

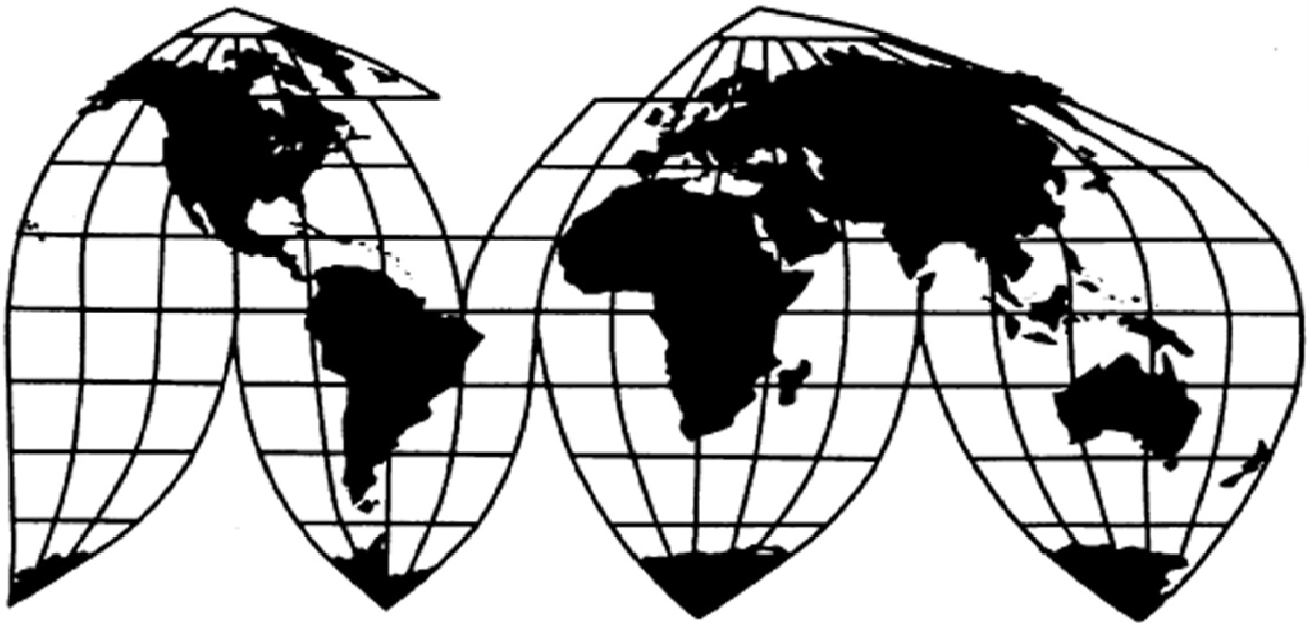
Certain Orange Juice From Brazil

Investigation No. 731-TA-1089 (Final)(Remand)

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U.S. International Trade Commission

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In February 2006, the United States International Trade Commission (“Commission”) determined that an industry in the United States was materially injured by reason of imports of certain orange juice from Brazil that were found by the Department of Commerce to be sold at less than fair value (“LTFV”).¹ Respondent Tropicana Products, Inc. appealed the Commission’s determination to the U.S. Court of International Trade. On April 12, 2007 the CIT remanded the case to the Commission and instructed the Commission to render a determination within seventy-five (75) days.

On remand, the Commission again determines that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain orange juice from Brazil sold at less than fair value.²

¹ Chairman Stephen Koplan and Commissioners Charlotte R. Lane and Shara L. Aranoff made affirmative determinations; Vice Chairman Deanna Tanner Okun and Commissioners Jennifer A. Hillman and Daniel R. Pearson made negative determinations. *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 1.

² Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun and Irving A. Williamson dissenting.

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

VIEWS OF THE COMMISSION

On April 12, 2007, the U.S. Court of International Trade (“CIT” or “the Court”) remanded the Commission’s affirmative determination in Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006).¹ Upon consideration of the Court’s remand instructions and the information in the record, as supplemented on remand, we again determine² that an industry in the United States is materially injured by reason of imports of certain orange juice from Brazil (“certain orange juice”) that the Department of Commerce has found are sold in the United States at less than fair value (“LTFV”).^{3 4 5}

I. Background

On March 21, 2006, the Commission found that an industry in the United States was materially injured by reason of LTFV imports of certain orange juice from Brazil.⁶ Respondent Tropicana Products, Inc., an importer and domestic producer, appealed the Commission’s determination. On April 12, 2007, the CIT remanded the determination to the Commission for re-examination and further explanation of certain issues. In particular, the Court directed the Commission to address (1) issues relating to the

¹ Tropicana Products, Inc. v. United States, Slip Op. 07-55 (Ct. Int’l Trade April 12, 2007) (“Slip Op.”). In the original determination, three Commissioners reached an affirmative determination, finding present material injury (then-Chairman Koplman and Commissioners Lane and Aranoff), and three reached a negative determination (then-Vice Chairman Okun and Commissioners Hillman and Pearson). The confidential version of the Commission majority’s Views is referred to as “Original Views,” and the Separate and Dissenting Views of then-Vice Chairman Okun and Commissioners Hillman and Pearson are referred to as “Dissenting Views.” The public versions of the Original and Dissenting Views are published in USITC Pub. 3838.

² Commissioner Dean A. Pinkert was not a member of the Commission at the time of the original determination. He makes his determination in this remand proceeding de novo, by weighing all of the information from the original proceeding as well as the additional information collected in this remand.

³ Chairman Pearson and Commissioner Okun do not join these views as they found, and continue to find that, a domestic industry is neither materially injured nor threatened with material injury by reason of subject imports from Brazil. In their original determinations Chairman Pearson and Commissioner Okun found that while the volume of and increase in subject imports was significant on an absolute basis, they also found that such volume was necessary to complement and supplement U.S. production. Chairman Pearson and Commissioner Okun further found that subject imports did not depress or suppress U.S. prices to a significant degree. Chairman Pearson and Commissioner Okun therefore concluded that the domestic industry was not materially injured by reason of such imports. See Dissenting Views of Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson, Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006).

⁴ Commissioner Irving A. Williamson was not a member of the Commission at the time of the original determination. He made his determination in this remand proceeding de novo, by weighing all the information from the original proceeding as well as the additional information collected in this remand. He adopts sections I and II of the Original Views regarding domestic like product, domestic industry, and related parties. On the issues of material injury and threat of injury, he adopts the original Dissenting Views of Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson. Because he reached a negative determination, he does not find it necessary to address the Court’s remand instructions.

⁵ In these remand proceedings, three Commissioners have reached affirmative determinations (Vice Chairman Aranoff and Commissioners Lane and Pinkert), and three Commissioners have reached negative determinations (Chairman Pearson and Commissioners Okun and Williamson). If the voting Commissioners “are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.” 19 U.S.C. § 1677(11).

⁶ See Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (March 2006).

shortfall in domestic production during the last year of the period of investigation; (2) opposition to the petition by the majority of processors; and (3) the factors set forth in Bratsk Aluminium Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006). On several other issues raised in litigation, the Court upheld the Commission's findings "in isolation," but noted that the Commission might wish to reexamine them when reviewing the record as a whole. These included issues relating to ultra-low pulp orange juice ("ULPOJ") imports, the alleged need for subject imports for blending and duty drawback, and the number of grower questionnaire responses.⁷

The Commission published a Federal Register notice in May 2007 reopening the record for the limited purpose of collecting information pertaining to its Bratsk analysis and soliciting written comments pertaining to the issues that were the subject of the CIT's remand.⁸ Persons who were interested parties to the original investigation and who were parties to the appeal were permitted to file comments, but were not allowed to submit any new factual information. On May 31, 2007, Petitioner Florida Citrus Mutual and Respondents Tropicana, Louis Dreyfus Citrus, Inc., Fischer S/A Agroindustria, and the Coca-Cola Company filed comments pertaining to the Commission's remand determination.

Based on our consideration of all of the information in the record, as supplemented on remand, and of the arguments raised by the parties in the original and remand proceedings, we determine that an industry in the United States is materially injured by reason of subject imports of certain orange juice from Brazil. Subject to the Views expressed herein,⁹ we adopt and incorporate in their entirety the Commission's Original Views.¹⁰

II. Consideration of the Shortfall in the Supply of Domestic Round Oranges

The Court directed the Commission to examine "all the relevant issues relating to the impact of the shortfall in the domestic production of round oranges on the domestic industry, including, but not limited to, the levels of residual demand, the inverse correlation between inventory levels of subject imports and domestic production, and the need of the domestic industry to maintain high inventories."¹¹ In addition to the volume-related aspects of these issues, the Court directed the Commission to revisit or

⁷ Slip Op. at 21, 38-40, and 40-42.

⁸ 72 Fed. Reg. 25778 (May 7, 2007). As it has in prior investigations in response to the Bratsk decision, the Commission issued questionnaires to non-subject producers of certain orange juice because it had not sought capacity, production and pricing data from non-subject producers in the original investigation. Subsequently, Respondents submitted a letter requesting that the Commission seek additional information from the importers concerning the Bratsk issue. In contrast to the decision to collect data from non-subject producers, the Commission declined to seek information from the importers, because the record already contained importer and purchaser responses to the questionnaires sent during the original investigation. The Commission concluded that these questionnaires had asked importers to provide such information relevant to a Bratsk inquiry as was within their direct knowledge and there was no reason to repeat the inquiry.

⁹ In particular, based on our consideration of the record as a whole in light of the Court's remand instructions, we have revisited some of the statements in the Original Views regarding the relationship between subject imports and demand. As discussed below, we have clarified these findings in response to the remand.

¹⁰ To the extent the dissenting Commissioners have reached different findings, we note that we have examined the record in its totality and given consideration to the arguments raised by the parties, but have come to different conclusions than the dissenting Commissioners. It is well recognized that different Commissioners can reasonably make different findings and reach different conclusions and that the possibility of drawing two inconsistent conclusions does not prevent the affirmative determination from being supported by substantial evidence. See Trent Tube Division, Crucible Materials Corp. v. Avesta Sandvik Tube AB, 975 F.2d 807, 814 (Fed. Cir. 1992); Matsushita Elec. Industrial Co. v. United States, 750 F.2d 927 (Fed. Cir. 1984).

¹¹ Slip Op. at 31.

further explain certain aspects of its determinations regarding price effects and impact that may have been affected by the Commission’s inventory-related findings. We address each of the issues in turn below.

A. Residual Demand and the Domestic Industry’s Maintenance of Inventories

To a large extent, the Court’s concerns revolved around the Commission’s discussion in the Original Views regarding “residual demand.” The Court particularly took issue with the Commission’s finding that subject imports increasingly exceeded residual demand. As the Court pointed out, the Commission “never actually determined the level of residual demand.”¹² Apparently relying on the definition of residual demand proffered by Respondent Louis Dreyfus,¹³ the Court concluded that “[w]hen so defined, the record shows that subject imports did not increasingly exceed residual demand but fluctuated from year to year” and that “in the last year of the POI, the level of subject imports did not exceed the residual demand, but was actually insufficient to meet the domestic demand.”¹⁴

The Respondents’ arguments to the Court about residual demand appear to rest on confusion regarding both our definition of that concept and how it must be applied given the facts of this case, confusion that may have been fostered by our incomplete statement in the Original Views that “[t]he parties agree, and the record confirms, that imports of certain orange juice are necessary to meet domestic demand.”¹⁵ Subsequently in the Original Views, we attempted to clarify this statement by noting that we must take inventories into consideration when analyzing the total available supply of orange juice.¹⁶ We failed, however, to fully articulate the effect of domestic inventories on residual demand and, thus, the basis for our determination that subject imports were not necessary to meet such demand.

As a general matter, we define residual demand as the difference between demand, on the one hand, and production plus available inventories, on the other. Our use of the term “available” to modify “inventories” is meant to indicate that the facts of the particular case will dictate whether all, or some portion of, the stated inventories might be brought to bear on demand within the period under consideration. To the extent that it is not possible for stated inventories to be brought to bear on demand within the period, they are not incorporated into our calculation of residual demand. We note that the Commission generally uses apparent consumption as the measure of demand for a product in the U.S. market.¹⁷

¹² Id. at 25.

¹³ As further discussed below, Louis Dreyfus defined residual demand as “the difference between the domestic consumption and juice available” and defined “juice available” as “the sum of domestic production for that year and the change in domestic inventory levels, whether positive or negative.” Slip Op. at 25.

¹⁴ Id. at 26.

¹⁵ Original Views at 17-18.

¹⁶ Id. at 20 (“Finally, Respondents argue that subject imports are at most a residual source of supply in the U.S. market to cover domestic production shortfalls, especially following the 2004 Florida hurricanes. The record does show that Brazilian subject imports tend to rise in years when Florida production falls and vice-versa. In our view, however, this simple comparison of import and production trends masks important changes in the supply/demand balance in the U.S. market over the total period examined [I]nventories of both domestic and Brazilian bulk product are significant supply factors. . . . [T]he record indicates that the amount of Brazilian subject imports held in U.S. inventory increased during the period examined, thereby exceeding the volume of imports necessary to counter domestic production shortfalls.”).

¹⁷ In this investigation, the parties do not dispute that apparent consumption is indicative of demand. See, e.g., Petitioners’ Comments at 5-6; Louis Dreyfus’s Comments at 4-5. As the Commission explained in its Original Views, domestic demand for certain orange juice is primarily a function of demand for downstream products using FCOJM and NFC, predominantly retail orange juice. Original Views at 16, citing CR at II-4; PR at II-3.

Our definition of residual demand is consistent with the statutory directive for analyzing subject import volume in 19 U.S.C. § 1677(7)(C)(i) and (iii)(I). The statute directs the Commission to consider the volume of imports “either in absolute terms or relative to production *or consumption*” and to consider “market share,” among various other factors, as relevant to the impact of the subject imports on the domestic industry.¹⁸ In addition to market share and the enumerated statutory factors (including inventories), the statute directs the Commission to evaluate any other “relevant factors which have a bearing on the state of the industry in the United States” and to do so “within the context of the . . . conditions of competition that are distinctive to the affected industry.”¹⁹ We note that we examine conditions of competition, including supply and demand, in virtually every investigation. 19 U.S.C. § 1677(7)(C)(i) and (iii)(I).

In the Original Views, the Commission discussed the relevant conditions of competition, including the role of inventories, in the supply and demand chain of the domestic orange juice market.²⁰ Between October and January, freshly harvested round oranges become available for processing into certain orange juice. Orange juice processors face significant year-to-year fluctuations in the supply of their primary input, round oranges.²¹ Fluctuations in the orange supply result from both weather conditions (e.g., freezes, hurricanes, and droughts) and other factors, including citrus diseases (e.g., Citrus Canker and Citrus Greening).²² Processors convert harvested oranges into FCOJM or NFCOJ and hold the juice in temperature-controlled storage tanks until needed by customers. Even stored this way, orange juice is perishable. The shelf life of NFCOJ is no more than 3 years, while the shelf life of FCOJM is longer.²³

Supply of certain orange juice is a function of inventories as well as crop size. Due to a variety of factors, including shelf life and storage capacity, domestic processors can supply the market for certain orange juice by drawing down their total available inventory, even in years of diminished production. When harvesting of round oranges concludes for a crop year, processors use inventories to supply the market until the next harvest begins. The record also indicates that, due to the inherent volatility in the domestic supply of round oranges, domestic producers of certain orange juice prefer to maintain some additional inventory as an insurance policy in order to reassure downstream customers that there will be an adequate supply of orange juice in the event of a poor orange crop harvest in the future.²⁴

The Commission considered the difference between U.S. apparent consumption and the juice available from domestic sources. In light of the high level of inventories maintained by the industry and the purposes for which the inventories were maintained, the Commission found that the domestic supply in any given crop year included both domestic production and inventories. If domestic supplies, including inventories, had fallen short of domestic consumption in a crop year, the Commission would have treated that shortfall as residual demand.²⁵

¹⁸ 19 U.S.C. § 1677(7)(C)(i) and (iii)(I) (emphasis supplied).

¹⁹ 19 U.S.C. § 1677(7)(C)(iii).

²⁰ Original Views at 14-17.

²¹ *Id.* at 15.

²² *Id.*

²³ Hearing Tr. at 29.

²⁴ *Id.* at 258 (“Over the POI, inventories were steadily and let me emphasize intentionally built, extending long term trends. Industry participants acknowledged the need to create substantially greater storage capacity during the past decade to protect American consumers from shortages.”) (Brinner).

²⁵ The market for subject merchandise may experience substantial uncertainty regarding the existence of residual demand in subsequent years, and imports may serve to hedge that uncertainty by providing an alternative source of supply. Hedging such uncertainty is not equivalent to being necessary to meet demand.

As described in the Court’s opinion, Louis Dreyfus has argued that “residual demand can be defined as the difference between the domestic consumption and juice available.”²⁶ It defined “juice available” as “the sum of domestic production for that year and the change in domestic inventory levels, whether positive or negative.”²⁷ Most significantly, to calculate total domestic juice available, it included in the juice available only a small portion of total available U.S. inventory, namely the amount actually withdrawn from or added to inventory in a given year. We find that this analysis understates by a significant amount the volume of domestic juice that is available in any given crop year to satisfy domestic consumption. By understating the amount of inventory that is available to satisfy domestic consumption, the analysis overstates the amount of subject imports necessary to meet the residual demand.

Louis Dreyfus ignores, and instead labels as unavailable, the major portion of total inventories from which U.S. producers can draw in order to meet demand. There is no credible support in the record for this artificial restriction on the ability of domestic producers to draw down large amounts of inventory that are readily available for sale. Thus, we reject the contention that the juice available to domestic processors from inventory must be restricted to the “change in domestic inventory levels, whether positive or negative,” between crop years.²⁸

Louis Dreyfus apparently presumes that all stock in inventory at the end of the crop year, regardless of how large, is deliberately left untouched as a “cushion.” The record does not bear this out. In fact, the evidence indicates that, beyond a certain level, specifically twenty weeks worth of inventory, domestic producers view inventories as a liability. At the hearing, the domestic industry’s economist, Ms. Warlick, on behalf of all the Petitioners (including three processors), testified that the industry needs to have only 12 weeks available at the start of the crop year to carry the processors from October to January, when freshly harvested Hamlin oranges become available for processing, although the industry “prefers” a comfort level of between 16 and 20 weeks.²⁹ Beyond 20 weeks, however, the industry views inventories as “a costly liability.”³⁰ In other words, while the evidence in the record suggests that domestic processors need 12 weeks and prefer to maintain 16 to 20 weeks of carryover stocks at the end of any given crop year, it does not follow that domestic processors need or prefer these amounts to be held in inventory constantly throughout the year, and Ms. Warlick did not testify to that effect. Furthermore, there is nothing in the record to indicate that domestic producers cannot use all of their inventory to meet demand. As Ms. Warlick testified at the hearing, however, due to differences in the

²⁶ Slip Op. at 25.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Hearing Tr. at 217. In response to questioning, Ms. Warlick stated:

COMMISSIONER PEARSON: Well, I’m glad that you raised inventories because that was getting to my next question. Is there such a thing as a normal level of carryover inventory for the U.S. orange juice market?

MS. WARLICK: It depends on what time of year.

COMMISSIONER PEARSON: Let’s look at the end of the crop year.

MS. WARLICK: Yes, October 1st. We’ve said you really need to have 12 weeks to get you to January. They prefer a comfort level of somewhere between 16 and 20.

³⁰ Hearing Tr. at 52:

MS. WARLICK: . . . We submit that at the beginning of the season, say October 1, U.S. processors need at least 12 weeks of supply to take them to January when the Hamlins are processed, and they would prefer a comfort level of between 16 and 20 weeks. However, beyond 20 weeks inventories are a costly liability.

harvest months for domestic orange varieties, the industry usually targets a minimum level of inventory as carryover stocks for the following crop year.

We find Ms. Warlick's testimony to be credible and indicative of the practice of the domestic producers. None of the Respondents questions the veracity of this testimony, although the Respondents mischaracterize her statements or point to other evidence that is not relevant to this particular point. Tropicana misstates Ms. Warlick's testimony by referring in its remand comments to "20 weeks optimum supply claimed by petitioners."³¹ As discussed above, Ms. Warlick testified that the domestic industry generally "need[s] at least 12 weeks of supply to take them to January" and would "prefer a comfort level of somewhere between 16 and 20 weeks," not that 20 weeks of supply in inventory was required or "optimum" either at the end of the crop year or any other time during the year.³² Tropicana references hearing testimony by several of Respondents' witnesses, but these witnesses merely testified about the processors' preference to maintain unspecified levels of inventories and that historically inventories tended to be higher in years with bumper crops.³³ This testimony does not rebut Ms. Warlick's quantitative assessment of the processors' target levels for carryover stocks that were "needed" versus a "comfort level."³⁴

The inventory data reflected in the questionnaire responses indicates that beginning-of-period inventory levels increased from 14.4 weeks in crop year 2001/02 to 17.7 weeks in 2002/03, then dropped slightly to 16.2 weeks in 2003/04 before rising to 24.9 weeks at the beginning of the last crop year (2004/05) covered by the POI.³⁵ These data show that the inventory levels, prior to the surge in subject imports in crop year 2004/05, corroborate Ms. Warlick's testimony that a typical and preferred beginning-of-crop-year inventory level would be below 20 weeks.

We note that U.S. beginning stocks of certain orange juice were lower and varied substantially in previous crop years, which undermines Respondents' claim regarding a "historical average" level of inventory.³⁶ For example, U.S. producers' beginning stocks were 232.8 million gallons SSE in crop year 1989/90 (11 weeks of domestic consumption), 225.4 million gallons SSE in crop year 1990/91 (10 weeks), 157.7 million gallons SSE in crop year 1991/92 (7 weeks), 170.1 million gallons SSE in crop year 1992/93 (7 weeks), 249.4 million gallons SSE in crop year 1993/94 (10 weeks), 360.4 million gallons SSE in crop year 1994/95 (15 weeks), 434.5 million gallons SSE in crop year 1995/96 (16 weeks), 417.0 million gallons SSE in crop year 1996/97 (16 weeks), 563.8 million gallons SSE in crop

³¹ Tropicana Comments at 7.

³² Hearing Tr. at 52, 217.

³³ Tropicana Comments at 6-7, citing testimony of Msrs. Freeman, Brinner, and Zellner. We give no evidentiary weight to argumentative statements of counsel that Tropicana has also cited and note in addition that those statements fail to support the contention that more than 12 weeks of inventory are ever necessary.

³⁴ To the extent the Court questioned whether the domestic industry was importing certain orange juice from Brazil to maintain a certain level of inventories (slip op. at 28), we note that the testimony of Respondent Louis Dreyfus' own witness belies that theory. Mr. Randall Freeman, the CEO of Louis Dreyfus, testified that "the inventory change from one year to another is entirely domestic. The delta is entirely domestic inventory change. The foreign component, as a percentage of it, is more or less constant because the blending requirements dictate that you have that, so the change in inventory is entirely a function of what's going on in the domestic production land. It's not a function of the imports." Hearing Tr. at 366.

³⁵ CR/PR at Table I-3A.

³⁶ CR/PR at Table IV-6. In the original determination, the Commission observed that "[b]ased on USDA data, during the period examined, the size of the U.S. inventory of certain orange juice represented approximately one-half of domestic production in any given crop year." Original Determination at 15. As noted above, however, U.S. beginning stocks of certain orange juice were far lower and varied substantially in previous crop years both in absolute terms and as a percentage of domestic production (*i.e.*, crop years 1989/1990 through crop year 2000/2001). CR/PR at Table IV-6

year 1997/98 (18 weeks), 678.7 million gallons SSE in crop year 1998/1999 (22 weeks), 533.8 million gallons SSE in crop year 1999/2000 (17 weeks), and 645.5 million gallons SSE in crop years 2000/01 (22 weeks).³⁷ Thus, the USDA data do not corroborate Respondents' assertions concerning historic inventory levels.

In determining whether there was any shortfall in domestic supply, we took into account that the industry needs 12 weeks of supply to carry over into the beginning of any given crop year. The chart below is based on the assessment that 12 weeks of beginning-of-period inventory ("B-O-P inventory")³⁸ is the amount needed.³⁹ Thus, any amount in excess of 12 weeks of inventory must be considered, along with current production levels, as available to meet domestic demand. The data demonstrate that in every year of the period examined the available domestic production plus inventories exceeded domestic consumption; therefore, there was not any residual demand that needed to be filled from non-domestic supply sources.

Crop Year	Domestic Production	B-O-P Inventories	Assume 12 Weeks Inventory Not Available for Sale	B-O-P Inventory Available for Sale	Domestic Production Plus Available Inventory	Domestic Consumption	Residual Demand
Quantity (1,000 gallons SSE)							
2001/02	1,432,162	698,464	333,683	364,781	1,796,943	1,445,959	-350,984
2002/03	1,246,761	692,163	328,260	363,903	1,610,664	1,422,460	-188,204
2003/04	1,471,334	704,509	330,651	373,858	1,845,192	1,432,822	-412,370
2004/05	1,006,642	842,139	345,642	496,497	1,503,139	1,497,781	-5,358

In crop year 2004/05, U.S. processors had 842.1 million gallons SSE in inventory at the beginning of the year.⁴⁰ As demonstrated above, the domestic industry had more than adequate inventory to satisfy domestic consumption during the final crop year (i.e., crop year 2004/05) of the period examined and more than adequate carryover stocks for the following crop year (i.e., crop year 2005/06).

Because the domestic industry had adequate combined domestic production and inventory to satisfy domestic consumption in each year of the period examined, there was no residual demand that needed to be met by subject imports at any time during the period.⁴¹ Although domestic supply was less plentiful in the final crop year following the hurricanes (i.e., crop year 2004/05), the domestic industry had more than adequate inventory in that year to make up for the production shortfall and to satisfy

³⁷ CR/PR at Table IV-6 (calculated weeks of domestic consumption).

³⁸ The end of one crop year is followed by the beginning of the next crop year. Accordingly, end-of-period inventory in one crop year is available as carryover stocks in beginning-of-period inventory in the following crop year. CR/PR at Table III-15.

³⁹ For purposes of these calculations, the weekly consumption used to derive the targeted beginning inventory level is based on the actual domestic consumption in the indicated crop year.

⁴⁰ CR/PR at Tables IV-6 & I-3A.

⁴¹ We note that U.S. producers' exports of certain orange juice were relatively low during the period examined, falling from 181.2 million gallons SSE in crop year 2001/02 to 112.5 million gallons SSE in crop year 2004/05. CR/PR at Table IV-6. Even taking into account these exports of certain orange juice, we find that subject imports were not needed to satisfy residual demand in crop years 2001/02, 2002/03, and 2003/04 and that subject imports entered the U.S. market at a higher level than was necessary to satisfy domestic consumption in crop year 2004/05.

domestic consumption while still carrying forward an ending inventory of 12 weeks into the 2005/06 crop year.⁴²

B. Inverse Correlation Between Inventory Levels of Subject Imports and Domestic Production

As to the relationship between subject import inventory levels and domestic production, the Court opined that “the level of subject imports held in domestic inventory was inversely correlated to the level of production of the domestic like product – rising when production levels fell and vice-versa.”⁴³ The Court reasoned that this supposed inverse correlation between the level of subject merchandise in domestic inventory and the level of domestic production was likely explained by the need of domestic producers to “‘maintain relatively large bulk juice inventories’ to ensure their supply of certain orange juice during fluctuations in domestic production.”⁴⁴ Accordingly, the Court directed the Commission on remand to examine all the relevant issues relating to the impact of the shortfall in the domestic production of round oranges on the domestic industry, including “the inverse correlation between inventory levels of subject imports and domestic production.”⁴⁵

Respondents argue that Brazilian subject imports are noninjurious because they are “pulled” into the U.S. market in order to offset a domestic supply shortfall.⁴⁶ As we recognized in the original determination, subject imports generally increased when U.S. production of certain orange juice fell and vice versa.⁴⁷ This simple observation, however, does not demonstrate that increases in subject imports are

⁴² CR/PR at Table IV-6. Although we find that no more than 12 weeks of carryover stocks were needed by the industry, the table below shows that even using a 20-week level for beginning inventory levels there would still have been sufficient domestic supply to meet domestic consumption in two of the four crop years reviewed. Moreover, even in the two years in which there was a positive residual demand, the level of subject imports exceeded the amount that would have been needed to meet the residual demand. We present this chart for illustrative purposes only, because we find it likely that, absent the influx of unfairly traded imports, domestic producers would certainly have drawn down inventories below a 20-week level, or even a 12-week level, in a year when domestic production was seriously reduced due to hurricanes.

Crop Year	Domestic Production	B-O-P Inventories	Assume 20 Weeks of Inventory Not Available for Sale	B-O-P Inventory Available for Sale	Domestic Production Plus Available Inventory	Domestic Consumption	Residual Demand	Imports from Brazil
Quantity (1,000 gallons SSE)								
2001/02	1,432,162	698,464	556,138	142,326	1,574,488	1,445,959	-128,529	109,728
2002/03	1,246,761	692,163	547,100	145,063	1,391,824	1,422,460	30,636	227,280
2003/04	1,471,334	704,509	551,085	153,424	1,624,758	1,432,822	-191,936	154,203
2004/05	1,006,642	842,139	576,070	266,069	1,272,711	1,497,781	225,070	231,711

⁴³ Slip Op. at 27 (citing Original Views at 15).

⁴⁴ Id.

⁴⁵ Slip Op. at 31.

⁴⁶ Louis Dreyfus Comments at 4-7.

⁴⁷ To the extent there is an inverse correlation between domestic production and subject imports, we note that the magnitude of any such correlation is questionable on this record. Subject import volumes were virtually identical in
(continued...)

solely the result of declines in domestic production. There are other factors in play. For example, these increases in subject imports generally coincided with especially large Brazilian orange crops and high levels of Brazilian production of certain orange juice. Subject imports were at their highest levels of the period in crop years 2002/03 and 2004/05.⁴⁸ Likewise, end-of-period inventories of subject FCOJM were at their highest levels in crop years 2002/03 and 2004/05.⁴⁹ Brazilian production of certain orange juice also reached its highest levels in crop years 2002/03 and 2004/05, rising to *** pounds solids and *** pounds solids, respectively.⁵⁰ We find this positive correlation between subject imports and subject merchandise inventory and Brazilian production of certain orange juice to be significant, because it suggests that production levels in Brazil affected the increase in subject imports during the period examined; it is contrary to the Respondents' claim that low-priced subject imports were merely "pulled" into the market to offset a domestic supply shortfall.⁵¹

Considering the positive relationship between levels of subject imports and Brazilian production and the availability of domestic juice to satisfy domestic consumption needs, we do not find that the inverse relationship between domestic production and subject imports demonstrates that subject imports at the levels that actually occurred during the period of investigation were needed to meet domestic demand. The central issue is whether the domestic industry could have made up for a domestic production shortfall by selling available inventories of certain orange juice. Even in the aftermath of the 2004 Florida hurricanes, during the worst crop year of the period of investigation, when domestic production was well below that of any of the previous years reviewed,⁵² domestic processors retained the ability to meet demand by drawing down total available inventory while still maintaining slightly in excess of 12 weeks of inventory to take them into the next crop year. Indeed, beginning-of-period domestic inventories were at a record high at the beginning of crop year 2004/05. Nevertheless, the volume of subject imports entering the U.S. market during that crop year (*i.e.*, crop year 2004/05), as in every other year of the POI, was higher than necessary to meet residual demand and limited the ability of domestic producers to sell in the domestic market their available supply, inclusive of inventories. We find that the increase in the volume of low-priced subject imports in excess of U.S. apparent consumption growth, in the absence of any residual demand that needed to be met by subject imports, is significant.

III. The Relationship Between Supply/Demand Factors and Price Effects

The Court directed the Commission on remand to revisit three aspects of its determination regarding price effects related to the Commission's findings with respect to the increase in the level of

⁴⁷ (...continued)

two crop years when domestic production levels varied substantially. In crop year 2002/03, subject imports totaled 227.3 million gallons SSE, while domestic production totaled 203 million gallons SSE. By contrast, in crop year 2004/05, subject imports totaled 231.7 million gallons SSE, while domestic production totaled 149.6 million gallons SSE. CR/PR at Table C-3.

⁴⁸ CR/PR at Table IV-6.

⁴⁹ CR/PR at Table C-3.

⁵⁰ CR/PR at Table VII-4.

⁵¹ Because the Brazilian home market is small with very little domestic demand for orange juice in Brazil, Brazilian producers of certain orange juice are export-oriented and must export even more to other markets (including the United States) in years when the Brazilian orange crop and Brazilian orange juice production are at high levels. CR/PR at Table VII-4; CR at VII-3 to VII-4; PR at VII-4.

⁵² Domestic production during the 2004/05 crop year was 32 percent less than production in the previous year. Moreover, the 2004/05 production was 19 percent less than the next lowest production year of the period of review and 27 percent lower than the average of the three previous years' production. CR/PR at Table IV-6.

subject imports held in domestic inventory.⁵³ First, the Court instructed the Commission “to [examine] how demand factors, such as the limited increase in domestic consumption of certain orange juice during the POI, may have prevented the domestic industry from raising prices.”⁵⁴ Second, the Court instructed the Commission to “also consider how the level of subject imports held in inventory, consisting of at most 8.7% of the domestic inventories during the POI, and less than 5% in two of the years of the POI, contributed significantly, rather than minimally, to the suppression of domestic prices.”⁵⁵ Finally, in a footnote, the Court directed the Commission to consider the “dissenting Commissioners’ conclusion that monthly subject import volumes fluctuated significantly in a manner that did not correlate with fluctuations in prices.”⁵⁶

After considering each of the issues raised by the Court, we again find that subject imports suppressed domestic prices to a significant degree. Given the increase in U.S. apparent consumption of certain orange juice over the period of investigation and the low demand elasticity,⁵⁷ domestic producers should have been able to pass on higher production costs through higher prices. They were prevented from doing so by the significant increase in subject import volume, which was beyond any increase explicable by non-price factors or unmet domestic demand, and significant subject import underselling margins.

The Commission’s finding in the Original Views that the domestic industry experienced “a classic cost-price squeeze” toward the end of the period of investigation as the ratio of cost of goods sold to net sales increased steadily throughout the POI is not in dispute.⁵⁸ The Court, however, has directed the Commission to consider on remand the extent to which the domestic industry’s inability to recoup higher costs through higher prices resulted from “demand factors, such as the limited increase in domestic consumption of certain orange juice during the POI”⁵⁹ As in our original determination, we find that demand trends did not significantly contribute to the price suppression experienced by domestic producers for two reasons.

First, U.S. apparent consumption of certain orange juice increased toward the end of the period of investigation, as the popularity of low-carbohydrate diets waned.⁶⁰ U.S. apparent consumption reached its highest level of the period examined in the final crop year of the period, increasing from 1.44 billion gallons SSE in crop year 2003/04 to 1.50 billion gallons SSE in crop year 2004/05.⁶¹ Apparent domestic consumption for certain orange juice increased by 3.5 percent over the period of investigation, from 1.45 billion gallons SSE in crop year 2001/02 to 1.50 billion gallons SSE in crop year 2004/05.⁶² All else being equal, increasing apparent consumption toward the end of the period should have made it easier for domestic producers to pass on higher costs to their customers through higher prices.

⁵³ Slip Op. at 29.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id. at 30 n.27.

⁵⁷ Demand for certain orange juice is price inelastic. See CR/PR at II-20; PR at II-15.

⁵⁸ Original Views at 23, 28 (finding that “the domestic industry’s ratio of COGS to net sales has steadily increased throughout the period examined” and that “the increase in net sales unit values in interim 2005 was only \$0.14 per pound while COGS increased by \$0.16 per pound over the same period”); CR/PR at Table VI-9 (COGS/net sales increased from 90 percent in 2002 to 92.9 percent in 2003 and to 96.3 percent in 2004, and increased from 87.7 percent in interim 2004 to 93.5 percent in interim 2005).

⁵⁹ Slip Op. at 29.

⁶⁰ See Original Views at 27-28.

⁶¹ CR/PR at Table C-3.

⁶² Id.

Second, domestic producers should have been capable of increasing their prices without increasing retail orange juice prices and consequently reducing downstream orange juice demand, because the gap between wholesale prices of certain orange juice and retail orange juice prices increased over the period of investigation.⁶³ This widening gap should have provided retailers with the financial latitude to maintain retail orange juice prices even as domestic producers recovered their costs through higher certain orange juice prices.

Additional factors that should have made it easier for the domestic industry to raise prices and break out of its cost-price squeeze were the domestic industry's limited capacity, the limited number of competitors, and the inelasticity of certain orange juice demand.⁶⁴ The relatively high concentration of the domestic industry and the unresponsiveness of demand to changes in price for certain orange juice should have afforded the domestic industry a degree of market power.

Despite strengthening apparent consumption, the growing gap between wholesale and retail prices, and other factors that should have facilitated price hikes, the cost-price squeeze affecting the domestic industry intensified toward the end of the period examined,⁶⁵ as the volume of low-priced subject imports increased more than the increase in U.S. apparent consumption. Subject import volume increased by 122.0 million gallons SSE, or 111.2 percent, over the period of investigation, outstripping the 50 million gallon SSE, or 3.5 percent, increase in U.S. apparent consumption over the period.⁶⁶ Moreover, underselling by subject imports was significant and pervasive, with subject imports underselling the domestic like product in 41 of 48 quarterly comparisons at margins averaging 8.3 percent.⁶⁷ The increase in certain orange juice supply relative to U.S. apparent consumption, coupled with significant subject import underselling, placed pressure on prices for certain orange juice. We find that the increase in the volume of low-priced subject imports in excess of U.S. apparent consumption growth, in the absence of any residual demand that needed to be met by subject imports, contributed significantly to the domestic industry's inability to raise prices commensurate with increasing costs.

The Court also instructed the Commission to "consider how the level of subject imports held in inventory, consisting of at most 8.7% of the domestic inventories during the POI, and less than 5% in two of the years of the POI, contributed significantly, rather than minimally, to the suppression of domestic prices."⁶⁸ We note at the outset that even a relatively modest increase in the volume of subject merchandise would likely have significant price-suppressing effects in a commodity market like that for certain orange juice.⁶⁹ In our original determination, we found that the increase in subject import volume beyond what was necessary to meet U.S. demand served to almost double subject import inventories between crop year 2003/2004 and crop year 2004/2005.⁷⁰ Specifically, subject import end-of-period inventories increased by 24.7 million gallons SSE, or 92.9 percent, from 26.6 million gallons SSE in

⁶³ See Original Views at 23-24.

⁶⁴ CR/PR at Table III-5; CR at I-4 to I-5, II-20; PR at I-4, II-20.

⁶⁵ See Original Views at 24 (finding that "[b]etween 2003 and 2004, the cost-price squeeze resulted in a 7.8 percentage point decline in the domestic industry's operating margin, which was more accelerated than the 1.8 percentage point drop in the domestic industry's operating margins between 2002 and 2003, when the domestic industry also experienced a cost-price squeeze").

⁶⁶ CR/PR at Table C-3. Subject import volume increased by 77.5 million gallons SSE, or 50.3 percent, between crop year 2003/2004 and crop year 2004/2005, outstripping the 64 million gallons SSE, or 4.5 percent, increase in U.S. apparent consumption over the period. Id.

⁶⁷ Original Views at 22.

⁶⁸ Slip Op. at 29.

⁶⁹ See e.g., Negev Phosphates, Ltd. v. U.S. Dep't of Commerce, 12 CIT 1074, 1084, 699 F.Supp. 938, 947 (1988) (when commodity product is price sensitive, underselling of even small volumes can cause price suppression).

⁷⁰ Original Views at 24.

2003/2004 (3.2 percent of U.S. ending stocks) to 51.3 million gallons SSE in 2004/2005 (8.7 percent of U.S. ending stocks).⁷¹ This significant inventory of low-priced subject imports accumulated over the last year of the period examined, which was equal to 2.6 percent of domestic production that year,⁷² would have dampened demand for the domestic like product just as domestic industry costs were increasing. We find that the timing and magnitude of the increase in subject import inventories, coupled with the price sensitivity of the certain orange juice market, contributed significantly to the domestic industry's inability to recoup higher costs through higher prices. We also note that our analysis of price effects is not limited to the effects of the carryover inventories. Rather, in finding significant price effects, we have also taken into account that total subject imports from Brazil, whether sold or inventoried, had price-suppressing effects by inhibiting domestic producers from raising prices sufficiently to cover costs.

Finally, in a footnote, the Court directed the Commission to consider evidence, and in particular a chart submitted by Petitioners, showing that "monthly subject import volumes fluctuated significantly in a manner that did not correlate with fluctuations in prices."⁷³ We acknowledge the absence of any inverse correlation between trends in subject import volume and trends in prices for the domestic like product, which increased towards the end of the period of investigation even as subject import volume increased. As explained above, however, we do not find that subject imports depressed domestic prices but that subject imports significantly *suppressed* domestic prices, preventing the domestic industry from recouping higher costs through higher prices to a significant degree. Although domestic prices increased toward the end of the period of investigation, they did not increase enough to compensate for higher domestic industry costs, and the ratio of COGS to net sales reached its highest level of the period examined in crop year 2004/2005. A chart merely exhibiting trends in subject import volume and domestic prices over the period of investigation does not capture the extent to which domestic prices were suppressed or the factors that contributed to price suppression. Therefore, we do not find the referenced chart relevant to our pricing conclusions.

IV. Subject Imports Had a Significant Adverse Impact on the Domestic Industry

Although the Court did not expressly remand our analysis of impact, the Court did highlight evidence pertaining to impact that it apparently viewed as inconsistent with the Commission's analysis. Specifically, the Court noted that the financial performance of several domestic processors appeared to have been influenced by the hurricanes in the last year of the period of investigation:

The performance of the different domestic processors varied depending on whether the processor was affected by the hurricanes in central Florida in 2004. For instance, processors which were not affected by the hurricanes, such as Southern Gardens and Sunkist, were not negatively affected in CY 2004/05, while processors hit hardest by the hurricanes were negatively affected.⁷⁴

The Court also opined that the domestic industry's market share and capacity utilization had been influenced by the orange crop:

⁷¹ CR/PR at Tables C-3 and IV-5.

⁷² Subject import end-of-period inventories were converted from 24.7 million gallons SSE to 25.4 million pounds solids using a conversion factor of 1.029 and dividing by domestic production in crop year 2004/2005 of 965.4 million pounds solids. See CR/PR at Table III-6.

⁷³ Original Views at 30 n.27.

⁷⁴ Slip. Op. at 30.

The Commission's statement that the domestic industry's share of the domestic market declined over the POI does not sufficiently explain the situation here. The Commission failed to mention that the domestic industry's share of the domestic market is directly correlated to domestic production levels of the like product, including round oranges. It is not surprising that the domestic industry's share of the domestic market declined when there was a tremendous fall in domestic production in CY 2004/05 because of orange shortages. This would have occurred even if the level of subject imports had remained the same. Likewise, it is not surprising that the domestic industry experienced a decline in domestic capacity utilization from the first year of the POI to the last year of the POI given the dramatic decline in domestic production.⁷⁵

After considering the issues raised by the Court, we again find that subject imports are having a significant adverse impact on the domestic industry.

As explained in our Original Views and supplemental discussion above, the subject import volume and the increase in subject import volume were significant in absolute terms and relative to U.S. apparent consumption and production, particularly given that subject imports were unnecessary to satisfy any residual demand in the U.S. market. The domestic industry was in a position throughout the period examined to satisfy U.S. apparent consumption using domestic production and available inventory. Even after the downturn in domestic production following the 2004 Florida hurricanes, domestic processors had record (and more than adequate) inventory on hand to satisfy domestic consumption, and domestic market share need not have declined as a result of any orange shortfall. Nevertheless, subject imports entered the U.S. market in excessive quantities, displacing domestic shipments and capturing market share from the domestic industry.

As explained in our Original Views and supplemental discussion above, this significant volume of subject imports significantly undersold the domestic like product throughout the period of investigation. Subject imports also significantly suppressed domestic prices by preventing the domestic industry from raising domestic prices sufficiently to cover increasing costs, even after the hurricanes in crop year 2004/2005.

We find that these significant volume and price effects are having a significant adverse impact on the domestic industry. By most measures, the domestic industry's condition and financial indicators worsened over the period examined,⁷⁶ even accepting that the domestic industry's capacity utilization rate in crop year 2004/2005 was depressed in part by the poor orange crop.⁷⁷ Although the performance of certain domestic producers may correlate with the hurricanes in the last year of the period examined, we have considered the impact of subject imports on the domestic industry "as a whole," as statutorily required,⁷⁸ and have not confined our analysis to adverse effects manifested only during the final year of the POI.

As explained in the Original Views, we find that the hurricanes did not sever the causal nexus between subject imports and the material injury to the domestic industry, given significant subject import

⁷⁵ Id. at 30-31.

⁷⁶ Original Views at 25-28.

⁷⁷ We recognize here, as we did in the Original Views, that some of the declining trends experienced by domestic processors and growers, including trends in production, capacity utilization, and employment, in part reflect the effects of hurricanes and the related spread of citrus diseases. See Original Views at 28.

⁷⁸ The statute defines the domestic industry as "the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. § 1677(4)(A).

underselling, the price-sensitivity of the certain orange juice market, and the cost-price squeeze that the domestic industry suffered as subject imports suppressed domestic prices to a significant degree.⁷⁹ The domestic industry's performance was deteriorating before the hurricanes in crop year 2002/2003, when subject import volume was 227.3 million gallons SSE, and its performance continued to decline after the hurricanes in crop year 2004/05, when subject import volume was at a similarly high level (231.7 million gallons SSE).⁸⁰

We therefore conclude that the domestic industry producing certain orange juice is materially injured by reason of subject imports of certain orange juice from Brazil that are sold in the United States at less than fair value.

V. Consideration of the Opposition to the Petition by a Majority of Processors

The Court also remanded for further explanation of why the Commission gave little weight to the lack of support for the petition by the majority of processors, notwithstanding the Commission's reliance on their data in addressing impact.⁸¹ In the original determination, the Commission took into account certain processors' opposition to the petition, stating: "[w]e recognize that U.S. processors accounting for *** percent of U.S. production of certain orange juice in crop year 2004/05 oppose the petition in this final phase investigation."⁸² The Commission also explained that "[w]hile the degree of support by members of the domestic industry for the petition may be a factor considered by the Commission, such a factor is not dispositive."⁸³ While acknowledging that the opposition to the petition by the majority of domestic processors did not preclude an affirmative determination, the Court directed the Commission on remand to explain its rationale for reaching an affirmative determination in the face of industry opposition.⁸⁴

Where, as here, the evidence shows that the domestic industry is materially injured by reason of the subject imports, the matter of whether particular producers or a particular subset of producers support the petition does not prevent the Commission from making an affirmative determination. In our view, the more important and objective consideration is whether the shipment, financial, market share, and inventory data demonstrate that the domestic industry as a whole suffered material injury by reason of subject imports from Brazil. The level of industry support for the petition is one factor among many, and we find that the record as a whole demonstrates material injury by reason of subject imports from Brazil.

We do not know – and will not speculate on – the motives of certain domestic processors for opposing the petition. A domestic producer's decision whether to support the petition is frequently based on a subjective judgment regarding legal strategy. Producer opposition to the petition, in and of itself, is not evidence of lack of injury to a particular producer, let alone lack of injury to the domestic industry as a whole, or evidence of a lack of causation. Our review of the evidence shows that the domestic industry is materially injured. As we explained in the Original Views, the domestic industry's financial indicators worsened throughout the period examined, and the industry's condition deteriorated by most other

⁷⁹ Original Views at 28.

⁸⁰ CR/PR at Table IV-6.

⁸¹ Slip Op. at 33-34.

⁸² Original Views at 28 n.197.

⁸³ Id.

⁸⁴ Slip Op. at 33-34.

measures, including market share, domestic shipments, number of production workers employed by processors, hours worked, and wages.⁸⁵

Out of the total, *** domestic processors, accounting for *** percent of domestic production in the final crop year of the period examined, supported the petition.⁸⁶ *** producers, accounting for *** percent of domestic production, opposed the petition. These *** include *** large processors, accounting for approximately *** percent of domestic production in the final year of the period examined, that have corporate ties to companies with financial interests in the production or importation of the Brazilian subject product.⁸⁷ Notwithstanding our determination that each of these related domestic producers' interest in domestic production was sufficient to include it in the industry, we attach significance to these *** processors' relationships with Brazilian subject producers and subject merchandise, which likely influenced their position in this investigation.⁸⁸ Therefore, we give less weight to their opposition to the petition under the particular circumstances present here.⁸⁹

*** of the 36 responding growers, whose financial interests are directly tied to those of domestic processors, supported the petition, and *** opposed it.⁹⁰ Especially in light of the highly fragmented nature of the grower segment of the industry and the proportionally greater burden placed on a small entity such as a grower in replying to the questionnaires, we do not penalize the growers for the imbalance between the percentage of growers supporting the petition and the percentage of processors supporting the petition. This is especially so given the timing of this investigation in the aftermath of the 2004 and 2005 hurricanes, which caused significant damage to the Florida groves, disrupting growers' operations and making it more burdensome for them to complete questionnaires.⁹¹

VI. Totality of the Evidence

In addition to ordering the Commission to address the four specific issues discussed above, the Court directed the Commission to "consider the totality of the evidence anew." Slip Op. at 43. Pursuant to these instructions, we have, as we always do in any remand, considered the entire record in light of any

⁸⁵ Original Views at 25-28.

⁸⁶ CR/PR at Table III-5.

⁸⁷ The other *** domestic producers opposing the petition do not have ties to subject Brazilian producers and accounted for *** percent of domestic production in crop year 2004/05. CR/PR at Table III-5.

⁸⁸ The related party inquiry, which concerns whether a particular firm is benefitting from importation, differs from the inquiry as to why a particular firm may oppose a petition. Indeed, the domestic industry's support or opposition to the petition is a subjective factor; there are many conceivable reasons why a particular domestic producer might support or oppose the petition regardless of whether it derives any tangible, financial benefit from the subject imports.

⁸⁹ These *** domestic processors accounted for *** percent of the production of all processors that opposed the petition. CR/PR at Table III-5.

⁹⁰ CR/PR at Table III-1.

⁹¹ CR at III-3 to III-5; PR at III-3 to III-4. With respect to the growers, we note that the coverage rate discussed by Tropicana and noted by the Court (slip op. at 19) is actually lower than the rate if based upon production of oranges used for processing. If coverage is based specifically on processed oranges, which we find to be more meaningful than calculating the percentage of total U.S. oranges produced (both for eating and processing), the U.S. grower financial data discussed in the Original Views accounted for 20 percent of total U.S. processed oranges and 22 percent of Florida processed oranges during the 2004/05 crop year. Memorandum INV-EE-055 (May 25, 2007) at I-4 and Table I-1.

new findings we have made. Having considered the record as a whole, we reaffirm our findings on all other issues.⁹²

VII. Application of the *Bratsk* Replacement/Benefit Test

In its remand instructions, the CIT directed the Commission to conduct the examination required by the Federal Circuit's decision in Bratsk.⁹³ Bratsk requires that, having reached an affirmative determination by application of the statutorily mandated factors, we must apply an additional analysis which can, in some circumstances, negate an affirmative determination. The Federal Circuit directed the Commission to undertake an "additional causation inquiry" if certain triggering factors are met, *i.e.*, "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."⁹⁴ The additional inquiry required by Bratsk, which we refer to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."⁹⁵

We respectfully disagree with the decision in Bratsk that the statute requires any analysis beyond that already included in our discussion of volume, price, and impact above.⁹⁶ The statutory scheme contemplates that an industry may be facing difficulties from a variety of sources, including non-subject imports and other factors, but the existence of injury caused by other factors does not compel a negative determination if the subject imports themselves are making more than a minimal or tangential contribution to material injury.⁹⁷ The legislative history further clarifies that the dumped imports need not be the "principal" cause of material injury and that the "by reason of" standard does not contemplate that injury from dumped imports be weighed against injury from other factors, such as non-subject imports, which may be contributing to overall injury to an industry.⁹⁸ Thus, once the Commission establishes the existence of a causal link between subject imports and material injury, the existence of other concurrent causes is legally irrelevant to its determination.

⁹² As discussed *supra*, on issues relating to ULPOJ imports, the need for subject imports for blending and duty drawback, and the level of grower questionnaire responses, the court upheld the Commission's findings "in isolation," but noted that the Commission may wish to reexamine them when reviewing the record as a whole. We have reviewed all of the evidence in the record and find that the record continues to support both our findings with respect to these issues and our affirmative determination.

⁹³ Slip Op. at 34-40.

⁹⁴ Bratsk, 444 F.3d at 1375.

⁹⁵ *Id.*

⁹⁶ For a full discussion of our views on the applicability of Bratsk, see our Views in the Remand Determination for Silicon Metal from Russia, Inv. No. 731-TA-991 (Final) (Second Remand), USITC Pub. 3910 (March 2007). For a full discussion of Vice Chairman Aranoff's views on the applicability of Bratsk, see the Views of the Commission in Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 (January 2007). For a full discussion of Chairman Pearson's views on the applicability of Bratsk, see his Separate and Additional Views in Silicon Metal from Russia. For a full discussion of Commissioner Okun's views of the applicability of Bratsk, see her Separate and Dissenting Views in Certain Lined Paper School Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443, 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006).

⁹⁷ See Uruguay Round Agreements Act Statement of Administrative Action ("SAA") H.R. Rep. No. 103-316, at 851-852 (1994).

⁹⁸ H.R. Rep. No. 317, 96th Cong., 1st Sess. at 47 ("Any such requirement has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports.").

Similarly, the statute does not permit the Commission to reach a negative determination based on the likely ineffectiveness of an order. Indeed, the purpose of the statute is not to bar or eliminate subject imports from the U.S. market or award subject import market share to U.S. producers, but instead to “level [] competitive conditions” by imposing a duty on subject imports and thus enabling the domestic industry to compete against fairly traded imports.⁹⁹ The statutory scheme in fact contemplates that subject imports may remain in the U.S. market after an order is imposed and even that the industry afterwards may continue to suffer material injury.¹⁰⁰ As the Commission has previously explained,

[N]othing in the statute or case law requires (or allows) us to consider the likely effectiveness of a dumping order in making our injury determination. The possibility that non-subject imports will increase in the future after an antidumping order is imposed is ... not relevant to our analysis of whether subject imports are currently materially injuring the industry.¹⁰¹

The Commission has a well established approach to addressing causation.¹⁰² We apply the Bratsk replacement/benefit test to our analysis, however, because the CIT has directed us to do so in light of Bratsk, notwithstanding that, in our considered view, this test is not required by, or consistent with, the statute.^{103 104}

As noted above, the Bratsk analysis “is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.”¹⁰⁵ If both Bratsk triggering factors are satisfied, we apply the “replacement/benefit” test required under Bratsk to determine whether non-subject imports could replace subject imports with no benefit to the domestic industry. We find that one of the Bratsk triggers is not satisfied in this investigation, and therefore it is unnecessary for us to take the further step of determining whether non-subject imports would have replaced subject imports with no beneficial effects for the domestic industry.

⁹⁹ Huaiyin Foreign Trade Corp. v. United States, 322 F.3d 1369, 1380 (Fed. Cir. 2003).

¹⁰⁰ SAA at 883-85, 889-90.

¹⁰¹ Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. 3742 (Dec. 2004) at 27, n. 222.

¹⁰² See Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 (Mar. 2007) at 3-8 (articulating in detail the Commission’s longstanding interpretation of the “by reason of” causation standard).

¹⁰³ Respondents themselves have observed in this remand investigation that the Bratsk directive to examine capacity and production by producers in non-subject countries shows a misunderstanding of the statutory scheme, given that such producers have no incentive to provide this information to the Commission. See Respondents’ request that the Commission seek additional data (May 4, 2007).

¹⁰⁴ Chairman Pearson and Commissioner Okun discern two possible interpretations of the Bratsk opinion, which differ substantially. The so-called “replacement/benefit test” is noted above. The second one is that Bratsk is an elaboration of the causation analysis prescribed by Gerald Metals. Under this interpretation, the Bratsk decision stands to remind the Commission of its obligation under Gerald Metals that the Commission may not satisfy the “by reason of” causation requirement by showing that subject imports contributed only “minimally or tangentially to the material harm.” In other words, the Bratsk Court’s relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in, Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 (April 2007). This analysis is included in the Commission’s affirmative causation analysis.

¹⁰⁵ Bratsk, 444 F.3d at 11.

A. The First Triggering Factor: Whether Certain Orange Juice Is a Commodity Product

We find that certain orange juice qualifies as a commodity product based upon Bratsk's definition of "commodity product" as "meaning that it is generally interchangeable regardless of its source." No party argues otherwise. Indeed, FCOJM futures are traded on the New York Board of Trade as commodities.¹⁰⁶ Further, the record indicates that purchasers generally view certain orange juice as interchangeable regardless of the source and that it is a price competitive product.¹⁰⁷

B. The Second Triggering Factor: Whether Price Competitive Non-subject Imports Are a Significant Factor in the Market

We find that price competitive non-subject imports are not a significant factor in the U.S. market based on the relatively low market share held by such imports. As the CIT noted in this case, the non-subject imports comprised 40.8 percent of total U.S. imports of certain orange juice in crop year 2001/02, 20.8 percent in crop year 2002/03, 29.4 percent in crop year 2003/04, and 34.2 in crop year 2004/05.¹⁰⁸ While, as the Court suggested, these percentages may not be so small as to render the nonsubject imports "an indisputably insignificant factor in the market,"¹⁰⁹ the record indicates that domestic and Brazilian product are by far the most significant sources of certain orange juice in the United States.¹¹⁰ Consistent with the approach we find most useful for assessing the significance of non-subject imports in the U.S. market,¹¹¹ we have examined the market share of such imports and find they do not rise to the level necessary to trigger a Bratsk analysis. In particular, the share of U.S. apparent consumption comprised of non-subject imports was 5.2 percent in crop year 2001/02, 4.2 percent in crop year 2002/03, 4.5 percent in crop year 2003/04, and 8.0 percent in crop year 2004/05, while the share comprised of subject imports was 7.6 percent in crop year 2001/02, 15.9 percent in crop year 2002/03, 10.7 percent in crop year 2003/04, and 15.4 percent in crop year 2004/05.¹¹² Thus, even at their highest level of 8.0 percent of apparent consumption, non-subject imports' market share was only at the level held by subject imports before the subject imports' surge late in the POI. Moreover, as discussed in the Original Views, although non-subject imports' share of the U.S. market increased overall by 2.8 percentage points during the period examined, subject imports gained far more market share at the expense of the domestic industry than did nonsubject imports.¹¹³

The three largest non-subject sources of certain orange juice in the United States accounted, respectively, for 15.6 percent of U.S. imports and 3.7 percent of U.S. apparent consumption in crop year

¹⁰⁶ Views at 24 n.166.

¹⁰⁷ CR at II-9; PR at II-6. See Original Determination at 21-22.

¹⁰⁸ Slip Op. at 37; CR/PR at Table IV-2.

¹⁰⁹ Slip Op. at 37.

¹¹⁰ See, e.g., CR/PR at Table IV-5; Memorandum INV-EE-055 at I-31 and Table I-10; Hearing Tr. at 43-44 (Mr. Behr); 50 (Ms. Warlick).

¹¹¹ See, e.g., Polyester Staple Fiber from China, Inv. 731-TA-1104, USITC Pub. 3922 (June 2007) at 40-41.

¹¹² Memorandum INV-EE-055 Views of the Commission 1
Views of the Commission 1
at Table I-6.

¹¹³ Original Views at 27-28; CR/PR at Table IV-5.

2004/05 (Mexico);¹¹⁴ 8.6 percent of U.S. imports and 2.0 percent of U.S. apparent consumption in crop year 2004/05 (Belize);¹¹⁵ and 8.4 percent of U.S. imports and 2.0 percent of U.S. apparent consumption in crop year 2004/05 (Costa Rica).¹¹⁶ Brazilian juice, in comparison, consistently made up the substantial majority of U.S. imports.¹¹⁷

There were *** imports of non-subject Brazilian certain orange juice to the United States during the POI, and therefore there were *** imports, let alone “price competitive” non-subject Brazilian imports, that played a significant role in the U.S. market. The only non-subject Brazilian producer, Citrovita, which was subject to an earlier U.S. antidumping duty order imposed during the POI, exported *** orange juice to the United States *** during the POI. Moreover, although Citrovita projected that it would import some certain orange juice to the United States in crop years 2005/06 and 2006/07, its projected U.S. exports were modest, at *** pounds solid and *** pounds solid, respectively, as compared to the subject Brazilian producers’ projected exports to the United States of *** pounds solid for crop year 2005/06 and *** pounds solid for crop year 2006/07.¹¹⁸ As such, we find that non-subject Brazilian imports do not play a significant role in the U.S. market and that application of a Bratsk analysis is therefore unwarranted with respect to Citrovita.

In light of the data reflecting the small role of nonsubject imports, we conclude that non-subject imports are not a significant presence in the U.S. market. Accordingly, we do not find the second triggering factor identified in Bratsk to be present. It therefore is unnecessary for us to apply the Bratsk replacement/benefit test.

VII. Conclusion

For the above-stated reasons, we determine that the domestic industry producing certain orange juice is materially injured by reason of subject imports of certain orange juice from Brazil that are sold in the United States at less than fair value.

¹¹⁴ Memorandum INV-EE-055 at Tables, I-5, I-6, & I-13.

¹¹⁵ Id. at I-37 and Tables I-5 & I-6.

¹¹⁶ Id. at Table I-13 and Tables I-5 & I-6.

¹¹⁷ We note that Brazilian exports dwarfed orange juice exports from all countries, accounting for approximately 90 percent of all worldwide orange juice exports throughout the POI. See Memorandum INV-EE-055 at Tables I-5 & I-13.

¹¹⁸ Id. at Table I-14 and CR/PR at Table VII-4.

INFORMATION IN THE REMAND PROCEEDING

BACKGROUND AND COURT ORDER

On February 27, 2006, the U.S. International Trade Commission (“Commission”) determined that an industry in the United States was materially injured by reason of imports from Brazil of certain orange juice.^{1 2} Respondent Tropicana Products, Inc. (“Plaintiff”)³ appealed the Commission’s determination to the U.S. Court of International Trade (“CIT”). On April 12, 2007 the CIT remanded the case to the Commission and instructed the Commission to render a determination within 75 days.

Summary information related to this remand proceeding is presented below.⁴

¹ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 1. The subject product is certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for further manufacturing (“FCOJM”); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as NFC (“Not-From-Concentrate”). Commerce expressly excluded from the scope reconstituted orange juice and frozen orange juice for retail (“FCOJR”). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated typically at 42 degrees Brix, in a frozen state, packed in retail size containers ready for sale to consumers. FCOJR is a finished consumer product, and is produced through manufacture of FCOJM, a bulk manufacturer’s product. *Ibid.*, p. 4. The scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill, Coinbra (successor-in-interest to Frutropic), Cutrale, Fisher, and Montecitrus. *Ibid.*, pp. I-4 and I-5.

Certain orange juice was provided for in the Harmonized Tariff Schedule of the United States (“HTS”) in subheadings 2009.11.00 (frozen orange juice), 2009.12.25 and 2009.12.45 (orange juice, not frozen, of a Brix value not exceeding 20), and 2009.19.00 (orange juice, other). In the HTS, the volume (i.e., liter or gallon) of FCOJM, is on a single strength equivalent (“SSE”) basis. The Brix level is a measurement of the sugar content expressed in percent by weight of solids.

The normal trade relations tariff rate for subheading 2009.12.25 is 4.5 cents/liter, while the rate for the other three subheadings is 7.85 cents/liter, all applicable to imports from Brazil; this rate was not reduced as a result of the Uruguay Round of Trade Negotiations. No GSP preference exists. *Ibid.*, p. I-15., n. 11.

² Chairman Stephen Koplan and Commissioners Charlotte R. Lane and Shara L. Aranoff made affirmative determinations; Vice Chairman Deanna Tanner Okun and Commissioners Jennifer A. Hillman and Daniel R. Pearson made negative determinations. *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 1.

³ Plaintiff-Intervenors included Louis Dreyfus Citrus, Inc., and Fischer S/A Agroindustria.

⁴ *Federal Register* notices cited in the tabulation are presented in app. A.

Date	Action
December 27, 2004	Petition filed with Commerce and the Commission ¹
March 3, 2006	Commission's final determination published in the <i>Federal Register</i> (71 FR 10993)
March 9, 2006	Commerce issued antidumping duty order (71 FR 12183)
May 7, 2007	Commission issues notice and scheduling of remand proceeding (72 FR 25778) ²
May 25, 2007	Commission releases new information gathered in the remand proceeding to the parties
May 31, 2007	Final comments of parties due to the Commission
June 26, 2007	Commission scheduled to transmit its second remand determination to the CIT
<p>¹ Petitioners included Florida Citrus Mutual (a voluntary cooperative organization whose membership consists of more than 10,400 growers of citrus fruit for processing into certain orange juice and other processed citrus products, as well as fruit for fresh consumption); A. Duda & Sons, Inc.; Citrus World, Inc.; Peace River Citrus Products, Inc.; and Southern Garden Citrus Processing Corp. On January 31, 2005, petitioners submitted a letter to the Commission modifying the petition to remove Peace River as a petitioner.</p> <p>² Remand instructions from the CIT opinion are presented in app. B. <i>Tropicana Products, Inc. v. United States</i>, Slip Op. 07-55, CIT 2007, April 12, 2007.</p>	

THE COMMISSION'S COMPLIANCE METHODOLOGY

During this remand proceeding, the Commission determined to reopen the record of the original investigation in order to obtain new information concerning the certain orange juice industries in Belize, Costa Rica, and Mexico, relevant to the inquiry set out in the Court of Appeals for the Federal Circuit ("CAFC") decision in *Bratsk Aluminum Smelter v. United States* ("Bratsk").^{5 6} Accordingly, the Commission issued foreign producer questionnaires to two firms in Belize, five firms in Costa Rica, and four firms in Mexico. The Commission also arranged for cables seeking foreign industry information to be sent to the U.S. embassies in Belize, Costa Rica, and Mexico. In addition, the Commission compiled available secondary-source data from public sources, including (1) official import statistics of the U.S. Department of Commerce ("Commerce"), (2) Global Agricultural Information Network ("GAIN") reports of the U.S. Department of Agriculture ("USDA"), (3) Production, Supply, and Distribution ("PDS") Online data of the USDA, and (4) international trade data of the Global Trade Information Services, Inc. ("Global Trade Atlas").

The countries and firms from which the Commission sought information are presented in the following tabulation:

⁵ *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

⁶ As noted in the Commission's original determination and as shown in table I-5 of this memorandum, imports of certain orange juice from Belize, Costa Rica, and Mexico, accounted for 32 of the 34 percent of total U.S. imports of certain orange juice from nonsubject sources in 2004. *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 42.

Country	Firm
Belize	Belize Citrus Growers Association Citrus Products of Belize Limited
Costa Rica	TicoFruit Del Oro S.A. Dos Pinos Frutca C.R., S.A. Suco Citro, S.A.
Mexico	Citrofrut S.A. de C.V. Procimart S.A. de C.V. Citrotam International, S.P.R. de R.I. Fruitec

The Commission received responses to its foreign producer questionnaires from three firms: Citrofrut S.A. de C.V., Mexico, Del Oro S.A., Costa Rica and Procimart S.A. de C.V., Mexico. The Commission also received a response from the U.S. embassy in Costa Rica.

Information presented in this remand memorandum relates to further analysis of U.S. grower coverage and U.S. processor inventory supply, as well as new information on production, imports, and exports by foreign producers/exporters in Belize, Costa Rica, and Mexico. This information is intended for use in conjunction with the confidential staff report (as revised) issued during the original investigation, INV-DD-010, dated January 27, 2006.⁷ Summary data on the U.S. market are presented in appendix C.

FURTHER ANALYSIS OF U.S. GROWER COVERAGE AND U.S. PROCESSORS' INVENTORY SUPPLY

As indicated in the staff report during the original investigation, there were approximately 7,000 farms in Florida that grew oranges in 2002. Based on a listing of such growers submitted by petitioners, a random sample of 400 domestic growers of juice oranges were selected to receive the Commission's grower questionnaire during the original investigation.⁸ Forty-one growers, or about 10 percent of all Florida orange growers, provided responses to the questionnaire with varying degrees of useable data.⁹ The Commission's final staff report presented the financial results of *** U.S. orange growers and indicated that the responding growers represented "approximately 12 percent of U.S. production of oranges."¹⁰ That coverage rate was estimated based on total U.S. oranges produced (i.e., oranges for both fresh consumption and processing) during the period of investigation.¹¹ If coverage was based

⁷ Additions and revisions to the staff report are contained in Investigations memoranda INV-DD-014, February 2, 2006; INV-DD-015, February 6, 2006; and INV-DD-016, February 7, 2006.

⁸ The random sample of growers was supplemented to include, as necessary, large orange growers identified through searches of public sources.

⁹ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. III-1.

¹⁰ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. VI-11.

¹¹ As noted by the Commission during the original investigation, "(t)here are two economically important types of oranges: round oranges and specialty oranges. 'Round oranges' include navel, Hamlin, Parson Brown, Pineapple and Valencia oranges. The bulk of round oranges are processed into certain orange juice with most of the (continued...)

specifically on processed oranges, U.S. grower financial data presented in table VI-15 of the original staff report accounted for 20 percent of total U.S. processed oranges and 22 percent of Florida processed oranges during the 2004/05 crop year (table I-1).

Table I-1

Oranges: U.S. growers' net sales, total oranges, and ratio of growers' net sales to total oranges, crop years 2002/03 to 2004/05 and average 2002/03-2004/05

Item	Crop year			Total/average
	2002/03	2003/04	2004/05	2002/03-2004/05
Net sales (1,000 90-pound boxes)				
U.S. growers' questionnaire responses (***) firms)	33,607	36,883	31,162	101,652
Total oranges (1,000 90-pound boxes)				
Total oranges produced:				
Florida	203,000	242,000	149,600	594,600
Total U.S.	283,760	267,040	294,620	845,420
Total processed oranges:				
Florida	193,287	232,107	142,217	567,611
Total U.S.	206,000	238,690	155,452	600,142
Ratio of growers' net sales to total oranges (percent)				
Total oranges produced:				
Florida	16.6	15.2	20.8	17.1
Total U.S.	11.8	13.8	10.6	12.0
Total processed oranges:				
Florida	17.4	15.9	21.9	17.9
Total U.S.	16.3	15.5	20.0	16.9
Source: Compiled from table III-2 and VI-15, <i>Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)</i> , USITC Publication 3838, March 2006.				

The Court instructed the Commission to consider on remand whether subject imports were needed to maintain a certain level of overall inventories to deal with shortfalls in domestic production. In its U.S. extractor/processor and U.S. importer questionnaires in the original investigation, the Commission requested information as to the reasons a firm imported/purchased certain orange juice. Provided in table I-2 is information pertinent to this request derived from Commission questionnaires.

¹¹ (...continued)

remainder (mainly navel oranges) sold for fresh eating.” *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 10, fn. 65.

Table I-2

Certain orange juice: Reasons for importing and purchasing orange juice, provided by importers and processors/extractors, by firm

Firm	Comments
Importers	
Response to the following question in the importers' questionnaire (question Part II-5): <i>"If your firm also produces certain orange juice in the United States, please indicate your reasons for importing this product. If your reasons differ by source, please elaborate."</i>	
*	* * * * *
Processors/ Extractors	
Response to the following question in the processors'/extractors' questionnaire (question Part II-21, n.1): <i>"Please indicate your reasons for purchasing this product(s). If your reasons differ by product and/or source, please elaborate."</i>	
*	* * * * *
Source: Compiled from data submitted in response to Commission questionnaires.	

Data relating to U.S. processors' U.S.-produced and import end-of-period inventories, ratios to shipments, and inventory supply, on a company-by-company basis, are presented in tables I-3 and I-4. Data relating to U.S. processors' U.S.-produced and import beginning inventories, ratios to shipments, and inventory supply, on a company-by-company basis, are presented in tables I-3A and I-4A.

Table I-3

Certain orange juice: U.S. extractor/processors' inventories, shipments, ratio of inventories to shipments, and weeks of supply, by firm, crop year 2001/02-2004/05

Item	Crop year				Crop year				Crop year			
	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05
	FCOJM				NFCOJ				Certain OJ			
	End-of-period inventories (1,000 pounds solid equivalent (PSE)¹)											
	* * * * *											
Total	289,580	293,214	377,622	266,243	134,161	146,598	162,762	148,938	423,741	439,812	540,384	415,181
	Total shipments (1,000 pounds solid equivalent)											
	* * * * *											
Total	936,848	668,273	862,554	515,013	519,930	576,974	560,552	595,096	1,456,778	1,245,247	1,423,106	1,110,109
	Ratio of end-of-period inventories to total shipments (percent)											
	* * * * *											
Total	30.9	43.9	43.8	51.7	25.8	25.4	29.0	25.0	29.1	35.3	38.0	37.4
	End-of-period weeks of supply (number of weeks)											
	* * * * *											
Total	16.1	22.8	22.8	26.9	13.4	13.2	15.1	13.0	15.1	18.4	19.7	19.4
¹ Pounds solid equivalent ("PSE") is the extracted orange solids regardless of their form, i.e., FCOJM, other FCOJ, single-strength orange juice ("SSOJ"), or other form.												
Source: Compiled from data submitted in response to Commission questionnaires.												

Table I-4

Certain orange juice: U.S. extractor/processors' U.S.-produced and import inventories, and ratio of import inventory to U.S.-produced inventory, by firm, crop years 2001/02-2004/05

Item	Crop year				Crop year			
	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05
	U.S.-produced				Imports from Brazil			
	End-of-period inventories (1,000 pounds solid equivalent)							
	* * * * *							
Total	423,741	439,812	540,384	415,181	34,771	42,868	27,404	52,408
	Ratio of import to U.S.-produced end-of-period inventories (percent)				U.S. processors' end-of-period weeks of supply, including import and U.S.-produced inventories (number of weeks)			
	* * * * *							
Total	8.2	9.7	5.1	12.6	16.4	20.2	20.7	21.9
Source: Compiled from data submitted in response to Commission questionnaires.								

Table I-3A

Certain orange juice: U.S. extractor/processors' beginning inventories, shipments, ratio of inventories to shipments, and weeks of supply, crop years 2001/02-2004/05

Item	Crop year				Crop year				Crop year			
	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05
	FCOJM				NFCOJ				Certain OJ			
	Beginning inventories¹ (1,000 pounds solid equivalent (PSE)²											
	* * * * *											
Total	275,509	290,249	295,119	370,364	128,085	133,457	148,064	161,747	403,594	423,706	443,183	532,111
	Total shipments (1,000 pounds solid equivalent)											
	* * * * *											
Total	936,848	668,273	862,554	515,013	519,930	576,974	560,552	595,096	1,456,778	1,245,247	1,423,106	1,110,109
	Ratio of beginning inventories to total shipments (percent)											
	* * * * *											
Total	29.4	43.4	34.2	71.9	24.6	23.1	26.4	27.2	27.7	34.0	31.1	47.9
	Beginning weeks of supply (number of weeks)											
	* * * * *											
Total	15.3	22.6	17.8	37.4	12.8	12.0	13.7	14.1	14.4	17.7	16.2	24.9

¹ Total beginning inventories reported in this table do not reconcile with the end-of-inventories for the prior period as reported in table I-3. The difference is attributable to disparities in those data as reported by *** in its U.S. extractor/processor questionnaire response in the original investigation.

² Pounds solid equivalent ("PSE") is the extracted orange solids regardless of their form, i.e., FCOJM, other FCOJ, single-strength orange juice ("SSOJ"), or other form.

Source: Compiled from data submitted in response to Commission questionnaires.

Table I-4A

Certain orange juice: U.S. extractor/processors' U.S.-produced and import beginning inventories, and ratio of import inventory to U.S.-produced inventory, crop years 2001/02-2004/05

Item	Crop year				Crop year			
	2001/02	2002/03	2003/04	2004/05	2001/02	2002/03	2003/04	2004/05
	U.S.-produced				Imports from Brazil			
	Beginning inventories (1,000 pounds solid equivalent)							
	* * * * *							
Total	403,594	423,706	443,183	532,111	52,373	34,771	42,868	27,404
	Ratio of import to U.S.-produced beginning inventories (percent)				U.S. processors' beginning weeks of supply, including import and U.S.-produced inventories (number of weeks)			
	* * * *				* * *			
Total	13.0	8.2	9.7	5.2	16.3	19.1	17.8	26.2

Source: Compiled from data submitted in response to Commission questionnaires.

DATA ADDRESSING THE COMMISSION'S BRATSK ANALYSIS

As a result of the CAFC's decision in *Bratsk*, the Commission is directed to:

undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market." The additional inquiry required by the Court, which we refer to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."^{12 13}

U.S. Imports and Apparent U.S. Consumption

Information presented in this section of the report relates to imports and apparent consumption of certain orange juice, by source, during the original period of investigation: crop years 2001/02 to 2004/05. Separate data on frozen orange juice in a highly concentrated form for manufacturing (FCOJM) and pasteurized single-strength orange juice which has not been concentrated (NFCOJ) are presented in appendix D.¹⁴ The Commission determined in the final phase of the original investigation that conventional FCOJM, conventional NFC, organic FCOJM, and organic NFC are a single domestic like product coextensive with Commerce's scope.¹⁵

Table I-5 presents a detailed listing of U.S. imports from nonsubject sources which supplements the information presented in table IV-2 of the staff report in the original investigation. Almost all nonsubject merchandise in 2004/05 was imported from Mexico, Belize, and Costa Rica.¹⁶ U.S. imports from these three sources accounted for 32.6 percent of total imports while imports of subject merchandise from Brazil accounted for 65.8 percent and imports from the remaining sources totaled 1.6 percent. The quantity of certain orange juice imported from Mexico fluctuated from a low of 8.2 million gallons SSE in 2003/04 to a high of 54.8 million gallons SSE in 2004/05. U.S. imports from Costa Rica fluctuated between 24.1 million gallons SSE in 2001/02 and 32.0 million gallons SSE in 2003/04. The quantity of U.S. imports of certain orange juice from Belize increased steadily from 3.8 million gallons SSE in 2001/02 to 30.4 million gallons SSE in 2004/05. Nonsubject shares of U.S. imports of certain

¹² *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

¹³ In the silicon metal remand, Chairman Pearson noted "consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Pub. 3884 (Sept. 2006) at 51, that while he agrees with the Commission that the Federal Circuit's opinion suggests a replacement/benefit test, he also finds that the Federal Circuit's opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports." *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2, fn. 17. Commissioner Okun joined in those separate and dissenting views in *Lined Paper*.

¹⁴ Organic orange juice is classified in the same subheadings as conventional orange juice.

¹⁵ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 9.

¹⁶ The Commission stated in its original final views that, other than Brazilian nonsubject imports, the primary sources of nonsubject imports during the period examined included Belize, Costa Rica, Honduras, Mexico, South Africa, and the Dominican Republic. *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 16, n.120.

Table I-5
Certain orange juice: U.S. imports, by source, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE¹)				
Brazil (subject)	109,728	227,280	154,203	231,711
Mexico	41,358	13,467	8,209	54,822
Belize	3,822	8,123	20,205	30,366
Costa Rica	24,054	28,755	32,020	29,658
Honduras	4,462	1,238	1,669	2,182
Dominican Republic	770	894	817	1,328
South Africa	536	5,737	237	1,006
All others	557	1,375	1,010	1,070
Subtotal, nonsubject	75,559	59,589	64,167	120,432
Total	185,287	286,869	218,370	352,143
Value¹ (1,000 dollars)				
Brazil (subject)	99,162	242,259	142,702	232,481
Mexico	43,486	16,591	8,339	53,106
Belize	13,747	11,486	10,602	18,484
Costa Rica	37,960	38,397	30,781	31,411
Honduras	5,526	1,722	1,534	2,591
Dominican Republic	681	836	951	1,349
South Africa	581	5,655	211	889
All others	1,120	1,806	1,229	1,361
Subtotal, nonsubject	103,102	76,494	53,648	109,191
Total	202,265	318,753	196,350	341,672
Unit value (per gallon)				
Brazil (subject)	\$0.90	\$1.07	\$0.93	\$1.00
Mexico	1.05	1.23	1.02	0.97
Belize	3.60	1.41	0.52	0.61
Costa Rica	1.58	1.34	0.96	1.06
Honduras	1.24	1.39	0.92	1.19
Dominican Republic	0.88	0.94	1.16	1.02
South Africa	1.08	0.99	0.89	0.88
All others	2.01	1.31	1.22	1.27
Subtotal, nonsubject	1.36	1.28	0.84	0.91
Average	1.09	1.11	0.90	0.97

Table continued on next page.

Table I-5--Continued

Certain orange juice: U.S. imports, by source, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
	Share of quantity (percent)			
Brazil (subject)	59.2	79.2	70.6	65.8
Mexico	22.3	4.7	3.8	15.6
Belize	2.1	2.8	9.3	8.6
Costa Rica	13.0	10.0	14.7	8.4
Honduras	2.4	0.4	0.8	0.6
Dominican Republic	0.4	0.3	0.4	0.4
South Africa	0.3	2.0	0.1	0.3
All others	0.3	0.5	0.5	0.3
Subtotal, nonsubject	40.8	20.8	29.4	34.2
Total	100.0	100.0	100.0	100.0
	Share of value (percent)			
Brazil (subject)	49.0	76.0	72.7	68.0
Mexico	21.5	5.2	4.2	15.5
Belize	6.8	3.6	5.4	5.4
Costa Rica	18.8	12.0	15.7	9.2
Honduras	2.7	0.5	0.8	0.8
Dominican Republic	0.3	0.3	0.5	0.4
South Africa	0.3	1.8	0.1	0.3
All others	0.6	0.6	0.6	0.4
Subtotal, nonsubject	51.0	24.0	27.3	32.0
Total	100.0	100.0	100.0	100.0
<p>¹ Single-strength equivalent ("SSE") is the volume of single-strength juice that can be reconstituted from concentrated orange juice.</p> <p>Note 1.—Crop years are October - September.</p> <p>Note 2.—Conversion factor: 1 liter = 0.2642 gallons.</p> <p>Source: Compiled from official Commerce import statistics using HTS numbers 2009.11.0060, 2009.19.2500, and 2009.12.2500.</p>				

orange juice declined by 20.0 percentage points from 40.8 percent in 2001/02 to 20.8 percent in 2002/03 and then increased by 13.4 percentage points to 34.2 percent in 2004/05.¹⁷

Apparent U.S. consumption and market shares are presented in table I-6 and supplements data provided in tables IV-5 and IV-6 of the staff report for the original investigation. Nonsubject import market shares, by quantity, were 5.2 percent in 2001/02, 4.2 percent in 2002/03, 4.5 percent in 2003/04, and 8.0 percent in 2004/05. Nonsubject imports from Belize, Costa Rica, and Mexico accounted for 7.7 of the 8.0 percent market share of total nonsubject imports during 2004/05.

¹⁷ U.S. imports of subject merchandise from Brazil accounted for between 60 and 80 percent of total imports during the period examined.

Table I-6

Certain orange juice: Apparent U.S. consumption and market shares, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)				
Beginning stocks	698,464	692,163	704,509	842,139
U.S. production	1,432,162	1,246,761	1,471,334	1,006,642
Minus: U.S. exports	173,629	94,730	115,410	110,255
Minus: Ending stocks	692,163	704,509	842,139	590,000
Total domestic shipments	1,264,833	1,139,684	1,218,294	1,148,526
Apparent consumption	1,450,121	1,426,553	1,436,664	1,500,670
Share of quantity (percent)				
U.S. producers' shipments	87.2	79.9	84.8	76.5
U.S. imports from--				
Brazil (subject)	7.6	15.9	10.7	15.4
Mexico	2.9	0.9	0.6	3.7
Belize	0.3	0.6	1.4	2.0
Costa Rica	1.7	2.0	2.2	2.0
Honduras	0.3	0.1	0.1	0.1
Dominican Republic	0.1	0.1	0.1	0.1
South Africa	0.0	0.4	0.0	0.1
All others	0.0	0.1	0.1	0.1
Subtotal, nonsubject	5.2	4.2	4.5	8.0
Total imports	12.8	20.1	15.2	23.5
Source: Compiled from table I-5 of this memorandum and table IV-5 from <i>Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)</i> , USITC Publication 3838, March 2006.				

Pricing Information

Imports of pricing product 1 (FCOJM, not organic) from the original investigation are found in HTS numbers 2009.11.0020, 2009.11.0040, and 2009.11.0060. Since they are not affected by difference in product mix, comparisons of average unit values of US imports from these three HTS numbers can be used to evaluate the relative prices for FCOJM from different sources

As seen in table I-7 and figures I-1 to I-4, average unit values for U.S. imports of FCOJM from Belize and Costa Rica fluctuated from fourth quarter 2001 to first quarter 2003. From 2003-05, average unit values were lowest for U.S. imports from Belize (although they were not consistently in the market) and highest for U.S. imports from Costa Rica. Average unit values for U.S. imports of FCOJM from Belize were higher than those of U.S. imports of FCOJM from Brazil until 2003, were similar in 2003, and then tended to be lower in 2004 and 2005. Average unit values for U.S. imports of FCOJM from Costa Rica were higher than those of U.S. imports of FCOJM from Brazil until 2003, when the unit values were similar. As seen in table I-7 and figure I-4, average unit values of U.S. imports from Mexico were higher than those from Brazil from 2001 to 2003; in 2004 and 2005, average unit values were similar.

Table I-7
FCOJM: Weighted-average monthly landed duty-paid average unit values and quantities of U.S. imports, by country, October 2001-September 2005

Period	Belize		Brazil		Costa Rica		Mexico	
	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)
2001:								
October	-	0	\$0.86	15,164	\$1.13	1,562	\$1.03	2,119
November	-	0	0.82	13,202	1.78	162	1.02	2,030
December	\$2.17	922	0.90	6,945	1.53	52	0.98	7,799
2002:								
January	-	0	0.88	3,614	1.10	64	1.04	1,026
February	4.29	569	0.85	7,253	2.49	110	1.06	3,507
March	4.21	621	0.81	9,147	1.71	2,272	1.07	3,582
April	-	0	0.89	7,111	1.61	3,401	1.06	4,449
May	4.21	766	0.92	4,384	2.15	3,818	1.10	4,484
June	4.29	570	0.89	6,946	5.69	673	1.12	2,874
July	-	0	0.93	6,737	1.44	3,331	1.16	1,594
August	3.83	266	0.87	10,214	1.18	4,699	1.14	2,118
September	-	0	1.05	11,184	1.16	3,232	1.12	2,282
October	1.04	101	1.01	15,219	1.29	1,454	1.19	2,536
November	1.04	101	1.00	13,579	7.31	18	1.19	2,136
December	0.99	101	1.01	10,940	4.98	172	1.22	3,270
2003:								
January	1.04	101	1.04	31,690	6.66	60	1.23	542
February	3.93	1,294	1.01	20,803	2.40	1,781	1.27	865
March	0.93	3,315	1.03	15,684	1.60	3,435	1.16	1,118
April	1.46	504	1.04	16,083	1.35	7,275	1.20	652
May	0.98	602	1.05	21,712	1.14	3,408	1.55	468
June	1.01	217	1.03	14,150	1.16	2,028	1.42	311
July	1.03	67	1.05	12,956	1.09	1,519	1.30	60
August	1.02	67	1.05	10,879	1.08	2,136	1.31	264
September	0.86	1,423	1.00	17,215	1.14	4,658	1.31	89
October	1.02	134	1.00	20,812	1.04	1,735	-	0
November	1.05	134	0.97	9,240	1.36	141	1.23	25
December	-	0	0.95	14,294	-	0	1.30	586

Table continued on next page.

Table I-7—Continued

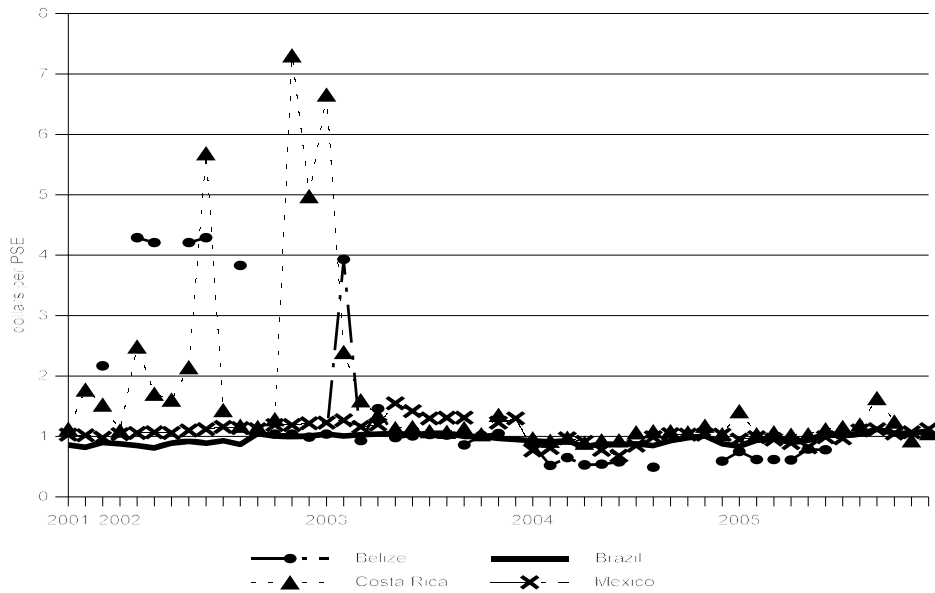
FCOJM: Weighted-average monthly landed duty-paid average unit values and quantities of U.S. imports, by country, October 2001-September 2005

Period	Belize		Brazil		Costa Rica		Mexico	
	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)	AUV (per PSE)	Quantity (1,000 PSEs)
2004:								
January	\$0.87	232	\$0.93	11,893	\$0.97	27	\$0.77	107
February	0.52	4,887	0.91	10,527	0.93	1,225	0.81	50
March	0.65	850	0.93	14,488	0.98	4,207	0.97	557
April	0.53	5,161	0.83	10,227	0.90	5,839	0.91	705
May	0.54	4,469	0.88	8,379	0.94	5,100	0.78	644
June	0.58	604	0.87	11,611	0.94	2,991	0.68	675
July	-	0	0.88	10,335	1.07	3,623	0.85	950
August	0.49	3,165	0.85	6,391	1.09	3,030	0.99	1,378
September	-	0	0.93	10,592	1.09	3,200	1.04	1,216
October	-	0	0.98	11,459	1.07	3,171	1.03	1,971
November	-	0	1.01	22,843	1.18	1,536	1.03	1,100
December	0.59	2,868	0.88	8,335	1.04	72	1.03	1,631
2005:								
January	0.75	382	0.84	9,087	1.42	255	0.95	2,335
February	0.62	5,295	0.94	12,194	1.04	1,850	0.99	3,710
March	0.62	9,356	0.96	19,328	1.07	4,235	0.95	10,883
April	0.61	9,723	0.91	28,985	1.03	4,186	0.89	9,101
May	0.79	1,151	0.94	13,697	1.04	5,093	0.82	5,898
June	0.78	734	1.05	18,796	1.12	4,741	0.99	3,479
July	-	0	1.02	26,327	1.16	1,482	0.97	3,481
August	-	0	1.04	20,764	1.20	2,117	1.10	3,045
September	-	0	1.12	12,126	1.64	86	1.12	3,871
October	-	0	1.05	11,192	1.25	91	1.05	4,367

Note.—Data converted from liters to pounds solid equivalent (PSE) by a factor of .2642/1.029.

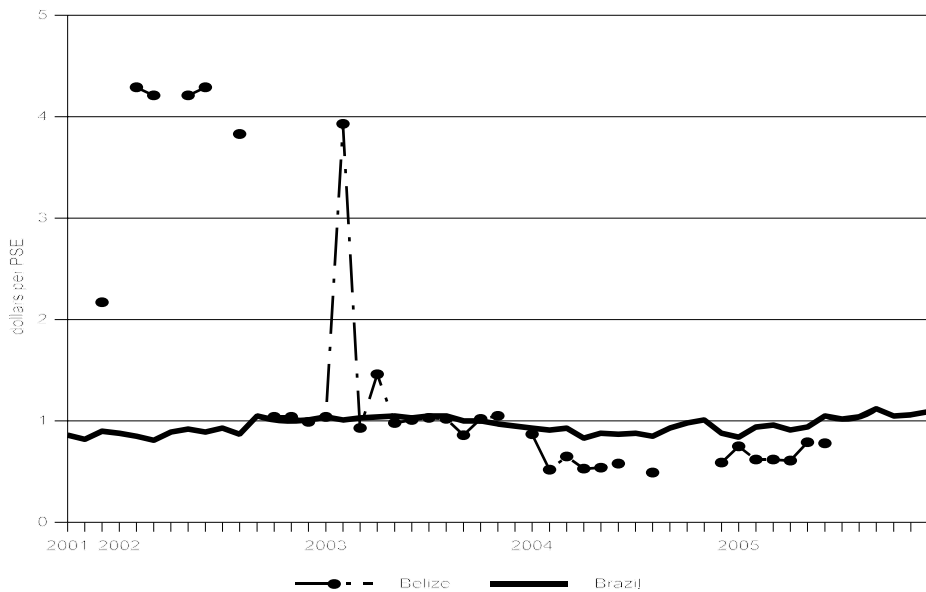
Source: Compiled from official Commerce statistics.

Figure I-1
FCOJM: Weighted-average monthly landed duty-paid average unit values of U.S. imports from Belize, Brazil, Costa Rica, and Mexico, by country, October 2001-September 2005



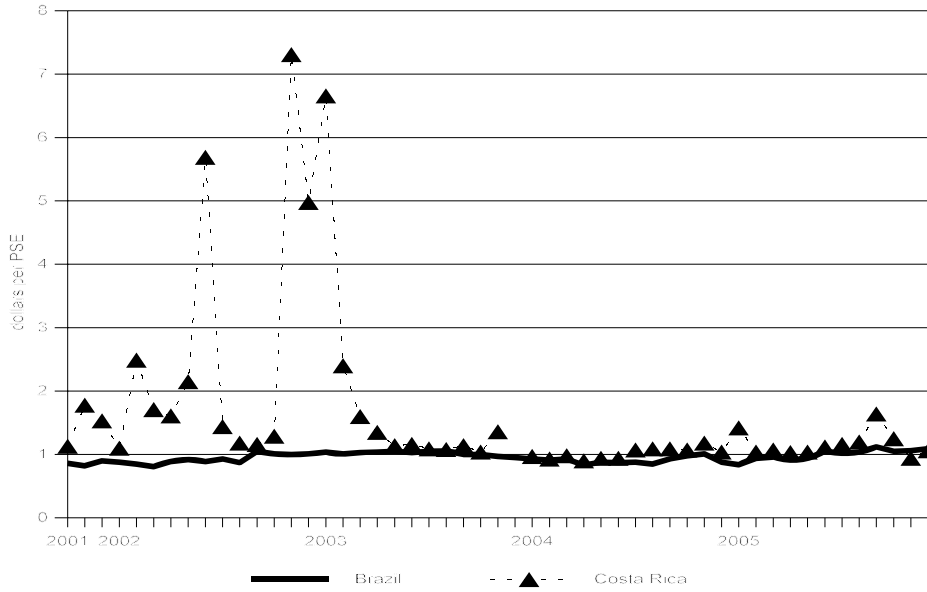
Source: Table I-7.

Figure I-2
FCOJM: Weighted-average monthly landed duty-paid average unit values of U.S. imports from Belize and Brazil, by country, October 2001-September 2005



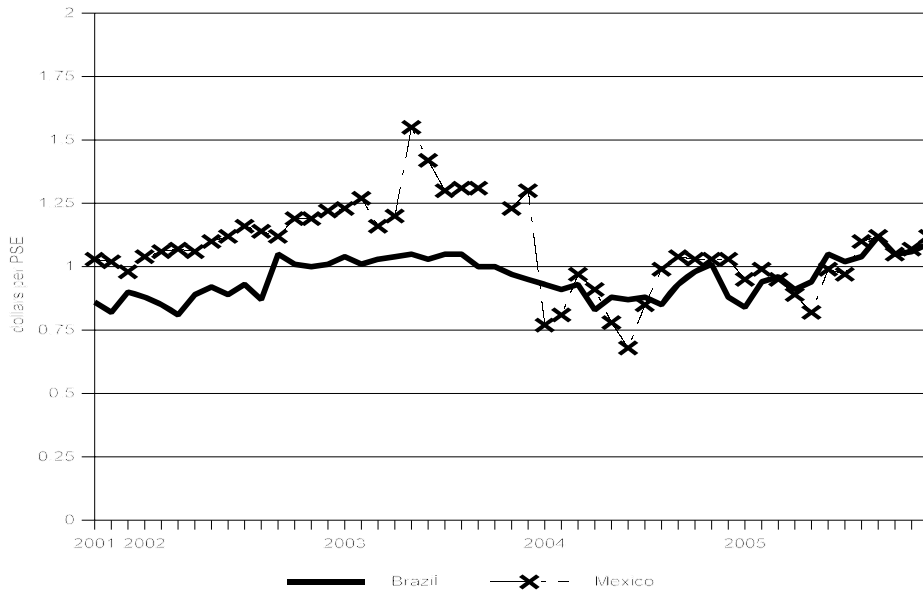
Source: Table I-7.

Figure I-3
FCOJM: Weighted-average monthly landed duty-paid average unit values of U.S. imports from Brazil and Costa Rica, by country, October 2001-September 2005



Source: Table I-7.

Figure I-4
FCOJM: Weighted-average monthly landed duty-paid average unit values of U.S. imports from Brazil and Mexico, by country, October 2001-September 2005



Source: Table I-7.

The Global Industry and Market

Information presented in this section of the report relates to production, inventories, exports, and imports of certain orange juice for nonsubject production in Brazil and for countries other than Brazil during the original period of investigation: crop years 2001/02 to 2004/05. Where available, growers' data for oranges are also presented. Round oranges are the primary input to the subject merchandise, with orange juice processors experiencing significant year-to-year fluctuations in the supply of round oranges.¹⁸

As indicated in tables I-8 and I-9, global trade in orange juice is influenced principally by the activities of growers and processors in Brazil and the United States. Approximately half of world orange production is distributed as processed oranges, with processed oranges accounting for 68 to 83 percent of total orange production in Brazil and the United States during the period of investigation.

Table I-8
Oranges: World supply and distribution, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 90-pound boxes)				
Production	1,221,275	1,123,260	1,245,221	1,115,025
Imports	13,946	18,456	18,480	18,824
Total supply	1,235,221	1,141,716	1,263,701	1,133,848
Fresh, domestic consumption	496,250	494,706	492,672	494,118
Oranges for processing	635,098	536,789	660,833	535,074
Exports	103,873	110,221	110,196	104,657
Total distribution	1,235,221	1,141,716	1,263,701	1,133,848
Shares (percent)				
Shares of total distribution:				
Fresh, domestic consumption	40.2	43.3	39.0	43.6
Oranges for processing	51.4	47.0	52.3	47.2
Exports	8.4	9.7	8.7	9.2
Total	100.0	100.0	100.0	100.0
Shares of imports to total supply	1.1	1.6	1.5	1.7
Note.—One box = 40.824 kilograms.				
Source: PSD online.				

¹⁸ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final)*, USITC Publication 3838, March 2006, p. 14.

Table I-9
Oranges: Global production and share of production, by countries, crop years 2001/02-2004/05

Country	Crop year			
	2001/02	2002/03	2003/04	2004/05
Total orange production (1,000 90-pound boxes)				
Brazil	450,000	377,010	467,010	406,005
United States	276,716	258,015	287,598	206,348
Italy	88,186	88,235	98,922	104,167
Mexico	98,529	91,520	95,613	98,039
Spain	69,167	72,304	74,804	65,956
Greece	42,255	42,230	44,975	51,593
South Africa	41,569	42,500	42,647	43,505
Australia	30,637	30,637	30,637	31,863
Cuba	30,956	28,137	27,279	25,441
Argentina	26,373	28,064	13,480	18,725
Turkey	17,647	19,608	17,279	19,926
Israel	19,118	17,157	18,382	18,873
China	15,515	9,975	11,103	13,407
Egypt	7,966	11,765	9,755	4,902
Cyprus	3,922	3,505	3,260	4,216
Morocco	2,279	2,181	2,083	1,716
Japan	441	417	392	343
Total	1,221,275	1,123,260	1,245,221	1,115,025
Processed oranges (1,000 90-pound boxes)				
Brazil	328,995	257,010	350,000	295,490
United States	228,333	205,049	238,873	156,324
Italy	16,740	20,343	22,475	23,284
Mexico	8,333	1,961	4,902	18,137
Spain	11,569	13,995	12,034	13,284
Greece	7,819	8,113	5,515	6,471
South Africa	7,672	5,956	5,564	3,113
Australia	8,309	4,167	4,657	5,392
Cuba	6,373	9,118	6,985	2,623
Argentina	3,922	3,676	3,922	4,167
Turkey	3,064	3,064	3,064	2,451
Israel	1,569	1,324	686	1,863
China	564	515	613	686
Egypt	858	907	907	980
Cyprus	490	466	515	662
Morocco	441	1,078	123	147
Japan	49	49	0	0
Total	635,098	536,789	660,833	535,074

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Table I-9--Continued

Oranges: Global production and share of production, crop years 2001/02-2004/05

Country	Crop year			
	2001/02	2002/03	2003/04	2004/05
Shares of total processed oranges (percent)				
Brazil	51.8	47.9	53.0	55.2
United States	36.0	38.2	36.1	29.2
Italy	2.6	3.8	3.4	4.4
Mexico	1.3	0.4	0.7	3.4
Spain	1.8	2.6	1.8	2.5
Greece	1.2	1.5	0.8	1.2
South Africa	1.2	1.1	0.8	0.6
Australia	1.3	0.8	0.7	1.0
Cuba	1.0	1.7	1.1	0.5
Argentina	0.6	0.7	0.6	0.8
Turkey	0.5	0.6	0.5	0.5
Israel	0.2	0.2	0.1	0.3
China	0.1	0.1	0.1	0.1
Egypt	0.1	0.2	0.1	0.2
Cyprus	0.1	0.1	0.1	0.1
Morocco	0.1	0.2	0.0	0.0
Japan	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0
Processed oranges as a share of country's distribution of oranges (percent)				
Brazil	73.1	68.2	74.9	72.8
United States	82.5	79.5	83.1	75.8
Italy	19.0	23.1	22.7	22.4
Mexico	8.5	2.1	5.1	18.5
Spain	16.7	19.4	16.1	20.1
Greece	18.5	19.2	12.3	12.5
South Africa	18.5	14.0	13.0	7.2
Australia	27.1	13.6	15.2	16.9
Cuba	20.6	32.4	25.6	10.3
Argentina	14.9	13.1	29.1	22.3
Turkey	17.4	15.6	17.7	12.3
Israel	8.2	7.7	3.7	9.9
China	3.6	5.2	5.5	5.1
Egypt	10.8	7.7	9.3	20.0
Cyprus	12.5	13.3	15.8	15.7
Morocco	19.4	49.4	5.9	8.6
Japan	11.1	11.8	0.0	0.0
World	51.4	47.0	52.3	47.2
Note.--FCOJ and NFC metric tons were converted to SSE gallons by a conversion factor of 1,405.88.				
Source: PSD online.				

Data on orange juice production measured in 1,000 gallons SSE is presented in table I-10. Brazil and the United States combined accounted for approximately 90 percent of world production.

Table I-10
Orange juice: Global production and share of production, crop years 2001/02-2004/05

Country	Crop year			
	2001/02	2002/03	2003/04	2004/05
Production (1,000 gallons SSE)				
Brazil	1,903,562	1,618,168	2,083,514	1,806,556
United States	1,434,502	1,251,296	1,466,987	975,648
Spain	57,876	78,729	70,294	78,729
Italy	44,315	52,018	56,938	59,047
South Africa	32,377	34,542	32,237	19,997
Mexico	47,800	11,247	28,258	104,176
Australia	36,661	18,385	20,547	23,792
Turkey	17,574	17,574	17,574	14,059
Greece	22,494	27,133	16,871	19,682
Korea	4,559	11,026	13,496	11,305
Israel	26,712	26,712	12,653	21,088
China	2,109	2,109	2,531	2,812
Morocco	2,249	6,186	703	844
Japan	281	281	0	0
Total	3,633,071	3,155,406	3,822,602	3,137,734
Share of production (percent)				
Brazil	52.4	51.3	54.5	57.6
United States	39.5	39.7	38.4	31.1
Spain	1.6	2.5	1.8	2.5
Italy	1.2	1.6	1.5	1.9
South Africa	0.9	1.1	0.8	0.6
Mexico	1.3	0.4	0.7	3.3
Australia	1.0	0.6	0.5	0.8
Turkey	0.5	0.6	0.5	0.4
Greece	0.6	0.9	0.4	0.6
Korea	0.1	0.3	0.4	0.4
Israel	0.7	0.8	0.3	0.7
China	0.1	0.1	0.1	0.1
Morocco	0.1	0.2	0.0	0.0
Japan	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0
Note.—FCOJ and NFC metric tons were converted to SSE gallons by a conversion factor of 1,405.88.				
Source: PSD online.				

Apparent Consumption in Selected Countries

Table I-11 presents available data on the apparent consumption of orange juice on a country basis, for countries other than Brazil and the United States.

Table I-11
Orange juice: Estimated apparent consumption, import penetration, and ratio of exports to consumption, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Australia--				
Production (1,000 gallons SSE)	36,661	18,385	20,547	23,792
Imports (1,000 gallons SSE)	41,653	35,362	59,796	41,473
Exports (1,000 gallons SSE)	3,502	2,678	3,165	3,045
Net exports (1,000 gallons SSE)	(38,151)	(32,684)	(56,632)	(38,428)
Apparent consumption (1,000 gallons SSE)	68,888	64,670	68,888	68,888
Import penetration (percent) ¹	60.5	54.7	86.8	60.2
Exports to consumption (ratio) ²	5.1	4.1	4.6	4.4
China--				
Production (1,000 gallons SSE)	2,109	2,109	2,531	2,812
Imports (1,000 gallons SSE)	50,381	59,785	68,315	64,506
Exports (1,000 gallons SSE)	4,004	4,294	3,706	3,927
Net exports (1,000 gallons SSE)	(46,377)	(55,491)	(64,609)	(60,579)
Apparent consumption (1,000 gallons SSE)	48,486	57,600	67,139	63,391
Import penetration (percent) ¹	103.9	103.8	101.8	101.8
Exports to consumption (ratio) ²	8.3	7.5	5.5	6.2
Greece--				
Production (1,000 gallons SSE)	22,494	27,133	16,871	19,682
Imports (1,000 gallons SSE)	21,088	14,059	18,276	53,632
Exports (1,000 gallons SSE)	14,762	14,762	11,247	15,848
Net exports (1,000 gallons SSE)	(6,326)	703	(7,029)	(37,783)
Apparent consumption (1,000 gallons SSE)	25,789	26,571	24,743	55,357
Import penetration (percent) ¹	81.8	52.9	73.9	96.9
Exports to consumption (ratio) ²	57.2	55.6	45.5	28.6

Table continued on next page.

Table I-11—Continued

Orange juice: Estimated apparent consumption, import penetration, and ratio of exports to consumption, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Israel				
Production (1,000 gallons SSE)	26,712	26,712	12,653	21,088
Imports (1,000 gallons SSE)	63,265	63,265	63,265	56,938
Exports (1,000 gallons SSE)	52,018	52,018	35,850	26,712
Net exports (1,000 gallons SSE)	(11,247)	(11,247)	(27,415)	(30,226)
Apparent consumption (1,000 gallons SSE)	37,959	44,988	52,721	52,018
Import penetration (percent) ¹	166.7	140.6	120.0	109.5
Exports to consumption (ratio) ²	137.0	115.6	68.0	51.4
Italy--				
Production (1,000 gallons SSE)	44,315	52,018	56,938	59,047
Imports (1,000 gallons SSE)	23,048	28,057	35,147	30,929
Exports (1,000 gallons SSE)	18,804	18,747	21,088	23,900
Net exports (1,000 gallons SSE)	(4,244)	(9,310)	(14,059)	(7,029)
Apparent consumption (1,000 gallons SSE)	55,603	60,758	62,562	64,670
Import penetration (percent) ¹	41.5	46.2	56.2	47.8
Exports to consumption (ratio) ²	33.8	30.9	33.7	37.0
Japan--				
Production (1,000 gallons SSE)	281	281	0	0
Imports (1,000 gallons SSE)	135,849	135,773	118,078	142,444
Exports (1,000 gallons SSE)	0	0	0	0
Net exports (1,000 gallons SSE)	(135,849)	(135,773)	(118,078)	(142,444)
Apparent consumption (1,000 gallons SSE)	136,130	136,054	127,920	128,385
Import penetration (percent) ¹	99.8	99.8	92.3	111.0
Exports to consumption (ratio) ²	0.0	0.0	0.0	0.0
Korea--				
Production (1,000 gallons SSE)	4,559	11,026	13,496	11,305
Imports (1,000 gallons SSE)	65,199	68,357	54,154	53,440
Exports (1,000 gallons SSE)	24	60	204	647
Net exports (1,000 gallons SSE)	(65,175)	(68,296)	(53,951)	(52,794)
Apparent consumption (1,000 gallons SSE)	69,559	78,777	68,068	64,295
Import penetration (percent) ¹	93.7	86.8	79.6	83.1
Exports to consumption (ratio) ²	0.0	0.1	0.3	1.0

Table continued on next page.

Table I-11—Continued

Orange juice: Estimated apparent consumption, import penetration, and ratio of exports to consumption, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Mexico--				
Production (1,000 gallons SSE)	47,800	11,247	28,258	104,176
Imports (1,000 gallons SSE)	998	281	867	1,265
Exports (1,000 gallons SSE)	43,175	5,624	22,543	95,881
Net exports (1,000 gallons SSE)	42,176	5,342	21,676	94,616
Apparent consumption (1,000 gallons SSE)	8,435	5,905	6,582	8,435
Import penetration (percent) ¹	11.8	4.8	13.2	15.0
Exports to consumption (ratio) ²	511.8	95.2	342.5	1,136.7
Morocco--				
Production (1,000 gallons SSE)	2,249	6,186	703	844
Imports (1,000 gallons SSE)	703	969	1,173	1,968
Exports (1,000 gallons SSE)	3,936	2,924	1,122	7
Net exports (1,000 gallons SSE)	3,234	1,956	(51)	(1,961)
Apparent consumption (1,000 gallons SSE)	2,249	2,390	3,374	3,508
Import penetration (percent) ¹	31.3	40.5	34.8	56.1
Exports to consumption (ratio) ²	175.0	122.4	33.3	0.2
South Africa--				
Production (1,000 gallons SSE)	32,377	34,542	32,237	19,997
Imports (1,000 gallons SSE)	89	343	384	896
Exports (1,000 gallons SSE)	23,775	16,291	10,484	15,158
Net exports (1,000 gallons SSE)	23,686	15,948	10,100	14,263
Apparent consumption (1,000 gallons SSE)	12,794	16,871	18,276	11,247
Import penetration (percent) ¹	0.7	2.0	2.1	8.0
Exports to consumption (ratio) ²	185.8	96.6	57.4	134.8
Spain--				
Production (1,000 gallons SSE)	57,876	78,729	70,294	78,729
Imports (1,000 gallons SSE)	37,959	81,119	124,191	113,166
Exports (1,000 gallons SSE)	77,323	122,593	153,580	173,650
Net exports (1,000 gallons SSE)	39,365	41,473	29,389	60,484
Apparent consumption (1,000 gallons SSE)	18,511	37,959	39,365	19,083
Import penetration (percent) ¹	205.1	213.7	315.5	593.0
Exports to consumption (ratio) ²	417.7	323.0	390.1	910.0

Table continued on next page.

Table I-11—Continued

Orange juice: Estimated apparent consumption, import penetration, and ratio of exports to consumption, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Turkey--				
Production (1,000 gallons SSE)	17,574	17,574	17,574	14,059
Imports (1,000 gallons SSE)	3,769	3,882	5,715	7,767
Exports (1,000 gallons SSE)	337	917	617	1,265
Net exports (1,000 gallons SSE)	(3,432)	(2,965)	(5,098)	(6,502)
Apparent consumption (1,000 gallons SSE)	20,385	20,526	22,213	22,494
Import penetration (percent) ¹	18.5	18.9	25.7	34.5
Exports to consumption (ratio) ²	1.7	4.5	2.8	5.6
World Total--				
Production (1,000 gallons SSE)	3,633,071	3,155,406	3,822,602	3,137,734
Imports (1,000 gallons SSE)	632,725	782,310	771,709	926,057
Exports (1,000 gallons SSE)	2,180,237	2,195,466	2,378,965	2,370,222
Net exports (1,000 gallons SSE)	1,547,513	1,413,155	1,607,257	1,444,165
Apparent consumption (1,000 gallons SSE)	4,256,513	3,761,468	4,147,720	3,475,472
Import penetration (percent) ¹	14.9	20.8	18.6	26.6
Exports to consumption (ratio) ²	51.2	58.4	57.4	68.2
Note.—FCOJ and NFC metric tons were converted to SSE gallons by a conversion factor of 1,405.88.				
Source: PSD Online				

Global Trade

Data on global imports and exports of orange juice are shown in tables I-12 and I-13. Most of the orange juice traded on the world market is imported by the United States and the European Union (table I-12). Brazil is, by far, the most substantial orange juice exporter (table I-13).

Table I-12
Orange juice: Global imports, by destination, 2002-05

Destination	Calendar year			
	2002	2003	2004	2005
Quantity (1,000 gallons SSE)				
United States	229,271	319,164	213,889	313,900
Other importing countries--				
European Union (external trade)	440,029	305,872	390,035	499,640
China	49,192	69,750	56,970	83,074
Russia	46,850	61,186	63,236	74,189
Canada	21,515	42,619	67,815	72,900
South Korea	66,076	56,835	54,175	53,283
Australia	34,529	35,645	57,994	47,787
Norway	25,467	25,424	28,197	32,045
Japan	15,035	13,667	15,471	15,590
All others	79,114	75,408	91,440	97,370
Total	1,007,078	1,005,570	1,039,220	1,289,778
Unit value (per gallon)				
United States	\$0.97	\$0.83	\$0.72	\$0.73
Other importing countries--				
European Union (external trade)	0.44	0.50	0.37	0.36
China	0.88	0.88	0.75	0.71
Russia	0.78	0.73	0.85	0.81
Canada	4.23	3.40	2.93	3.09
South Korea	0.89	0.98	0.85	0.78
Australia	0.76	0.90	0.71	0.65
Norway	0.87	0.89	0.75	0.71
Japan	6.02	6.13	5.45	5.41
All others	(¹)	(¹)	0.92	0.88
Average	(¹)	(¹)	(¹)	(¹)
Share of quantity (percent)				
United States	22.8	31.7	20.6	24.3
Other importing countries--				
European Union (external trade)	43.7	30.4	37.5	38.7
China	4.9	6.9	5.5	6.4
Russia	4.7	6.1	6.1	5.8
Canada	2.1	4.2	6.5	5.7
South Korea	6.6	5.7	5.2	4.1
Australia	3.4	3.5	5.6	3.7
Norway	2.5	2.5	2.7	2.5
Japan	1.5	1.4	1.5	1.2
All others	7.9	7.5	8.8	7.5
Total	100.0	100.0	100.0	100.0
¹ Not available.				
Source: HTS subheadings 2009.11 and 2009.12 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com , retrieved May 16, 2007. Kilograms are converted to gallons by a conversion factor of 1.40588; liters are converted to gallons by a conversion factor of 0.2642.				

Table I-13
Orange juice: Global exports, by source, 2002-05

Source	Calendar year			
	2002	2003	2004	2005
Quantity (1,000 gallons, SSE)				
United States	142,396	93,522	131,432	121,459
Other exporting countries--				
Brazil	1,606,004	1,873,518	1,883,824	2,131,800
Mexico	30,662	1,854	3,385	13,720
European Union (external trade)	44,884	37,359	37,437	38,742
Canada	1,507	3,713	4,188	4,483
Costa Rica	18,472	10,391	24,700	19,930
Argentina	8,896	4,725	6,333	11,822
All others	49,836	37,606	26,876	31,877
Total	1,902,657	2,062,688	2,118,173	2,373,832
Unit value (per gallon)				
United States	\$1.55	\$2.46	\$2.20	\$2.55
Other exporting countries--				
Brazil	0.56	0.52	0.46	0.43
Mexico	1.83	5.85	4.39	4.93
European Union (external trade)	0.55	0.88	0.93	0.89
Canada	2.51	2.23	1.86	1.90
Costa Rica	0.48	0.38	0.67	0.42
Argentina	0.53	0.61	0.54	0.61
All others	(¹)	(¹)	0.87	1.52
Average	(¹)	(¹)	0.59	0.59
Share of quantity (percent)				
United States	7.5	4.5	6.2	5.1
Other exporting countries--				
Brazil	84.4	90.8	88.9	89.8
Mexico	1.6	0.1	0.2	0.6
European Union (external trade)	2.4	1.8	1.8	1.6
Canada	0.1	0.2	0.2	0.2
Costa Rica	1.0	0.5	1.2	0.8
Argentina	0.5	0.2	0.3	0.5
All others	2.6	1.8	1.3	1.3
Total	100.0	100.0	100.0	100.0
¹ Not available. Note.--Kilograms are converted to gallons by a conversion factor of 1.40588; liters are converted to gallons by a conversion factor of 0.2642. Source: HTS subheadings 2009.11 and 2009.12 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com , retrieved May 15, 2007.				

Nonsubject Production in Brazil

Product from Brazilian producer Citrovita Agro Industrial Ltda. (“Citrovita”) constitutes nonsubject merchandise since the firm is not covered by the scope of the investigation as defined by Commerce.¹⁹ Table I-14 presents data submitted by Citrovita during the Commission’s original investigation.²⁰ Reported processing capacity *** Citrovita’s production of FCOJM in 2001/02 and 2003/04 while FCOJM production was *** than reported processing capacity in 2002/03 and 2004/05.²¹ The firm anticipated *** excess capacity to produce FCOJM in either 2005/06 or 2006/07. ***.

**Table I-14
FCOJM (nonsubject Brazil): Citrovita production capacity, production, shipments, and inventories, 2001/02-2004/05, July-September 2004, July-September 2005, and projected 2005/06-2006/07**

* * * * *

¹⁹ 71 FR 2183, January 13, 2006. At the time of the filing of the original petition, there was an existing antidumping duty order on FCOJ from Brazil. The scope of the investigation, therefore, covers only FCOJM produced and/or exported by those companies that were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. 70 FR 49557, August 24, 2005. This includes all Brazilian producers/exporters except Citrovita.

²⁰ Four additional (subject) Brazilian orange producers (Coinbra, Cutrale, Fischer/Citrosuco, and Montecitrus Group) also provided data during the original investigation. These four firms accounted for approximately *** percent of Brazilian production of certain orange juice in 2004/05. (Original staff report, INV-DD-010 (January 27, 2006), p. VII-5.) The following tabulation presents data for both the subject and nonsubject producers:

Item	Actual experience						Projections	
	Crop year (July-June)				July-September		2005/06	2006/07
	2001/02	2002/03	2003/04	2004/05	2004	2005		
Quantity (1,000 pounds solids)								
Subject producers: Capacity	***	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***	***
Citrovita (nonsubject): Capacity	***	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***	***
Source: Tables I-14 of this memorandum and table VII-4 from the original staff report (INV-DD-010, January 27, 2006).								

As shown, Citrovita’s operations accounted for *** percent of total production of certain orange juice in Brazil during crop year 2004/05.

²¹ Production was also *** than capacity during the interim periods.

The Industries in Nonsubject Countries

Belize

Belize produced about 213,400 metric tons of oranges in the 2004/05 season, or less than 1 percent of world production.²² According to the Food and Agriculture Organization of the United Nations (“FAO”) data, Belize exported 25,900 metric tons of frozen concentrated orange juice in 2004. This amount accounted for about 1.1 percent of world exports of concentrated orange juice in 2004.²³

Citrus Products of Belize, Ltd. (“CPB”) reportedly is the primary processor of concentrated juices and not-from-concentrate juices.²⁴ Groves planted by CPB account for about 20 percent of the Belizean citrus industry.²⁵ The CPB groves in the Stann Creek Valley and Cayo District are located within 100 miles of its processing facilities. CPB maintains two processing plants - one in the Alta Vista Valley (Belize Food Products Ltd. & Top Juice Ltd.) and one in the Poona Valley (Citrus Company of Belize Ltd.).²⁶

Data on the fresh orange and orange processing industry in Belize are presented in table I-15. As shown, the numbers of oranges processed and factory recovery of solids from oranges have risen sharply from 2002/03 to 2004/05. About 95 percent of the orange production in Belize is processed into juice, 2 percent is rejected at the factory, and 3 percent is exported as fresh fruit exports.²⁷

²² *Citrus Fruit, Fresh and Processed, Annual Statistics 2003*, FAO/UN, CCP: CI/ST/2003. Compare also 2003/04 data for table I-15 (Belizean orange production for exporting and processing to table I-9 (world orange production)).

²³ Figures based on official FAO data. Global Trade Atlas® data on exports from Belize are not available.

²⁴ CPB did not provide a response to the Commission questionnaire sent to it in this remand investigation.

²⁵ According to the “Pounds Solids Authority Annual Report Crop Year 2004/05” CPB processed 43 percent of the total orange crop in 2004/05. A total of 564 growers delivered oranges to the CPB processing plants. Ibid. There are believed to be about 1,000 orange growers in Belize. Official statistics of the Belize Citrus Growers Association, www.belizecitrus.org, and the Belize Agricultural Health Authority.

²⁶ www.citrusproductsbelize.com, retrieved May 21, 2007.

²⁷ Figures calculated from data for 2003/04 in table I-15.

Table I-15

Fresh oranges and processed orange solids: Production in Belize, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Fresh oranges exported (90-pound boxes)	(¹)	(¹)	169,886	(¹)
Oranges rejected at factories (90-pound boxes)	(¹)	(¹)	109,987	(¹)
Oranges processed at factories (90-pound boxes)	4,122,594	4,046,295	4,946,717	6,264,847
Total (90-pound boxes)	(¹)	(¹)	5,226,590	(¹)
Processed orange solids (factory): CCB ² (pounds solid equivalent)	(¹)	(¹)	(¹)	15,751,456
BFP ³ (pounds solid equivalent)	(¹)	(¹)	(¹)	22,797,948
Total	(¹)	23,374,326	28,322,764	38,549,404

¹ Not available.
² Citrus Company of Belize Ltd.
³ Belize Food Products Ltd.

Source: *Pounds Solid Authority Annual Report Crop Year 2004/05*, Belize Citrus Growers Association, found at www.belizecitrus.org, retrieved May 18, 2007. According to the report, data for the two plants represent an "industry total" for the most recent crop year.

The following tabulation provides the volume of U.S. imports of certain orange juice from Belize:

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)	3,822	8,123	20,205	30,366
Value (1,000 dollars)	13,747	11,486	10,602	18,484
Unit value (per gallon)	\$3.60	\$1.41	\$0.52	\$0.61

Source: Table I-5 of this memorandum.

All U.S. imports of orange juice from Belize were FCOJM, for which Belize was the third leading supplier to the United States in 2004/05 after Brazil and Mexico (tables I-5, D-1, and D-2). Belize accounted for 8.6 percent of the quantity of all U.S. imports of certain orange juice in 2004/05 (table I-5).

Costa Rica

Costa Rica accounts for only a small share of the world's orange production.²⁸ The majority of its orange production is exported as frozen concentrate. In 2005, Costa Rica accounted for 0.8 percent of global exports of orange juice (table I-13) although it regularly supplies orange juice to the United States (table I-5).

Costa Rican orange production is concentrated in the northwest part of the country, along the border with Nicaragua. Most of the processing is done by two companies, TicoFrut and Del Oro, which also process pineapples during the off-season.²⁹ TicoFrut and Del Oro are reported by the USDA to have continued "to improve" their plants and processing capacity³⁰ and, with respect to TicoFrut, purchased additional orange groves and replanted trees. A significant share of the fresh oranges obtained by these processors are grown across the border in Nicaragua. Recent higher prices for orange juice in the international markets have spurred orange production in both Costa Rica and Nicaragua.³¹

Available data on fresh orange production in Costa Rica are presented in table I-16.

Table I-16
Oranges: Acres planted, orange bearing trees, and production in Costa Rica, crop year 2005/06

Item	Crop year 2005/06
	Forecast
Area planted (acres)	49,420
Oranges produced (1,000 90-pound boxes) ¹	8,000
Orange solids produced: Unit (1,000 pounds solid at 66 Brix)	41,600
Unit (1,000 gallons SSE)	5,487
¹ Includes an estimated 1,000 boxes coming from Nicaragua.	
Note.—One hectare = 2.471 acres; one box = 40.824 kilograms; one metric ton = 191.91 SSE gallons (66 Brix).	
Source: <i>Costa Rica Citrus Annual 2005</i> , USDA Foreign Agricultural Service GAIN Report, November 15, 2005.	

There is minimal information available on the frozen concentrated orange juice processing industry in Costa Rica. Neither the Government of Costa Rica nor any private source maintains industry-wide data although processors apparently report data on their operations to a Costa Rican governmental authority.³² As indicated above, the majority of the orange production in Costa Rica is exported as orange juice. Table I-17 presents export data for Costa Rica by market. In quantity terms, exports of

²⁸ Compare table I-9 to table I-16.

²⁹ Commission questionnaires in this remand investigation were sent to the following firms in Costa Rica: TicoFrut (San José); Del Oro (La Cruz, Guanacaste); Dos Pinos (San Jose); Fructa C.R., S.A. (San Jose); and Suco Citro, S.A., an affiliate of Fructa C.R. (San Jose). Only Del Oro provided a response; information provided by the firm is shown in app. E.

³⁰ See app. E. for data on Del Oro's processing capacity; the firm made a ***.

³¹ "Costa Rica Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 15, 2005.

³² Telegram O 171611Z, May 7, 2007 from the U.S. Embassy (San Jose, Costa Rica) and letter from ***, May 23, 2007.

Table I-17

Orange juice: Export markets for product from Costa Rica, 2002-05

Export market	Calendar year			
	2002	2003	2004	2005
Quantity (1,000 gallons SSE)				
FCOJM:¹				
Netherlands	17,495	427	0	450
United States	883	0	0	134
Panama	95	0	543	535
All others	0	82	54	0
Total	18,472	509	597	1,119
NFCOJ:²				
Netherlands	0	9,877	11,883	18,810
Bahamas	0	0	10,870	0
United States	0	5	1,350	0
Total	0	9,883	24,103	18,810
Total:³				
Netherlands	20,619	10,716	13,376	21,866
United States	31,675	31,459	12,928	25,138
Panama	512	119	565	552
Bahamas	0	0	13,279	0
All others	1,977	2,697	3,139	4,001
Total	54,783	44,992	43,286	51,557
Unit value (per gallon)				
FCOJM:¹				
Netherlands	\$0.46	\$0.23	(⁴)	\$0.32
United States	0.90	(⁴)	(⁴)	0.76
Panama	0.56	(⁴)	\$0.47	0.53
All others	(⁴)	0.40	0.45	(⁴)
Total	0.48	0.25	0.46	0.47
NFCOJ:²				
Netherlands	(⁴)	0.38	0.34	0.42
Bahamas	(⁴)	(⁴)	0.99	(⁴)
United States	(⁴)	0.49	1.02	(⁴)
Total	(⁴)	0.38	0.67	0.42
Total:³				
Netherlands	0.46	0.39	0.34	0.41
United States	1.00	1.05	0.92	0.94
Panama	0.58	0.58	0.47	0.52
Bahamas	(⁴)	(⁴)	0.98	(⁴)
All others	0.62	0.47	0.42	0.52
Total	0.78	0.86	0.72	0.68

Table continued on next page.

Table I-17–Continued

Orange juice: Export markets for product from Costa Rica, 2002-05

Export market	Calendar year			
	2002	2003	2004	2005
Share of quantity (percent)				
FCOJM:¹				
Netherlands	94.7	83.8	0.0	40.2
United States	4.8	0.0	0.0	12.0
Panama	0.5	0.0	90.9	47.8
All others	0.0	16.2	9.1	0.0
TOTAL	100.0	100.0	100.0	100.0
NFCOJ:²				
Netherlands	0.0	99.9	49.3	100.0
Bahamas	0.0	0.0	45.1	0.0
United States	0.0	0.1	5.6	0.0
Total	0.0	100.0	100.0	100.0
Total:³				
Netherlands	37.6	23.8	30.9	42.4
United States	57.8	69.9	29.9	48.8
Panama	0.9	0.3	1.3	1.1
Bahamas	0.0	0.0	30.7	0.0
All others	3.6	6.0	7.3	7.8
Total	100.0	100.0	100.0	100.0
¹ HTS 2009.11.00. ² HTS 2009.12.00. ³ Exports reported under HTS subheading 2009.19.00 ("other" orange juice) were included in the total in an effort to capture all exports of certain orange juice. ⁴ Not applicable.				
Note.—Kilograms are converted to gallons by a conversion factor of 1.40588; liters are converted to gallons by a conversion factor of 0.2642.				
Source: Global Trade Atlas.				

orange juice from Costa Rica have ranged between a low of 43.2 million gallons SSE in 2004 and a high of 54.8 million gallons SSE in 2002. The United States is the destination for the largest amount of exports of orange juice from Costa Rica, followed by the Netherlands.

The following tabulation provides the volume of U.S. imports of certain orange juice from Costa Rica:

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)	24,054	28,755	32,020	29,658
Value (1,000 dollars)	37,960	38,397	30,781	31,411
Unit value (per gallon)	\$1.58	\$1.34	\$0.96	\$1.06
Source: Table I-5.				

U.S. imports of Costa Rican orange juice have fluctuated between 24 and 32 million gallons during the last four crop years. Costa Rica exported only FCOJM to the United States during the original period of investigation (tables I-5, D-1, and D-2). Costa Rica was the fourth leading supplier of the product to the United States in 2004/05 after Brazil, Mexico, and Belize. Costa Rica accounted for 8.4 percent of the quantity of total U.S. imports of certain orange juice in 2004/05 (table I-5).

Mexico

Less than 9 percent of world production of oranges is in Mexico (table I-9, calculated for 2004/05). Mexico's share of total processed oranges is less than 4 percent (table I-9) while its share of global exports of orange juice is less than 2 percent (table I-13).

Several firms currently process orange juice in Mexico.³³ Reportedly owing to financial problems within the Mexican processing industry and droughts, the Mexican industry has become more concentrated with the number of processors declining from a previous estimate of 22 firms to only 7 in 2005.³⁴ There were an estimated 67,000 citrus growers located throughout Mexico, most of which were believed to be growing oranges.³⁵ Data on orange production in Mexico are presented in table I-18 with production by type of orange shown in table I-19. According to the USDA, fresh orange production in the most recent crop year fell to 3.9 million tons from 4.3 million tons in 2004/05 due to lack of rain in the northern states during the first quarter of 2005. The heavy rainfalls caused by hurricanes during September and October 2005 were also a factor leading to reduced production. According to the 2005 GAIN report “[p]roducers do not expect an increase in the number of {fresh orange} groves. In general, growers have been abandoning groves, or switching to other crops, due to the high production costs, wide swings in fresh orange prices, and marketing problems. Increases in orange production are more a result of increased tree density than of expansion in area planted.”³⁶ As shown in table I-18, most of the oranges grown in Mexico are consumed domestically as fresh squeezed juice. In 2005/06 it is forecast that 11 percent will be processed and less than 1 percent will be exported.³⁷

³³ Commission questionnaires in this remand investigation were sent to the following firms: CitroFruit S.A. de C.V. (“CitroFruit”) (Monterrey, N.L.); Procimart (Tamaulipas); Citrotam International, S.P.R. de R.I. (Guemez); and Fruitec (Col. America Guadalupe, N.L.). CitroFruit and Procimart provided responses to the questionnaire; data provided by the firms are presented in appendix E.

³⁴ “Mexico Citrus Annual 2005,” USDA Foreign Agricultural Service GAIN Report, November 14, 2005.

³⁵ “Mexico Citrus Semi-Annual Report 2005,” USDA Foreign Agricultural Service GAIN Report, May 11, 2005.

³⁶ “Mexico Citrus Annual 2005,” USDA Foreign Agricultural Service GAIN Report, November 14, 2005. Production costs also vary between regions and producers. Differing cost structures are due primarily to variations in irrigation costs but can also be attributed to fertilization and pest control costs. *Ibid.*

³⁷ Calculated from figures in table I-18.

Table I-18

Oranges: Acres planted and harvested, orange bearing trees, production and utilization of oranges in Mexico, crop years 2002/03, 2003/04, 2004/05, and 2005/06

Item	Crop year			
	2002/03	2003/04	2004/05	2005/06
	<i>Revised</i>	<i>Revised</i>	<i>Estimate</i>	<i>Forecast</i>
Area planted (1,000 acres)	878,161	864,121	825,314	825,314
Area harvested (1,000 acres)	815,287	825,991	815,430	810,488
Bearing trees (1,000 trees)	66,648	67,523	66,660	66,256
Non-bearing trees (1,000 trees)	5,089	3,117	810	1,212
Total trees (1,000 trees)	71,737	70,640	67,470	67,468
Oranges produced (1,000 90-pound boxes)	91,520	95,613	105,392	95,588
Oranges imported (1,000 90-pound boxes)	956	441	490	441
Total supply (1,000 90-pound boxes)	92,475	96,054	105,882	96,029
Exports (1,000 90-pound boxes)	172	319	490	490
Fresh domestic consumption (1,000 90-pound boxes)	90,343	90,833	89,461	85,245
Processed (1,000 90-pound boxes)	1,961	4,902	15,931	10,294
Total distribution (1,000 90-pound boxes)	92,475	96,054	105,882	96,029
Note.—One hectare = 2.471 acres; 40.8 kg. = 90-pound box.				
Source: "Mexico Citrus Annual 2004", USDA Foreign Agricultural Service GAIN Report, December 13, 2004 and "Mexico Citrus Annual 2004", USDA Foreign Agricultural Service GAIN Report, November 14, 2005.				

Table I-19

Oranges: Production in Mexico, by variety, 2002-04

Variety	2002	2003	2004
(1,000 90-pound boxes)			
Early season and other	51,705	49,107	12,912
Valencia	46,338	44,749	84,255
Navel	495	405	313
Total	98,539	94,261	97,480
Source: Compiled from SAGARPA, SAICON statistics.			

Reportedly, orange production in Mexico was forecast to decrease from 2004/05 to 2005/06 due to both dry weather conditions and strong rainfalls, with a resulting decrease in the supply of oranges and

FCOJ production.³⁸ Low international prices for frozen concentrated orange juice are also reported to have led to a decline in processed orange juice production “in recent years.”³⁹

FCOJ production for 2005 is forecast at about 59 million gallons SSE (table I-20).⁴⁰ Most of the FCOJ processed in Mexico is exported since domestic consumers prefer to squeeze their own fresh orange juice. In 2005, 88 percent is forecasted to be exported while the remaining 12 percent should be consumed domestically.⁴¹ However, domestic demand has been slowly increasing, mainly from hotel chains and restaurants as well as increasing demand for beverages and other food products with an orange flavoring.⁴²

Table I-20
FCOJ: Distribution in Mexico, 2002-05

Item	Market year beginning--			
	01/2002	01/2003	01/2004	01/2005
Quantity (1,000 gallons SSE)				
Beginning stocks	1,406	1,406	1,406	4,218
Production	11,247	28,258	91,382	59,047
Imports	281	867	872	872
Total supply	12,934	30,531	93,660	64,136
Exports	5,624	22,543	82,694	52,889
Domestic consumption	5,905	6,582	6,748	7,029
Ending stocks	1,406	1,406	4,218	4,218
Total distribution	12,934	30,531	93,660	64,136
Note.--FCOJ metric tons at 65 Brix were converted to SSE gallons by a conversion factor of 1,405.88.				
Source: "Mexico Citrus Annual 2004", USDA Foreign Agricultural Service GAIN Report, December 13, 2004 and "Mexico Citrus Annual 2005", USDA Foreign Agricultural Service GAIN Report, November 14, 2005.				

Most Mexican orange juice is exported to the United States, followed by the Netherlands (table I-21). According to the Mexican processing industry, more orange juice is being exported to the EU and Japan following trade agreements that give it lower tariffs in those markets.⁴³

³⁸ "Mexico Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 14, 2005, p. 3.

³⁹ "Mexico Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 14, 2005.

Reliable data on the Mexican orange juice production are difficult to obtain because the Government of Mexico does not maintain official statistics. According to the USDA FAS, the industry “tends to keep partial information most of which is proprietary.” Ibid.

⁴⁰ "Mexico Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 14, 2005.

⁴¹ There was no change reported in the level of inventory stocked.

⁴² "Mexico Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 14, 2005.

⁴³ "Mexico Citrus Annual 2005," USDA Foreign Agricultural Service GAIN Report, November 14, 2005, p. 11.

Table I-21

Orange juice: Export markets for product from Mexico, by product, 2002-05

Export market	Calendar year			
	2002	2003	2004	2005
Quantity (thousand gallons SSE)				
FCOJM:¹				
United States	14,241	835	1,589	8,321
Netherlands	6,878	29	186	2,740
Japan	1,436	309	311	485
Venezuela	662	0	112	309
Germany	2,931	25	142	292
United Kingdom	1,049	375	426	228
All others	3,382	175	147	744
Total	30,578	1,747	2,913	13,119
NFCOJ:²				
United States	36	2	346	455
Aruba	14	27	20	35
All others	34	78	105	111
Total	84	107	472	600
Total:³				
United States	24,043	2,844	4,226	12,663
Netherlands	6,878	35	187	2,741
Japan	1,440	309	311	485
Venezuela	746	6	119	323
Germany	2,931	25	142	292
United Kingdom	1,049	375	429	231
Aruba	41	27	20	35
All others	3,524	292	297	894
Total	40,652	3,913	5,732	17,663
Unit value (per gallon)				
FCOJM:¹				
United States	\$2.16	\$5.81	\$4.93	\$5.07
Netherlands	1.16	5.67	4.69	4.77
Japan	2.94	6.49	5.69	7.00
Venezuela	3.79	(⁴)	5.48	5.85
Germany	0.75	3.48	3.77	4.35
United Kingdom	2.33	5.50	4.55	4.47
All others	1.73	7.99	4.61	5.56
Total	1.83	6.05	4.88	5.10
NFCOJ:²				
United States	0.93	4.61	0.95	0.94
Aruba	2.36	2.34	2.33	2.23
All others	2.70	2.58	2.38	2.75
Total	1.89	2.55	1.33	1.35
Total:³				
United States	1.49	3.03	2.74	3.80
Netherlands	1.17	5.04	4.70	4.77
Japan	2.94	6.49	5.69	7.00
Venezuela	3.46	2.37	5.28	5.71
Germany	0.75	3.48	3.77	4.35
United Kingdom	2.33	5.50	4.53	4.44
Aruba	1.04	2.34	2.33	2.23
All others	1.71	5.70	3.39	5.05
Total	1.51	3.75	3.21	4.15

Table continued on next page.

Table I-21—Continued
Orange juice: Export markets for product from Mexico, 2002-05

Export market	Calendar year			
	2002	2003	2004	2005
Share of quantity (percent)				
FCOJM:¹				
United States	46.6	47.8	54.5	63.4
Netherlands	22.5	1.7	6.4	20.9
Japan	4.7	17.7	10.7	3.7
Venezuela	2.2	0.0	3.8	2.4
Germany	9.6	1.4	4.9	2.2
United Kingdom	3.4	21.4	14.6	1.7
All others	11.1	10.0	5.0	5.7
Total	100.0	100.0	100.0	100.0
NFCOJ:²				
United States	42.6	1.5	73.4	75.7
Aruba	16.4	25.5	4.3	5.8
All others	40.9	73.0	22.3	18.5
Total	100.0	100.0	100.0	100.0
Total:³				
United States	59.1	72.7	73.7	71.7
Netherlands	16.9	0.9	3.3	15.5
Japan	3.5	7.9	5.4	2.7
Venezuela	1.8	0.2	2.1	1.8
Germany	7.2	0.6	2.5	1.7
United Kingdom	2.6	9.6	7.5	1.3
Aruba	0.1	0.7	0.4	0.2
All others	8.7	7.5	5.2	5.1
Total	100.0	100.0	100.0	100.0
¹ HTS 2009.11.00. ² HTS 2009.12.00. ³ Exports reported under HTS subheading 2009.19.00 ("other" orange juice) were included in the total in an effort to capture all exports of certain orange juice. ⁴ Not applicable.				
Note.—FCOJM and NFCOJ metric tons were converted to SSE gallons by a conversion factor of 1,405.88.				
Source: Global Trade Atlas.				

In crop-year 2004/05, Mexico was the second-leading supplier of certain orange juice to the U.S. market after Brazil, with imports of about 55 million gallons. The volume of product shipped from Mexico has, however, fluctuated throughout the period examined with smaller quantities imported in crop years 2002/03 and 2003/04.⁴⁴ Data on U.S. imports of certain orange juice from Mexico are provided in the following tabulation:

⁴⁴ Costa Rica was the second-largest supplier (after Brazil) of certain orange juice to the U.S. market in 2002/03 and 2003/04.

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)	41,358	13,467	8,209	54,822
Value (1,000 dollars)	43,486	16,591	8,339	53,106
Unit value (per gallon)	\$1.05	\$1.23	\$1.02	\$0.97
Source: Table I-5.				

Both FCOJM and NFCOJ are exported to the United States from Mexico (tables D-1 and D-2). Virtually all U.S. imports of NFCOJ were from Mexico and Brazil during the original period of investigation. Orange juice from Mexico is subject to a 40 million-gallon quota under NAFTA, although in 2008 the U.S. quota is scheduled to be completely phased out. In 2007, Mexican orange juice may enter the United States free of duty within quota, and is subject to a duty of 1.57 cents per liter over quota.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1089
(Preliminary)]

Certain Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1089 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain orange juice,¹ provided for in subheadings

¹The imported product subject to this investigation is certain orange juice for transport and/or manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, referred to as frozen concentrated orange juice for further manufacturing ("FCOJM"); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate orange juice. Excluded from the scope of the investigation are: (1) Imports of reconstituted orange juice and frozen orange juice for retail and (2) imports of FCOJM from Brazilian manufacturers/exporters covered by

2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 10, 2005. The Commission's views are due at Commerce within five business days thereafter, or by February 17, 2005.

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

EFFECTIVE DATE: December 27, 2004.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Haines (202) 205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on December 27, 2004, on behalf of Florida Citrus Mutual, Lakeland, FL; A. Duda & Sons (d/b/a Citrus Belle) Oviedo, FL; Citrus World, Inc., Lake Wales, FL; Peace River Citrus Products, Inc., Arcadia, FL; and Southern Garden Citrus Processing Corp. (d/b/a Southern Gardens), Clewiston, FL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under

the existing antidumping duty order on frozen concentrated orange juice from Brazil.

investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 19, 2005, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Betsy Haines (202) 205-3200 not later than January 14, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 24, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic

means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

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

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 18, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-37 Filed 1-3-05; 8:45 am]

BILLING CODE 7020-02-P

2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission makes a negative finding with regard to critical circumstances.

Background

The Commission instituted this investigation effective December 27, 2004, following receipt of a petition filed with the Commission and Commerce by Florida Citrus Mutual, Lakeland, FL; A. Duda & Sons, Inc., Oviedo, FL; Citrus World, Inc., Lake Wales, FL; and Southern Garden Citrus Processing Corp., Clewiston, FL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain orange juice from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith 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** of September 7, 2005 (70 FR 53251). The hearing was held in Washington, DC, on January 10, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 27, 2006. The views of the Commission are contained in USITC Publication 3838 (February 2006), entitled *Certain Orange Juice from Brazil: Investigation No. 731-TA-1089 (Final)*.

By order of the Commission.

Issued: February 28, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-3085 Filed 3-2-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1089 (Final)]

Certain Orange Juice From Brazil

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of certain orange juice, provided for in subheading 2009.11.00,

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

² Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson dissenting.

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

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42° Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product. The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of this order is dispositive.

Antidumping Duty Order

On February 27, 2006, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing certain orange juice is materially injured by reason of less-than-fair-value imports of subject merchandise from Brazil. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from Brazil that are subject to the Department's partial affirmative

critical circumstances finding. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of certain orange juice from Brazil. These antidumping duties will be assessed on all unliquidated entries of certain orange juice from Brazil entered, or withdrawn from the warehouse, for consumption on or after August 24, 2005, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557 (Aug. 24, 2005). With regard to the ITC negative critical circumstances determination, we will instruct CBP to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after May 26, 2005 (*i.e.*, 90 days prior to the date of publication of the preliminary determination in the **Federal Register**), but before August 24, 2005.

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise extend that four-month period to not more than six months. In this investigation, the six-month period beginning on the date of the publication of the preliminary determination ended on February 19, 2006. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of certain orange juice from Brazil entered, or withdrawn from warehouse, for consumption on or after February 19, 2006, and before the date of publication of the ITC's final injury determination in the **Federal Register**. *See Antidumping Duty Order: Certain Color Television Receivers From the*

DEPARTMENT OF COMMERCE

International Trade Administration

(A 351-840)

Antidumping Duty Order: Certain Orange Juice from Brazil

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

EFFECTIVE DATE: March 9, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3874 or (202) 482-4593, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen

People's Republic of China, 69 FR 31347 (June 3, 2004). Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. We will also instruct CBP that, for NFC, the "All Others" rate applies to all companies not specifically named below. However, for FCOJM, the "All Others" rate only applies to FCOJM produced and/or exported by Cargill and Coinbra-Frutesp.

Manufacturer/Exporter	Weighted-Average Margin (percent)
Fischer S/A – Agroindustria	12.46
Montecitrus Trading S.A.	60.29
Sucocitrico Cutrale, S.A.	19.19
All Others	16.51

This notice constitutes the antidumping duty order with respect to certain orange juice from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary.

[FR Doc. E6-3364 Filed 3-8-06; 8:45 am]

BILLING CODE 3510-DS-S

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-1089 (Final)
(Remand)]

Certain Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered remand of its determination in the antidumping Investigation No. 731-TA-1089 concerning certain orange juice from Brazil. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

EFFECTIVE DATE: May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Debra Baker, Office of Investigations, telephone 202-205-3180, or David Goldfine, Office of General Counsel, telephone 202-708-5452, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record of Investigation No. 731-TA-1088 may be viewed on the Commission's electronic docket ("EDIS") at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. In March 2006, the Commission determined that an industry in the United States was materially injured by reason of imports of certain orange juice from Brazil that were allegedly sold in the United States at less than fair value. The Commission's determination was appealed to the U.S. Court of International Trade, which issued an opinion in the matter on April 12, 2007. *See Tropicana Products, Inc. v. United States*, Slip Op. 07-55 (Ct. Int'l Trade April 12, 2007). In its opinion, the U.S. Court of International Trade remanded the matter to the Commission for further proceedings not inconsistent with that opinion.

Participation in the proceeding. Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional appearance filings with the Commission to participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions. The Commission is reopening the record for the limited purpose of collecting data pertinent to its analysis called for under *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 and 1375 (Fed. Cir. 2006). In addition, the Commission will permit the parties to file comments pertaining to the inquiries that are the subject of the CIT's remand instructions, but no new factual information may be submitted with these comments. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than May 31, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

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

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: May 1, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-8615 Filed 5-4-07; 8:45 am]

BILLING CODE 7020-02-P

APPENDIX B

**Excerpts from *Tropicana Products, Inc. v. United States*
Slip Op. 07-55, CIT 2007**

Brazilian imports in order to use the duty drawbacks from Brazilian imports to offset the higher prices of their juice. Final Determination, at 20 n.142. While the duty drawback program does help facilitate U.S. exports, the Commission found that the domestic industry did not need Brazilian imports in order to export its own like product. Id. at 19–20. The Commission found that the fact that the value of drawback credits available significantly exceeded the value of domestic exports demonstrated that there is little correlation between U.S. exports and the availability of drawback credits. Id. at 19–20, 20 n.142. The court agrees that the record supports the conclusion that, although duty drawbacks help facilitate U.S. exports, duty drawbacks are not a major factor in spurring U.S. exports.

CONCLUSION

For the foregoing reasons, the court remands the affirmative determination to the Commission. As previously discussed, the Commission's inventory analysis is seriously flawed for failure to consider, among other factors, the residual demand, the inverse correlation between inventory levels of subject imports and domestic production, and the domestic industry's voluntary maintenance of high inventories. Thus, upon remand, the Commission must examine the full effects of a shortage in the supply of domestic round oranges, and how that affects the Commission's volume and price effects analysis. Additionally, the Commission must examine: the opposition to the petition by a large portion of the domestic industry; whether, if prices were adjusted to account for the LTFV margin, non-subject imports would displace subject imports; and its price suppression analysis.

Further, although the Commission's determinations as to the collection of data, the lack of consideration of ULPOJ imports, and the role of blending are not erroneous when viewed

in isolation, the weakness of the overall analysis and the relatedness of the issues may cause these matters to be significant in the context of a more comprehensive analysis. Given the relatedness of the issues, upon remand, the Commission must not only examine the four deficiencies noted above but must also consider the totality of the evidence anew. In so doing, the Commission must not seize upon bits of evidence to reject what the bulk of the evidence dictates. Additionally, while the court understands that the dissent is not under direct assault here, the dissent's finding of no causation appears to be more logical and supported than the Commission's finding of causation. It would be helpful upon remand for the Commission to engage the dissent.

The Commission's present determination acknowledges that weather and disease caused an increase in the demand for imports but does not offer sufficient evidentiary support, or adequate explanation, for its findings that subject imports were greater than necessary to meet that demand and that the inventory levels of these subject imports over the course of the POI prevented price increases that otherwise would have occurred. In a volatile supply condition, which the Commission acknowledges, not the least by the breadth of the POI here, significant inventory is necessary. If inventory is the key, it needs an in-depth analysis.

If it finds it necessary or efficacious, the Commission may reopen the record. The Commission should render a determination upon remand within 75 days hereof. Objections may be filed 20 days thereafter. Response may be filed within 11 days.

/s/ Jane A. Restani

Jane A. Restani
Chief Judge

Dated this 12th day of April, 2007.
New York, New York.

APPENDIX C
SUMMARY DATA

Table C-3
Certain orange juice: Summary data concerning the U.S. market, crop years 2001/02 - 2004/05

(Quantity=1,000 gallons, value=1,000 dollars, unit values are per gallon; period changes=percent, except where noted)

Item	Reported data				Period changes			
	Crop years				2001/02 - 2004/05	2001/02 - 2002/03	2002/03 - 2003/04	2003/04 - 2004/05
	2001/02	2002/03	2003/04	2004/05				
Total available supply:								
Amount	1,450,121	1,426,553	1,436,664	1,500,670	3.5	-1.6	0.7	4.5
Domestic share (1)	87.2	79.9	84.8	76.5	-10.7	-7.3	4.9	-8.3
Importers' share (1):								
Brazil	7.6	15.9	10.7	15.4	7.9	8.4	-5.2	4.7
Belize	0.3	0.6	1.4	2.0	1.8	0.3	0.8	0.6
Costa Rica	1.7	2.0	2.2	2.0	0.3	0.4	0.2	-0.3
Mexico	2.9	0.9	0.6	3.7	0.8	-1.9	-0.4	3.1
All other sources	0.4	0.6	0.3	0.4	-0.1	0.2	-0.4	0.1
Total imports	12.8	20.1	15.2	23.5	10.7	7.3	-4.9	8.3
U.S. imports from:								
Brazil:								
Quantity	109,728	227,280	154,203	231,711	111.2	107.1	-32.2	50.3
Value	99,162	242,259	142,702	232,481	134.4	144.3	-41.1	62.9
Unit value	\$0.90	\$1.07	\$0.93	\$1.00	11.0	17.9	-13.2	8.4
Ending inventory quantity	33,791	41,795	26,633	51,312	51.9	23.7	-36.3	92.7
Belize:								
Quantity	3,822	8,123	20,205	30,366	694.5	112.5	148.7	50.3
Value	13,747	11,486	10,602	18,484	34.5	-16.4	-7.7	74.3
Unit value	\$3.60	\$1.41	\$0.52	\$0.61	-83.1	-60.7	-62.9	16.0
Costa Rica:								
Quantity	24,054	28,755	32,020	29,658	23.3	19.5	11.4	-7.4
Value	37,960	38,397	30,781	31,411	-17.3	1.1	-19.8	2.0
Unit value	\$1.58	\$1.34	\$0.96	\$1.06	-32.9	-15.4	-28.0	10.2
Mexico:								
Quantity	41,358	13,467	8,209	54,822	32.6	-67.4	-39.0	567.8
Value	43,486	16,591	8,339	53,106	22.1	-61.8	-49.7	536.8
Unit value	\$1.05	\$1.23	\$1.02	\$0.97	-7.9	17.2	-17.5	-4.6
All other sources:								
Quantity	6,325	9,244	3,733	5,586	-11.7	46.1	-59.6	49.6
Value	7,908	10,020	3,925	6,191	-21.7	26.7	-60.8	57.7
Unit value	\$1.25	\$1.08	\$1.05	\$1.11	-11.4	-13.3	-3.0	5.4
All sources:								
Quantity	185,287	286,869	218,370	352,143	90.1	54.8	-23.9	61.3
Value	202,265	318,753	196,350	341,672	68.9	57.6	-38.4	74.0
Unit value	\$1.09	\$1.11	\$0.90	\$0.97	-11.1	1.8	-19.1	7.9
Ending inventory quantity	35,484	41,834	26,642	54,749	54.3	17.9	-36.3	105.5
U.S. domestic shipment quantity	1,264,833	1,139,684	1,218,294	1,148,526	-9.2	-9.9	6.9	-5.7

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data				Period changes			
	Crop years				2001/02 - 2004/05	2001/02 - 2002/03	2002/03 - 2003/04	2003/04 - 2004/05
	2001/02	2002/03	2003/04	2004/05				
U.S. processors':								
Average capacity quantity	1,645,640	1,645,641	1,690,640	1,690,640	2.7	0.0	2.7	0.0
Production quantity	1,405,537	1,226,103	1,465,341	965,406	-31.3	-12.8	19.5	-34.1
Capacity utilization (1)	85.4	74.5	86.7	57.1	-28.3	-10.9	12.2	-29.6
U.S. shipments:								
Quantity	1,338,675	1,194,489	1,348,799	1,048,643	-21.7	-10.8	12.9	-22.3
Value	1,331,416	1,247,495	1,321,088	1,103,316	-17.1	-6.3	5.9	-16.5
Unit value	\$1.20	\$1.26	\$1.16	\$1.23	2.1	4.8	-8.2	6.1
Export shipments:								
Quantity	118,103	50,758	74,307	61,466	-48.0	-57.0	46.4	-17.3
Value	132,123	57,672	71,151	56,598	-57.2	-56.3	23.4	-20.5
Unit value	\$1.12	\$1.14	\$0.96	\$0.92	-17.7	1.6	-15.7	-3.8
Ending inventory quantity	423,741	439,812	540,384	415,181	-2.0	3.8	22.9	-23.2
Inventories/total shipments (1)	29.1	35.3	38.0	37.4	8.3	6.2	2.7	-0.6
Production workers	3,445	3,445	3,542	3,040	-11.8	0.0	2.8	-14.2
Hours worked (1,000s)	9,098	8,263	8,478	7,263	-20.2	-9.2	2.6	-14.3
Wages paid (\$1,000)	118,500	117,708	122,723	113,485	-4.2	-0.7	4.3	-7.5
Hourly wages	\$13.02	\$14.25	\$14.48	\$15.63	20.0	9.4	1.6	7.9
Productivity (pounds per hour)	153.6	145.5	172.9	129.5	-15.7	-5.2	18.8	-25.1
Unit labor costs	\$0.08	\$0.10	\$0.08	\$0.12	42.2	15.4	-14.4	44.1

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Increase greater than 1,000 percent.

Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from official USDA and Commerce statistics.

APPENDIX D

DATA ON U.S. IMPORTS OF FCOJM AND NFCOJ

Table D-1

Certain orange juice: U.S. imports by source and by type of product, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)				
FCOJM:				
Brazil (subject)	104,857	206,064	142,418	209,620
Mexico	38,964	12,667	7,093	51,871
Belize	3,822	8,123	20,205	30,366
Costa Rica	24,054	28,755	32,020	29,658
Honduras	4,462	1,238	1,669	2,182
Dominican Republic	768	894	430	1,120
South Africa	536	5,737	237	1,006
All others	533	1,294	949	1,005
Subtotal, nonsubject	73,140	58,708	62,603	117,209
Total	177,997	264,772	205,021	326,829
NFCOJ:				
Brazil (subject)	4,871	21,216	11,785	22,091
Mexico	2,394	800	1,117	2,951
Belize	0	0	0	0
Costa Rica	0	0	0	0
Honduras	0	0	0	0
Dominican Republic	2	0	387	207
South Africa	0	0	0	0
All others	24	81	61	65
Subtotal, nonsubject	2,419	881	1,564	3,223
Total	7,291	22,097	13,349	25,314
Value¹ (1,000 dollars)				
FCOJM:				
Brazil (subject)	90,340	205,709	127,358	199,970
Mexico	40,201	15,089	6,490	48,380
Belize	13,747	11,486	10,602	18,484
Costa Rica	37,960	38,397	30,781	31,411
Honduras	5,526	1,722	1,534	2,591
Dominican Republic	674	836	406	1,070
South Africa	581	5,655	211	889
All others	1,042	1,575	1,072	1,195
Subtotal, nonsubject	99,732	74,759	51,097	104,020
Total	190,073	280,468	178,455	303,990
NFCOJ:				
Brazil (subject)	8,822	36,550	15,344	32,510
Mexico	3,285	1,503	1,850	4,725
Belize	0	0	0	0
Costa Rica	0	0	0	0
Honduras	0	0	0	0
Dominican Republic	7	0	544	280
South Africa	0	0	0	0
All others	78	232	157	167
Subtotal, nonsubject	3,370	1,734	2,551	5,172
Total	12,192	38,285	17,895	37,682

Table continued on next page.

Table D-1--Continued

Certain orange juice: U.S. imports by source and by type of product, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Unit value (per gallon)				
FCOJM:				
Brazil (subject)	0.86	1.00	0.89	0.95
Mexico	1.03	1.19	0.91	0.93
Belize	3.60	1.41	0.52	0.61
Costa Rica	1.58	1.34	0.96	1.06
Honduras	1.24	1.39	0.92	1.19
Dominican Republic	0.88	0.94	0.95	0.95
South Africa	1.08	0.99	0.89	0.88
All others	1.95	1.22	1.13	1.19
Subtotal, nonsubject	1.36	1.27	0.82	0.89
Total	1.07	1.06	0.87	0.93
NFCOJ:				
Brazil (subject)	1.81	1.72	1.30	1.47
Mexico	1.37	1.88	1.66	1.60
Belize	----	----	----	----
Costa Rica	----	----	----	----
Honduras	----	----	----	----
Dominican Republic	3.50	----	1.41	1.35
South Africa	----	----	----	----
All others	3.29	2.88	2.59	2.57
Subtotal, nonsubject	1.39	1.97	1.63	1.60
Total	1.67	1.73	1.34	1.49
Share of quantity (percent)				
FCOJM:				
Brazil (subject)	58.9	77.8	69.5	64.1
Mexico	21.9	4.8	3.5	15.9
Belize	2.1	3.1	9.9	9.3
Costa Rica	13.5	10.9	15.6	9.1
Honduras	2.5	0.5	0.8	0.7
Dominican Republic	0.4	0.3	0.2	0.3
South Africa	0.3	2.2	0.1	0.3
All others	0.3	0.5	0.5	0.3
Subtotal, nonsubject	41.1	22.2	30.5	35.9
Total	100.0	100.0	100.0	100.0
NFCOJ:				
Brazil (subject)	66.8	96.0	88.3	87.3
Mexico	32.8	3.6	8.4	11.7
Belize	0.0	0.0	0.0	0.0
Costa Rica	0.0	0.0	0.0	0.0
Honduras	0.0	0.0	0.0	0.0
Dominican Republic	0.0	0.0	2.9	0.8
South Africa	0.0	0.0	0.0	0.0
All others	0.3	0.4	0.5	0.3
Subtotal, nonsubject	33.2	4.0	11.7	12.7
Total	100.0	100.0	100.0	100.0

Table continued on next page.

Table D-1--Continued

Certain orange juice: U.S. imports by source and by type of product, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Share of value (percent)				
FCOJM:				
Brazil (subject)	47.5	73.3	71.4	65.8
Mexico	21.2	5.4	3.6	15.9
Belize	7.2	4.1	5.9	6.1
Costa Rica	20.0	13.7	17.2	10.3
Honduras	2.9	0.6	0.9	0.9
Dominican Republic	0.4	0.3	0.2	0.4
South Africa	0.3	2.0	0.1	0.3
All others	0.5	0.6	0.6	0.4
Subtotal, nonsubject	52.5	26.7	28.6	34.2
Total	100.0	100.0	100.0	100.0
NFCOJ:				
Brazil (subject)	72.4	95.5	85.7	86.3
Mexico	26.9	3.9	10.3	12.5
Belize	0.0	0.0	0.0	0.0
Costa Rica	0.0	0.0	0.0	0.0
Honduras	0.0	0.0	0.0	0.0
Dominican Republic	0.1	0.0	3.0	0.7
South Africa	0.0	0.0	0.0	0.0
All others	0.6	0.6	0.9	0.4
Subtotal, nonsubject	27.6	4.5	14.3	13.7
Total	100.0	100.0	100.0	100.0

Note1.--Crop years are October - September.

Note2.--Conversion factor: 1 liter = 0.2642 gallons.

¹ Landed, duty-paid.

Source: Compiled from official Commerce import statistics using HTS numbers 2009.11.0060, 2009.19.2500, and 2009.12.2500

Table D-2

Certain orange juice: Apparent U.S. consumption and market shares, by type of product, crop years 2001/02-2004/05

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)				
FCOJM:				
Beginning stocks	470,985	466,736	475,061	567,867
U.S. production	877,816	654,031	881,885	382,836
Minus: U.S. exports	121,753	37,389	56,847	43,051
Minus: Ending stocks	466,736	475,061	567,867	397,846
Total domestic shipments	760,312	608,317	732,232	509,807
Apparent consumption	938,309	873,089	937,253	836,636
NFCOJ:				
Beginning stocks	227,479	225,427	229,448	274,272
U.S. production	554,346	592,730	589,449	623,806
Minus: U.S. exports	51,877	57,342	58,563	67,204
Minus: Ending stocks	225,427	229,448	274,272	192,154
Total domestic shipments	504,521	531,368	486,062	638,720
Apparent consumption	511,812	553,464	499,411	664,034
Share of quantity (percent)				
FCOJM:				
U.S. producers' shipments	81.0	69.7	78.1	60.9
U.S. imports from--				
Brazil (subject)	11.2	23.6	15.2	25.1
Mexico	4.2	1.5	0.8	6.2
Belize	0.4	0.9	2.2	3.6
Costa Rica	2.6	3.3	3.4	3.5
Honduras	0.5	0.1	0.2	0.3
Dominican Republic	0.1	0.1	0.0	0.1
South Africa	0.1	0.7	0.0	0.1
All others	0.1	0.1	0.1	0.1
Subtotal, nonsubject	7.8	6.7	6.7	14.0
Total	19.0	30.3	21.9	39.1
NFCOJ:				
U.S. producers' shipments	98.6	96.0	97.3	96.2
U.S. imports from--				
Brazil (subject)	1.0	3.8	2.4	3.3
Mexico	0.5	0.1	0.2	0.4
Belize	0.0	0.0	0.0	0.0
Costa Rica	0.0	0.0	0.0	0.0
Honduras	0.0	0.0	0.0	0.0
Dominican Republic	0.0	0.0	0.1	0.0
South Africa	0.0	0.0	0.0	0.0
All others	0.0	0.0	0.0	0.0
Subtotal, nonsubject	0.5	0.2	0.3	0.5
Total	1.4	4.0	2.7	3.8
Source: Compiled from table D-1 of this report and table IV-5 of the final staff report (INV-DD-010).				

APPENDIX E

**DATA SUBMITTED BY FOREIGN PRODUCERS
IN NONSUBJECT COUNTRIES**

DATA SUBMITTED ON THE ORANGE JUICE INDUSTRY IN COSTA RICA

Del Oro S.A. (“Del Oro”), a producer of orange juice in Costa Rica, provided certain data to the Commission (table E-1).¹ The *** of the orange juice processed by Del Oro is shipped to the United States although the firm also maintains home market customers and ships to other regions (** to Europe).² Reported capacity utilization fell from over *** percent in 2002 and 2003 to slightly over *** percent in 2004 and January-September 2005. Del Oro indicated in a cover letter to the submitted data that it made a “***” in processing capacity in 2003.

Table E-1
Orange juice (nonsubject production in Costa Rica): Del Oro production capacity, production, shipments, and inventories, 2002-04, January-September 2004 and 2005, and projected 2005-06

* * * * *

DATA SUBMITTED ON THE ORANGE JUICE INDUSTRY IN MEXICO

Citrofrut S.A. de C.V. (“Citrofrut”) and Procimart S.A. de C.V. (“Procimart”) returned questionnaires on their operations in Mexico.³ The below tabulation presents production, on a firm basis, for Citrofrut and Procimart, as well as industry-wide figures for Mexico compiled by PSD Online (previously presented in SSE gallons in tables I-10 and I-11):

Source	Time period ¹			
	2002	2003	2004	2005
Production quantity (1,000 pounds solids equivalent)				
Citrofrut	***	***	***	***
Procimart	***	***	***	***
Total	***	***	***	***
PSD Online	46,453	10,930	27,461	101,240
Percent				
Coverage	***	***	***	***
¹ The following time periods are used for Citrofrut and Procimart: full year 2002, full year 2003, full year 2004, and January-September 2005 (a period which appears to be equivalent to a crop year). The data for PSD Online is for crop years 2001/02 through 2004/05 (crop/market year period was November-October). Note.—SSE gallons were converted to pounds solid equivalent using the conversion factor: pound solid equivalent (PSE) = 1.029 gallons.				

Data submitted by Citrofrut indicate that the firm accounted for the *** of orange juice production in Mexico ***.

¹ ***.

² Del Oro indicated that its exports to the United States were not subject to tariff barriers due to the Caribbean Basin Initiative and that there is similar access to the European market.

³ Citrofrut did not provide any information on the structure of its firm operations in its response to the Commission questionnaire. With respect to Procimart, approximately *** percent of its total sales in 2004 was represented by sales of the subject merchandise. Citrofrut’s and Procimart’s foreign producer questionnaire responses.

Combined data for Citrofrut and Procimart on their capacity, production, and shipments of orange juice are shown in table E-2. Capacity to process orange juice increased by *** percent from 2002 to 2004 and then was *** from January-September 2004 to January-September 2005. Procimart began processing oranges in 2004 when it installed *** pounds solids equivalent of capacity.⁴ Combined orange juice production for the two firms fell from 2002 to 2003 and then increased in 2004 and 2005. Production was at *** capacity in 2002 and January-September 2005 but was *** lower in 2003 and 2004. Citrofrut and Procimart reported a combined capacity utilization figure of *** percent in January-September 2005 (table E-2).

Table E-2
Certain orange juice (nonsubject production in Mexico): Production capacity, production, shipments, and inventories, 2002-04, January-September 2004 and 2005

* * * * * * *

The *** of the orange juice processed by the reporting firms is exported (table E-2);⁵ the *** are the predominant export destinations. The unit values of exports to the United States were generally *** than those to other export markets during 2002-04, and *** than exports to the European Union and Asia during the January-September 2005 period.

*** projected operations in 2005 and 2006 are shown in the following tabulation:

* * * * * * *

As shown, *** producing less orange juice in 2006 than in 2005 resulting in a *** in capacity utilization. ***.⁶

⁴ Procimart's foreign producer questionnaire response. The firm produces only nonorganic FCOJM. (***) Ibid.

⁵ Data for the entire industry (table I-11) likewise shows that home market consumption of orange juice in Mexico is much lower than country exports.

⁶ Procimart's foreign producer questionnaire response.

