, in the face of large and growing FCOJ production and the lack of significant growth in other markets for this production, will attempt to maintain or increase their current levels of exports to the United States. The importance of Brazilian FCOJ as an integral (as opposed to supplemental) part of the U.S. market will make this increasingly possible. Further, imports of Brazilian FCOJ, in light of inventory levels and projected Brazilian production, are likely to have a significant price suppressive effect on the U.S. price of FCOJ.

Further, we have considered the possibility that revocation of the suspension agreement would result in a lower U.S. price for Brazilian FCOJ. This projection assumes that the Brazilian producers would pass through the

^{49/} Thus, the amount of duty paid is not affected by pricing. Hence, the amount of duty must be either absorbed as a cost or passed on to customers through an increase in price.

Commissioner Rohr notes that the theoretical assumptions about the pricing effect of antidumping and CVD orders are not relevant to his decision in this case. While it may be possible after the consideration of the facts and circumstances of a particular case to determine the price effects of such orders, a priori assumptions are unwarranted. He further notes that in this case he has made both assumptions, in alternate scenarios, and his prediction of the impact of subsidized imports in both scenarios is the same.

savings caused by revocation of the suspension agreement in the form of lower prices to the United States. Econometric models developed by the Commission estimate that the consequences of a decline in the price of Brazilian FCOJ would be an increase in imports from Brazil, and would have a price suppressive effect on domestic FCOJ. ^{50/} These effects would be in addition to those resulting from the continued significant presence of Brazilian imports in the U.S. market.

IV. Effect of imports on the domestic industry

Having considered the condition of the domestic industry and determined the impact revocation of the suspension agreement will have on imports of the product under investigation, the Commission must determine whether material injury or the threat thereof would be caused by those imports. This determination requires the Commission to determine the ability of the domestic industry to withstand the impact of subsidized imports that would enter the U.S. market after revocation of the suspension agreement. Thus, the Commission must predict the impact of the imports, as affected by the revocation, on the domestic industry's productive capacity, capacity utilization, shipments, inventories, employment, exports, and profitability.

Under either of our alternative projections of imports from Brazil in the event of revocation, we cannot conclude that those imports would cause material injury to the domestic industry. However, we are persuaded that imports from Brazil would continue to have a significant presence in the U.S.

^{50/} We note that this projection is based on models reflecting the historical patterns of Brazilian imports as supplemental to U.S. production. We have concluded that this role has changed, and that Brazilian imports are an integral part of the U.S. market. Thus, the effect of the price decline is likely to be understated.

market. In the event of revocation, those subsidized imports would threaten the domestic industry with material injury.

Florida growers have already committed resources to replanting and rebuilding groves damaged by the recent freezes. Imports of Brazilian FCOJ are already underselling the domestic product. The likely downward pressure on prices exerted by subsidized imports would lead to lowered revenues to growers, already suffering from the effects of unprecedented bad weather. Increasing imports, particularly if prices fall, would place a disproportionate burden on cooperatives, which must purchase member growers' fruit regardless of the price of available alternatives. Corporations have somewhat greater flexibility in limiting their domestic purchases under participation plans, thus taking advantage of lower priced imports.

The nature of an agricultural industry such as that under consideration here renders it vulnerable to the vagaries of weather and other growing conditions. Freezes are an accepted fact in the domestic FCOJ industry, as is the expectation that the industry will recover from the freeze. However, if imports act to hinder or prevent the industry's recovery, we conclude that this would be injury to the industry. Such injury would not manifest itself immediately upon revocation of the suspension, but would begin to be apparent in subsequent crop years as the opportunity for recovery slips by, and the industry is unable fully to recover.

In the event of revocation, imports must be assumed to be subsidized, and we must concentrate our analysis on the effects of the subsidized imports, not the effect of the subsidies or the revocation alone. Assuming that revocation had no effect on the price or volume of such imports, if current trends of Brazilian imports continued unchanged by revocation of the suspension

agreement, those subsidized imports would threaten the domestic industry with material injury. If there were a decline in the price of Brazilian imports of FCOJ in response to revocation of the suspension agreement, based on the econometric models developed during the course of this investigation, we would anticipate a revenue loss to the domestic industry. Again, given its current vulnerable condition, the industry would be threatened with material injury. Thus, we conclude that the domestic industry would be threatened with material injury by reason of imports of FCOJ from Brazil if the suspension agreement were to be revoked.

VIEWS OF CHAIRWOMAN PAULA STERN

Summary

I have determined that the removal of the 3.51 percent tax on imports of frozen concentrated orange juice (FCOJ) from Brazil (imposed by the Brazilian government as a result of a suspension agreement) would have little, if any, effect on the U.S. volume of these imports. Removal of the countervailing duty order would be unlikely to cause material injury or threaten material injury to the domestic industry.

The economic health of the FCOJ industry is highly sensitive to winter weather conditions in Florida where a substantial majority of all round oranges are grown. In three of the past four crop years, the industry has suffered from freezes. As a result of the worst of these recent freezes, which occurred in December 1983, output of round oranges in the 1983/1984 crop year fell to just slightly more than one half of the level recorded in the peak crop year of 1979/80.

To minimize the damage caused by these freezes, processors have been forced to purchase record amounts of Brazilian FCOJ. Nearly all of the domestic processors--many of them growers as well--are also importers of FCOJ. The imports have provided the domestic industry with a supplementary source of FCOJ at a reasonable cost, and have prevented consumers from switching to alternate products. Instead of injuring the domestic industry, Brazilian FCOJ has repeatedly provided a buffer for the domestic producers against what would have been the disastrous impact of freezes during recent seasons.

Because of the severe damage to orange trees due to last year's freeze, imports are likely to remain at a high level during the 1984/85 crop year. However, unless additional freezes occur, imports are likely to decline significantly in future years as production of round oranges recovers to more normal levels.

I considered de novo the record of the present review investigation. I do note that I concluded my negative final determination in the original July 1983 case with the observation: "If imports increase the record indicates that it will most likely be in response to a Florida freeze. Long term weather forecasting is at best speculative and . . . the imports in response to Florida freezes are not a cause of material injury to the domestic FCOJ industry." 1/ The record of the current investigation has confirmed that judgment.

Statutory Standard

The purpose of section 751 is to provide an opportunity for the review of affirmative title VII determinations. Section 751(b) provides a mechanism through which outstanding antidumping or countervailing duty (CVD) orders (or, as in this case, a suspension agreement agreed to in lieu of such an order) may be revoked if such revocation will not result in material injury or the threat thereof to the domestic industry.

1/ See Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Final), USITC Pub. 1406, July 1983, "Views of Commissioner Stern" at 30.

The determination that the Commission must make in a section 751 investigation differs from that in other title VII cases in that it is entirely prospective and predictive. Instead of determining whether a domestic industry is materially injured or threatened with material injury by reason of dumped or subsidized imports, section 751 determinations assume that the existing CVD or antidumping order is currently eliminating any unfairness that previously has been found to exist. Therefore, the Commission is required to predict the impact of the revocation of that order on the domestic industry.

The analysis required in a 751 investigation involves two steps. First, the Commission must forecast the likely effect of revoking the order or suspension agreement on imports of the product under investigation. This requires a prediction of the likely behavior of foreign producers, exporters or importers in response to the revocation. Second, the Commission must forecast whether those effects would cause material injury or the threat thereof to the domestic industry. Before proceeding with this analysis, it is important to define clearly the domestic industry and to examine its current economic condition.

Definition of the domestic industry

The term industry is defined in section 771(4)(A) of the Tariff Act of 1930 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." 2/ The term "like product" is defined in section 771(10) 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. . . ." 3/

The imported product under investigation is FCOJ from Brazil. Domestic FCOJ is virtually the same as the imported product. Both Brazilian and domestic FCOJ are produced from "round" oranges, as distinguished from eating oranges. FCOJ is also distinct from both fresh and canned orange juice. In accordance with the Commission's previous investigation, I therefore define the like product to include only frozen concentrated orange juice and to exclude eating oranges, fresh orange juice, and canned orange juice. 4/

In agricultural product cases, defining the domestic industry presents a particular problem. Congress foresaw the special problems of agricultural industry definition when it gave the Commission authority to consider including both growers and producers in one industry. 5/

2/ 19 U.S.C. Sec. 1677(4)(A).

3/ 19 U.S.C. Sec. 1677(10).

4/ Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Final), USITC Pub. No. 1066 (1983).

5/ The Senate Finance Comm. stated in the Committee report on the Trade Agreements Act of 1979:

Because of the special nature of agriculture, . . . special problems exist in determining whether an agricultural industry is materially injured. For example, in the livestock sector, certain factors relating to the state of a particular industry within that sector may appear to indicate a favorable situation for that industry when in fact the opposite is true. Thus, gross sales and employment in the industry producing beef could be increasing at a time when economic loss is occurring, i.e., cattle herds are being liquidated because prices make the maintenance of the herds unprofitable. S. Rept. No. 249, 96th Cong., 1st Sess. 88 (1979).

The Commission, however, has not always seen fit to include the growers as members of the domestic industry. Commission precedent for processed agricultural products has followed two lines of cases, one including only processors, and the other including the grower as well as the processor. The Commission has defined the industry to include only processors when the agricultural product can be sold in more than one market. 6/ When the agricultural product enters a single, continuous line of production resulting in one end product, the Commission has found a highly integrated industry to include both growers and processors. 7/ In neither approach, however, has the Commission viewed the domestic industry as only the growers of a processed agricultural product, because the raw product of the grower is not "like" the processed product.

In the present case, the majority of round oranges is used solely in the single, continuous line of production of one end product, FCOJ. The high level of interlocking ownership in the industry, evidenced by grower-owned cooperatives and

6/ Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub No. 1259 (1982). Instant Potato Granules from Canada, Inv. No. AA1921-97, USITC Pub. No. 509 (1972). Canned Hams and Shoulders from Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom, Inv. No. 701-TA-31-39 (Final), USITC Pub. No. 1082 (1980). Mushrooms, Inv. No. TA-201-43, USITC Pub. No. 1089 (1980).

7/ Certain Fish and Certain Shellfish from Canada, Inv. No. 303-TA-9, USITC Pub. No. 966 (1979). Fish, Fresh, Chilled or Frozen, Whether or Not Whole, But Not Otherwise Prepared or Preserved from Canada, Inv. No. 701-TA-40 (Final), USITC Pub. No. 11066 (1980). Sugar from the European Community, Inv. No. 104-TAA-7, USITC Pub. No. 1247 (1982). Lamb Meat, supra note 9.

processor-owned growers, provides further reason for including both growers and processors. I therefore find the domestic industry to consist of both growers of round oranges and processors of FCOJ.

Another issue in defining the industry involves application of the "related party" provision of section 771(4)(B) of the Tariff Act of 1930.

This provision states:

When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry. 8/

The related parties provision involves a two step determination: (1) whether the domestic producers are themselves importers of the subject product or are related to the importers or foreign producers of such product through a corporate relationship; and (2) whether there are appropriate circumstances for excluding these domestic producers from the domestic industry for the injury analysis.

The legislative history and the underlying intentives of the statute provide boundaries within which the Commission can apply its discretion regarding appropriate circumstances. The Commission is not to include domestic manufacturers if their relation to the importers protects them from injury and including them would skew injury data. Nor are domestic

8/ Section 771(4)(B); 119 U.S.C. Sec. 1677(4)(B).

producers to be excluded if they constitute such a major proportion of the total industry that their exclusion would severely distort industry data. 9/

In the case currently before the Commission, none of the domestic producers of FCOJ have any corporate relationship to the foreign producers or exporters of FCOJ in Brazil, but they may be considered related because of their importer status. Domestic FCOJ producers import varying percentages of their total FCOJ production. Some domestic producers have ongoing contracts for a set quantity of FCOJ, while others only import on an emergency basis after a freeze. There is no clear division of the domestic producers according to relatedness on this basis.

"Appropriate circumstances" do not exist to warrant excluding some domestic producers from the definition of the industry. No producer receives benefits of such a nature that it behaves differently from other producers in the industry. Indeed, the record shows no correlation between imports and the financial health of those companies having high import to production ratios. While some of these firms enjoyed comparatively high or modest profits, others faced losses. Furthermore, exclusion of all importer/processors would eliminate a major proportion of the domestic industry and distort the data.

9/ Section 771(4)(a) requires that the domestic industry must be at least "those producers whose collective output constitutes a major proportion of the total domestic production of that product."

I therefore do not apply the related parties provision to this case, but rather include all domestic producers as members of the domestic industry.

Condition of the domestic industry

The condition of the domestic industry has been declining during the investigation period because of the effects of freezes in three of the past four seasons. The particularly devastating effects of the freeze in December 1983 reduced output of round oranges in Florida to only 117 million boxes in 1983/84. 10/ This represented a decline of nearly 50 percent from the peak level recorded in 1979/80.

Because of the extensive destruction of trees in Florida due to this freeze, very little increase in domestic output can be expected in the 1984/85 crop year. 11/ However, if no additional freezes occur, production will probably reach more normal levels by 1985/86. 12/

The statistics on indices of injury gathered by the Commission have paralleled the expected pattern. Although processing capacity has increased, the record indicates that production, domestic shipments, exports, research and

10/ Report at A-9-11.

11/ Respondent's prehearing brief at 12-13.

12/ Report at A-34-35.

development expenses, and profits in the FCOJ industry have all declined in recent years because of the effects of the freezes. 13/

Since Florida generally accounts for about 85 percent of U.S. production of round oranges, total U.S. production reflects the trend in Florida production. After reaching a peak level in 1979/80, total production declined in 1980/81 and 1981/82 as a result of freezes in both years. It recovered moderately in 1982/83 and then declined sharply in 1983/84 as a result of the most recent freeze. 14/ Despite the sharp fluctuation in output of oranges, processing capacity increased steadily from 1982 to 1984. 15/.

Largely because of increased prices of FCOJ that have resulted from these freezes, the demand for FCOJ has decreased in recent years, and domestic shipments and exports have both declined irregularly. Between 1979/80 and 1983/84 the average price of FCOJ increased by nearly 60 percent. 16/ In 1983/84 alone it has risen by about 20 percent over the previous crop year. Domestic shipments decreased sharply in both 1980/81 and 1981/82 and then recovered during 1982/83. 17/ However, they have declined again in 1983/84. U.S. exports fluctuated irregularly between 1979/80 and 1982/83 with no apparent trend. During the first 10 months of the 1983/84 crop year, they have been 7 percent lower than in the corresponding period

13/ Id. at A-9-19.

14/ Id. at A-11.

15/ Id. at A-12.

16/ Id. at A-27

17/ Id. at A-12

in 1982/83. 18/ Profits and research and development expenditures have both declined irregularly in recent years. Operating profits reported by 10 corporations on their FCOJ operations declined significantly from 1981 to 1983. 19/ Seven of these 10 corporations reported operating losses on their FCOJ operations in 1983. However, profits have improved in the first half of 1984. Similarly operating profits of the four U.S. cooperatives that reported results also declined between 1981 and 1983, but have improved during the first half of 1984. 20 Research and development outlays by six firms that reported these expenditures increased significantly between 1981 and 1982 but then declined in 1983. However, these expenditures increased moderately during the first 8 months of 1984 over the level in the same period in 1983. 21/

Although imports have been at historically high levels during recent seasons, there is no evidence that they have suppressed domestic prices or have otherwise contributed to the industry's problems. Because FCOJ is usually a blend of the U.S. and imported product, meaningful comparisons between the price of domestic FCOJ and imports from Brazil are not possible. However, available evidence shows that the average transaction price of the imports in the U.S. has increased by more than 20 percent during the 1983/84 crop year over the level in the previous year. 22/ Therefore, imports of FCOJ from Brazil could not have exerted a significant downward pressure on the price of the domestic product.

18/ Id. at A-13

19/ Id. at A-15.

20/ Id. at A-15.

21/ Id. at A-18.

22/ Id. at A-29.

The likely effect of revoking the Suspension Agreement

Whether or not the revocation of the Suspension Agreement would have any effect on the level of imports depends upon whether the elimination of the 3.51 percent tax on imports from Brazil would result in a decline in the price of these imports. Although some amount of price decline is possible, it is doubtful that the Brazilian price would fall by the full 3.51 percent.

For one thing, demand for imported FCOJ from Brazil has increased significantly during the past year, and is likely to remain high during the next year because output of FCOJ from the domestic orange crop will fall far short of the total U.S. demand for this product. In the face of this continued strong demand for Brazilian FCOJ, it is unlikely that Brazilian suppliers would lower their price at all if the export tax were repealed.

In addition, the minimum export price that is imposed by the Brazilian Government puts a constraint on the ability of Brazilian producers to reduce their price. Under this arrangement Brazilian exporters are required to market their exports at a level that is equal to or higher than the minimum export price as measured in U.S. currency. ^{23/} If FCOJ is exported at a price that is lower than this minimum level, the exporter is still required to repatriate the amount of foreign exchange to Brazil that would have been received if the product had been exported at its minimum level. This provides a clear incentive for exporters to maintain their price at or above the minimum.

During recent years, average F.O.B. transaction prices of Brazilian FCOJ exports to the U.S. have been only slightly above the minimum level. During both the 1981/82 and 1982/83 crop years, the average transaction price on exports to the U.S. was 2.5 percent above the minimum that was in effect during those years. 24/ During the 1983/84 crop year transaction prices and the minimum export price have both increased significantly. However, there is no evidence that Brazilian suppliers have been able to export FCOJ at prices that are significantly higher than the minimum. In fact, available evidence indicates that transaction prices have been very near this minimum during the past year.

Thus, particularly in view of the fact that the imported product is already selling at close to the minimum export price, it is unlikely that the elimination of the export tax of 3.51 percentage would result in a 3.51 percent decline in the export price from Brazil. If any price reduction occurred, it would probably be smaller than this amount.

23/ Id. at A-29.

24/ Staff memorandum of Dec. 7, 1984.

The effect of the revocation on the domestic industry

Even if the revocation of the 3.51 percent tax on Brazilian exports were fully passed forward in the form of a 3.51 percent reduction in the price of exports from Brazil, evidence indicates that the effect of this revocation on the domestic industry would still be very small. Simulation results from a five equation econometric model developed by the Commission staff indicate that the value of domestic shipments of FCOJ from Florida is likely to exceed \$1.4 billion in 1984/85. ^{25/} If the Brazilian price is reduced by 3.51 percent, imports would increase moderately, the domestic price of FCOJ shipments from Florida would decline, and shipments from Florida would increase slightly. On balance, the 3.51 percent reduction in the Brazilian price would lead to a maximum decline of only \$15 million in total revenue to Florida processors during 1984/85. This amounts to about 1 percent of their projected revenue in the 1984/85 crop year. Since it is very doubtful that the Brazilian price would decline by a full 3.51 percent if the suspension agreement were revoked, actual revenue losses to U.S. processors if they occurred at all probably would be much less than \$15 million.

^{25/} Id. at A-59-72 and staff memorandum of December 10, 1984.

Therefore, the revocation of the suspension agreement would not cause material injury to the domestic industry.

The respondents have expressed concern that increased quantities of imports of FCOJ have been entering the U.S. in Wilmington, Delaware, and other ports outside of Florida. 26/ This raises the question of whether in the years ahead FCOJ imports entering these non-Florida ports will increasingly pose direct competition to the Florida industry rather than merely supplementing the Florida crop. Because of the newness of the importing facility in Wilmington, the potential long-term effect of the operations of this facility and other future facilities outside of Florida on competition for the domestic FCOJ market cannot be readily determined.

In order to reach a finding that the revocation of the suspension agreement would pose a threat to the domestic industry, a determination must be made that the threat of injury is "real and imminent." Such a finding cannot be based upon mere supposition, conjecture, or speculation. While it is possible that the revocation of the suspension agreement could hasten the development of additional terminals outside of Florida, hard evidence that this would be likely to occur is lacking. Therefore, there is no basis for concluding that the revocation of the agreement would pose a threat of material injury to the domestic industry.

26/ Respondent prehearing brief at 18-19.

Thus, overall evidence shows that the revocation of the suspension agreement would not be likely to have a material effect on the condition of the domestic industry. The future condition of the industry will depend importantly upon the weather. 27/ If freezes do not occur during the next 2 or 3 years, it is likely that domestic production will recover significantly and imports will decline. If, for example, production of round oranges recovers to a more normal level of 150 million boxes, the econometric estimates in the report indicate that by 1985/86 imports of FCOJ from Brazil would decline to about one half of their 1983/84 level in that year. 27/

27/ Id. at A-62.

Views of Vice Chairman Liebeler

A. Introduction

On 11 July 1983, in Investigation No. 701-TA-184 (Final), the U.S. International Trade Commission (Commission) determined by a 1 to 1 vote that an industry in the United States was threatened with material injury by reason of imports of frozen concentrated orange juice (FCOJ) which had been found by the Secretary of Commerce (Commerce) to be subsidized by the government of Brazil (48 F.R. 34150, 27 July 1983). As a result of this determination, the suspension agreement signed by Commerce and the Government of Brazil on 24 February 1983, by which Brazil agreed to offset the subsidy by an export tax, remained in effect.

On 31 May 1984, the Commission received a request under section 751(b) of the Tariff Act of 1930, to review its affirmative injury determination in light of changed circumstances. The petitioners alleged that the freeze in Florida in December 1983 which resulted in the subsequent decline in the Florida crop and increased demand for Brazilian FCOJ are sufficient factors to warrant a review. Florida Citrus Mutual (Mutual), the original petitioner opposed the request to review. On 21 August 1984, the Commission by a vote of 3 to 2 decided to review its determination and instituted investigation No. 751-TA-10. Finally, on 11 December 1984, the Commission by a vote of 3 to 2 determined that if the suspension agreement were

revoked an industry would be threatened with material injury by reason of subsidized imports of FCOJ from Brazil.

Although the domestic FCOJ industry, which includes round orange producers, is experiencing difficult times, their troubles are a result of freezes in three of the last four years, and not subsidized Brazilian imports.

B. Standard of Review

Section 751 provides an opportunity for the review of affirmative title VII determinations. Section 751(b) provides a means through which outstanding antidumping orders, countervailing duty (CVD) orders, or, as in the instant investigation, suspension agreements agreed to in lieu of such an order, may be revoked if such revocation will not result in material injury or threat thereof to the domestic industry by reason of dumped or subsidized imports.¹ Section 751(b) does not establish specific legal standards for the Commission in conducting review investigations. Just recently, the Court of Appeals for the Federal Circuit (CAFC) spoke to the question of the standard of review appropriate in section 751 review cases.² The CAFC said that the burden on the petitioner in a section 751

1. Section 751(a) which is administered by Commerce, provides for the revocation of dumping or CVD orders if the dumping or subsidization is no longer occurring.

2. Matsushita Electric Industrial Co. v. United States and Zenith Radio Corp., Appeal Nos. 84-693 and 84-694 (13 December 1984).

review case is the burden of going forward.³

The determination made by the Commission in a section 751 case differs from that made in other title VII cases in that it is entirely prospective and predictive. Instead of determining whether a domestic industry is materially injured or threatened with material injury by reason of dumped or subsidized imports, section 751 determinations require the Commission to determine whether a domestic industry would be materially injured by dumped or subsidized imports were the existing CVD or antidumping order revoked. In this investigation, the Brazilian export tax eliminates the subsidy. Thus, the level and prices of Brazilian imports of FCOJ into the United States would be the same with the suspension agreement in effect as with no subsidy. Therefore, the analysis can proceed by predicting the impact of the revocation of the suspension agreement on the domestic industry.⁴

C. Defining Like Product and Industry

A section 751 review investigation, like a title VII investigation, begins with the definition of the like product and

3. Id., (Nichols, J. additional views).

4. This analysis may be different in antidumping duty review investigations. In these cases, Commerce determines the rate of the antidumping duty retrospectively rather than prospectively. Because of the resulting uncertainty over the amount of the duty, an antidumping duty order can have a significant chilling effect on trade beyond the effect the duty would have if imposed prospectively.

the domestic industry. The term "like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation"⁵ The imported product under investigation is FCOJ from Brazil. Domestic and imported FCOJ are virtually the same. They are fungible, sell for nearly the same price, and are both produced from round, as distinguished from eating, oranges. Therefore, the like product is FCOJ.

The term industry is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major portion of the total domestic production of that product."⁶ In agricultural product cases, The Commission has on various occasions elected to include both the growers and producers in one industry. Several factors present in the instant investigation favor including both round orange growers and FCOJ producers in the industry. First, the vast majority of United States production of round oranges go into the production of FCOJ.⁷ Second, there is a single, continuous line of production from round oranges to FCOJ. Third, because mature round orange trees produce oranges for many years, round orange producers cannot inexpensively shift from round orange production

5. 19 U.S.C. 1677(10) (1982 ed.).

6. 19 U.S.C. 1677(4)(A) (1982 ed.).

7. Report, at A-10.

to another crop. These factors indicate that a substantial portion of any injury from subsidized imports of FCOJ will fall on the growers of round oranges. Therefore, I include both the processors of FCOJ and the growers of round oranges in one industry.

A subsidiary issue in defining the industry involves the related party provision of section 771(4)(B) of the Tariff Act of 1930, which allows the Commission to exclude some domestic producers from the industry if they themselves are related to the exporters or importers, or are themselves importers of the product under investigation.^B In the instant investigation, none of the domestic producers of FCOJ have any corporate relationship to the Brazilian producers or exporters of FCOJ, although some import Brazilian FCOJ. The producers who import Brazilian FCOJ use the Brazilian product as an input along with domestic FCOJ to produce FCOJ for the retail market. There is no evidence on record that the large importing producers are making significant profits from Brazilian FCOJ. Indeed, the record shows no correlation between imports and the financial health of those companies having high import to production ratios. In addition, excluding all importing processors would eliminate a major portion of the industry, thereby distorting the data. Therefore, I do not apply the related parties provision in this investigation, and include all domestic producers of FCOJ within

B. 19 U.S.C. 1677(4)(B) (1982 ed.).

the domestic industry.

D. Application to Instant Investigation

The condition of the domestic industry has been declining since 1979/80 when the domestic round orange crop reached a record 273.6 million boxes. Because of the devastating freeze that occurred in Florida in December of 1983, production in 1983/84 reached a five year low of 169.3 million boxes, nearly 40 percent below the 1979/80 level.⁹ As a result of the extensive destruction of trees in Florida from the December 1983 freeze, the domestic crop in 1984/85 will not be significantly above the 1983/84 crop. If no additional freezes occur, production may return to more normal levels in 1985/86.¹⁰

Although imports have been at historically high levels in recent years there is little reason to believe that they have been the cause of the industry's problems rather than a result of them. Indeed, the increased level of imports is largely a result of reduced U.S. production of round oranges because of the series of freezes. A freeze in Florida reduces the supply of round oranges available for FCOJ in the following year, and possibly for several years if trees are destroyed. A reduction in round oranges, and consequently in the supply of FCOJ, causes the price of FCOJ to rise. A higher price in the U.S. for FCOJ is an

9. Report, at A-10.

10. Report, at A-34-35.

incentive for Brazil to increase its imports of FCOJ to the U.S. Thus, to blame the state of the U.S. industry on Brazilian imports is to confuse cause and effect. The series of freezes is the cause, and Brazilian imports are one of their effects. Thus, it is incorrect to attribute the state of the U.S. industry to Brazilian subsidies.

Whether or not the revocation of the suspension agreement would have any effect on the level of imports depends upon whether the elimination of the 3.51 percent tax on imports from Brazil would result in a decline in the price of these imports.¹¹ Although it is likely that the price would fall, it is doubtful that the U.S. price of Brazilian FCOJ would fall by as much as 3.51 percent. Even if the suspension agreement is revoked, Brazil might choose to leave the export tax in place. However, because Brazil exports only about half of its FCOJ to the U.S., and to the best of my knowledge, does not tax its exports to other countries, I will assume that Brazil would remove its export tax on FCOJ were the suspension agreement revoked.

In the event that the suspension agreement is revoked and Brazil removes its export tax on FCOJ to the United States, the price of FCOJ in the United States will fall by less than 3.51

11. In April 1983, following an increase in the Brazilian subsidy, Commerce revised its estimated subsidy for 1983 to 3.51 percent ad valorem. See Report, at A-2.

percent. First, the 3.51 percent tax on Brazilian FCOJ is not a 3.51 percent tax on the delivered U.S. price of FCOJ, but a tax on the F.O.B. Brazil price. The tax is not on the U.S. tariff of \$.35 a gallon of single strength FCOJ.¹² In 1983, this tariff was equivalent to an ad valorem tariff of 43.5 percent.¹³ Because the delivered price of FCOJ includes the U.S. tariff, but the export tax is 3.51 percent of the F.O.B. price in Brazil, removing the export tariff would reduce the delivered price of FCOJ by less than 3.51 percent.¹⁴

Second, the U.S. delivered price of FCOJ from Brazil will fall by less than the reduction in the tax because the elasticity of supply of FCOJ from Brazil to the United States is less than infinite. If Brazil's supply curve of FCOJ to the U.S. were horizontal, the entire reduction in tax would be passed on to consumers. If, however, the supply curve were upward sloping, then the reduction in the tax would lower the price to consumers by less than the reduction in the tax.¹⁵ There are two reasons to expect the Brazilian supply curve of FCOJ to the U.S. to be upward sloping. First, the U.S. and Brazil are the two major

12. There are other costs that the tax does not cover as well. These include transportation, further processing, and marketing.

13. Report, at A-4.

14. In 1983, for example, the reduction in the delivered price of FCOJ from removing the 3.51 percent export tax would have been approximately 2.4 percent.

15. See J. Hirshleifer, Price Theory and Applications, at 214-16. (2d ed. 1980).

suppliers of FCOJ in the world and the U.S. imports about 48 percent of Brazil's output of FCOJ.¹⁶ Thus, Brazil cannot substantially increase exports to the U.S. without substantially reducing its exports to other countries. Second, the Brazilian supply curve of FCOJ to the world is probably upward sloping because in order to increase supply Brazil must make use of land that is less valuable for growing round oranges and more valuable in some alternative employment.

Even if the revocation of the Brazilian tax were fully passed on to the U.S. consumer in the form of a 3.51 percent reduction in the price of FCOJ, the Commission's econometric analysis indicates that the effect of this revocation on the domestic industry would be very small. Simulation results indicate that the value of domestic shipments of FCOJ from Florida in 1984/85 are likely to exceed \$1.4 billion. If the Brazilian price is reduced by 3.51 percent, imports would increase moderately, the domestic price of FCOJ shipments would decline, and shipments from Florida would increase slightly. On balance, a 3.51 percent reduction in the price of Brazilian FCOJ would lead to a maximum decline of only \$15 million in total revenue to Florida processors in 1984/85, which amounts to about 1 percent of their expected revenue.¹⁷ Because it is unlikely that the Brazilian price would fall by as much as 3.51 percent,

16. Report, at A-34.

17. Report, at A-60-72.

the actual losses to U.S. processors will probably be much smaller. Therefore, because the series of freezes is the source of the industry's difficulties and because revoking the suspension order would have only a minimal effect on the industry, I conclude that the revocation of the suspension agreement would not result in imports that would cause material injury.

Respondents have expressed concerns that increased quantities of imported FCOJ have been entering the U.S. in ports outside of Florida.¹⁸ However, because the importing facility in Wilmington, Delaware is relatively new, the long-term effects of these operations on competition for the domestic FCOJ market are not known. In order to find that the revocation of the suspension agreement would pose a threat of injury to the domestic industry, the threat must be real and imminent not merely speculative. Because there is no hard evidence that the revocation of this agreement could hasten the development of these terminals, I conclude there is no basis for concluding that revocation would impose a threat of material injury to the domestic industry.

Therefore, the evidence indicates that the revocation of the suspension agreement would not be likely to have a significant effect on the condition of the domestic industry. Instead, the

18. Respondents' prehearing brief, at 18-19.

future condition of the industry will depend most importantly on the weather. For these reasons I determine that revoking the suspension agreement would not materially injure or threaten a domestic industry.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On July 11, 1983, in investigation No. 701-TA-184 (Final), the U.S. International Trade Commission (Commission) determined by a vote of 1 to 1 that an industry in the United States was threatened with material injury by reason of imports of frozen concentrated orange juice (FCOJ) which were found by the U.S. Department of Commerce (Commerce) to be subsidized by the Government of Brazil (48 F.R. 34150, July 27, 1983). 1/ As a result of this determination the suspension agreement signed by Commerce and the Government of Brazil on February 24, 1983, under which Brazil agreed to offset completely the amount of the net subsidy determined by Commerce to exist with respect to FCOJ, remained in effect. 2/

On May 31, 1984, the Commission received a request, filed pursuant to section 751(b) of the Tariff Act of 1930, to review its affirmative injury determination in light of changed circumstances. The request was filed on behalf of three Brazilian producers and exporters of FCOJ, 3/ who alleged that the major freeze in Florida in December 1983 and the subsequent decline in the 1983/84 Florida crop, as well as the surge in demand for Brazilian 1983/84 crop juice in light of lower-than-projected Brazilian production, are sufficient factors to warrant a review. 4/

The Commission requested comments from the public regarding the proposed institution of a review investigation in a notice published in the Federal Register of June 20, 1984 (49 F.R. 25319). The only comments received were those from Florida Citrus Mutual (Mutual), the original petitioner, in opposition to the request.

Mutual argued that the changed circumstances alleged by the Brazilian firms were insufficient to warrant a review, contending that the long-term trend in production and exportation of FCOJ from Brazil is unaffected by any temporary fluctuations in Brazilian supplies, and that the December 1983 Florida freeze created a "near-term" shortage that does not amount to a "changed circumstance" within the meaning of section 751. 5/

On the basis of the request for review and the comments filed concerning the request, the Commission, by a vote of 3 to 2, instituted investigation No.

1/ Frozen Concentrated Orange Juice from Brazil: Determination of the Commission in Investigation No. 701-TA-184 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation, USITC Publication 1406, July 1983.

2/ Copies of the suspension agreement and Commerce's final determination are presented in app. A.

3/ These producers and exporters are Sucocitrico Cutrale, SA (Cutrale); Citrosuco Paulista, SA (Citrosuco); and Cargill Industrial, Ltda. (Cargill).

4/ "Petition for a Changed Circumstances Review Under Section 751(b) of the Tariff Act of 1930 of the Commission's Final Affirmative Threat Determination in Investigation No. 701-TA-184 (Frozen Concentrated Orange Juice From Brazil)," May 31, 1984.

5/ "Statement Of Florida Citrus Mutual In Opposition To The Initiation Of A 'Changed Circumstances' Review," July 20, 1984.

751-TA-10 on August 21, 1984. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of FCOJ from Brazil if the suspension agreement regarding such merchandise were to be modified or revoked. Notice of the institution of the investigation and of the public hearing to be held in connection therewith was published in the Federal Register of August 29, 1984 (49 F.R. 34312). 1/ The public hearing was held in the Commission's hearing room in Washington, DC on November 5, 1984. 2/ The Commission is scheduled to vote on this investigation on December 11, 1984; its deadline for notifying Commerce of its determination is December 17, 1984.

Nature and Extent of Bounties and Grants
and the Brazilian Export Tax on FCOJ

Commerce published its final affirmative countervailing duty determination on June 6, 1983 (48 F.R. 25245). Information was received concerning three Brazilian producers and exporters which represented over 85 percent of Brazilian exports of FCOJ to the United States in calendar year 1981. 3/ The period for which Commerce measured subsidization was March 1, 1981, to February 28, 1982, for Cargill, and May 1, 1981, to April 30, 1982, for Citrosuco and Cutrale.

Commerce found that two programs conferred export subsidies during this period. These programs, and the subsidies conferred, are as follows:

<u>Program</u>	<u>Subsidy</u> (percent ad valorem)
Preferential working capital	
financing for exports-----	1.64
Income tax exemption for	
export earnings-----	<u>1.13</u>
Total-----	2.77

As shown, the estimated net subsidy was 2.77 percent ad valorem during this period. In February 1983, the Government of Brazil increased the subsidy provided under the preferential working capital financing for exports program to an estimated 2.38 percent ad valorem. As a result, Commerce increased the estimated net subsidy for 1983 to 3.51 percent ad valorem, and notified the Government of Brazil that it must impose an export tax of this amount to meet the terms of the suspension agreement. 4/

Commerce is currently in the process of conducting an administrative review of the countervailing duty determination covering calendar year 1983.

1/ A copy of the Commission's notice of institution is presented in app. B.

2/ A list of witnesses appearing at the hearing is presented in app. C.

3/ These firms are Cargill, Citrosuco, and Cutrale.

4/ A copy of the letter dated Apr. 18, 1983, from Gary Horlick, Deputy Assistant Secretary of Commerce for Import Administration, to Mr. Luiz Felipe P. Lampreia, Minister-Counselor, Brazilian Embassy, is presented in app. A.

An official at Commerce has stated that the preliminary results of the review should be published in the Federal Register in December.

The Product

Description and uses

Orange juice is derived from the fruit of subtropical evergreen trees of the sweet orange species, genus Citrus, family Rutaceae. The principal varieties of sweet oranges used for processing into juice differ by growing area, and include the Pineapple and Valencia in Florida and the Valencia and some Washington navel in California. 1/ The composition (i.e., color, flavor, fragrance, and juice content) of fresh oranges is affected by such factors as growing conditions, various treatments, horticultural practices, maturity, rootstock and variety, and climate. Thus, the juice produced from the same variety in different growing areas will commonly vary in composition.

FCOJ is produced by extracting the juice from fresh oranges, evaporating natural moisture from the juice until a desired level of concentration is achieved, and then freezing the concentrate. 2/ FCOJ is usually produced in a super concentrated form referred to as frozen concentrated orange juice for manufacturing (FCOJM). FCOJM is the principal product stored at a processing facility and also is the principal product shipped in bulk. The use of FCOJM in these applications saves space and weight over FCOJ. However, FCOJM is not sold at the retail or institutional level. Instead, FCOJM is reprocessed through the addition of water into FCOJ before being packaged in retail-size or institutional-size containers for shipment. The most popular retail-size containers are 6, 12, and 16 ounces; institutional containers are generally 24 and 32 ounces.

The concentration level of FCOJ and FCOJM is expressed by Brix value. 3/ Single-strength orange juice is rated at 11.8° Brix; FCOJ is generally rated at 41.8° to 47.0° Brix; and FCOJM is concentrated above 47.0° Brix, usually at 65.0°. 4/ For human consumption, FCOJ requires a 3-to-1 dilution with water to reach single-strength equivalent. By comparison, FCOJM requires approximately a 7-to-1 dilution with water.

All FCOJ that is prepared in the United States must meet the Food and Drug Administration's (FDA's) Standards of Identity. By comparison, all FCOJ prepared in Florida must meet Florida Citrus Code Standards, which are more exacting than those promulgated by the FDA. For example, the FDA standards include no requirements regarding minimum maturity, flavor, color, oil

1/ These varieties of oranges are referred to in the trade as "round" oranges, compared with eating oranges (such as temple and navel) and specialty fruit such as tangerines and tangelos, which are called "zipper" fruit because of their ease of peeling.

2/ This process is more fully described in the "Manufacturing process" section of this report.

3/ Brix value is the refractometric sucrose value (sugar content of oranges expressed in percent by weight of solids), as measured in air at 20° centigrade and adjusted for the acid correction of the solids.

4/ FCOJM is rarely stored at a concentration level above 65° Brix because of quality changes.

content, or gelation, and the Florida standards do. The Florida standards are enforced by Florida Department of Agriculture inspectors who inspect the fruit both when it enters the processing plant and when it has been converted to FCOJ. 1/

Although the majority of the imported product is blended with domestic product, it is sometimes repacked and shipped to consumers without blending. This is most commonly done by firms located outside the State of Florida.

Manufacturing process

Oranges used in the production of FCOJ come from two sources--directly from the grove or from eliminations at a fresh-citrus packinghouse. The majority of the oranges in Florida are hand harvested and transferred to large trailers for hauling to the processing plant.

At the processing plant, oranges are dumped, inspected, and tested for solids content. They are then run through an extractor which squeezes the juice from the orange and removes seeds, pulp, and other extraneous matter. The juice then moves to an evaporator, which reduces it to approximately 25 percent of its original volume. During the evaporating process, much of the volatile essence which gives the taste and fragrance to fresh juice evaporates. This is distilled from the vapors and returned to the concentrate. Some fresh juice may be mixed with the concentrate to improve the flavor. The mixture is then cooled until partially frozen, and may be packed in retail- and institutional-size containers at about 42° Brix for shipment or further concentrated and placed in bulk storage tanks at 65° Brix. The concentrate is stored at approximately 0° F. As the product is needed for filling orders, it is drawn from bulk storage tanks and blended to meet the specifications of the purchaser. The blending process is carefully monitored to insure the desired flavor and other qualities in the final product.

U.S. tariff treatment

U.S. imports of FCOJ are classified under item 165.35 of the Tariff Schedules of the United States (TSUS). 2/ Imports from Brazil and all other countries receiving the column 1 rate of duty 3/ are dutiable at 35 cents per gallon 4/ (43.5 percent ad valorem equivalent in 1983). This rate has been in

1/ These inspection programs are financed by assessments levied on boxes of fresh fruit and on cases of FCOJ.

2/ As of Jan. 1, 1985, FCOJ will be classified in TSUS item 165.29, at the same rates of duty as are currently imposed. This new provision was added by section 117 of the Trade and Tariff Act of 1984 (Public Law 98-573).

3/ The rates of duty in col. 1 are most-favored nation rates, and are applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(f) of the TSUS.

4/ The per gallon duty rate is applicable to juice in its natural unconcentrated form. If the juice is concentrated, the duty is calculated on the number of gallons of reconstituted single-strength juice which can be made from a gallon of the concentrate (see headnotes 3 and 4, subpt. A, pt. 12, of schedule 1 of the TSUSA concerning "reconstituted" juice, which are presented in app. D).

effect since 1948 and is not scheduled for reduction. Imports from countries receiving the column 2 rate of duty are dutiable at 70 cents per gallon, those from Caribbean Basin Initiative (CBI) countries are eligible for duty-free entry. Imports from beneficiary developing countries are not eligible for duty-free entry under the GSP, nor are reduced rates available for imports from least developed developing countries (LDDC's).

Processors that both import and export FCOJ are eligible to obtain a refund on certain import duties paid in the form of drawback. 1/ Under section 313 (as amended) of the Tariff Act of 1930, a manufacturer which imports merchandise and then exports products produced with the imported merchandise is eligible to receive a refund of 99 percent of the duties, taxes, and fees paid on the imports (19 U.S.C. 1313(a)). 2/ Additionally, if both imported and domestic materials of the same kind and quality are used within a specified period to produce a product, some of which is exported, drawback equal to 99 percent of the duty paid on the imported material is payable upon that exportation. Under this provision, called "substitution," it does not matter whether the actual imported material or similar domestic material was used to produce the exported article (19 U.S.C. 1313(b)). 3/

U.S. Market and Channels of Distribution

Apparent U.S. consumption

The major portion of imported FCOJ is consumed at the processor level, where the FCOJ produced from round oranges and carryover stock are combined in varying proportions to yield total available FCOJ, and from which demand (domestic shipments and exports) is filled.

Total available FCOJ 4/ declined from 1.3 billion gallons in crop year 5/ 1979/80, the year of the record orange crop, to 1.2 billion gallons in 1980/81 and 1981/82 (table 1). Declining Florida production in these latter two crop years was offset by rising imports. Total available FCOJ increased back to 1.3 billion gallons in 1982/83 as Florida production rose and imports remained stable. In 1983/84, total available FCOJ declined to an estimated 1.2 billion gallons as increased imports did not offset the sharp decrease in orange production due to the severe Christmas Day 1983 freeze and low carryover stocks from 1982/83.

1/ Drawback can also be collected on exports of single-strength orange juice, provided that either single-strength orange juice (either domestic, imported, or a blend), or water, oil, and essence are added to the imported FCOJ.

2/ This refund also applies to any dumping, countervailing, or marking duties paid on imports (Customs regulations, 19 CFR 22.41).

3/ To claim drawback, exports must be made within 5 years of the date of importation, and the product to be exported must be produced during the first 3 of those years. Also, claims for drawback must be filed within 3 years of the date of exportation.

4/ Calculated on the basis of production of FCOJ from the Florida crop only, which accounts for over 90 percent of all domestically produced FCOJ.

5/ Trade data in this report are generally reported on a crop-year (December-November) basis.

Table 1.--FCOJ: Production from Florida crop, imports, carryover stock, and total available FCOJ, by crop years, 1979/80 to 1983/84

(In millions of gallons) 1/					
Crop year	:Production from:	Imports 2/	: Carryover	: Total avail-	
	:Florida crop 2/:		: stock 3/	: able FCOJ	
1979/80-----	1,012.9 :	102.7 :	163.8 :		1,279.4
1980/81-----	733.1 :	208.4 :	240.3 :		1,181.8
1981/82-----	538.4 :	374.1 :	278.7 :		1,191.2
1982/83-----	684.9 :	377.1 :	215.6 :		1,277.6
1983/84-----	489.6 :	4/ 410.2 :	173.0 :	5/	1,154.8

1/ Single-strength equivalent.

2/ On a crop-year basis, which runs from Dec. 1 to Nov. 30.

3/ From prior season.

4/ Data are for the period Dec. 1, 1983, through Sept. 30, 1984.

5/ Estimated by the staff of the U.S. International Trade Commission on the basis of projected imports through November 1984.

Source: Compiled from official statistics of the U.S. Department of Commerce, and from statistics of the Florida Citrus Processors Association, except as noted.

U.S. producers

Growers.--U.S. orange growers are located almost entirely in the States of Florida, California, Texas, and Arizona. From crop years 1979/80 to 1983/84, Florida accounted for about 90 percent of the oranges that were used for processing. Almost all of the oranges processed in Florida are utilized in the production of FCOJ. It is estimated that there were nearly 15,000 growers in Florida producing oranges on a total of 530,300 acres in crop year 1983/84 (table 2).

Table 2.--Florida, California/Arizona, and Texas bearing acreage in oranges, by crop years, 1979/80 to 1983/84

State	: 1979/80	: 1980/81	: 1981/82	: 1982/83	: 1983/84
	-----1,000 acres-----				
Florida-----	576.6 :	573.4 :	560.2 :	536.8 :	530.3
California/Arizona-----	201.5 :	195.9 :	193.3 :	188.1 :	190.1
Texas-----	27.8 :	25.3 :	23.7 :	24.0 :	24.3
Total-----	805.9 :	794.6 :	777.2 :	748.9 :	744.7

1/ Not available.

Source: Compiled from official statistics of the Florida Crop & Livestock Reporting Service and the California Crop & Livestock Reporting Service.

Growers may choose to sell their fruit through a cooperative, through a "participation plan," or in the cash market. According to Mutual, about 38 to 40 percent of the Florida fruit is handled by cooperatives, with an additional 40 to 42 percent handled in participation plans. 1/ The remainder of the crop is sold in the cash market.

Growers that are members of a cooperative deliver all their fruit to the cooperative-owned processing plant, where it is processed and marketed. The members receive the net proceeds after the sale of the FCOJ, allocated according to the number of boxes of oranges delivered by each member and the pounds of solids in each member's oranges. In addition to processing and marketing, most cooperatives provide grove care, maintenance, and harvesting services for their members.

Under a "participation plan," a nonmember of a cooperative agrees to deliver all his fruit to a cooperative or corporate processor. The grower's return is determined by an agreed-upon formula based on the final selling price of the FCOJ. This type of arrangement provides the grower with the security of a "home" for his fruit, and also allows him the freedom to search for the best deal available each year. Additionally, the cooperative or processor may provide the grower with grove-care services, but does not usually harvest the fruit. 2/

Cash-market sales may be made directly to a processor or to an intermediate handler called a bird dog. A bird dog locates fruit for processors, buys it on the tree, harvests it with his own crew, and delivers the fruit to the processing plant. Purchases may be on a bulk basis, in which all the fruit in the grove is sold for an agreed-upon price, or the fruit may be bought at a set price per box or per pound of solids. Growers that sell on the cash market can seek the highest offer for their fruit, but are subjected to price fluctuations. Also, they have no set "home" for their fruit, and can expect neither assistance in harvesting nor a "home" for their fruit after a freeze. 3/

At the present time, it is estimated that the average established grove is 50 acres in size and costs \$8,000 to \$16,000 per acre to purchase. Additionally, it takes approximately 4 years for a new tree to produce fruit and 10 to 12 years for it to reach maturity. Some growers are absentee owners 4/ that contract with a firm to provide care and maintenance services for their grove if such services are not provided by their cooperative or under their participation plan.

1/ Transcript of the hearing, p. 47.

2/ After a freeze, damaged fruit must be harvested and processed quickly to be usable. Under a participation plan, the grower is assured that his salvagable fruit will be accepted for processing.

3/ Cash growers' fruit is the last accepted for processing following a freeze, and the fruit may spoil before processors are able to process it, assuming they choose to accept the damaged fruit.

4/ Mutual, the original petitioner, has estimated that 10 percent of Florida's growers are out-of-state absentee owners.

Processors.---The number of firms processing FCOJ in Florida, as reported by the Florida Citrus Processors Association, is shown in the following tabulation:

<u>Crop year</u>	<u>Processing firms</u>
1979/80-----	34
1980/81-----	35
1981/82-----	35
1982/83-----	<u>1/</u> 31
1983/84-----	<u>2/</u> 35
1984/85-----	34

1/ Of the 4 plants which ceased processing FCOJ in 1982/83, * * *.

2/ In 1983/84 the increase in the number of firms processing fruit is attributable to the freeze. Damaged fruit needs to be processed quickly to avoid spoilage, and all available processing capacity was utilized.

Data on the number of processing plants in other States are not available, but they are believed to total less than 15 plants. Many of these firms process only frozen concentrate and single-strength orange juice products. However, some processors are parts of large food-processing conglomerates for which orange juice processing is only a small part of the total operations.

The processing of oranges into FCOJ is seasonal. The processing of early and midseason orange varieties begins in September and October; the main processing season, however, does not begin until December, when the Valencia variety is ripe. It then continues through the following June. Although no orange processing occurs during July and August, most processing plants blend FCOJ for packing of retail and institutional orders or for bulk shipment to other processors during this period.

The majority of the processing plants in Florida are owned by either growers or cooperatives. 1/ In these instances, the processing plants are viewed as extensions, or marketing arms, of the growing operations. Exceptions include * * * and * * * along with several other smaller processors, which own no groves and are not cooperatives, and thus are concerned with the return on their processing operations only.

U.S. importers

The largest U.S. importers of FCOJ from Brazil include * * *. With the exception of * * * and * * * which are solely importers, these firms are also among the largest processors in the United States. * * *. Many U.S.

1/ This pattern of ownership is gradually changing, with a number of major corporations purchasing processing plants within the last several years. These corporations include: Proctor & Gamble, Campbell's Soup, Phillip Morris, and Quaker Oats. Two other corporations, Coca-Cola and Beatrice Foods, have owned processing plants in Florida for longer periods of time. Additionally, both the Nestle's Group and DiGiorgio have purchased processing plants in California.

importers have imported FCOJ from Brazil for a long period of time, and all processors in the United States are believed to have purchased imported FCOJ at least once in recent years. 1/ Moreover, some processors have purchased FCOJ from Mexico and other Central American countries as well. In addition to U.S. processors, repackers of FCOJ into single-strength orange juice products and orange drinks have begun to import directly from Brazil in recent years.

Foreign producers

Brazil.--Brazil is one of the world's largest producers of oranges and is the world's leading producer of FCOJ. The Brazilian orange products industry is characterized by an abundance of fresh oranges, an ability to increase orange production, and an efficient processing sector with modern equipment. 2/

According to the USDA, Brazil's production of FCOJ decreased from 816 million gallons (single-strength equivalent) in 1981/82 3/ to an estimated 707 million gallons in 1983/84. Brazil's production is projected to increase to 954 million gallons in 1984/85, and 958 million gallons in 1985/86. During the same period, Brazil's exports of FCOJ decreased from 819 million gallons in 1981/82 to 629 million gallons in 1982/83. Exports increased in 1983/84 to 813 million gallons, and are projected to reach 933 million gallons in both 1984/85 and 1985/86. The domestic market for FCOJ in Brazil is very small.

There are nine firms in Brazil which produce FCOJ. Together, these firms own 15 processing plants. In addition, three small plants are currently under construction. It is estimated that four firms account for over 90 percent of FCOJ exports. 4/ The majority of the exports of FCOJ are in 55-gallon drums filled with 52 to 53 gallons of FCOJ. However, bulk transportation in tank ships is becoming increasingly important, with several tank ships currently in service.

Other countries.--Production of FCOJ for export is very limited except for Brazil and the United States. However, Israel, Italy, Morocco, Spain, and Mexico all produce limited quantities of FCOJ for export.

The Condition of the U.S. Industry

Orange growers, U.S. production and shipments

U.S. production of round oranges decreased steadily from 273.6 million boxes 5/ in 1979/80 6/ to 177.8 million boxes in 1981/82, and then rose to

1/ Although no U.S. processors own facilities in Brazil, Coca-Cola has entered into a joint-marketing venture with Cutrale, a Brazilian processor. Transcript of the hearing in investigation No. 701-TA-184 (Final), pp. 46, 163.

2/ One processing plant in Brazil contains the world's largest evaporator.

3/ The marketing year for FCOJ in Brazil is from July 1 to the following June 30.

4/ These firms are Cutrale, Cargill, Citrosuco, and Frutesp.

5/ One box weighs 90 pounds in Florida, 85 pounds in Texas, and 75 pounds in Arizona and California.

6/ As mentioned earlier, 1979/80 was the record year for Florida orange production.

225.2 million boxes in 1982/83. Production declined to 169.3 million boxes in 1983/84 following the Christmas 1983 freeze, which impacted groves in both Florida and Texas. Total U.S. production during 1979/80 to 1983/84 mirrors trends exhibited by the Florida crop, as shown in table 3.

Table 3.--U.S. production of round oranges, 1/ by States and by crop years, 1979/80 to 1983/84

(In millions of boxes) <u>2/</u>					
Crop year	Florida <u>3/</u>	California	Arizona	Texas	Total
Production					
1979/80-----	206.7 :	59.4 :	3.5 :	4.0 :	273.6
1980/81-----	172.4 :	65.3 :	2.6 :	4.3 :	244.6
1981/82-----	125.8 :	43.0 :	3.1 :	5.9 :	177.8
1982/83-----	139.6 :	76.1 :	3.8 :	5.7 :	225.2
1983/84-----	116.7 :	48.3 :	1.8 :	2.5 :	169.3
Processed <u>4/</u>					
1979/80-----	195.7 :	19.2 :	1.3 :	2.0 :	218.2
1980/81-----	164.1 :	27.6 :	.9 :	1.5 :	194.1
1981/82-----	118.2 :	8.5 :	.9 :	2.6 :	130.2
1982/83-----	129.3 :	32.9 :	1.3 :	2.3 :	165.8
1983/84-----	109.1 :	10.7 :	.3 :	1.1 :	121.2

1/ Excludes tangelos, tangerines, and tangors, but includes temples and navels.

2/ One box weighs 90 pounds in Florida, 85 pounds in Texas, and 75 pounds in Arizona and California.

3/ Excludes temples, production of which totaled 6.0 million, 3.6 million, 3.2 million, 4.7 million, and 2.9 million boxes in 1979/80, 1980/81, 1981/82, 1982/83, and 1983/84, respectively.

4/ Processed into all juice and other citrus products.

Source: Compiled from official statistics of the U.S. Department of Agriculture, 1984 Citrus Fruits Summary.

Florida's production usually accounts for about 85 to 90 percent of all oranges used in processing in the United States. Approximately 94 percent of the Florida crop is used in processing, 85 percent of which is used to produce FCOJ.

Florida's production declined from 206.7 million boxes in 1979/80 to 125.8 million boxes in 1981/82 following two freezes, 1/ but then rose to

1/ The two back-to-back freezes in 1980/81 and 1981/82 represent the first time in history that the Florida orange crop has suffered freezes in consecutive years. The 1980/81 freeze cut the estimated crop size by 15 percent, and the 1981/82 freeze cut the estimated crop size in that year by 22 percent.

139.6 million boxes in 1982/83. Production decreased further in 1983/84 to 116.7 million boxes, the result of a severe freeze in late December 1983. ^{1/} The 1983/84 crop was the smallest since 1967/68. Production is forecast to be 119.0 million boxes in 1984/85 due to the continuing effect of the December 1983 freeze.

Orange processors

U.S. production.--U.S. production of FCOJ from fresh Florida oranges ^{2/} decreased steadily from 1.0 billion gallons (single-strength equivalent) in 1979/80 to 538.4 million gallons in 1981/82, but then recovered to 684.9 million gallons in 1982/83, a nonfreeze year (table 4). Production fell in 1983/84 to 489.6 million gallons as a result of a freeze in December 1983.

Table 4.--FCOJ: U.S. production from Florida's orange crop, 1979/80 to 1983/84

Crop year	Production of FCOJ from	
	Florida orange crop	
	Million gallons ^{1/}	
1979/80-----		1,012.9
1980/81-----		733.1
1981/82-----		538.4
1982/83-----		684.9
1983/84-----		489.6

^{1/} Single-strength equivalent.

Source: Compiled from statistics of the Florida Citrus Processors Association.

Capacity.--To prevent spoilage and loss of quality, orange processors run their operations continuously when fresh fruit is ready for processing. After the processing season, the equipment sits idle until the following year. Thus, capacity may be measured in two ways: hourly capacity to extract juice from fresh fruit, and hourly capacity to evaporate water from fresh juice (table 5). These data reveal trends relating to expansion or reduction of facilities.

The hourly juice-extracting capacity of 17 U.S. processors that accounted for about 73 percent of fresh oranges purchased for processing in 1983/84 increased slightly from 5.2 million pounds in 1982 to 5.3 million pounds in 1984. Water-evaporating capacity of these producers also increased throughout the period, rising from 2.6 million pounds per hour in 1982 to 2.8 million pounds per hour in 1984.

Capacity utilization.--As mentioned, processing plants operate at full capacity until all fresh fruit is processed, and then close their fresh-fruit processing operations until the following season.

^{1/} The 1983/84 freeze cut the estimated crop size by 31 percent.

^{2/} Florida oranges account for over 90 percent of total production.

Table 5.--FCOJ: U.S. capacity to extract juice and evaporate water, as of January 1982-84

Year	Juice-extracting	Water-evaporating
	capacity	capacity
	-----Million pounds per hour-----	
1982-----	5.2 :	2.6
1983-----	5.3 :	2.7
1984-----	5.3 :	2.8

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Domestic shipments.--Shipments of FCOJ to the domestic market ^{1/} accounted for about 89 percent of total shipments (domestic, export, and futures deliveries) during 1979/80 through 1982/83. As shown in the following tabulation, compiled from Florida Citrus Processors Association data, domestic shipments of FCOJ fluctuated, but decreased slightly during that period:

Crop year	<u>Domestic shipments</u> ^{1/}
	(1,000 gallons) ^{2/}
1979/80-----	956,789
1980/81-----	883,610
1981/82-----	838,807
1982/83-----	942,545
1983/84-----	^{3/} 837,209

^{1/} Excludes product delivered in fulfillment of futures contracts.

^{2/} Single-strength equivalent.

^{3/} Dec. 1, 1983, through Nov. 10, 1984.

Domestic shipments decreased by 12 percent from 1979/80 to 1981/82, primarily due to the decrease in available FCOJ in the latter years and higher prices. Shipments rose in 1982/83, as production increased following the back-to-back freezes in 1980/81 and 1981/82, and rising imports increased total available FCOJ. Futures deliveries accounted for approximately 5 percent of total shipments during 1979/80 through 1982/83. These deliveries ranged from 49 million gallons ^{2/} in 1980/81 to 23 million gallons in 1982/83.

U.S. exports.--As mentioned in the section of this report on U.S. tariff treatment, the import duty on FCOJ is substantial (43.5 percent ad valorem equivalent in 1983). This provides importers/processors with a strong incentive to export FCOJ and take advantage of the drawback provisions of section 22.41 of Customs regulations. As drawback can be collected on exports of either imported or domestically produced FCOJ, and because the great majority of FCOJ produced by importer/processors is blended (i.e., part domestic and part imported), it is not possible to determine what portion of exported FCOJ consists of the imported product.

^{1/} As noted, domestic shipments includes imports.

^{2/} Single-strength equivalent.

The United States exports FCOJ to over 70 countries located in all areas of the world. Such exports increased from 80 million gallons (single-strength equivalent) in 1979/80 to 91 million gallons in 1980/81, and then declined irregularly to 82 million gallons in 1982/83 (table 6). Exports declined from 70 million gallons in December-September 1982/83 to 65 million gallons in December-September 1983/84.

Table 6.--FCOJ: U.S. exports, by principal markets, crop years 1979/80 through 1982/83, December-September 1982/83, and December-September 1983/84

Market	1979/80	1980/81	1981/82	1982/83	December-September--	
					1982/83	1983/84
Quantity (1,000 gallons) 1/						
Canada-----	38,251	38,418	31,109	34,907	29,537	26,349
Netherlands-----	4,911	9,397	6,005	7,859	7,298	4,196
Mexico-----	1,248	941	336	773	701	3,986
West Germany-----	5,276	6,279	4,715	4,058	3,656	3,597
United Kingdom-----	2,641	3,060	1,954	2,772	2,297	2,980
France-----	4,506	5,420	3,783	3,268	3,031	2,337
Other-----	23,345	27,873	29,102	28,394	23,953	21,996
Total-----	80,178	91,388	77,004	82,031	70,473	65,440
Value (1,000 dollars)						
Canada-----	67,134	68,237	65,283	66,776	56,526	56,319
Netherlands-----	6,419	8,774	5,793	6,047	5,463	4,217
Mexico-----	533	1,906	479	1,257	1,062	4,993
West Germany-----	6,390	7,347	5,151	4,596	4,093	3,845
United Kingdom-----	3,488	3,886	2,538	3,357	2,882	3,531
France-----	7,741	9,310	7,160	6,210	5,709	4,992
Other-----	36,096	40,007	41,486	39,835	33,408	32,955
Total-----	127,801	139,467	127,890	128,078	109,143	110,852
Unit Value (per gallon)						
Canada-----	\$1.76	\$1.78	\$2.10	\$1.91	\$1.91	\$2.14
Netherlands-----	1.31	.93	.97	.77	.75	1.01
Mexico-----	.43	2.03	1.43	1.63	1.52	1.25
West Germany-----	1.21	1.17	1.09	1.13	1.12	1.07
United Kingdom-----	1.32	1.27	1.30	1.21	1.26	1.18
France-----	1.72	1.72	1.89	1.90	1.88	2.14
Other-----	1.55	1.44	1.43	1.40	1.40	1.50
Total-----	1.59	1.53	1.66	1.56	1.55	1.69

^{1/} Single-strength equivalent.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note.--Because of rounding, data may not add to the figures shown.

Financial experience of U.S. producers

FCOJ operations.—Fourteen U.S. producers (10 corporations and 4 cooperatives) provided income-and-loss data on their FCOJ operations (table 7). These producers accounted for about 62 percent of total U.S. shipments of FCOJ ^{1/} in crop year 1982/83. Since the accounting methods of corporations and cooperatives differ significantly, the data for these two types of organizations are presented separately in the table.

Total net sales of the 10 corporations increased from \$549.8 million in 1981 to \$636.9 million in 1983, or by 16 percent. During the interim period ended June 30, 1984, total net sales rose to \$404.6 million, representing a 31-percent increase from the \$307.9 million in the corresponding period of 1983. Aggregate net sales of the four cooperatives increased by 6 percent, from \$281.3 million in 1981 to \$297.0 million in 1982, and remained at the latter level in 1983. Total net sales of the cooperatives in interim 1984 were 10 percent higher than those during interim 1983. Combined total net sales of the corporations and cooperatives increased by 12 percent from 1981 to 1983 and then by 22 percent in interim 1984 compared with interim 1983.

Aggregate operating income of the corporations on their FCOJ operations declined annually from \$44.8 million, or 8.1 percent of net sales, in 1981, to \$21.8 million, or 3.4 percent of net sales, in 1983, despite increasing sales during the period. However, the declining trend reversed in interim 1984, when the U.S. corporations reported an almost sixfold increase in their operating income to \$19.3 million from the \$2.9 million earned in interim 1983. Between interim 1983 and interim 1984, the ratio of operating income to net sales increased from 0.9 percent to 4.8 percent, and the number of corporations reporting losses dropped from six to two. The number of corporations reporting net losses increased from two in 1981 to four in 1982. Seven of the 10 corporations sustained net losses in 1983.

* * * did not provide interest expense separately as requested in the Commission's questionnaire, but instead included interest expense in the other income (expense) item. Therefore, data for * * * were not included in the following reported interest expense figures, nor were they used in calculating the following ratios of interest expense to total net sales. Reported interest expenses remained at about 1.8 percent of net sales during 1981-83, although, in absolute dollars, they declined by 4 percent from 1981 to 1982 and then increased by 18 percent from 1982 to 1983. During interim 1984, interest expenses more than doubled to \$14.0 million (3.5 percent of net sales), compared with \$6.6 million (2.1 percent of net sales), in the corresponding period of 1983. * * *. After taking into consideration interest expense and other income or expense, net income before income taxes followed a trend similar to that of operating income, decreasing from \$33.5 million, or 6.1 percent of net sales, in 1981 to \$12.3 million, or 1.9 percent of net sales, in 1983, and then increasing to \$5.0 million, or 1.2 percent of net sales, in interim 1984, compared with a loss of \$4.0 million, or 1.3 percent of net sales, in interim 1983.

^{1/} Includes production from U.S. round oranges and blends of domestic and imported FCOJ.

Table 7.--Selected financial data of 14 U.S. producers on their FCOJ operations, accounting years 1981-83 and interim periods ending June 30, 1983, and June 30, 1984

Item	1981	1982	1983	Interim period ended June 30--	
				1983	1984
Operations of 10 U.S. corporations 1/					
Net sales-----1,000 dollars--	549,830	566,365	636,881	307,863	404,579
Cost of goods sold-----do-----	450,012	469,732	541,263	267,328	344,925
Gross profit or (loss)-----do-----	99,818	96,633	95,618	40,535	59,654
General, selling, and administrative expenses-----do-----	55,066	63,509	73,829	37,640	40,367
Operating income or (loss)					
do-----	44,752	33,124	21,789	2,895	19,287
Interest expense 2/-----do-----	9,907	9,485	11,236	6,550	14,005
Other income (expense) 2/-----do-----	(1,347)	(785)	1,781	(301)	(290)
Net income or (loss) before income taxes-----do-----	33,498	22,854	12,334	(3,956)	4,992
Ratio of operating income or (loss) to net sales					
percent-----	8.1	5.8	3.4	0.9	4.8
Ratio of net income or (loss) before income taxes to net sales-----percent-----	6.1	4.0	1.9	(1.3)	1.2
Number of firms reporting operating losses-----	1	4	6	6	2
Number of firms reporting net losses-----	2	4	7	6	2
Operations of 4 U.S. cooperatives					
Net sales-----1,000 dollars--	281,275	297,026	297,018	230,496	253,524
Interest expense-----do-----	7,499	7,197	6,128	4,368	4,579
Other costs and expenses-----do-----	147,694	171,928	164,295	134,042	153,318
Net proceeds resulting from member and nonmember sales before income taxes-----do-----	126,082	117,901	126,595	92,086	95,627
Net income or (loss) from nonmember business before income taxes-----do-----	4,996	23	2,182	1,898	2,778
Ratio of net proceeds resulting from member and nonmember sales before income taxes to net sales-----percent-----	44.8	39.7	42.6	40.0	37.7

^{1/} * * *.

^{2/} * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

***. 1/ When *** and *** data are excluded from the aggregate data, the trends for gross profit and operating income remain the same, but lower, as shown in the following tabulation:

Period	As a share of net sales:					
	Including ***		Excluding ***		Excluding	
	and ***		***		*** only	
	Gross profit	Operating income	Gross profit	Operating income	Gross profit	Operating income
1981-----	18.2	8.1	***	***	***	***
1982-----	17.1	5.8	***	***	***	***
1983-----	15.0	3.4	***	***	***	***
Interim to						
June 30--						
1983-----	13.2	0.9	***	***	***	***
1984-----	14.7	4.8	***	***	***	***

* * * * *

Aggregate net proceeds of the four U.S. cooperatives on their FCOJ operations declined from \$126.1 million in 1981 to \$117.9 million in 1982, and then increased to \$126.6 million in 1983. The ratio of net proceeds to net sales dropped irregularly from 44.8 percent in 1981 to 42.6 percent in 1983. During interim 1984, the total net proceeds increased by 4 percent to \$95.6 million, compared with \$92.1 million in interim 1983. However, the net proceeds margin dropped to 37.7 percent in interim 1984 from 40.0 percent during interim 1983. During 1981 through June 1984, the trend in net proceeds margins for cooperatives was similar to the operating income margins reported by corporations, with the exception of 1983. Pretax net income from nonmember business declined from \$5.0 million in 1981 to \$23,000 in 1982 and then rose to \$2.2 million in 1983. Such income rose to \$2.8 million in interim 1984, compared with \$1.9 million in interim 1983 (table 7).

Overall establishment operations.--Selected financial data for the overall operations of establishments within which FCOJ is produced are presented in table 8. The overall establishment operations of the corporations followed similar trends in operating income and pretax net income (loss) as did their operations on FCOJ. The overall establishment operations of the cooperatives also generally followed the same trends in net proceeds and net proceeds margins as did their operations on FCOJ. Net income from nonmember business for the cooperatives increased from \$2.7 million in 1981 to \$5.6 million in 1982, and then declined to \$3.0 million in 1983. During interim 1984, such income rose to \$3.1 million, compared with \$1.4 million in interim 1983.

1/ In a telephone interview with David Coombs of the Commission's staff in investigation No. 701-TA-184 (Final), ***.

2/ ***.

Table 8.--Selected financial data of 14 U.S. producers on the overall operations of establishments within which FCOJ is produced, accounting years 1981-83 and interim periods ending June 30, 1983, and June 30, 1984

Item	1981	1982	1983	Interim period ended June 30--	
				1983	1984
Operations of 10 U.S. corporations 1/					
Net sales-----1,000 dollars--	1,137,391	1,105,357	1,184,315	558,955	724,980
Cost of goods sold-----do-----	853,895	842,418	905,733	437,070	552,375
Gross profit or (loss)---do-----	283,496	262,939	278,582	121,885	172,605
General, selling and admini- strative expenses-----do-----	164,704	180,711	203,143	93,211	120,293
Operating income or (loss)					
do-----	118,792	82,228	75,439	28,674	52,312
Interest expense 2/-----do-----	16,027	15,364	16,970	6,866	14,242
Other income (expense) 2/					
do-----	(4,112)	(4,021)	8,037	350	(286)
Net income or (loss) before income taxes-----do-----	98,653	62,843	66,506	22,158	37,784
Ratio of operating income or (loss) to net sales					
percent--	10.4	7.4	6.4	5.1	7.2
Ratio of net income or (loss) before income taxes to net sales-----percent--	8.7	5.7	5.6	4.0	5.2
Number of firms reporting operating losses-----	-	4	4	3	3
Number of firms reporting net losses-----	2	7	4	3	3
Operations of 4 U.S. cooperatives					
Net sales-----1,000 dollars--	432,855	431,486	412,742	297,431	325,900
Interest expense-----do-----	11,081	12,044	9,607	6,369	7,790
Other costs and expenses					
do-----	232,654	276,195	260,698	183,779	205,578
Net proceeds resulting from member and nonmember sales					
before income taxes-----do-----	189,120	143,247	142,437	107,283	112,532
Net income or (loss) from non- member business before income taxes-----do-----	2,725	5,580	2,969	1,384	3,087
Ratio of net proceeds resulting from member and nonmember sales before income taxes to net sales-----percent--	43.7	33.2	34.5	36.1	34.5

^{1/} * * *

^{2/} * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Research and development expenses.--Of the 17 U.S. producers of FCOJ that responded to the Commission's questionnaire, six firms reported research and development expenses. Their expenditures are shown in the following tabulation:

<u>Research and development expenses</u> <u>(1,000 dollars)</u>	
1981-----	865
1982-----	3,063
1983-----	1,602
January-August--	
1983-----	1,092
1984-----	1,153

The majority of these research and development expenses were reported by * * *. Total research and development expenses increased from \$865,000 in 1981 to \$3.1 million in 1982 and then declined to \$1.6 million in 1983. These expenses increased by 6 percent during January-August 1984 compared with those during January-August 1983. Further research and development is performed by State agencies and grower associations on behalf of Florida citrus growers and processors.

Unit costs of production.--Domestic producers of FCOJ were requested to provide data on their unit costs of production for FCOJ. The cooperatives, with the exception of * * *, were not able to provide complete unit-cost data because their raw material (fresh oranges) is not supplied at market price. Eleven corporations and * * * provided data on unit costs of production, and all these firms, except * * *, reported data for major items of such costs. The average industry costs, by major items, for crop years 1980/81 through 1983/84 are presented in table 9.

Table 9.--U.S. processors' average manufacturing cost to produce FCOJ from fresh oranges, at 65° Brix equivalent, crop years 1980/81 to 1983/84

<u>(Per gallon)</u>				
<u>Item</u>	<u>1980/81</u>	<u>1981/82</u>	<u>1982/83 ^{1/}</u>	<u>1983/84</u>
Fresh oranges and other material-----	\$7.87	\$8.78	\$8.27	\$10.21
Direct labor-----	.27	.28	.28	.33
Energy-----	.23	.25	.25	.27
Depreciation-----	.09	.11	.11	.13
Other plant costs ^{2/} -----	.56	.50	.46	.61
Total-----	9.02	9.92	9.37	11.55

^{1/} Data for 13 processors.

^{2/} Adjusted to arrive at total.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

As shown, the industry's average total cost of producing FCOJ from round oranges increased from \$9.02 per gallon in 1980/81 to \$9.92 in 1981/82, or by 10 percent, but then declined by 6 percent to \$9.37 in 1982/83. Their total cost of production rose to its highest level in the past 4 years--\$11.55 per gallon--in 1983/84, representing a 28-percent increase over the 1980/81 level. Fresh oranges and other material costs per gallon accounted for about 88 percent of total costs of production during each reporting year. These major costs in 1983/84 were 23 percent greater than those in 1982/83, and 30 percent greater than those in 1980/81. The producers attribute the increases in 1981/82 and 1983/84 to the low volume of fresh oranges available for processing, and to higher prices due to crop freezes. Depreciation and other plant costs (mainly fixed costs) increased during the reporting period, reflecting the processing of lower volumes of fresh oranges. Average direct labor and energy costs per gallon increased slightly in 1981/82 over those in 1980/81. Such costs remained steady in 1982/83, before rising in 1983/84.

Investment in productive facilities.--Nine U.S. corporations provided data relative to both their investment in productive facilities employed in the production of FCOJ (table 10), and all products produced in their establishment(s) (table 11).

Table 10.--Investment in productive facilities, net sales, and income of 9 U.S. corporations for their operations producing FCOJ, as of the end of accounting years 1981-83, and, as of June 30, 1983, and June 30, 1984

Item	1981	1982	1983	As of June 30--	
				1983	1984
Investment in productive facilities:					
Original cost					
1,000 dollars--	92,601	105,171	137,911	122,819	158,700
Book value-----do-----	57,128	67,963	90,859	83,615	114,448
Net sales-----do-----	317,022	308,839	370,251	182,211	273,250
Operating income or (loss)					
do-----	13,502	(2,488)	(14,491)	(14,532)	5,145
Net income or (loss) before income taxes-----do-----	4,617	(11,078)	(23,005)	(21,176)	(8,628)
Ratio of operating income or (loss) to net sales					
percent--	4.3	(0.8)	(3.9)	(8.0)	1.9
Ratio of net income or (loss) before income taxes to--					
Net sales-----percent--	1.5	(3.6)	(6.2)	(11.6)	(3.2)
Original cost-----do-----	5.0	(10.5)	(16.7)	(17.2)	(5.4)
Book value-----do-----	8.1	(16.3)	(25.3)	(25.3)	(7.5)

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 11.--Investment in productive facilities, net sales, and income of 9 U.S. corporations for their overall operations of establishments within which FCOJ is produced, as of the end of accounting years 1981-83, and, as of June 30, 1983, and June 30, 1984

Item	1981	1982	1983	As of June 30--	
				1983	1984
Investment in productive facilities:					
Original cost					
1,000 dollars--	199,193	222,649	239,864	172,874	213,911
Book value-----do-----	135,995	154,571	162,467	120,449	153,171
Net sales-----do-----	493,585	439,067	499,220	231,935	324,675
Operating income or (loss)					
do-----	36,106	(2,331)	(13,147)	(16,023)	2,632
Net income or (loss) before income taxes-----do-----	22,513	(17,528)	(24,804)	(21,729)	(11,375)
Ratio of operating income or (loss) to net sales					
percent--	7.3	(0.5)	(2.6)	(6.9)	0.8
Ratio of net income or (loss) before income taxes to--					
Net sales-----percent--	4.6	(4.0)	(5.0)	(9.4)	(3.5)
Original cost-----do-----	11.3	(7.9)	(10.3)	(12.6)	(5.3)
Book value-----do-----	16.6	(11.3)	(15.3)	(18.0)	(7.4)

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The corporations' investment in FCOJ facilities, valued at original cost, increased from \$92.6 million in 1981 to \$158.7 million in June 1984. The book value of such facilities increased by \$57.3 million during the same period.

To provide an additional measure of profitability, the ratios of net profit or loss before income taxes to original cost and book value of fixed assets are also presented in the tables. The ratios for both FCOJ operations and establishment operations followed the same trend as did the ratios of income or loss before income taxes to net sales.

Imports, Market Penetration, and Prices

U.S. imports

U.S. imports of FCOJ ^{1/} from Brazil rose from 100 million gallons in crop year 1979/80 to 352 million gallons in crop year 1981/82, but then declined slightly to 349 million gallons in crop year 1982/83, more than tripling over the period (table 12). Imports from Brazil rose from 273 million gallons in

^{1/} All quantity data on imports of FCOJ are collected and reported in single-strength-equivalent form.

Table 12.--FCOJ: U.S. imports for consumption, by principal sources, crop years 1979/80 to 1982/83, December 1982-September 1983, and December 1983-September 1984

State	1979/80	1980/81	1981/82	1982/83	December-September--	
					1982/83	1983/84
Quantity (1,000 gallons) <u>1/</u>						
Brazil-----	100,122	197,876	352,239	349,084	273,393	388,851
Mexico-----	2,387	6,524	17,621	26,050	24,680	15,598
Venezuela-----	-	-	-	738	291	568
Canada-----	-	15	535	371	371	102
West Germany-----	107	5	293	210	210	10
Other-----	86	3,995	3,460	637	617	5,088
Total-----	102,702	208,416	374,149	377,090	299,561	410,217
Value (1,000 dollars)						
Brazil-----	66,791	162,084	282,439	280,581	220,702	379,618
Mexico-----	1,726	5,364	15,164	19,727	18,801	17,360
Venezuela-----	-	-	-	461	185	215
Canada-----	-	25	593	390	390	152
West Germany-----	302	24	1,051	1,866	1,866	13
Other-----	58	3,436	2,858	663	617	7,162
Total-----	68,877	170,933	302,105	303,688	242,561	404,520
Unit value (per gallon)						
Brazil-----	\$0.67	\$0.82	\$0.80	\$0.80	\$0.80	\$0.98
Mexico-----	.72	.82	.86	.76	.76	1.11
Venezuela-----	-	-	-	.62	.63	.38
Canada-----	-	1.69	1.11	1.05	1.05	1.49
West Germany-----	2.83	4.49	3.59	8.89	8.88	1.24
Other-----	.67	.86	.83	1.04	.99	1.41
Average-----	.67	.82	.81	.81	.80	.98

1/ Single-strength equivalent.

Source: Compiled from official statistics of the U.S. Department of Commerce.

December 1982-September 1983 to 389 million gallons in December 1983-September 1984, or by 42 percent.

Total imports mirrored the trend exhibited by imports from Brazil, rising steadily from 103 million gallons in 1979/80 to 377 million gallons in 1982/83, representing an overall increase of 267 percent. 1/ Total imports

1/ Imports from Brazil accounted for between 97 percent (1979/80) and 91 percent December-September 1983/84 of total imports during the period under investigation.

increased further in December 1983-September 1984 to 410 million gallons, representing a level 37-percent above total imports during December 1982-September 1983.

The average unit value of imports from Brazil increased from \$0.67 per gallon in 1979/80, the year of the record domestic orange crop, to about \$0.81 per gallon during 1980/81 through 1982/83. However, the average unit value of these imports increased to \$0.97 per gallon in December 1983-September 1984, or by about 20 percent over previous levels.

The original petitioner, Mutual, noted a trend toward the importation of FCOJ into States outside of Florida for conversion into reconstituted juice. ^{1/} The portions of imports of FCOJ which were entered through Florida during 1979 through January-August 1984 are presented in the following tabulation, compiled from Department of Commerce data (in percent):

	<u>Imports of FCOJ</u> <u>from Brazil</u> <u>entered through</u> <u>Florida ports</u>	<u>Imports of FCOJ</u> <u>from other</u> <u>sources entered</u> <u>through Florida</u> <u>ports</u>	<u>Total imports of</u> <u>FCOJ entered</u> <u>through Florida</u> <u>ports</u>
1979-----	80	35	77
1980-----	75	22	74
1981-----	80	86	81
1982-----	81	81	81
1983-----	64	44	62
January-August--			
1983-----	73	51	70
1984-----	61	41	60

A large share of imports entered through non-Florida ports is accounted for * * *. In addition to selling imported FCOJ to customers, this firm * * *. ^{2/}

The trend towards increasing imports through non-Florida ports is likely to accelerate in the future, when Inter American, Inc., becomes operational in spring 1985. This firm, which is located in a foreign trade zone in Port Elizabeth, NJ, * * *. ^{3/}

This trend towards imports through non-Florida ports is further illustrated by data on U.S. general imports for December-September 1983/84. General imports through ports outside of Florida increased from 57.5 million gallons in December-September 1982/83 to 177.0 million gallons in

^{1/} See "An Appraisal of Recent Domestic and International Trade Developments in Orange Juice; Implications for U.S. Growers and Processors," pp. 13-15, Investigation No. 701-TA-184 (Preliminary).

^{2/} * * *.

^{3/} Bulk shipments are transported by FCOJM tankers. There are currently three such ships in operation, with a fourth under construction. Two ships are owned by Citrosuco, and one by Cargill. The ship under construction is owned by Cutrale.

December-September 1983/84, representing a three-fold increase. In comparison, general imports through Florida ports rose from 210.6 million gallons in December-September 1982/83 to 313.1 million gallons in December-September 1983/84, representing an increase of 49 percent.

It should be noted, however, that some FCOJ is entered and shipped from non-Florida ports to processors in Florida, reducing this overall trend. It is estimated that Florida processors purchased either directly or indirectly about 70 percent of total U.S. FCOJ imports during December-September 1983/84.

Market penetration

As mentioned earlier, it is not possible to determine the portion of exported FCOJ that consists of the imported product. This casts doubt on the meaningfulness of traditional market penetration analysis (i.e., the ratio of imports to apparent U.S. consumption) since at least some imported FCOJ, and possibly a significant amount, is known to be exported. Such exports of imported FCOJ should be subtracted from total imports before analyzing market penetration. However, since most imported FCOJ is blended with the domestic product, albeit in varying proportions, processors are generally unable to determine the specific composition of each shipment. In this section, therefore, the quantity of imports from Brazil is compared with total available FCOJ (U.S. production plus imports plus carryover stock) and with total U.S. production of FCOJ from the Florida crop.

The ratio of imports from Brazil to total available FCOJ increased from 7.8 percent in 1979/80 to 29.6 percent in 1981/82, and then declined to 27.3 percent in 1982/83 (table 13). The ratio of imports from Brazil to total

Table 13.--FCOJ: U.S. imports from Brazil and total available FCOJ, crop years 1979/80 to 1983/84

Period	Imports from Brazil	Total available FCOJ	Ratio of imports from Brazil to total available FCOJ
	Million gallons ^{1/}		Percent
1979/80-----	100.1	1,279.4	7.8
1980/81-----	197.9	1,181.8	16.7
1981/82-----	352.2	1,191.2	29.6
1982/83-----	349.1	1,277.6	27.3
1983/84-----	^{2/} 466.6	^{2/} 1,154.8	^{2/} 40.0

^{1/} Single-strength equivalent.

^{2/} Estimated by the staff of the U.S. International Trade Commission by projecting imports from Brazil through November 1984.

Source: Compiled from official statistics of the U.S. Department of Commerce and data of the Florida Citrus Processors Association, except as noted.

available FCOJ is projected to increase to about 40 percent in 1983/84. Over the period, penetration was the highest in the worst domestic crop year (1983/84) and lowest in the best domestic crop year (1979/80). This trend is illustrated in table 14, which compares imports from Brazil with production from the Florida crop.

Table 14.--FCOJ: U.S. imports from Brazil and production from Florida crop, crop years 1979/80 to 1983/84

Crop year	Imports from Brazil	Production from Florida crop	Ratio of imports from Brazil to production from Florida crop
	Million gallons ^{1/}		Percent
1979/80-----	100.1	1,012.9	9.9
1980/81-----	197.9	733.1	27.0
1981/82-----	352.2	538.4	65.4
1982/83-----	349.1	684.9	51.0
1983/84-----	<u>2/</u> 466.6	489.6	<u>2/</u> 95.3

^{1/} Single-strength equivalent.

^{2/} Estimated by the staff of the U.S. International Trade Commission by projecting imports from Brazil through November 1984.

Source: Compiled from official statistics of the U.S. Department of Commerce and from data of the Florida Citrus Processors Association, except as noted.

Prices

This section of the report presents and considers a wide range of pricing information that has been compiled by the Florida Department of Citrus and by a trade association within Florida. It examines both long term and recent trends in prices received by growers for fresh oranges and by processors for FCOJ, discusses recent movements in the Brazilian Government-controlled minimum price for exports of orange juice concentrate, and provides rough comparisons between domestic and import prices of FCOJM that were developed from processor's questionnaires. An econometric analysis of the effects of prices on the demand for domestic and imported FCOJ and projections of price levels, production, shipments, and imports under alternative scenarios is included in appendix E.

Cash prices of oranges.---Data on domestic round orange spot and contract prices and FCOJ prices are published by Florida Citrus Mutual. A discussion of these reported prices follows.

Processors buy fresh oranges on both a spot and a contract basis. In spot transactions prices are negotiated informally between buyers and sellers. Although growers deal directly with processors in some cases, picking and hauling companies known as "bird dogs" usually serve as intermediaries in spot transactions. These independent companies buy oranges

directly from growers and then sell them to processors at the going market price. In contract agreements, which may range in duration from one to three years, growers and processors generally agree upon a minimum price for the oranges during a given season. However, these contracts usually allow for the price to rise above or fall below the minimum level if an increase or decrease is warranted by market conditions.

Average prices paid by processors for oranges used in FCOJ for the past 23 seasons are presented in table 15. The transactions on which these prices are based have typically accounted for about 15 to 20 percent of the total shipments from growers to processors in recent years. As shown in the table, average prices during the second half of the marketing season have usually been higher than the average during the first half due to the fact that the quality of the fruit improves as the season progresses. ^{1/}

Although it is evident that prices have risen significantly from an average of \$2.25 per box in the 1961/62 season to an average of \$6.62 per box in the 1983/84 season, these prices have often fluctuated sharply from year to year, as a result of short-run demand and supply influences. Prices of oranges have usually increased during seasons in which freezes have caused damage to the orange crop, and they have usually increased much more significantly in the following season. As shown in table 15, freezes occurred during the 1962/63 season, the 1970/71 season, the 1976/77 season, and in three of the past four seasons. Prices during 1962/63 rose to \$2.71 per box, representing a 20-percent increase from the \$2.25 per box in the previous year. In the following year, the price nearly doubled, reaching an average of \$5.25 per box. Similarly, the price increase during crop year 1971/72 was larger than the increase in 1970/71 when the freeze occurred. During the 1976/77 crop year, prices actually declined from the average level in the previous year, despite the freeze. However, during the next season, they climbed by over 100 percent to \$5.42 per box. During 1980/81, the average price rose by 8 percent, and then increased by an additional 17 percent in the following year. The price increased significantly during each of the next two years, before declining moderately in 1983/84.

Despite the impact of freezes, the overall increase in the average price of fresh oranges during the past seven seasons was small. After reaching an all-time high (at that time) of \$6.42 per box in 1978/79, prices fell sharply to \$5.16 in the following year and then recovered during the next 2 years, reaching \$6.49 in 1981/82--an amount that was only 7 cents higher than the 1978/79 average. The price rose to \$6.96 in 1982/83, but then fell back to an average of \$6.62 for the entire 1983/84 season, despite the sharp rise in price during the second half of the season that resulted from the severe December freeze.

Processors prices for FCOJ.--Average f.o.b. reference prices ^{2/} quoted by private-label processors for sales of 12 6-ounce cans of FCOJ are presented in

^{1/} The quality of the fruit improves during the second half of the season because the majority of the fruit harvested during that period is of the Valencia variety, the best variety for juice.

^{2/} These prices are commonly referred to as "card" or "benchmark" prices. According to industry sources, processors generally quote prices on an f.o.b. basis. It has been reported that one large private label processor, * * *, is now quoting all of its prices on a delivered basis.

Table 15.—Fresh oranges: Average cash prices paid by processors, by crop years, 1/ 1961/62 to 1983/84

(Per 90-pound box)				
Crop year	Average price: in first half of season	Average price: in second half of season	Average price: for entire season	
1961/62-----	\$2.54 :	\$1.91 :	\$2.25	
1962/63 <u>2/</u> -----	1.61 :	3.81 :	2.71	
1963/64-----	5.16 :	5.32 :	5.25	
1964/65-----	3.46 :	3.24 :	3.37	
1965/66-----	1.92 :	2.58 :	2.28	
1966/67-----	1.17 :	1.46 :	1.29	
1967/68-----	2.55 :	2.98 :	2.76	
1968/69-----	2.56 :	2.92 :	2.70	
1969/70-----	1.90 :	1.99 :	1.94	
1970/71 <u>2/</u> -----	1.52 :	3.02 :	2.07	
1971/72-----	2.87 :	2.95 :	2.91	
1972/73-----	2.27 :	2.50 :	2.36	
1973/74-----	2.49 :	2.71 :	2.58	
1974/75-----	2.27 :	2.74 :	2.41	
1975/76-----	2.91 :	3.44 :	3.11	
1976/77 <u>2/</u> -----	1.88 :	3.41 :	2.59	
1977/78-----	5.06 :	5.88 :	5.42	
1978/79-----	6.26 :	6.66 :	6.42	
1979/80-----	4.97 :	5.43 :	5.16	
1980/81 <u>2/</u> -----	4.30 :	7.23 :	5.55	
1981/82 <u>2/</u> -----	6.27 :	6.90 :	6.49	
1982/83-----	6.68 :	7.29 :	6.96	
1983/84 <u>2/</u> -----	5.47 :	8.48 :	6.62	

1/ A crop year denotes the period from December of a given year through November of the following year, although all fresh oranges are harvested by July.

2/ Season in which a freeze occurred.

Source: Compiled from data provided by Florida Citrus Mutual.

table 16. Although these price data provide a good indicator of year-to-year movements in prices, they do not represent actual transaction prices for FCOJ.

Private-label processors have always offered standard and special discounts from the reference price. For example, in early 1981 when the reference price was \$3.91 per dozen 6-ounce cans, processors were selling private-label brands for \$3.60. In the middle of 1982, the actual transaction price of about \$3.70 was well below the reference price of \$3.91 that prevailed at that time. 1/ In September 1984, FCOJ was reportedly selling for about 6 percent less than the reference price of \$5.02 per dozen 6-ounce cans. 2/

As shown in table 16, FCOJ reference prices have usually moved in the same direction as prices of fresh oranges during the past two decades, though the magnitudes of the fluctuations from season to season have generally been smaller than those for fresh oranges. FCOJ prices have also consistently increased during seasons in which freezes occurred and in the seasons immediately following the freezes. However, the effect of the freezes on FCOJ

Table 16.--FCOJ: Average prices received by processors,
by crop years, 1/ 1961/62 to 1983/84

(Per dozen 6-ounce cans)			
Crop year	Price	Crop year	Price
1961/62-----	\$1.39	1972/73-----	\$1.74
1962/63 <u>2/</u> -----	2.29	1973/74-----	1.80
1963/64-----	2.35	1974/75-----	2.03
1964/65-----	1.62	1975/76-----	2.00
1965/66-----	1.62	1976/77 <u>2/</u> -----	2.45
1966/67-----	1.19	1977/78-----	3.30
1967/68-----	1.62	1978/79-----	3.50
1968/69-----	1.78	1979/80-----	3.04
1969/70-----	1.46	1980/81 <u>2/</u> -----	3.91
1970/71 <u>2/</u> -----	1.60	1981/82 <u>2/</u> -----	3.98
1971/72-----	1.88	1982/83-----	3.95
		1983/84 <u>2/</u> -----	<u>3/</u> 4.80

1/ A crop year includes the period from December of a given year through November of the following year.

2/ Season in which a freeze occurred.

3/ Represents the average for December 1983–September 1984.

Source: Compiled from data developed by Florida Citrus Mutual.

1/ These transaction price data were presented in the report to the Commission in investigation No. 701-TA-184 (Final).

2/ Information obtained from discussions with industry sources.

prices has been small in some cases. For example, between the 1980/81 season and the 1981/82 season, the average price of FCOJ increased by only 2 percent, from \$3.91 per dozen 6-ounce cans to \$3.98 per dozen 6-ounce cans, despite freezes in both seasons.

Prices of FCOJ increased only moderately in the four seasons prior to 1983/84, rising by only 13 percent between 1978/79 and 1982/83. This increase was smaller than increases in prices of some related products. For example, during this period the producer price for fruit juices, nectars, and concentrates rose by 23 percent. ^{1/}

However, after remaining at about \$3.95 for nearly 2 years, the price of FCOJ climbed rapidly after the freeze in December 1983, reaching a level of \$4.75 in January 1984. It climbed further to \$5.02 in February and remained at that level through September 1984.

Over the past decade, the price of FCOJ has increased more rapidly than the general rate of inflation in the United States. Between 1974 and 1983 the price of FCOJ increased at an average annual rate of 9.1 percent for an overall increase of 219 percent. During 1974-83 the producer price index for all finished goods increased at an average annual rate of only 7.6 percent, rising by 93 percent over the period. The differential has widened further in 1984. During the first 9 months of this year, the price of FCOJ was more than 20 percent higher than in the corresponding period in 1983. In contrast, the index of finished good prices has increased by only about 2 percent, as shown in the following tabulation:

Period	Indexes of prices of FCOJ and producer's finished goods	
	FCOJ	Producer's Finished Goods ^{1/}
	(1973/74 = 100)	
1973/74-----	100	100
1974/75-----	113	111
1975/76-----	111	116
1976/77-----	136	123
1977/78-----	183	133
1978/79-----	194	148
1979/80-----	169	167
1980/81-----	217	183
1981/82-----	221	190
1982/83-----	219	193

^{1/} The Producer's finished goods index, which is published by the Bureau of Labor statistics, is on a calendar-year basis.

^{1/} Developed from official data of the Bureau of Labor Statistics of the U.S. Department of Labor.

Brazil's minimum export price.--The Government of Brazil imposes a minimum price on exports of frozen orange juice concentrate to ensure that significant amounts of foreign exchange will be repatriated to Brazil as a result of these exports. ^{1/} Thus, if the world market price of the concentrate is \$1,500 per ton and the minimum export price is \$1,100 per ton, a Brazilian exporter would be required to repatriate a minimum of \$1,100 to Brazil on a sale of 1 ton of concentrate. The remaining \$400 could either be repatriated to Brazil or invested elsewhere.

After remaining relatively stable for a long period, the minimum export price was adjusted upward significantly in 1984 as a result of the sharp increase in U.S. demand for imports of concentrate that stemmed from the freeze in late 1983, and the resulting decline in Brazilian inventories due to these shipments. During 1978-81, the minimum export price remained at \$900. As a result of freeze-related shortages in the United States, the price was increased to \$1,200 in 1982, and was kept at that level throughout 1983. It was adjusted upward to \$1,250 in January 1984, however, and has been increased periodically since then. In October, the minimum export price reached \$1,700, and it will be increased to \$1,800 in January 1985.

Comparisons between domestic and import prices of FCOJ.--Direct price comparisons between imported and domestically produced FCOJ are difficult to make because most FCOJ is a blend made by combining FCOJ with concentrate produced from U.S. oranges. However, U.S. processors were asked to provide information on purchases of FCOJM from Brazil and from U.S. sources (typically the blended product). Their data suggest that prices of the Brazilian product have consistently been lower than the price of the blended domestic product during each of the past three crop years. However, the differential appears to have narrowed during the 1983/84 crop year, as summarized in the following tabulation (per gallon): ^{2/}

<u>Period</u>	<u>From Brazil</u>	<u>From U.S. Sources</u>
1981/82	\$1.07	\$1.24
1982/83	1.09	1.25
1983/84	1.48	1.55

Prices paid by * * * a repacker located in * * *, offers additional evidence that imported FCOJM from Brazil tends to cost less than the domestic product. In * * *.

Inland transportation costs.--Florida processors were asked to provide information on the methods and costs of shipping FCOJ. Responses indicate that most of the FCOJ sold by these processors is shipped by truck, although a small percentage is transported by rail and minimal amounts are moved by barge. Except for * * *, which quotes delivered prices, transportation costs are normally paid by the purchaser.

The data show that transportation costs tend to increase moderately as a share of the delivered price as the distance increases. For shipments of 100

^{1/} The minimum export price is quoted in U.S. dollars despite the location of the export markets.

^{2/} Single-strength equivalent.

to 500 miles, costs range from 1.4 percent to 2.5 percent of the delivered price. For distances of 500 to 1,000 miles, these costs vary from 2 percent to 5 percent of the price, and from 1,500 to 3,000 miles, they range from 4 percent to 10 percent.

Among the largest distributors, * * *.

Although the data indicate that transportation costs are not usually an important consideration in sales within Florida or in a large part of the Southeastern section of the country, they do suggest that Florida processors might have trouble competing with imported FCOJ from Brazil in markets, such as the Northeast, which are a considerable distance from Florida and are served by a close port. Brazil charges essentially the same delivered price to non-Florida ports as it does to Tampa and Port Canaveral.

Exchange rates

The Brazilian cruzeiro depreciated significantly in relation to the dollar between January 1981 and June 1984 (table 17). The real-exchange-rate index, which adjusts for rates of inflation in Brazil and the United States shows that the cruzeiro declined relative to the dollar during most quarters in this three and one-half year period. The overall decline amounted to 22 percent.

Table 17.--Index of real exchange rates between the U.S. dollar and the Brazilian cruzeiro, by quarters, January 1981-June 1984

(January-March 1981=100)	
Period	Real-Exchange- Rate Index 1/
1981:	
January-March-----	100.0
April-June-----	98.6
July-September-----	95.0
October-December-----	93.3
1982:	
January-March-----	93.0
April-June-----	96.5
July-September-----	95.9
October-December-----	91.2
1983:	
January-March-----	80.2
April-June-----	72.5
July-September-----	76.7
October-December-----	79.2
1984:	
January-March-----	78.5
April-June-----	78.0
July-September-----	81.0

1/ Based upon exchange rates that are expressed in U.S. dollars per Brazilian cruzeiro.

The Question of a Threat of Material Injury

The rate of increase of imports for consumption
from Brazil

Imports for consumption of FCOJ from Brazil increased irregularly but sharply (by 249 percent) from 1979/80 to 1982/83. These imports then increased at a lower, but still significant, rate from December-September 1982/83 to December-September 1983/84, as shown in the following tabulation:

	<u>Imports from Brazil</u> <u>(million gallons) 1/</u>	<u>Percentage change</u>
1979/80-----	100.1	2/
1980/81-----	197.9	97.7
1981/82-----	352.2	78.0
1982/83-----	349.1	-0.9
December-September--		
1982/83-----	273.4	2/
1983/84-----	388.9	42.2

1/ Single-strength equivalent.

2/ Not available.

Changes in import levels of Brazilian FCOJ have occurred in relation to domestic production of fresh oranges, as shown in the following tabulation:

Crop year	Imports from Brazil	Index 1/	Production, Florida round oranges	Index 1/
	<u>Million gallons 2/</u>		<u>Million boxes</u>	
1979/80-----	100.1	100	206.7	100
1980/81-----	197.9	198	172.4	83
1981/82-----	352.2	352	125.8	61
1982/83-----	349.1	349	139.6	68
1983/84-----	3/ 466.6	466	116.7	56

1/ 1979/80=100.

2/ Single-strength equivalent.

3/ Estimated by the staff of the U.S. International Trade Commission by projecting imports through November 1984.

As shown in the above tabulation, imports increased in 1980/81 and 1981/82, coinciding with poor U.S. crop years. Imports decreased in 1982/83, when the U.S. crop was better. Imports increased dramatically in 1983/84, when U.S. orange production again decreased because of a freeze.

The amount of FCOJ from Brazil in bonded warehouses

Due to the relatively high tariff on FCOJ, there is more incentive for importers of this product to store their imports in bonded warehouses 1/ than exists with respect to imports of many other products. FCOJ imports may then be withdrawn from the bonded warehouses, and the duties paid, closer to the time the FCOJ will be used by the processor. As shown in table 18, estimated end-of-period imports from Brazil held in bonded warehouses increased irregularly from 1972/73 to 1980/81, when such imports reached a record (at that time) high of approximately 185 million gallons. 2/ Imports from

Table 18.--FCOJ: General imports and imports for consumption from Brazil, 1972/73 to 1982/83, December-September 1982/83, and December-September 1983/84

Period	General imports	Imports for consumption	Excess of general imports over: imports for consumption <u>1/</u>	Estimated end-of-period imports in bonded warehouses
	-----1,000 gallons, single-strength equivalent-----			
1972/73-----	7,620	10,550	-2,930	<u>2/</u>
1973/74-----	18,790	15,884	2,906	2,906
1974/75-----	39,897	29,992	9,905	12,811
1975/76-----	34,496	29,064	5,432	18,243
1976/77-----	31,860	28,842	3,018	21,261
1977/78-----	140,867	117,470	23,397	44,658
1978/79-----	199,504	163,890	35,614	80,272
1979/80-----	99,423	100,122	-699	79,573
1980/81-----	303,675	197,876	105,798	185,371
1981/82-----	327,122	352,239	-25,117	160,254
1982/83-----	313,176	349,084	-35,908	124,346
Dec.-Sept.--				
1982/83-----	242,912	273,393	-30,481	129,773
1983/84-----	459,474	388,851	70,623	194,969

1/ Includes imports for reexport, which accounted for less than 1 percent of general imports during 1978/79-1982/83.

2/ Base year is 1972/73. Imports held in bonded warehouses during this period are believed to have been minimal.

Source: Compiled from official statistics of the U.S. Department of Commerce.

1/ FCOJ may be stored for three or four years without product degradation, Transcript, p. 36.

2/ As no official statistics exist as to imports in bonded warehouses, all data are only approximations. However, the trends shown by such data are valid and indicate the patterns of entries and withdrawals.

Brazil in bonded warehouses then declined to 160 million gallons in 1981/ 82, when processors withdrew 25 million gallons for consumption. These imports continued to decline in 1982/83 to 124 million gallons, as withdrawals exceeded entries by 36 million gallons. Imports in bonded warehouses during December 1982-September 1983 declined by 30 million gallons. However, this trend reversed in December 1983-September 1984, when imports exceeded withdrawals by 71 million gallons.

The capacity of Brazil to generate exports
and the availability of other export markets

According to data published by the USDA, 1/ Brazil displaced the United States as the world's largest producer of oranges in crop year 1981/82. 2/ Brazil's production in that year was 180 million boxes 3/ (table 19).

Table 19.--Selected data on oranges and FCOJ in Brazil, by crop years, 1981/82 to 1985/86

Item	Crop year <u>1/--</u>				
	1981/82	1982/83 <u>2/</u>	1983/84 <u>2/</u>	1984/85 <u>3/</u>	1985/86 <u>3/</u>
Oranges:					
Production <u>4/</u>					
million boxes---	180	195	180	185	210
Fresh consumption-----do-----	26	33	33	18	20
Fresh exports-----do-----	1	2	2	2	4
Processed-----do-----	153	160	145	165	186
FCOJ:					
Beginning stocks					
million gallons <u>5/</u> ---	53	28	142	14	14
Production-----do-----	816	766	707	954	958
Domestic consumption--do-----	22	22	22	18	21
Exports-----do-----	819	629	813	933	933
Ending stocks-----do-----	28	142	14	17	21

1/ Processing seasons in Brazil run from July 1 to June 30.

2/ Estimated by the USDA.

3/ Data were contained in FAS cable TOFAS 95-BR4051, Sao Paulo, Nov. 21, 1984. These data are not official data of the USDA.

4/ Includes 3 to 8 million boxes of tangerines and tangors.

5/ Single-strength equivalent.

Source: Compiled from data published by the USDA, except as noted.

1/ BR 4029, BR 4036, and FHORT 7-84.

2/ The Brazilian crop year runs from July 1 through June 30 of the following calendar year, compared with the U.S. crop year of Dec. 1 to Nov. 30.

3/ A box in Brazil weighs 40.8 kilograms, or 89.95 pounds.

Brazil's production increased to 195 million boxes in 1982/83 before declining irregularly to an estimated 185 million boxes in 1984/85. Production is estimated to rise to 210 million boxes in 1985/86.

In recent years approximately 80 to 90 percent of the Brazilian orange crop was utilized in the production of FCOJ, which totaled 766 million gallons 1/ in 1982/83 and is estimated to total 707 million gallons in 1983/84. Production of FCOJ in 1984/85 is projected to be a record 954 million gallons, and production is estimated to reach 958 million gallons in 1985/86. 2/ The large amount of FCOJ produced in 1984/85 is due, in part, to very high yields achieved during that crop year.

As shown in table 20, the United States is Brazil's largest export market for FCOJ, accounting for 48 percent of total Brazilian exports during 1981-83.

Table 20.--FCOJ: Brazil's exports, by selected markets, 1981-83

(In million of gallons) <u>1/</u>				
Market	1981	1982	1983	
United States-----	362.1	415.0	365.5	
European Community-----	402.5	199.1	260.4	
Canada-----	33.4	27.9	44.6	
Other-----	91.9	83.6	99.6	
Total-----	889.9	725.6	770.1	

1/ Single-strength equivalent.

Source: Compiled from official statistics of the USDA.

U.S. projected orange production, 1985/86-1989/90

U.S. production of oranges is projected to increase during the period 1985/86 to 1989/90. However, the rate of increase and the magnitude of the increase vary considerably depending on the assumptions used in the projection. The following table (table 21) shows the projections of the Florida Department of Citrus, 3/ which estimates that production will increase from 150 million boxes in 1985/86 to 173-177 million boxes in 1989/90, and those of Schnittker Associates, 4/ which estimates that production will increase from 150 million boxes in 1985/86 to 155-190 million boxes in 1989-90.

1/ Single strength equivalent.

2/ TOFAS 95-BR4051, Sao Paulo, Nov. 21, 1984.

3/ The Florida Department of Citrus appeared at the hearing as a witness for Mutual.

4/ Schnittker Associates appeared at the hearing as a witness for the Brazilian exporters.

Table 21.--Projected Florida production of oranges,
1985/86 through 1989/90

Period	Florida Department of Citrus' estimates future tree planting assumptions			Schnittker Associate's estimates future freeze assumptions		
	Half <u>1/</u>	Average <u>2/</u>	Double <u>3/</u>	No freezes 1984-90	Freeze damage equivalent to 30 million boxes in December 1986	Freeze damage in December 1986 followed by a 20 million box freeze in December 1987
	----- million boxes -----					
1985/86-----	150	150	150	150	150	150
1986/87-----	168	168	168	160	130	130
1987/88-----	164	164	164	170	150	130
1988/89-----	174	174	174	180	160	145
1989/90-----	173	175	177	190	170	155

1/ One-half of 5-year average annual planting rate.

2/ Based on 5-year average annual tree planting rate from 1979-83.

3/ Double the 5-year average annual tree planting rate.

Source: Economic Research Department, Florida Department of Citrus, and Schnittker Associates.

APPENDIX A

THE SUSPENSION AGREEMENT, EXPORT TAX LETTER OF APRIL 18, 1983,
AND COMMERCE'S FINAL DETERMINATION

ACTION: Notice of suspension of investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving frozen concentrated orange juice from Brazil. The basis for the suspension is an agreement by the government of Brazil to offset with an export tax all benefits which we find to be subsidies on frozen concentrated orange juice exported to the United States.

EFFECTIVE DATE: March 2, 1983.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Case History

On July 14, 1982, we received a petition from Florida Citrus Mutual, filed on behalf of the U.S. growers of oranges for processing into frozen concentrated orange juice. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on August 2, 1982, we initiated a countervailing duty investigation (47 FR 37172). We stated that we expected to issue a preliminary determination by October 7, 1982. We subsequently determined that the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until December 13, 1982 (47 FR 45896).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On September 9, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (47 FR 39740).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington,

D.C. On December 1, 1982, we received the response to that questionnaire.

On December 13, 1982, we issued our preliminary determination in this investigation (47 FR 56528). We stated in our preliminary determination that the government of Brazil was providing its manufacturers, producers, or exporters of frozen concentrated orange juice with benefits that constitute subsidies. The programs preliminarily determined to bestow subsidies were:

- Preferential working capital financing for exports.
- Income tax exemption for export earnings.

On January 25, 1983, the Department initialed a proposed agreement to suspend the countervailing duty investigation involving frozen concentrated orange juice from Brazil. The basis for the proposed agreement was that the government of Brazil would offset by an export tax the entire amount of benefits we found to confer subsidies on frozen concentrated orange juice exported to the United States.

In compliance with the procedural requirements of section 704(e) of the Act, we discussed with the parties to the proceeding the proposed agreement and provided them a copy of the proposed agreement.

Scope of Investigation

The product covered by this investigation is frozen concentrated orange juice as currently provided for in item 165.35 of the *Tariff Schedules of the United States*.

There are nine known producers and exporters in Brazil of frozen concentrated orange juice to the United States. We have received information from the government of Brazil regarding three of these companies, Cargill Industrial Ltda. (CARGILL), Citrosuco Paulista S.A. (CITROSUCO) and Sucocitrico Cutrale S.A. (CUTRALE), which represented over 85 percent of exports of this product to the United States during a recent, representative period—calendar year 1981.

The period for which we are measuring subsidization is that fiscal year for each company which most closely corresponds to calendar year 1981. That period is March 1, 1981 to February 28, 1982 for CARGILL; and May 1, 1981 to April 30, 1982 for CITROSUCO and CUTRALE. We have referred to these periods as fiscal year 1981 in this notice.

Frozen Concentrated Orange Juice from Brazil; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

Changes Since the Preliminary Determination

Preferential Working Capital Financing for Exports: Resolution 674

On February 11, 1983, the government of Brazil notified the Department that the Banco do Brasil rate for discounting accounts receivable had increased from 59.6 percent to 72 percent effective January 3, 1983. In addition, effective January 11, 1983, the tax on financial transactions was reduced from 6.9 percent to 4.6 percent. These changes result in a subsidy rate differential of 32.6 percent rather than 22.5 percent as stated in the preliminary determination with respect to frozen concentrated orange juice. Consequently, since the rate established for purposes of the suspension is prospective, we will use 32.6 percent as the applicable differential in determining the subsidy rate from this program.

Petitioner's Comments

The Department has consulted with the petitioner, and has received no comments from them concerning the proposed suspension agreement. However, we did receive comments from the petitioner with respect to our preliminary determination.

Comment 1

The petitioner disagrees with the methodologies employed by the Department in the determination of the net subsidy stemming from the preferential working capital financing program. The petitioner alleges that access to preferential short-term financing has significantly enhanced the long-term market position of the Brazilian exporters of frozen concentrated orange juice. They argue that because of these alleged long-term benefits, the Department should equate the benefits received under this program to capital benefits and calculate the subsidy rate in a manner similar to that used to calculate the net subsidy for preferential long-term loans or capital grants. They suggest that rather than allocate the benefits of this program only to exports in the year in which such financing was received, the Department should employ a present value methodology to allocate to the review period benefits of financing received "during the past five years." They do not suggest, however, a period of time over which financing should be allocated.

Further, the petitioner argues that the benchmark used by the Department in determining the net subsidy for this program was incorrect. The petitioner argues that the Department should compound the monthly or quarterly rate

for discounting accounts receivable in order to establish an effective annual rate as a comparable benchmark for financing received under this program. In addition, they argue that the department failed to account for alleged compensating balances on these short-term loans (although illegal in Brazil).

DOC Position

The Department has in previous cases used a present value methodology to calculate the benefits stemming from long-term loans in order to match the flow of benefits more directly to the production of goods under investigation. In such instances the benefits were either allocated over the life of the loan or over the average useful life of the asset(s) purchased with the loan(s). The loans which were received by the processors of frozen concentrated orange juice under the preferential working capital financing program had a duration of less than one year and, by their nature, were not tied to assets. Likewise, the loans did not have any of the characteristics of capital grants; the amounts received are repayable and they are not tied to assets.

Therefore, the Department believes that it is inappropriate to determine the value of the benefits of this program using the present value of a cumulation of short-term loans as if they had long-term benefits for which the financial markets ordinarily account in the structure of interest rates based on maturity of instruments.

The conceptual basis for the Department's calculations of the amount of the subsidy is based on the following: (1) That the sale of an account receivable constitutes the purchase of an asset by a bank, in which the bank absorbs the risk of non-payment; (2) that once the sale is completed, the seller has no further obligation (such as repayment with interest) to the bank; and (3) that a series of sales of accounts receivable is not equivalent to rolling over a loan where interest on the original loan is compounded. As a result, the discount rate we have used is a simple rate and additive.

If the sale of an account receivable does in fact have more the character of a loan than the sale of an asset, we may have to reassess our position. We will investigate this matter further in the course of monitoring the agreement and make any necessary adjustments in the calculation of the interest differential and net subsidy.

Concerning the argument that the Department has not accounted for compensating balances when determining the net subsidy stemming from this program, we have found no

evidence of compensating balances in company records. The only deductions from the value of the receivables noted during verification were the discount, the tax on financial transactions and a commission on the transactions.

Respondent's Comments

Comment 1

The respondent argues that the benefits from preferential working capital financing are realized by a borrower at the time the cost of a loan is paid. Consequently, they argue that the Department should calculate the net subsidy based upon the date of repayment of such loans rather than to prorate the benefit throughout the duration of the loans.

DOC Position

In the notice of final results of administrative review of the countervailing duty order on certain scissors and shears from Brazil (47 FR 10266), we noted that the government of Brazil argued for the allocation of the benefits from these loans throughout the duration of the loans rather than to assign them to the period in which the loan was received. The government stated that the method of assigning the entire benefit to the period in which the loan was received did not fully allow for factors, such as increased or decreased exports from one period to another, factors, which affect the *ad valorem* value of the benefit. We agreed with the government of Brazil's argument and prorated the benefits throughout the duration of the loan. At that time we stated that when each year there is a substantial growth in the value of exports over the previous year, the allocation of the whole loan to the period in which it was received can create a distortion and overstate the value of the benefit. Likewise, in similar circumstances, the allocation of the whole loan to the period in which it is repaid can understate the value of the benefit. Therefore, we have not changed the methodology as stated in the preliminary determination.

Comment 2

The respondent argues that the benefit from the income tax exemption for export earnings should be reduced by 2 percent, the amount of taxes which corporate taxpayers may direct into certain investment funds. The corporations then receive stock for their investment. Respondent claims that had the companies subject to the investigation paid additional taxes, absent the income tax exemption program, they would have elected to

direct 26 percent of such taxes to the investment funds.

DOC Position

It is speculative to assume that the concerned companies would take part in a voluntary investment program. Moreover, the fact that the government of Brazil administers two programs exempting taxes on earnings under differing terms and conditions does not argue that the amount of the countervailable benefit under the export program should be adjusted. Consequently, the Department believes that the proper basis for calculating the benefit from this program is 100 percent of the amount of taxes saved by the companies which participated in it.

Comment 3

The respondent argues that the Department should offset the amount of any subsidies from countervailable programs by the amount of an export tax paid on the export of frozen concentrated orange juice and by the amount of a government imposed increase in the price which exporters of frozen concentrated orange juice must pay for oranges.

During the period for which we are measuring subsidization, exporters paid a 10 percent tax upon exportation of frozen concentrated orange juice. In June 1982 the government also established minimum prices which purchasers must pay for oranges. In conjunction with the establishment of those minimum prices, the export tax was reduced to one percent, the rate currently in effect. They state that processors of frozen concentrated orange juice are contractually bound "to comply with the current system for the foreign sale of frozen concentrated orange juice and to the terms that make up the (strandard) agreement for setting supply prices of raw material (fruit)" in order to obtain export licenses and any financial incentives from exporting the product under investigation. Therefore, they argue that the Department should allow offsets for the export tax and the minimum price for oranges under section 771(6)(A) as application fees, deposits, or similar payments paid in order to qualify for or to receive the subsidy.

The respondent also cites two other conditions to which a company must agree in order to obtain export licenses, namely, export quotas and minimum export prices. All of these conditions, the export tax, minimum price for raw materials, export quotas and minimum export prices are part of a policy of "diversification" by which the government of Brazil controls the

exportation of certain products such as frozen concentrated orange juice, coffee, cocoa, sugar and other items.

The respondent also suggests that the Department should allow offsets for a three percent "excise equalization tax" imposed by the State of Florida and for duties paid to the United States government upon importation of frozen concentrated orange juice.

DOC Position

The government of Brazil has used certain mechanisms in its policy of diversification to restrain the exportation of certain agricultural commodities. The restraints on frozen concentrated orange juice were imposed in 1979 and have varied widely in their application since then, apparently in reaction to differing market conditions. The purpose of such restraints counters the purpose of export incentives, to expand trade. That they are imposed suggests that any financial "burdens" which result from these restraints serve another purpose than to act as applications or fees to qualify for export incentives.

The policies of restraint and expansion not only differ in purpose but also in operation. As has been noted, the restraints have varied substantially since their inception. Such controls can be further modified in nature (currently a mixture of monetary and quantitative controls), in the extent of their application, or even as to their existence. Such modifications are related to market conditions rather than to qualification for export incentives. As has been shown in previous countervailing duty investigations involving Brazilian products for which no such controls exist, the working capital financing and the income tax exemption for export earnings programs have operated independently of these controls, without any application fees or other payments which allegedly stem from such controls. The controls exist as basic conditions under which the frozen concentrated orange juice may be exported, regardless of the participation, or extent of participation of the exporters of frozen concentrated orange juice in any financial incentive program. As such, the Department considers any cost resulting from these controls to be in the nature of a general expense borne by the exporter, rather than an application fee, deposit or similar payment paid to qualify for, or to receive, the benefit of any specific subsidy program. Therefore, we have not offset the gross subsidy amount of any countervailable program by the costs of these controls. Concerning the export tax imposed under these controls,

we are indifferent as to the amount (or existence) of such a tax as it relates to the export tax to be established under the terms of the suspension as long as the latter is sufficient to offset completely the amount of the net subsidy determined by the Department to exist with respect to the subject product. In addition, the Department does not consider taxes imposed by the state of Florida and customs duties imposed by the U.S. Government to constitute offsets under the Act.

Suspension of Investigation

The Department consulted with the petitioner with respect to the proposed suspension agreement. We have determined that the agreement will offset the subsidies completely with respect to the subject merchandise exported directly or indirectly to the United States, that the agreement can be monitored effectively, and that the agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement, signed February 24, 1983, are set forth in Annex 1 to this notice. Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of frozen concentrated orange juice from Brazil effective November 19, 1982, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination, Frozen Concentrated Orange Juice from Brazil," is hereby terminated.

Any cash deposits on entries of frozen concentrated orange juice from Brazil pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

The Department intends to conduct an administrative review within 12 months of the anniversary date of publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 740(f)(1)(A) of the Act.

Dated: February 24, 1983.

Judith H. Bello,
Acting Deputy Assistant Secretary for Import Administration.

Annex I—Suspension Agreement; Frozen Concentrated Orange Juice

Pursuant to section 704 of the Tariff Act of 1930, as amended (the Act), and section

355.31 of the Commerce Regulations, the United States Department of Commerce (the Department) and the government of Brazil enter into the following suspension agreement (the agreement) on the basis of which the Department shall suspend its countervailing duty investigation initiated on August 2, 1982 (47 FR 37172) with respect to frozen concentrated orange juice from Brazil. The agreement shall be in accordance with the terms and provisions set forth below.

A. Scope of the Agreement

The agreement applies to frozen concentrated orange juice manufactured in Brazil and exported, directly or indirectly, from Brazil to the United States (hereinafter referred to as the "subject product"), as currently provided for in item 185.35 of the *Tariff Schedules of the United States*.

B. Basis of the Agreement

1. The government of Brazil hereby agrees to offset completely the amount of the net subsidy determined by the Department in this proceeding to exist with respect to the subject product. The offset shall be accomplished by an export tax applicable to the subject product exported on or after April 30, 1983. The export tax shall offset completely any benefits found to exist with respect to the following programs:

(a) Preferential working capital financing for exports.

(b) Income tax exemption for export earnings.

(c) Any other program subsequently determined by the Department to constitute a subsidy under the Act to the subject product.

The Department shall officially notify the government of Brazil of any determination made with respect to items (a) through (c) above.

2. The government of Brazil certifies that no new or equivalent benefits shall be granted on the subject product as a substitute for any benefits offset by the agreement.

3. The offset of these benefits does not constitute an admission by the government of Brazil that such benefits are subsidies within the meaning of the U.S. countervailing duty law.

4. The government of Brazil agrees that from the effective date of the suspension of the investigation and until the imposition of an export tax no later than April 30, 1983 that completely offsets the net subsidy determined by the Department to exist, the rate of exports of the subject product will not exceed the average monthly rate of exports to the United States in the period June 1981-May 1982. Exports in excess of this quantity will constitute a violation of the agreement pursuant to section 704(i) of the Act.

C. Monitoring of the Agreement

1. The government of Brazil agrees to supply to the Department documentation concerning the method and time of payment of the export tax and other information the Department deems necessary to demonstrate that it is in full compliance with the agreement.

2. The government of Brazil shall notify the Department if any exporters of the subject product which benefit from the programs described in paragraph B.1 regarding the

manufacture, production or export of the subject product transship the subject product through third countries to the United States.

3. The government of Brazil shall certify to the Department within 15 days after the first day of each three-month period beginning on July 1, 1983 whether it continues to be in compliance with the agreement by offsetting completely the net subsidy referred to in paragraph B.1 and whether it has substituted any new or equivalent benefits for the benefits offset by the agreement. The first certification shall include the period April 30, 1983-June 30, 1983. Failure to supply such information or certification in a timely fashion may result in the immediate resumption of the investigation or issuance of a countervailing duty order.

4. The government of Brazil shall permit such verification and data collection as is requested by the Department in order to monitor the agreement. The Department will request such information and perform such verification periodically pursuant to administrative reviews conducted under section 751 of the Act.

5. The government of Brazil shall promptly notify the Department, with appropriate documentation, of any change in the amount of benefits to the subject product, of any change in the rate of the export tax, or if it decides to alter or terminate its obligations with respect to any of the terms of the agreement.

D. Violation of the Agreement

If the Department determines that the agreement is being or has been violated or no longer meets the requirements of section 704(b) or (d) of the Act, then section 704(i) shall apply.

E. Effective Date

The effective date of the agreement is the date of publication.

Signed on this 24th day of February 1982 for the Government of Brazil.

José Alfredo Graça Lima,

First Secretary of the Brazilian Embassy.

I have determined that the provisions of paragraph B completely offset the subsidies that the government of Brazil is providing with respect to frozen concentrated orange juice exported directly or indirectly from Brazil to the United States and that the provisions of paragraph C ensure that this agreement can be monitored effectively pursuant to section 704(d) of the Act.

Furthermore, I have determined that the agreement meets the requirements of section 704(b) of the Act and suspension of the investigation is in the public interest.

Department of Commerce.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5238 Filed 3-1-83; 8:45 am]

BILLING CODE 3510-25-M

Mr. Luiz Felipe P. Lampreia
 Minister-Counselor
 Brazilian Embassy
 3006 Massachusetts Avenue, N.W.
 Washington, D.C. 20008

Dear Mr. Lampreia:

Pursuant to the provision of the agreement suspending the investigation of frozen concentrated orange juice, the government of Brazil is required to impose an export tax on all shipments of frozen concentrated orange juice exported from Brazil to the United States on or after April 30, 1983. As stated in the Federal Register notice announcing the suspension agreement, we do not consider that the present export tax constitutes an offset to the subsidy determined to exist with respect to frozen concentrated orange juice. Therefore, a separately identifiable export tax should be established under the terms of the agreement "to offset completely the amount of the net subsidy determined by the Department....to exist with respect to the subject product."

According to our calculations, the export tax should not be lower than 3.51 percent of the f.o.b. value of these exports. This is based upon the following:

Resolution 674 financing	2.38%
Income tax exemption for export earnings	1.13%

The rate of export tax is derived from information for 1981 received during the investigation, but with an adjustment in the rate for Resolution 674 financing to reflect the increase in the "interest differential" as stated in the February 11, 1983 letter from the Ministry of Finance, government of Brazil.

We recognize that benefits from these programs may vary somewhat from year to year. Should there be an increase in benefits under any of the programs, benefits will be received on exports before information is submitted and analyzed in a section 751 administrative review and before a new rate for the offsetting export tax can be established. Consequently, it is the responsibility of the Brazilian government to establish the export tax at a level sufficiently high to ensure that when a section 751 review is completed all subsidies have been fully offset.

On March 21, 1983, we received a request from counsel for the government of Brazil, that we continue this investigation. We will make our final determination on or before June 6, 1983. Should any changes occur in our calculations as a result of the determination, you will be notified and we will change the rate of export tax required for remaining in compliance with the suspension agreement.

Should you need any further information or assistance in this matter, please contact Mr. Francis R. Crowe of my staff (202) 377-3051.

Sincerely,

Gary M. Horlick

Gary M. Horlick
Deputy Assistant Secretary
for Import Administration

2665d

Department of Commerce, 14th Street
and Constitution Avenue, N.W.,
Washington, D.C. 20230; telephone: (202)
377-0171.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we have determined that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential working capital financing for exports.
- Income tax exemption for export earnings.

We have determined the estimated net subsidy on frozen concentrated orange juice from Brazil to be 2.77 percent *ad valorem*.

The Department of Commerce (the Department) and the government of Brazil have entered into a suspension agreement. If the final determination by the ITC is negative, the suspension agreement shall have no force or effect. If the final determination by the ITC is affirmative, the suspension agreement shall remain in force.

Case History

On July 14, 1982, we received a petition from Florida Citrus Mutual, filed on behalf of the U.S. growers of oranges for processing into frozen concentrated orange juice. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on August 2, 1982, we started an investigation (47 FR 37172). We stated that we expected to issue a preliminary determination by October 7, 1982. We subsequently determined that the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until December 13, 1982 (47 FR 45896).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On September 9,

Final Affirmation Countervailing Duty Determination: Frozen Concentrated Orange Juice From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination.

SUMMARY: We have determined that certain benefits which constitute subsidies within the meaning of the countervailing duty laws are being provided to manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice. The estimated net subsidy is 2.77 percent *ad valorem*. The U.S. International Trade Commission (ITC) will determine within 45 days of the publication of this notice whether these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

The Department of Commerce (the Department) and the government of Brazil have entered into a suspension agreement. We continued the investigation at the request of the government of Brazil in accordance with section 704(g) of the Tariff Act of 1930, as amended (the Act). If the final determination by the ITC is negative, the suspension agreement shall have no force or effect. If the final determination by the ITC is affirmative, the suspension agreement shall remain in force.

EFFECTIVE DATE: June 6, 1983.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S.

1982, the ITC determined that there is a reasonable indication that these imports are materially injuring, or are threatening to materially injure, a U.S. industry (47 FR 39740).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. on August 27, 1982. On December 1, 1982, we received the response to that questionnaire.

On December 13, 1982, we preliminarily determined that the government of Brazil was providing its manufacturers, producers, or exporters of frozen concentrated orange juice with benefits that constitute subsidies. The programs preliminarily determined to bestow subsidies were:

- Preferential working capital financing for exports.
- Income tax exemption for export earnings.

Notice of the preliminary affirmative countervailing duty determination was published on December 17, 1982 (47 FR 56528). We directed the U.S. Customs Service to suspend liquidation of all entries of the frozen concentrated orange juice entered, or withdrawn from warehouse, for consumption on or after December 17, 1982, and to require the posting of a cash deposit, bond or other security in the amount of 2.655 percent of the f.o.b. value of the merchandise.

On January 25, 1983, the Department and the government of Brazil initiated a proposed agreement to suspend the countervailing duty investigation involving frozen concentrated orange juice from Brazil. The basis for the proposed agreement was that the government of Brazil would offset by an export tax the entire amount of benefits we found to confer subsidies on exports of frozen concentrated orange juice to the United States.

On the same date, in compliance with the procedural requirements of section 704(e) of the Act, we consulted with the petitioners regarding the proposed agreement and provided them a copy of it. We received no comments concerning the proposed agreement.

On February 24, 1983, the Department and the government of Brazil signed a suspension agreement, as provided for under section 704 of the Act. The agreement became effective with its publication in the *Federal Register* on March 2, 1983 (48 FR 8839). Under the agreement, the government of Brazil is required to offset completely by an export tax the amount of the net subsidy determined by the Department to exist on Brazilian exports of frozen concentrated orange juice to the United States.

By letter of March 21, 1983, counsel for the government of Brazil requested that the investigation be continued under section 704(g) of the Act. Therefore, we have completed the investigation and are issuing a final determination.

Scope of Investigation

The product covered by this investigation is frozen concentrated orange juice as provided for in item 165.35 of the *Tariff Schedules of the United States*.

There are nine known producers and exporters in Brazil of frozen concentrated orange juice to the United States. We have received information from the government regarding three of these companies, Cargill Industrial Ltda. (CARGILL), Citrosuco Paulista S.A. (CITROSUCO) and Sucocitrico Cutrale S.A. (CUTRALE), which represented over 85 percent of exports of this product to the United States during a recent, representative period—calendar year 1981.

The period for which we are measuring subsidization is that fiscal year for each company which most closely corresponds to calendar year 1981. That period is March 1, 1981 to February 28, 1982 for CARGILL; and May 1, 1981 to April 30, 1982 for CITROSUCO and CUTRALE. We have referred to these periods as fiscal year 1981 in this notice. In its response, the government of Brazil provided data for the applicable periods.

Analysis of Programs

I. Programs Determined To Confer Subsidies

We have determined that subsidies are being provided to manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice under the following programs.

A. Preferential Working Capital Financing for Exports: Resolution 674

Under this program, companies are declared eligible to receive working capital loans by the Department of Foreign Commerce of the Banco Central do Brasil (CACEX). These loans may have a duration of up to one year. Firms in the frozen concentrated orange juice industry can obtain this financing at preferential rates for up to 12 percent of the net f.o.b. value of the previous year's exports. The maximum dollar eligibility under this program is established by CACEX and is stated on the "Certificado de Habilitacao" issued to recipients. Since this program is designed to promote exports and is tied to export performance, we have determined that such financing is an

export subsidy and therefore is countervailable. This program has also been found to be countervailable in previous investigations involving Brazilian products.

The net export value is calculated by taking numerous deductions from the export value of the merchandise, including agent commissions, contractual penalties or refunds, exports denominated in cruzeiros, imported inputs over 20 percent of the export value, and a deduction for the company's trade deficit as a percentage of the value of its exports.

To determine the value of loans in existence under this program during the 1981 fiscal year, we prorated any loans that straddled other fiscal years. For loans taken out in fiscal year 1980, only that portion extending into fiscal year 1981 was included in our calculation. Any fiscal year 1981 loans extending into fiscal year 1982 were similarly adjusted.

As in previous Brazilian countervailing duty cases, we are using the rate established by the Banco do Brasil for discounting sales of accounts receivable as the commercial rate for the acquisition of short-term working capital. We have used this comparison because information provided by the government of Brazil indicates that within the Brazilian financial system, working capital is normally raised through the sale of accounts receivable. In the review period the annual rate for discounting sales of accounts receivable was 59.6 percent plus a 6.9 percent tax on financial transactions (IOF). The subsidy is the difference between the interest rate available under Resolution 674 and the commercial rate.

The interest rate on loans under Resolution 674 is 40 percent, with interest payable semiannually and the principal fully payable on the due of the loan. The effective rate of interest for these loans is 44 percent. These loans are also exempt from the IOF. Therefore, the differential between these two types of financing is 22.5 percent. Multiplying this differential by the amount of preferential financing received and dividing the result by the value of exports, we calculated a subsidy of 1.64 percent *ad valorem*.

On February 11, 1983, the government of Brazil notified the Department that the Banco do Brasil rate for discounting accounts receivable had increased from 59.6 percent to 72 percent effective January 3, 1983. In addition, effective January 11, 1983, the tax on financial transactions was reduced from 6.9 percent to 4.6 percent. These changes result in a subsidy rate differential of

32.6 percent rather than 22.5 percent as stated above. Consequently, since the rate established for purposes of the suspension agreement is prospective, we will use 32.6 percent as the applicable differential in determining the net subsidy rate which must be offset by an export tax under the terms of the agreement.

B. Income Tax Exemption for Export Earnings

Exporters of frozen concentrated orange juice are eligible to participate in this program, under which the percentage of their profit attributable to export revenue is exempt from income tax. To arrive at this percentage, export revenue is divided by total revenue. The amount of profit exempt from the income tax is then multiplied by the 35 percent corporate income tax rate to determine the amount of the benefit. Since the program is designed to promote exports and is tied to export performance, we have determined that it is an export subsidy and therefore is countervailable. This program has also been found to be countervailable in previous investigations involving Brazilian products.

In a program of this kind, benefits cannot be determined with finality until the books are closed sometime in the following year. Therefore, we must look at fiscal year 1980 income tax returns to determine if any benefit was received in fiscal year 1981. All three companies received benefits under this program in fiscal year 1981. By dividing the benefit received by the value of exports of the companies under investigation, we calculated a subsidy of 1.13 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We have determined that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice under the following programs.

A. Exemption From State Value-Added Tax (ICM)

The state value-added tax (ICM) is applicable only to domestic sales of frozen concentrated orange juice. Export transactions are exempt from such taxation. The exemption of indirect taxes levied on the value added on exported goods does not constitute a countervailable benefit under either section 303 or section 701 of the Act.

B. Exemption From Federal Industrialized Products Tax (IPI)

The federal IPI value-added tax is applicable only to domestic sales of

frozen concentrated orange juice. Export transactions are exempt from such taxation. The exemption of indirect taxes levied on the value added on exported goods does not constitute a countervailable benefit under either section 303 or section 701 of the Act.

III. Program Determined Not To Be Used

We have determined that the following program was not used by the manufacturers, producers, or exporters in Brazil of frozen concentrated orange juice.

A. Federal Industrialized Products Tax (IPI) Export Credit Premium

The IPI export credit premium program was suspended on December 7, 1979. When the IPI export credit premium was reinstated on April 1, 1981, the orange concentrate industry was specifically excluded from receiving the benefits of this program (Ministry of Finance Ordinance No. 78).

IV. Program Determined To Be no Longer in Existence

We have determined that the following program is no longer in existence.

A. State Value-Added Tax (ICM) Export Credit Premium

This program, under which Brazilian companies were eligible for an overrebate of a state value-added tax on goods destined for export, was eliminated by Convention 01-79, published January 12, 1979.

Verification

In accordance with section 776(a) of the Act, we have verified data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with company and government officials and inspection of manufacturer's records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). There was no request of a public hearing. In accordance with the Department's regulations (19 CFR 355.34(a)), written views concerning the preliminary determination have been received and considered. All comments received were addressed in the notice of suspension of this investigation (48 FR 8839).

Suspension of Liquidation

The suspension of liquidation of entries of frozen concentrated orange juice pursuant to the preliminary

affirmative determination was terminated upon publication of the notice of suspension of the investigation.

ITC Notification

In accordance with Section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine within 45 days of the publication of this notice whether imports of frozen concentrated orange juice from Brazil are materially injuring, or are threatening to materially injure, a U.S. industry. If the ITC determines that material injury, or threat or material injury, does not exist, the agreement will have no force or effect and this investigation will be terminated. However, if the ITC determines that such injury does exist, the suspension agreement will remain in force, and we will not issue a countervailing duty order as long as the requirements of section 704(f)(3)(B) of the Act are met.

This determination is published in accordance with section 705(d) of the Act.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

May 24, 1983.

[FR Doc. 83-15021 Filed 6-3-83; 8:45 am]

BILLING CODE 3510-25-01

APPENDIX B

COMMISSION'S NOTICE OF INSTITUTION

FOR FURTHER INFORMATION CONTACT:
David Coombs, Office of Investigations,
U.S. International Trade Commission
(202-523-1376).

SUPPLEMENTARY INFORMATION

Background

On July 14, 1983, the Commission determined, pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)), that an industry in the United States was threatened with material injury by reason of subsidized imports of frozen concentrated orange juice from Brazil. The effect of that determination was to leave in effect a suspension agreement between the United States and Brazil whereby the Brazilian Government assesses a tax on exports of frozen concentrated orange juice to the United States equal to the amount of the subsidy found by Commerce. The suspension agreement was published in the Federal Register on March 2, 1983 (48 FR 8839) and Commerce's final subsidy determination was published on June 8, 1983 (48 FR 25245).

On May 31, 1984, the Commission received a request to review its affirmative determination in investigation No. 701-TA-184 (Final) pursuant to section 751(b) of the Tariff Act of 1930. The request was filed by Wald, Harkrader & Ross on behalf of the following Brazilian producers and exporters of frozen concentrated orange juice: Sucocitrico Catrale, SA; Citrosuco Paulista, SA; and Cargill Industrial, Ltda. On June 20, 1984, the Commission requested written comments in the Federal Register (49 FR 25319) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. On August 21, 1984, after reviewing comments received in response to that request, the Commission determined that the alleged changed circumstances were sufficient to warrant a review investigation.

The review investigation will be conducted in accordance with § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)). The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of frozen concentrated orange juice from Brazil if the countervailing duty order regarding such merchandise were to be revoked. Pursuant to § 207.45(b) of the Commission's Rules of Practice and Procedure, the 120-day period for completion of this investigation begins

on the date of publication of this notice in the Federal Register.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on October 19, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a public hearing in connection with this investigation beginning at 10:00 a.m., on November 5, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 23, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 11:00 a.m., on October 30, 1984, in room 114 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 30, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis

[Investigation No. 751-TA-10]

Frozen Concentrate Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. 701-TA-184 (Final), Frozen Concentrated Orange Juice from Brazil.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review its determination in investigation No. 701-TA-184 (Final). The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of frozen concentrated orange juice from Brazil if the countervailing duty order regarding such merchandise were to be modified or revoked. Frozen concentrated orange juice is provided from in item 165.35 of the Tariff Schedules of the United States.

EFFECTIVE DATE: August 29, 1984.

of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 13, 1984.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before October 30, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A, C and E (19 CFR Part 207), and Part 201, Subpart A through E (19 CFR Part 201).

Authority: This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45)

By order of the Commission.

Issued: August 21, 1984.

Kenneth R. Mason,
Secretary

APPENDIX C

WITNESSES APPEARING AT THE HEARING

TENTATIVE CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Frozen Concentrated Orange Juice
from Brazil

Inv. No. : 751-TA-10

Date and time : November 5, 1984 - 10:00 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

Parties in opposition to the application for review of the
determination of injury:

Barnes, Richardson & Colburn--Counsel
Washington, D.C.
on behalf of

Florida Citrus Mutual

Bobby F. McKown, Executive Vice President

Economic Panel:

Ms. Sunne Brandmeyer

Dr. Dan L. Gunter

Edward E. Martin

William Raley, Grower

Robert Freeman, Grower

Philip Herndon, Grower/Processor

James L. Lundquist)
Matthew T. McGrath) --OF COUNSEL

Parties in support of the application for review of
the determination of injury:

Wald, Harkrader & Ross--Counsel
Washington, D.C.
on behalf of

Branco Peres Citrus S/A
Cargill Citrus Ltda
Citro-Mojiana Ltda
Citrosuco Paulista S/A
Citrovale S/A
Central Citrus S/A Industria E Commercica
Frutene Industria De Frutas Do Nordeste S/A
Frutesp S/A Agro Industrial
Frutos Tropicais S/A
Frutropic S/A
Sucocitrico Cutrale S/A
Sucorrico S/A Industria E Commercica

Dulio Bento, Administrative Director, ABRASSUCOS

Schnittker Associates, Washington, D.C.

John A. Schnittker, President

John M. Schnittker

Noel Hemmendinger)
Royal Daniel, III)--OF COUNSEL
Ms. Lucy F. Reed)

APPENDIX D
EXCERPTS FROM THE TSUSA

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1984)

SCHEDULE 1. - ANIMAL AND VEGETABLE PRODUCTS
Part 12. - Beverages

Page 1-79

1 - 12 - A

G S P	Item	Stat. Suf- fix	Articles	Units of Quantity	Rates of Duty		
					1	LDDC	2
			<p align="center">PART 12. - BEVERAGES</p> <p><u>Part 12 headnotes:</u></p> <p>1. This part covers only products which are fit for use as beverages or for beverage purposes.</p> <p>2. The standard for determining the proof of brandy and other spirits or liquors of any kind when imported is the same as that which is defined in the laws relating to internal revenue. The Secretary of the Treasury, in his discretion, may authorize the ascertainment of the proof of wines, cordials, or other liquors and fruit juices by distillation or otherwise, when it is impracticable to ascertain such proof by the means prescribed by existing law or regulations.</p> <p>3. The duties prescribed on products covered by this part are in addition to the internal-revenue taxes imposed under existing law or any subsequent Act. The duties imposed on products covered by this part which are subject also to internal-revenue taxes are imposed only on the quantities subject to such taxes; except that, in the case of distilled spirits transferred to the bonded premises of a distilled spirits plant under the provisions of section 5232 of the Internal Revenue Code of 1954, the duties are imposed on the quantity withdrawn from customs custody.</p> <p>4. Provisions for the free entry of certain samples of alcoholic beverages are covered by part 5 of schedule 8.</p> <p align="center">Subpart A. - Fruit Juices</p> <p><u>Subpart A headnotes:</u></p> <p>1. The products described in this subpart are covered herein whether or not containing ethyl alcohol, but any such products which are also described in subpart C or D of this part are classifiable in said subpart C or D.</p> <p>2. For the purposes of this subpart, a concentrated juice may be in liquid, powdered, or solid form.</p>				

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1984)

age 1-80

SCHEDULE 1. - ANIMAL AND VEGETABLE PRODUCTS
Part 12. - Beverages

- 12 - A

85.15 - 165.35

G S P	Item	Stat. Suf- fix	Articles	Units of Quantity	Rates of Duty		
					1	LDDC	2
			<p>3. For the purposes of this subpart --</p> <p>(a) the term "gallon" in the "Rates of Duty" column of the provisions applicable to fruit juices means gallon of natural unconcentrated juice or gallon of reconstituted juice;</p> <p>(b) the term "reconstituted juice" means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States; and</p> <p>(c) the term "Brix value" means the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid.</p> <p>4. In determining the number of gallons of reconstituted fruit juice which can be obtained from a concentrate, the degree of concentration shall be calculated on a volume basis to the nearest 0.5 degree, as determined by the ratio of the Brix value of the imported concentrated juice to that of the reconstituted juice, corrected for differences of specific gravity of the juices. Any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural unconcentrated juice.</p> <p>5. In determining the degree of concentration of mixed fruit juices (item 165.65), the mixture shall be considered as being wholly of the component juice having the lowest Brix value.</p> <p>Subpart A statistical headnote:</p> <p>1. For the purposes of statistical reporting in this subpart, the term "gallon" in the "Units of Quantity" column means gallon of natural unconcentrated juice or gallon of reconstituted juice (as defined in headnote 3(b) above).</p> <p>-----</p> <p>Fruit juices, including mixed fruit juices, concentrated or not concentrated, whether or not sweetened:</p> <p>Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:</p> <p>165.15 00 Apple or pear..... Gal..... Free 1/ 5c per gal. 1/</p> <p>165.25 Citrus fruit:</p> <p>20 Lime..... Gal. 10c per gal. 1/ 70c per gal. 1/</p> <p>40 Not concentrated..... Gal.</p> <p>Concentrated..... Gal.</p> <p>Other:</p> <p>165.30 Not concentrated..... Gal. 20c per gal. 1/ 70c per gal. 1/</p> <p>50 Orange..... Gal.</p> <p>80 Other..... Gal.</p> <p>165.35 Concentrated..... Gal. 35c per gal. 1/ 70c per gal. 1/</p> <p>40 Orange..... Gal.</p> <p>50 Lemon..... Gal.</p> <p>80 Other..... Gal.</p>				

1/ Imports under this item may be subject to Federal Excise Tax (26 U.S.C. 5001 and 5041) as follows:

- A) If containing distilled spirits, a tax of \$10.50 per proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.
- B) If containing wine, a tax of --
- 1) 17c per wine gallon on still wines containing not more than 14% of alcohol by volume;
 - 2) 67c per wine gallon on still wines containing more than 14% and not exceeding 21% of alcohol by volume;
 - 3) \$2.25 per wine gallon on still wines containing more than 21% and not exceeding 24% of alcohol by volume;
 - 4) \$3.40 per wine gallon on champagne and other sparkling wines; and
 - 5) \$2.40 per wine gallon on artificially carbonated wines.

APPENDIX E

PROJECTED LEVELS OF SHIPMENTS, PRICES AND IMPORTS OF FCOJ, AND
ECONOMETRIC ANALYSIS OF DEMAND, SUPPLY, AND PRICES OF FCOJ

This appendix is divided into three sections. The first section provides projections of domestic shipments and imports of frozen orange juice concentrate from Brazil under alternative scenarios. These projections are based largely upon the results of an econometric analysis performed by the Commission staff. A general discussion of the analysis is presented in the second section of the appendix, and a technical description of the equations is provided in the final section.

Projections of domestic shipments, prices, and imports

The four sets of projections of U.S. shipments, prices, and imports of FCOJ are based upon differing prospects for the production of Florida oranges during the next three seasons and upon varied pricing strategies by Brazilian suppliers of imported concentrate. ^{1/} Case I proceeds on the assumption that no freezes will occur during any of the next three crop years, and that output of oranges will expand in all years. Cases II, III, and IV allow for the effects of a severe freeze at the beginning of the 1986/87 season. Cases III and IV also allow for the effects of price reductions by Brazilian suppliers. In all instances it is assumed that the overall demand for FCOJ will increase during each of the next three years as a result of moderate increases in consumer income.

If output of fresh oranges increases during each of the next three crop years as projected by Florida Citrus Mutual, prices of FCOJ will decrease significantly, domestic shipments will increase, and imports of concentrate from Brazil will decline sharply. Under this first scenario, the rise in production from 117 million boxes in 1983/84 to 168 million boxes in 1986/87 will result in an increased availability and lower price of domestic oranges. Because of this lower input cost to processors, the price of domestic FCOJ will decline from \$4.80 per dozen 6-ounce cans in 1983/84 to \$4.11 in 1986/87 (table E-1). The increase in the quantity of FCOJ demanded as a result of the lower price will cause domestic shipments to increase from less than 900 million gallons in 1983/84 to nearly 1.1 billion in 1986/87. Because of the availability and low prices of domestic oranges, processors will cut back on their purchases of imported concentrate from Brazil. Imports of the Brazilian concentrate are projected to decline from an estimated 467 million gallons in 1983/84 to only 161 million in 1986/87. However, since freezes occurred in three out of the last four seasons, this scenario of three freeze-free seasons may be too optimistic.

^{1/} While the projections are based upon parameter estimates that were developed from historical data, they do not represent precise solutions of a complete econometric model of the industry. The methodology employed in developing the projections is described near the end of the final section of this appendix.

The second set of projections allows for the effects of a severe freeze at the beginning of the 1986/87 season that causes output in that year to decline to 130 million boxes instead of increasing to 168 million boxes. 1/ As a result of the freeze and decline in output of domestic oranges the price of FCOJ would climb back up to a level of \$4.87 per dozen 6-ounce cans in 1986/87 instead of falling to \$4.11. Domestic shipments would only reach 1,028 billion gallons instead of rising to 1,093 billion, and imports of concentrate from Brazil would increase to 361 million gallons instead of falling to 152 million.

1/ This estimate was developed by Schnittker Associates.

Table E-1.--Projected levels of production, imports, domestic shipments, and price of FCOJ for crop years 1982/83 to 1986/87

(Production in million boxes; imports/shipments in million gallons)					
Item	1982/83 <u>1/</u>	1983/84 <u>2/</u>	1984/85	1985/86	1986/87
<u>Case I--No projected domestic freeze</u>					
Production of oranges-----	139.6	117	123	150	168
Imports of Brazilian concentrate-----	349.1	467	455	232	161
Domestic shipments of FCOJ--	942	888	937	1,023	1,093
Domestic price of FCOJ per box-----	\$3.95	\$4.80	\$4.79	\$4.36	\$4.11
<u>Case II--Projected domestic freeze in 1986/87</u>					
Production of oranges-----	139.6	117	123	150	130
Imports of Brazilian concentrate-----	349.1	467	455	232	361
Domestic shipments of FCOJ--	942	888	937	1,023	1,028
Domestic price of FCOJ per box-----	\$3.95	\$4.80	\$4.79	\$4.36	\$4.87
<u>Case III--Projected domestic freeze in 1986/87; Brazil lowers prices by 4 percent in 1984/85</u>					
Production of oranges-----	139.6	117	123	150	130
Imports of Brazilian concentrate-----	349.1	467	489	249	388
Domestic shipments of FCOJ--	942	888	948	1,034	1,039
Domestic price of FCOJ per box-----	\$3.95	\$4.80	\$4.67	\$4.23	\$4.75
<u>Case IV--Projected domestic freeze in 1986/87; Brazil lowers prices by 10 percent in 1984/85</u>					
Production of oranges-----	139.6	117	123	150	130
Imports of Brazilian concentrate-----	349.1	467	566	288	527
Domestic shipments of FCOJ--	942	888	971	1,057	1,062
Domestic price of FCOJ per box-----	\$3.95	\$4.80	\$4.40	\$3.96	\$4.44

1/ Actual.

2/ Estimated.

Source:

The third and fourth scenarios allow for the freeze in the 1986/87 season and also allow for the effects of price reductions by Brazil on imported concentrate. In case III, it is assumed that the export tax on Brazilian concentrate will be repealed at the beginning of the 1984/85 season, and that this will induce Brazilian suppliers to reduce the price of imported concentrate by 4 percent. As a result of this action, cash prices received by growers of domestic oranges would decline, since the imported concentrate from Brazil would be an increasingly attractive substitute in the production of FCOJ. During the 1984/85 season the price of FCOJ would decrease to \$4.67 instead of remaining at \$4.79 and shipments of FCOJ would be slightly higher. Imports would increase to 489 million gallons instead of declining to 455 million gallons. If the 4-percent price reduction remained in effect during 1985/86 and 1986/87 the price of FCOJ would continue to be lower throughout this period, and domestic shipments of FCOJ and imports of Brazilian concentrate would remain higher. If Brazil discontinued the price reduction as a result of the freeze, imports, shipments, and the domestic price of FCOJ in 1986/87 would be the same as in Case II.

Case IV allows for the effects of a 10-percent price reduction by Brazil at the beginning of the 1984/85 season. As shown in the table, the decline in the domestic price of FCOJ would be greater than with a 4 percent reduction in import prices, and domestic shipments and imports would both be higher in all crop years.

The econometric model

The econometric model which was used for the projections in the previous section was developed by the staff as an aid in understanding the economic interrelationships within the U.S. market for FCOJ. ^{1/} The analysis attempted to answer three questions. How are prices and production of fresh oranges established? What factors influence imports of FCOJ from Brazil? And finally, how are prices and shipments of domestic FCOJ determined? The quantitative estimates that resulted from researching these questions provided evidence of how changes in imports and import prices affect the domestic FCOJ market.

Fresh oranges.--Since fresh oranges are the main input used in the production of FCOJ, fluctuations in prices and production of this product have a significant effect on prices and shipments of FCOJ. But an analysis of the market for oranges is somewhat complicated by the fact that the major portion of the oranges used in producing FCOJ are shipped to processors under cooperative or participation agreements. As a result, only about 15 percent of the oranges shipped to processors involve cash transactions. However, increases or decreases in the prices that result from these cash transactions are thought to be good indicators of the scarcity or abundance of this product in relation to demand in a given season.

^{1/} All of the estimated equations were developed from crop-year data for 1964/65 through 1981/82.

The regression analysis tested three commonly held observations concerning cash prices paid by processors for fresh oranges. It was believed that the average cost per pound solid of the fresh oranges used in making FCOJ could be largely explained by production levels of fresh oranges, prices of imported FCOJ from Brazil, and a time trend.

The regression results were consistent with the assumptions discussed above. The cost per pound solid of fresh oranges was found to be negatively related to the output of fresh oranges, and positively related to the price of imported concentrate from Brazil and the time trend. All three of the explanatory variables were statistically significant at the 95-percent confidence level or higher. The estimated coefficients from the regression indicate that a 1-percent decline in output during a given season would result in a 0.9-percent increase in the cost of oranges. They also show that a 1-percent decline in the cost of imported concentrate from Brazil would result in a 1.6-percent decline in the price of fresh oranges.

Although prices of fresh oranges are determined by short-term supply and demand conditions, production of oranges in a given season was thought to be determined solely by the amount of fruit-bearing acreage, and by the effects of freezes. Therefore, the quantities of oranges used in the production of FCOJ were regressed on fruit-bearing acreage and on a qualitative variable which was intended to measure the effects of the severe freeze that occurred during the 1981/82 crop year. The results, which were statistically significant at the 99-percent confidence level, indicated that the production of oranges is positively related to the acreage variable. However, attempts to quantify the effects of the freeze on production were not successful.

Imports of FCOJ from Brazil.--The model also attempted to measure the factors affecting the demand for imports of FCOJ from Brazil. It was believed that demand for this concentrate increases with reductions in its price and decreases with increases in its price. It was also thought that demand for imported FCOJ increases when prices of domestically produced oranges increase, and decreases when the price of oranges decreases. Finally, it was thought that demand for this imported concentrate has tended to increase over time as a result of the growth in demand for FCOJ.

These assumptions were tested by regressing imports of FCOJ from Brazil on the ratio of the import price to the cost per box of oranges and a time trend. The results indicated that the demand for imported FCOJ is highly sensitive to changes in the relative price variable. According to the estimates, a 1-percent increase in the ratio of the import price to the cost of oranges would result in a 2.4-percent decline in imports. The estimates also showed that imports have a tendency to increase over time. The relative-price variable and the time-trend variable were both statistically significant at the 95-percent confidence level.

The FCOJ market.---The final part of the analysis focused on the factors determining the levels of total shipments, and the prices received by processors for FCOJ. Two regression equations were estimated and the results were consistent with the underlying hypothesis of a market that operates according to demand and supply assumptions. The first equation indicated that demand for FCOJ is negatively related to the price of FCOJ in retail cans and is positively related to real income in constant 1972 dollars. The second equation indicated that the supply of FCOJ, which was measured by total shipments, is directly related to the price of FCOJ in retail containers, but varies inversely with the cost per box of fresh oranges. 1/ All of the explanatory variables in both equations were statistically significant at the 99-percent confidence level or higher.

The coefficients for the price variables in the estimated equations suggest that the supply of FCOJ is highly sensitive to changes in price, but that the demand for FCOJ is fairly price inelastic. 2/ The results show that a 1-percent increase in the price of FCOJ would lead to a 3-percent increase in the quantity supplied. However, they also suggest that a 1-percent increase in price would cause the quantity demanded to decrease by only 1/2 percent. This indicates that processors would be likely to benefit from a price increase, because gains in revenue would more than offset losses in volume that would result from the higher prices.

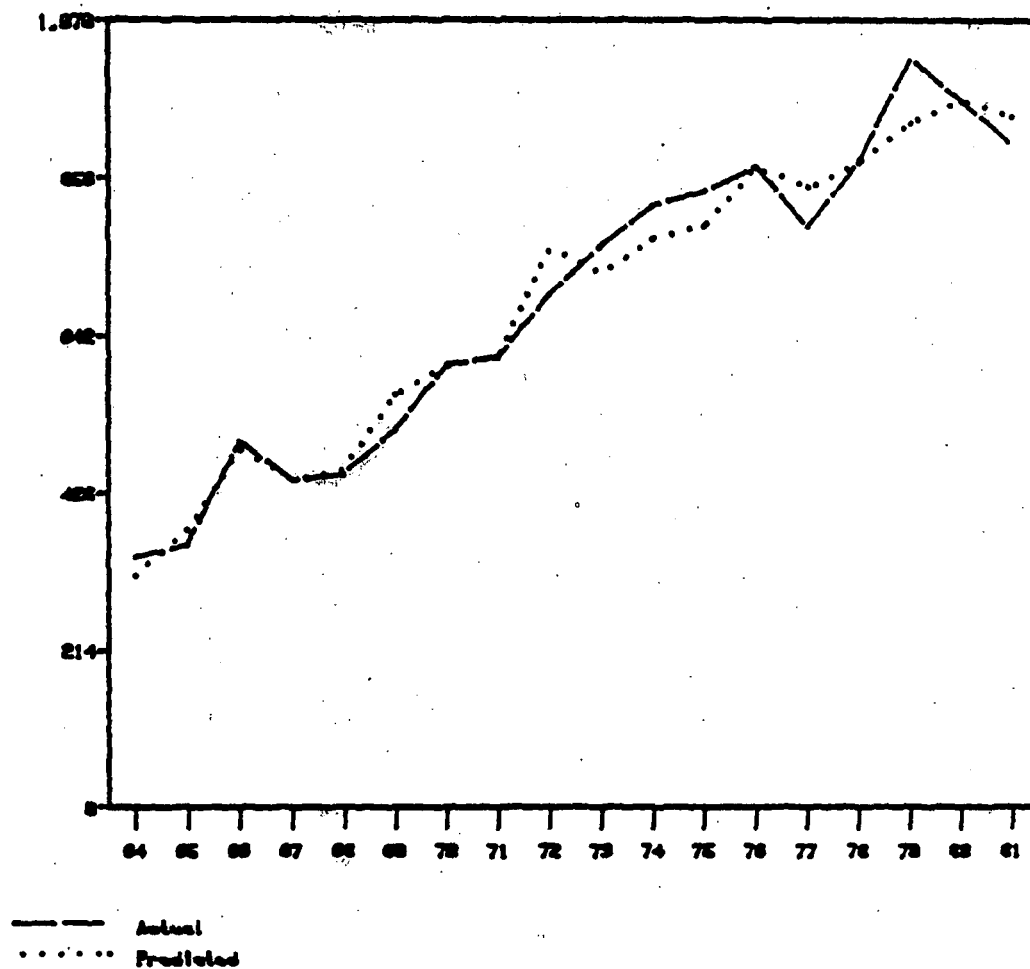
Besides obtaining estimates of price elasticities, it was also possible to relate price levels and quantities of shipments of FCOJ to costs of oranges and levels of real disposable income. The results show that, on average, a 1-percent increase in real disposable income would lead to a 2-percent increase in total shipments and a 1-percent increase in the price of FCOJ, and that a 10-percent increase in the cost of oranges would result in a 5-percent increase in price, and a 2-percent decline in total shipments. Predicted and actual levels of prices and of shipments are shown in figures 1 and 2.

1/ The shipment variable includes domestic shipments plus exports. However, exports consistently amounted to 5 percent or less of total shipments during this period.

2/ Despite this relatively inelastic demand by retailers, institutions, and other intermediate buyers, studies have shown that demand at the consumer level is much more price elastic. Researchers have generally found that a 1-percent increase in the price of FCOJ would result in a decline of slightly more than 1 percent in the quantity demanded. A fairly recent study of consumer demand in the orange juice industry by R. Ward and D. Tilley entitled "Time Varying Parameters with Random Components: The Orange Juice Industry," was published in the December 1980 issue of the Southern Journal of Agricultural Economics.

Million
gallons

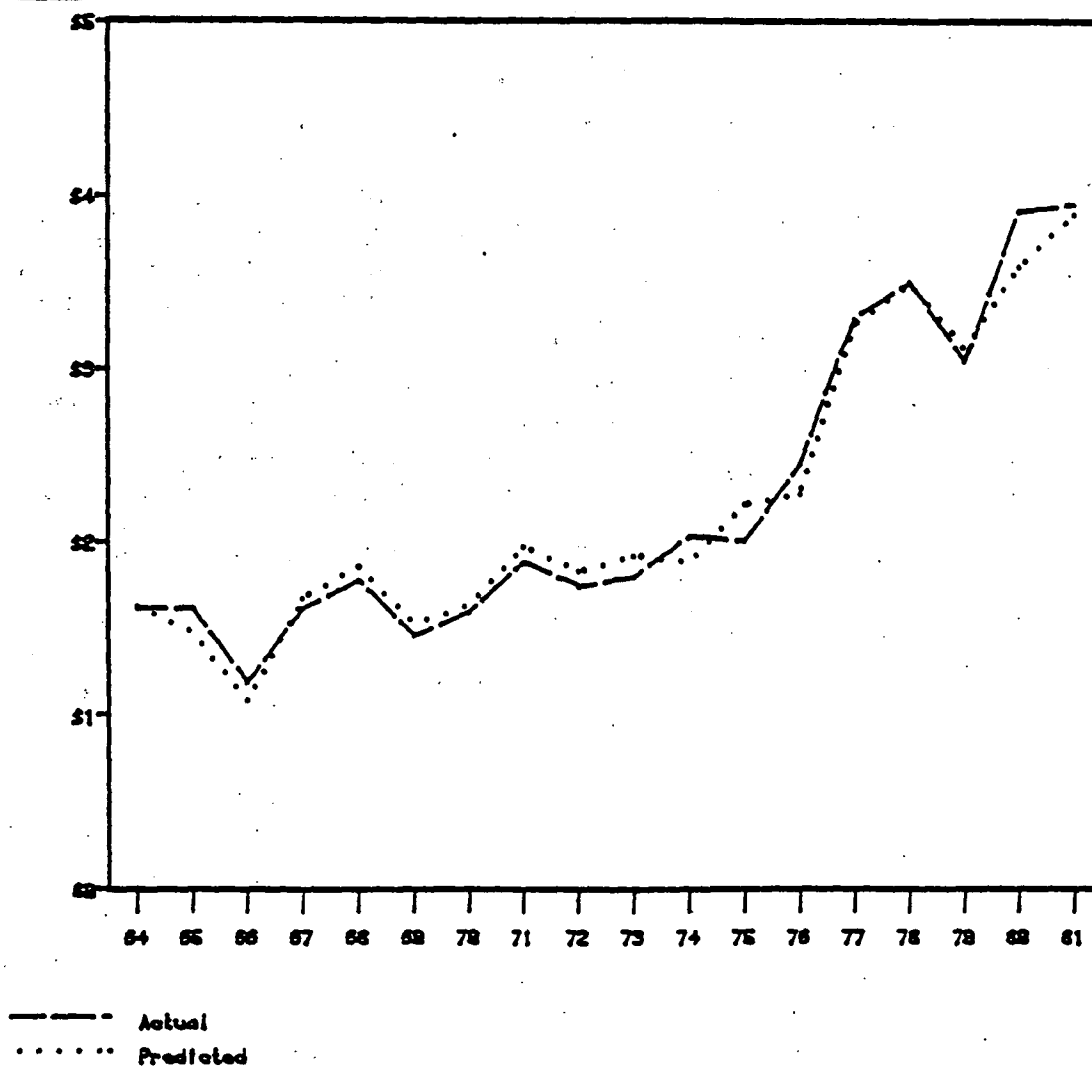
Figure 1, --FCOJ: Actual and predicted
by crop years, 1964/65 through 1981/82.



Source: Compiled from data supplied by the Florida Department of Citrus, the U.S. Department of Commerce, and from estimates made by the staff of the U.S. International Trade Commission.

Per dozen
6-ounce
cans

Figure 2.--FCOJ: Actual and predicted
by crop years, 1964/65 through 1981/82.



Source: Compiled from data supplied by the Florida Department of Citrus, the U.S. Department of Commerce, and from estimates made by the staff of the U.S. International Trade Commission.

Technical description of regressions

This section presents a technical discussion of the regressions. All of the equations were specified in a log-linear form. As a result, the estimated coefficients can usually be interpreted as elasticities.

The analysis began with the hypothesis that shipments of FCOJ and prices received by processors are simultaneously determined by a demand equation and a supply equation. It was believed that the quantity of shipments demanded by retailers and other purchasers, which is represented by Q_{doj} in expression (1) below is negatively related to its price, P_{oj} , measured in retail containers, and is positively related to Y_d which represents real disposable income in constant 1972 dollars. It was also believed that the quantity supplied, Q_{soj} is directly related to its own price, but is negatively related to the cost per box of the oranges used in making FCOJ. At the market clearing price, the quantity of shipments demanded and the quantity supplied are equal.

$$(1) \ln Q_{doj} = \ln A_1 + B_1 \ln P_{oj} + B_2 \ln Y_d$$

$$(2) \ln Q_{soj} = \ln A_2 + B_3 \ln P_{oj} + B_4 Z_o$$

Since the price variable was included in both equations, the two stage least squares procedure was used to estimate these equations instead of the more standard ordinary least squares method. Although two stage least squares does not eliminate the problem of bias in this two equation system, it does produce consistent estimates of the coefficients.

The results of the two regressions are presented in equations (3) and (4) below. In these equations, the variable, $\ln P_{oj}$ represents the estimate of $\ln P_{oj}$ that was generated in the first stage of the two stage estimation procedure. All of the coefficients in both equations had the expected signs, and all variables were significant at the 99 percent confidence as determined from the t values that are shown below the estimated coefficients. The R^2 values of .976 for the demand equation and of .970 for the supply equation indicate that both equations explained a large part of annual variations in shipments. The Durbin-Watson statistic indicates that both regressions were relatively free of autocorrelation. The estimated coefficients of -.462 for $\ln P_{oj}$ and 2.752 for $\ln Y_d$ suggests that the demand for orange juice is

fairly price inelastic, but is highly income elastic. The coefficients of 3.007 for $\ln P_{oj}$ and of -1.824 for $\ln Z_o$ indicate that the supply of FCOJ is highly price elastic, and is also sensitive to changes in the cost of oranges.

$$(3) \ln Q_{oj} = 11.694 - .462 \ln P_{oj} + 2.752 \ln Y_d + e_1$$

$$(-9.604) \quad (-5.006) \quad (14.487)$$

$$R^2 = .976$$

$$D.W. = 1.69$$

$$(4) \ln Q_{oj} = 3.125 + 3.007 \ln P_{oj} - 1.824 \ln Z_o + e_2$$

$$(4.813) \quad (5.613) \quad (-4.400)$$

$$R^2 = .970$$

$$D.W. = 2.32$$

In order to examine the effects of changes in each of the exogenous variables, Z_o and Y_d on levels of each of the endogenous variables $\ln P_{oj}$ and $\ln Q_{oj}$, reduced form equations were derived from the two estimated structural equations. Equation 5 shows that a 10-percent increase in the cost of oranges would result in a 5-percent increase in the price of FCOJ and suggests that a 1-percent increase in income would result in a 0.8-percent price increase. Equation 6 indicates that shipments of FCOJ are relatively unaffected by changes in the costs of oranges, but are highly sensitive to changes in real disposable income. Actual values of $\ln Z_o$ and $\ln Y_d$ were substituted into equations (5) and (6) to generate the predicted levels of prices and quantities that are compared with actual levels in figures 1 and 2 in this appendix.

$$(5) \ln P_{oj} = -4.272 + .526 \ln Z_o + .793 \ln Y_d$$

$$(6) \ln Q_{oj} = -9.721 - .243 \ln Z_o + 2.385 \ln Y_d$$

The market price for fresh oranges was also thought to be determined by demand and supply considerations. It was believed that the quantity of oranges demanded, q_{do} , in equation (7) below, depends upon its own price, Z_{oj} and upon Z_{ojm} , the price of imported concentrate from Brazil which is a substitute for domestic oranges in the production of FCOJ. ^{1/} It was also thought that the demand for oranges could be partly explained by a time trend that reflects the steady growth in demand for oranges as a result of rising consumption of FCOJ.

$$(7) \ln Q_{do} = \ln a_1 + b_1 \ln Z_o + b_2 \ln Z_{ojm} + b_3 \ln T$$

^{1/} The price of imported FCOJ was estimated by adding the tariff to the unit value of imports.

Output in a given crop year was believed to depend solely upon bearing acreage planted and upon the effects of crop damage resulting from freezes. In the expression below, W_0 represents acreage planted to oranges and b is a dummy variables that is intended to account for the effects of the freeze on output during the 1981/82 crop year. The coefficient of W_0 was expected to be positive, and the coefficient of D was thought to be negative.

$$(8) \quad \ln Q_{so} = \ln a_2 + b_4 \ln W_0 + b_5 D$$

$$(9) \quad \ln Q_{so} = \ln Q_{do}$$

If the supply of oranges is price inelastic, fluctuations in output will affect the price of oranges, but fluctuations in prices will have no effect on the quantity of oranges supplied in a given crop year. Since the quantity of oranges demanded is equal to the quantity supplied at the market price, a price equation to be used for estimation can be obtained by substituting $\ln Q_{so}$ in place of $\ln Q_{do}$ in (7), and rearranging terms to express Z_0 as a function of the level of output of oranges, the price of imported concentrate, and the time trend as shown in (10) below. Since b_1 should be negative and b_2 and b_3 should be positive, it was expected that the regression would result in a negative coefficient for $\ln Q_s$, and in positive coefficients for $\ln Z_{ojm}$ and for $\ln T$.

$$(10) \quad \ln Z_0 = \frac{-\ln a_1}{b_1} + \frac{1}{b_1} \ln Q_{so} - \frac{b_2}{b_1} \ln Z_{ojm} - \frac{b_3}{b_1} \ln T$$

The regression estimates conformed to expectations. All estimated coefficients had the expected signs, and all were statistically significant at the 95-percent confidence level or higher as shown in (11) below. The fit of the equation was fairly good as measured by the R^2 value of .869, and the Durbin-Watson statistic of 2.19 indicated that the estimates were largely free of autocorrelation. The estimated coefficients indicate that a 1.0 percent

$$(11) \ln Z_o = 3.772 - .925 \ln Q_{so} + 1.568 \ln Z_{ojm} + .291 \ln T + e_3$$

$$(2.426) (-2.565) \quad (5.614) \quad (2.160)$$

$$R^2 = .869$$

$$D.W. = 2.19$$

decline in output would result in a 0.9 percent increase in the price of oranges and that a 1-percent decline in the price of imported concentrate would result in a 1.6 percent decrease in orange prices.

It was also possible to derive the structural parameters of the initial demand equation from this reduced form regression equation, even though tests of significance could not be applied to these parameters. The results indicated a value for b_1 , the price elasticity of demand of 1.1. This suggests that the demand by processors for fresh oranges is moderately sensitive to small changes in price. The coefficient for b_2 of 1.45 suggests that the demand for domestic oranges is even more sensitive to upward and downward movements in the price of imported concentrate from Brazil.

The results of regressing the acreage variable and the dummy variables on the production of oranges were not particularly successful. The acreage variable was statistically significant at the 99-percent confidence level, but the dummy variable was insignificant. The R^2 value was only .451 and the Durbin-Watson statistic of .758 pointed to the presence of positive autocorrelation. Applications of the Cochrane-Orcutt technique did not improve the results.

$$(12) \ln Q_{oj} = -5.047 + 1.578 \ln W_o - .039D + e_4$$

$$(-1.726) \quad (3.431) \quad (-.191)$$

$$R^2 = .451$$

$$D.W. = .758$$

It was believed that the demand for imported concentrate from Brazil, Q_{ojm} , tends to increase over time, and is negatively related to the import price, Z_{ojm} , but is positively related to the cost of oranges. Regressing the volume of imports on a time trend, and on the ratio of the import price to the cost of oranges supported this hypothesis. The coefficients for both variables had the expected signs, and both were statistically significant at the 99-percent confidence level. The coefficient of -2.440 for the relative price variable indicates that the demand for imports is highly sensitive to changes in the ratios of the prices of these competing products.

$$(13) \quad \ln Q_{ojm} = 8.194 - 2.440 \ln \frac{Z_{ojm}}{Z_0} + 1.326 \ln T + e_5$$

(10.873) (-3.117) (4.882)

$$R^2 = .797$$

$$D.W. = 1.78$$

Use of econometric results in projections.--Although the projections in the first part of this appendix were not obtained by means of a direct solution of the estimated equations, the parameters were used in developing these projections. For example, with given percentage changes in production or the Brazilian price from the levels that prevailed in 1983/84, it was possible to determine the ultimate percentage changes in the domestic price of FCOJ, domestic shipments, and imports of concentrate that would result. In all scenarios it was assumed that the demand curve for FCOJ would continue to shift to the right each year as a result of an annual 2-percent increase in real disposable income.